Comments: I support this law but wonder if there is a way to enhance the scope. I live in an overburdened community and while air and water pollution are concerns, we are affected by several stressors that "may cause potential public health impacts" such as lack of tree canopy, impervious surfaces, and flooding. My municipality cuts down trees and never replants any in our neighborhood and a large new development nearby has been granted permission to have 90% impervious surface cover on their site. This EJ law focuses on pollution-producing industries, which is great, but can there be a way to also use this law to better incentivize municipalities to address stressors that may cause potential public health impacts? I don't know the best way to do this, but examples could be mandating that municipalities with overburdened communities have shade tree commissions.
** Electronic Rulemaking Comment **
Submission Date: 06/07/2022 19:31:13
First Name: Randy
Last Name: Ruth
Affiliation: stone to sand
City: Milltown
State: NJ
Zip: 08850
Email: [REDACTED]
Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: There should be reference to redevelopment of residential development with over 90% impervious coverage.
Phillipsburg has six (6) newly built, HUGE warehouses located next to highway Route 22. A developer wants to build a warehouse with its accompanying TRACTOR TRAILER truck traffic congestion and diesel fumes pollution in historic downtown Phillipsburg behind the Catholic Church, next to the Delaware River, where today's hearing is being conducted. This neighborhood is also the poorest in Phillipsburg, the poorest town in Warren County. This is a blatant example of environmental INJUSTICE.
I tried to submit thought the portal and there isn’t a confirmation.

Gerald T Reiner Jr.
Purchasing Manager,
Bergen County Utilities Authority
Box 9, Foot of Merhoff Road
Little Ferry, NJ 07643
Office: 201-807-8693
Cell: [Redacted]

Notice: This e-mail communication (including any attachment) form the Bergen County Utilities Authority may contain personal or confidential information which is protected from disclosure by the attorney-client privilege or other privilege or legal doctrine. If the reader of this communication is not the intended recipent, you are hereby notified that you have received this communication in error and that your review, dissemination in error and that your review, dissemination, distribution, or copying of the communication is strictly prohibited.
The Bergen County Utilities Authority (BCUA) is a county utilities authority organized and existing pursuant to the Municipal and County Utilities Authority Law, N.J.S.A. 40:14B-1 et seq., to provide the services enumerated in N.J.S.A. 40:14B-2 in the County of Bergen, including but not limited to sewage collection and disposal services and the relief of waters in or bordering the State from pollution arising from causes within the district and the relief of waters in, bordering or entering the district from pollution or threatened pollution on behalf of its constituent members.

The operation and maintenance of an effective and efficient water pollution control system represents a vital responsibility of government that is essential to ensuring the health, safety, and welfare of those whose daily life activities depend on such a system. The BCUA plays an important role in providing these essential services within the Authority’s sewer service district. The size and scale of the BCUA’s water pollution control facility in Little Ferry, NJ makes it one of the largest in the State of New Jersey and an essential component in the efforts for maintain clean water in a very sensitive environmental region and a facility which wholly is located within a “overburdened community”.

I am writing to express comments regarding the regulations being drafted around the P.L. 2020 Chapter 92, regarding Environmental Justice, it is our hope that you consider these comments in drafting regulations and hopefully some if not all of our concerns are addressed. In reviewing the legislation, we have determined that our one facility which processes upwards of 150 million gallons of sewage a day would potentially have operations and improvements be stifled due to extraordinary regulation.

Specifically, in review of the law the following permits may be required for various reasons at the facility:

The law requires that “the department shall not consider complete for review any application for a permit for a new facility or for the expansion of an existing facility, or any application for the renewal of an existing facility’s major source permit, if the facility is located, or proposed to be located, in whole or in part, in an overburdened community” unless the act is followed which includes three steps to include;

1. Prepares an environmental justice impact statement that assesses the potential environmental and public health stressors associated with the proposed new or expanded facility, or with the existing major source, as applicable, including any adverse environmental or public health stressors that cannot be avoided if the permit is granted, and the environmental or public health stressors already borne by the overburdened community as a result of existing conditions located in or affecting the overburdened community
2. Transmits the environmental justice impact statement required to be prepared pursuant to paragraph (1) of this subsection, at least 60 days in advance of the public hearing required pursuant to paragraph (3) of this subsection, to the department and to the governing body and the clerk of the municipality in which the overburdened community is located. Upon receipt, the department shall publish the environmental justice impact statement on its Internet website; and

3. Organize and conduct a public hearing in the overburdened community, per the statute.

While there are some limited exemptions such as a minor modification, or a permit which reduces emissions, the act as adopted would apply to nearly every construction project at the Little Ferry Water Pollution Control facility. In review of the adopted law, and within the spirit of the law it is the Authority’s opinion that the regulations should provide a process that public utilities which are subject to the Open Public Records Act provide an existing platform for transparency to their communities and therefore should be affording the ability to hold an annual environmental justice hearing based upon the facilities capital plan to comply with the act. This is within the spirit of the law in that it provides for an ongoing dialog between the facility and the overburdened community in a consistent and regular basis.

This concept is within the spirit of the law in that P.L. 2020 Chapter 92, C13:1D-160(e) states; “If a permit applicant is applying for more than one permit for a proposed new or expanded facility, the permit applicant shall only be required to comply with the provisions of this section once…”

Furthermore, on a case by case basis the law allows for additional compliance if warranted based upon the project being undertaken, specifically; “…the department, in its discretion, determines that more than one public hearing is necessary due to the complexity of the permit applications necessary for the proposed new or expanded facility. Nothing in this section shall be construed to limit the authority of the department to hold or require additional public hearings, as may be required by any other law, rule, or regulation.”

Should the regulations be drafted in such a manner to only provide for a strict interpretation of the act, the Authority would be at a standstill unable to proceed with timely projects which often result in a cleaner and improved facility. It is our opinion that this method also helps to reduce confusion within the overburdened community, in that if a hearing is held on a case by case basis the community will be unable to decipher the information in a fair and reasonable manner. In holding the meetings on a regular basis the facility will better know our neighbors in the “overburdened community” and be able to work together toward solutions for the betterment of the community and the County of Bergen as a whole.

Lastly, there seems to be considerable confusion within the various divisions of DEP, the rules need to make clear if public comment periods may be concurrent vs. consecutively. The communities at risk are overburdened from not only environmental impact but also socioeconomic impact. In holding concurrent public comment, the communities are able to be updated to the status of applications and projects without having to take multiple days/nights off work. When
regulatory burdens are placed calling for multiple meetings the messages and meanings are diluted and the public is not served.
Comments: Make sure that rules are not used for Regulatory Taking of peoples property for Penn East pipeline. Also, look into contamination of Trenton water supply with radioactive uranium by Luxfer and accepted by NJDEP personnel as A-OK as long as NJDEP gets paid a fine. Justice is not supposed to be a way of collecting a cash flow of fines. Exxon can afford to contaminate NJ forever.
From: DEP rulemakingcomments [DEP]
To: DEP rulemakingcomments [DEP]
Cc: jeanpublic1@gmail.com
Subject: DEP Dkt. No. 04-22-04 Environmental Justice
Date: Sunday, July 3, 2022 4:24:04 PM

** Electronic Rulemaking Comment **
Submission Date: 07/03/2022 16:23:55
First Name: jean
Last Name: publiee
Affiliation:
City: flemington
State: NJ
Zip: 08822
Email: jeanpublic1@gmail.com
Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: the public hearings mentioned in this proposal shall be noticed in the nj register so that all citizens of the state can have a say on these new alleged "environmental justice" that claims roads have racial connotations. this new field which has been promoted primarily by the democratic party, along with crt and other new declaratory decisions that have zero public input are seriously flawed and need to be revoked. this is new fat ct bureaucracy that needs to be shut down entirely. we have enough regulations already and do not need more. it all costs more and the taxes are already so high.
Comments: I support the strictest rulemaking possible under the law. The blanket loophole, "compelling public interest," should be struck completely. The loophole perpetuates the colonialism that appropriates life choices to powerful constituencies over the bodies of less-powerful communities. The environmental justice law was designed to stop this barbaric exploitation of power. We believe all people's lives have equal value; the rulemaking for environmental justice should not allow a loophole around this human value that we hold dear. If the law cannot be changed, the loophole "compelling public interest" should be defined very narrowly and explicitly. Here's how I recommend going about that: Firstly WHO constitutes "the public." The language seems to broaden the interested parties beyond the communities that have experienced environmental racism for generations. That is unacceptable. The only "public" who should be considered are the "public" impacted by the pollution where the infrastructure is being targeted. Within that area, the vague language also fails to distinguish which socio-economic strata will be weighed more favorably. This too is unacceptable. Ownership classes, businesses and wealthy, well-connected individuals should not be weighted more heavily than anyone else. If anything, children and health-compromised individuals in the potentially impacted community should be weighed more heavily because their bodies are more vulnerable to the pollution that this law is all about. Extra weight MUST be given to the census tracts that border and are closest downwind and downflow of the proposed facility. Secondly WHO and WHAT determines their "interest." Again the language implies that powerful, well-connected people can determine the interest of the community being targeted for pollution. This is unacceptable. It allows elites to say, "They need the jobs more than health" and "They need the money more than their children's well-being" and "They can tolerate more pollution." The people inside the targeted community should determine their own interests. And whose interests inside the targeted community should be served? No socio-economic strata in that community should get priority, unless possibly it is the children and health-compromised individuals, because of their added vulnerability. Also, extra weight MUST be given to the census tracts that border and are closest downwind / downflow of the proposed facility. Thirdly, who gets to choose what they find to be "compelling." Clearly, powerful economic actors from outside a burdened community feel compelled to export their pollution. It must be clarified by the rulemaking that such a thing is not acceptable. The rules must be written to narrowly define who gets to determine what "compels." Again, those choice-making should be centered in the burdened community, by a balanced cross-section of socio-economic strata inside that community. Extra weight MUST be given to the census tracts that border and are closest downwind and downflow of the proposed facility, and extra consideration to the people who are most vulnerable in those populations.
** Electronic Rulemaking Comment **
Submisison Date: 07/08/2022 12:58:52
First Name: Joseph
Last Name: Basralian
Affiliation:
City: Chatham Township
State: NJ
Zip: 07928
Email: 
Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: This is my second public comment today on this Docket #. Two separate points. PPPPPPP1) The 200-foot notification perimeter is woefully inadequate. Truly and terribly inadequate. If my neighbor in suburban Morris County wants to build a home that is 1-inch above 35 feet high, the notifications have to go out in a 200 foot perimeter. That's fine. But to have that same standard apply when a new or expanded INDUSTRIAL FACILITY is going to be built in an urban environment?!...that is FAR more potentially damaging and impactful over a widespread area than a suburban homeowner seeking a minor variance. The Rulemaking must expand the notification perimeter to AT LEAST 1,000 FEET. AND there must be a requirement for two notifications, spread two weeks apart, not just one. A 200 foot notification perimeter is also deeply unjust in another way. It puts an added burden on small, overtaxed citizens groups to get the word out to many thousands of more people who will be impacted by the proposed pollution. There's no way they can do that. They don't have tens of thousands of dollars to buy mailer data, much more to print and send cards, and so on. The state already has this data, and the responsibility should be born by the well-capitalized corporation who proposes doing the polluting, not by the citizen groups who are on the victim end of the proposed pollution. PPPPPPPP2) I am also concerned about the potential loophole driven by the easier standards for expansion and renewal permit requests. The interpretation of these should be STRICT. We can't have small existing facilities apply for massive expansions and get away with easier rulemaking. Big companies will seed an area with a very small facility that won't get flagged by the law, then come back in a few years with a massive expansion. It should be treated as a brand new facility. Please be very strict in DEP's policy on this. We can not tolerate loopholes that allow any more impacts to accumulate in overburdened communities.
Comments: I strongly support this law, which will work towards equalizing environmental protections across all New Jersey communities.
As a resident of an overburdened community, I would like to see major sources of air pollution to include warehousing due to excessive diesel trucks that would be travelling through our town as a result of these types of facilities.
** Electronic Rulemaking Comment **

Submission Date: 07/26/2022 08:45:00
First Name: Zadie
Last Name: Adams
Affiliation:
City: Newark
State: NJ
Zip: 07103
Email: [redacted]

Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice

Comments: Please ensure that this law does not provide leeway for big corporations on account of financial promise. In order to ensure that our air quality remains safe and healthy for all groups (even sensitive and immune compromised) we need to be sure that there is minimal discretion when applying these penalties. Discretion leaves room for loopholes which will result in continued detrimental health outcomes for the people of Newark New Jersey and the world at large.
** Electronic Rulemaking Comment **

Submisison Date: 07/26/2022 19:41:52
First Name: Zadie
Last Name: Adams
Affiliation:
City: Newark
State: NJ
Zip: 07103
Email: 

Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice

Comments: Please ensure that this law does not provide leeway for big corporations on account of financial promise. In order to ensure that our air quality remains safe and healthy for all groups (even sensitive and immune compromised) we need to be sure that there is minimal discretion when applying these penalties. Discretion leaves room for loopholes which will result in continued detrimental health outcomes for the people of Newark New Jersey and the world at large.
I, Martha Arencibia, a homeowner/flood victim of sewage overflow in Paterson facing environmental injustice. Paterson CSO situation is effecting our health, finances, and most of all quality of life. Unfortunately the residents of Paterson are being neglected from having serious federal funds to address our current need for sewer separation. The _ej-Law_ and overburdened community map under NJ Environmental Justice proves the injustice Paterson is under. I'm seeking immediate action has the climate is changing creating more frequent thunderstorms/heavy rainfalls causing tremendous hardship to the residents. The Paterson LTCP has my area scheduled to be addressed in 2040 this truly unexceptionable! My neighbors and I have reported to the Mayor, City council, DPW, city engineer, the hotline for DEP 1-877-927-6337 and we have even emailed letter to Susan Rosenwinkel Bureau Chief NJDEP Division of Water Quality. I attend and belong to different organizations all based on CSO Green infrastructure and Environmental Justice but Paterson is usually not number 1 it's usually Newark, and Jersey City. Nevertheless it time for environmental justice now for Paterson. Thank you Martha Arencibia
** Electronic Rulemaking Comment **
Submission Date: 07/27/2022 17:22:38
First Name: janet
Last Name: tauro
Affiliation: 
City: Brick
State: NJ
Zip: 08724
Email: 
Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: This is in reference to PPPPN.J. A.C.7:1CPPPPPPPPPMy name is Janet Tauro and I am writing on behalf of myself and my family; my husband, Joe, and two adult children, Joseph and Tracy. We live at the Jersey Shore in Brick, NJ and wholeheartedly support the Environmental Justice legislation, and want the NJDEP_s rulemaking to be devoid of loopholes that would negatively impact EJ communities. PPPPPMy family knows firsthand how dirty air can harm an individual. My sister lives in Essex County and we can_t even take her out to a local diner for a grilled cheese without first making sure she_s done her inhaler and then setting her up with her portable oxygen tank. How did we get to this low point? We got here through decades of dirty industries_n neglect of the human and environmental toll for profit, and regulators allowing it. PPPPPWe are concerned that dirty industries might dangle the promise of jobs as a path toward approval. EJ communities should not have to choose between a healthy environment and jobs. That is environmental racism and extortion. Neither do we want to see dirty industries encouraged in EJ communities. We would agree with those who say that dirty industries actually harm the economy as health care costs rise to deal with the sickness they cause. PPPPPWhen one suffers, we all suffer. I do look forward to the day when we can take my sister outdoors and have her breathe in a lungfull of clean, fresh air. I do believe we can make that happen if the EJ rulemaking is written adequately, fairly, and with true justice as its goal. PPPPPT Thank you for giving me this opportunity to comment. PPPPPPPP
** Electronic Rulemaking Comment **

Submission Date: 07/28/2022 09:57:51
First Name: Wynnie-Fred
Last Name: Victor Hinds
Affiliation:
City: Newark
State: NJ
Zip: 07112
Email:

Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice

Comments: Good morning. My name is Wynnie-Fred Victor Hinds. I am the Executive Director of the Weequahic Park Association, speaking on the WPA’s behalf, concerning the Environmental Justice Rule N.J.A.C. 7:1C. As a 19-year resident of Newark, I can attest to the disproportionate impact of polluting industries in Newark, a mostly people of color and low-income city. I have lived in other states, and countries. Newark is, by far, the most environmentally impacted city I've lived in; Negatively impacted due to pollutants from multiple carbon and green house gas (GHG) emitters such as polluting plants, mobile sources of emissions, plus water, noise, etc. The EJ Rule, N.J.A.C.7:1C, stands to be a groundbreaking legislation. We, the WPA, support the EJ Rule as it was written, by community environmental experts and activists, including community residents. We do not want polluting industries getting special treatment to dilute the legislation in order to increase their profit to the detriment of residents' health and lifespan. Are Newark residents and the surrounding areas not worthy of good health, clean air and green industries because of their zip codes? The intention of the law was to fundamentally change the approach to business as usual that allows the constant dumping of dirty industries in overburdened communities. By allowing economic factors to trump these considerations - you essentially leave in place the system we have now - one that continues to sacrifice public health and re-entrench the patterns of environmental racism that have left Environmental Justice communities vulnerable to the cumulative impacts of pollution. Again, we support the Environmental Justice Rule N.J.A.C.7:1C, without any loopholes that will benefit polluting industries. Let's start prioritizing residents' health over fleeting economic gains for a few workers, that will also only benefit those who do not live in Newark. We deserve better, and our lives depend on it. Thank you.
Dear EJ Committee,

This letter expresses our strong desire to see our NJ EJ law protected and strengthened, and that the definition of what could be developed in the "public interest" be very carefully scrutinized and thoughtfully, narrowly defined to make sure polluting industries are kept out of our overburdened neighborhoods in virtually all circumstances. We are keenly aware of the dirty air, water and streets that afflict us. As a local business consisting of a local resident workforce, we do not want any more false choices presented to our community where in order to get 'jobs' and 'tax revenue' we have to sacrifice our environment and our green spaces to polluters and generally to dense development -- and that these promised benefits conveniently override any alternative ideas or initiatives we offer (e.g. non-polluting companies, small locally owned urban farms, etc).

Further, it is our observation and our experience here that 'jobs' and 'tax revenue' are not universally in the 'public interest' because they are usually 1) less than promised and 2) not necessarily transparently and equitably distributed; while the costs of pollution and overdevelopment are widely and distributed to most vulnerable communities of color and also to the entire City.

Thank you for allowing us to contribute to this hearing and discussion.

Best,
Emilio Panasci
Co-founder and director
Urban Agriculture Cooperative
** Electronic Rulemaking Comment **

Submission Date: 07/28/2022 15:13:43
First Name: Charity
Last Name: Haygood
Affiliation:
City: Newark
State: NJ
Zip: 07112
Email: [REDACTED]

Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: I support the EJ Rule N.J.A.C. 7:1C, without any loopholes that will benefit polluting industries. Let's start prioritizing residents' health over fleeting economic gains for a few workers, that will also only benefit those who do not live in Newark. We deserve better, and our lives depend on it.
From: DEP rulemakingcomments [DEP]
To: DEP rulemakingcomments [DEP]
Cc: 
Subject: DEP Dkt. No. 04-22-04 Environmental Justice
Date: Thursday, July 28, 2022 4:56:16 PM

** Electronic Rulemaking Comment **
Submisison Date: 07/28/2022 16:56:09
First Name: Martha
Last Name: Arencibia
Affiliation: 333 20th avenue
City: Paterson
State: NJ
Zip: 07513
Email: 
Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: I Martha Arencibia a homeowner / flood victim of sewage overflow in Paterson facing environmental injustice. Paterson CSO situation is effecting our Health finances and most of all quality of life. Unfortunately the residents of Paterson are being neglected from having serious federal funds to address our current need for sewer separation. The _ej-Law and overburdened community map under NJ Environmental Justice proves the injustice Paterson is under. I am seeking immediate action has the climate is changing creating more frequent thunderstorms/ heavy rainfalls causing tremendous hardship to the residents. The Paterson LTCP has my area scheduled to be addressed in 2040 this truly unexceptionable! My neighbors and I have reported to the Mayor,City council, DPW , city engineer ,the hotline for DEP 1877-927-6337 and we have even emailed letter to Susan Rosenwinkel Bureau Chief NJDEP Division of Water Quality. . I attend and belong to different organizations all based on CSO Green infrastructure and Environmental Justice but Paterson is usually not number 1 it’s usually Newark, and Jersey City. Nevertheless it time for environmental justice now for Paterson. PPPPT thank you PPPP Martha Arencibia
i do not support docket 04-22-04 on n.j.a.c. 7:1c proposals for environmental justice. i do not believe this is a well thought out proposal. it needs to be turned down and we need to start over again. this comment is for the public record. please receipt. b ker bk14
i do not support docket 04-22-04 on n.j.a.c. 7:1c proposals for environmental justice. i do not believe this is a well thought out proposal. it needs to be turned down and we need to start over again. this commetn is for thepublic record. please receipt. b ker bk14
** Electronic Rulemaking Comment **
Submission Date: 07/29/2022 09:03:17
First Name: Anthonyette
Last Name: Hunter
Affiliation:
City: Newark
State: NJ
Zip: 07112
Email:
Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: I support the Environmental Justice Rule N.J.A.C. 7:1C, without the loopholes. I am a Newark resident.
From: Holly Cox <holly.cox@example.com>
Sent: Thursday, July 28, 2022 7:56 PM
To: DEP rulemakingcomments [DEP] <rulemakingcomments@dep.nj.gov>
Subject: [EXTERNAL] Comments on NJ Environmental Justice Law

Please include my comments in your review of NJ's Environmental Justice law.
Thank you,
Holly Cox

NJ EJ Law Meeting 07-28-22:

My name is Holly Cox. I’m a 24 year resident of Montville, NJ, & I’m here to ask the NJDEP to enact the strongest possible rules to protect overburdened communities from more pollution.

First, there should be no “economic interest” exception. This exception is the business as usual approach that has allowed governments & corporations to exploit vulnerable populations for generations, with the promise of economic development & a raise in standard of living that never comes. EJ communities should not have to choose between a healthy environment and jobs - this is environmental racism.

Further, the promise of economic gains and jobs is a false promise - it's a lie industries have told for a long time that has never produced wealth for EJ communities. There are decades upon decades of tangible examples of companies promising jobs and economic gains to EJ communities that deliver nothing but pollution & sickness.

These dirty industries do not bring in good union jobs, but instead, low-wage jobs, while they dump millions of pounds of chemicals into the air & water and reduce property values. They stigmatize EJ communities as dumping grounds & concentrate all the pollution in communities that have historically borne the brunt of “economic” engines for the rest of the region to prosper.

So, NJDEP, If you remove the economic factors exclusion, you create an enormous loophole that renders this landmark EJ bill a complete failure & undermines the intent & spirit of the law.

Further, there is no viable way that the NJDEP can ensure compliance with an economic benefits standard. The promise of economic gains based on metrics such as local employment, number of jobs, and tax ratables, are all difficult to measure after the permit is allowed, by an agency like DEP that does not have any jurisdiction or mechanism to enforce these claims.

Secondly, the draft regulation should be changed from the Department “may” consider public input regarding the compelling public interest exception to “shall” consider public input. It is crucial that the affected communities have the right to speak directly to the NJDEP regarding permitting matters that affect them.

Third, the definition of a “community” should include independent community groups that are
representative of and accountable to residents, as opposed to only including governmental entities.

Fourth, the definition of ‘facility’ should be expanded to include newer, polluting technologies.

Fifth, corporations should not be allowed to use pollution “offsets” to justify approval of a pollution permit application that is subject to the EJ Law. Any pollution emissions reductions recognized by the law must come directly from the facility applying for the pollution permit.

Lastly, despite knowing that NJ’s EJ Law has been signed by Gov. Murphy, many government agencies and corporations are currently trying to force their dirty fossil fuel plants into EJ neighborhoods before the rules have been finalized. Examples of this are Passaic Valley Sewerage Commission trying to build a fourth fracked gas power plant in the Ironbound section of Newark, NJ Transit trying to build a natural gas power plant in Kearney, & CPV trying to build another gas plant in Woodbridge. These are in bad faith, & I ask you & Gov Murphy to pull the permits for these plants & subject them (& any other) proposed power plants to NJ’s EJ Law.

To summarize, when Gov. Murphy signed the country’s strongest environmental justice law in September 2020, he gave you, the DEP, the power to deny permits to polluting facilities in communities that already face a toxic pollution burden from generations of environmental racism. It is now up to you to uphold his vision & fully enforce this law.

Thank you.
Hello my name is Armani and I've lived in Newark for around two years. My community has been burdened by the effects of pollution. The soil in my neighborhood is contaminated. My flowers and herbs cannot thrive in this soil. The street in front of Jewels Transportation Inc smells entirely of sewage. This area is also heavily polluted. Green washing this issue is only going to make things worse for my community. Change is the only way.
**Electronic Rulemaking Comment**

Submission Date: 07/29/2022 15:18:14

First Name: Kimberley
Last Name: Irby
Affiliation: New Jersey Future
City: 
State: 
Zip: 
Email: kirby@njfuture.org

Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice

Comments: New Jersey Future is a nonpartisan, nonprofit organization that believes our state can be a great place for everyone with a strong, prosperous economy; safe, healthy communities, and open spaces. The current proposed rule generally does a good job of protecting communities disproportionately impacted by polluting facilities while expanding participation by overburdened communities to further reduce adverse environmental impacts. While this is a great step, there are a few key considerations that we support that will strengthen these protections and help New Jersey's overburdened communities not just recover, but thrive.

Too often, overburdened communities are left to deal with the aftermath of unintended consequences that further destabilize the community and deprive residents of a safe and healthy environment. We reiterate that the compelling public interest exception should be applied very narrowly, excluding economics and jobs as a factor. Additionally, the regulation regarding this exception should make consideration of public input required as opposed to optional in the case of a significant degree of public interest. In conjunction with allowing communities to weigh in on potential effects and adverse impacts, they must be given ample opportunities to receive and understand clearly and effectively the proposed changes. This involves equitable consideration about access to information and communication barriers, as overburdened communities are often the most culturally diverse, but also resource deprived due to limited literacy rates, English proficiency, access to technology, and time. Public notices should have translated versions available for multilingual communities and be disseminated through a wide variety of mediums beyond printed flyers/signs, including social media and online newsletters.

Additionally, we are supportive of the EJ analyses contained in the proposed regulations. We caution that permits subject to the law should not be approved on the basis of pollution offsets, which fail to protect overburdened communities and sensitive populations. Any pollution emissions reductions recognized by the law must come directly from the facility applying for the pollution permit. Moreover, the cumulative impact analysis should cover a unit of geography that captures people in census tracts next to facilities, including ones that are not immediately adjacent, but would still be affected by environmental stressors.

Finally, New Jersey Future supports the adoption of the EJ rules and stands with the Environmental Justice leaders in urging that certain parts be strengthened to ensure that this monumental legislation lives up to its label as the nation's strongest environmental justice law thus far. Thank you for considering this testimony.
** Electronic Rulemaking Comment **
Submission Date: 07/30/2022 10:35:07
First Name: Lala
Last Name: Luz
Affiliation:
City:
State:
Zip:
Email:
Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: We cannot live like this ,, each day it_s more illnesses due to this. We need a healthier NJ .
I'm writing to express my strong support for EJ Bill S232. This is a vitally important and groundbreaking piece of legislation that will improve the quality of life for all New Jersey residents, including those living in overburdened communities. EJ Bill S232 must go into effect while preserving its original objective, which is to avoid overburdening communities who already are on the receiving end of environmental pollution and other inequities. These communities have been paying the price of New Jersey’s economic growth and population growth while reaping very few of the benefits. Please implement the provisions of New Jersey’s Environmental Justice Law and establish the requirements, including requiring permits for “pollution-generating facilities located, or proposed to be located, in overburdened communities,” and require the analysis of “relevant environmental and public health stressors, as each are defined in the Act, as well as requirements intended to ensure applicants' meaningful engagement with members of host overburdened communities.” The health of New Jersey residents and the surrounding environment is at stake.
Julia,

There was an issue with the rulemaking portal where it was defaulting to the wrong docket number. I believe this comment is for EJ, not Marine Fisheries. Can you add it to our list?

---

** Electronic Rulemaking Comment **
Submission Date: 08/01/2022 20:00:49
First Name: Catia
Last Name: DaLuz
Affiliation:
City:
State:
Zip:
Email:

Rule Proposal: DEP Dkt. No. 05-22-06, NOAC Authority to Modify Gear Proposed Amendment
Comments: To many peoplePPPPDying of cancer _. And why ? These chemicals and fumes are the main reason. Even the workers !!
--
Julia L. Wong
NJDEP

-----Original Message-----
From: Abatemarco, Melissa [DEP] <Melissa.Abatemarco@dep.nj.gov>
Sent: Wednesday, August 3, 2022 8:43 AM
To: Wong, Julia [DEP] <Julia.Wong@dep.nj.gov>
Subject: FW: DEP Dkt. No. 05-22-06, NOAC Authority to Modify Gear Proposed Amendment

Here is another EJ rule comment that went to the wrong docket number...

-----Original Message-----
From: DEP rulemakingcomments [DEP] <rulemakingcomments@dep.nj.gov>
Sent: Tuesday, August 2, 2022 4:04 PM
To: DEP rulemakingcomments [DEP] <rulemakingcomments@dep.nj.gov>
Cc: greg@nynjbaykeeper.org
Subject: DEP Dkt. No. 05-22-06, NOAC Authority to Modify Gear Proposed Amendment

**Electronic Rulemaking Comment**
Submission Date: 08/02/2022 16:04:16
First Name: Greg
Last Name: Remaud
Affiliation: NY/NJ Baykeeper
City: HAZLET
State: NJ
Zip: 07730
Email: greg@nynjbaykeeper.org

Rule Proposal: DEP Dkt. No. 05-22-06, NOAC Authority to Modify Gear Proposed Amendment
Comments: PPPPPNew Jersey Environmental Justice Rule Comments from NY/NJ BaykeeperPPPNNPPPJuly 28, 2022PPPnPGood evening. Thank you Deputy Commissioner Moriarty & the NJDEP team for the opportunity to comment this evening. And many thanks to our EJ colleagues and NJDEP for creating New Jersey_s nation leading EJ law. PPPPPPPP I m Greg Remaud, Baykeeper & CEO, of NY/NJ Baykeeper the citizen guardian of the waterways of the NY/NJ Harbor. We re a non-profit conservation organization that has that has been active in the many urban and underprivileged communities of the Region for over thirty years. PPPPPPPSince our inception we ve advocated for the clean-up of numerous brownfields and Superfund sites that plaque the region as a result of its industrial history- we serve as Co-chair on the Passaic River CAG and have sit on several other toxic advisory groups in the region. PPPPPPPP We ve also sued polluters on the Lower Raritan River, Meadowlands, Arthur Kill and elsewhere in the region to ensure responsible parties clean up their mess they ve dumped into these waterways and to ensure natural areas in urban areas are restored for natural habitat and community use. PPPPPPPP Until recently the clean-up of these sites happened slowly, if at all -these communities were often written-off directly as _lost causes_ and less directly through the advocacy of many traditional conservation organizations who felt like money spent in underserved urban communities did not _provide a big enough bang for the buck._ PPPPPOur EJ colleagues at the South Ward Environmental Association, Ironbound Community Corporation, Clean Water Action and throughout the State have fought hard against the disproportionate concentration of harmful air emissions that are located in lower income urban communities. PPPPPPPBaykeeper & Hackensack Riverkeeper sued and prevailed against NJDEP public access rules that failed to adequately take in the access needs concerns of urban communities that often look different from beachfront access a!
We are proud to Co-Chair NewarkDIG where community groups from each ward in Newark work together to improve eliminate or improve CSO where raw sewage from emptying into streets and waterways after rainstorms. This infrastructure problem plagues all older urban areas, like Perth Amboy, Elizabeth, Kearny and Jersey City. To the point, as you’ve heard from countless community groups, local leaders and other speakers that outdated, inequitable and unethical policies and behavior of packing facilities that spew harmful emissions into and underserved communities that are already overburdened by contaminants and suffer countless environmental insults and treating them as dumping grounds for negative externalities needs to end. So should the harmful impact of simply neglecting these areas. The best step toward accomplishing these equitable and overdue objectives is by enacting a strong EJ Law, plain and simple. Thank you.

Sincerely,

Gregory A. Remaud
Baykeeper and CEO
NY/NJ Baykeeper
Comments: I hope this message finds you well. "Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies." My name is Monica and I have many friends and family that live in Newark and other environmentally affected zones in New Jersey, like Jersey City and Elizabeth. It is a fact that we know depending on your zip code, you get pollutants in your system leading to chronic illnesses such as asthma, emphysema, and chronic obstructive pulmonary disease. Sadly, I know too many people with these illnesses residing in cities like Newark and Jersey City. It has been extremely unfortunate that due to the effects of environmental racism, all of the pollutant making companies have been implanted into poor and marginalized communities causing unfair exposure and extreme harm. No matter our income or skin color, we have the right to a clean earth so that we have a fighting chance to live healthy long lives too. I am sure you would not want your backyard to have a sludge dump. These irritants have been affecting our people's mental, spiritual, and physical health. We are people too that need clean air, for clean oxygen and optimal health. The fact that we don't see any of these companies like PVSC, Covanta, Darling and Aries having their sites in upper class or predominantly white communities tell you everything you need to know. It is unfair that us people of color give our all and work extra hard to come home to a polluted environment that will eventually collapse our lungs. I am in support of the EJ Bill S232 to help put a stop to those companies that put profit over people. Enough is enough. Our communities, as genuine habitants of this earth TOO, deserve to live full healthy lives. Please show us that you care about humanity. This will eventually start affecting everybody else too, so keep that in mind. Thank you!
The health and well being of our communities is of utmost importance. As the damages of Climate Change wreck havoc on the most vulnerable, it's time we really reflect on how we treat the earth and each other. The EJ Law is an important step in creating a future that serves everyone, regardless of race or economic status. For the future of our world, putting the power back in the hands of the people instead of polluting corporations and money interests is vital.
Comments: I strongly support NJ's proposed environmental-justice law S232 as too many frontline communities in the state suffer relentlessly from appalling environmental conditions. I believe that the bill will finally give them the relief they have been seeking and so I urge the state legislature and regulatory agencies to pass and implement it as soon as possible. Thank you.
Comments: When providing notice of a permit to residents or neighbors, the Department must increase the radius from 200ft to at least 1,000 ft within the site. This increase is essential in order to make the radius of public notice equivalent to the potential radius of impact by air contaminants that the Department already evaluates for each Title V facility. All community members with a potential to be subject to negative health impacts must be notified of a potential threat to their health.
Hello, I fully support the rules outlined in this proposal. I plead for the residents of NJ that it is made clear that these rules apply to warehouses. Of course warehouses, through their mobile emitters, stand to be facilities which majorly pollute air, and thus are under this proposal, but this facility designation is vague; warehouses must be clearly included. In Pittsgrove NJ, we have major problems with industrial traffic which has many times proposed to drive straight through residential, overburdened Gershal Avenue to various proposals south of Landis, an industrial zoned area. Planners of industrial facilities, including warehouses dependent on tractor trailer traffic, must be required to provide solutions that restrict their traffic from droning through residential areas. It is unacceptable for developers of industrial warehouses to assume it is OK to drive hundreds of trucks a day through our overburdened community. These trucks are loud, shake homes, bring danger to pedestrians, emit noxious diesel exhaust, generally making a hostile living situation out of the hamlets which commonly have county and state roads through. Across Salem and Cumberland County, warehouse developers are including in their plans little to zero to control their tractor trailer traffic, so they must be required to do so. These proposed rules stand to do a lot of good for our overburdened community on Gershal Avenue and beyond. I plead to see it is made clear that warehouses are under the domain these rules control.
** Electronic Rulemaking Comment **
Submission Date: 08/08/2022 13:37:03
First Name: Kathleen
Last Name: Maher
Affiliation: Ms.
City: Ocean
State: NJ
Zip: 07712
Email: [Redacted]
Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities. Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

- No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables.
- No offsets (e.g. planting trees or bike lanes elsewhere).
- Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.
All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie Environmental Justice communities have been told for a long time that has never produced wealth for EJ communities. Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

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- All pollution reductions must be on site and codified in the permit.

Thank you for your consideration.
July 26, 2022

Melissa P. Abatemarco, Esq.
Attn.: DEP Docket No. 04-22-04
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, New Jersey 08625-0402

Re: Environmental Justice Rules rule proposal (54 N.J.R. 971(a))

Dear Ms. Abatemarco,

On behalf of the New Jersey State Association of Pipe Trades, we would like to offer comments on the Environmental Justice Rules rule proposal (54 N.J.R. 971(a)) as published in the Volume 54, Issue 11, June 6, 2022, New Jersey Register. The State Pipe Trades applaud the sponsors for addressing cumulative effects of environmental impacts on communities that already serve host to industrial facilities. However, we firmly believe aspects of this bill are too damaging to communities and extend far beyond the original intent of the bill. We understand the need in protecting residents that are historically subjected to development projects that have a severe public health impact on their community. In its current form, after expanding the definition of “overburdened community” in a Senate Budget and Appropriations Committee Substitute, the measure will give the authority to the DEP to halt development and construction in more than 300 communities, which accounts for well over two thirds of the State.

We are extremely concerned this law would add delay upon delay to all types of infrastructure projects and facilities due to the broad application and broad definitions of many provisions. Our concern in general is that this measure invariably will touch nearly every vertical of construction of new and existing facilities, as well as many major long overdue infrastructure projects in the pipeline. A vast majority of impacted future development plans are public works projects, which employ our membership and keep New Jersey’s economy working. As you are aware, these projects, by their very nature, have a huge public benefit such as
transportation, water safety and infrastructure. This represents numerous man-hours for our New Jersey State Pipe Trades.

Allow us to outline some of our major concerns and subsequent recommendations for changes:

The Pipe Trades are concerned over your eight specific types of facilities covered by the Act: (1) major sources of air pollution; (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.

Another concern is the “REMEDIATION/REPLACEMENT OF OLDER FACILITIES WOULD BE REQUIRED TO BE REVIEWED UNDER THIS BILL.” We respectfully encourage that any project, new construction and or expansion of an existing facility that provides cleaner and or greener technology should be exempt from the requirements of this bill. As the State is aware, thousands of contaminated sites throughout NJ are in need of costly clean-up; anything that impedes or increases the cost of demolition and remediation of one of these sites will only stall its rehabilitation and ability to contribute to the community and the State’s environmental progress. Basically, let’s practice what we preach. We are also respectfully requesting the definition of "facility" be looked over again. It is way too broad and has serious consequences in the prohibition of construction.

Also, your number (3) is perplexing and disturbing to say the least. This legislation in its current form would make sound, essential public works projects that will be required to address the combined sewer overflow problem in 21 NJ Municipalities, recycling and solid-waste recovery centers and the potential for energy-sector public-private partnerships (pending legislation), exceedingly more difficult if not impossible.

Lastly, the NJ State Pipe Trades whole heartily disagree with “MANDATORY PERMIT DENIALS”, we request changing the proposed language of “Shall” back to “May”.

Sincerely,

Michael Maloney
President
Comments: All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities. Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

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- All pollution reductions must be on site and codified in the permit.
**Electronic Rulemaking Comment**

Submission Date: 08/08/2022 16:44:21

First Name: Daurie
Last Name: Pollitto
Affiliation: 
City: Aberdeen
State: NJ
Zip: 07747
Email: 

Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice

Comments: All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities. Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

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2. No offsets (e.g. planting trees or bike lanes elsewhere).
3. Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.
All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie. EJ communities have been told for a long time that has never produced wealth for EJ communities. Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

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Dear Governor Murphy:

Please be a just shepherd of the environment and all of us who live here. Environmental justice is a human right and right for the planet. Thank you.

Sincerely,
Catherine Keim
From: DEP rulemakingcomments [DEP]
To: DEP rulemakingcomments [DEP]
Cc: 
Subject: DEP Dkt. No. 04-22-04 Environmental Justice
Date: Tuesday, August 9, 2022 8:34:30 PM

** Electronic Rulemaking Comment **
Submission Date: 08/09/2022 20:34:25
First Name: Elizabeth
Last Name: Ndoye
Affiliation: MoveOn.org Hoboken
City: Hoboken
State: NJ
Zip: 07030-3705
Email: 

Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice

Comments: My name is Liz Ndoye. I live in Hoboken and am a member of Don’t Gas the Meadowland and Hoboken MoveON.org. I am here tonight to speak specifically about the compelling public interest exception regulation in the new Environmental Justice legislation. I am concerned with the rather ambiguous language employed in the draft regulation at this time. I would like the regulation to read:

_That a new facility must primarily serve an essential, health, or safety need for individuals_ and ONLY in the host overburdened community in order to qualify for the compelling public interest exception. As well as change, the Department _may_ consider public input regarding the compelling public interest exception to _shall_ consider public input. These changes will strengthen and clarify the language of the regulation. No exceptions for entities that may not have the EJ community members best interests will then be possible. When defining community the language must also clearly state that groups that represent members and residents directly effected by proposals are at the bargaining table not just government entities or others appointed to speak for them.

The term compelling public interest must be narrowly defined to specifically exclude proposals that put forth financial gain or economic development as their purpose. The idea that job creation in Black, Brown, or economically disadvantaged communities is more advantageous than protecting community members health and environment is completely false, racist, and unacceptable. Folks do not need to accept more pollution and risk their health and lives in order to earn a living wage! It is unconscionable and quite frankly magical thinking to believe that people living in neighborhoods where they are already struggling to breathe, where their water is unfit to drink, and where they have little to no access to cool shade or healthy food - will find that taking a job in a new toxic, dirty facility for minimal wages and life!

Governor Murphy and the DEP must make this historic bill the best it can be - the bill that truly lives up to its promise of protecting our friends, neighbors, colleagues, front line workers, and all EJ community residents from more horrible adverse affects of further pollution and climate crisis. I strongly urge, I call on all present today, and most especially our governor, the one we elected for his green platform, to make these EJ rules ironclad and PRO ENVIRONMENTAL JUSTICE, NOT riddled with vague legalese that will result in death for the vulnerable populations of our EJ communities! This IS a matter of life and death - DO THE RIGHT, MORAL, AND COURAGEOUS THING! Make the compelling public interest exception regulation clear, concise and just! & #8232;
As a citizen of New Jersey and advocate for clean air and water for all communities throughout the state, I support the NJDEP’s proposed Act, Environmental Justice Bill S232, which proposes to Strengthen the NJDEP Environmental Justice process to deny or challenge polluting facilities (i.e., Pipeline, natural gas companies) from obtaining permits especially in host overburdened communities. These overburdened communities located in Ironbound district of Newark, Rahway, Elizabeth and Camden and a consensus of low-income wage earners, Black/Brown/Latino minorities already have a long history of existing pollutions all around them and already suffer myriad health issues caused by polluting facilities who have escaped the toxic environment themselves while they go home to cleaner environments. Now is the time when NJDEP needs to step up to stop these bad acting facilities that only care about their economic gains and disregard the health, wellness and prosperity to the communities they would further damage. Additionally, I’m in favor of the Act’s strengthening language in its law as well as including more stringent requirements. For example, with regard to language, the regulation should be modified from the Department _may_ consider public input regarding the compelling public interest exception to _shall_ consider public input. And requirements should enforce these polluting facilities to demonstrate and outline with a clear analysis the environmental and health stressors their project would entail, as well as engaging public/members of proposals and encouraging/allowing members to be participate in the Department’s decision-making process. Moreover, the Act is right to close the loophole that has allowed polluting facilities to use economic gains, jobs and municipal tax benefits as poor and dirty excuse for attempting to acquire permits that would only benefit their pockets. I stand with environmental organizations, and host overburdened communities to uphold this law to its full capacity, realize it’s value in that it benefits everyone. And lastly, realize that we need to end the pollution and instead restore the environmental landscape, health and safety in neighborhoods of frontline communities now. Thank you for your attention. I am happy to back the Act to help mitigate the severe and long-lasting effects polluting facilities have on clean air, water and health of frontline communities. Best Regards, Carmen Weir
Please do not overburden environmental justice communities any further. Give our children our families a chance. Poor housing, noise pollution, crime, and poisonous lead levels in low-income neighborhoods of color need no more contaminated additives in our hood. We are overburdened enough! Lets put human lives and the environment before corporate greed. PPPPPPPPTthank you, PPPPShereyl
Comment for EJ (not Triennial).

-----Original Message-----
From: DEP rulemakingcomments [DEP] <rulemakingcomments@dep.nj.gov>
Sent: Friday, August 12, 2022 2:43 PM
To: DEP rulemakingcomments [DEP] <rulemakingcomments@dep.nj.gov>
Cc: 
Subject: DEP Dkt. No. 05-22-05 Surface Water Quality Standards

** Electronic Rulemaking Comment **
Submission Date: 08/12/2022 14:43:13
First Name: Joan
Last Name: Maccari
Affiliation:
City: Madison
State: NJ
Zip: 07940
Email: 

Rule Proposal: DEP Dkt. No. 05-22-05 Surface Water Quality Standards
Comments: Overburdened communities should not have to put up with additional burdens. And no community should be burdened with hazards to health and well-being. The interests of industry should never take precedence over the needs of people.
**Electronic Rulemaking Comment**
Submission Date: 08/12/2022 22:24:37
First Name: Daurie
Last Name: Pollitto
Affiliation:
City:
State:
Zip:
Email: [redacted]
Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: Please keep all of NJ environmentally clean and healthy.
** Electronic Rulemaking Comment **

Submitison Date: 08/16/2022 01:09:40
First Name: Jamal
Last Name: Littles
Affiliation:
City: Newark
State: NJ
Zip: 07112
Email: [Redacted]

Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: All communities deserve good, healthy, clean, dignified jobs- not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities. PPPPPPPP
DEP Rulemaking DEP Rulemaking,

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Terrance Bankston

52 Girard Place
Newark, New Jersey 07108
With a good knowledge of the state from south to north, and the towns I worked in, the mapping which calls out overburden communities seems assumptions which run contrary to my experiences.

For instance the area I live in is denoted as an OBC based solely because we have less non white folks than white folks. Odd because we have an integrated community of folks living side by side in well kept homes that are affordable.

And Willingboro, with a major non white community, is listed as an OBC apparently because the white folks are a minority.

This is nuts.

Suggest focusing on poverty, race is a poor determining factor of overburdened communities.

Folks who are not considered as being under an established determinate of poverty, regardless of their skin color or ethnic background, ostensively have the means to afford to live in areas not subject to current or historical contamination. Those left behind, regardless of their skin color or ethnicity, are there because they lack the means to find better housing.

An OBC, I suggest, is where there’s concentrations of folks who have incomes less than the recognized benchmarks. Just using a minority status in any community as determinative benchmark is in its self, racist.

Rick Brown

Sent from me to you
DEP Rulemaking DEP Rulemaking,

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Max Oliveira

524 Market st
Newark, New Jersey 07105
DEP Rulemaking DEP Rulemaking,

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Esteban Veloz
Hawkins
Newark, New Jersey 07105
DEP Rulemaking DEP Rulemaking,

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Bárbara Bosich
1289 white st
Hillside, New Jersey 07205
DEP Rulemaking DEP Rulemaking,

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Gabrielly Cardoso
293 New York ave
Newark, New Jersey 07105
DEP Rulemaking DEP Rulemaking,

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Natalia Ojeda
135 Garfield Ave
Colonia , New Jersey 07067
DEP Rulemaking DEP Rulemaking,

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Diana Perez
584 avejigue c
Bayonne , New Jersey 07002
DEP Rulemaking DEP Rulemaking,

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Natalia Ojeda
135 Garfield ave
Colonia, New Jersey 07067
DEP Rulemaking, DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

+ No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables.
+ No offsets (e.g. planting trees or bike lanes elsewhere).
+ Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

Chuan Shen
350 Bergen Ave
Kearny, New Jersey 07032
DEP Rulemaking DEP Rulemaking,

Strongest law possible, NO EXEMPTIONS!!!!!!!!!!!
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Pranita Bijlani
103 Princeton Ave
Rahway , New Jersey 07065
DEP Rulemaking DEP Rulemaking,

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alisonbhay [REDACTED]
12 Rose Lane, apt. A
Union Beach, New Jersey 07735
DEP Rulemaking, DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution.

The message is clear as is the Executive Order from Governor Murphy’ as is the EJ Law: Communities already overburdened by toxic emissions which decrease quality of life, health and life expectancy should be excluded from further pollution, NO EXCEPTIONS, NO LOOPHOLES, NO TRADE-OFFS, NO OFFSETS, NO SPECIAL DEALS, NO COMPROMISES!

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Tina Weishaus
143 N 5th Ave
Highland Park, New Jersey 08904
DEP Rulemaking DEP Rulemaking,

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Michael Madden
50 Germonds Road
New City, New York 10956
DEP Rulemaking DEP Rulemaking,

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Mary Agnes Sullivan, OP
40 Ryerson Ave
Caldwell, New Jersey 07006
DEP Rulemaking DEP Rulemaking,

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Fred Fall
106 Uxbridge
Cherry Hill, New Jersey 08034
DEP Rulemaking DEP Rulemaking,

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Fay Trisker
14 North Robert st
Sewaren, New Jersey 07077
DEP Rulemaking DEP Rulemaking,

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Susan Clark

168 W Valley Brook Rd
Califon, New Jersey 07830
DEP Rulemaking,

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Marco Palladino
86 Tuers Ave
Jersey City, New Jersey 07306
** Electronic Rulemaking Comment **
Submission Date: 08/17/2022 14:52:51
First Name: Kaniska
Last Name: Basnet
Affiliation:
City: Edgewater
State: NJ
Zip: 07020
Email: [redacted]

Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: Honor the people that you claim to serve! Environmental justice for one and all.
DEP Rulemaking DEP Rulemaking,

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Katharine Sween

18 Wheeler Road
Kendall Park, New Jersey 08824
DEP Rulemaking DEP Rulemaking,

We are in dire circumstances due to politicians allowing big polluters to go unchecked. Much of the damage that has been done cannot be undone and the future of humanity depends on strong leaders who speak the truth and do what is right.

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Kim Parker
313 Madison Ave
Pitman, New Jersey 08071
DEP Rulemaking DEP Rulemaking,

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Richard Askins
87 Oak Trail Rd
Hillsdale, New Jersey 07642-1217
DEP Rulemaking DEP Rulemaking,

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Jo Ann Doran
786 Burnt Meadow Rd
Hewitt, New Jersey 07421
DEP Rulemaking DEP Rulemaking,

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James Rowley
James Rowley, 64 Fiume St.
Iselin, New Jersey 08830
I am writing this today in support of the proposed Environmental Justice rules. Giving lawmakers, hopeful companies, and concerned citizens the tools and data to fully analyze where current OBCs are located as well as hotspots for environmental stressors will be great in addressing how proposed facilities can disproportionately impact certain communities. A New Jersey court case like South Camden Citizens in Action v. New Jersey Department of Environmental Protection in 2001 would have greatly benefited from proposals like this (https://cite.case.law/f-supp-2d/145/446/). Citizens of Camden attempted to block the opening of a cement manufacturing plant even though it was approved for all necessary permits at the time. Even though the courts initially ruled in favor of the citizens of Camden, the ruling was eventually turned over and the manufacturing plant was able to open. Environmental injustice is still a concern in Camden over twenty years later, as citizens grapple with polluting facilities that make their neighborhoods smell bad and result in higher rates of respiratory conditions (https://whyy.org/articles/camden-teens-take-on-environmental-racism-in-a-new-play/). One concern I do have is the necessary job growth in some of these communities, especially those already facing disproportionate amounts of low-income households. While it is a great thing to limit opening new facilities in OBCs facing high levels of environmental stress and health concerns, it is important to note that some communities rely on industry to stimulate the economy and create jobs for people that desperately need them. Any time we switch the focus of our economy to different industries, there will be growing pains. Being able to spot these issues early on and prepare for them will be important, rather than inadvertently hurting these OBCs even more as job growth slows and companies decide to move to new locations with looser environmental restrictions. The Urban Institute proposes skill development for green infrastructure using apprenticeships to advance racial equality while also combating climate change (https://www.urban.org/urban-wire/three-ways-advance-racial-equity-workforce-while-combating-climate-change). By giving citizens the opportunity to become apprentice solar panel installers or wind turbine technicians, they can be equipped with the right skills for higher paying jobs, without necessarily needing to go to school beforehand. Of course, the end goal is to create better paying and less dangerous jobs in these communities while also phasing out the reliance on heavier polluting industries that have been viewed as a necessary evil for so long. Forcing citizens to compromise their own beliefs and choose unsafe jobs when they have no other alternative is unacceptable (https://www.thenation.com/article/economy/workplace-environmental-justice/). By reducing the need for these polluting facilities to be built while also creating better jobs in the process, no citizen will have to choose between their own health and being able to feed themselves and their families. Thank you for taking the time to address mine and other citizens’ concerns. I look forward to seeing how this proposal matures and the great things these tools can do to help New Jersey lawmakers in the long run in developing more robust environmental policies.
Comments: I am Cameron from the New Jersey Resource Project, a community organization working in New Jersey’s rural and suburban regions. For the past 10 years, activists, legislators, and community members have been working to pass a landmark piece of Environmental Justice legislation that will allow the NJDEP to deny permits to any facilities who would add pollution to already overburdened and over polluted communities, like many of those in Newark. I like to share my support for this important legislation, but question the need for economic exemptions that may open new loopholes. I am not a Newark resident - but I am a 2 time flood survivor. Almost 10 years ago during Superstorm Sandy, my home in Point Pleasant flooded with 4 feet of water, displacing my family for almost 6 years. Now I live in Somerset, right outside New Brunswick, and lucky me: when Hurricane Ida hit last year, my first-floor rental flooded, and I am currently still partially displaced once more, as are many Newark residents. I know how life-altering climate-related disasters can be first hand. And communities that have been historically over-burdened by pollution and toxic industries don’t just face a flood, they face a toxic flood - one laden with pollutants and chemicals from nearby Superfund sites caused by generations of environmental inequality. Residents from pollution-burdened communities can tell you first hand how urgently this threatens their and their family’s health, their safety, their homes. Climate disasters will only increase in frequency and destruction as New Jersey continues to invest in polluters, and we know that while disasters don’t discriminate, disaster recovery systems do. To allow environmental injustice to continue in the form of exceptions for economic considerations is to allow polluting industries loopholes to keep on polluting, subjecting communities like Newark to the continued burden of dirty industries, while putting the entire state at risk for climate disasters of increased frequency and magnitude. There should be no economic exception for industry that hurts communities, especially when clean alternatives exist to bring good jobs without forcing them to choose between those jobs and a healthy environment. Industries like offshore wind have the potential to provide jobs without increasing pollution - there are more reasonable ways to generate economic interest in communities like Newark without making exceptions for polluters. If you are a legitimately clean business or can mitigate your impact, you don’t need to extort the community with the promise of economic development that can never be fully accounted for.
DEP Rulemaking,

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Michele Shell
786 burnt meadow rd
Hewitt, New Jersey 07421
Good evening. Thank you for the opportunity to testify today on one of the state’s most pressing issues: promoting and establishing healthy homes and communities. My name is Arnold Cohen, Senior Policy Advisor at the Housing and Community Development Network of New Jersey. The Network represents nearly 300 community development corporations, individuals and other organizations that support the creation of affordable homes, economic opportunities, and strong communities. The consequences of poor air quality and water quality on health are well known to most New Jersey residents. However, we often don’t think about the overlapping effect that this can have on our daily lives and overall experience within the state. According to the New Jersey Department of Health there are over half a million cases of adult asthma, with over 150,000 cases regarding children. The consequences of these cases are not just hospital visits; they are absent days from school for thousands of children, and missed days of work for their parents, or for adults suffering from poor air quality themselves. The air we breathe is the one most forgotten but constant factors in both our everyday experiences and overall lives. No matter where one lives within our state the ability to breathe safe and clean air and stave off the long-term effects of illnesses like asthma, man-made chemical pollutant exposure, and more, is essential to maintaining a healthy life. Because of this, the Network stands with our allies in support of having the strongest environmental justice regulations as possible. These rules touch on every facet in our state. Housing and health are intractably connected and when addressed together, result in far greater economic stability than any one employer could ever provide to a community. There are real reasons why the White House has developed its environmental justice framework to address high and adverse health, environmental, economic, climate, and other cumulative impacts on communities that are marginalized, underserved, and overburdened by pollution. And at a time when we have federal dollars entering the state to provide thousands of new affordable homes, we have a unique opportunity to address health, energy affordability, and emissions reductions goals across the buildings sector. Dangling the carrot of trickle-down economic prosperity will not address long-term community vitality. Instead, let’s keep our communities prosperous by providing more affordable homes, closing the racial wealth gap in Black and brown communities, reinvesting in our communities through tools that promote generational wealth, and removing the barriers that keep people out of a home. Our neighbors take seriously and adhere to guidelines that promote healthy communities and understand the long-term economic benefits. Our business stakeholders must be held to the same high, environmental standards.

On a personal note, I was a member New Jersey’s Environmental justice Task force. On Feb. 18, 2004, the first-ever Statewide Environmental Justice Policy, Executive Order #96 was signed into law. It took until now and this legislation for New Jersey to see any real action on this issue. Keep New Jersey’s Environmental Justice Law (S232) strong and effective.
DEP Rulemaking DEP Rulemaking,

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+ Deny new pollution permits in already overburdened communities.
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+ No offsets (e.g. planting trees or bike lanes elsewhere).
+ Achieve "Actual" reduction or avoidance of pollution at the facility. All pollution reductions must be on site and codified in the permit.

Kathryn Scarbrough

59 TALL OAKS DR
E BRUNSWICK, New Jersey 08816
August 23, 2022

Shawn M. LaTourette, Commissioner
401 E State St.
7th Floor, East Wing
P.O. Box 402
Trenton, NJ 08625-0402

Dear Commissioner,

The League of Women Voters of New Jersey is impressed by the thoroughness of the rule-making effort for the Environmental Justice Law. The Department of Environmental Protection has been most attentive to the needs of Environmental Justice communities and to potential ways to reduce the environmental stresses imposed on these communities by the presence of multiple industrial facilities. Thank you also for providing so many opportunities for input at hearings, both in-person and virtual.

We strongly support the rules as they stand. In particular, we support the comprehensive list of stressors used in computing the burden, the strict rules for Compelling Public Interest, and the exclusion of economic benefits, such as jobs in the community, as offsetting conditions if a facility increases the burden on a community. Ideally, an increase in a stressor could only be offset by a decrease in that stressor elsewhere in the community.

Nonetheless, we would like to see you include odors and use of pesticides and other agricultural chemicals as stressors. In fact, it would be especially useful to have an empirical study of the relationship between the stressor score and health conditions in the community. Perhaps a local university could undertake to do that.

While public participation in this process worked well for the League of Women Voters of New Jersey leadership, as individuals already deeply engaged in the process, we are familiar with current means of informing people of hearings, via email and the DEP Web site. We believe that it would also be good to consider using digital and social media tools, such as TikTok, Instagram, and Twitter, to reach and engage new voices and solicit additional feedback from impacted individuals.

Also, when inviting public participation, people living in census blocks that neighbor the polluting facility should be included as well as the census block where the facility will be based. Neighboring census blocks will also be affected and may have people with more experience with public hearings.

Thank you to the commissioner and staff of the DEP for a job well done. We look forward to engaging with you in the future.

Sincerely,
Eleanor Gruber, Co-Chair,  
League of Women Voters of New Jersey Natural Resources Committee

Nancy Griffeth, Co-Chair  
League of Women Voters of New Jersey Natural Resources Committee
From: DEP rulemakingcomments [DEP]
To: DEP rulemakingcomments [DEP]
Cc: amann@lwvnj.org
Subject: DEP Dkt. No. 04-22-04 Environmental Justice
Date: Tuesday, August 23, 2022 4:06:38 PM

** Electronic Rulemaking Comment **
Submisison Date: 08/23/2022 16:06:32
First Name: Eleanor
Last Name: Gruber
Affiliation: League of Women Voters of New Jersey
City: Trenton
State: NJ
Zip: 08608
Email: amann@lwvnj.org
Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: August 23, 2022

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League of Women Voters of New Jersey Natural Resources Committee

Nancy Griffeth, Co-Chair
League of Women Voters of New Jersey Natural Resources Committee
NJDEP,

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Sincerely,
Terrance Bankston
58 Nairn Place
Newark, NJ 07108
NJDEP,

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Sincerely,
Jake Cooper
22 Richelieu Terrace
Newark, NJ 07106
DEP Rulemaking DEP Rulemaking,

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Doug O'Malley
domalley@environmentnewjersey.org
104 Bayard Street, Fl. 6
New Brunswick, New Jersey 08901
DEP Rulemaking DEP Rulemaking,

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Tracy Carluccio
tracy@delawareriverkeeper.org
81 North Hill Rd.
Ringoes, New Jersey 08551
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

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Ann Sandritter
3B Ashwood Mall, Apt B
Old Bridge, New Jersey 08857
DEP Rulemaking,

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Barbara Coy

2622 Monterey St
Sarasota, Florida 34231
DEP Rulemaking

DEP Rulemaking,

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Louise Sellon
1253 Springfield Avenue
New Providence, New Jersey 07974
DEP Rulemaking DEP Rulemaking,

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Amelia Lufrano

318 Meeker Street
South Orange, New Jersey 07079
DEP Rulemaking DEP Rulemaking,

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LESLIE COHEN

1307 w AMARANTH ST
EGG HARBOR CITY, New Jersey 08215
DEP Rulemaking DEP Rulemaking,

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Douglas Schneller
321 N Union Ave
Cranford, New Jersey 07016
DEP Rulemaking DEP Rulemaking,

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Sriram Mohanakanthan

36 Fairmount Drive
Glassboro, New Jersey 08028
DEP Rulemaking DEP Rulemaking,

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Irene Gnarra
26 Country Club Lane
Elizabeth, New Jersey 07208
DEP Rulemaking DEP Rulemaking,

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Kathleen Maher
1201 evergreen Ave
ocean , New Jersey 07712
DEP Rulemaking DEP Rulemaking,

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Andrew Mumford
226 S Bridge Ave
Red Bank, New Jersey 07701
DEP Rulemaking DEP Rulemaking,

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Raghav Akula
2 Melissa Court
Mooresville, New Jersey 08057
DEP Rulemaking DEP Rulemaking,

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David Miller
55 Plumer Road, Newton, NJ
Newton, Saint Croix Island 07862
DEP Rulemaking DEP Rulemaking,

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Pamela Kane
1101 Timberbrooke Drive
Bedminster, New Jersey 07921
DEP Rulemaking DEP Rulemaking,

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Alice Golin
108 Essex Avenue
Glen Ridge, Saint Croix Island 07028
DEP Rulemaking DEP Rulemaking,

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Melvin Ford

50 ESCHER ST, UNIT 308B
Trenton, New Jersey 08609
DEP Rulemaking,

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Zoe Leach
810, Lawrenceville Rd
Lawrence, New Jersey 08648
DEP Rulemaking DEP Rulemaking,

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Virginia Hyzer

1102 Columbia Ave.
Cinnaminson, New Jersey 08077
DEP Rulemaking, DEP Rulemaking,

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Julie Takatsch
67 Schoolhouse Rd
Port Jervis, New York 12771
DEP Rulemaking DEP Rulemaking,

I have lived in New Jersey my entire life and appreciate all the natural beauty, but not all communities are EQUAL and often disenfranchised communities are forced to live in highly polluted environments…. we must change this now.

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Gayle Rembold Furbert
187 Mine Hill Rd
Hackettstown, New Jersey 07840
DEP Rulemaking DEP Rulemaking,

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George Hurst
1133 Boynton Ave Apt 203
Westfield, New Jersey 07090
DEP Rulemaking DEP Rulemaking,

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People shouldn't have to choose between a healthy environment and jobs. All residents - no matter their zip code - deserve a seat and a voice at the table in decisions that will impact the health of their water, air and neighborhoods.

Thank you for your consideration.

Patricia Kortjohn
376 Oakwood Dr.
Wyckoff, New Jersey 07481
DEP Rulemaking

DEP Rulemaking, 

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Tracey katsouros

1322 Harwich Dr
Waldorf, Maryland 20601
DEP Rulemaking DEP Rulemaking,

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Sandra Garcia

3337 New York Ave.
Newark, New Jersey 07105
DEP Rulemaking

DEP Rulemaking, 

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Denise Lytle
3207 Plaza Dr.
Woodbridge, New Jersey 07095
DEP Rulemaking DEP Rulemaking,

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Cheryl Harding
Box 309
Flemington, New Jersey 08822
DEP Rulemaking DEP Rulemaking,

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kathy hart
11 Aspen Dr
North caldwell, New Jersey 07006
DEP Rulemaking DEP Rulemaking,

Clean water and clean air are two basic elements to good living. We all deserve this no matter where we live no matter how we make money no matter who we are. All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

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Laurie Ludmer
264 Sherman Avenue
Teaneck, New Jersey 07666
DEP Rulemaking

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Matt Santaiti
26 Patriot Hill Drive
Basking Ridge, New Jersey 07920
DEP Rulemaking DEP Rulemaking,

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Melissa Marks
10 Roosevelt Pl
Montclair, New Jersey 07042
DEP Rulemaking DEP Rulemaking,

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Jo Ann Doran
786 Burnt Meadow Rd
Hewitt, New Jersey 07421
DEP Rulemaking DEP Rulemaking,

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Charles Rinear
221 S. School St.
Gibbstown, New Jersey 08027
DEP Rulemaking DEP Rulemaking,

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Morgan Spicer
6 Victorian woods drive
Atlantic highlands, New Jersey 07716-1500
DEP Rulemaking DEP Rulemaking,

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Everyone deserves a liveable planet and less pollution means more jobs in renewable energy. Only those companies which refuse to take up cleaner energy production lose.

ann malyon
1 seminole ave
oak, New Jersey 07436
From: Michaela Redden
To: DEP rulemaking comments [DEP]
Subject: [EXTERNAL] DEP Docket Number: 04-22-04
Date: Tuesday, August 30, 2022 11:05:28 AM

DEP Rulemaking DEP Rulemaking,

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Michaela Redden
michaela@computerguru.org
8 Fraesco Lane
Norwood, New Jersey 07648
DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

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Gina Norton
805 Windward Dr
Forked River, New Jersey 08731
DEP Rulemaking DEP Rulemaking,

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Tiffany Jones
80 south munn ave, Apt 307
EAST ORANGE, New Jersey 07018
DEP Rulemaking DEP Rulemaking,

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Jenna McGuire

35 Elmwood Ave
Montclair, New Jersey 07042
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs at the expense of the environment is a false trade off that’s harmed EJ communities for too long.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

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Stu Kennedy
61 Club Rd
Montclair, New Jersey 07043-2528
DEP Rulemaking DEP Rulemaking,

The law has FINALLY been passed and must not be watered down with all sorts of (money making) exemptions by malleable bureaucrats. Enforce the legislation to the limit. No politically motivated con jobs,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

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George Moffatt
20 Pemberton Ave
Oceanport, New Jersey 07757
DEP Rulemaking, 

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Stacy Goto

28 Bunker Hill Drive
Mananlapan, New Jersey 07726
DEP Rulemaking DEP Rulemaking,

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Linda Blatnik
250 Gorge Rd apt 22C
Cliffside Park, New Jersey 07010
DEP Rulemaking DEP Rulemaking,

New Jersey has the opportunity to lead in Environmental Justice. We need action on this now.

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Marilynn Benim
121 Roosevelt Ave
Hasbrouck Heights, New Jersey 07604
DEP Rulemaking DEP Rulemaking,

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Michael Paul

106 Taylor Terrace
Hopewell, New Jersey 08525
DEP Rulemaking DEP Rulemaking,

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Nancy Griffeth

264 West Dudley Ave
Westfield, New Jersey 07090
DEP Rulemaking,

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Bharat Adarkar

18 Shiloh Road
Manalapan Township, New Jersey 07726
DEP Rulemaking DEP Rulemaking,

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Holly Cox

1 Dey Court
Towaco, New Jersey 07082
DEP Rulemaking DEP Rulemaking,

Go to sleep at night feeling honorable and proud. Give vulnerable communities undisputed rights to a safe environment for themselves and their families. All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

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Jane Manning
jana@manningdesigngroup.com
10 deal lake ct
asbury park, New Jersey 07712
DEP Rulemaking DEP Rulemaking,

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Mon Mor
888 Westfield Ave Apt C1
Elizabeth City, New Jersey 07208
DEP Rulemaking,

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Jeanne Golden

131 Princeton Rd
Linden, New Jersey 07036
DEP Rulemaking,

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Victor Sytzko
0-47 27th Street
Fair Lawn, New Jersey 07410
DEP Rulemaking DEP Rulemaking,

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Chris Hazynski
17 Gate Ct.
Burlington, New Jersey 08016
DEP Rulemaking DEP Rulemaking,

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Louise Marinucci
2104 Ambassador Ct.
Somerset, New Jersey 08873-6093
DEP Rulemaking DEP Rulemaking,

To the decision makers at the DEP,
I am really worried. I have been concerned about the environment since the 80's, but I have never been REALLY worried. How much longer are we going to stand around and let this continue to happen? How much more can NJ take? Too many people, too much traffic, too much trash, too much pollution, and the list goes on. When are YOU going to stand up for ALL the people in the state? We need to do this now. We can not afford to waste any more time and push it off any longer. I used to be so proud of what the DEP has done. I want to be proud again. Drought, fires, storms, insects, viruses...when are we going to stop being greedy and step up to do the right thing? NOW!

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Sincerely,
Ellen Goldberg

Ellen Goldberg
90 Glenwood Dr
Tinton Falls, New Jersey 07724
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it’s a lie. EJ communities have been told for a long time that has never produced wealth for EJ communities.

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Marco Palladino
86 Tuers Ave
Jersey City, New Jersey 07306
DEP Rulemaking DEP Rulemaking,

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Emily Wallace

453 Alexander Ave
Maple Shade, New Jersey 08052
DEP Rulemaking DEP Rulemaking,

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I recently walked 50 miles from Newark to Red Bank in order to bring awareness to the impending fossil fuel projects and to hopefully prevent these projects. During this walk I learned first hand how many communities are impacted with air and noise pollution. These communities deserve fairness and a reduction in pollution, not more. Please make sure these communities are provided with the strongest Environmental Justice rules.

Thanks so much.

Maureen Carson

10 O'Hara Street
Edison, New Jersey 08837
DEP Rulemaking,

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Dawn Zelinski
140 Deepdale Dr.
Middletown, New Jersey 07748
DEP Rulemaking DEP Rulemaking,

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Sheila Ward
1057 Calle 8
San Juan, Puerto Rico 00927
DEP Rulemaking DEP Rulemaking,

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Maureen Schulze

170 Beach Drive
WATERFORD TOWNSHIP, New Jersey 08004
DEP Rulemaking, DEP Rulemaking,

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Laurel Kornfeld
106 North Sixth Avenue
Highland Park, New Jersey 08904
DEP Rulemaking, DEP Rulemaking,

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Elise Aronov
19 Dodd st
Montclair, New Jersey 07042
DEP Rulemaking DEP Rulemaking,

Job creation should hinge on guaranteeing decently paid, healthy, clean jobs that do not add to the burden of pollution in frontline communities. These opportunities should enrich the community with detracting from the actual quality of life in EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

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Julie Winokur
jwinokur@talkingeyesmedia.org
110 Montclair Ave.
Montclair, New Jersey 07042
DEP Rulemaking DEP Rulemaking,

I really care about environmental justice and want everything to be done to keep our air and water as clean and safe as possible. Therefore, I am strongly urging you to pass the most effective environmental justice rules possible by implementing the following criteria:

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Gwenn Levine

65 Campbell Ave
Woodcliff Lake, New Jersey 07677
DEP Rulemaking,

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Elizabeth Salerno
243 E. Kinney Street
Newark, New Jersey 07105
DEP Rulemaking DEP Rulemaking,

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Edward Reichman
12 Moore Ter
West Orange, New Jersey 07052-5014
DEP Rulemaking DEP Rulemaking,

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jj mistretta
506-8 harding rd
freehold, New Jersey 07728
DEP Rulemaking, DEP Rulemaking,

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Diane Heyer
53 Providence Blvd.
Kendall Park, New Jersey 08824
DEP Rulemaking DEP Rulemaking,

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Michael Madden
50 Germonds Road
New City, New York 10956
DEP Rulemaking DEP Rulemaking,

Environmental degradation has tragic consequences for people who live in these toxic areas. Children in particular are harmed, often with lifetime poor mental and physical ill health.

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Anne Brown
149 Edgar Street, #1
Weehawken, New Jersey 07086
DEP Rulemaking DEP Rulemaking,

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Kevin Kimmel

46 Linden Place
Summit, New Jersey 07901
DEP Rulemaking DEP Rulemaking,

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Martin Horwitz
1326 23rd Avenue
San Francisco, California 94122
DEP Rulemaking DEP Rulemaking,

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Marinus Broekman

4 Allen Place
Fair Lawn, New Jersey 07410-3505
DEP Rulemaking,

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Don Vonderschmidt
9 Buckley Ln
Marlton, New Jersey 08053
DEP Rulemaking DEP Rulemaking,

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Ralph Zelman

4N Dennison Drive
East Windsor, New Jersey 08520
DEP Rulemaking DEP Rulemaking,

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Jerry Rivers
8 Gombert place
Roosevelt, New York 11575
DEP Rulemaking, DEP Rulemaking,

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Melissa Pflugh
10 Colgate Rd.
Oakland, New Jersey 07436
DEP Rulemaking DEP Rulemaking,

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Shawn Liddick
8 Gorczyca Place
South Amboy, New Jersey 08879
DEP Rulemaking,

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Ronald Harkov
81 Coppermine Rd
Princeton, New Jersey 08540-8602
DEP Rulemaking DEP Rulemaking,

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Vikram Sikand
39 King Avenue
Weehawken, New Jersey 07086
DEP Rulemaking DEP Rulemaking,

It's time to ensure your environmental law works for the people. All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie and a cover up for big companies to get what they want at the expense of the people.

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Jeanne Jordan
130 Avocet Lane
West Deptford, New Jersey 08086
DEP Rulemaking DEP Rulemaking,

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Ron De Stefano

113 Crestview Lane
MOUNT ARLINGTON, New Jersey 07856
DEP Rulemaking

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Lise Sayer

156 E Cedar Street, Apt 1303
Livingston, New Jersey 07039-4147
DEP Rulemaking DEP Rulemaking,

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Celeste Martin

1 Central Railroad
Glen Gardner, New Jersey 08826
DEP Rulemaking DEP Rulemaking,

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Robert Veralli
54 Beacon Hill Rd Unit A
West Milford, New Jersey 07480-1259
DEP Rulemaking DEP Rulemaking,

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These recommendations work for me. Thank you.

Steven Mitchell
1 Mountain Avenue, Ste. 901
Somerville, New Jersey 08876-1848
DEP Rulemaking DEP Rulemaking,

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Judy Kushner
830 Kings Croft
Cherry Hill, New Jersey 08034
DEP Rulemaking, DEP Rulemaking,

As a concerned citizen, I urge you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

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Thank you for your consideration.

Rosemary Topar
35 La Grande Ave
Fanwood , New Jersey 07023
DEP Rulemaking DEP Rulemaking,

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Susan Mullins

110 Mountain Avenue
Bloomfield, New Jersey 07003
DEP Rulemaking,

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Amanda Dickinson

1322 South 18th Avenue, 135
Yakima, Washington 98902
DEP Rulemaking DEP Rulemaking,

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Damon Brown
3536 Cloverdale Avenue
Los Angeles, California 90016
DEP Rulemaking DEP Rulemaking,

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Linda Rossin
13 Alpine Drive
Lake Hopatcong, New Jersey 07849
DEP Rulemaking DEP Rulemaking,

I grew up in South Philadelphia, not too far from a major power plant. I can still remember the chemical smoke smell 40 years later. When I think about environmental justice, I remember that and am grateful that I was able to move away. But not everyone can just leave their community, and they shouldn't have to.

For those who now are overwhelmed and overburdened, I am making a plea for the strongest Environmental Justice rules possible by implementing the following criteria:

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Dionne Polk
27 Lawrencia Drive
Lawrence Township, New Jersey 08648
DEP Rulemaking DEP Rulemaking,

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Joann Ramos
64 Fiume St
Iselin, New Jersey 08830
DEP Rulemaking,

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Ibn-Umar Abbasparker

386 New Brunswick Avenue, F2
Fords, NJ, New Jersey 08863
DEP Rulemaking DEP Rulemaking,

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Ruth Boice
162 Willow Grove Rd
Shamong, New Jersey 08088
DEP Rulemaking, DEP Rulemaking,

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Marie Peak
[address redacted]
12 Mountain Ash Place, Sewell, New Jersey 08080
DEP Rulemaking,

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Jeany Myers
19 Hopkins Court
Parsippany, New Jersey 07054
DEP Rulemaking, DEP Rulemaking,

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John Schreiber
4471 Nottingham Way
Trenton, New Jersey 08690
DEP Rulemaking

DEP Rulemaking DEP Rulemaking,

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Patricia Palermo

125 Main
Summit, New Jersey 07901
DEP Rulemaking DEP Rulemaking,

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Colleen Loughran

10 Royal Court Drive, Apt. K7
Spring Lake , New Jersey 07762
DEP Rulemaking

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Ibn-Umar Abbasparker
386 New Brunswick Avenue, F2
Fords, NJ, New Jersey 08863
DEP Rulemaking,

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Pat Rolston
50 Wesley Pl, PO Box 120
Mount Tabor, New Jersey 07878
DEP Rulemaking

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STEVEN BERNHAUT

447 NORTHFIELD AVENUE
WEST ORANGE, New Jersey 07040
From: Ann T
To: DEP rulemakingcomments [DEP]
Subject: [EXTERNAL] DEP Docket Number: 04-22-04
Date: Tuesday, August 30, 2022 10:43:40 PM

DEP Rulemaking DEP Rulemaking,

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Ann T
596 Stangle Rd
Martinsville, New Jersey 08836
DEP Rulemaking DEP Rulemaking,

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Susan Nierenberg

365 Edgewood Ave.
Teaneck, New Jersey 07666
DEP Rulemaking DEP Rulemaking,

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Margaret Yelenik

22 Mallard Ct.
Howell, New Jersey 07731-4029
DEP Rulemaking DEP Rulemaking,

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Juliet Jones
581 Highland Avenue
Montclair, New Jersey 07043
DEP Rulemaking DEP Rulemaking,

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Rita ROEDIG
155 Bells Lake Rd
Turnersville, New Jersey 08012
DEP Rulemaking DEP Rulemaking,

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gregory.a.. clewell

258 fremont ave. apt.1 seaside heights, n.j. 08751
Seaside Heights, New Jersey 08751
DEP Rulemaking DEP Rulemaking,

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ELYSE STERNBERG
25 Abington Ave.
Marlton, New Jersey 08053
DEP Rulemaking DEP Rulemaking,

Please we the people urge you to act in good faith to ensure a healthy happy life for all residents.

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KELLY OATES
66 Maple Ave
Maplewood, New Jersey 07040
DEP Rulemaking DEP Rulemaking,

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grace chen

52 dunbar ave.
long branch, New Jersey 07740
DEP Rulemaking DEP Rulemaking,

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When does this stop? When your grandchildren are dying of cancer? GET WITH IT, ALREADY!

Annette Shandolow-Hassell
40 74th Street, #1-B
North Bergen, New Jersey 07047
DEP Rulemaking DEP Rulemaking,

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ROBERT MOORE

75 CATLIN ROAD
Franklin, New Jersey 07416
DEP Rulemaking

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Robert Focht
312 21st Street
Union City, New Jersey 07087
DEP Rulemaking, DEP Rulemaking,

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Stephen Hirsch

516 Passaic Ave
Spring Lake, New Jersey 07762
DEP Rulemaking DEP Rulemaking,

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Charles Nunzio
45 Alpine Dr.
Lincoln Park, New Jersey 07035
DEP Rulemaking DEP Rulemaking,

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Corey Schade
11 Buena Vista Court
Loch Arbour, New Jersey 07711
DEP Rulemaking DEP Rulemaking,

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Charles Hansen
29 Mahoras Dr
Ocean, New Jersey 07712-3346
Please see attached comments by the New Jersey State Chamber of Commerce ("State Chamber") regarding:

**Notice of Rule Proposal**  
Environmental Justice  
**Proposed New Rules: N.J.A.C. 7:1C**  
**DEP Dkt. No. 04-22-04**

Thank you for the opportunity for us to provide our views.

Mike Egenton

---

**Michael Egenton**  
Executive Vice President – Government Relations  
609-989-7888 x119  
**New Jersey Chamber of Commerce**  
216 West State Street, Trenton, NJ 08608  

[Web] [Facebook] [Twitter] [LinkedIn]
August 31, 2022

Melissa P. Abatemarco, Esq.
ATTN: DEP Docket Number: 04-22-04
NJ Department of Environmental Protection
Office of Legal Affairs
401 East State Street, 7th Floor
Mail Code 401-04L; PO Box 402
Trenton, NJ 08625-0402

Re: Notice of Rule Proposal
Environmental Justice
Proposed New Rules: N.J.A.C. 7:1C

Dear Ms. Abatemarco:

The New Jersey State Chamber of Commerce (the “State Chamber”) is pleased to submit these comments regarding the New Jersey Department of Environmental Protection (“NJDEP” or the “Department”) proposed new rules implementing N.J.S.A. 13:1D-157, also known as the Environmental Justice Law (“EJ Law”) published in the New Jersey Register on June 6, 2022 (the “Proposal”).

As the NJDEP is aware, the State Chamber has been in operation since 1911, advocating for initiatives that will improve New Jersey’s business climate and enhance job creation. With a broad-based membership ranging from Fortune 500 companies to the small mom-and-pop establishments, we represent every corner of the state and every industry sector. In that regard, the State Chamber has been an advocate for all business in New Jersey to exceed and grow, including business in the minority community.

Beginning in the late 1980s, and into the 1990s, the State of New Jersey recognized the deterioration of urban areas such as Newark, Jersey City and Camden, as well as other cities. New Jersey businesses were encouraged by all prior New Jersey Governors, both Democrats and Republicans, to focus redevelopment efforts in our cities to encourage economic growth, countering the flight of businesses from our cities that had been occurring decades prior to that. The State Chamber was a proud advocate of decades of legislative policies and budgetary appropriations encouraging businesses to reinvest in our cities. Specifically on the environmental front, the State Chamber has supported major brownfields initiatives, including the passage of the Brownfield and Contaminated Site Act in 1997 (“Brownfields Act”), which codified changes in New Jersey’s site remediation law to allow for the remediation of contaminated sites that were lying fallow. The major impetus for the Brownfield Act was the recognition that many former industrial and commercial facilities that had shut down were being unproductive, and could be locations for new, cleaner businesses in our deteriorating cities. The Brownfield Act, along with the focus of development of business in our cities, was a major reason why New Jersey saw, and to this day continues to see, the revitalization and redevelopment of our cities.

At the same time we were focusing our efforts on redeveloping New Jersey’s downtrodden cities, the State Chamber was also an advocate for preserving our precious open space. The State Chamber has been an
advocate of Green Acres funding as well as an advocate for the historic Garden State Preservation Trust Fund, which was designed to provide funding to preserve land in our rural and suburban areas. Recall that given the state of our cities, if business and industrial facilities were locating in New Jersey, the preference was to develop on greenfield land.

The combination of open space funding and brownfields redevelopment has allowed for the redevelopment and relocation of businesses in our urban areas and has been a true success story in New Jersey. During all that time, the State Chamber, under the leadership of several administrations, has encouraged the business sector to locate or remain in urban areas to revitalize them and provide jobs and ratables for these communities, and avoiding those business to flee to the suburbs or our rural areas, or worse flee the State.

As you can see, the State Chamber has historically been an advocate for the revitalization and redevelopment of our urban areas, where much of the concentration of environmental justice (“EJ”) communities exist. In that regard, On August 17, 2020, the State Chamber signed a Memorandum of Understanding with the African American Chamber of Commerce of New Jersey setting a framework for the two organizations to work together to address the economic inequities for black citizens and black business owners in New Jersey. The focus of both groups’ efforts is on creating and enhancing education, entrepreneurship and employment opportunities. In the MOU, the two chambers define specific and measurable actions they will take together to achieve their goal, including:

- Securing the commitment of businesses across New Jersey to increase economic opportunity for black-owned businesses and black citizens, and to participate in the various programs created to achieve this goal. Businesses that participate will be asked to establish a set of diversity and inclusion-related goals and report progress.
- Increasing the number of black business executives serving on boards of directors for the participating companies;
- Increasing the number of black business and community leaders serving on the New Jersey Chamber of Commerce’s Board of Directors;
- Identifying contract, investment, mentoring, employment and recruitment opportunities for black-owned businesses;
- Creating good corporate citizenship programs that will positively impact the social and economic standing of blacks in New Jersey.

In addition to being an advocate for our urban areas and minority businesses, the State Chamber has been an advocate of cleaning New Jersey’s air, especially in our urban areas. For 25 years, I have been a proud representative of the State Chamber in its statutory role on the New Jersey Clean Air Council (the “CAC”). I have participated actively in numerous recent public hearings, where the focus has been on improving air quality recognizing particular needs in our EJ communities. For example, in 2020, I was the Hearing Co-Chair of the CAC’s public hearing entitled “Past, Present, and Future: Air Quality Around Our Ports and Airports,” which overviewed the extent of air pollution and greenhouse gas emissions around our ports and airports, most of which are located in our urban communities. The CAC’s report which I helped author recognized the progress in reducing emissions in and around our ports, but the need to continue to push emission reduction efforts, including recommendations encouraging electrification of vehicles and
equipment, expansion of renewables, and the use of alternative cleaner fuels, among many other recommendations.

Many of the State Chamber’s members who are located in urban communities have been leaders in reducing the emissions and transitioning vehicles and equipment to cleaner, less emitting sources which have directly benefitted our urban communities. Finally, the State Chamber has been supportive of reasoned attempts to modernize and electrify New Jersey’s transportation fleet. As the Department is well aware, and has repeated to the public, stationary sources, including our fossil fueled generation fleet, have improved dramatically, and the transportation sector has become the largest sector of emissions in New Jersey.

While the State Chamber will continue to advocate location of our business and manufacturing facilities in our urban areas, the State Chamber and its members have significant concerns about the unintended consequences of the Proposal. While we understand that the Legislature left the details to NJDEP regarding many of the decisions, we think that the Proposal adds process and standards which will in fact end up pushing many facilities either to not locate in urban areas or, if they already do exist, avoid expanding their economic footprint.

As enacted, the EJ Law applies to seven categories of facilities located in overburdened communities (“OBCs”) generally categorized as solid waste facilities, and all major sources of air pollution, i.e. those facilities that have Operating Permits under the Title V program. Almost every permit issued by the NJDEP for new or expanded facilities in these categories, as well as renewals of existing major sources of air pollution, are required to prepare an environmental justice impact statement (“EJIS”) and engage the community, including conducting a public hearing. The EJ Law allows the NJDEP to deny permits for a new facility if it causes or contributes to adverse cumulative environmental or public health stressors in the OBC higher than those borne by other communities within the State, county or other geographic unit of analysis as determined by NJDEP, except where the facility serves a compelling public need, where the NJDEP may impose conditions on the construction and operation of the facility. With regard to expansions of existing facilities, or the renewal of major sources of air pollution, NJDEP may apply conditions to a permit upon a finding that the expansion or renewal would, together with other environmental or public health stressors affecting the OBC, cause or contribute to adverse cumulative environmental or public health stressors in the OBC that are higher than those borne by other communities within the State, county or other geographic unit of analysis as determined by NJDEP. The EJ Law does not permit the denial of an expansion of a facility or renewal of a major source of air pollution.

We understand that you will be receiving detailed comments on the Proposal from other business organizations and are generally supportive of their comments. In that regard, we would like to highlight some or our major concerns with the Proposal, particularly with respect to our existing businesses.

Overreaching of the Definition of New Facility to Include Existing Facilities

As has been commented by others, the definition of new facility has been so broadly defined as to blur the distinction between a new and existing facility. As defined, a “New facility” includes “a change in use of an existing facility.” Proposed N.J.A.C. 7:1C-1.5. The Proposal further defines “Change in Use” to mean “a change in the type of operation at an existing facility that increases the facility’s contribution to any environmental and public health stressor in an overburdened community, such as a change to waste processed or stored.” We believe that this is so broad that essentially any business covered under the EJ Law which attempts to keep up with the business needs for the times will be considered a new facility. This
distinction is critical because expansions of facilities will now be judged under the standards of new facilities, including the right of the NJDEP to deny permits rather than impose conditions. The expansion of the definition of New Facility to include those facilities that expand their businesses simply was not the intent of the Legislature, and goes beyond the EJ Law.

In many cases, the denial of a permit for a facility expanding its business will ultimately result in a shut down of a facility. As customer needs change, or the business climate changes, businesses change their business profiles at their existing plants. Businesses that cannot change with the times usually do not continue to operate. This is a simple fact of business life. The Legislature knew this when it enacted the EJ Law and took this into consideration when it did not authorize NJDEP to deny permits for existing facilities for an expanded use; rather, it required the NJDEP to consider additional conditions. The Proposal does not do that; rather, it leaves to NJDEP whether a facility can be denied a permit for expansion unless it serves a compelling public need, which is a need that must be within the OBC. The definition of New Facility should be changed to mirror the definition in the EJ Law so that it meets the intent of the Legislature.

We also note that even the prospect of an existing facility being considered a new facility under the EJ Law will have a chilling effect on businesses covered by the EJ Law from performing any type of improvement to change with the times. Most businesses will simply not take the risk of a permit denial, particularly if the business is relying on financing and other outside capital to go into a new business line. For example, to the extent a recycling facility were to receive new waste streams that would allow the business to remain profitable, that business must judge whether it is worth the risk of applying for a permit which cannot meet the almost insurmountable standards for new facilities process will even make it difficult for businesses such as recycling facilities to expand.¹ Rather than expand or change its operations, the business will continue to operate as is, likely making less profit, until it no longer is remains economically viable. The Legislature recognized this dilemma; they were not looking to ban or shut down businesses in urban areas through application of the EJ Law.

Expansions of Major Sources of Air Pollutions

Although the EJ Law does not permit NJDEP to shut down an existing facility with a Title V Operating Permit, we are concerned that the provisions in the Proposal regarding expansions of an existing facility that decides to expand its business will cause certain Title V facilities to shut down, even if the facility meets all of the requirements of the Federal Clean Air Act and the Air Pollution Control Act. The Operating Permit provisions of NJDEP’s Air Pollution Control rules at N.J.A.C. 7:27-1 et seq. (“Air Rules”) require those facilities to undertake an extensive review of its air pollution control technologies in order to meet the applicable standards. The Proposal imposes a new standard, Localized Impact Control Technology (LICT), for both expanded and new Title V facilities, which goes beyond the technology reviews and the Air Pollution Control Act’s State-of-the-Art (SOTA) requirements by focusing solely on technical rather than economic feasibility. Those provisions are subjective in nature, which necessarily become unknowns as the facility passes into its first renewal application. This may effectively act as denial because facilities will not be able to incur the additional costs for technology that go well beyond what our current Air Rules require. Many of our existing Title V facilities are newer facilities, such as our natural gas fired electric generating stations, which were constructed with the best heat rates to produce electricity and, with the most advanced

¹ The State Chamber notes that even if the definition of New Facility in the Proposal were not adopted, and the expansion were to be considered as intended under the EJ Law, the process for a recycling facility or other similar facility to expand into different lines of business would still be difficult; the EJ Law still permits NJDEP to apply conditions to a permit.
air pollution control technologies available. As with other facilities looking to expand their businesses discussed above, facilities with Title V Operating Permits which have been financed under long term financing agreements, will now have to make a decision either to incur more debt for an additional, as yet undefined, technology, or eventually close. The imposition of a new air pollution control technology such as LICT is not driven by the EJ Law, and needs to include the analysis of economic impact, particularly to an already existing well operating facility.

Renewals of Title V Operating Permits

Even though the renewal provisions of the Proposal do not require the imposition of LICT, the Proposal’s provisions requiring the review of older equipment separate and apart from stringent requirements of the Air Rules. If adopted, the Proposal would require facility-wide risk assessments and, for certain older equipment, a technical feasibility analysis which could require yet undefined controls that go well beyond SOTA and other requirements of the Air Rules. As stated above, many of our existing Title V facilities are newer facilities, such as our natural gas fired electric generating stations, which were constructed with the best heat rates to produce electricity and, with the most advanced air pollution control technologies available, and likely available for a long time. They were also financed for periods much longer than the required five-year renewal periods. However, if the Title V Operating Permit is located in an OBC, that facility will have to consider yet-to-be defined technologies or operating measures that could go well beyond what would be required to obtain a renewal. This will require additional costs and additional financing which may cause a facility to shut down prematurely. Any focus on renewal should focus on existing standards such as SOTA and other standards appliable under the Air Rules.

We have highlighted these three areas because of the impact on existing businesses covered by the EJ Law, particularly those that have invested a significant amount of time and money in locating in our urban areas and have revitalized them.

More broadly, members of the business community that are not covered under the EJ Law have expressed significant concerns about the Proposal and its future impact on the business community at large. Many of those businesses are companies that operate in many states, or in-state businesses that are considering what investments they should make and whether those investments should be located in New Jersey. New Jersey is the first state to enact such a broad and sweeping law on environmental justice, and the Proposal is one of the first of its kind. To the extent the Proposal is adopted, it will have a ripple effect how businesses view New Jersey’s business climate, and likely on the remainder of the States and Federal Government, as to how environmental justice principles are incorporated in their respective programs. We remind NJDEP that the EJ Law is not the first environmental program initiated by New Jersey. In 1983, the Legislature enacted the then-named Environmental Cleanup Responsibility Act (“ECRA”). ECRA was the first statute of its kind that essentially placed a requirement to investigate and, if necessary, remediate certain industrial facilities prior to a facility in New Jersey being transferred. NJDEP subsequently enacted regulations implementing ECRA, which went well beyond what ECRA had intended, causing major transactions to almost come to a screeching halt pending implementation of ECRA. As a result of the outrage, ECRA was amended, including amending its name, to the Industrial Site Recovery Act (“ISRA”), which although a change in name, still imposed environmental requirements at a critical time, namely, a time when a company wanted to transfer its business to another business. In order to combat the onerous requirements of ISRA, the Brownfields Act was enacted, and finally given the burdens on NJDEP in completing site remediation
oversight, the Site Remediation Reform Act (“SRRA”) was enacted in 2009 which allowed Licensed Site Remediation Professionals to oversee cleanups. However, ISRA was never abolished.

Has ISRA turned into a national model? In a word, no. Other than the Connecticut Transfer Act, no other state, nor the Federal Government, has enacted a statute or program similar to ECRA or ISRA. At the same time, for almost 40 years since the enactment of ECRA, businesses have kept a sharp eye out on the potential compliance requirements of ISRA, and have in some cases refused to invest in certain businesses that may have ISRA risks at the time of closure or transfer of operations. The State Chamber fears the Proposal, if enacted, will lead to a similar result, all at a time when we are trying to incentivize business to continue to operate or relocate to our urban areas, providing much needed jobs and tax benefits to the local community.

In contrast to adopting such onerous rules, New Jersey needs to examine how it incentivizes the continuation of our businesses and industry in our urban areas. The FY2023 budget signed by the Governor included a record surplus of $6.8 billion. Rather than impose incredibly onerous requirements on our business that are trying to survive in our urban areas, New Jersey should be incentivizing and investing in these businesses to allow them to meet the needs of the local community and continue the efforts to revitalize these communities. One can only look at urban areas such as Trenton, our state capital, which has essentially lost its entire manufacturing and commercial base. Only investment and incentives will bring them back, and not onerous requirements which will simply force business to relocate.

The State Chamber thanks the Department for the opportunity to comment upon the Proposal.

Sincerely,

Michael A. Egenton
Executive Vice President
Government Relations

cc: Governor Phillip Murphy
    George Helmy, Governor’s Chief of Staff
    Parimal Garg, Governor’s Chief Counsel
    Joe Kelley, Governor’s Deputy Chief of Staff for Economic Growth
    Shawn LaTourette, Commissioner, NJDEP
DEP Rulemaking DEP Rulemaking,

This is important! These are people's lives and health risks that we are talking about. Don't ignore them.

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

I strongly urge you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

+ No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables.
+ No offsets (e.g. planting trees or bike lanes elsewhere).
+ Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

Eileen bird

53 Moran Ave
Princeton, New Jersey 08542
DEP Rulemaking DEP Rulemaking,

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Sharon Paltin

po box 18
Laytonville, California 95454
DEP Rulemaking DEP Rulemaking,

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Peter Svhofield
1568 Mcy Ln
Lawrenceville, Georgia 30043
The New Jersey State Railroad Association takes this opportunity to submit our remarks regarding the Environmental Justice regulations proposed by the New Jersey Department of Environmental Protection at N.J.A.C. 7:1C. DEP Docket Number: 04-22-04; Proposal Number: PRN 2022-082; 54 N.J.R. 971(a) (June 6, 2022). While we applaud the general goals of the underlying Environmental Justice law, we believe the proposed regulations undermine those goals in their handling and treatment of railroad tracks and rail freight transportation.

We are signatories to, and firm supporters of the remarks and comments made by the New Jersey Business and Industry Association.

We make specific remarks about summary language included in of the proposed regulations regarding the Department's intention to include railways in its list of stressors at N.J.A.C. 7:1C Appendix, the summary of which is found on pages 30-31 of the 153 pages of the proposed regulations: [https://www.nj.gov/dep/rules/proposals/proposal-20220606a.pdf](https://www.nj.gov/dep/rules/proposals/proposal-20220606a.pdf). The inclusion of railways is found in the Appendix as a Mobile Source of Air Pollution on page 150 of the document.

According to the summary, the support that these proposed regulations give for their inclusion of railways as stressors is cited as "The proximity of railways to residences and other institutions is an indicator of increased air pollution exposure levels and is relevant to mobile sources of air pollution."

The fault with this identification of railways as a stressor is that it fails to consider modal differences within the transportation sector and to account for the important role rail transportation plays in reducing the impacts to overburdened communities. Any statewide policy designed to alleviate impacts to those communities should encourage, or at the very least not discourage, the diversion of freight from high truck trafficked local roads and highways to the far less impactful rail freight network. At this time, all methods of freight transportation use the same fossil fueled internal combustion engines. This includes both prominent surface modes of freight transportation which are truck and rail. Further, both truck and rail now seek to move to alternative forms of propulsion including hydrogen, biodiesel and electric introduction of these technologies are now not fully available. What is crucially different however is that rail freight travels not on either highways or local roads but on our own rail network. This network has existed in New Jersey since the 1800s and is privately owned and maintained.

Supporters of the concept of Environmental Justice frequently cite congestion on New Jersey roads as part of the impetus for the passage of the Environmental Justice Act. However, by including railways among the list of stressors in the Appendix as Mobile Sources of Air Pollution of the regulations a partial cure for that congestion is now cited as not an amelioration of the problem but as a stressor. We can only think that the drafters of the proposed regulations misunderstood freight movements across both New Jersey and the nation. With this section, the Title V applicants are punished for using the freight mode that is the most congestion reducing...
mode that exists. Beyond the reduction of highway congestion, the other benefit of rail is that it is the most environmentally friendly way to move freight over land. On average rail produces 75% less greenhouse gas emissions than via truck. U.S. Railroads, on average move 1 ton of freight nearly 500 miles on 1 gallon of fuel which makes locomotives 3-4 times more fuel efficient than trucks. Railroads account for about 40% of long-distance freight volume but only produce 1.9% of transport related greenhouse gas emissions. Finally, national policy has long recognized the importance of the freight rail network to the nation’s economy. In furtherance of this policy, the US Congress has vested exclusive jurisdiction over the regulation of interstate rail transportation in a federal regulatory agency, the Surface Transportation Board _ 49 USC 10501(b). To the extent the proposed regulations would limit the construction, maintenance, expansion or operation of rail facilities or otherwise regulate rail transportation in New Jersey, those regulations would be preempted by federal law and have no force or effect. For these reasons, we respectfully request that railways be excluded from the list of stressors in the Appendix and from the final version of the regulations adopted by the Department.
** Electronic Rulemaking Comment **
Submitision Date: 08/31/2022 16:29:54
First Name: Michael
Last Name: McGuinness
Affiliation: NAIOP New Jersey
City: New Brunswick
State: NJ
Zip: 08901
Email: mcguinness@naiopnj.org
Rule Proposal: Select Rulemaking
Comments: August 31, 2022

Melissa P. Abatemarco, Esq.
Attn.: DEP Docket No. 04-22-04
Office of Legal Affairs
Department of Environmental Protection
401 E State St 7th Fl
Mail Code 401-04L
PO Box 402
Trenton, NJ 08625-0402

Dear Ms. Abatemarco:
NAIOP New Jersey, the Commercial Real Estate Development Association, represents the interests of New Jersey’s commercial and industrial real estate community. Our 830 members support thousands of jobs throughout the state and are committed to environmentally sustainable and responsible development. In fact, we actively promote and educate our members on the environmental, social, and governance platform.

The enactment of the groundbreaking New Jersey Environmental Justice Law and the proposed rules to implement it are commendable efforts to improve conditions in communities heavily burdened by decades of industrial pollution from Title V covered facilities, notably solid waste facilities and power generation facilities. The proposed regulations appear not to currently impact the office property and warehouse industries. However, we are concerned that some local governments may adopt ordinances under the guise of environmental justice that are aimed at thwarting smart development and critical redevelopment and that broaden the scope of covered facilities. If permitted, such initiatives carried out under false pretenses could corrupt honest environmental justice efforts and create a climate inhospitable to economic development and redevelopment.

We are especially concerned that environmental justice will be falsely cited and used to prohibit brownfield redevelopment, which will further expose vulnerable populations to contaminated land. Brownfield redevelopment is environmental justice in action. Prohibiting it will place development pressure on our greenfields and exacerbate sprawl. While implementing the new and important environmental justice law in our overburdened communities, it is incumbent upon the New Jersey Department of Environmental Protection (NJDEP) to keep in check those towns that seek to abuse or exceed the law to stop economic growth.

Regardless of the intention of local governments, the adoption of local environmental justice ordinances will create an uneven and inconsistent statewide patchwork of ordinances. We urge NJDEP to establish standards for local environmental justice ordinances.

The proposed rule’s definition of facility is different from the definition in the environmental justice law, which is limited to eight types of facilities. NAIOP NJ remains concerned about the rule’s vague definition of facility, which includes any major source of air pollution. Our members’ facilities do not compare with Title V facilities for air pollution, but truck, van, and car traffic from such development may be construed as a mobile source of air pollution, which the enabling statute calls an environmental or public health stressor.

An additional concern is that NJDEP staff will start to routinely review stressors in all permit applications and that land-use decisions for facilities not covered by the law will eventually be based on the impact of these stressors on the community. This will likely lead or contribute to delays or denials for logistics industry projects. We hope NJDEP will monitor for this and address it with staff as necessary.

Given that air pollution from point, non-point, and mobile sources are major public health stressors in many New Jersey communities, public officials at all levels should prioritize and target the use of available excess federal and state funds for upgrading the electric infrastructure, siting electric charging stations, and providing financial incentives for truck owners to convert their fossil fuel powered trucks to electric, especially in New Jersey’s most stressed and overburdened communities. Achieving this goal will likely take several years as ele!
Electric vehicle batteries become more affordable, available, and robust, and the state's electric power grid is expanded to meet growing demand. Better local and regional planning can only be achieved with predictability. Toward that end, it is important to ensure that environmental justice requirements not be an impediment to municipalities that are updating their local planning and zoning ordinances. Nowhere is this more relevant than with the siting of warehouse and distribution centers, which are integral to the state's logistics sector and contribute more than 11% to the state's gross domestic product. Under the proposed rules, one of the criteria for a community to be designated as overburdened is 35 percent of households are low-income households. Further, the proposed rules establish unemployment as a public health stressor. However, the proposed rules forbid the consideration of a facility's economic benefits such as jobs and income despite the fact these benefits would directly improve household income levels and alleviate unemployment. It is only logical that the proposed rules should permit the consideration of a facility's economic contributions that help ease the challenges that lead a community to become overburdened, such as low-income, and that help mitigate its public health stressors, such as unemployment.

As we implement environmental justice protections, we also need to be sensitive to the business community, workforce, and investors operating and expanding in our state. Thank you for the opportunity to comment on the proposed environmental justice rules. Please feel free to contact me by email (mcguinness@naionj.org) or phone (732-729-9900) for additional information and with any questions.

Sincerely,
Michael G. McGuinness
Chief Executive Officer
NAIOP New Jersey
August 31, 2022

Melissa P. Abatemarco, Esq.
Attn.: DEP Docket No. 04-22-04
Office of Legal Affairs
Department of Environmental Protection
401 E State St 7th Fl
Mail Code 401-04L
PO Box 402
Trenton, NJ 08625-0402


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We are especially concerned that environmental justice will be falsely cited and used to prohibit brownfield redevelopment, which will further expose vulnerable populations to contaminated land. Brownfield redevelopment is environmental justice in action. Prohibiting it will place development pressure on our greenfields and exacerbate sprawl. While implementing the new and important environmental justice law in our overburdened communities, it is incumbent upon the New Jersey Department of Environmental Protection (NJDEP) to keep in check those towns that seek to abuse or exceed the law to stop economic growth.
Regardless of the intention of local governments, the adoption of local environmental justice ordinances will create an uneven and inconsistent statewide patchwork of ordinances. We urge NJDEP to establish standards for local environmental justice ordinances.

The proposed rule’s definition of “facility” is different from the definition in the environmental justice law, which is limited to eight types of facilities. NAIOP NJ remains concerned about the rule’s vague definition of “facility,” which includes any “major source of air pollution.” Our members’ facilities do not compare with Title V facilities for air pollution, but truck, van, and car traffic from such development may be construed as a “mobile source of air pollution,” which the enabling statute calls an environmental or public health stressor.

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Under the proposed rules, one of the criteria for a community to be designated as overburdened is 35 percent of households are low-income households. Further, the proposed rules establish unemployment as a public health stressor. However, the proposed rules forbid the consideration of a facility’s economic benefits—such as jobs and income—despite the fact these benefits would directly improve household income levels and alleviate unemployment. It is only logical that the proposed rules should permit the consideration of a facility’s economic contributions that help ease the challenges that lead a community to become overburdened, such as low-income, and that help mitigate its public health stressors, such as unemployment.

As we implement environmental justice protections, we also need to be sensitive to the business community, workforce, and investors operating and expanding in our state.

Thank you for the opportunity to comment on the proposed environmental justice rules. Please feel free to contact me by email (mguinness@naiopnj.org) or phone (732-729-9900) for additional information and with any questions.

Sincerely,

Michael G. McGuinness
Chief Executive Officer
NAIOP New Jersey
Comments: I am a fifty-year resident of Maplewood and thus a beneficiary of industry-free neighbors, while aware of New Jersey’s long industrial history. I’m a former financial executive and retired recently as an Associate Professor of Management at Fairleigh Dickinson University. I did research and taught for several years on how companies can manage for sustainability. A growing swath of profitable corporations have found how to protect the environment and support employees and community members while attaining financial goals. These three dimensions are sometimes called _People, Planet, and Profit._

Through the new Environmental Justice Law, New Jersey has now set out an admirable standard for considering the cumulative impact of pollution and toxicity on overburdened communities. The new regulations should be crafted to reflect those protections, while not placing undue burdens on corporate operations. Today’s world of rapid global warming and challenging globalization calls for the Department of Environmental Protection to discern how to place rigorous and pragmatic restrictions in place. The proposed amendment could allow permits for corporate proposals if they contribute to economic benefit. It should not be approved. Like your counterparts in corporate executive suites, I believe you need to take a multi-faceted approach to such decisions. After all, in the discussions about New Jersey’s welfare, you clearly must be a strong voice for your title _ENVIRONMENTAL PROTECTION._

As formerly an esteemed corporate executive himself, Governor Murphy is no stranger to challenging decisions about profits and public welfare. Our new law does not simply ask the question of _WHETHER_ to construct industrial facilities but _WHERE._ That’s one reason he held a public signing of the new law on the streets of the Ironbound. At the August hearing, the representative from New Jersey Business and Industry Association asserted that the law in its current form would forbid new cons! traction in something like 80% of the state. Really? That seems to exaggerate what would be a realistic limitation about the geographic extent of the law. My impression is that a well-drawn set of regulations would emphasize traditional industrial urban centers, such as the Ironbound and the rest of Newark, Camden, Elizabeth, Paterson, and the like. Surely engineers, public health professionals, and meteorologists could help define the geographic extent of areas that need special protection.

Some power generation facilities may need to be co-located with the users of their power in urban areas. In those cases, it is imperative that project leaders explore how to fully exploit renewable energy sources, such as wind, solar, and battery technology. That pertains, for instance, to the current fossil-fuel projects proposed by Passaic Valley Sewerage Commission in the Ironbound and New Jersey Transit in Kearney. They point to additional work and new jobs for hardworking blue-collar men and women. This, of course, has been a long-standing appeal for economic development. Countless states have judged that enticing new projects should qualify for generous tax treatments. Too often, however, the promised new jobs have been wildly exaggerated. It’s particularly misleading when the _new jobs_ are filled by workers living outside the affected area, not benefiting the host communities. For that matter, maybe 500 workers are needed to construct a new facility. When completed, how many full-times jobs are required? Oh, well, maybe 35. The DEP should not be sucker into that kind of misrepresentation. I hope you will discern how to make the new environmental justice law a ground-breaking advance for enlightened development in the US. It can shine well-deserved credit on New Jersey, Gov. Murphy, and the DEP itself.

Sincerely,

Kent D. Fairfield, Ph.D.
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it’s a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

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Debra Miller
407 Buckhorn Drive
Belvidere, New Jersey 07823
DEP Rulemaking,

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For too long these communities have shouldered a burden and been sold a lie. It's time to act with integrity for justice.

Thank you for reading my letter.

Lynn Mignola
1 Wilkins Ln
Bedminster, New Jersey 07921
DEP Rulemaking DEP Rulemaking,

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Maria Giffen-Castro
280 Prospect Ave, 6J
Hackensack, New Jersey 07601
DEP Rulemaking DEP Rulemaking,

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Kenneth Hammond

5713 Fox Run Drive
Plainsboro, New Jersey 08536
DEP Rulemaking DEP Rulemaking,

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Annette Coomber
33 Sweetwater Lane
Ringwood, New Jersey 07456
DEP Rulemaking DEP Rulemaking,

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Carol Levin
144 Smoke Rise Rd, 0
Bedminster, New Jersey 07921
DEP Rulemaking,

Having participated in marches in the Ironbound section of Newark, I urge those responsible for establishing the Environmental Justice (EJ) rules to go there. Walk, as I did, from the intersection of Ferry Street and Wilson Avenue along Wilson Avenue to the Passaic Valley Sewerage Commission. Your rules should preclude any activity that contributes to the incredible amount of pollution already emanating from that area--the constant onslaught of diesel trucks (many of them very old with huge amounts of particulate pollution), the constant roar of planes overhead (and the smell of airplane fuel), and fumes of power plants and other industrial activity. You will definitely want to wear a mask--and not for COVID prevention.

Go back to Trenton and ensure that you enact the strongest EJ regulations possible:

--no allowance of more pollution for jobs (which turn out to be phantom or short-term jobs anyway, or filled by individuals who don't live in the EJ areas)

--no allowance of more pollution for tax ratables (another false promised, the new, polluting ratables drive down the value of the existing properties, and, moreover, contribute to an increase in healthcare costs)

--no offsets (these bike paths and trees do not address the root cause of the poor health outcomes of residents in EJ communities, and, often, they aren't built anyway (e.g., see the Woodridge power station)

--achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

Brian Scanlan
51 Ravine Avenue
Wyckoff, New Jersey 07481
Good Morning
Please accept the attached comments on the Environmental Justice Rule on behalf of Peggy Gallos, Executive Director of the Association of Environmental Authorities. In accordance with the instructions on the DEP website, all comments greater than 2000 words must be submitted to rulemakingcomments@dep.nj.gov.
Please confirm receipt by reply mail.
Please contact me at the number below for any questions regarding this email.
Thank you and regards

Robert Fischer
Sr. Director

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Comments from the Association of Environmental Authorities on:

Environmental Justice Rules
Proposed New Rules: N.J.A.C. 7:1C
NJDEP Docket Number: 04-22-04.
Proposal Number: PRN 2022-082

Submitted by:
Peggy Gallos, AEA Executive Director

The Association of Environmental Authorities (AEA) represents local, regional, county, and State agencies that deliver water and other services to millions across the State. The drinking water treatment and distribution facilities, wastewater collection and treatment facilities, recycling services, transfer stations, and landfill facilities that our members operate protect public health and the environment. They make it possible for large groups of people to live and work together.

We understand and support the goals of the Environmental Justice Law, which was enacted to address the disproportionately high number of environmental and public health stressors to which low-income communities and communities of color have historically subjected. We value transparency and public participation. Our members are local government units, subject to the Open Public Meetings Act and the Open Public Records Act. They routinely conduct public outreach, public hearings, issue RFPs, and comply with web posting laws.

AEA is requesting clarification on the following:

1. Which Facilities are Subject to this Law? AEA has members that incinerate sludge and operate treatment plants with a permitted flow that is below the 50 MGD threshold. Are the entities subject to the EJ law? If a Publicly Owned Wastewater Treatment Facility not located in whole (or in part) within an overburdened community has a wastewater collection system pump station that is located within an overburdened community, would the EJ law be triggered for modifications to the pump station? Would the Wastewater
Treatment Facility at the time of its NJPDES permit renewal be subject to the EJ Law even though the treatment plant itself is not in an overburdened community?

2. Currently, the Title V Air Permit requires a renewal package to be submitted between 12 to 15 months prior to the expiration date. With the addition of the EJ requirements, will NJDEP require the renewal packages to be submitted earlier to allow for the additional review time? And if so, what is the estimated timeframe for renewal packages moving forward?

3. Can the Department provide guidelines that offer an approximate timeline for projects being completed under these rules? For example, if an owner were to plan to replace a sludge dewatering facility, what compliance activities should they be doing during each phase of a project? (Conceptual design, preliminary design, permitting, final design, construction bidding, construction aware/NTP, construction, testing/start-up, substantial/final completion, and project closeout.)

4. “The eight specific types of facilities covered by the Act are: (1) major sources of air pollution; (2) incinerators and resource recovery facilities; (3) large sewage treatment plants that process more than 50 million gallons per day....” (Page 6) “Critically, the Act empowers the Department to consider environmental and public health stressors presented by the entirety of a facility and its operations, including elements not previously subject to certain of the Department’s media-based regulatory schemes, such as mobile sources of emissions.” (Page 6)

It is noted that mobile sources of emissions are one of the categories of stressors evaluated; however, does this imply that mobile sources of emissions including cars and trucks will be factored into the emissions of the facility? Will the facility need to calculate estimated emissions based on the number of cars and trucks associated with operating the facility and add these numbers into their air permit emission limits?

5. “Where the Act applies, the Department may not deem a permit application complete for review, unless the applicant completes the environmental justice impact statement (EJIS) process to assess the environmental and public health stressors in the overburdened community and the facility’s potential contributions thereto, including conducting a public hearing in the affected overburdened community and responding to public comment on the application.” (Page 7)
Does this imply that a permit application will not go to the applicable Department Bureau for review until after the EJIS process is complete? Will the Department consider having the EJIS process run concurrent with the Bureau review in case the Bureau finds technical deficiencies that would require modification to the EJIS?

6. “To satisfy the conditions of the narrow compelling public interest exception, the primary purpose of the facility must be to serve an essential environmental, health, or safety need of the host overburdened community for which there is no reasonable alternative to siting within the overburdened community.” (Page 14)

7. Is there a list of criteria that a facility must meet to be considered under the compelling public interest exception? How will the Department make this assessment?  

NJAC 7:1C-5.3

8. “However, the NJDEP would consider whether a proposed facility, such as a public works project, would directly reduce adverse environmental or public health stressors in the host overburdened community, thereby serving an essential environmental, health, or safety need of the host overburdened community.” (Page 14)

1. Many treatment plants were constructed before our society understood that climate change impacts include storms of increased severity and intense rainfall over short periods. Would new or expanded facilities designed to prevent spillage of raw sewage be considered a compelling public interest?

2. Regarding the Department’s determination to expressly exclude reliance on economic factors to justify applicability of the “compelling public interest” exception, it appears contradictory for the Department to use unemployment as a public stressor and exclude the employment benefit of a project when considering “compelling public interest”  

NJAC 7:1C-5.3 (c)

9. The regulations state, “The proposed definition for “new facility” covers the development of new covered facilities, as well as changes in use of existing facilities. The proposed definition for “expansion” applies to modifications or changes in an existing facility’s operations that have the potential to result in an increase in the existing facility’s contribution to environmental and public health stressors.” (Page 15)

At what point does a change in an existing facility’s operations trigger a new facility versus an expansion designation? Is the designation based on the emission calculations or will the decision be under the discretion of the Department? Is a permittee required to engage in the EJ process every time its permit
comes up for renewal, or is the EJ process applicable only in the event a 'major change' is planned at the facility?  **NJAC 7:1C-1.5**

10. **Regarding stressors relating to diesel fumes (Page 24-25):**

    Does the NJDEP anticipate determinations that might limit the volume of diesel traffic in and out of a facility? What consideration could be anticipated if such a limit were to result in revenue losses or affect the financial viability of a facility?  **Appendix Mobile Sources of Air Pollution**

11. **The Department would consider the zero population block groups located adjacent to an overburdened community to be an overburdened community (Page 62)**

    Will the EJ rule be applicable to one of the eight facility types solely because they are located adjacent to an overburdened community?  **NJAC 7:1C-2.1 (e).**

12. The regulations state, “the Department will provide, upon request, a written applicability determination if an applicant provides the Department with the address of the existing or proposed facility…” (Page 63)

    What is the expected timeframe for the Department to provide the determination? Will it be possible to obtain a determination of applicability in advance of a permit application? Covered permittees may find it saves time and perhaps money to seek a determination of applicability and keep that on file for the next permit cycle. Does the NJDEP encourage a written applicability request as the better of the two options listed above?  **NJAC 7:1C-2.1 (g)**

13. **Meaningful public participation (Page 66).** How does the proposed regulation define “consider the position of” commenters? In some cases, perhaps infrequently, there may be comments that are irrelevant or misinformed. Would the Department consider an applicant compliant if the applicant acknowledges the comment and indicates that it has no further comment or response?  **NJAC 7:1C-.4.1**

14. **Regarding absence of time limits.** Given that environmental facilities provide critical-to-life service and must continue to provide that public service 24/7, would the NJDEP contemplate including deadlines for its determinations? Or target dates? E.G., the NJDEP has 180-days to complete its review of the EJIS.  **NJAC 7:1C-9.3**

15. **Regarding: (1) notice to property owners within 200 feet of the facility; (2) placement of a sign at the site; and (3) notice through additional methods tailored to best reach individuals in the host community**
that could include interfacing with community groups, additional signage or flyers or direct outreach. 
The Department, municipality or municipalities, and local environmental and environmental justice 
groups would be directly invited to participate in the public hearing.

How would the applicant obtain the list of environmental and environmental justice groups considered 
relevant to its application? How would the applicant obtain information about new groups to be included? 
Would the NJDEP maintain a list to which applicants could refer? **NJAC 7:1C-4.1**

16. **Regarding addressing all comments:** If applicant acknowledges a comment but has no other response 
because the comment is irrelevant, not viable, or such, will the NJDEP accept that as having addressed 
it? In the case where a commenter advocates a modification or a denial and the applicant disagrees 
because it assesses that there is a compelling public interest, would that be considered “addressed”? 
What about comments that refer to temporary adverse impacts, such as traffic rerouting? Will these be 
considered relevant? While we acknowledge that the NJDEP will not take rate impacts into account as 
would ratepayer cost impacts be relevant in responses to comments? **NJAC 7:1C-4.3**

17. “…which mandates that new or modified sources which emit air pollutants incorporate “advances in the 
art of air pollution control”. In addition, on page 133, the regulations state, “shall include measures 
applied to sources in similar source categories, as well as innovative control technologies…”.” (Page 
79)

18. There are many emerging technologies available that do not have long-term records of operational 
reliability. Focusing strictly on the technical feasibility of a technology could force facilities to pursue 
unnecessarily expensive technologies that relatively untried at commercial scales when there are 
proved, effective technologies available. Will the Department develop a list of innovative control 
technologies that are expected to be evaluated as part of the process? Does a technology have to 
meet certain criteria or be proven successful in order to be required to be included in the evaluation? 
**NJAC 7:31C-7 (c)**

19. “However, LICT would focus on technical feasibility rather than economic feasibility or cost-
effectiveness in determining appropriate control technologies.”

It is understood that several facilities are outdated and could utilize better controls; however, will there 
be a limit on the costs of these controls that the Department can require during one permit cycle? It is 
unrealistic to expect facilities to have the funding available to update their controls all at once to maintain
their permit. Will NJDEP consider creating long-term plans for these facilities in which certain measures need to be met per renewal cycle in order to keep the costs reasonable? **NJAC 7:1C-7**

20. **The regulations state that the Department will conduct an administrative review of the EJIS prior to the public participation process, but not a technical review.**

   This seems to be inefficient since if the technical review identifies data gaps or any other issues, there is the potential the public participation process will have to be completed again. Is it possible for a full technical review to be completed prior to the public participation process?

   Has the Department conducted analyses or reviewed published studies that confirm its anticipated outcome? If the LICT requirements of this proposed rule (Page 79) do not allow for an economic feasibility analysis to be considered along with a technical feasibility, would a facility have any means to complete an analysis or otherwise demonstrate that in its individual case, the additional capital, operating and/or regulatory expenses may not be offset by increased economic health of the host overburdened community?  **NJAC 7:1C-3.4**

21. **“The Department would list any additional Department permits that would be subject to the conditions of the decision, provided the same would be submitted to the Department within five years and that no material change occurs.”** (Page 85)

   Facilities that fall under this regulation commonly have several applicable environmental permits, each with a different coverage period and renewal date/cycle. Can you clarify whether the environmental justice process will need to be completed for each permit renewal (Title V, NJPDES, etc.) or once every five years unless a major modification to one of the permits is requested?

22. **The Department anticipates that any additional capital, operating, and/or regulatory expenses incurred by facilities located or proposed to be located in overburdened communities to comply with the proposed new rules will be offset by increased economic health of the host overburdened community.** (Page 85)

   AEA hopes the Environmental Justice Law redresses past wrongs, promotes health, and provides economic benefit overburdened communities. However, we do feel that the statement above “mixes apples and oranges.” Cost increases related to compliance to the EJ Law that might occur are clearly defined impacts that can be accurately measured. Capital, operating, and/or regulatory expenses incurred by facilities are funded directly through the ratepayers of the system. “Increased economic health” of a community, on the other hand, is a broad concept that could be measured in a variety of ways, involving different sets of economic, employment, and/or demographic data. For example, increased property values can be considered an increase in economic health, to one group (property
owners) and not to another group (first-time buyers). Higher user fees and property taxes may reduce the affordability of the community, may prompt businesses to seek lower cost locations, or may discourage new business from locating in the community.

A benefit that is anticipated may or may not actually occur. AEA recommends that the NJDEP assess the EJ Law’s impacts every five years and issue a report to determine which of the anticipated benefits occurred, whether all overburdened communities benefitted and how they benefitted in comparison to one another. This type of assessment could inform amendments to the law which increase its benefits.

Economic Impact Statement P 89.

23. For an expanding facility located in an overburdened community, can contemporaneous reductions in air pollution stressors (e.g., reductions via process changes, capacity reductions, and/or retirement or deactivation of emission units) be used to offset the modeled ambient impact of new equipment to ultimately avoid a “disproportionate impact”? (Page 102) NJAC 7:1C-1.5

24. It is recommended that NJDEP allow for a “De Minimis” level of air pollution increase for overburdened communities. This would be similar to the De Minimis changes allowed under EPA’s New Source Review Program. In this De Minimis EJ permitting scenario, not every “small” plant expansion, in overburdened communities subject to adverse cumulative stressors, will have to be subject to the lengthy and expensive EJ process if the air modeling demonstrates impacts are below the De Minimis stressor level. (Page 102) NJAC 7:1C-1.5
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it’s a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

+ No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables.
+ No offsets (e.g. planting trees or bike lanes elsewhere).
+ Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

Rey Watson

647 County Rd 523
Whitehouse Station, New Jersey 08889
DEP Rulemaking DEP Rulemaking,

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Kerry Heck
22 Fairview Avenue
Pequannock, New Jersey 07440
Please find attached a document reflecting our organization's comments regarding DEP Docket No. 04-22-04.

Sincerely,

Charles Loflin, Executive Director
Pronouns: he/they

4 Waldron Avenue  |  Summit, NJ 07901
execdir@uufaithaction.org | (cell)
Follow: fb.com/uufaithactionnj

(formerly the Unitarian Universalist Legislative Ministry of NJ)
To Whom it May Concern:

As Unitarian Universalists, we affirm and promote the inherent worth and dignity of every person, and justice, equity and compassion in human relations. These are principles that we feel are addressed by the new Environmental Justice Law. We’re pleased with the rules that DEP has drafted to enforce that law, and strongly support them.

We’d like to thank DEP for the extensive public process you conducted in order to hear from as many people as possible. Holding public meetings both in person and virtually gave many people the opportunity to participate. While we were pleased with the public input process, we’d like to suggest that in the future, social media be employed more extensively to encourage participation by a younger and more technically sophisticated audience. The geographic area of influence surrounding the proposed project should also be expanded to include at least neighboring census blocks, perhaps even further.

We are pleased that the list of conditions used under the “Compelling Public Interest” clause does not include economic benefits, such as jobs created. We would like to suggest that additional stressors be added when considering community burden including pesticides and other agricultural contaminants, as well as odors, and that any increase in a stressor should trigger an automatic Environmental Justice review.

While we recognize that DEP cannot deny a permit renewal for existing facilities, we suggest that upon such renewal a new condition be added that requires the permanent installation of an automatic continuous air quality monitoring station which would monitor for all pollutants listed in the new Air Quality permit.

Once again, we thank you for developing a strong set of rules to back up this new law which we believe will have enormous beneficial impact in overburdened communities.

Thank you for your consideration of these comments.

Sincerely,

Charles Loflin
Executive Director, UU FaithAction NJ
Attached, please find comments from our Association for the above captioned rule proposal. Thank you!

Evan

--

Evan Piscitelli
Executive Director

NUCA of New Jersey
www.NUCANJ.org
732-403-5638

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August 22, 2022

**VIA ELECTRONIC MAIL**
Shawn M. LaTourrette, Commissioner
New Jersey Department of Environmental Protection
Office of Environmental Justice
401 East State Street
Trenton, NJ 08625

**RE:** DEP Docket Number: 04-22-04; Proposed New Rules: N.J.A.C. 7:1C (EJ)

Dear Commissioner LaTourrette:

The National Utility Contractors Association is the nation's oldest and largest association exclusively for the utility and excavation construction industry. NUCA represents nearly 2,000 companies in 48 states that provide the materials and workforce to build and maintain our nation's underground water, sewer, gas, electric, and telecommunications systems, as well as water treatment plants.

On behalf of the New Jersey regional chapter, it is my pleasure to provide brief comments on the environmental justice law. We commend the DEP for taking steps to reduce, and hopefully eliminate altogether, the harmful effects that the building of certain new facilities may have on an overburdened community.

Treating our state’s wastewater and remedying combined sewer overflows remain unpleasant yet critically necessary occurrences in a myriad of towns across our state, including those considered overburdened. The resulting positive impact of these services is at the very heart of what defines a resident’s good quality of life, including in those communities. That being said, it is our hope that as these essential public works projects are contemplated in new areas, or expanded where they currently exist, the new permitting process, particularly after the EJ review, be as clear and spelled out as possible.

In general, it would be helpful to those seeking to deal with water treatment or CSOs in overburdened areas to have specific timelines established for parties to act by during various steps of the process. It also remains unclear as to whether an applicant that is responding to EJ review has to re-notice after additional steps are agreed to and taken to further mitigate community impact. This collaboration with the DEP is intended to make a project better, not strangle it in an endless and ambiguous cycle of re-notice.

NUCA NJ appreciates your efforts to address this important issue in a way that both protects overburdened areas and at the same time establishes an unambiguous process to move these deeply essential public works projects forward without harmful delays.

Respectfully,

Evan Piscitelli
Executive Director
NUCA New Jersey
Comments: The Association of New Jersey Recyclers (ANJR) offers the following comments to the Department regarding the Environmental Justice (EJ) proposed rules. By way of background, the mission of ANJR is to support, promote and enhance source reduction, reuse practices, organics management, and recycling activities in the State of New Jersey. ANJR provides educational and training programs, and also advances policies that support sustainable materials management, which in turn benefits the environment, the communities and the economy of New Jersey. We are a not-for-profit, 501(c) (3), nonpartisan network that was incorporated in 1984. ANJR's members consist of individuals and organizations from both the public and private sectors, governmental entities, the recycling industry, and the business community.

In our November 23, 2020 stakeholder letter to then NJDEP Commissioner Catherine McCabe, we noted that it is critically important in the context of developing EJ rules that the Department recognize the importance of local facilities to the success of our recycling efforts. As again noted in the letter, the Legislature and Department are actively engaged in numerous initiatives to stimulate markets for recycled products, including the adopted postconsumer recycled content legislation and the Food Waste Recycling Act. Without question, the approval process for recycling facilities in New Jersey is among the most stringent of any State in the country and rigorous application requirements and standards are currently embodied in DEP regulations at N.J.A.C. 7:26A-3.1 and 3.2. Existing recycling facilities, already operating and previously sited in locations zoned for such activity, may now be subject to EJ requirements when seeking a modification in order to accommodate changes in the market or to better manage materials in an effort to comply with the State’s goals. This will result in additional costs and longer time frames to gain approval. Existing facilities that are not subject to the process of EJ based on mapping, would be afforded an unfair economic advantage by avoiding the time and expense for the preparation of an EJIS. Our overarching comment is that the State must be very careful not to further discourage recycling facilities from locating in New Jersey, prevent existing recycling facilities from leaving New Jersey and we are concerned that the proposed rules would do just that.

Our more specific comments are below:

1. The explanation on page 74, as well as 7:1C-2.1, refers to sections 7:1C-4.4 a & b. These sections do not exist; there is only section 7:1C-4.4 (no_a_or_b_). We are concerned with the appropriateness and feasibility of assessment of a number of the environmental stressors identified by the Department which new recycling facility applicants must address, most notably: Lack of Recreational and Open Space; Impervious Surfaces; Land Use/Land Cover; Unemployment; Education. The public hearing process for County Solid Waste Management Plan inclusion operates under different rules and therefore, it should be by agreement of the applicant and solid waste district that the public hearings run concurrently. In our November 23, 2020 letter, we asked for permission to consolidate the required public hearings. However, there may be specific occasions where an applicant would wish to undergo the Environmental Justice process first (or vice versa). We are requesting that Section 7:1C-4.4 say _may conduct_ rather than _shall conduct_. The NJDEP issued a letter on April 23, 2019 regarding the Solid Waste Management Plan Inclusion process, which added public hearing and notice requirements (in addition to what is contained in the Solid Waste regulations at 7:26-6.10). We presume the Environmental Justice regulations will replace this guidance letter. Class B, C & D recycling facility applicants are also required to publish a public hearing notice for County Solid Waste Management plan inclusion.
3.1(c)). Do the Environmental Justice regulations (if the facility is impacted) replace that requirement? In our November 23, 2020 letter, we noted that Since Class A recycling facilities do not receive permits or approvals from the Department, ANJR respectfully requests that the Department clarify in its rulemaking that they are not subject to C.13:1D-160. ANJR does not dispute that the EJ law pertains to Class B, C and D recycling centers which obtain Department oversight and approval. Page 16 of the rule proposal states that Even though recycling permits are called general approvals in the recycling rules, N.J.A.C. 7:26A, these permits are akin to individual permits and are, thus, subject to the Act because they contain site-specific requirements. ANJR is therefore interpreting these regulations to mean that Class A facilities are exempt from all of these requirements as they do not require a DEP permit or general approval, with the exception of those facilities that need a permit (air, flood, water) as contained in the permit definition. We respectfully request confirmation of our assertion of non-applicability within the rule adoption response to comments document.

We disagree with the inclusion within the definition of overburdened community of zero population blocks adjacent to an overburdened community as this appears to go beyond the reasonable scope of the proposed regulations (expanding the applicability of the regulations and EJ process to blocks where no one lives.) At 7:1C-3.4(c) it states that the DEP will request revisions or provide authorization to move forward with the process within 10 days of receipt of the EJIS. There is no explanation as to what would happen if the DEP does not respond in that timeframe. In addition, there do not appear to be any mandated timeframes for DEP to issue final decisions on the applications. How will this be addressed to ensure that applicants receive timely decisions?

The process set forth at N.J.A.C. 7:1C-5.3(d) regarding compelling public interest for new facility applications that demonstrate any disproportional environmental or public health impact, seems to default to public input where individuals and not the Department appear empowered to make decisions. Can there be a reprieve from EJ applicability in a scenario where an existing Title V facility is seeking modification and the application includes installation of higher tiered equipment, demonstrating the modification will result in an overall decrease in facility emissions? The mapping, which is the premise of EJ inclusion is not part of the rule, which doesn’t seem to be appropriate. Is there a mechanism to submit updates to the mapping that determines whether or not EJ is applicable? For example, if a facility is in an EJ area due to the proximity of a small number of households, and the houses are sold to a redeveloper and there are no longer and residences in the area, is there a way to have the mapping updated before the time that the mapping is due to be updated? Also, in the instances where there is apparent flawed mapping, for example, where prominent New Jersey beach communities are listed as low income and are subject to EJ because it’s likely that these are second/vacation homes, what is the mechanism to dispute the designation prior to bearing the cost and expense of the EJIS?

Thank you for the opportunity to provide these comments. If you have any questions regarding our submission, please contact Marie Kruzan, Executive Director by email at anjr@optimum.net or by phone at (908) 722-7575.
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it’s a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

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Anna Caswell
185 Blue Heron dr
Thorofare, New Jersey 08086
From: DEP rulemakingcomments [DEP]
To: DEP rulemakingcomments [DEP]
Cc: aadams@accnj.org
Subject: DEP Dkt. No. 04-22-04 Environmental Justice
Date: Thursday, September 1, 2022 2:35:11 PM

First Name: Jack
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Affiliation: Associated Construction Contractors NJ
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Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: September 1, 2022PPPPPPPPMelissa P. AbatemarcoPPPPAttn: DEP Docket No. 01-22-04PPPOffice of Legal Affairs PPPPPDepartment of Environmental ProtectionPPP401 East State Street, 7th FloorPPPMail Code 401-04LPPPPPO Box 402PPPTrenton, NJ 08625-0402PPPPDear Ms. Abatemarco,PPPPThe Associated Construction Contractors of New Jersey (ACCNJ) respectfully submits the following comments in response to the proposed regulations for the NJDEP_s Environmental Justice Rules found at N.J.A.C. 7:1C-1.4, 2.1, 2.2, 5.3. ACCNJ is a statewide trade association comprised of hundreds of members engaged in building, heavy, highway, marine, site development and utility construction. ACCNJ_s mission is to provide service to its members by promoting their skill, integrity, and responsibility, and by encouraging the practice of the highest safety and business standards for the industry. While safeguarding overburdened communities in New Jersey is critical, the procedures outlined in N.J.A.C. 7:1C-2.2 will create significant delays and hurdles that will prevent essential work from being done. If important infrastructure projects are not completed, the outcome would be detrimental to the communities that Environmental Justice rules are meant to protect. For example, without properly functioning wastewater treatment facilities, New Jersey_s next hurricane could leave an overburdened community with sewage flooding the streets. Additionally, within N.J.A.C. 7:1C-2.2, there are no _act by_ dates for the Department to abide by. This has the potential to further cause delays in the permitting process. The screening variables and stressors listed in N.J.A.C. 7:1C-1.4 are extensive and broad. Due to the expansive nature of what determines a community to be overburdened as defined in N.J.A.C. 7:1C-2.1, as well as the applicability of census blocks adjacent to overburdened communities, many businesses will be forced to move their work out of State. Ultimately, this will result in New Jersey losing needed tax revenue and lost job opportunities for local residents. Finally, including public works projects in the definition of Compelling Public Interest (N.J.A.C. 7:1C-5.3) with such discretion will prevent crucial infrastructure projects our State needs. Public works projects can include deferred maintenance on vital State infrastructure and allow government entities to manage other critical public assets at all levels. Including public works projects under the command of Environmental Justice will impact New Jersey residents in a myriad of negative ways. ACCNJ appreciates the New Jersey Department of Environmental Protection_s efforts to protect and serve overburdened communities within our State. However, those efforts come at an exorbitant cost to the New Jersey business community and New Jersey residents. ACCNJ applies these formal comments contained herein to all relevant sections of the proposed regulation. Thank you for your consideration.

Sincerely,

JACK KOCSIS, JR.
Chief Executive Officer

Cc: Darlene Regina, Chief Operating Officer; Michael A. Travostino, Government Affairs Director; Abby Adams, Associate Government Affairs Director
September 1, 2022

Melissa P. Abatemarco
Attn: DEP Docket No. 01-22-04
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, NJ 08625-0402

Dear Ms. Abatemarco,

The Associated Construction Contractors of New Jersey (ACCNJ) respectfully submits the following comments in response to the proposed regulations for the NJDEP’s “Environmental Justice” Rules found at N.J.A.C. 7:1C-1.4, 2.1, 2.2, 5.3.

ACCNJ is a statewide trade association comprised of hundreds of members engaged in building, heavy, highway, marine, site development and utility construction. ACCNJ’s mission is to provide service to its members by promoting their skill, integrity, and responsibility, and by encouraging the practice of the highest safety and business standards for the industry.

While safeguarding overburdened communities in New Jersey is critical, the procedures outlined in N.J.A.C. 7:1C-2.2 will create significant delays and hurdles that will prevent essential work from being done. If important infrastructure projects are not completed, the outcome would be detrimental to the communities that Environmental Justice rules are meant to protect. For example, without properly functioning wastewater treatment facilities, New Jersey’s next hurricane could leave an overburdened community with sewage flooding the streets. Additionally, within N.J.A.C. 7:1C-2.2, there are no “act by” dates for the Department to abide by. This has the potential to further cause delays in the permitting process.

The screening variables and stressors listed in N.J.A.C. 7:1C-1.4 are extensive and broad. Due to the expansive nature of what determines a community to be overburdened as defined in N.J.A.C. 7:1C-2.1, as well as the applicability of census blocks adjacent to overburdened communities, many businesses will be forced to move their work out of State. Ultimately, this will result in New Jersey losing needed tax revenue and lost job opportunities for local residents.

Finally, including public works projects in the definition of Compelling Public Interest (N.J.A.C. 7:1C-5.3) with such discretion will prevent crucial infrastructure projects our State needs. Public works projects can include
deferred maintenance on vital State infrastructure and allow government entities to manage other critical public assets at all levels. Including public works projects under the command of Environmental Justice will impact New Jersey residents in a myriad of negative ways. ACCNJ appreciates the New Jersey Department of Environmental Protection’s (DEP’s) efforts to protect and serve overburdened communities within our State. However, those efforts come at an exorbitant cost to the New Jersey business community and New Jersey residents.

ACCNJ applies these formal comments contained herein to all relevant sections of the proposed regulation.

Thank you for your consideration.

Sincerely,

JACK KOCSIS, JR.
Chief Executive Officer

JK/aa

Cc: Darlene Regina, Chief Operating Officer
    Michael A. Travostino, Government Affairs Director
    Abby Adams, Associate Government Affairs Director
Good afternoon,

Please see the attached comments provided by the [EXTERNAL] CCSNJ Comments re: Docket Number: 04-22-04, PRN 2022-082 – the environmental justice proposed rules.

Should you have any questions please do not hesitate to let me know.

Best Regards,
Christina

Christina M. Renna
President & CEO
Chamber of Commerce Southern New Jersey
220 Laurel Road, Suite 203
Voorhees, NJ 08043
P. (856) 424-7776 ext. 27
C.  
W. [EMAIL]
September 2, 2022

Via Electronic Mail (rulemakingcomments@dep.nj.gov)
Melissa P. Abatemarco, Esq.
Attn.: DEP Docket No. 04-22-04, PRN 2202-082
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Trenton, New Jersey 08625-0402

Re: DEP Docket No.: 04-22-04; Proposal No.: PRN 2022-082
Comments Submitted on behalf of the Chamber of Commerce Southern New Jersey to
the Proposed New Environmental Justice Rules

Dear Ms. Abatemarco:

The Chamber of Commerce Southern New Jersey (the “CCSNJ”) welcomes this opportunity to comment on the New Jersey Department of Environmental Protection’s (“the Department”) proposed Environmental Justice Rules, which were published in the New Jersey Register on June 6, 2022 at 54 N.J.R. 971(a) (the “Proposed Rules”). The CCSNJ is the region’s largest and most influential business organization representing businesses in the seven most southern counties of New Jersey, as well as greater Philadelphia and northern Delaware with more than 1,100-member companies.

The CCSNJ is supportive of the intent of the New Jersey Environmental Justice Law, N.J.S.A. 13:1D-157 et seq., (the “EJ Law”): to ensure that no community bears a disproportionate share of the adverse environmental and public health consequences associated with the State’s economic growth, and that overburdened communities have a meaningful opportunity to participate in the decision-making process to approve new or expanded facilities that have the potential to increase environmental and public health stressors. See N.J.S.A. 13:1D-157. As an organization that was created 149 years ago by Campbell Soup Company and RCA Victor in the City of Camden as the “Camden Board of Trade”, the CCSNJ has an acute interest in assuring the region’s urban areas are thriving, successful, and ripe for economic growth. The CCSNJ strongly believes that residents’ livelihoods are bettered when development opportunities exist. To that end, the CCSNJ hosts regular meetings with residents and small business owners to discuss what is needed to assure the community and people living in it are best positioned for continued progress. The CCSNJ also serves as Vice Chair of Governor Phil Murphy’s Atlantic City Restart & Recovery Working Group, whose charter is to assure Atlantic City is best positioned for economic opportunities, which includes business attraction as well as public health and safety initiatives. The CCSNJ’s efforts directly help small businesses serving
and providing jobs for people living in overburdened communities such as may exist in parts of Camden and Atlantic City. However, investments in overburdened communities cannot be made without a friendly regulatory environment conducive to growth, which is why the CCSNJ weighs in as follows.

We are concerned that the approach taken by the Department in the Proposed Rules goes beyond legislative intent to impose unduly burdensome and vague requirements on existing New Jersey-based businesses that will not serve New Jersey’s overburdened communities, ignores the economic benefits that industry provides to these communities, and, as a result, will undermine existing and future economic opportunities for businesses and overburdened communities located within the State. The CCSNJ hopes that the Department will reconsider the Proposed Rules in accordance with the following comments.

1. The Proposed Rules should establish a balanced, cooperative approach to addressing environmental justice concerns that incorporates the benefits that industry provides to overburdened communities and the costs associated with complying with the proposed requirements, instead of pushing jobs out of the State.

The EJ Law established a balanced approach to considering environmental justice that protected the interests of overburdened communities while preserving the ability of businesses to operate in New Jersey. Instead of facilitating cooperation between existing businesses and overburdened communities to address community concerns, CCSNJ is concerned that the Proposed Rules provide an ill-defined process that would allow the Department to impose burdensome and costly conditions on both large and small businesses and require a potentially endless amount of public comment, without consideration of the positive benefits that these businesses provide. These benefits include, but are not limited to, thousands of direct and indirect jobs, educational and workforce training programs, and other forms of direct community service and support. While we acknowledge the compelling importance of redressing adverse environmental and health conditions in overburdened communities, the CCSNJ is concerned that the Department has not performed a substantive evaluation of the economic benefits provided by businesses located in these communities, and the resulting impact of the potential loss of these economic benefits, in its Economic Impact Analysis and only performed a cursory evaluation of potential job impacts in its Jobs Impact Analysis, concluding, without support, that “the proposed rulemaking will have little or no impact on job retention in the State and in overburdened communities.” Contrary to assumptions made by the Department in these analyses, it is reasonable to assume that the increased costs and burdens associated with complying with the Proposed Rules could result in existing businesses relocating to other States that do not have these requirements, discourage such businesses from expanding, and discourage new businesses from locating within New Jersey. This is especially true considering the Proposed Rules’
definition of “geographic point of comparison” (discussed below) combined with the Proposed Rules’ granting NJDEP broad powers to impose restrictions on development in a significant percentage of the State where overburdened communities are located. When these factors are coupled with the extensive restrictions on development in existing environmentally sensitive areas, such as the Pinelands in southern New Jersey, the Highlands, and coastal zones, less than 38% of New Jersey will be available for potential development. When development limitations on preserved farmland and local residential and agricultural zoning restrictions are considered, as well as other land that is simply not developable because of topographic or geologic characteristics, there is left a relatively small percentage of actual developable land for new or expanded businesses. Moreover, if the proposed definitions of “new” and “expanded” businesses are not revised (as discussed in Section 3 below), these limitations and expansive restrictions could present an existential threat to existing businesses. Yet, the Department has unreasonably assumed that no existing or future economic benefits or jobs would be lost.

In addition, the Department has made no attempt to quantify the costs associated with (1) preparing an environmental justice impact statement (“EJIS”), which requires applicants to obtain a sizeable amount of information, particularly when coupled with the supplemental information requirements, (2) the potential conditions to be imposed by the Department, as the Proposed Rules do not provide any guidance or limits on the range or types of conditions to be imposed, and (3) the substantial delay in operations or investments in facility expansions as a result of the lengthy environmental justice review process that the Department has created.

Before thousands of jobs are put at risk, the Administrative Procedure Act requires that the Department meaningfully perform Economic Impact and Jobs Impact analyses. See N.J.S.A. 52:14B-4 and N.J.A.C. 1:30-5.1. More importantly, the goals and mandates of the EJ Law can be accomplished through regulations that encourage community engagement and participation without the broad and nebulous provisions of the Proposed Rules that confer boundless authority on the Department and leave businesses unable to plan for the future.

2. The definition of “compelling public interest” in proposed N.J.A.C. 7:1C-1.5 should allow for consideration of economic impacts.

The definition of “compelling public interest” is too narrow and should allow for consideration of economic impacts. The current proposed definition specifically excludes consideration of any economic impacts. Nothing in the EJ Law or in the legislative history indicates that the term “compelling public interest” was intended to be construed so narrowly. It is particularly inappropriate for economic impacts to be excluded when the definition of “overburdened community” includes any census block group in which at least 35 percent of the
households qualify as low-income households. Thus, if a new facility was committed to employing local residents, it could potentially make an overburdened community no longer overburdened, but this result is not allowed under the proposed definition. Similarly, the percent of unemployed in a community is identified as a stressor in the Appendix to the Proposed Rules, but yet consideration of lessening that identified stressor is not allowed under the proposed definition of “compelling public interest.” The Department’s apparent concern that promised jobs or other economic benefits sometimes do not come to fruition is not an appropriate basis for totally excluding consideration of this obviously relevant factor to overburdened communities that are deemed overburdened due to the percentage of low-income households. A definition of “compelling public interest” that allows consideration of all relevant factors should be adopted.

In addition, beyond not allowing consideration of economic impacts, the definition also limits what can qualify as a compelling public interest by specifying multiple layers of requirements such that a business applying for approval to construct a new facility that cannot avoid a “disproportionate impact” to cumulative adverse environmental or public health stressor impacts would need to demonstrate that its business is the one, necessary way to address an essential environmental, health or safety need in the overburdened community. See Proposed N.J.A.C. 7:1C-1.5. As discussed below in section 4 of these comments, given the Department’s methodology for determining which facilities result in disproportionate impacts, this could well mean that most businesses applying for permits for a new facility would face the need to make this showing. Moreover, as discussed in the next section, given the Department’s definition of “new facility,” even existing businesses that have operated in the State for decades could find themselves subject to this standard for the permits they need to operate or have to close down. As there are often a number of ways to address any specified need, the Proposed Rules’ artificial construct of there being only one necessary way to serve an essential environmental, health or safety need ignores reality and will unnecessarily force the Department to deny permits for facilities that bring many benefits to the community and the State.

3. The definitions of “New Facility,” “Existing Facility,” and “Expansion” in proposed N.J.A.C. 7:1C-1.5 are vague and contrary to the common understanding of the terms and the intent of the Legislature.

The EJ Law intentionally distinguished “new facilities” from “existing facilities” that are “expanding.” For new facilities, the EJ Law requires that the Department deny a permit if the EJIS analysis shows a “disproportionate impact.” To ensure that existing facilities were not shut down, the Legislature revised the original version of the EJ Law to make clear that the Department could only add conditions to permits for existing facilities as a result of the EJIS analysis, but could not deny the permit. Despite the clear intent of the Legislature, the
Department has proposed to define “new facility” and “existing facility” based on whether the facility possesses a valid approved registration or permit as of the effective date of the Proposed Rules. See proposed N.J.A.C. 7:1C-1.5. The practical effect of the proposed definitions is that facilities that are not currently subject to permitting requirements under the Department’s existing environmental regulations would be considered a new facility if the Department changes its interpretation or application of its laws or the scope of an existing regulatory program, and thus subject to potential permit denial. Consequently, the CCSNJ requests that the Department amend the definitions of “new facility” and “existing facility” such that they are based on the date of construction of or modification to a facility, as opposed to whether the facility has obtained a permit, consistent with the common understanding and usage of the terms and with legislative intent.

Additionally, the definition of “expansion” encompasses more than the Legislature intended and more than the common understanding of this word, to include “modifications” of existing operations that have the “potential” to result in an increase of the facility’s contribution to “any” environmental and public health stressor. The proposed definition’s inclusion of any modification to a facility, regardless of size, that has the “potential” to result in an increase, whether or not they in fact do so, is confusing, and improperly pulls in changes in operations that will not negatively impact cumulative stressors. The uncertainty and cost of having to comply with the Proposed Rules for almost every change at a facility will undoubtedly make operating in overburdened communities difficult. The Department should amend the definition of expansion to remove modifications and other changes that do not result in an overall increase in stressor contributions.

The Department should also amend the Proposed Rules to ensure that the level of burden and cost associated with undergoing an environmental justice review is proportional to the size of the change being proposed by a facility. A more balanced approach could include providing a de minimis threshold below which the Proposed Rules would not apply, or a tiered approach that would create a less burdensome process for smaller changes at a facility, consistent with the process established by the Department’s environmental regulations.

4. The proposed definition of “geographic point of comparison” in N.J.A.C. 7:1C-1.5 improperly results in nearly all overburdened communities being identified as disproportionately impacted.

In enacting the EJ Law, the Legislature envisioned the Department comparing overburdened communities to “other communities within the State, county, or other geographic unit of analysis” to place all geographic areas on a level playing field such that overburdened communities are not disproportionately impacted. Instead of comparing communities to other similarly situated geographic areas in the State to determine whether a community is
disproportionately impacted, the Department’s proposed methodology essentially assumes that all overburdened communities have disproportionate impacts based on a comparison of overburdened communities, which are often in urban environments, to rural and pristine areas, i.e., the lower value of the State or county’s 50th percentile, excluding overburdened communities. In fact, this proposed approach almost always results in utilizing the State’s 50th percentile since this will always result in the inclusion of the most pristine areas in the State, whether or not they have similar population density or resemble the target community in any way. Thus, the proposed method of identifying the geographic point of comparison actually ignores the language in the EJ Law that suggests that the county or other geographic unit of analysis would be an appropriate point of comparison in some circumstances. Further, the proposed approach departs significantly from the methodologies used by the California Environmental Protection Agency (“CalEPA”), the Environmental Protection Agency (“EPA”), and other agencies that have established environmental justice programs by excluding overburdened communities from the comparison, without adequate support for doing so. As discussed in Section 7, below, the approach taken by the Department in identifying the geographic point of comparison will have substantial impacts on the regulated community, stifle economic development, and reduce the number of jobs and economic benefits flowing to overburdened communities. The CCSNJ requests that the Department more carefully consider CalEPA’s and EPA’s approaches such that similarly situated communities with similar population densities are compared.

5. The inclusion of adjacent zero-population block groups as overburdened in proposed N.J.A.C. 7:1C-2.1(e) is contrary to the EJ Law.

While the EJ Law only applies to facilities “located, or proposed to be located, in whole or in part, in an overburdened community,” the Department has improperly proposed to expand the scope of its authority to include zero-population block groups that are adjacent to overburdened communities as overburdened communities. See N.J.S.A. 13:1D-160(a). In addition to lacking any support in the EJ Law for doing this, by including zero-population block groups as overburdened communities, the Department has essentially precluded facilities from minimizing impacts to overburdened communities by purchasing adjacent property that would either create a buffer around the facility, or provide open space for use of the community (which could, in turn, assist with the lack of tree canopy, impervious surface, flooding, lack of recreational space, and other stressors identified by the Department). The Department should remove adjacent zero-population block groups from being considered overburdened communities consistent with the EJ Law.

6. The Department has not provided standards or guidance that would allow businesses to predict what will be required to obtain a permit and the cost to comply with the environmental justice review process.

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1 We have not been able to identify any community where the point of comparison would actually be the county’s 50th percentile, and where the EJ mapping tool identifies the county’s 50th percentile as the point of comparison, it appears to have been done in error.
a. **Proposed N.J.A.C. 7:1C-9.1**

While the Proposed Rules establish detailed requirements for what a permit applicant must evaluate during the environmental justice process, they provide no standards for the types of conditions that the Department may impose in the requisite permits. The EJ Law authorizes the Department to impose conditions on the construction and operation of a facility in a permit to protect public health based on the substantive authority under the existing environmental permitting statutes. See N.J.S.A. 13:1D-160(c) and (d). However, the Proposed Rules are drafted broadly enough so as to allow the Department to impose a range of conditions that are not related to the permit being sought or the construction and operation of a facility, contrary to the EJ Law. It is imperative that, prior to submitting an application, businesses can predict whether permits can reasonably be obtained, the types of conditions that may be imposed, and whether those conditions are able to be implemented, to enable them to make rational business planning decisions.

b. **Proposed N.J.A.C. 7:1C-3.2 and 3.3**

The Proposed Rules do not specify which environmental and public health stressors a facility must address or how to address them. Many of the categories of supplemental information identified in proposed N.J.A.C. 7:1C-3.3 require an applicant to obtain extensive site-specific information which may not be readily available, may be very costly and time-consuming to obtain, and are beyond what would otherwise be required under the substantive environmental permitting regulations. This potentially includes, but is not limited to, the installation of groundwater monitoring wells to understand seasonal groundwater flows, an evaluation of endangered or threatened species, an evaluation of site alternatives, the performance of a facility-wide risk assessment and an evaluation of localized impact control technology for major sources. It is not clear whether the Department intends for all facilities, regardless of size or potential impact, to submit all of the information required in proposed N.J.A.C. 7:1C-3.2 and 3.3, or only the relevant information.² To the extent that the Department intends for all facilities to address all of the information in proposed N.J.A.C. 7:1C-3.2 and 3.3, the CCSNJ is concerned that this will impose substantial costs and unreasonable delays on businesses that will significantly impact the future prosperity and environmental health in overburdened communities. New businesses that could bring good paying jobs and important services to overburdened communities may be dissuaded from locating there and existing facilities may choose not to pursue projects that could improve the environment or provide

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² Proposed N.J.A.C. 7:1C-3.2(a)(3)(i) requires that applicants provide “an explanation of the purpose of the permit application, including how the project serves the needs of the individuals in the overburdened community” in their EJIS. The Department should exempt facilities from having to submit this information if it is determined that an overburdened community is not subject to an adverse cumulative impact and the activities covered by the permit application do not cause or contribute to such an impact.
economic opportunities for the communities because of the time and cost associated with complying with these requirements. The Department should clarify the Proposed Rules to ensure that applicants are only required to evaluate information relevant to the permit being sought.

c. Proposed N.J.A.C. 7:1C-9.2 and 9.3

The Proposed Rules do not prescribe time periods for the Department’s review of the EJIS and supplemental materials that are required to be submitted pursuant to proposed N.J.A.C. 7:1C-9.1. While the applicant is waiting for the Department to review and issue a decision on whether it has satisfied the environmental justice requirements, it cannot move forward with submitting its application for the environmental permit at issue, which permit process will also require additional review periods. This is a significant problem for business planning purposes and could lead to expensive time delays for almost any applicant. Further, it is a particularly acute problem for major source facilities that do not qualify for an application shield unless their renewal applications are determined to be administratively complete by the renewal deadline. See N.J.A.C. 7:27-22.30(c). In N.J.S.A. 13:1D-160(f), the Legislature recognized that facilities routinely rely on application shields to continue operations after expiration of an operating permit due to the length of time it takes the Department to review and issue Title V operating permit renewals.

The Department should identify timeframes for its review of an EJIS and supplemental materials to ensure the timely submission and processing of permit applications so that economic development is not unreasonably delayed and potentially foreclosed due to the uncertainty associated with the timing of the application process.

d. Proposed N.J.A.C. 7:1C-4.3

The Department has established a public participation process with no end point. After an applicant has provided the requisite public notice, conducted a public hearing and responded to the comments received, the Proposed Rules require an applicant to go through the entire process again if the applicant makes a “material change” to the information set forth in the EJIS or its permit application. Facilities frequently make changes to permit applications or the facility design in response to comments provided by the Department as part of its technical review of an application. Because the Department has proposed to define “material change” very broadly, virtually any change to the facility or the EJIS could result in having to undergo another public hearing. It could also result in facilities having to unreasonably restart the environmental justice review process even after an application has been submitted. Rather than penalizing businesses who meaningfully incorporate comments from the Department and the community into their
plans or operations by requiring them to undergo an endless cycle of public notice and comment, the Department should encourage this behavior by allowing an applicant to continue with the submittal of its application. The Department should also narrow the scope of what constitutes a material change to those changes that cumulatively increase the impact on stressors or that contribute to an impact on new stressors that were not previously addressed by the applicant. Public participation should be limited to changes in the cumulative impact of stressors.

7. The methodology for determining disproportionate impacts in proposed N.J.A.C. 7:1C-9.1 and 9.2 will have unintended consequences for economic development in New Jersey, adversely affecting the poverty level in overburdened communities.

   The EJ Law allows the Department to deny a permit for a new facility and impose conditions on the construction and operation of an existing or expanding facility if the Department finds that the facility will cause or contribute to adverse cumulative stressors in the overburdened community that are higher than other communities within the State, county, or other geographic unit of analysis. See N.J.S.A. 13:1D-160(c) and (d). However, as discussed in Section 4, above, the Department’s proposed methodology for determining adverse cumulative stressors, based on a geographic point of comparison that compares urban areas to rural ones and includes a list of stressors that are duplicative, results in most, if not all, overburdened communities being identified as disproportionately impacted. Thus, all new facilities will not be able to locate in overburdened communities unless they avoid facility contributions to all adverse environmental and public health stressors or demonstrate that they serve a compelling public interest, and all existing facilities located in overburdened communities will be subject to burdensome and potentially cost-prohibitive conditions in order to continue to operate. The CCSNJ is concerned that the Department’s approach will make it difficult for businesses to operate within the State, resulting in fewer jobs, less tax revenue, and fewer resources available for overburdened communities. The CCSNJ requests that the Department amend the regulations to broaden the scope of facilities that would qualify as serving a compelling public interest (see section 3 of these comments), redefine the geographic point of comparison to include overburdened communities (see Section 6.d of these comments), and streamline its list of stressors to ensure that issues are not double-counted (see Section 8 of these comments).

8. The stressors identified and method of measurement in the Appendix will have a potentially devastating impact on economic development.

   In the Appendix to the Proposed Rules, the Department has identified twenty-six different environmental or public health stressors that it will use to determine whether an overburdened community is disproportionately impacted based on the geographic point of
comparison. The CCSNJ is concerned that businesses located in overburdened communities will always be subject to the substantial burdens and costs to comply with the Proposed Rules because the stressors identified by the Department and the methodology used to measure them results in most overburdened communities being considered disproportionately impacted. Specifically, the CCSNJ believes that the stressors identified are unrelated to impacts from potential applicants’ businesses on the overburdened community, and are duplicative.

First, the EJ Law defines “environmental or public health stressors” to include certain sources of environmental pollution or conditions that may cause potential public health impacts in the overburdened community. See N.J.S.A. 13:1D-158. The CCSNJ is concerned that the stressors identified by the Department, that go beyond those envisioned by the EJ Law and are unrelated to impacts from businesses, will result in many facilities unnecessarily becoming subject to the costly evaluations and delays imposed by the Proposed Rules. For example, the Department has identified “social determinants of health,” such as lack of recreational open space, lack of tree canopy, flooding, and amount of impervious surface as separate stressors. These issues, while hallmarks of urban areas, are not necessarily based on actual stress caused by New Jersey businesses. Rather they are often related to the historic failure of local, state and federal government to adequately plan and provide for amenities and updated infrastructure in these communities. The intent of the EJ Law was not to force businesses to make up for these governmental inadequacies but to address the disproportionate impacts historically caused by industry in overburdened communities. Requiring businesses to address stressors unrelated to their business and proposed activity is unreasonable and will further serve to push vital businesses out of these communities.

Second, the stressors identified by the Department are duplicative and result in the same environmental issue being counted multiple times. A facility that operates under an air permit, holds an NJPDES permit, and uses trucks to transport materials to and from the facility will be counted as contributing to multiple stressors. So too will these businesses typically be penalized multiple times because they have impervious surface and lack tree canopy simply because they are located in an urban environment. Often, these two stressors are just two sides of the same coin – significant impervious surface means there is a lack of tree canopy. Similarly, significant impervious service will also mean there is increased flooding. The Department also identified soil contamination deed restrictions and ground water classification exemption areas as stressors despite the fact that the Department has determined that the remedies are protective of public health and the environment. Further still, certain facilities, such as scrap metal facilities and waste facilities, which may also have many of these characteristics, are identified by the Department as stressors based on their mere existence and double counted for the same characteristics. Businesses in New Jersey located in overburdened communities will face an
uphill battle demonstrating that they are not causing a disproportionate impact based on the tabulation methodology used by the Department in the Proposed Rules and the duplicative nature of the stressors.

This approach also calls attention to the Department’s lack of consideration of economic and other social benefits in identifying its list of stressors. New Jersey businesses provide substantial economic benefits, through direct and indirect jobs and tax revenue, as well as substantial social and environmental benefits to overburdened communities and the State. The CCSNJ is concerned that facilities located in overburdened communities will be forced to expend considerable resources and time to comply with the Proposed Rules, regardless of whether the facility is fully compliant with applicable regulations and its permits, the actual impact caused by the facility, and the economic, social and environmental benefits that the facility provides. The CCSNJ suggests that the Department reevaluate the stressors identified in the Appendix to ensure that impacts are not being double-counted and to better and more accurately reflect the impacts of businesses in overburdened communities.

CONCLUSION

The CCSNJ appreciates the opportunity to provide these comments expressing the concerns of the South Jersey business community regarding the Proposed Rules. The CCSNJ hopes that these comments convince the Department that substantial revisions to the proposed rules are necessary before finalization to ensure that the Proposed Rules recognize the benefits that New Jersey businesses provide overburdened communities, provide further clarification on the timeline to complete the environmental justice review process and the conditions that may be imposed in a permit, and narrowly tailor the stressors identified in the Appendix to ensure that overburdened communities are not being disproportionately impacted while preserving the ongoing viability of businesses to operate in an environmentally sound manner and provide valuable benefits to these communities. Because of its significant impact on industry, the CCSNJ requests that the public be afforded an opportunity to provide additional comments on any substantial revisions made to the Proposed Rules in response to public comments, or that the Department promulgate a new rule, consistent with N.J.S.A. 52:14B-4.10.

Sincerely,

[Signature]
President & CEO
Chamber of Commerce Southern New Jersey
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

+ No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables.
+ No offsets (e.g. planting trees or bike lanes elsewhere).
+ Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

Martin Andersen
1 Marine View Plz Apt 24A
Hoboken , New Jersey 07030
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it’s a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

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Elizabeth CerCEO

165 Grant Avenue
Cherry Hill, New Jersey 08002
Ms. Abatemarco –

On behalf of Dennis Hart, Executive Director of the Chemistry Council of New Jersey, please find attached CCNJ/SRIN’s comment letter (with attachments) on DEP Docket Number: 04-22-04, Proposal Number: PRN 2022-082 for your review and consideration. As always, we greatly appreciate the opportunity to provide feedback, and we look forward to DEP’s responses.

Thank you,
Sam.

Samantha Jones
Director of Regulatory Affairs

Committed to a Better Quality of Life through Science
September 2, 2022

VIA ELECTRONIC MAIL
rulemakingcomments@dep.nj.gov
Melissa.Abatemarco@dep.nj.gov
Melissa P. Abatemarco, Esq.
Attention: DEP Docket No. 04-22-04
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
P.O. Box 402
Trenton, NJ 08625-0402

RE: COMMENTS ON NJDEP PROPOSED NEW ENVIRONMENTAL JUSTICE RULES (DEP DOCKET NO. 04-22-04, PROPOSAL NO. PRN 2022-082)

Dear Ms. Abatemarco:

On behalf of our members, the Chemistry Council of New Jersey (CCNJ) and the Site Remediation Industry Network (SRIN) appreciate the opportunity to provide comments to the New Jersey Department of Environmental Protection (NJDEP, Department) on the Proposed New Environmental Justice (EJ) Rules published in the New Jersey Register on June 6, 2022 (Proposed Rules).

CCNJ/SRIN support the intent of New Jersey’s EJ Law and member companies are committed to ensuring that all New Jersey residents are afforded the same degree of environmental, health and safety protections. However, we have significant concerns about the NJDEP’s implementation process as the Proposed Rules do not sufficiently take into account the significant, and potentially avoidable, challenges that they present for businesses operating in the state. In addition, the NJDEP is proposing regulations that clearly contradict and exceed the legislative intent of the EJ Law. Though we do greatly appreciate the NJDEP’s efforts, there are many significant issues with the scope and specificity of the Proposed Rules language, including concepts not aired in the stakeholder process. We urge the NJDEP to seriously consider and address the deficiencies we have identified before the rules are adopted to avoid operational impacts to existing facilities providing important services and employment to these same communities.

As an initial matter, we summarize below some of CCNJ/SRIN’s key general comments and concerns with the Proposed Rules. Thereafter, CCNJ/SRIN offer more specific and detailed comments on the Proposed Rules for the Department’s consideration.
First, the Department has not offered the public a formal opportunity to provide feedback on its New Jersey Environmental Justice Mapping, Assessment, and Protection (EJMAP) tool, available at https://experience.arcgis.com/experience/548632a2351b41b8a0443cfc3a9f4ef6, and its accompanying EJMAP Technical Guidance. This is a foundational tool under the Proposed Rules that sets forth the key information required to identify overburdened communities (OBCs) by the most recent United States Census and the components of the EJ impact statement (EJIS). CCNJ/SRIN strongly urge the NJDEP to allow stakeholders to provide feedback on this information in a formal rulemaking procedure, as the tool and the Proposed Rules are inextricably linked. While we understand the NJDEP has provided technical guidance on the EJMAP, it is imperative that the regulated community and the public have up-to-date access to the data sources and clearly understands all of the environmental and public health stressors, how they interact with the identified eight (8) facility types in a given OBC, and how the NJDEP built this tool. We also recommend that the NJDEP create and share with the public a calendar schedule of when the EJMAP tool will be updated with the most recent United States Census data and environmental and public health stressors, and request clarification on when and how stakeholders will be notified of any updates. Based on our review, there are differences between the 2019 and 2020 United States Census on the EJMAP tool that indicates facilities that were not located in an OBC in 2019 were located in an OBC in 2020. This is a critical step for facilities to ensure that, at the time of any environmental permit submittal to the NJDEP, it is confirmed or not if the facility is regulated under the EJ program.

Second, the NJDEP’s approach and definitions under the Proposed Rules are overly broad resulting in challenges for the most well-intentioned compliance program. For example, the EJ Law specifically authorizes the NJDEP to impose EJ requirements on facilities “located in, or proposed to be located, in whole or in part, in an overburdened community.” In issuing the Proposed Rules, the NJDEP acknowledges this but unilaterally attempts to extend its authority to additional census block groups and the facilities therein that are not OBCs. The Proposed Rules result in over half of the area of New Jersey being deemed an OBC. This could potentially lead to severe economic consequences in the state, including a disincentive to corporate growth and innovation. Furthermore, the proposed definition of “geographic point of comparison” is overly broad. Using the 50th percentile approach, in addition to making comparisons at state/county levels and also to non-OBCs, will result in the vast majority of OBCs to be considered “higher than” for almost every stressor, which in turn will stifle economic development in the state. Undoubtedly, baseline community scores in populated areas that are situated along major transportation routes (e.g. ports, navigable waterbodies, railways, interstate) are going to fall in OBCs that score as “already subject to adverse cumulative stressors.”

Third, the requirements of the EJIS present significant burdens on industrial facilities without due consideration to the benefits and investments of a particular facility to the local community. We strongly urge the NJDEP to consider and address the positive impacts that economic investment, tax base, relatively low energy costs, and job creation will have on an OBC. The NJDEP should similarly consider how to reconcile the apparent conflict between making unemployment a stressor with potential negative health consequences, while simultaneously not including the economic benefits of direct and indirect jobs and tax revenue in their review. In addition, community service and community support that companies often provide to residents living near industrial facilities, such as volunteerism, educational and workforce training programs, and grants to improve services or quality of life in the city and/or county, should also be taken into account.

Fourth, the Proposed Rules provide the NJDEP with vast discretion to deny applications for new facilities and to impose significant conditions or restraints on existing facilities. Specifically, for existing facilities,
there are no prescribed limits in the Proposed Rules on what the NJDEP can impose as conditions, both in scope and number. For new facilities that cannot avoid a disproportionate impact, consideration will be given if the facility provides a “compelling public interest.” However, this term is vaguely defined, and without further clarification, could be a very difficult standard to meet. The standard is also subjective and allows for a situation where stakeholders who have a say in the compelling public interest determination cannot reach an agreement. Moreover, the NJDEP will not allow consideration of economic benefits as justification for compelling public interest, which is arbitrary and capricious and fails to accurately and holistically consider net cumulative impacts, especially in light of the fact that “unemployment” is a listed stressor. Furthermore, for new or expanded major source facilities, the NJDEP has the ability to add Localized Impact Control Technology (LICT) and State of the Art (SOTA) standards. Importantly, however, facilities that are in this process will have likely already implemented air control technologies that have met permitting standards. This is layering on beyond compliance and can add significant cost and competitive disadvantage without justified environmental benefit. The increase in cost for compliance with the Proposed Rules, and/or the cost of upgrading facilities will likely cause many companies to move operations to new or existing facilities outside of New Jersey, or even shut down entirely.

Fifth, CCNJ/SRIN members are concerned with additional delays and cost burdens in the overall permitting process as established in the Proposed Rules. Specifically, the EJ process, including preparation of an EJIS, is going to significantly delay the NJDEP’s administrative completeness determination and, therefore, cause prejudicial delay for permit review and issuance of approvals. Critically, the Proposed Rules outline no clearly defined timeframe for when an EJIS must be submitted in the permit application process, and when the NJDEP must issue its decision (beyond stating that the decision shall not be issued until at least 45 days after the public hearing). Also, for instance, where a stressor is listed as affected, the applicant has to perform “appropriate modeling.” However, the Proposed Rules provide no standards or definitions for what is acceptable to the Department. Failure to define appropriate modeling is a deficiency which will result in not only a lack of clarity, but likely additional delays having to address questions or issues raised by the Department on the back-end of this process. It also opens up the opportunity for appropriate modeling to be challenged, and thus, further complicates the permitting process. CCNJ/SRIN urge the NJDEP to clarify what is accepted for such modeling by providing concrete, implementable guidance.

Sixth, CCNJ/SRIN strongly urge the NJDEP to recognize and incentivize through the Proposed Rules facilities that already have successful, transparent Community Advisory Panels (CAPs) and/or community engagement with community members, first responders, and elected officials. A simplified and flexible process will be more productive compared to a straight command and control mandated approach. The NJDEP should encourage successful CAPs as a robust form of community engagement by allowing CAPs that meet a defined level of engagement to be deemed an acceptable public process in lieu of public hearings.

Seventh, the Proposed Rules allow for an “interested party” to submit written and oral comments regarding an application. However, no definition on who qualifies as an “interested party” exists. This allows for anyone from outside an affected area to comment, including those with a competitive or personal interest outside of EJ or even New Jersey, to participate. Instead, the NJDEP should limit the scope of public comment to residents and individuals or organizations with an objective, defined connection to the OBC.
And finally, by way of general comment, given the scope and cost of compliance with the Proposed Rules, facilities seeking to renew a permit should be able to build upon and update the first EJIS, public process and engagement, and not need to start over for every renewal period. Subsequent evaluations should only consider increased environmental impacts that have occurred since the initial evaluation.

As indicated, aforementioned items are a summary of some of the priority concerns of our members. Notwithstanding, CCNJ/SRIN also refer to the pre-proposal comments submitted on November 23, 2020 and August 20, 2021 (both letters attached), and CCNJ/SRIN’s specific comments and questions on the Proposed Rules below.

**CCNJ/SRIN SPECIFIC COMMENTS ON AND CONCERNS WITH THE PROPOSED RULES:**

**Proposed Rules, N.J.A.C. 7:1C-1.5 Definitions**

CCNJ/SRIN have specific comments and concerns with the list of definitions below:

- **“Change in use”**;
  - “Change in use” as currently defined is vague and overbroad, particularly regarding the phrase “a change in the type of operation of an existing facility.” “Change in use” should be tied to increases of emissions or the addition of a pollutant not previously permitted at the facility. CCNJ/SRIN request further clarification on the meaning of this phrase. Changes for “minor modifications” to permits should be excluded.

- **“Compelling public interest”**;
  - The terms used to define “compelling public interest” require further clarification. In particular, with regard to the phrase “a demonstration by a proposed new facility that primarily serves an essential environmental, health, or safety need of the individuals in an overburdened community,” it is unclear what the NJDEP is deeming “essential” or how high the bar is to achieve this standard. We recommend that the NJDEP defines this term drawing upon the language used in the Freshwater Wetlands Protection Act, which includes in its definition of compelling public need “that based on specific facts . . . that the public health and safety benefit from the proposed use . . .”.

- **“Expansion”**;
  - As defined, the term “expansion” is unclear, particularly with regard to the meaning of an “expansion of existing operations or footprint of development.” The definition of “expansion” is also overly broad, as it appears to encompass any activity that “result[s] in an increase in stressor contributions.” We recommend that the NJDEP use a clearer definition, such as a major modification as defined in the Clean Air Act. Further, “expansion” should exclude changes for which “minor modifications” to permits would be required.
  - CCNJ/SRIN also seek clarification with regard to the scenario where an existing facility with a valid approved registration or permit purchases an adjacent property for an expansion of operations; would this be considered an existing facility or an expansion?

- **“Facility”**;
  - For clarification, the Proposed Rules should expressly exclude surface impoundments, waste piles, and land treatment units from the definition of a landfill.
• “Geographic point of comparison”;
  o As noted above, using the lower value of the state or county’s 50th percentile (non-OBCs) is too aggressive, especially in light of the fact that some of these stressors have a value of “0” (e.g. the 50th percentile for the state for railways is “0” per the NJDEP EJMAP tool, so any OBC with a railway stressor value greater than “0” would be deemed adverse). This is not a reasonable baseline for comparison. We strongly urge the NJDEP to reconsider this approach.

• “Material change”;
  o Under the NJDEP’s proposed definition of “material change”, essentially any modification to the facility or EJIS that needs to be addressed after the initial public hearing and comment period would require the facility to conduct a second public hearing due to a change in any of the four criteria in the definition. We recommend that the NJDEP narrow the focus on what is really a “material change” and thus requires a public hearing for a second time.
  o CCNJ/SRIN recommend the following edits be made to this definition:
    ▪ “Material change” means a major modification of the facility or EJIS that, in the determination of the Department, requires further analysis or public comment to accurately assess the facility’s contribution to environmental and public health stressors in the overburdened community, such as, but not limited to: 1. A change to the basic purpose; 2. An expansion of the facility; 3. An increase in the potential contributions to environmental or public health stressors; or 3.4. A change in measures proposed to address the facility’s contributions to environmental and public health stressors.

• “Net environmental benefit”;
  o The definition of net environmental benefit is described as a determination “by the Department.” However, the Proposed Rules do not identify specific standards or criteria as to how stressors and benefits will be weighted by the Department. CCNJ/SRIN seek a better understanding and more transparency of how the NJDEP will make a net environmental benefit determination to make this standard more achievable.

• “New facility”;
  o CCNJ/SRIN strongly urge removing from the definition of “new facility” the statement that the NJDEP considers a new facility an “existing facility that has operated without a valid approved registration or permit required by the Department prior to (the effective date of this chapter)...”. This statement would add significant burdens and uncertainty to companies, especially if an existing facility is unintentionally without proper permitting or registration.
  o Also, the definition for “new facility” includes “a change of use of an existing facility”, which creates confusion between what is new vs. an expansion of an existing facility. We request clarification on the meaning of “change of use” in this context.

• “Overburdened community”;
  o Stakeholders are not able to confirm that the NJDEP accurately captured all three criteria to identify an “overburdened community” or what quality controls were in place to create this list/map. CCNJ/SRIN recommend that the NJDEP make the census data that it relied upon available for review and provide explanation regarding how they identified the census block groups based on the definition.
  o Based on our review, there are differences between the 2019 and 2020 United States Census on the EJMAP tool that indicates facilities that were not located in an OBC in 2019
were located in an OBC in 2020. This is a critical step for facilities to ensure that, at the time of any environmental permit submittal to the NJDEP, it is confirmed or not if the facility is regulated under the EJ program. Similarly, CCNJ/SRIN urge the NJDEP to clarify when the designation of the census blocks could change. We understand the data is updated every two years, but it is unclear how the state legislative redistricting that occurs every 10 years will affect the EJ mapping.

- “Permit”;
  - CCNJ/SRIN request clarification of the permit exclusion as it relates to site remediation. Specifically, the definition of “permit” excludes “any authorization or approval necessary to permit a remediation” but does not explicitly exclude other permits that may be associated with a remedy (e.g. air permit, land use permit). The Proposed Rules should expressly exempt any and all permits that are specifically required for remediation activities.
  - CCNJ/SRIN also request that the NJDEP comment on the situation where an operating facility needs applicable permits while in the process of conducting remediation. We are seeking a better understanding of how the remedy may contribute to the stressors and ultimately affect the NJDEP’s review of the EJ process.
  - Moreover, regulatory projects (e.g. new fuel standards, Maximum Achievable Control Technology (MACT) standards) often result in the need for permit emission increases based on the Clean Air Act’s New Source Review rules. Yet, they are compulsory and government-mandated for environmental protection. As such, CCNJ/SRIN members are concerned that undue burdens could be imposed on facilities subjected to these standards since the term “permit” excludes “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 covered permits identified in the EJ Law are regulated by environmental statute and regulations with specific conditions or activities that exempt the requirements to prepare and submit an environmental permit. We request that the NJDEP confirm that all applicable permit exemptions will continue to apply, and general permits, permits-by-rule, and permits by certification are not covered permits as well.

- “Recycling or reclamation facility”;
  - We strongly urge the NJDEP to exempt all Class A recycling facilities from the definition of “recycling or reclamation facility.” These operations do not require solid waste permits as they are exempt and, therefore, they should not trigger the EJ process.
  - CCNJ/SRIN request clarification as to whether a recycling facility that is associated with upcycling materials to equal or higher value than the original item would be considered to have a greater compelling public interest than a recycling facility associated with down-cycling materials to a product that is of lower value than the original item.

- “Renewal”; and
  - The definition of “renewal” includes the following statement: “[f]or the purposes of this chapter, modifications or changes of operations that decrease or do not otherwise increase a facility’s contributions to stressors shall be permitted as a renewal.” CCNJ/SRIN request removal of this provision, as this is in direct conflict with the permit exception for “minor modification of a facility’s major source permit for activities or improvements that do not increase actual or potential emissions.” It should be irrelevant if a permit is renewed or if a facility has a minor modification so long as there is no increase of actual or potential emissions for the facility.
• “Solid waste facility”.
  o We recommend that this definition not include industrial facilities that have treatment, storage, and disposal permits to manage facility hazardous waste and are not receiving from outside facilities.

Proposed Rules, N.J.A.C. 7:1C-1.4 and Chapter Appendix, Environmental and Public Health Stressors

As we stated in our pre-proposal submissions, CCNJ/SRIN encourage the NJDEP to take into account background sources impacting a facility’s baseline when considering a concentrated area of pollution. Importantly, the requirement for a facility to evaluate cumulative impacts in an area necessitates making assumptions about the other impacts on a community from a wide variety of sources outside the control of the applicant (i.e. personal habits and behaviors of community members, transit authorities, shipping companies, etc.). In addition, the NJDEP must consider the air and water pollution in neighboring states that cause a significant increase to New Jersey’s environmental and public stressors. For example, neighboring states do not require SOTA emission reduction technology necessary to minimizing ozone producing emissions. Attainment of the Ozone National Ambient Air Quality Standards (NAAQS) continues to be a challenge in the Northeast.

The NJDEP should also consider mitigation efforts beyond the scope of a permitted facility, and efforts that are in progress, such as proposed new regulations that will improve the status of a stressor in an OBC. For instance, the United States Environmental Protection Agency (USEPA) has proposed, and claims it will finalize later this year, a Federal Implementation Plan (FIP) that will address interstate transport of ozone and requires Nitrogen Oxides (NOx) mitigations by hundreds or thousands of upwind sources to drive ozone attainment in all downwind states, including New Jersey. The USEPA has also, as part of the FIP justification, noted co-pollutant benefits, including Particulate Matter (PM) 2.5 and greenhouse gases. Where the USEPA speaks to these air quality improvements and has technical support (e.g. model results of the projected improvements), those cumulative improvements should be considered.

Looking at the list of 26 stressors, CCNJ/SRIN have serious concerns regarding the heavy reliance the NJDEP has placed on air quality stressors (i.e. two air toxics cancer risks, air toxics non-cancer risk, ground-level ozone, fine particulate matter, and permitted air sites) that result in a fair amount of redundancy. Additional stressors also appear duplicative; for instance, impervious surface and flooding stressors are similar in nature as they are a cause and effect to each other.

For the reasons that follow, CCNJ/SRIN also recommend the removal of the following stressors:

• Soil contamination deed restrictions: The Proposed Rules provide that “[w]hile soil contamination deed restrictions are protective, sites subject to such restrictions cannot be used for any purpose and, when found in abundance, reflect siting inequalities that the Act seeks to address.” This is an inaccurate statement; while facility “uses” are restricted, the overall remedy is protective to the environment and public health in accordance with the Site Remediation Reform Act and the Brownfield and Contaminated Site Remediation Act. Accordingly, identifying soil contamination deed restrictions as a stressor places additional burdens on Responsible Parties to clean up sites to an unrestricted use.

• Ground water classification exception areas/currently known extent restrictions: For similar reasons as the previous stressor, identification of ground water classification exception areas
places additional burdens on Responsible Parties to clean up ground water by active remediation rather than monitored natural attenuation.

- Permitted air sites: All sites are not created equal, and there are situations where many small sites collectively have lower emissions than one large site. In addition, there are already stressors for specific pollutants that are monitored or modeled, which are much better indicators of impacts to communities.

Regarding the first two bullets above, permits for remediation projects are exempt from the EJ process; however, these same sites with institutional/engineering controls are identified as environmental and public health stressors which the NJDEP reflect as “inequities for the OBC.” This appears to be a contradictory statement as these sites are being remediated and redeveloped into residential areas with affordable housing and/or into industrial and commercial uses for the state. Responsible Parties are converting old brownfield and industrial sites to provide growth, stability, and well-being for communities; these sites cannot be both adversely impacting and benefiting the OBC.

Moreover, given the anticipated electrification of the transportation sector that New Jersey is leading on many fronts, CCNJ/SRIN request that the NJDEP explain how mobile stressors will reflect this development and whether applicants can get “credit” for increasing use of electric vehicles.

**Proposed Rules, N.J.A.C. 7:1C-2.1 Applicability**

The NJDEP is not authorized by the Legislature to apply the EJ Law requirements outside of a statutorily defined OBC. Yet, the Proposed Rules seek to include certain areas that are “adjacent” to OBCs as defined in the enabling legislation.

As noted above, the EJ Law is clear that, to be subject to its requirements, a facility needs to be located in an OBC, as defined by the statute. See N.J.S.A. § 13:1D-160 (states the requirements for permit applicants under the EJ Law “if the facility is located, or proposed to be located, in whole or in part, in an overburdened community . . . “) (emphasis added).

OBCs are clearly defined by the statute:

“Overburdened community” means 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.


In issuing the Proposed Rules, the NJDEP echoes the statute in the rulemaking package:

The Department is proposing new rules to implement the provisions of New Jersey’s Environmental Justice Law, codified at N.J.S.A. 13:1D-157 et seq. (Act), and establish the requirements for applicants seeking permits for certain pollution-generating facilities located, or proposed to be located, in overburdened communities, . . . (emphasis added).
The Department’s authority, pursuant to the Act, 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 Act; (2) the applicant seeks a Department permit or approval enumerated in the Act; and (3) the facility is located or proposed to be located, in whole or in part, in an overburdened community as defined by the Act. (emphasis added).

Despite this acknowledged limitation on its own authority, the Proposed Rules purport to extend the definition of OBC of the EJ Act by proposing N.J.A.C. 7:1C-2.1e to include non-OBC Census Block Groups. However, zero population census block groups are not mentioned in the EJ Law. They are not defined in the EJ Law or the Proposed Rules. The NJDEP admits they are not OBCs as “statutorily defined,” but explains that they have decided to include them anyway:

The Department recognizes that certain census block groups may now or, as a result of census reconfiguration, have zero population. To the extent these zero population census blocks are immediately adjacent to statutorily defined overburdened communities, the operations of new or existing facilities in the zero population block groups have similar potential for impacts to environmental and public health stressors as those located directly in the overburdened community that would not otherwise be considered. Accordingly, the Department proposes to require an analysis of impacts of those facilities on the immediately adjacent overburdened community. (emphasis added).

The Proposed Rules deviate from the enabling legislation by withholding from the public and the stakeholder process the intent to expand the applicability of the EJ Law requirements beyond OBCs.

The EJ Law required the NJDEP to provide public notice of the census block groups that were considered OBCs, in the form of a list, within 120 days of enactment:

No later than 120 days after the effective date of this act, the department shall publish and maintain on its Internet website a list of overburdened communities in the State.


The NJDEP provided this list (and corresponding maps). Consistent with the statute, the list and maps identified only census block groups that met the EJ Law’s required criteria. No census block groups were identified as covered because they were “adjacent.” In fact, the concept of applying the EJ Law requirements to “adjacent” census block groups was never revealed until June 2022. This is clearly inconsistent with the EJ Law’s requirement for transparency, including that the list of OBCs be published within 120 days.

The extension of the EJ Law requirements to zero population census block groups is arbitrary on its face. Facilities in some census block groups immediately adjacent to OBCs would be covered by the requirements (i.e. those in zero population census block groups) and others, even if located closer to the OBC, would not be (those census block groups with any residences). No explanation is provided by the NJDEP for this distinction.

Furthermore, CCNJ/SRIN request that the NJDEP clarify the Proposed Rules’ applicability to the situation
in which a facility is located in both an OBC and a populated non-OBC (i.e. not a block group with zero residents, as contemplated in § 7:1C-2.1(d)), particularly if the majority of the operations and impacts are in the non-OBC.

It is requested that the Department replace the term “complete for review” in paragraph N.J.A.C. 7:1C-2.1(c) with “administratively complete,” meaning that permit applications that have been submitted by the Department and classified as administratively complete before the effective date of the EJ regulations will not be subject to the requirements of the Proposed Rules. Retroactively subjecting applicants who have already submitted permitting applications to the EJ requirements would almost certainly create unnecessary and burdensome permitting delays.

CCNJ/SRIN also request that the NJDEP clarify the applicability of the Proposed Rules to those who completed the Administrative Order 2021-25 EJ process, received a letter from the NJDEP Office of Permit and Project Navigation, but have not been issued a permit yet.

Below are comments specifically regarding those under the Federal Energy Regulatory Commission (FERC):

- We recommend that the NJDEP review and consider the USEPA’s Promising Practices for EJ Methodologies in National Environmental Policy Act (NEPA) Reviews.
- We recommend that the NJDEP consider an exemption for projects held to FERC/NEPA standards, or at least deem federal documents submitted as part of a FERC environmental impact statement as acceptable.

Proposed Rules, N.J.A.C. 7:1C-2.2 Procedural overview

CCNJ/SRIN strongly urge the NJDEP to allow the EJ process to run concurrently with the permit renewal process. We are concerned about the onerous burden that the regulated community will have if the EJ process is required to be completed in order for a Title V renewal application to be considered administratively complete. Even with a proposed timeline for the EJ process, this requirement would create unnecessary logistical complications, unpredictability, and much longer timeframes for the Title V permitting process.

We also request confirmation that the NJDEP administrative review is the step in the EJ process that needs to be completed prior to an existing permit expiring. Moreover, the NJDEP should clarify how facilities with expired permits operating under permit shields will be treated, including whether permit shields will apply if the EJ process delays renewal submission beyond the permit expiration.

Proposed Rules, N.J.A.C. 7:1C-2.3 Initial screening information

As the Proposed Rules are written, updates to the data used in the EJMAP tool will constitute a material change and may require a resubmission of the EJIS and a new public engagement process and meeting. This can cause unreasonable delays in the permitting process for applicants who are complying with the EJ requirements and operating with good faith. CCNJ/SRIN recommend that the Proposed Rules include language that addresses using the current (i.e. as of the permit application submittal) EJMAP data. Similarly, there should be an effective date, not retroactive, when updated EJMAP outputs should be used. The Proposed Rules also do not describe the process for updating the EJMAP tool, the frequency with which it will be updated, or how the NJDEP will update the EJMAP tool once a facility reduces
environmental, health, and safety stressors in the OBC. It is similarly unclear how updates to the EJMAP tool affect nearby facilities, or new facilities that are just starting the EJ evaluation process. Furthermore, there is no indication or process set forth as to whether the NJDEP will notify municipalities when the census data blocks are updated or designation as an OBC is removed. Accordingly, CCNJ/SRIN would appreciate further clarification on the procedures for updating this tool.

Proposed Rules, Subchapter 3, Environmental Justice Impact Statement

CCNJ/SRIN are concerned that the requirements for the EJIS in the Proposed Rules are extremely subjective and unnecessarily complicated. As such, we propose that if the initial screening information for the OBC collected pursuant to N.J.A.C. 7:1C-2.3 indicates the community is not subject to a disproportionate impact of adverse environmental and public health stressors, then an applicant seeking to renew an existing permit should not be required to complete an EJIS.

In addition, the Proposed Rules do not indicate which environmental and public health stressors are to be addressed and how. There are two problems with this approach: (1) there is no specified methodology for evaluating creation or contribution of adverse cumulative stressors to determine “disproportionate impact” and (2) there is no de minimis threshold for what would be defined as “creating adverse cumulative stressors.” In the absence of a threshold, even the minimum amount of additional stressor(s) would result in permit denial or imposition of conditions.

Similarly, CCNJ/SRIN request clarification as to whether stressors are only evaluated for the OBC where a new or expanded facility is located or whether other affected OBCs need to be considered. For instance, the EJIS requires a description of new or expanded facilities’ traffic routes, among other information. It is unclear whether this encompasses traffic routes exclusive to the OBC in which the facility is located only, adjacent OBCs in the event of a zero population block facility location, and/or traffic routes within another OBC.

There are certain stressors, such as ground-level ozone, which cannot be easily modeled to determine the facility’s impact on the OBC. Modeling of ground-level ozone requires sophisticated and complex models that simulate the photochemical reactions of Volatile Organic Compounds (VOCs) and NOx in the environment under different meteorological conditions. These models are used by the USEPA and state agencies and are beyond the reach of most manufacturing site environmental professionals.

Moreover, the requirement to prepare an EJIS prior to permit application review by the NJDEP could turn this into a “chicken and egg” situation, especially for new and expanded sources. It is not unusual for changes to the project design (e.g. emission control equipment, stack parameters, etc.) to be made based on NJDEP questions and comments during the permit review process. This would result in additional delays and cost burdens in the overall permitting process that could ultimately be passed on to communities that are already struggling as consumers.

Proposed Rules, N.J.A.C. 7:1C-3.3 Supplemental information

The NJDEP proposes to require supplemental information where: (1) the facility is located, or proposed to be located, in whole or in part, in an OBC that is already at the time of the permit application subject to adverse cumulative stressors; or (2) the applicant cannot demonstrate that it will avoid a disproportionate impact because it will create adverse cumulative stressors in the OBC. The all-
encompassing approach for what an applicant must submit as part of the supplemental information requirement is excessive. In many instances, the required information will be unrelated to both the subject permit application and potentially the entire facility. Rather than mandating that all information proposed at N.J.A.C. 7:1C-3.3 be provided, the list of required information pursuant to this provision should be determined on a case-by-case basis as agreed upon between the NJDEP and the applicant. In other words, the supplemental information that is required should be based on the type of facility and the facility’s current or potential contribution to adverse stressors.

CCNJ/SRIN members also have the following specific questions regarding information required pursuant to N.J.A.C. 7:1C-3.3:

- For subsection (a)(1)(ii), will the New Jersey Landscape Program data be considered an approved source of known rare, threatened and/or endangered species data?
- For subsection (a)(3):
  - From what location should localized air quality data be provided from (e.g. the perimeter of the facility, on-site at the facility, within the OBC, etc.)?
  - If localized air quality data is required to be collected, concurrent site-specific weather data (e.g. wind direction, wind speed, etc.) should also be measured to assist in determining the source of any detected constituents.
- For subsection (a)(4), what source and/or method is to be used to determine “future supply capabilities” of ground water?

Proposed Rules, Subchapter 4, Process for Meaningful Public Participation

As previously noted, CCNJ/SRIN are concerned that the Proposed Rules provide no standard for what constitutes an “interested party” who would be permitted to submit oral and written comments as part of the NJDEP’s EJ review. Unless the scope of community input is limited, any third party, including competitors, could come in and intentionally create problems in the EJ review process regardless if they live outside of the impacted community or area. Public meeting participant comments should be limited to local community residents, officials and corporations.

Furthermore, the Proposed Rules do not provide a mechanism for determining applicability of public comments to the facility or permit at issue. Facilities are unable to identify comments that facilities do not impact, such as unrelated, but local traffic issues, or comments generated from other companies located at the same site or in close proximity. CCNJ/SRIN recommend that the NJDEP provide a clear and defined process for facilities to identify public comments that are not germane to the permit or facility, and not be required to respond to them and not allow the NJDEP to attach special conditions to the permit resulting from said comments.

Proposed Rules, N.J.A.C. 7:1C-4.2 Public hearing and comment

As we stated in our initial comments and our pre-proposal comments, many of our CCNJ and SRIN member companies participate in CAPs where industry, community members, first responders, and elected officials come together to communicate and be transparent with one another. CAPs are a successful way to address community concerns and share information about nearby manufacturing facilities. Accordingly, CCNJ/SRIN recommend that the NJDEP allow CAPs that meet a defined level of engagement to suffice as an acceptable public process in lieu of public hearings.
Proposed Rules, N.J.A.C. 7:1C-5.3 Compelling public interest

As set forth above, when determining whether a facility will serve a “compelling public interest” in the community, the NJDEP should allow for the consideration of overall benefits of a project, including economic benefits. This includes tax revenue and jobs, as well as community service and support such as volunteerism and grants to improve services or quality of life for those on fixed incomes. Direct and indirect jobs created in the community as a result of a facility would mitigate some of the listed stressors, including “unemployment”.

CCNJ/SRIN request clarification on how the NJDEP decides that there is a “significant degree of public interest.” Specifically, the NJDEP’s consideration of public input as to whether a compelling interest is demonstrated is subjective, and could lead to a situation where an applicant makes a strong showing that it will serve an “essential environmental, health, or safety need of the individuals in an overburdened community,” yet still not have the support of the community. The NJDEP should clarify how it will weigh these competing factors, and whether the support of the OBC is the governing factor in determining compelling public interest. Would a permit of public convenience and necessity supersede “compelling public interest”?

Proposed Rules, N.J.A.C. 7:1C-7.1 Localized impact control technology for new or expanded major source facilities

It is perhaps not the intent for the NJDEP to impose LICT/SOTA standards for new or expanded major source facilities that are so unfairly burdensome and costly as to force economic unfeasibility and arbitrarily stagnate economic development. Indeed, the emissions from stationary sources are already highly regulated on both the state and federal levels; the addition of a LICT standard would be unnecessary and arbitrary as the NJDEP air program is already addressing these air quality issues independent of the Proposed Rules.

Moreover, the NJDEP underestimates the potential costs to facilities if they implement LICT at an “expanded” major facility. If air quality related stressors are of legitimate concern to the NJDEP, there are other, more reasonable, means to address it; for example, a fenceline ambient monitoring program can be implemented at the site before the NJDEP requires that a LICT analysis be performed. These monitors can be implemented at a reasonable cost, and the data recorded by the monitors can be accessible via a cloud or Internet. If a facility can show through their monitoring that they are not adversely contributing to an adverse air stressor and would continue to do so even with the expansion, the facility should be able to move forward with the project without the need for implementing LICT or some other form of additional costly and unreasonably controls.

Proposed Rules, N.J.A.C. 7:1C-8.2 Avoidance of disproportionate impact

N.J.A.C. 7:1C-8.2 requires that any party seeking renewal of a major source permit “shall analyze and propose all control measures necessary to avoid facility contributions to all adverse environmental and public health stressors in the overburdened community.” (emphasis added). This should be revised to state “shall analyze and propose feasible control measures necessary to avoid facility contributions.” In its current form, the proposed regulation is vague and ambiguous as to what control measures must be analyzed and what control measures must be proposed, which are already more specifically set forth in §§ 8.3 through 8.6. It is also made superfluous by the next sentence, which clarifies if a facility is able to avoid a disproportionate impact to all adverse stressors, the Department will be permitted to grant
the application.

Proposed Rules, N.J.A.C. 7:1C-8.4 Facility-wide risk assessment

The Department is proposing to require an applicant for a renewal permit to conduct a risk assessment for its existing source operations that emit hazardous air pollutants (HAPs). However, there are already established requirements and procedures in place to evaluate stressors which are embedded in the permit renewals and modification process. For example, the NJDEP should accept the air modeling results as required under existing regulations to meet the requirement for evaluating environmental and public health stressors under air pollution. Further, the Department should identify with specificity what risks need to be addressed that are not already identified in the criteria for when a minor modification is acceptable.

Furthermore, CCNJ/SRIN request clarification on how a facility should approach the public with a Title V facility-wide risk assessment that would not be approved by the NJDEP until the permitting process, which, as written, does not occur until after the EJ process is complete. If the EJ and permitting processes do not run concurrently, we strongly encourage the NJDEP to make it a priority to review risk assessments as efficiently as possible so they can get through the EJ process and move onto permitting.

Proposed Rules, N.J.A.C. 7:1C-8.5 Technical Feasibility Analysis

Technical feasibility analyses for additional control measures at facilities receiving their Title V renewal seem excessive when the equipment at these facilities is already highly regulated on a state and federal level. As noted in the comments related to LICT, as an alternative, facilities should at least be given the option to implement a fenceline ambient monitoring program that demonstrates that the facility renewing their Title V permit is not adversely contributing to air stressors in the OBC. If the fenceline monitoring program can demonstrate that the facility’s air emissions are not adversely contributing to air stressors, the applicant should be exempt from doing the technical feasibility review.

Facilities already participating in fenceline monitoring programs in compliance with federal fenceline monitoring requirements and below federal prescribed action levels should be deemed to not adversely contribute to air stressors in the OBC.

The NJDEP can use the closest ambient monitor to the facility in the Air Now network as the geographic point of comparison during any instance where NAAQS or New Jersey Ambient Air Quality Standards (NJAAQS) for ozone or fine particulates are exceeded.

Proposed Rules, N.J.A.C. 7:1C-9.1 Department review

CCNJ/SRIN request clarification on how the NJDEP will assemble a pool of experts if they determine outside expertise is needed during their EJJS review process. It is unreasonable that the NJDEP can engage outside experts without limitation at the applicant’s expense. CCNJ/SRIN also encourage the NJDEP to develop processes to ensure that outside experts have a good understanding of the industry being regulated and that a fair portion of the work goes to small and/or minority-owned businesses. Further, the applicant should have an opportunity to offer comments on contemplated experts.

Additionally, the timeline to solicit and obtain such outside expertise is also without limit and could cause unreasonable delays and costs to the applicant. In light of these concerns, CCNJ/SRIN reiterate the need
for the NJDEP to provide clarification on the anticipated timeline for the NJDEP’s EJ review, and how it intends to address a situation where a permit that is being renewed expires during the EJ review process.

Proposed Rules, N.J.A.C. 7:1C-9.2 Department decision

CCNJ/SRIN strongly urge the NJDEP to not only evaluate but actually consider and address the feasibility of any additional permit conditions they plan to impose. We also respectfully request that the NJDEP allow for flexibility in the rules with their acceptance of permit conditions. For example, if an agreement on a particular mitigation and associated permit language is reached between the permit applicant and community representatives, the NJDEP should give this deference.

The Proposed Rules present a significant workload for the NJDEP, and CCNJ/SRIN members are concerned whether the NJDEP has the staffing necessary to implement this program.

Lastly, CCNJ/SRIN support the NJDEP not requiring applicable permits to go through the EJ process for a period of five (5) years following a positive final EJ decision on a permit for the same facility.

Conclusion

Finally, CCNJ/SRIN support any comments submitted separately by members of CCNJ and SRIN. In addition, we support comments submitted by the American Chemistry Council, including but not limited to its detailed review of the NJ EJ Screening Mapping Tool Stressors and associated appendix.

Thank you for your consideration of our comments on this important rulemaking effort. Again, we strongly urge the NJDEP to seriously consider and address our comments and the identified deficiencies before finalizing any rule language. If I can be of further assistance, please let me know.

Sincerely,

Dennis Hart
Executive Director

Attachments
November 23, 2020

VIA ELECTRONIC MAIL
ejrulemaking@dep.nj.gov
New Jersey Department of Environmental Protection

RE: CCNJ/SRIN PRE-PROPOSAL COMMENTS ON NJDEP EJ RULEMAKING EFFORT

To Whom It May Concern –

On behalf of our members, the Chemistry Council of New Jersey (CCNJ) and Site Remediation Industry Network (SRIN) appreciate the opportunity to provide the following pre-proposal comments to the New Jersey Department of Environmental Protection (NJDEP) on the environmental justice (EJ) rulemaking focus areas, as presented at the October 22, 2020 virtual initial public information session. Please note that these initial comments are limited based on what information has been shared so far. CCNJ/SRIN respectfully request that the NJDEP follow through with their statement about committing to scheduling future focus group and stakeholder meetings, and remain engaged with stakeholders on this rulemaking effort.

While CCNJ/SRIN sees the value in open dialogue and cooperation between manufacturing facilities and the communities in which we operate, we encourage the NJDEP to provide flexibility in the permitting process so that businesses can continue to operate, expand, remain competitive, and bring benefits to the residents of New Jersey.

Aligned with the EJ principles of fair treatment and meaningful involvement, we have a long-held view that community input is paramount to being a good corporate citizen. Many of our CCNJ and SRIN member companies participate in Community Advisory Panels (CAPs) where industry, community members, first responders, and elected officials come together to communicate and be transparent with one another. It is our belief that CAPs are a successful way to address community concerns and share information about nearby manufacturing facilities. For both the impact assessment and public hearing processes, the NJDEP should recognize and incentivize those companies that are already engaged with their communities in a meaningful and effective way. CCNJ/SRIN believe that a simplified and flexible process will be more productive compared to a straight command and control mandated approach.

It is important to note that many companies find it a challenge to operate in New Jersey already, and additional hurdles, costs and uncertainties will further hamper our efforts to bring investment and product lines into the state. Companies not only compete against other companies, but facilities within companies compete against each other; facilities in New Jersey are competing against facilities in Pennsylvania, Ohio, and Michigan, which do not have similar hurdles to face, when their companies are deciding to continue operations and expand a facility. Companies in New Jersey are also competing

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with imports from companies operating abroad. New Jersey needs to keep these critical companies that provide essential services operating in our state. Investment and product lines are what drive job growth, a valuable asset to any community. Investing in existing facilities should be encouraged rather than discouraged because communities benefit from modernized operations, as well as the construction and permanent jobs created by new local investment.

Below are CCNJ/SRIN’s initial responses to the NJDEP’s questions posed during the October 22, 2020 stakeholder meeting:

**EJ Impact Statement (EJIS)**

The NJDEP should clarify the content, coverage, and applicability of this EJIS requirement. The regulated community submits many applications for permits which do not result in any environmental impact on the communities in which they operate. In many cases, these permits can actually decrease the environmental impact of an existing operation (e.g. replacement of older equipment with newer, more efficient technology). Therefore, CCNJ/SRIN recommend an exclusion for projects that result in no additional environmental impact or actually decrease environmental impacts. The NJDEP should set impact thresholds below which an EJIS is not required, and clarify that applying for a permit required to perform preventative maintenance or emergency activities does not trigger this EJIS requirement.

Focusing on air quality and Hazardous Air Pollutants (HAPs), we would like to highlight the already established requirement and process that is in place to evaluate stressors embedded in the permit renewals and modification process†. These permitting actions include risk screening or comprehensive modeling of emission points for all HAPs or air toxics in a facility’s permit. The results of modeling are compared to the NJDEP health thresholds which are developed from numerous validated sources (e.g. USEPA’s Integrated Risk Information System, the California Environmental Protection Agency Toxicity Criteria Database, and the Agency for Toxic Substances and Disease Registry’s “Minimal Risk Levels for Hazardous Substances”), and the ultimate impact of a project must be below these vetted health benchmarks for the permit to be approved.

The NJDEP should recognize this established process and ensure that the EJIS process utilizes current resources and efforts as much as possible. Moreover, any evaluation of stressors should be based upon sound science, including validated (i.e. peer-reviewed), publicly available data, and recognized and validated analytical methodologies to ensure consistency in the EJIS process. Finally, the evaluation of stressors should include evaluation of not only possible increases, but also reductions associated with a project or permitting action.

Evaluating cumulative impacts is much more challenging without an established scientific method or existing validated community metrics. The NJDEP should ensure that any cumulative impact assessment follows a predictable and efficient process that is supported scientifically and proven in practice. Also, it should be noted that requiring a facility to evaluate cumulative impacts in an area necessitates making assumptions about the other impacts on a community from a wide variety of sources outside the control of the applicant, including personal habits and behaviors of community members, transit authorities and shipping companies, along with the impacts associated with other potentially competing facilities. Absent validated, publicly available data, and a proven cumulative impact assessment method, these assumptions and public statements about cumulative impacts are speculative at best and pose a risk of unnecessary legal and competitive claims. The EJIS process should be crafted

† [https://www.state.nj.us/dep/aqpp/risk.html](https://www.state.nj.us/dep/aqpp/risk.html), “Risk Screening Tools, Estimating Risk from Air Toxics”
so as not to require disclosure of confidential business information or create a risk of legal claims or business risk. CCNJ/SRIN recommend that the NJDEP maintain a public database of identified environmental and public health stressors for each overburdened community as the Department is in a better position to collect and make available this information. In addition, this approach and sharing of information puts everyone on equal footing regarding what data to consider when preparing the EJIS.

Public Process

The NJDEP should consider and integrate existing CAPs into any new public engagement process being considered, as they already provide a means of engaging communities. As already discussed, CAPs are created for the express purpose of engaging those communities most closely connected to and impacted by industrial facilities. To encourage CAPs as a robust form of community engagement, the NJDEP should allow CAPs meeting a defined level of engagement to suffice as an acceptable public process in lieu of public hearings. In addition, CCNJ/SRIN are committed to reinvigorating CAP participation and expand their services to more EJ communities in New Jersey.

Environmental and Public Health Stressors

When considering a concentrated area of air pollution, the NJDEP should take into account background sources impacting a facility’s baseline, such as ozone and particulate air pollution transport from upwind states. The NJDEP’s Division of Air Quality already has a network of Air Monitoring Stations that should be used to establish this baseline.

In addition to air quality, there are also land use, waste, water, and noise stressors that will likely be considered. CCNJ/SRIN recommend that the NJDEP evaluate their own programs to identify the gaps within and determine what already exists as an established process that is effective in considering and addressing local and regional issues. For example, there is a metric in place for Total Maximum Daily Loads (TMDLs) to prevent water quality impacts; there are also area-wide Water Quality Management Plans, Solid Waste Management Plans, delineated freshwater wetlands, and threatened and endangered species areas, to name a few. It is critical that the Department make as much public information available as possible for the proper assessment of current conditions in the vicinities of existing or proposed businesses and waste management facilities. Though we support the NJDEP’s efforts on this, we do not want to negatively affect or dismiss anything that is currently effective in minimizing environmental impact.

The NJDEP should utilize validated, publicly available data for any evaluation of stressors. Its analysis should be a standard model to ensure consistency across the industry and across the state, and incorporate actual fenceline monitoring data that is readily available, in lieu of relying on model assumptions. As noted above, we recommend that the NJDEP maintain and make available a public database of stressors that need to be considered.

Permit Application Evaluation

The NJDEP should define and/or provide examples of “conditions that avoid or reduce stressors” that the Department will accept to meet the requirements of the statute. A full evaluation of a permit must include stressors which are reduced or avoided.

Since multiple stressors are considered as part of the cumulative impact analysis during the evaluation.
of a permit, CCNJ/SRIN believe that a reduction of any one of the multiple stressors should be considered as an option to mitigate the overall cumulative impact to the identified community.

In addition, in order to be equitable, the cumulative impact analysis should include benefits as well as stressors. If the NJDEP solely focuses on a sum of all negative stressors, that impact assessment would not be balanced. The NJDEP EJ Guidance Document identifies that EJ communities suffer not only from cumulative environmental stressors but also from a lack of “environmental and public health benefits,” which include access to quality parks, healthy food, quality housing, tree canopies, and much more. The NJDEP should clearly define the universe of conditions that may be applied to permit holders and allow consideration for reduction of environmental stressors as well as improvements to environmental and public health benefits. Measures that exceed (i.e. do better than) regulatory requirements should also be considered as part of the cumulative assessment of stressors that may be present near covered facilities. Our member companies have very strong sustainability goals and environmental/health and safety policies. They also participate in the Dow Jones Sustainability Indices, Carbon Disclosure Project (CDP) Index, NJDEP Environmental Stewardship Initiative, and American Chemistry Council Responsible Care Initiative, and meet the International Organization for Standardization (ISO) 14001 (Environmental Management Systems) and ISO 18001 (Health and Safety Management Systems) standards. Strong consideration also needs to be given to the potential adverse social and economic impacts at local and state levels when potentially impacting a facility’s ability to remain competitive.

When determining whether a facility will serve a compelling public interest in the community, the NJDEP should consider overall benefits of the project, including economic benefits, at the city and county levels. Tax revenue and jobs provided to people in the community, including direct, indirect, and induced, are a significant public benefit. Community service and community support such as volunteerism and grants to improve services or quality of life in the city and/or county should also be taken into account.

Regarding the Title V permit application shield, the NJDEP should clarify that the EJ process can run concurrent with the permit renewal process. CCNJ/SRIN are concerned about the burden that the regulated community will have to take on if the EJ process is required to be completed in order for a renewal application to be considered administratively complete. To be eligible for the “application shield,” which prevents a Title V permit from expiring during review of a renewal application, the renewal application must be submitted and deemed administratively complete 12 months prior to expiration. Given the uncertainties of the EJ process, and the long timeframes expected for meaningful engagement and NJDEP review, requiring the EJ process to be completed as a prerequisite for obtaining the application shield would create unnecessary logistical complications, unpredictability, and much longer timeframes for the Title V permitting process. Also, to avoid unnecessary burden for the communities, the NJDEP, and regulated community, the EJ process for future Title V renewals should pick up from the first EJIS, public process and engagement, and not start over every 5 years. After completing the evaluations for the first Title V renewal that triggers the EJ process for a given facility, subsequent evaluations should only consider increased environmental impacts that have occurred since that first evaluation.

Outreach & Engagement

CCNJ/SRIN support the interest of meaningful engagement with overburdened and all communities. As described earlier, we request that the NJDEP considers integrating CAPs into this rulemaking stakeholder process and also utilizes validated, publicly available sources of information.
In addition to our comments in response to the NJDEP’s specific questions, CCNJ/SRIN would also like to provide feedback regarding what constitutes a permit trigger. The NJDEP should clarify that only permits for projects/facilities that increase environmental impact or renewals of major source permits qualify. The NJDEP should clarify what constitutes an “expansion” with some type of significance trigger and that only permits associated with an actual increase in actual pollution levels are included; we do not support a trigger that would include a facility expansion that does not result in an emission increase. Also, there should be some relief for those sites that have elected to permit themselves as major sources but have actual emissions below the regulatory thresholds; again, historical actual emissions and increases in actual emissions to major thresholds should be the trigger.

CCNJ/SRIN and its members remain committed to being solution providers that help the state reach EJ goals that are achievable and not arbitrary, while protecting the investments made by business of chemistry companies employing more than 40,000 people in New Jersey.

We would like the record to reflect our support of any comments submitted separately by members of CCNJ and SRIN.

Thank you for your consideration of our comments on this very important rulemaking effort. We look forward to participating in the upcoming series of smaller, more focused discussions that the NJDEP had highlighted, as well as other stakeholder meetings to be scheduled prior to the publication of the final EJ rule proposal. If I can be of further assistance, please let me know.

Sincerely,

Dennis Hart
Executive Director
August 20, 2021

VIA ELECTRONIC MAIL
ejrulemaking@dep.nj.gov
Olivia.Glenn@dep.nj.gov
Sean.Moriarty@dep.nj.gov

New Jersey Department of Environmental Protection

RE: CCNJ/SRIN PRE-PROPOSAL COMMENTS ON NJDEP ENVIRONMENTAL JUSTICE RULEMAKING STAKEHOLDER EFFORT

To Deputy Commissioner Glenn and Deputy Commissioner Moriarty –

On behalf of our members, the Chemistry Council of New Jersey (CCNJ) and Site Remediation Industry Network (SRIN) appreciate the opportunity to provide the following comments to the New Jersey Department of Environmental Protection (NJDEP, the Department) on the Environmental Justice (EJ) rulemaking focus areas, as presented at the virtual stakeholder meetings held from January through June 2021. We would like to thank the NJDEP for engaging with stakeholders prior to drafting and publishing a final EJ rule proposal. Please note that these comments are limited based on what information had been shared during these meetings. Though CCNJ/SRIN plan to participate in the public comment period once a formal rule proposal is published in the New Jersey Register, we strongly urge the NJDEP to seriously consider these pre-proposal comments before finalizing any rule language.

CCNJ/SRIN support the fair treatment and meaningful involvement from all of our community stakeholders. As such, we support the goals of the EJ legislative and regulatory process. However, as we stated in our initial comments submitted on November 23, 2020 (attached), we encourage the NJDEP to provide balance to the implementation process that both achieves the goals of the legislation and provides flexibility in the permitting process so that businesses can continue to operate, expand, modernize, remain competitive, and bring benefits to the residents of New Jersey while meeting the NJDEP’s permitting requirements.

Below are CCNJ/SRIN’s pre-proposal comments on the information presented by the NJDEP during the EJ rulemaking stakeholder effort, with the concluding meeting held on June 24, 2021:

Facility & Permit Definitions and Triggers

CCNJ/SRIN requests that the NJDEP confirm that a covered facility/applicable permit would not be subject to the EJ process if the activity in the mapped overburdened community does not result in a material net increase in environmental or public health stressors. We recommend that only significant permit changes that result in a material net increase in an environmental stressor(s) require the EJ
process. Also, we recommend that the NJDEP establish clear EJ-specific regulatory criteria for a facility to be required to prepare an EJ Impact Statement (EJIS) with clear de minimis thresholds, as well as for permit applicability (e.g. Title V amendment vs. Title V significant modification).

The covered permits identified in the EJ law are regulated by environmental statute and regulations. There are specific conditions or activities that exempt the requirements to prepare and submit an environmental permit in these environmental statute and regulations. We request that all identified permit exemptions continue to apply. Based on our review, we have identified the permit exemptions to include, but may not be limited to, the following: all solid waste and recycling exemption activities cited in N.J.A.C. 7:26-1.1 and 7:26A-1.1, water supply allocation permit exemption cited in N.J.A.C. 7:19-1.4, New Jersey Pollutant Discharge Elimination System (NJPDES; N.J.A.C. 7:14A-2.5), Coastal Area Facility Review Act (CAFRA; N.J.A.C. 7:7-2.2(c) through (f)), and the Waterfront Development Law set forth at N.J.A.C. 7:7-2.4(d), (f), and (h). In addition, we urge the NJDEP to exempt all Class A recycling facilities. These operations do not require solid waste permits as they are statutorily/regulatorily exempt and, therefore, they should not trigger the EJ process.

Also, to avoid unnecessary burden for the communities, the NJDEP, and regulated community, CCNJ/SRIN recommend that the EJ process for future Title V renewals should initiate from the first EJIS, public process and engagement, and not start over every 5 years. After completing the evaluations for the first Title V renewal that triggers the EJ process for a given facility, subsequent evaluations for the same facility should only consider increased potential environmental impacts that have occurred since that first evaluation.

In addition, considerations should be made when multiple environmental permits are renewed on different timelines (e.g. Title V permit renewal due January 2022 and NJPDES permit expires January 2023) so that the previous EJIS can be updated and incorporate any modifications that were made to reduce stressors. This will be time-consuming to the facility and the public to conduct and review an EJIS for each permit that is expiring or other EJIS triggering event. There must be some ability to receive credit or provide an off-ramp to re-assess the EJIS every time a permit is expiring within a two-year window.

CCNJ/SRIN suggest that the NJDEP consider alternatives to the EJ process frequency for large facilities with multiple environmental permits and programs. The statute covers a multitude of statutes that trigger the EJ process. Large industrial facilities are responsible for obtaining a number of different permits under these statutes, and a separate EJ process for each individual permit could overwhelm both NJDEP and facility resources, as well as the public review process.

CCNJ/SRIN support the NJDEP’s statement that general permits, permits-by-rule, and site remediation permits are exempt from the EJ process at the June 2021 stakeholder meeting.

**Geographic Points of Comparison**

The New Jersey EJ law defines “overburdened community” 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. Stakeholders are not able to confirm that the NJDEP accurately captured all three criteria to identify an “overburdened community” or what quality controls were in place to create this
CCNJ/SRIN recommend that the NJDEP make the 2018 census data available for review and provide explanation regarding how they identified the census block groups based on the definition as part of upcoming rule proposal.

Similarly, the process for comparing overburdened communities to other (i.e. non-overburdened) communities using state and county data is a confusing, complicated, data-intensive process that requires further stakeholder review and input to better understand the potential outcomes and appropriate use of data sets before NJDEP puts this procedure into use.

Further, CCNJ/SRIN are concerned that this same lack of transparency may occur in the NJDEP unilaterally designating the geographic point of comparison. It is unclear how the NJDEP intends to determine the applicable point of comparison. CCNJ/SRIN want to ensure that the nuances of each project are considered when determining the geographic point of comparison. What’s more, if an applicant disagrees or objects to the prescribed comparison location, it is unclear whether there will be an opportunity to lodge this objection or advocate for a more appropriate comparison point.

CCNJ/SRIN support an appropriate geographic unit that is fair and equitable to determine the adverse environmental and public health stressors. As such, the NJDEP should allow flexibility for the applicant to select its own comparison area since situations will vary with one level of geographic reference not being suitable for all circumstances. In addition, we support the NJDEP’s statement that all environmental and public health stressor data will be made publicly available.

The New Jersey EJ law gives the NJDEP latitude to establish what constitutes “higher than those borne by other communities”. As noted on slides 34 – 36 presented during the NJDEP’s June 24, 2021 EJ rulemaking stakeholder meeting, the Department suggests that the rule proposal will establish 50th percentile as “higher than” vs. the United States Environmental Protection Agency (USEPA)’s 80th percentile. Using this approach, in addition to making comparisons at state/county levels and also to non-overburdened communities, is too aggressive and results in a situation where the vast majority of overburdened communities will be considered “higher than” for almost every stressor. The illustration on the aforementioned slides 34 – 36 results in 90% of overburdened communities being classified as “higher than”. If this is compounded with nearly twice as many environmental and public health stressors (further discussed below) as the USEPA, it results in a stifling environment for economic development in the state.

Environmental & Public Health Stressors

As we stated in our initial comments submitted on November 23, 2020, CCNJ/SRIN encourage the NJDEP to take into account background sources impacting a facility’s baseline when considering a concentrated area of air pollution, such as ozone and particulate air pollution transport from upwind states. The NJDEP’s Division of Air Quality already has a network of Air Monitoring Stations that should be used to establish this baseline.

Focusing on air quality and Hazardous Air Pollutants (HAPs), an established requirement and process are in place to evaluate stressors which are embedded in the permit renewals and modification process. The results of modeling are compared to the NJDEP health thresholds that are developed from numerous validated sources, and the ultimate impact of a project must be below these vetted health benchmarks for the permit to be approved. Therefore, the NJDEP should accept the air modeling results as required

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1 [https://www.state.nj.us/dep/aqpp/risk.html](https://www.state.nj.us/dep/aqpp/risk.html), “Risk Screening Tools, Estimating Risk from Air Toxics”
under existing regulations to meet the requirement for evaluating environmental and public health stressor under air pollution. In addition, the NJDEP should clearly define the universe of conditions that may be applied to permit holders and allow consideration for reduction of environmental stressors as well as improvements to environmental and public health benefits.

In addition to air quality, land use, waste, water, and noise stressors will likely be considered. CCNJ/SRIN recommend that the NJDEP evaluate its own programs to identify the gaps within and determine what already exists as an established process that is effective in considering and addressing local and regional issues. For example, a metric is in place for Total Maximum Daily Loads (TMDLs) to prevent water quality impacts; there are also area-wide Water Quality Management Plans, Solid Waste Management Plans, delineated freshwater wetlands, and threatened and endangered species areas, to name a few. Also, the NJDEP’s analysis should be a standard model to ensure consistency in approach across the state, and incorporate actual fence-line monitoring data that is readily available, in lieu of relying on model assumptions.

Looking at the NJDEP’s current draft list of 31 total environmental and public health stressors, CCNJ/SRIN have serious concerns regarding how all of this data will be evaluated and quality controlled. It appears that the NJDEP is potentially proposing to utilize existing state and federal data sources and scale, and we strongly recommend that all source data be made publicly available and that it not be put into use in an EJ review process until it receives adequate stakeholder review, comment, and response. We do not recommend the utilization of any type of public survey data since it is not always the most appropriate or accurate way to collect information. We recommend that the NJDEP focus on environmental and public health stressors that can have a direct, independent impact to potential health outcomes versus ones that do not. Any potential public health impacts due to implied causation from any specific stressor should be removed as such health outcomes are the complicated result of various risk factors, and can be inter-related. Applicants should be scored higher in environmental and public health stressor categories (i.e. public health and social issues) for incorporating activities to increase the environmental and public health benefits in the overburdened community. An “Other Category” should be added to the EJ screening tool for the applicant to add positive activities that benefit the overburdened community by implementing mitigation measures to climate change, using clean energy alternatives, and implementing green infrastructure.

The EJ screening tool must be part of the proposed rule making process for the regulated community to clearly understand all of the environmental and public health stressors and how they interact with the identified eight (8) facility types in any given overburdened community. Until each individual data layer is created and the NJDEP is able to demonstrate to the regulated community how these layers will be compiled and used, it does not seem possible to properly assess and write rules.

Again, we support the NJDEP’s statement that all environmental and public health stressor data will be made publicly available.

CCNJ/SRIN believe that several of the suggested stressors are redundant and/or inappropriate and, therefore, should be removed; these include the following:

- “Permitted air sites” (see slide 40 presented during the NJDEP’s June 24, 2021 EJ rulemaking stakeholder meeting) – All sites are not created equal, and there are situations where many small sites collectively have lower emissions than one large site. In addition, there are
already stressors for specific pollutants that are monitored or modeled, which are much better indicators of impacts to communities;

- “Truck Traffic” and “Warehouses” – This is redundant; and
- “Total Regulated Facilities under EJ Law” – This is redundant.

**EJ Impact Statement (EJIS)**

As we stated in our initial comments submitted on November 23, 2020, and also above under “Facility & Permit Definitions”, CCNJ/SRIN recommend an exclusion for projects that result in no net increase to the facility’s permissible emissions or discharges, or that actually decrease potential environmental impacts which reduces the overall environmental and/or health stressors in the overburdened community. The NJDEP should set impact thresholds below which an EJIS is not required, and clarify that applying for a permit required to perform preventative maintenance or emergency activities does not trigger this EJIS requirement.

Evaluating cumulative impacts is much more challenging without an established scientific method or existing validated community metrics. The NJDEP should ensure that any cumulative impact assessment is supported scientifically and proven in practice. The first step of the EJIS process, “Initial Screen”, seems to be flawed in that every overburdened community could possibly have more environmental and public health stressors than non-overburdened communities and, therefore, never be initially screened out. By definition, an “overburdened community” will have one or more socioeconomic stressors adding to its combined stressor total (CST). If this screening process serves no purpose, it should be adjusted to allow for a reasonable portion of permits to be screened from further consideration based on cumulative impacts, or eliminated. With the stressor data being readily available, the NJDEP should have the ability to pre-score all overburdened communities and determine how many will be screened out.

We have learned from the COVID-19 pandemic the importance of a virtual format to hold public meetings and have discussions. This provides an opportunity to reach all of the community for participation. It is important that the NJDEP incorporate virtual meetings as one of the mechanisms for the public meeting, as well as in-person meetings. Also, it is important to utilize social media platforms to communicate to the public, as well as newsprint and publicly available websites.

We support the publication of a basis and background document that specifically outlines the NJDEP’s expectations regarding what the EJIS will look like; however, the NJDEP should first circulate a draft document to stakeholders, and be accepting of and seriously consider all stakeholder comments, before finalizing.

**Permit Conditions (New Facility, Facility Expansions/Title V Renewal) and Permit Application Evaluation**

CCNJ/SRIN recommend that the NJDEP use basic and plain English definitions for “new facility” and “permit renewal”. A “new facility” is a newly sited facility or change in use of existing facility. A Title V “permit renewal” is continuation of existing operations. Also, an “expansion facility” is a facility that has performed a major modification as defined in the Clean Air Act.

Similar to what we stated above under “Facility & Permit Definitions”, an application for a covered permit/facility that does not result in a material net increase in environmental or public health stressors or that reduces stressors should not be subject to the EJ process.
In order to be equitable, the environmental impact analysis should include benefits as well as stressors. For instance, when the NJDEP promulgates the New Jersey Protecting Against Climate Threats (NJPACT) rules, the regulated community must document how Greenhouse Gases and Clean Air Act-regulated pollutants are being mitigated at their facility, which results in benefits to the environment and/or public health stressors in the overburdened community. CCNJ/SRIN recommend that the NJDEP incorporate regulatory language that allows future environmental regulations that mitigate environmental or public health stressors to be viewed as a benefit for the regulated community in the environmental impact analysis. Instead of solely focusing on a sum of all negative stressors, the NJDEP should clearly define the universe of conditions that may be applied to permit holders and allow consideration for reduction of stressors as well as improvements to environmental and public health benefits. Measures that exceed minimum regulatory requirements should also be considered as part of the cumulative assessment of stressors that may be present near covered facilities.

The NJDEP should define and/or provide examples of “conditions that avoid or reduce stressors” that are acceptable to the Department. CCNJ/SRIN strongly oppose the NJDEP imposing Best Available Control Technology (BACT)/State of the Art (SOTA) standards for Title V permit renewals. SOTA/BACT requirements will be burdensome and may not be the most cost-effective way to minimize potential health impacts. Actual health impact assessments should guide mitigation choices versus defaulting to the most expensive option; we urge the NJDEP to consider predictability and jobs in order for industry to stay in, expand in, and bring businesses back to NJ.

We urge the NJDEP to allow for flexibility in the rules with their acceptance of mitigation choices. For example, if an agreement on a particular mitigation and associated permit language is reached between the permit applicant and community representatives, the NJDEP should give this deference.

As we stated in our initial comments submitted on November 23, 2020, the NJDEP should clarify that the EJ process can run concurrent with the permit renewal process. CCNJ/SRIN are concerned about the burden that the regulated community will have if the EJ process is required to be completed in order for a Title V renewal application to be considered administratively complete. To be eligible for the “application shield,” which prevents a Title V permit from expiring during review of a renewal application, the renewal application must be submitted and deemed administratively complete 12 months prior to expiration. The New Jersey EJ law does not give the NJDEP regulatory authority to override the USEPA’s regulatory authority to deem a Title V air permit “administratively complete”. Given the uncertain timeframe of the EJ process, which was confirmed with the NJDEP’s statement that it does not have a specific deadline to approve/deny, requiring the EJIS to be completed as a prerequisite for obtaining the application shield would create unnecessary logistical complications, unpredictability, and much longer timeframes for the Title V permitting process.

**Compelling Public Interest**

The NJDEP’s potential direction of defining compelling public need by modeling the Freshwater Wetlands Protection Act regulation seems to be appropriate. The Freshwater Wetlands Protection Act defines compelling public need as “that based on specific facts, the proposed regulated activity will serve an essential health or safety need of the municipality in which the proposed regulated activity is located, that the public health and safety benefit from the proposed use and that the proposed use is required to serve existing needs of the residents of the State, and that there is no other means available to meet the established public need.” The key words “serve an essential health or safety need of the municipality”
means a healthy community is one in which all residents have access to a quality education, safe and healthy homes, adequate employment, transportation, physical activity, and nutrition, in addition to quality health care. By bringing businesses to the overburdened community, we provide the essential social, economic, and environment triple bottom line to make a sustainable community. We are committed to reducing the environmental and health stressors and increasing the environmental and public health benefit in the communities in which we operate.

CCNJ/SRIN strongly oppose the NJDEP’s position that it will not allow for economic benefits as justification for compelling public interest. As we stated in our initial comments submitted on November 23, 2020, tax revenue and jobs provided to people in the community, including direct, indirect, and induced, are a significant public benefit. Direct and indirect jobs created in the community as a result of a new facility increase income, directly mitigating two of the listed stressors, “Poverty” and “Unemployment” (#27 and 28, respectively, found on slide 47 presented during the NJDEP’s June 24, 2021 EJ rulemaking stakeholder meeting). Needless to say, tax revenues fund essential government services to the benefit of the community. Community service and community support, such as volunteerism and grants to improve services or quality of life in the city and/or county, should also be taken into account.

Similar to our comments above regarding permit conditions, we urge the NJDEP to allow for flexibility in the rules with its decision-making process following a public hearing and comment period, with the option to defer to the appropriate community stakeholders. If the facility and the community agree that a project serves a compelling public interest, the enhanced public participation objectives of EJ have been achieved, and the NJDEP defer to those agreements. Also, the NJDEP’s proposed permit conditions that do not originate from the current environmental permit regulations to mitigate environmental or public health stressors should be allowed as options that the facility and community can consider and discuss rather than being made a requirement.

Outreach & Engagement

We are disappointed that the NJDEP did not discuss meaningful engagement at all during the June 24, 2021 stakeholder meeting. As we stated in our initial comments submitted on November 23, 2020, many of our CCNJ and SRIN member companies participate in Community Advisory Panels (CAPs) where industry, community members, first responders, and elected officials come together to communicate and be transparent with one another. We believe that CAPs are a successful way to address community concerns and share information about nearby manufacturing facilities. Enhanced communication is one of the hallmarks of EJ. As a result, for both the impact assessment and public hearing processes, the NJDEP should recognize and incentivize those companies that are already engaged with their communities in a meaningful and effective way. CCNJ/SRIN believe that a simplified and flexible process will be more productive compared to a straight command and control mandated approach.

The NJDEP should encourage successful CAPs as a robust form of community engagement by allowing CAPs that meet a defined level of engagement to suffice as an acceptable public process in lieu of public hearings. In addition, CCNJ/SRIN are committed to reinvigorating CAP participation and expand their services to more EJ communities in New Jersey.

CCNJ/SRIN and its members remain committed to being solution providers that help the state reach EJ goals that are achievable and not arbitrary, while protecting the investments made by business of chemistry companies employing more than 40,000 people in New Jersey.
We would like the record to reflect our support of any comments submitted separately by members of CCNJ and SRIN.

Thank you for your consideration of our comments on this very important rulemaking effort. Again, we strongly urge the NJDEP to seriously consider our pre-proposal comments before finalizing any rule language. CCNJ/SRIN also request to schedule a meeting with you prior to the publication of the rule proposal to further discuss our concerns and recommendations. If I can be of further assistance, please let me know.

Sincerely,

[Signature]

Dennis Hart
Executive Director

Attachment
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it’s a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

+ No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables.
+ No offsets (e.g. planting trees or bike lanes elsewhere).
+ Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

Brandon Wheelock
734, Crestview Rd
Vista, California 92081
** Electronic Rulemaking Comment **
Submision Date: 09/02/2022 10:54:51
First Name: Duron
Last Name: Jackson
Affiliation: Newark Resident
City: Newark
State: NJ
Zip: 07107
Email: 

Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: Newark doesn't need anymore waste facilities in our city. Imagine waking up in the middle of the night smelling burning garbage thinking your house is on fire, choking in your sleep. This happens every time the local incinerators burn their toxic loads several times a month. We're burdened enough already, and need to have the incinerators that are present deactivated. Please consider another method, another place, a remote place to dump garbage. Newark is a growing city that will never see it's full potential if folks won't move here because of toxic fumes. Newark leadership should be at the helm of this fight instead of entertaining the thought of another environmentally, health damaging waste facility.
My name is Rev. Sue Smith. I am a resident of Atlantic Highlands, NJ, and am an advocate for the Environmental Justice legislation passed by the NJ legislature. I want to add to voices asking that the rulemaking not have loopholes that would undermine the intent of the legislation and negatively impact rather than help EJ communities. Why am I called to speak to this? I take seriously God’s first commandment to God’s people: to take care of all God created. Colleagues in EJ communities have suffered health consequences that I never have, just because of where they live. It is time for justice.

The compelling interest rule scope needs to remain narrow and exclude economic interests from the exception, should dirty industries lobby for changing this rule. Including economic interests in the rule would leave EJ communities with more pollution – a choice between jobs in dirty industries and health. Is that a choice NJ residents in non-EJ communities want to make? Would a change in the rule to include economic interests really be considered taking care of all God created? Additionally, offsets cannot be used to justify approval of a pollution permit application. All emission reductions need to come from the facility applying for the permit. A tree planted in my neighborhood, or one like mine, does nothing to help EJ communities.

I remember the delight when this law was passed. It was billed the strongest EJ bill in the nation. The final rule needs to keep Justice as its focus. Thank you.
** Electronic Rulemaking Comment **

Submitison Date: 09/02/2022 12:17:25

First Name: Raymond

Last Name: Cantor

Affiliation: NJBIA

City: Trenton

State: NJ

Zip: 08608

Email: rcantor@njbia.org

Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice

Comments: To: Melissa P. Abatemarco, Esq.

Attn.: DEP Docket No. 04-22-04, PRN 2202-082

Office of Legal Affairs

Department of Environmental Protection

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, New Jersey 08625-0402

Date: September 2, 2022

Re: DEP Dkt. No. 04-22-04

Proposal Number: PRN 2022-082

Proposal On behalf of the undersigned business entities, please accept our comments on the Department of Environmental Protection_s proposed Environmental Justice Rules. The business community is fully supportive of efforts to address the environmental and health challenges being faced in many areas of the state where pollution impacts and social conditions may have led to conditions with enhanced risks and a lower quality of life. We were also largely supportive of the underlying Environmental Justice Law which these proposed rules seek to implement. However, it is our strong belief that the proposal, as currently drafted, will not serve the interests of the communities it seeks to protect, but will rather lead to less economic opportunities, more abandoned properties, with only minimal, if any, environmental and health benefits. This proposal has significantly strayed from the balanced approach required by the underlying legislation and has, instead, imposed an overly proscriptive, command and control approach that will likely prove to be unnecessarily costly and unworkable in the real world. These rules represent a lost opportunity to improve conditions in these communities.

This letter will highlight our key concerns, but it is by no means an exhaustive list. Many of the signatories to this letter will be submitting more detailed, and entity-specific letters, as will many other members of the business and labor communities. There are however, two themes that connect the concerns reflected in this letter: The rules would be more effective in achieving real improvements in communities by relying on a more cooperative and less proscriptive approach; and these rules have not only stretched the parameters of the underlying statutory authority, they go beyond legislative intent. By selecting parameters intended to deem as many overburdened communities as possible as being disproportionately impacted, the proposed rules have effectively eviscerated the Legislature_s direction to compare overburdened communities against other areas to determine which communities may be overburdened with stressors. During the stakeholder process, the DEP stated that the use of the parameters ultimately proposed in the rule would result in over 90% of overburdened communities (OBCs) being deemed disproportionately impacted. Given this result, despite the statute_s requirement for a comparison for analysis, the rules effectively deem nearly all OBCs as disproportionately impacted. Given that two-thirds of the state_s population is located in OBCs and given that much of the rest of the state is either regulated as Highlands, Pinelands, or wetlands, a large proportion of the populated and developable area of the state will be a disproportionately impacted OBC and largely precluded from any new or expanded facilities. If the Legislature had intended this result, they would have merely deemed all OBCs as disproportionately and not bothered with the comparison. In addition, the determination of whether an OBC is disproportionately impacted by adverse stressors is made by comparing the impacts on the OBC to the more restrictive of the countywide or statewide level. Thus, the OBC is not compared to an average community, but rather, it is compared to a community that is above average in every single category. The EJ law explicitly provides that it applies only to permits for facilities located, in whole or in part, in an overburdened community. An OBC is clearly defined in the statute as a census block group with a specified percentage of certain populations. Despite this clear legislative language, the proposed rules seek to expand the statutory definition of overburdened community to
include all unpopulated census block groups adjacent to an OBC. This provision exceeds DEP_s jurisdiction under the EJ Law, which is limited to the communities that meet the statutory criteria for an OBC. Had the Legislature intended the EJ Law to apply in unpopulated areas, it would have included it in the statutory text. In addition, this provision is counterproductive, as one of the goals of the EJ Law is for new facilities to be located in areas that are not populated. Nevertheless, the adjacency rule makes this more difficult, by holding certain unpopulated areas to a higher standard than populated areas. This provision makes even less sense when you consider the fact that a facility adjacent to an OBC, but not in a zero population block group would not be regulated but could have as much impact as those in zero block groups. The use of zero block groups to regulate facilities under the EJ law seems to be a means to regulate certain facilities and not a logical, or legal, means to address potential impacts. This extension of the rules to block groups that do not meet the statutory definition of an OBC clearly exceeds DEP_s statutory authority, is contrary to the underlying law and should not be adopted.

Renewal Provisions. The provisions for renewals are of significant concern because they impact existing facilities with substantial investments and often long histories in neighborhoods. The Legislature recognized their special nature and thus prohibited the DEP from denying their renewal permit. However, the proposed rules would effectively deny renewal applications for facilities that are fully in compliance with all other laws due to the overly burdensome requirements being imposed to obtain a renewal. Requiring major source facilities to produce a new EJIS, host public hearings, and address all public comments every five years is excessive and unduly burdensome. Give!

en these circumstances, the compliance period for major source facilities should be extended to every other permit renewal, instead of every permit renewal, especially if the permit renewal contains few or no changes. The proposed rules require existing facilities to propose measures to avoid contributing to all adverse stressors, perform a facility-wide risk assessment to limit hazardous air pollutants (HAPS) and toxic substances to negligible levels, implement a feasibility assessment to control fine particulate matter, NOx, and VOCs, and then implement control measures to address all stressors not otherwise covered. In addition, for major sources, compliance with the EJIS requirements is duplicative of many of the requirements for Title V air permits. These analyses and control measures are being imposed on existing businesses which already meet DEP_s emissions requirements at a community level. These analyses and control measures far exceed what is required by existing law and require existing businesses to go beyond the levels of emissions the DEP has already deemed to be safe even at a community level. The cost, time, and unpredictability of these requirements on existing facilities could negatively impact the ability of businesses to operate in New Jersey. The benefits are likely minimal.

We remind the Department that these facilities all meet stringent DEP standards and are willing to do more to improve conditions in their communities. This rule, however, is several steps too far. Compelling public interest test should include economic benefits. Despite the fact that the law partly defines an OBC based on a low-income population and that the proposed rules include unemployment as a stressor, the rules specifically do not allow consideration of the economic benefits to a community from a facility, the precise benefits that would help raise income levels and lower unemployment. By considering potential impacts but not economic benefits, the DEP is only looking at one side of the ledger. In fact, these rules could have the absurd result of denying a permit even where good-paying jobs would be brought to a community where the local elected officials and even if the community itself wants the facility to be located in the OBC. The rules allow for no flexibility to consider relevant factors, especially given the economic benefits can directly impact both the number of low-income families in the community and the unemployment rate. One of the factors used to determine OBC status and one of the environmental and public health stressors sought to be addressed by the EJ Law, respectively. The_no contribution to a stressor_standard is too strict. In various provisions in the proposed rules, facilities can avoid certain conditions or procedures if they can demonstrate it would not contribute to an adverse stressor. Given the fact that many of the stressors are broadly defined (e.g. air pollution impacts, traffic) it will be difficult, if not outright impossible for any facility to meet this test. By having a hard and fast rule, it also discourages facilities from changing processes or installing new equipment where the net environmental benefit may far outweigh a minimal contribution to a stressor. There needs to be some de minimis or minor impact threshold, especially with regard to minor modifications under a permit, rather than a seemingly_zero impact test. Otherwise, this provision will have no practical meaning other than to increase costs and cause confusion. The definition of a new facility is overly broad and vague. The EJ law makes a distinction between a new facility and the expansion of an existing facility. This distinction is significant as permits for new facilities can be denied whereas those for existing facilities cannot. Yet, despite this clear distinction and plain meaning of the word new, the DEP has blurred these lines by including existing facilities in the definition of new if an existing facility has had a change!

in use or failed to obtain a permit. Absent a specific statutory definition, DEP is required to follow the plain and
generally understood meaning of the phrase _proposed new facility_, which does not include existing unpermitted facilities. DEP therefore does not have the authority to require existing unpermitted or lapsed permit facilities to comply with the requirements for _a proposed new facility_. The term _change in use_ is ambiguously and broadly defined as _a change in the type of operation of an existing facility_ that increases a contribution to a stressor. This is an extremely broad standard and ignores the plain language of the underlying statute. _New_ should be defined by the plain meaning of that word: not existing before. Under the proposed rule’s definition, if an existing facility fully in compliance with all laws added a third shift, switched from making widgets to masks during a pandemic, or changed the formula of one of its products, it will be treated as a new facility, trigger the EJ rule process, and then have the DEP compelled by law to deny its permit. This term is so vague that facility operators may not even know their actions would trigger the EJ law. This is not what the EJ law intended when it carved out the category of a _new facility_. Further, failure to obtain a permit, or letting one lapse, no matter how insignificant, harmless, or innocent, should not result in an EJ new facility analysis that would, very likely, result in the facility being denied a permit and forced to shut down. The definition of an _expansion_ is too broad and vague. The proposed rules define _expansion_ to be a _modification_ of _existing operations or footprint of development that has the potential_ to increase contributions to a stressor. A _modification_ of operations or an increase of a footprint are extremely stringent standards, especially when combined with a _potential_ to contribute to the broad categories of stressors. This term could include almost any change!

Conclusion _ We believe the DEP is missing an opportunity to encourage facilities to better engage with their community neighbors and to take actions to improve conditions for the long term. Rather, the DEP has proposed rules that seek to implicitly, if not explicitly, drive businesses out of OBCs. We can have both economic opportunities and healthy communities. These rules are a step backward in achieving that goal. We recommend that substantial amendments be made to these rules before they are considered for adoption.

Ray Cantor, VP Government Affairs, New Jersey Business & Industry Association (NJBIA)
Michael Fesen, Executive Director, Norfolk Southern Corporation & NJ Railroad Association
Anthony Russo, President, Commerce and Industry Association of NJ
Christina Renna, President & CEO, Chamber of Commerce Southern New Jersey
Lewis Dubueque, Vice President, National Waste & Recycling Association
Joseph De Flora, Director, The American Fuel & Petrochemical Manufacturers
Robert Briant, Chief Executive Officer, Utility & Transportation Contractors Association
Mark Longo, Director, ELEC825 _ Labor Management Fund of Operating Engineers Local 825_
Michael Giaimo, Regional Director, American Petroleum Institute
Dear Melissa P. Abatemarco,

Please accept our attached comments on the Environmental Justice Rule Proposal, PRN 2022-082.

Thank you,

Raymond Cantor
Vice President Government Affairs
New Jersey Business & Industry Association
(609) 433-4931
These comments are being sent on behalf of the New Jersey Business & Industry Association, the state’s largest and most influential business association. The business community is fully supportive of efforts to address the environmental and health challenges faced in many areas of the state where legacy pollution and social conditions have led to conditions with enhanced risks and a lower quality of life. We were also largely supportive of the underlying Environmental Justice Law, which these proposed rules seek to implement.

Before detailing concerns with the proposed rule, I think it is important to discuss the process. Upon the adoption of the underlying Environmental Justice Law (P.L. 2020, c.92 (C. 13:1D-157 et seq.)) the Department engaged in a yearlong process of stakeholder meetings. These meetings were primarily broken down into one set with business interests and the other with environmental justice advocates. Several of these stakeholder meetings were held, each covering a different topic. At each of these meetings PowerPoints were provided detailing issues and concepts the Department was considering. Recordings of these meetings were placed on the Department’s website.

While we do not agree with many of the decisions the Department has made in this proposed rule, we thank the Department for the process that led up to its proposal. The Department listened to all concerns, allowed for supplemental information to be submitted, and gave everyone a turn to speak or be heard. While any process can be improved (we would have liked to have been able to comment on a pre-proposal with actual language or more definitive concepts), we thank the Department for the process they put in place and encourage similar processes for future rulemaking.

Having said that, it is our strong belief that the proposal, as currently drafted, will not serve the interests of the communities it seeks to protect, but will rather lead to fewer economic opportunities and more business closures and abandoned properties, with only minimal, if any, environmental and health benefits. This proposal has significantly strayed from the balanced approach required by the underlying legislation and has, instead,
imposed an overly prescriptive, command and control approach that will prove to be unnecessarily costly and unworkable in the real world. These rules represent a lost opportunity to improve conditions in overburdened communities. If, however, the intent of the regulations is to drive out manufacturers and de-industrialize the state, the rules may very well achieve that goal.

There are two themes that connect the concerns reflected in this letter: The rules would be more effective in achieving real improvements in communities by relying on a more cooperative and less prescriptive approach; and these rules have not only stretched the parameters of the underlying statutory authority, but they also go beyond legislative intent.

The following are our substantive comments:

**Geographic point of comparison** – By selecting parameters intended to deem as many overburdened communities as possible as being disproportionately impacted, the proposed rules have effectively eviscerated the Legislature’s direction to compare overburdened communities against other areas to determine which communities may be overburdened with stressors. During the stakeholder process, the DEP stated that the use of the parameters ultimately proposed in the rule would result in over 90% of OBCs being deemed disproportionately impacted. Despite the statute’s requirement for a comparison and analysis, the rules effectively deem nearly all OBCs as disproportionately impacted.

Given that two-thirds of the state’s population is located in OBCs and given that much of the rest of the state is either regulated as Highlands, Pinelands, or wetlands, a large proportion of the populated and developable area of the state will be deemed a disproportionately impacted OBC and largely precluded from any new or expanded facilities. As discussed below, many existing facilities will be forced to close. If the Legislature had intended this result, it would have merely deemed all OBCs as disproportionately impacted and not bothered with the comparison. In addition, the determination of whether an OBC is disproportionately impacted by adverse stressors is made by comparing the impacts on the OBC to the more restrictive of the countywide or statewide level. Thus, the OBC is not compared to an “average” community, but rather, it is compared to a community that is above average in every single category. We would suggest the Department reevaluate how it applies the geographic point of comparison so that the number of disproportionately impacted communities is closer to 50%, not 90%.

**Use of stressor data** – One of the concerns we expressed early in the process was businesses would be tasked with doing their own research into numbers of stressors, impacts, and comparisons. We did not want an open-ended analysis of stressors which could be uncertain and prohibitively expensive. The rule proposal solves our problem by reliance on a list of stressors and data that the Department has provided. The Department has even developed tools so an applicant or an interested person can look at an area, determine what stressors are there, and make a comparison to other areas. By doing this upfront work the Department has removed any ambiguity in this phase of the rule implementation, has conserved resources, and has allowed for comparisons to be made uniformly. We are supportive of these provisions even if we have concerns with the stressors selected and how the law is applied.

**Zero population and adjacency** – The EJ law explicitly applies only to permits for facilities located, “in whole or in part, in an overburdened community.” An OBC is clearly defined in the statute as a census block group with a specified percentage of certain populations. Despite this clear legislative language, the proposed rules seek to expand the statutory definition of “overburdened community” to include all
unpopulated census block groups adjacent to an OBC. This provision exceeds the Department’s jurisdiction under the EJ Law, which is limited to the communities that meet the statutory criteria for an OBC. Had the Legislature intended the EJ Law to apply in unpopulated areas, it would have included that language in the statutory text.

In addition, this provision is counterproductive, as one of the goals of the EJ Law is for new facilities to be located in areas that are not populated. Nevertheless, the adjacency rule makes this more difficult, by holding certain unpopulated areas to a higher standard than populated areas. This provision makes even less sense when you consider the fact that a facility adjacent to an OBC, but not in a zero-population block group, would not be regulated but could have as much impact as those in zero block groups.

The “adjacency rule” seems to be a means to regulate certain specific facilities and does not represent a logical or legal means to address potential impacts. This extension of the rules to block groups that do not meet the statutory definition of an OBC clearly exceeds the Department’s statutory authority, is contrary to the underlying law, and should not be adopted.

The list of adverse stressors has numerous problems – Although the EJ Law seeks to address the health and safety of persons living in OBCs through public participation in permitting decisions, the list of environmental and public health stressors to be considered do not necessarily have any connection to the permit. For example, factors affecting air permitting decisions will now include the percentage of the population without a high school diploma, the community’s potential for flooding, the amount of land in the community encumbered by a deed notice or classification exception area, the percentage of houses built before 1950, and the number of combined sewer outflows. These (and other) factors have little to no connection to the potential impact of the facility on the community, and yet, a permitting decision might be subject to a drastically different level of scrutiny based on these factors.

The rules provide no opportunity for a permittee to question or challenge the Department’s determination that a community is subject to any adverse stressor. Even if a permittee can conclusively establish that what the Department has determined to be an adverse stressor in fact has no impact on a community, that permittee has no recourse, and as a result may be subject to greater scrutiny.

The fact the adverse stressors are all weighted equally presents another problem. For the purposes of the EJ Law, the Department considers the percent of impervious surface in an OBC to be as important as the cancer risk from diesel particulate matter. Other jurisdictions that use similar measures as stressors, such as California, have a weighted system that more appropriately compares one type of stressor to another.

The statewide 50th Percentile for seven of the 26 stressors is zero. (*i.e.*, Fine Particulate Matter PM$_{2.5}$, Railways per Square Mile, Soil Deed Notices, Groundwater CEAs, Solid Waste Facilities, Scrap Metal Facilities, and NJPDES Sites). This results in unfair and unrealistic comparisons whereby a community will be deemed subject to an “adverse stressor” without any consideration of the impacts to the community. For example, any OBC containing a NJPDES site is deemed “adversely impacted” by that stressor.

Comparing an OBC to the statewide percentage of tree canopy and impervious surface is unfair, given much of the state is wooded. It also fails to account for the fact the OBC may be in an urban area and cannot reasonably be compared to suburban or rural areas on these factors. While the EJ legislation was still being considered in the Legislature, the business community expressed concerns that urban areas would be unfairly compared to rural areas where there are likely fewer stressors. The Department
repeatedly stated that this was not their intention and would not be the case. However, this is very much the case, and it results in unfair comparisons. Measuring potential lead exposure by the percentage of houses built before 1950 is arbitrary and capricious, as it unfairly penalizes OBCs based on the age of the neighborhood. The New Jersey Department of Health maintains a database for childhood lead exposure, listed by municipality. That data would be a more appropriate measure of potential lead exposure.

Treating known contaminated sites, CEAs, and deed notices as three separate adverse stressors is specious, arbitrary, and capricious. The rule proposal acknowledges CEAs and deed notices (institutional controls) are measures which protect the health and safety of the community. Nevertheless, the rule proposal treats these protective measures as environmental and public health stressors, with the same weight as known contaminated sites.

The rule proposal fails to account for the fact that many remediated sites include both a deed notice and CEA. In those situations, a completed site remediation project would be counted as a stressor twice, while a facility which has not been addressed at all is counted only once. In this way, the Department irrationally and arbitrarily would identify the fact that pollution has already been cleaned up as having double the negative impact on a community than a parcel in which pollution has gone unaddressed.

The rule proposal’s stated reason for including deed notices is based on a fundamental misunderstanding that such properties must remain completely unused. Instead, most often only residential uses are prohibited, if at all, and in many cases such land can be used for other purposes, including public parks and recreational open space.

Renewal provisions – The provisions for renewals are of significant concern because they impact existing facilities with substantial investments and often long histories in communities. The Legislature recognized their special nature and thus prohibited the Department from denying their renewal permit. However, the proposed rules would effectively deny renewal applications for facilities that are fully in compliance with all other laws due to the overly burdensome requirements being imposed to obtain a renewal.

The proposed rules require existing facilities to propose measures to avoid “contributing” to all adverse stressors, perform a facility-wide risk assessment to limit hazardous air pollutants (HAPS) and toxic substances to negligible levels, implement a feasibility assessment to control fine particulate matter, NOx, and VOCs, and then implement control measures to address all stressors not otherwise covered. In addition, for major sources, compliance with the EJIS requirements is duplicative of many of the requirements for Title V air permits. These analyses and control measures are being imposed on existing businesses which already meet DEP’s emissions requirements at a community level.

These analyses and control measures far exceed what is required by existing law and require existing businesses to go beyond the levels of emissions the DEP has already deemed to be safe even at a community level.

The cost, time, and unpredictability of these requirements on existing facilities will no doubt influence business decisions on whether to continue operations in New Jersey. The benefits are likely minimal. At the end of the day, we fear that more facilities will shutter their doors. Jobs and tax revenues will be lost. These impacts, by the way, are totally ignored in the impact statements of the rule.
Proposed NJAC 7:1C-8.2 requires any party seeking renewal of a major source permit “shall analyze and propose all control measures necessary to avoid facility contributions to all adverse environmental and public health stressors in the overburdened community.” This should be revised to state “...shall analyze and propose feasible control measures necessary to avoid facility contributions...”

In its current form, the proposed regulation is vague and ambiguous as to what control measures must be analyzed and what control measures must be proposed, which are already more specifically set forth in §§ 8.3 through 8.6.

It also is made superfluous by the next sentence, which clarifies that if a facility can avoid a disproportionate impact to all adverse stressors, the Department will be permitted to grant the application.

NJAC 7:1C-8.6(b) requires an applicant for a major source permit renewal to propose feasible onsite measures to minimize any facility contributions to environmental and public health stressors that cannot be avoided. Under § 5.4 and § 6.3, however, new facilities and facility expansions are also permitted to address such facility contributions via: (a) feasible offsite measures; (b) reducing adverse environmental and public health stressors to which the facility does not contribute; and (c) implementing feasible measures that provide a net environmental benefit to the community. Applicants for major source permit renewals should also be able to address facility contributions to adverse stressors via these three alternatives.

We remind the Department these facilities all meet stringent DEP standards and are willing to do more to improve conditions in their communities. This rule, however, is several steps too far.

Requiring major source facilities to produce a new EJIS, host public hearings, and address all public comments every five years is excessive and unduly burdensome. Given these circumstances, the compliance period for major source facilities should be extended to every other permit renewal, instead of every permit renewal, especially if the permit renewal contains few or no changes.

No clear timelines for Department reviews – The Department has no affirmative timeline to act or respond in various essential steps in the process. Without firm dates for decision making, this process can drag on indefinitely. The uncertainty this causes will be detrimental to economic activity. Other programs within the Department do have timeframes for actions and they have positively benefited the process. Ninety-day permit rules in land use have been an effective tool in forcing action within the Department. We request that these rules contain similar provisions.

Compelling public interest test should include economic benefits – Despite the fact that the law partly defines an OBC based on a low-income population and that the proposed rules include unemployment as a stressor, the rules specifically do not allow consideration of the economic benefits to a community from a facility, the precise benefits that would help raise income levels and lower unemployment. By considering potential impacts but not economic benefits, the Department is only looking at one side of the ledger.

In fact, these rules could have the absurd result of compelling the denial of a permit even where good-paying jobs would be brought to a community in which the local elected officials and even the community itself wants the facility to be located.
The rules allow for no flexibility to consider relevant factors, especially given the economic benefits can directly impact both the number of low-income families in the community and the unemployment rate — one of the factors used to determine OBC status and one of the environmental and public health stressors sought to be addressed by the EJ Law, respectively.

The “no contribution to a stressor” standard is too strict — In various provisions in the proposed rules, facilities can theoretically avoid certain conditions or procedures if they can demonstrate it would not “contribute” to an adverse stressor. Given the fact that many of the stressors are broadly defined (e.g., air pollution impacts, traffic) it will be difficult, if not outright impossible, for any facility to meet this test.

By having a hard and fast rule, it also discourages facilities from changing processes or installing new equipment where the net environmental benefit may far outweigh a minimal contribution to a stressor. There needs to be some de minimis or minor impact threshold, especially regarding minor modifications under a permit, rather than a seemingly “zero impact” test. Otherwise, this provision will have no practical meaning other than to increase costs and cause confusion.

We note that other environmental regulatory programs do incorporate these concepts. Land use allows for a certain percentage of a footprint to be expanded without triggering more extensive reviews. The air program employs a minor modification standard for major facilities. The use of general permits and permits by rule itself is an example of the recognition of de minimis impact concept.

The Department should analyze each stressor and determine what a de minimis threshold would look like. Setting de minimis thresholds is also an effective means of incentivizing facilities to work toward limiting impacts through the use of expedited permitting. As currently drafted, the thresholds throughout the proposed rule relating to contributions to stressors are totally meaningless.

The definition of a “new” facility is overly broad and vague — The EJ law makes a distinction between a “new” facility and the expansion of an “existing” facility. This distinction is significant as permits for “new” facilities can be denied whereas those for existing facilities cannot. Yet, despite this clear distinction and plain meaning of the word “new,” the Department has blurred these lines by including “existing” facilities in the definition of “new” if an existing facility has had a change in use or failed to obtain a permit. Absent a specific statutory definition, the Department is required to follow the plain and generally understood meaning of the phrase “proposed new facility,” which does not include existing unpermitted facilities or other existing facilities engaging in normal business operations.

The term “change in use” is ambiguously and broadly defined as “a change in the type of operation of an existing facility” that increases a contribution to a stressor. This is an extremely broad standard and ignores the plain language of the underlying statute. “New” should be defined by the plain meaning of that word: not existing before.

Under the proposed rule’s definition, if an existing facility fully in compliance with all laws added a third shift, switched from making widgets to masks during a pandemic, or changed the formula of one of its products, it will be treated as a new facility, trigger the EJ rule process, and then have the Department compelled by law to deny its permit.

This term is so vague that facility operators may not even know their actions would trigger the EJ law. This is not what the Legislature intended when it carved out the category of a “new facility.”
Further, failure to obtain a permit, or letting one lapse, no matter how insignificant, harmless, or innocent, should not result in an “new facility” analysis under the EJ Rules that would, very likely, result in the facility being denied a permit and forced to shut down.

Had the Legislature intended to treat existing unpermitted or lapsed permit facilities as a new facility, it would have used the phrase “proposed new permits.” The Department therefore does not have the authority to require existing unpermitted or lapsed permit facilities to comply with the requirements for “a proposed new facility.”

The definition of an “expansion” is too broad and vague – The proposed rules define “expansion” to be a “modification” of “existing operations or footprint of development that has the potential” to increase contributions to a stressor. A “modification” of operations or an increase of a footprint are extremely stringent standards, especially when combined with a “potential” to contribute to the broad categories of stressors. This term could include almost any change at a facility and will have facilities continually triggering the EJ rules.

Even if no further conditions are warranted or imposed, the facility will nevertheless be required to go through the costly and time-consuming EJIS and hearing process for every minor change.

This uncertainty and cost will undoubtedly make operating in OBCs difficult if not impossible.

There needs to be some de minimis threshold below which the EJ rules are not triggered. Similar de minimis thresholds already exist in land use regulations where permits are based on the size of a development’s expansion.

Environmental Justice Impact Statement – Creating an environmental justice impact statement is potentially very costly and time-consuming.

If the initial screening information for the overburdened community collected pursuant to NJAC 7:1C-2.3 indicates the community is not subject to a disproportionate impact of adverse environmental and public health stressors, then under NJAC 7:1C-2.2 and -3.1, an applicant seeking to renew an existing permit should not be required to complete an environmental justice impact statement.

Public participation – Under the proposed regulations, applicants are required to accept, consider, and address public comments from all sources, without regard to the commenter’s connection to the community. Requiring applicants to entertain and address issues raised by outside interest groups, which issues may have no relevance to or regard to for the community in question, places an unreasonable burden on applicants.

The Department should instead limit the scope of public comment to “interested parties,” which should be defined to include residents, property owners, and individuals or organizations with some connection to the overburdened community or municipality.

The definition of a “material change” is too broad and vague - The Department should more clearly define and clarify what constitutes a material change.

NJAC 7:1C-4.3(b) indicates if a party makes a “material change” to its permit application after it has completed the public notice or public hearings, “the Department will require the applicant...to conduct additional public notice and public hearings.” Without a clear definition, “material change” is determined
entirely at the discretion of the Department. Applicants considering changes to the permit application to address public comments or Department suggestions will not be able to determine whether doing so will require the applicant to repeat the entire public participation process and result in a minimum delay of 90 days. A more specific and narrower definition of “material change” can eliminate this confusion.

The term “material change” is not defined and, presumably, it even includes changes in the facility plans that further limit emissions or impacts to stressors. There are no timeframes given for this “additional public notice and public hearing” or whether the entire process, including responses to comments, must be repeated.

This requirement can set up a continuing “do loop” of public comment, changes in response, and then a required new process all over again. It is a disincentive for an applicant to propose conditions that would improve a community for fear that such conditions would trigger a “material change” process.

The rules are unclear whether an applicant for a new or renewed permit that triggers a full environmental justice review has to re-notice (adding more time, costs and process) after they agree to actions that will lower the impact of their operations. It needs to be clarified that re-noticing is not necessary if the impact variables have been lowered.

It is a fact that opponents of projects try to “time out” projects that are seeking financing. Having an endless loop of mandatory re-noticing would be a disaster and DEP is clearly allowed to clarify under the law.

The time and cost of going through this process can be prohibitive for many facilities and can serve as a procedural weapon for opponents to the facility. Process is a standard tool used to oppose projects, whereby opponents try to delay a project as long as possible until it is no longer viable, therefore, this concern is real. We recommend the elimination of the necessity to go through a new hearing process and instead require only a notice of changes to be made. At the least, if the material change results in less pollution or less impacts to stressors, it should not require a new hearing process.

**Data set changes** — The Department has expressed its intention to update not only the census data every two years, but also the stressors. While operating with the latest information is usually a good thing, too-frequent updates of data points will create substantial uncertainty in the business community. A facility currently not in an OBC might be in two years. An OBC not considered disproportionately impacted, may be in the next updated data set. This proposed frequency of data updates will result in a facility’s inability to do long-term and even short-term planning. Businesses need predictability if they are to invest capital and create jobs. A total lack of predictability will result in a loss of capital investment. That is simply how capital investment works.

We recognize the need to update data. However, we would recommend that it be done on a less frequent basis than the current two-year plan. Ten years is a much more reasonable timeframe to update data and strike a balance between necessary protections and predictability.

Another option might be for the Department to update the data sets when the underlying regulations are re-adopted every seven years.

No regulatory program is perfect, and no data sets are either. There is thus no compelling reason to update data so frequently at the expense of predictability and economic stability.
We also recommend that if data changes after a facility has submitted a permit application that it be grandfathered for that permit.

**Supplemental EJIS** – While we understand the need for supplemental information in the EJIS where there are adverse cumulative stressors or the facility cannot avoid contributing to a disproportionate impact, the amount and type of information being required seems to be a “kitchen sink” approach rather than a thoughtful approach as to what information may be helpful in more fully understanding the environmental and health impacts of a community.

While much of this information is publicly attainable, it will be very costly to hire a consultant to do this work and likely will have little if any impact on the community’s understanding of the facility or of its impact on stressors. The supplemental EJIS provisions read like they are intended to be a full employment for environmental consultants regulation.

We suggest the Department take a much more limited approach and if supplemental information is needed for an EJIS the Department should let the facility propose what information needs to be provided, subject to Department approval, based on the specific conditions of the facility and its application.

**Compelling public purpose and community opposition** – In determining whether a compelling public interest exists, the proposal states the Department may consider as relevant “if there is a significant degree of public interest in favor of or against an application from individuals residing in the overburdened community.” Taking a “vote” of those who engage in a public process is not how regulatory permit decisions have been or should be made.

If a member of the public raises a factual matter that the Department should consider when applying regulatory standards, that is appropriate. It is not appropriate to apply a subjective standard of community support or opposition based on who is engaged from the community and who has the loudest voice. This is a totally unpredictable regulatory standard. It is akin to a dance concert where the audience is asked to applaud their favorite contestant and the contestant who receives the most applause is declared the winner. This is a dangerous precedent for a regulatory agency that often must make difficult decisions based on science, sound policy, and law. Decisions should not be made based on who has the loudest voice.

**Recycling** – Despite the tremendous environmental benefits from recycling activities, the decades long policies to support the recycling industry in New Jersey, and even the beneficial impacts on reduction of greenhouse gas emissions, the proposed rules seem to go out of their way to single out scrap metal and other recycling industries and to drive them out of all OBCs, if not the entire state. These facilities are often located near population centers because that is where the material is generated and where former industrial facilities can be more easily and economically re-purposed. These facilities are part of county waste management plans, have undergone numerous processes to be sited, and meet all required standards of the Department’s various air, water, and solid waste rules.

We stand by the comments submitted by the New Jersey Chapter of the Institute of Scrap Recycling Industries and the National Waste & Recycling Association, which has expressed significant concerns with the rule’s structure. While we recognize the legislative mandate to address recycling facilities under the EJ law, the proposed rules are so proscriptive, burdensome, and broad as to make them unworkable. We either want to enhance recycling in the state or we do not. Driving these facilities out of OBCs is not the
way to promote recycling in New Jersey. The Department should reconsider how it regulates recycling facilities under this rule.

Railroads – We support the comments of the New Jersey Railroad Association which objects to the provisions that consider proximity to railroads as a stressor. Railroads help solve the problem of congested roads and truck traffic and should be thought of in a positive manner and not as a stressor. Considering railroads as a stressor sends the wrong signal to the public and may even have the long-term effect of discouraging their use in favor of long-haul trucking. We recommend this stressor be eliminated.

Requirements for new facilities, expansions, and renewals – While we can have disagreements on the OBCs considered disproportionately impacted, how the EJIS process should work, what should be a de minimis impact, and various other process and procedural aspects of the proposed rule, the main concern we have are the standards that must be met in order to be deemed complete and allowed to go through the permit process. It is our belief that the standards being imposed by this rule are overly proscriptive, costly, and will ultimately drive manufacturers, recyclers, and others out of the over 300 municipalities with OBCs and even out of the state.

The Localized Impact Control Technology (LICT) requirements and the imposition of top-down control measures for both new (if a compelling public interest) or expanded facilities is overly protective and costly. It will not only prevent most facilities from expanding, but it will also force them to look elsewhere to expand. We are aware of one major national manufacturer whose parent company is looking to build a new facility in another state and expand their New Jersey facility that is now considering cancelling its New Jersey expansion and instead increasing the size of its new out-of-state facility. They cited this EJ rule proposal as the reason for their reconsideration.

Imposing control technologies equivalent to Lowest Achievable Emission Rate (LAER) where economic feasibility is not considered could result in unjustifiably excessive costs without corresponding environmental and public health benefits

Infrastructure projects will also now be more costly and time-consuming as a result of these standards, which will mean fewer projects will be done, and the public will be inconvenienced for longer periods of time. This will have real world impacts for the very communities we want to protect.

The standards being imposed on renewals will all but force many of these facilities to consider shuttering their operations. The facility-wide health risk assessment for air toxics has become the standard requirement for all Title V renewals over the past five years. We recognize that under existing policy, everyone has to do it even though it is not currently in regulations. It is a negotiated and very complicated process, not something that lends itself to a standard checklist that all facilities can follow predictably in the same way. This requirement, which will now be memorialized in regulations, carries with it a heavy dose of uncertainty. This will especially be the case in the context of an EJIS review process with community involvement.

While we appreciate the Department not creating a new process or standard, it is still problematic in this context. Specific to the facility-wide health risk assessment for Title V renewals, 7:1C-8.4(d) of the proposed rule suggests that only a “negligible” risk outcome will be acceptable for an affected facility, and that conditions will be imposed on facilities with non-negligible risk with no case-by-case assessment of the specific circumstances of the modeled non-negligible risk. This is counter to long-standing DEP policy
to refer non-negligible (but potentially acceptable) risk levels of between 10 in one million and 100 in one million to the NJDEP Risk Management Committee (RMC). According to NJDEP Technical Manual 1003, *Guidance on Preparing a Risk Assessment for Air Contaminant Emissions* (TM1003), the “RMC may consider, but are not limited to the following factors: overall impact on the sensitive receptor population; the uncertainties associated with the health risk; compliance history; previous compliance efforts by the facility; new and pending regulations; and cost analysis.” The RMC *may* recommend further actions based on review of the factors above.

The Department should follow the complete health risk assessment process that has evolved over 30+ years and is protective of public health, and up to date in practice and in the NJDEP Technical Manual 1003. The options for RMC review and case-by-case review are a fundamental and important part of this well-developed policy and should be clearly allowed in any facility-wide health risk assessment that is part of the EJ process. The simplest solution would be for this section of the rule to state that “facility-wide health risk assessments for Title V renewals must be completed in accordance with Technical Manual 1003.”

Some facilities are subjected to the Federal fence-line monitoring requirements which provides actual benzene concentrations from a comprehensive network of monitoring locations surrounding facility property, with thousands of samples taken per year, and is designed to ensure that the public is not exposed to unhealthy levels of air pollution, such as benzene, ethylbenzene, toluene and xylenes. The Department should consider the results of federal fence-line monitoring programs in the overall facility wide health risk assessment.

A technical feasibility analysis on equipment 20 years old eliminates grandfather provisions that have kept many facilities in operation.

The imposition of further requirements to avoid any contributions to all stressors may be the proverbial icing on the closure or relocation cake. There is no limit as to what this means or what it would entail.

While these requirements sound good to activists who openly call for the closure of these facilities, these policies will not be good for the overall community, the municipalities in which they are located, or for the state. This proposal misses the forest from the trees. There are numerous social issues that drive conditions in OBCs and most pollution comes from outside these areas as well. Local facilities do not cause low income or unemployment, just the opposite.

Local facilities do not control impacts from airports, ports, or major roadways. Yet, these facilities are being held responsible for stressors they cannot control. Making these facilities do more or close will not solve the underlying problems facing these communities.

There are larger issues that need to be addressed. The Department would have done better to focus on programs such as the Community Collaborative Initiative, allowing facilities to propose projects that would have resulted in a net environmental benefit for communities, facilitating communications between businesses and communities, and seeking to address the larger sources of pollution impacting the state. Rather than solving these real problems, the Department is focusing on each facility and trying to obtain minimal benefit at maximum cost. There is a better way.

**Miscellaneous technical questions** – The following are questions we have on provisions throughout the proposal:
• 7:1C-2.2 states that “new” facilities must comply with 7:1C-6. However, 7:1C-6 refers to “expansions” not “new” facilities. This needs to be corrected;
• Does the requirement to consider feasible control measures in 7:1C-6.3 require an applicant to take all these measures or only the top effective one?
• Are the “feasible measures” required to be listed in 7:1C-2.2(b)2 the same as the “control measures” required in 7:1C-6.3 (b)?
• Do the requirements to “avoid” contributions to adverse stressors apply if an OBC is already subject to adverse cumulative stressors or only if it would result in a disproportionate impact?
• Do the renewal control measures provisions require that all stressors must be addressed even if not adverse?

Conclusion – We believe the DEP is missing an opportunity to encourage facilities to better engage with their community neighbors and to take actions to improve conditions for the long term. Rather, the DEP has proposed rules that seek to implicitly, if not explicitly, drive businesses out of OBCs. We can have both economic opportunities and healthy communities. These rules are a step backward in achieving that goal. We recommend that substantial amendments be made to these rules before they are considered for adoption.

Raymond Cantor
New Jersey Business & Industry Association (NJBIA)
Dear Melissa P. Abatemarco,

Please accept the attached comments on the Environmental Justice Rule Proposal, PRN 2022-082 which was successfully submitted through the online portal. I am also submitting a copy via email for formatting purposes.

Thank you,

Raymond Cantor
Vice President Government Affairs
New Jersey Business & Industry Association
(609) 433-4931
To: Melissa P. Abatemarco, Esq.
Attn.: DEP Docket No. 04-22-04, PRN 2202-082
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, New Jersey 08625-0402

Date: September 6, 2022
Re: DEP Dkt. No. 04-22-04
Proposal Number: PRN 2022-082

On behalf of the undersigned business entities, please accept our comments on the Department of Environmental Protection’s proposed Environmental Justice Rules. The business community is fully supportive of efforts to address the environmental and health challenges being faced in many areas of the state where pollution impacts and social conditions may have led to conditions with enhanced risks and a lower quality of life. We were also largely supportive of the underlying Environmental Justice Law which these proposed rules seek to implement.

However, it is our strong belief that the proposal, as currently drafted, will not serve the interests of the communities it seeks to protect, but will rather lead to less economic opportunities, more abandoned properties, with only minimal, if any, environmental and health benefits. This proposal has significantly strayed from the balanced approach required by the underlying legislation and has, instead, imposed an overly prescriptive, command and control approach that will likely prove to be unnecessarily costly and unworkable in the real world. These rules represent a lost opportunity to improve conditions in these communities.

This letter will highlight our key concerns, but it is by no means an exhaustive list. Many of the signatories to this letter will be submitting more detailed, and entity-specific letters, as will many other members of the business and labor communities. There are however, two themes that connect the concerns reflected in this letter: The rules would be more effective in achieving real improvements in communities by relying on a more cooperative and less prescriptive approach; and these rules have not only stretched the parameters of the underlying statutory authority, they go beyond legislative intent.

Geographic point of comparison – By selecting parameters intended to deem as many overburdened communities as possible as being disproportionately impacted, the proposed rules have effectively eviscerated the Legislature’s direction to compare overburdened communities against other areas to determine which communities may be overburdened with stressors. During the stakeholder process, the DEP stated that the use of the parameters ultimately proposed in the rule would result in over 90% of overburdened communities (OBCs) being deemed disproportionately impacted. Given this result, despite the statute’s requirement for a comparison and analysis, the rules effectively deem nearly all OBCs as disproportionately impacted. Given that two-thirds of the state’s population is located in OBCs and given that much of the rest of the state is either regulated as Highlands, Pinelands, or wetlands, a large proportion of the populated and developable area of the state will be a disproportionately impacted OBC and largely precluded from any new or expanded facilities. If the Legislature had intended this result, they would have merely deemed all OBCs as disproportionate and not bothered with the comparison. In addition, the determination of whether an OBC is disproportionately impacted by adverse stressors is made by comparing the impacts on the OBC to the more restrictive of the countywide or statewide level. Thus, the OBC is
not compared to an “average” community, but rather, it is compared to a community that is above average in every single category.

Zero population and adjacency – The EJ law explicitly provides that it applies only to permits for facilities located, “in whole or in part, in an overburdened community.” An OBC is clearly defined in the statute as a census block group with a specified percentage of certain populations. Despite this clear legislative language, the proposed rules seek to expand the statutory definition of “overburdened community” to include all unpopulated census block groups adjacent to an OBC. This provision exceeds DEP’s jurisdiction under the EJ Law, which is limited to the communities that meet the statutory criteria for an OBC. Had the Legislature intended the EJ Law to apply in unpopulated areas, it would have included it in the statutory text.

In addition, this provision is counterproductive, as one of the goals of the EJ Law is for new facilities to be located in areas that are not populated. Nevertheless, the adjacency rule makes this more difficult, by holding certain unpopulated areas to a higher standard than populated areas. This provision makes even less sense when you consider the fact that a facility adjacent to an OBC, but not in a zero population block group would not be regulated but could have as much impact as those in zero block groups. The use of zero block groups to regulate facilities under the EJ law seems to be a means to regulate certain facilities and not a logical, or legal, means to address potential impacts. This extension of the rules to block groups that do not meet the statutory definition of an OBC clearly exceeds DEP’s statutory authority, is contrary to the underlying law and should not be adopted.

Renewal Provisions – The provisions for renewals are of significant concern because they impact existing facilities with substantial investments and often long histories in neighborhoods. The Legislature recognized their special nature and thus prohibited the DEP from denying their renewal permit. However, the proposed rules would effectively deny renewal applications for facilities that are fully in compliance with all other laws due to the overly burdensome requirements being imposed to obtain a renewal. Requiring major source facilities to produce a new EJIS, host public hearings, and address all public comments every five years is excessive and unduly burdensome. Given these circumstances, the compliance period for major source facilities should be extended to every other permit renewal, especially if the permit renewal contains few or no changes.

The proposed rules require existing facilities to propose measures to avoid “contributing” to all adverse stressors, perform a facility-wide risk assessment to limit hazardous air pollutants (HAPS) and toxic substances to negligible levels, implement a feasibility assessment to control fine particulate matter, NOx, and VOCs, and then implement control measures to address all stressors not otherwise covered. In addition, for major sources, compliance with the EJIS requirements is duplicative of many of the requirements for Title V air permits. These analyses and control measures are being imposed on existing businesses which already meet DEP’s emissions requirements at a community level.

These analyses and control measures far exceed what is required by existing law and require existing businesses to go beyond the levels of emissions the DEP has already deemed to be safe even at a community level. The cost, time, and unpredictability of these requirements on existing facilities could negatively impact the ability of businesses to operate in New Jersey. The benefits are likely minimal.

We remind the Department that these facilities all meet stringent DEP standards and are willing to do more to improve conditions in their communities. This rule, however, is several steps too far.

Compelling public interest test should include economic benefits – Despite the fact that the law partly defines an OBC based on a low-income population and that the proposed rules include unemployment as a stressor, the rules specifically do not allow consideration of the economic benefits to a community from a facility, the precise benefits that would help raise income levels and lower unemployment. By considering potential impacts but not economic benefits, the DEP is only looking at one side of the ledger. In fact, these rules could have the absurd result of
denying a permit even where good-paying jobs would be brought to a community where the local elected officials and even if the community itself wants the facility to be located in the OBC. The rules allow for no flexibility to consider relevant factors, especially given the economic benefits can directly impact both the number of low-income families in the community and the unemployment rate — one of the factors used to determine OBC status and one of the environmental and public health stressors sought to be addressed by the EJ Law, respectively.

The “no contribution to a stressor” standard is too strict – In various provisions in the proposed rules, facilities can avoid certain conditions or procedures if they can demonstrate it would not “contribute” to an adverse stressor. Given the fact that many of the stressors are broadly defined (e.g. air pollution impacts, traffic) it will be difficult, if not outright impossible for any facility to meet this test. By having a hard and fast rule, it also discourages facilities from changing processes or installing new equipment where the net environmental benefit may far outweigh a minimal contribution to a stressor. There needs to be some de minimis or minor impact threshold, especially with regard to minor modifications under a permit, rather than a seemingly “zero impact” test. Otherwise, this provision will have no practical meaning other than to increase costs and cause confusion.

The definition of a “new” facility is overly broad and vague – The EJ law makes a distinction between a “new” facility and the expansion of an “existing” facility. This distinction is significant as permits for “new” facilities can be denied whereas those for existing facilities cannot. Yet, despite this clear distinction and plain meaning of the word “new,” the DEP has blurred these lines by including “existing” facilities in the definition of “new” if an existing facility has had a change in use or failed to obtain a permit. Absent a specific statutory definition, DEP is required to follow the plain and generally understood meaning of the phrase “proposed new facility,” which does not include existing unpermitted facilities. DEP therefore does not have the authority to require existing unpermitted or lapsed permit facilities to comply with the requirements for “a proposed new facility”.

The term “change in use” is ambiguously and broadly defined as “a change in the type of operation of an existing facility” that increases a contribution to a stressor. This is an extremely broad standard and ignores the plain language of the underlying statute. “New” should be defined by the plain meaning of that word: not existing before. Under the proposed rule’s definition, if an existing facility fully in compliance with all laws added a third shift, switched from making widgets to masks during a pandemic, or changed the formula of one of its products, it will be treated as a new facility, trigger the EJ rule process, and then have the DEP compelled by law to deny its permit. This term is so vague that facility operators may not even know their actions would trigger the EJ law. This is not what the EJ law intended when it carved out the category of a “new facility.”

Further, failure to obtain a permit, or letting one lapse, no matter how insignificant, harmless, or innocent, should not result in an EJ new facility analysis that would, very likely, result in the facility being denied a permit and forced to shut down.

The definition of an “expansion” is too broad and vague – The proposed rules define “expansion” to be a “modification” of “existing operations or footprint of development that has the potential” to increase contributions to a stressor. A “modification” of operations or an increase of a footprint are extremely stringent standards, especially when combined with a “potential” to contribute to the broad categories of stressors. This term could include almost any change at a facility and will have facilities continually triggering the EJ rules. Even if no further conditions are warranted or imposed, the facility will nevertheless be required to go through the costly and time-consuming EJIS and hearing process for every minor change. This uncertainty and cost could undoubtedly make operating in OBCs difficult if not impossible. There needs to be some de minimis threshold below which the EJ rules are not triggered. Similar de minimis thresholds already exist in land use regulations where permits are based on the size of a development’s expansion.

Conclusion – We believe the DEP is missing an opportunity to encourage facilities to better engage with their community neighbors and to take actions to improve conditions for the long term. Rather, the DEP has proposed
rules that seek to implicitly, if not explicitly, drive businesses out of OBCs. We can have both economic opportunities and healthy communities. These rules are a step backward in achieving that goal. We recommend that substantial amendments be made to these rules before they are considered for adoption.

Ray Cantor
VP Government Affairs
New Jersey Business & Industry Association (NJBIA)

Michael Fesen
Executive Director
Norfolk Southern Corporation & NJ Railroad Association

Anthony Russo
President
Commerce and Industry Association of NJ

Christina Renna
President & CEO
Chamber of Commerce Southern New Jersey

Lewis Dubuque
Vice President
National Waste & Recycling Association

Joseph De Flora
Director
The American Fuel & Petrochemical Manufacturers

Robert Briant
Chief Executive Officer
Utility & Transportation Contractors Association

Mark Longo
Director
ELEC825 – Labor Management Fund of Operating Engineers Local 825

Michael Giaimo
Regional Director
American Petroleum Institute

Michael Miller
President
ISRI New Jersey Chapter
From: DEP rulemakingcomments [DEP]
To: DEP rulemakingcomments [DEP]
Cc: jestabrook@lindabury.com
Subject: DEP Dkt. No. 04-22-04 Environmental Justice
Date: Friday, September 2, 2022 12:45:09 PM

** Electronic Rulemaking Comment **
Submisison Date: 09/02/2022 12:45:01
First Name: James
Last Name: Estabrook
Affiliation: Linden Industrial Association
City: Westfield
State: NJ
Zip: 07091
Email: jestabrook@lindabury.com
Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: Dear Ms. Abatemarco,
PPPPPPPPPRe: Linden Industrial Association PPPPComments on the NJDEP Environmental Justice Rules Proposal PPPPP PPP DEP DOCKET NO. 04-22-04, PROPOSAL NO. PRN 2022-082PPPPPPPOn behalf of the governing body of the Linden Industrial Association (the _Association_), please accept our comments on the Department of Environmental Protection_s proposed Environmental Justice Rules (the _Rules_). Notably, the Association collectively represents the industries located or having interests in the City of Linden and its contiguous municipalities. Please see the list of Members below. Accordingly, the Association is fully supportive of the Department_s efforts to address environmental and health challenges. PPPPPPPPHowever, with respect to the current language of the Rules, the Association wholeheartedly believes that the Rules have gone beyond the legislative language and intent which causes great concern in the Association_s community _ the City of Linden, in particular. As a result, the Rules will have a negative and disparate impact on the low-income and minority communities which the legislation seeks to protect. Here, if the Rules were implemented, it will be extremely difficult, if not impossible, for certain businesses located in the City of Linden and its contiguous municipalities to continue business operations. PPPPPPPPPFurther, the Association urges amendment of the proposed Rule to address the following:PPPPPPPP__Geographic point of comparison. By selecting parameters intended to deem as many overburdened communities as possible as being disproportionately impacted, the Rules have effectively eviscerated the Legislature_s direction to compare overburdened communities against other areas to determine which ones may be overburdened with stressors. During the stakeholder process, the DEP stated that the use of the parameters ultimately proposed in the Rule would result in over 90% of overburdened communities (OBCs) being deemed disproportionately impacted. Given this result, despite the statute_s requirement for a comparison and analysis, the Rules effectively deem nearly all OBCs as disproportionately impacted. Given that two-thirds of the State_s population is located in OBCs and given that much of the rest of the State is either regulated as Highlands, Pinelands, or wetlands, a large proportion of the populated and developable area of the State will be a disproportionately impacted OBC and largely precluded from any new or expanded facilities. If the Legislature had intended this result, they would have merely deemed all OBCs as disproportionate and not bothered with the comparison.PPPPPPPP__Zero population and adjacency. The EJ law explicitly provides that it applies only to permits for facilities located, _in whole or in part, in an overburdened community._ An OBC is clearly defined based on it being a census block group with a specified percentage of certain populations. Despite this clear legislative language, the Rules state that they will also be applicable to block groups with a _zero population_ if adjacent to an OBC. This provision makes even less sense when you consider the fact that a facility adjacent to an OBC, but not in a zero-population block group would not be regulated but could have as much impact as those in zero block groups. The use of zero block groups to regulate facilities under the EJ law seems to be a means to regulate certain facilities and not a logical, or legal, means to address potential impacts. This extension of the Rules to block groups that do not meet the statutory definition of an OBC is clearly contrary to the underlying law and should not be adopted. PPPPPPPP__Renewal Provisions. The provisions for renewals are of significant concern because these are existing facilities with substantial investments and often long histories in neighborhoods. The Legislature recognized their special nature and thus prohibited the DEP from denying their renewal permit. However, the Rules would effectively deny renewal applications, or substantially impact facilities, due to the overly burdensome requirements being imposed in order to obtain a renewal. Despite the fact
that these facilities have and will continue to meet all DEP and federal air regulatory requirements, the Rules require them to propose measures to avoid contributing to all adverse stressors, perform a facility-wide risk assessment to limit hazardous air pollutants (HAPS) and toxic substances to negligible levels, implement a feasibility assessment to control fine particulate matter, NOx, and VOCs, and then implement control measures to address all stressors not otherwise covered. These analyses and control measures far exceed what is required by existing law and which the DEP has deemed to be safe levels of emissions even at a community level. The cost, time, and unpredictability of these requirements on existing facilities will no doubt influence business decisions on whether to continue operations in New Jersey. The benefits are likely minimal. At the end of the day, the Association fears that more facilities will shutter their doors. Jobs and tax revenues will be lost. The Association reminds the Department that these facilities all meet stringent DEP standards and are willing to do more to improve conditions in their communities. This Rule, however, is several steps too far. The definition of a new facility is overly broad and vague. The EJ law makes a distinction between a new facility and the expansion of an existing facility. This distinction is significant as permits for new facilities can be denied whereas those for existing facilities cannot. Yet, despite this clear distinction and plain meaning of the word new, the DEP has blurred these lines by including existing facilities in the definition of new if an existing facility has had a change in use or failed to obtain a permit. The term change in use is further defined as a change in the type of operation of an existing facility that increases a contribution to a stressor. This is an extremely broad standard and ignores the plain language of the underlying statute. New should only mean new, as in not existing before. Under the proposed Rule's definition, if a facility added a third shift, switched from making widgets to masks during a pandemic, or changed the formula of one of its products, it can be considered to be a new facility, trigger the EJ Rule process, and then have the DEP compelled by law to deny its permit. This term is so vague that facility operators may not even know their actions would trigger the EJ law. This is not what the EJ law intended when it carved out the category of a new facility. Further, failure to obtain a permit, or letting one lapse, no matter how insignificant, harmless, or innocent, should not result in an EJ new facility analysis that would, very likely, result in the facility being denied a permit and forced to shut down. The definition of an expansion is too broad and vague. The Rules define expansion to be a modification of existing operations or footprint of development that has the potential to increase contributions to a stressor. A modification of operations or an increase of a footprint are extremely stringent standards, especially when combined with a potential to contribute to the broad categories of stressors. This term could include almost any change at a facility and will have facilities continually triggering the Rules and having to go through the EJIS and hearing process even if no further conditions are imposed, although they can be. This uncertainty and cost will undoubtedly make operating in OBCs difficult if not impossible. There needs to be some de minimis threshold below which the Rules are not triggered. Similar de minimis thresholds already exist in land use regulations where permits are based on the size of a development's expansion. The Association believes the DEP is missing a critical opportunity to encourage facilities to better engage with their community neighbors and to take actions to improve conditions for the long term. Rather, the DEP's new Rules seek to implicitly, if not explicitly, drive businesses out of OBCs. We can have both economic opportunities and healthy communities. These Rules are a significant step backward in achieving that goal: they will drive the businesses out of OBC thereby creating a higher rate of unemployment and more low-income residents. Consideration of the economic benefits of our industrial partners should very much be considered when evaluating a projects value to the community, as they support the tax base, employment and offer extensive philanthropic and charitable giving in our city and to our civic and nonprofit organizations. Accordingly, the Association recommends that substantial amendments be made to these Rules before they are considered for adoption.
Good Afternoon NJDEP Representatives,

Please find attached comments to the proposed Environmental Justice Rule, Docket 04-22-04.

We look forward to working with the Department and stakeholders on the amendments in the pursuit of promulgating an effective Environmental Justice Rule.

Hope all is well,

Matt Lydon | Vice President of Compliance TigerGenCo, LLC
832 Red Oak Lane | Sayreville, NJ 08872 | Mobile: [Redacted]

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September 2, 2022

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Attn.: DEP Docket No. 04-22-04
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, New Jersey 08625-0402

Submitted via email to NJDEP: rulemakingcomments@dep.nj.gov

RE: Comments on the Proposed Environmental Justice Rule NJAC 7:1C
DEP Docket No. 04-22-04

Dear Agency Representatives,

Please accept these comments provided below in the form of bullet point talking points and recommendations with the intent to make the implementation of the Environmental Justice Act, as currently written and as should be amended, through the prescribed NJDEP regulatory process effective and efficient and that addresses actual Environmental Justice concerns attributable to the applicable permitted activities at the defined facilities.

It is the hope that the currently required 1) municipal zoning and permitting ordinances including public comment and hearing processes along with 2) various state and federal permitting public comment and hearing processes could satisfy Environmental Justice concerns instead of an additional costly and complex administrative process as currently prescribed in the Act and proposed by the NJDEP. Facilities that have already undergone and met the stringent siting and permitting requirements including the local, state, federal public comment and hearing requirements will be exempt from conditions being applied in a retro-active fashion. Where a remedial action is needed regarding an existing Environmental Justice concern it is also the hope that the state and municipality would then appropriately accommodate and compensate either the residences or the businesses and workers where such relocation, closure, or other type of remedy is warranted.

Overview Comments:

- Request the Department work with the legislators and applicable stakeholders to amend the Act, incorporating the lessons learned over the last 2 years and assist in clarification of terms and procedures so that there will not be such disparities between legislation and regulation and the good intentions of the legislative and regulatory drafters vs the actual unintended negative consequences of the requirements. This includes the re-defining an Overburdened Community to a single demographic attribute of “low-income” and clarifications of the terms regarding applicable Facilities and Permits. The drafters of the Act used a broad brush with the terms Facilities and Permits and can be assumed did not fully comprehend the vast universe of applicants and permitting events that the currently defined terms encompass. The provisions of the amended Act would be based on the findings of the Environmental Justice Analysis as discussed below to fine-tune provisions to address actual Environmental Justice concerns.
• Request the Department perform and publish an Environmental Justice Analysis to document the currently low-income communities, other demographic attributes can also be analyzed, that are subject to a disproportionately high number of environmental and public health stressors derived from industrial, commercial, and governmental facilities that have been sited in those communities or which communities have been developed around such facilities. Both the Act and the Proposed Rule need to be drafted based on actual findings, data, and incorporate both preventative and correction actions to address such.

• Request the Department perform the actual analyses as prescribed in New Jersey’s Administrative Procedure Act and related policies. The Social, Economic, and Environmental Impact Statements and related analyses the Department is required to perform and document in the Preamble neither meets the rigors as intended in Administrative Procedure Act nor the significance of such a broad regulatory action focused on an important societal issue. As currently proposed, administrative costs placed on applicants and number of permitting processes per year can readily be estimated to derive a potential cost of the regulation in addition to the Department’s resources managing such activities.

Preamble:

• Background
  o There are communities that have been subject to a disproportionately high number of environmental and public health stressors however, the Department needs to perform an analysis of such and then base regulatory requirements to resolve the root causes and contributing factors.
  o Focus on the potential negative externalities derived from the defined facilities. However, the Department can also identify other contributing factors to the Stressors such as mobile sources including rail, marine, and air transport, other facilities not defined in the Act, effects from neighboring states, housing and infrastructure materials, background effects from historical commercial and industrial activities no longer operational in the area, community design, food quality availability, educational opportunity, life-style influences, etc. These should all be documented in the required Environmental Justice Analysis used to amend both the Act and the Proposed Rule.
  o Use of Census Block Group. A Census Tract is made of several Block Groups while a Block Group is made of several Blocks. Blocks being the smallest land area designation of the census. All 3 land area designations vary in size and shape. Dependent on population densities a Census Tract can be as small as a few city blocks or as large as a complete county. Census Blocks usually contain around a population of a few hundred people however, around 40% of the Blocks in the United States contain a population of zero. New Jersey has many of these “zero population” Blocks located in both heavily industrial and rural areas. The EJ Map is in some cases utilizes Census Tracts instead of Block Groups. We need to coordinate on how various land areas are categorized and OBC applicability determinations are made. Use of a Block Group to determine applicability is another indicator that although the Act and Proposed Rule were drafted with good intentions adequate analysis was not put into how to address Environmental Justice concerns most effectively.
Permit review for completeness determinations is outlined in the media specific permitting regulations and it does not appear the Department has the ability to circumvent those requirements.

As implied in the Act, an Expansion should be defined as adding an emission unit or point source to a facility. An Expansion does not include a permitting activity that modifies an existing unit within a facility while maintaining its Potential To Emit.

### General Provisions

- **Relationship to Other Regulatory Programs:** reiterating the board scope of the legislation that the legislative drafters did not fully comprehend.

- **Definitions:** reiterating the need to amend definitions, as will also be discussed in the Rule comments.
  
  - Department to define “Environmental Stressors” and “Public Health Stressors” as provided in the Act, C.13:1D-158.2, as attributed to the facilities. Currently there is just a grouping of 8 various stressor categories that do not meet the Act’s definition nor intention. These stressors would then be correlated with the various applicable permitting activities and facilities covered under the Act. It is acknowledged that the Department has derived a detailed methodology for assessing stressors, however, a complete stressor re-evaluation is required to properly address the Act’s intents and requirements.

  - **Geographic Point of Comparison**, request to amend the point of comparison as only the county that the OBC and Facility reside in. The state as a point of comparison is too diverse and broad in scope.

  - **Facility**, regarding to air pollution should be clarified to mean a Major Source of Hazardous Air Pollutants. Again, the Title V source is too broad of a universe of facilities while the focus on Major Sources of Hazardous Air Pollutants identifies the facilities to assumed higher potential risks to local communities.

- **Facility**, regarding expansion, as discussed in other sections of this comment package and as the drafters intended, should be amended to only include an addition of a new unit/point source to the existing facility.

### NJ EJ Rule Requirements and Procedures:

- **Applicability:**
  
  - The requirements apply well before the Department receives a permit application.

- **Identification of Overburdened Communities:**
  
  - Similar comment as previously mentioned, need to clarify how the Block Groups are defined. It may be best just to have a 0.5 miles radius around the facility. To note, there is a requirement to update the list of OBCs every two years however, the United States Census is only performed every ten years.

- **Adjacency:**
  
  - Request the department remove the “adjacency rationale” and maintain that the facility must be located in the OBC Block Group or another defined parameter. Adjacency is an overreach on the municipalities that promulgated zoning ordinances to prohibit the direct
exposure of industrial areas with other areas. A facility located in the industrial area “zero population area” or the municipality zoned the area as non-residential due to the historical facilities in the area to keep exposures away from the population. The current adjacency rationale is a harm to the societally beneficial placement of facilities. For argument’s sake, would the department include a facility in a populated non-OBC Block Group that borders an OBC?

- **Procedural Overview:**
  - Amend to clarify the actual milestones for the processes applicable to an applicant, department, and OBC commentor. Example, Step 1 – Initial Screen should be an applicability determination. The term “Initial Screen” shall be replaced with Stressor Analysis or similar. The Department starts “Step 1” at the time of a permit application being received by the Department. However, upon submittal of a permit application the applicant should have already completed a significant portion of the proposed requirements.

  - **Environmental Justice Impact Statement (EJIS):**
    - **EJIS Applicability:**
      - An EJIS is not required for “any permit application” by an applicable facility. Recommend that if the OBC does not have any Adverse Stressors or the facility does not contribute to any of the Adverse Stressors then the EJIS and related requirements shall be waived.
    - **EJIS Requirements:**
      - Incorporate the “Supplemental Information” into the EJIS requirements. Separating the EJIS and Supplemental information creates confusion.
      - As will be discussed in the Rule comment section, many of the requirements are overly burdensome, redundant, and do not provide value in an analysis of EJ concerns.

  - **Review of EJIS and Authorization to Proceed:**
    - Recommend deleting “meaningful” as a qualifier of public participation. The word is subjective and implies that currently promulgated local, state, and federal public participation mechanisms are not and have not been “meaningful”.
    - Paragraph 2, update to clarify that the Department will publish the EJIS and related information on the Department’s website and recommend that this is not an action requiring publishment in the monthly bulletin. The “electronic copy” shall be obtained from the Department’s website. Need clarification on the mis-placed last sentence of the paragraph.

  - **Public Participation, Post-Hearing, and Comment Process:**
    - To be incorporated to the amendments of the Act, recommend notice be given at least 30 days prior to the hearing. The current 60 days is time consuming.
    - Please define and give examples of what the “governing body” is.
    - Remove the “expanded requirements”. Current requirements are more than adequate and in fact redundant of other applicable local, state, and federal
public participation requirements that the applicant will be required to carry out.

- To avoid potential issues, the Department shall attend each public hearing, provide the official recording/transcript of such hearing and post such on the Department’s website, and be the primary recipient of comments. Response to comments of which shall be coordinated with the applicant.
- Responses to comments shall be posted on the Department’s website.

- Permit Applications for New Facilities, Facility Expansions, and Renewals:
  - To note, this currently proposed EJ process is not a “Permit Application” process.
  - It should be viewed that the legislative drafters intended any type of permit renewal process of any applicable facility required to go through the EJ process not just “Major Source Facilities”. However, additional requirements and/or limitations placed on the applicant (permittee) as a result of the EJ process shall be considered a “taking” and compensation made to the facility and workers.
  - The Facility-wide Risk Assessment and Technical Feasibility Analysis shall only be applicable to Major Sources of Hazardous Air Pollutants that do not combust natural gas. Still with the knowledge that facilities making capital expenditures to comply with Department requirements derived from this EJ process shall be reimbursed by the Department through the prescribed state and/or municipal funding source.

- Department Review and Decision:
  - Department Review:
    - Note, the Department already reviewed and approved the EJIS in a prior step.
    - “Expert Analysis” shall be at the expense of the Department. The Department should be staffed appropriately, as determined in the Cost Benefit Analysis that will be developed for re-Proposed Rule.
  - Department Decision:
    - If the facility will avoid a disproportionate impact then no additional conditions are warranted on the permit.
    - Only New and Expansion projects on permitted facilities can be denied.

- Fees:
  - With the known number of facilities in OBCs the department can budget using the known current renewal permit cycles and assumed New and Expansion facility rates to determine costs, not just for the Department but for the applicants as well. The provisions of this chapter may not be creating an entirely novel permit review program, unless the Department contemplates to issue an “EJ Permit”.

- Social Impact:
  - As the current Act and Proposed Rule is drafted with a “broad brush” encompassing many facilities and permits, it should be noted that facilities will avoid this EJ process by moving to areas within state, out of state, or offshore. Facilities moving within state or out of state may increase vehicle miles traveled and decrease jobs supporting the commercial and industrial businesses and tax base to the governments of the OBCs.

- Economic Impact Statement:
  - Department needs to perform an economic impact statement of the Proposed Rule. Quantification of the effects of the rule, as proposed, are practicable and can be
reliable. At a minimum the department can quantify the number of facilities in OBC and calculate the facilities’ and the department’s costs for undertaking the renewal permitting process. The Department can then make assumptions on New facility and Expansion projects using historical data.

- Costs to Applicants can readily be estimated. In coordination with the potentially effected businesses the Department can derive the costs.
- With the potential for relocated residences, business, and related effects of the rule as currently proposed the Department can estimate the potential costs to municipalities and the state relating to losses in tax collection and related fees.
- Unless the Department is going to model realistic assumptions, do not speculate using COBRA.

- **Environmental Impact Statement**
  - As mentioned, stating that there will be a “benefit” without a competent analysis does not meet the requirements of the Administrative Procedures Act nor provide adequate basis to implement a regulation focusing on such an important social issue.

- **Jobs Impact**
  - The Department can estimate the closure rate of facilities that will be affected by this Proposed Rule and then effects on support business to the facilities.
  - Again, a more robust assessment is required.

- **Regulatory Flexibility Analysis:**
  - Please provide the list of applicable facilities and if they meet the definition of a Small Business. It is the assumption that most applicable facilities will have under 100 employees.

**Proposed Rule**

- **General**
  - Capitalize defined terms.
  - Hyperlinks in the preamble are useful however, are not recommended in the actual rule. Website addresses will change.
  - Irregular use of prepositions throughout the rule
    - Example: 7:1C-2.3(b) ... as set forth at the chapter Appendix ... “at” should be replaced with “in” or similar.
  - Need to either give the Appendix an actual name or include Environmental and Public Health Stressor information in the body of the rule.

- **7:1C-1.3 Purpose**
  - 1.3(a): Update wording to reflect the actual purpose(s). “Ensure meaningful public participation in the Department’s analysis of...” if focused on public participation should read, “Provide a forum for public participation specific to Environmental Justice concerns related to certain permitting activities at applicable facilities.”
  - 1.3(a)3: Wording on “new, expanded, and existing major source facilities” implies only applicable to Major Source Facilities.

- **7:1C-1.5 Definitions**
  - Update definitions regarding Stressors.
    - Identify the difference between Environmental Stressors and Public Health Stressors as defined in the Act.
o Avoid the detail in the EJIS definition because may conflict with the actual rule language in section 3.1.

o Amend Expansion to mean an addition of an air emission unit or point source of water discharge that will result in an increase of an existing facility’s Potential to Emit or similar for NJPDES. The drafters of the legislation contemplated an “expansion” as a project at a facility constructing another unit at the facility that required an increase to the permitted Potential to Emit or additional discharge point and not customary modifications to existing units.

o Clarify Facility to include Major Sources of Hazardous Air Pollutants and the broad universe of Title V sources.

o Remove Geographic Point of Comparison. Per these comments the point of comparison is the county.

o Amend Major Source or Major Facility to Major Hazardous Air Pollutant (HAP) Facility or Major HAP Source shall have the same meaning as the term defined in N.J.A.C 7:27-22.1.

o Amend New Facility by deleting “; or 2) a change in use of an existing facility.” A change may be an expansion or may not be an applicable event.

o Amend Permit to mean Construction Air Permit, NPDES, Waste, etc. The currently drafted universe of permit activities is too broad and an overreach for the intent of both the Act and the Proposed Rule.

o Renewal does not just include a Major Facility.

• 7:1C-2.1 Applicability

  o General: This section should contain what facilities are applicable to the regulation.
  
  o 2.1(a): The requirements of this chapter apply well before the applicant submits a permit application and not just a “major source permit”.
  
  o 2.1(b): Does the NJDEP need to amend the existing permitting rules to also clarify what a “timely and complete” application is? If the EJ conditions are not met does that trigger an issue with the permitting deadline?
  
  o 2.1(d): The legislation states the OBC is “determined in accordance with the most recent United States Census.” The United States Census is conducted every 10 years. How can the department update data every 2 years when the data is only collected on a 10 year basis? Current data as published on the department’s website does not match data as published by the United States Census Bureau.
  
  o If the facility does not contribute to any identified Stressor then the requirements of this chapter including Public Participation shall be waived.

• 7:1C-2.2 Procedural Overview

  o General: This section should contain a clear step by step overview of processes applicable to the applicant, department, and OBC residents. However, the section is not necessary, may result in confusion, and conflict with the actual regulatory language elsewhere in the rule. The Procedural Overview may be best summarized in the Preamble.

• 7:1C-2.3 Initial Screening Information

  o General: Does not fit into the “Applicability and Procedural” narrative. “Initial Screening Information” implies that there is going to be subsequent screening. Why would such demographic and stressor data change?
  
  o General: Recommend drafting a section dealing with the Environmental and Public Health Stressors and stating that the Geographic Point of Comparison is at the County Level.
2.3(a): Duplicative, may reference applicability determination in actual “Applicability” section 2.1.
2.3(g): Regarding process, the applicant must submit the EJIS prior to the permit application? Just creating more confusion.

7:1C-3.1 Applicability
- General: Delete or reconstruct this section, “applicability” is contained in 2.1 whereas Subchapter 3 should detail the contents of the EJIS.
- General: Delete reference to section 3.3 and “supplemental information”. Rather this information is required for some applicants preparing an EJIS and not a completely standalone document.
- 3.1(a): Implies that “All permit applicants” regardless of being a defined facility within an OBC in an applicable permitting process are required to prepare and submit an EJIS.

7:1C-3.2 EJIS Requirements
- 3.2(a): Replace sentence with “An EJIS shall contain the following:”
- 3.2(a)(2): No need for a detailed written description (too subjective). Recommend requiring a map indicating the nearest community structures. Assume anything outside of 0.5 miles of no consequence or just the structure in the Block Group.
- 3.2(a)(3): Just a description of the facility’s current and proposed operations is enough, “serves the needs of the individuals in the overburdened community” too subjective.
- 3.2(a)(4): List of all permits not required. Can contain a list of applicable permits for the EJ Rule.
- 3.2(a)(5): Need to clarify what all a potential “local environmental justice analysis” and “cumulative impact analysis” entails.
- 3.2(a)(6): Update to “Environmental and Public Health Stressor Analysis” or similar.
- 3.2(a)(8): Chronologically, the applicant cannot satisfy the requirements of 3.4(d) before submitting and getting approval from the Department to publish the public notice. The applicant can, however, include a draft of the public notice for the Departments approval as summarized in 3.4(a). Need to reword with paragraph with the intent of the applicant preparing a public participation plan to carry out those requirements.
- 3.2(a)(9): Reword paragraph and duplicative to (a)(3)(ii), (a)(3)(iii), and (a)(7)

7:1C-3.3 Supplement Information
- General: To avoid confusion, recommend including an “if statement” in paragraph 3.2 (b) to tie “supplemental information” into section 3.2 instead of having this separate section apart of the EJIS requirements. Currently, the rule reads at the “supplemental information” is not part of the EJIS requirements.
- 3.3(a): the trigger for the additional information is if a facility has a significant contribution to an identified Adverse Stressor.
- 3.3(a)(1): Map, in addition to map commented on in 3.2(a)(2), showing the facility’s emission units(s)/path/point/etc that is “making” the significant contribution. The items currently listed in the rule may be no relation to the actual Adverse Stressor(s) that the facility is contributing to.
- 3.3(a)(3)-(10): The facility may not be a source or applicable to the stated “stressors”. Need a leading paragraph stating “as applicable...” The facility may not be a source of air pollution, may not be a source of discharge to the groundwater, may not be in a Flood Hazard Area, may have an insignificant amount of employees and/or traffic, may discharge to a municipal system an only have sanitary discharge, may not be an Industrial Activity as defined in the Stormwater Rules, may not be a significant source of
water consumption, and may not be a significant consumer of various energy or power commodities.

- 3.3(a)(13): Recommend the Department provide the compliance history and not the facility. It is readily available from the Department and the facility may not have complete history due to changes of control. Why does the Department want a copy of “existing Department permits” in the EJIS?
- 3.3(a)(14): Duplicative per 3.2(a)(9) and related.
- 3.3(b): Paragraph can be deleted because the above requirements will be included in the EJIS section 3.2
- 3.3(c): Delete this section, just adds confusion.

**7:1C-3.4 Review of EJIS and Authorization to Proceed**

- 3.4(a): Delete or reword paragraph to clarify. May be duplicative to 3.2(a) as 3.2(a) is currently drafted.
- 3.4(b): Within 10 business days of receipt of the EJIS, the Department shall make a determination of completeness of the EJIS. If Department finds the EJIS complete, meeting the requirements of section 3.2, then the applicant may proceed with the public... If the Department finds the EJIS incomplete the Department shall coordinate with the applicant to revise the EJIS in order for the Department to make a determination that the EJIS is complete, meeting the requirements of 3.2. If the Department has not notified the applicant of a completeness determination within 10 business days then the EJIS is determined to be complete.
- 3.4(c): Delete publication in the bulletin. Posted on the Department’s website is enough.
- 3.4(d): This paragraph has been misplaced in this section. It should be part of the process in Subchapter 4.

**Subchapter 4: Process for Environmental Justice Public Participation, or similar rewording.**

- Meaningful is subjective and historically, there has always been meaningful and adequate public participation in various forms on the local, state, and federal levels in all stages of a facility’s life cycle.

**7:1C-4.1 Public Notice**

- 4.1(a): Include provision for the Department to provide such public notices as well, “...the applicant and the Department shall provide...” Meaning the Department is going to post the materials on their website.
- 4.1(a)(1)(i): Can more than 1 municipality be included in a Census Block Group?
- 4.1(a)(1)(i): Per C.13:1D-160.4.a(2) need to include the “governing body” entity in the EJIS submittal. Can the Department define what the governing body is and include in the rule to meet the legislative requirement?
- 4.1(a)(1)(ii): Update to just 1 newspaper. What if there are not 2 newspapers in the OBC or a non-english newspaper?
- 4.1(a)(1)(iv) and (v): Overly burdensome to the applicant.
- 4.1(a)(1)(vi): Overly burdensome and subjective. The applicant should not be regulatorily required to provide more notice than the publication in the newspaper and have posted on the Department’s website.
- 4.1(a)(1)(vii): Redundant. The Public Notice is the invitation for entities to participate.
- 4.1(b)(3): Logistically, a map included in a Public Notice is difficult of newspapers to accommodate.
- 4.1(b)(5): Update in process, written comments will go to the department and be coordinated with the applicant. Clarify the 30 and 60 day provisions, also use clarifier of
“calendar days” Recommend, “...for a time period of 30 days after the hears, written comments may be submitted to the Department.”

- **7:1C-4.2 Public Hearing and Comment**
  - 4.2(a)1: Allow provisions to be held remotely online, via Teams, ZOOM, etc...
  - 4.2(a)2: Paragraph allows for the hearing to be held on holidays. To avoid confusion, recommend replacing “Eastern Standard Time/Eastern Daylight Time” with “Eastern Prevailing Time”. Recommend, “Hearings shall be conducted on a week day, that does not fall on a Federal or State recognized holiday, beginning no earlier than 5:00 P.M. Eastern Prevailing Time and lasting for the earlier of 2 hours or all oral comments have been provided.”
  - 4.2(a)2: Virtual component overly burdensome to applicant. If a “virtual component” is required it is recommended that the Department provide for such recording and management to then also post on the Department’s website.
  - 4.2(b): For recognition, “interested parties” may comment however, only “OBC residents” require response.
  - 4.2(b): Written comments shall be presented to the Department official in attendance.
  - 4.2(c): Confusing paragraph. The public comment period begins on the earlier of the day the Department posts the EJIS or the publication in a newspaper.
  - 4.2(d): Need a paragraph that the Department shall have the public hearing transcribed. These measures are to avoid any conflicts of interest.

- **7:1C-4.3 Post-Hearing and Comment Process**
  - General: update to reflect the Department’s applicability to manage all comments received pre, during, and post hearing and the transcription of the public hearing. Department will coordinate with the applicant on the responses to the applicable public comments. If EJIS needs to be republished, the Department will on its website.
  - 4.3(b): Amend to state “..., the Department may require the applicant to conduct another public notice and public hearing pursuant to this chapter....”. However, in the extreme majority of cases the applicant should not have to go through the process again.

- **Subchapter 5, 6, 7, and 8**
  - General: Update subchapter titles to “EJIS Requirements Specific to New Facility, Expansions, and Renewals” or it is recommended to incorporate these subchapters in to the EJIS 3.2 section. It is confusing to have all the assumed EJIS Requirements listed in 3.2 then place more requirements in subchapters 5, 6, 7, and 8 in addition to section 3.3. Incorporating these subchapters into 3.2 also removes the confusion of “supplemental information”. A concentrated effort will be required to amend the errors and overburdensome requirements found throughout subchapters 5, 6, 7, 8, as mentioned in the comments found in the corresponding Preamble section of this document.

- **7:1C-9.1 Department Review**
  - 9.1(a): The Department has already considered and approved the EJIS per sections 3.4 and 4.1.
  - 9.1(a): Is the decision pursuant to this chapter or as detailed in 9.1(b) pursuant to section 9.2?
  - 9.1(b): Update to clarify, “In performing its review of the all of the Environmental Justice materials the Department shall.”. Matters dealing with “issuing its decision” should be addressed in section 9.2.
  - 9.1(b).3: Include, “If necessary, impose conditions...”
9.1(c): The Department should be adequately staffed with the appropriate skill sets to evaluate the information. Any additional “experts” should be the burden of the Department to fulfill its obligations.

- **7:1C-9.2 Department Decision**
  - 9.2(a): Clarify that if the Department finds that the facility does not have a disproportionate impact then its permit application(s) shall be processed as normal.
  - 9.2(b): Need to complete the possibility that multiple permit applications can be packaged into a single EJIS.

- **7:1C-9.3 Form and Timing of Decision**
  - 9.3(d): Recommend deleting this paragraph. Department should find permit applications complete for review in accordance with the prescribed media specific regulatory requirements. Unless the Department wishes to issue proposals to amend all the NJAC permitting processes and coordinate with the legislature the amendment of the NJSA as found in the Act under the definition of a Permit.

- **7:1C-9.5 Procedure to Request an Adjudicatory Hearing; Decision on the Request; Effect of Request**
  - General: Replace “person” with “applicant”.
  - 9.5(c)2-3: The decision and date received should not be required as is already public via the Department’s website. However, the decision can be references.

Thank you for your consideration of the comments provided above. They are given with the anticipated outcome of amending both the Act and the Proposed Rule to properly identify and address actual Environmental Justice concerns, specifically Environmental and/or Public Health Stressors, derived from applicable Existing Facilities and mitigate potential future concerns from New and Expanded Facilities.

Sincerely,

Matt Lydon
VP of Compliance
** Electronic Rulemaking Comment **
Submission Date: 09/02/2022 14:07:22
First Name: Drew
Last Name: Curtis
Affiliation:
City: Newark
State: NJ
Zip: 07105
Email: [redacted]
Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: Please keep economic interests from the exception because: Environmental Justice communities (overburdened communities) should not have to choose between a healthy environment and jobs - it's environmental racism and extortion. This is the business as usual model that has allowed economic interests to exploit vulnerable areas with the promise of economic development that does not actually happen. The current permitting model already allows for economic interests to weigh heavily in facility siting. If we reinforce this economic model, it only serves to maintain the existing system where poor communities of color are forced to take dirty industries and rich communities will always be able to say no. Dirty industries are not the kind of jobs we want to encourage in EJ communities. We deserve good, healthy, clean, dignified jobs, not at the expense of more pollution. We want the kinds of jobs that don't need an exemption to be allowed into our communities. If you are a legitimately clean business or can lessen your impact, you don't need to extort the community with the promise of economic development that can never be held accountable for after the permitting process. The promise of economic gains and jobs is a false promise - it's a lie we've been told for a long time that has never produced wealth for EJ communities. We have decades upon decades of examples and experiences with companies promising jobs and economic gains to EJ communities that deliver nothing but pollution and tax exemptions that they profit from. Just take a look at Covanta - where are all the hundreds of jobs from that industry? They employ 20 people, few if any from Newark or Camden or Rahway, they're not union jobs and they dump millions of pounds of chemicals into our air and reduce our property values. Also, please: Robust public notice. Go out as far as possible. Pollution travels so notice should. Be in libraries, community centers. Be on social media and in traditional media especially local!
Update law to include new terminology and technology. Polluters are developing new ways of doing things but they still pollute. For example, include Gasification is awfully like incineration. Let makes sure the law covers everything.
On behalf of the New Jersey Chapter of the Institute of Scrap Recycling Industries, Inc., attached please find comments on the New Jersey Department of Environmental Protection’s proposed environmental justice regulations, DEP Docket No. 04-22-04, PRN 2022-082. For the Department’s convenience, we have attached the comments in both PDF and Word formats.

I kindly request that you confirm receipt of the comments.

Thank you,

Jessica
September 2, 2022

Via Email and Overnight Mail
Melissa P. Abatemarco, Esq.
Attn.: DEP Docket No. 04-22-04, PRN 2202-082
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L, PO Box 402
Trenton, New Jersey 08625-0402
rulemakingcomments@dep.nj.gov

Re: NJ Chapter of ISRI Comments to Proposed New Environmental Justice Rules
Proposed New Rules: N.J.A.C. 7:1C
DEP Docket No.: 04-22-04
Proposal No.: PRN 2022-082

Dear Ms. Abatemarco:

On behalf of the New Jersey Chapter of the Institute of Scrap Recycling Industries, Inc. (“ISRI”),¹ please accept these timely submitted comments to the Proposed Environmental Justice Rules, proposed to be codified at N.J.A.C. 7:1C, which were published in the New Jersey Register on June 6, 2022 (the “Proposed Rules”). The ISRI New Jersey Chapter’s mission includes supporting the New Jersey-based scrap metal recycling industry, which employs 17,000 people in New Jersey. ISRI firmly supports environmental justice (“EJ”) principles and has actively participated in the stakeholder process, submitting comments and testimony on several topics covered in the prior public hearings. However, the Proposed Rules fall short of establishing a fair and effective EJ program designed to address actual community impacts. Instead, the Proposed Rules would establish a regulatory framework that would effectively prohibit scrap metal recycling in the State of New Jersey.

The Proposed Rules do not appear to take into consideration ISRI’s comments made during the stakeholdering process, and validate ISRI’s expressed concerns that one objective of the New Jersey Department of Environmental Protection (“NJDEP” or “the Department”) in

¹ As the Voice of the Recycling Industry™, ISRI represents more than 1,300 processors, brokers, and consumers of scrap materials, including ferrous and non-ferrous metals, paper, plastic, tire and rubber, glass textiles and electronics. The New Jersey Chapter of ISRI includes 50 member companies, employing more than 17,000 New Jersey residents that process and recycle the full range of scrap metal and other recyclable materials.
issuing the Proposed Rules is to selectively regulate scrap metal recycling facilities out of the State of New Jersey. At this point, the benefits and acute need for recycling in New Jersey, including scrap metal recycling, should not need to be described, but since the Proposed Rules affirmatively discourage the mere presence of New Jersey recycling facilities, we feel it incumbent on us to note that recycling not only “keeps millions of tons of materials out of landfills and other disposal facilities, but also... conserves natural resources, saves energy, and reduces emissions of water and air pollutants, including greenhouse gas emissions.”2 Many of New Jersey’s statutes and regulations expressly identify and encourage recycling, including metal recycling.3 Most recently, scrap metal recycling facilities were identified as “critical infrastructure” during the COVID-19 pandemic, recognizing the important services that such facilities provide, such as the prevention of accumulation of trash and debris within New Jersey’s communities.4

Consistent with the intent of the New Jersey Environmental Justice Law, N.J.S.A. 13:1D-157 et seq., (the “EJ Law”), ISRI members are committed to and are already working with local communities in which their facilities are located, considering cumulative environmental and health impacts in planning operations, and incorporating communities’ concerns into business decisions regarding siting new facilities or expanding existing facilities. However, the Proposed Rules go far beyond the intent, plain language and statutory authority of the EJ Law, imposing restrictive obligations and expansive definitions that prevent New Jersey scrap metal recyclers from being able to predict their ability to obtain necessary permits or the possible conditions that could be imposed. ISRI encourages NJDEP to consider the general and specific comments provided herein and those of others in the business and labor community and to revise the Proposed Rules to be consistent with the intent and plain language of the EJ Law, thereby protecting the interests of overburdened communities while preserving the ability of essential businesses to operate in New Jersey, including those that serve important public functions such as recycling. ISRI also supports the comments submitted by the New Jersey Business & Industry Association.

I. Executive Summary of ISRI Comments

ISRI members are in a unique and disadvantageous position under New Jersey’s EJ Law; scrap metal facilities, which includes scrap metal recycling facilities, are identified as a “Facility” subject to the EJ Law permitting process, and scrap yards are identified as an environmental public health stressor accounted for in determining the stressors that are borne by an overburdened community. The manner in which the Proposed Rules are written, however,

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further disadvantages scrap metal recycling facilities by defining terms and including provisions that make it virtually certain that the communities in which they operate will be found to be subject to adverse cumulative stressors and that they are determined to be contributing to the environmental and public health stressors in the overburdened community. ISRI believes that there are key aspects of the Proposed Rules that are unfairly prejudicial to these facilities based on metrics and assumptions that have no basis in actual impacts to the community. Set forth below, among all of ISRI’s comments, are key issues relating to the Proposed Rules’ lack of clear standards for affected facilities, a definition of the geographic point of comparison that will make siting in urban areas nearly impossible, the quantification of stressors in a manner that double and triple counts scrap metal recycling facilities, a definition of new facility that will promote targeted enforcement against scrap metal recycling facilities, an impossibly narrow definition of compelling public interest, and the disregard of economic benefits, including jobs, provided by scrap metal recycling facilities to the community, among other critical comments. None of these items are required by the EJ Law, and taken together, amount to discriminatory treatment by the Department of scrap metal recycling facilities in a manner that is inconsistent with equal protection and due process principles. The portions of the Proposed Rules that single out the scrap metal recycling industry are unnecessary to advance the goals of EJ, are not narrowly tailored to address any purported impact caused by scrap metal recycling facilities in comparison to other industries, will stymie New Jersey’s recycling goals, and will cost New Jerseyans thousands of jobs. We ask the Department to give full and fair consideration to ISRI’s comments and to correct these fundamental flaws in the Proposed Rules.

II. General Comments on the Proposed Rules

A. The Department has Not Evaluated the Public Benefits of Scrap Metal Recycling and the Socioeconomic and Jobs Impacts of the Proposed Rules as Required by the Administrative Procedure Act.

1. The potential loss of benefits provided by the scrap metal recycling industry are not accounted for in the Department’s socioeconomic impact analysis, which is required by the Administrative Procedure Act. Section 52:14B-4(a)(2) of the New Jersey Administrative Procedure Act requires the Department to evaluate the socioeconomic impact of its proposed regulations. N.J.S.A. 52:14B-4(a)(2). While the Department performed a cursory evaluation of the potential direct costs to comply with the Proposed Rule, it ignored the societal and economic benefits that the recycling industry provides to New Jersey residents, and did not consider costs associated with the negative impacts that the Proposed Rules will have on the recycling industry.5

5 The Department acknowledges in its economic impact statement that the benefits are “difficult to fully quantify” and therefore, only improvements to human health and increased amenity values were considered. The Department’s economic impact statement acknowledged that some affected entities will incur costs to comply with the Proposed Rule, but failed to evaluate the potential loss of industry and benefits that recycling provides to residents in New Jersey.
The State of New Jersey has a long history of supporting recycling as a benefit to the environment and public health, as shown through the multitude of statutes passed by the New Jersey Legislature that encourage recycling. Nearly fifty years ago, the Legislature passed the Solid Waste Management Act (“SWMA”) to address the “rapid disappearance of available solid waste disposal facilities” by “[e]ncourag[ing] resource recovery through the development of systems to collect, separate, recycle and recover materials, glass, paper and other materials of value for reuse or for energy production.”6 Furthermore, in 1987, the Legislature passed the New Jersey Statewide Mandatory Source Separation Recycling Act to bolster the rate of recycling in New Jersey, including the recycling of scrap metal, by requiring recycling in residential, commercial, and institutional sectors.7 Later, to help achieve the most ambitious New Jersey recycling plan goals, the Legislature passed the Recycling Enhancement Act, which imposed a tax on solid waste generation as another way of encouraging recycling, because it was in the “environmental and economic interests” of the State,8 and the Electronic Waste Management Act, which required certain electronic products be recycled, resulting in the increase of recycling of consumer electronics by over 700% from 2005 to 2017.9 The New Jersey Chapter of ISRI has long-played a cooperative role in partnering with New Jersey in assisting it to meet the State’s recycling goals.

In passing the above-referenced statutes, the New Jersey Legislature has continuously recognized the public and environmental benefits of recycling, including scrap metal recycling, finding that recycling not only saves waste disposal capacity “equal to the annual utilization of 3.5 solid waste incinerators or 4.5 solid waste landfills,” but also allows for the recovery and saving of valuable resources, including over three million tons of iron, coal and limestone in the production of new ferrous metals, over nine million trees in the production of virgin paper from ferrous metals and paper recycling, and more than seven hundred million gallons of gasoline that would otherwise be used in the manufacturing process.10 Thus, recycling enables a reduction in air and water pollutants emitted during the manufacturing process by more than 134,000 metric tons.11 The Department has similarly recognized the wide range of environmental and economic benefits that recycling, including scrap metal recycling, provides to New Jersey residents.12 The Department has seemingly ignored the immense environmental, social, and economic benefits that scrap metal recycling provides to New Jersey residents and the negative impacts that the Proposed Rules will have on the recycling and scrap metal recycling industries in New Jersey in its socioeconomic impact analysis required pursuant to N.J.S.A. 52:14B-4(a)(2).

7 The Legislature found that “it is in the public interest to mandate the source separation of marketable waste materials” so that less scrap material is disposed of in the state’s “overburdened landfills.” N.J.S.A. 13:1E-99.11.
8 N.J.S.A. 13:1E-96.3.
10 See N.J.S.A. 13:1E-96.3.
11 See id.
In addition, the Department has also overlooked the immense economic benefits that the scrap metal recycling industry provides. In New Jersey alone, the scrap recycling industry, which includes scrap metal recycling, provides 17,445 direct, indirect and induced jobs, over $1.2 billion in wages, and approximately $550 million in Federal and State tax revenue.\(^{13}\) As a result of the supply chain disruption caused by the COVID-19 pandemic, the scrap metal recycling industry is a key economic player providing critical resources for construction, infrastructure rehabilitation and other critical projects which should result in a corresponding rise in New Jersey employment.\(^{14}\) Of the jobs associated with the scrap metal recycling industry, many are direct, well-paying, union jobs. Nationally, scrap metal recycling is a critical first link in the manufacturing supply chain, supplying 40% of raw material needs for manufacturing in the United States.\(^{15}\) In the U.S. steel industry alone, scrap material accounts for more than 70 percent of processed steel, making ferrous scrap metal the most recycled material in the United States. More than half of all aluminum consumption by manufacturers in the United States comes from scrap.

In addition to being an important economic driver, the scrap recycling industry is a pivotal player in environmental protection, resource conservation, and sustainable development. The industry recycles more than 130 million metric tons of materials annually, transforming end-of-life or obsolete scrap materials into useful raw materials needed to produce a range of new products.\(^{16}\) The industry also plays a pivotal role in supporting the conversion to electric vehicles and in the recycling of end-of-life combustion engine vehicles. Consequently, scrap metal recycling: (1) reduces the need to mine for new ore, cut down more trees, and otherwise deplete our natural resources; (2) produces significant energy savings as compared to using virgin materials, thereby reducing greenhouse gas emissions; (3) reduces the amount of material being sent to landfills, saving the land for better uses; and (4) ensures the appropriate handling and recycling of abandoned end-of-life vehicles.

The Proposed Rules fail to recognize both the environmental and economic benefits of recycling, and do not reflect the requisite analysis and balancing required by the Administrative Procedure Act. While the EJ law identifies “scrap yards” as possible environmental or public health stressors, the Proposed Rules assume that all scrap metal recyclers will cause stress to the community, which is not the case, and fails to recognize the associated benefits of such recycling. Instead, a proper analysis and balancing of the benefits and impacts of the Proposed Rules, and their impact on scrap metal recycling, is necessary. As required by the Administrative Procedure Act, the Department is required to evaluate the full economic and societal impacts of the Proposed Rules, which necessarily include the impact on the environment.


\(^{14}\) In Executive Order 14017, entitled “America’s Supply Chains,” President Biden recognized the importance of strengthening the supply chains of critical goods and materials, including materials resulting from metal recycling. 86 Fed. Reg. 11849 (March 1, 2021).


\(^{16}\) See footnote 13.
and economy of New Jersey of discouraging recycling and recycling facilities. The Department should consider whether the Proposed Rules can be more narrowly tailored to ensure that the benefits provided by the scrap metal recycling industry in New Jersey are preserved.

2. The Department’s jobs impact analysis is inaccurate, incomplete, and fails to comply with the requirements of the Administrative Procedure Act. The Administrative Procedure Act requires that the Department assess the number of jobs to be generated or lost if the proposed rule takes effect. N.J.S.A. 52:14B-4(a)(2). Instead of conducting the required evaluation, the Department summarily concludes that “the proposed rulemaking will have little to no impact on job retention in the State and in overburdened communities.” The Department’s conclusion demonstrates that the Department has not performed a detailed analysis of potential job loss. As discussed above, the scrap recycling industry alone provides approximately 17,445 direct, indirect and induced jobs in New Jersey. While the Department incorrectly assumes that jobs lost in overburdened communities will be relocated to other parts of New Jersey, the Department has also not considered the impact that the relocation of jobs will have on overburdened communities, which rely on industry to provide meaningful employment. The Department should fully evaluate the impact that the Proposed Rules will have on jobs both in overburdened communities and the State.

B. The Proposed Rules Do Not Provide Standards or Guidance that Would Allow Scrap Metal Recycling Businesses to Predict What Will Be Required to Obtain a Permit.

ISRI supports Environmental Justice concepts that ensure that local communities’ concerns and desires are heard and addressed by existing and proposed new businesses and by NJDEP. Scrap metal recyclers, like other businesses, already engage with local communities and take the community’s concerns into account as part of their business planning, and ISRI welcomes a rulemaking structure that facilitates further engagement. However, the Proposed Rules provide no standards or guidance for the types or numbers of conditions that NJDEP may impose in requisite permits to satisfy the goals of EJ. The Proposed Rules set up a process that is a moving target, both substantively and procedurally, that will create uncertainty for applicants and disincentivize investment in overburdened communities, including investments in new state-of-the-art pollution control technologies for scrap metal recycling facilities. This type of system, with no description of or constraints on NJDEP’s authority, acts to pit EJ communities’ interests against those of local recycling businesses. ISRI does not believe that these interests must be in opposition and strongly encourages NJDEP to revise the Proposed Rules to include reasonable

18 The Proposed Rules in combination with the extensive restrictions on development in existing environmentally sensitive areas, such as the Pinelands, the Highlands, and coastal zones, development limitations on preserved farmland and local residential and agricultural zoning, and land that is otherwise unable to be developed, leave a very small percentage of actual developable land for scrap metal recycling facilities to locate. Thus, it will be difficult, if not impossible, for facilities to relocate in the State, further exacerbating unemployment rates in overburdened communities.
19 Pursuant to proposed N.J.A.C. 7:1C-9.2, the Department can impose any conditions “as necessary to ensure a disproportionate impact is avoided.”
standards regarding the scope of community comments to be addressed, the scope of conditions to be imposed, and the timeline for NJDEP’s review.

This lack of clarity and restraint on the scope of NJDEP’s authority will be particularly problematic for existing facilities. While new facilities that have not yet been constructed have the ability to incorporate conditions into design and operational plans, facilities that have existed for multiple decades may be subject to burdensome and unfeasible requirements that may not be possible to implement. It is imperative that, prior to submitting an application, businesses can predict whether permits can reasonably be obtained and whether the conditions that might be imposed are able to be implemented.

With respect to the timing involved in obtaining a permit, the Proposed Rules require that the public participation process start all over again if any material changes are made in response to community comments and specifies no definite end point for this public participation process. See Proposed N.J.A.C. 7:1C-4.3. An indefinite review time will further contribute to the Department’s existing permit backlog, which is substantial, and act as a further drain on agency resources. Instead of penalizing businesses who meaningfully incorporate community feedback into their plans and operations by requiring them to undergo an endless cycle of public notice and comment, the Department should encourage applicants to address community concerns by ensuring that applications are moved along efficiently, without requiring a restart of the public participation process.

III. Comments on Specific Portions of the Proposed EJ Rules


1. Proposed N.J.A.C. 7:1C-1.5: “Compelling public interest” – The proposed definition of Compelling Public Interest is too restrictive and improperly excludes consideration of economic benefits. The Department has proposed to define “compelling public interest” to include a stringent three-part test – the proposed new facility must (a) serve an essential environmental, health, or safety (“EHS”) need of the individuals in an overburdened community, (b) be necessary to serve the essential EHS need, and (c) there must be no other means reasonably available to meet the essential EHS need. As written, a proposed new facility would need to demonstrate that it is the one and only way to address not only an identified EHS need, but an essential one. Such a demonstration is unreasonably burdensome and would exclude businesses that provide vital services from being located in an overburdened community. For example, it would be difficult for scrap metal recycling facilities to qualify because, while serving an important need for the State and all communities, including preventing the abandonment of cars and metal appliances in the community, providing meaningful employment opportunities to the community, and providing other environmental benefits, this definition requires that there be no other possible solution for the EHS need. As there is no objective measure for when a possible solution is “reasonably available” to address an identified need, the specified criteria would enable NJDEP and community members to veto new facilities if any other hypothetical solution can be identified, even if the other solution has no realistic
chance of coming to fruition. Thus, as currently drafted the definition of “compelling public interest” is too narrow and disallows consideration of the essential role scrap metal facilities play in the recycling of post-consumer materials and avoiding the abandonment of scrap metal in communities, including overburdened communities.20

Additionally, the proposed definition goes on to state that, “for purposes of this chapter, the economic benefits of the proposed new facility shall not be considered in determining whether it serves a compelling public interest in an [overburdened community].” Nothing in the EJ Law or in the legislative history indicates that the term “compelling public interest” was intended to exclude consideration of economic benefits. Excluding consideration of economic benefits is particularly inappropriate where a community qualifies as overburdened because of the percentage of low-income households. The criteria for an “overburdened community” includes any census block group in which at least 35 percent of the households qualify as low-income households. Similarly, in the Appendix to the Proposed Rules, the percent of unemployed residents in an area is identified as one of the stressors to be measured. Yet, under the proposed definition of compelling public interest, new businesses that would employ local residents and assist in making the community no longer overburdened would have their permits denied. During the stakeholder meetings, NJDEP representatives expressed concern that promised jobs sometimes do not materialize. However, there are many ways to address this identified concern short of ruling out all consideration of economic benefits. As discussed above, the scrap recycling industry are proven job creators, employing more than 17,000 New Jersey residents. Importantly, the industry employs individuals who have recently been released from jail, halfway houses, and other persons in transition, commonly referred to as “second chance employees,” that otherwise have difficulty finding gainful employment and integrating into society. If one of the goals of the EJ Law and the Proposed Rules is to assist overburdened communities in no longer being overburdened, then encouraging additional jobs and increased income must be viewed as a public benefit.

2. Proposed N.J.A.C. 7:1C-1.5: “Expansion” – The definition of Expansion is vague and contrary to the intent of the EJ Law. The EJ Law makes an important distinction between “new facilities” and “existing facilities” that are “expanding.”21 The EJ Law requires the Department to deny a permit for a new facility if the environmental justice impact statement (“EJIS”) analysis shows a “disproportionate impact.” However, the Legislature made revisions from the original version of the EJ Law to make clear that for existing facilities, the Department could only add conditions to the requested permit as a result of the EJIS analysis, but could not deny the permit. In amending the original language of the EJ Law, the Legislature acknowledged that it would be unfair and inappropriate to push existing facilities out of the State that were not significantly changing their operations or their impact to the environment. At the Department’s stakeholder meeting on April 7, 2021, the Department agreed with the Legislature, indicating as a general principle that the purpose of the EJ Law is not to make it more difficult for existing facilities to continue operations, and that the...
Department considered “expansions” to be facility proposals that increase operational footprint or stressor contributions. Yet, the proposed definitions of “expansion,” and of “new facility” discussed below, are drafted in a way that do in fact threaten the continued existence of New Jersey’s scrap metal recycling facilities.

The proposed definition of “expansion” encompasses far more than what was intended by the Legislature and more than the typical construction of this word by including “modifications” of existing operations that have the “potential” to result in an increase of the facility’s contribution to “any” environmental and public health stressor. While the definition goes on to carve out “any such activity that decreases or does not otherwise result in an increase in stressor contributions,” the inclusion of any modifications that have the potential to increase contributions, whether or not they in fact do so, make this definition vague and overly broad. Since specific analyses are required to be performed in conjunction with a business’s planned operations, the concept of “potential” increases has no place in this definition and improperly pulls in changes in operations that will not negatively impact cumulative stressors. For example, the definition of expansion is broad enough to include the installation of an air pollution control technology or the replacement of older equipment with newer and more efficient equipment. Modifications to operations are not typically viewed as expansions unless they increase the footprint or overall production capacity of a facility. Deeming modifications to be an expansion of an existing facility will result in fewer facility upgrades, including upgrades aimed solely at improving pollution control, being made because of the lengthy and undefined EJ approval process that will be required. Accordingly, consistent with the Legislature’s intent and the assurances provided during the stakeholder meetings, ISRI proposes that the definition of “expansion” be amended to state as follows: “‘Expansion’ means an increase in the physical footprint of development or a material increase in maximum allowable emissions or discharges that results in an increase in an existing facility’s contribution to any environmental or public health stressor in an overburdened community and requires an application for a Permit. An expansion for purposes of this chapter shall not include a pollution control project and shall not include any activity that decreases or does not otherwise result in an overall increase in stressor contributions.”

3. Proposed N.J.A.C. 7:1C-1.5: “Existing Facility” and “New facility” – The proposed definitions of “new facility” and “existing facility” are contrary to the common understanding of the terms, plain language of the EJ Law and to the intent of the NJ Legislature. “New facility” is defined to include “an existing facility that has operated without a valid approved registration or permit required by the Department prior to (the effective date of this chapter)… .” “Existing facility,” in contrast, is defined as a facility that possesses a

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22 The Department has proposed to define “expansion” to mean “a modification or expansion of existing operations or footprint of development that has the potential to result in an increase of an existing facility’s contribution to any environmental and public health stressor in an overburdened community, but shall not include any such activity that decreases or does not otherwise result in an increase in stressor contributions.” See proposed N.J.A.C. 7:1C-1.5.

23 Certain ISRI members are actively working with EPA and NJDEP to make potential improvements to their facilities, such as constructing shredder enclosures and installing air pollution control equipment. As drafted, the Proposed Rules would jeopardize these improvements by subjecting them to the EJ process.
valid approved registration or permit from the Department for its operation or construction and is in operation as of the effective date of the Proposed Rules. The Department has indicated that the definitions are based on the definitions contained in N.J.A.C. 7:26-1.4, regarding the permitting of solid waste facilities, broadened to apply to all permits covered by the Proposed Rules.

As noted above, the NJ Legislature revised the original version of the EJ Law to treat new facilities and existing facilities differently. If proposed new facilities would create adverse cumulative stressors their permits must be denied and they would not be able to be sited, while existing facilities could only have conditions imposed in their permits. The EJ Law reflects the Legislature’s desire not to close down existing businesses. Yet, the Proposed Rules require existing facilities, who have operated in the State for decades, but which NJDEP determines do not currently have all their necessary permits (even if the requirement reflects a new interpretation by NJDEP), to be considered “new” facilities. In previously submitted comments, ISRI highlighted its concern that NJDEP might construe situations where NJDEP changes its interpretation or application of its laws, or changes the scope of an existing regulatory program, such that a “new permit” is deemed necessary at an existing facility, as constituting a “new facility”. This is in fact what the Department is attempting to codify in the Proposed Rule. The consequence of being a new facility is that NJDEP must deny their permits, unless a compelling public interest can be shown, which under the current proposed definition will be extremely difficult for scrap metal facilities to meet. Consistent with the intent of the Legislature, the definitions of new and existing facility should be based on the date of construction of a facility, as opposed to whether the facility has obtained a permit.

With respect to scrap metal facilities, the possibility of NJDEP advancing novel permit interpretations against existing facilities is not merely a hypothetical. Recently, the Department has targeted certain scrap recycling facilities under Administrative Order No. 2021-25 in connection with NJDEP’s new interpretation that mobile equipment, like fork trucks that move scrap material, require a preconstruction air permit under the Department’s generic permitting category at N.J.A.C. 7:27-8.2(c)(19), governing “equipment in which the combined weight of all raw materials used exceeds 50 pounds in any one hour…” See Compliance Advisory #2021-03. ISRI and its members disagree with the Department’s new interpretation of permit applicability for these operations, which has no basis in either the regulatory language or the Department’s prior application of these standards. Further, the Department’s determination to require Subchapter 8 permits and initiate enforcement against scrap metal recycling facilities reveals the Department’s desire to selectively enforce against the industry. Notably, the regulatory citations that the Department offers in support make no mention of scrap metal recycling facilities at all, and the Department has made no efforts to expand its novel interpretation more broadly, despite the fact that thousands of facilities all over the State of New Jersey use material handling equipment on a daily basis utilizing such equipment to move material in excess of 50 pounds of material per hour and are not subject to the same novel interpretation of air permit applicability.

The clear result of the Department’s Compliance Advisory #2021-03, in combination with the proposed definition of “new facility,” is to position scrap metal recycling facilities as
new facilities subject to the EJ process, and subject them to potential permit denial. These facilities have been in New Jersey for decades, and until now, NJDEP inspectors have inspected this equipment and operations throughout that period and never suggested that air permits were necessary. If adopted as currently drafted, whenever NJDEP chooses to interpret its regulations differently, as it is doing under Compliance Advisory #2021-03, an existing facility could be artificially determined to be a new facility. Thus, the proposed definition of “new facility” is in direct opposition to the assurances provided by the Governor, Legislature and the Department when the EJ Law was passed that the EJ Law would not be used to push existing businesses out of the State. Accordingly, ISRI proposes that the definitions of “new facility” and “existing facility” be revised to be consistent with the common understanding and usage of the terms “new” and “existing.”

4. Proposed N.J.A.C. 7:1C-1.5: “Geographic point of comparison” – The proposed approach to identifying the geographic point of comparison results in finding disparate impacts simply because urban communities are being compared to rural communities. The EJ Law authorizes NJDEP to deny permits for a new facility or apply conditions to a permit for the expansion or renewal of an existing facility upon a finding that approval of a permit, as proposed, would “cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the State, county, or other geographic unit of analysis as determined by the department….” N.J.S.A. 13:1D-160 c and d. NJDEP is proposing to determine the geographic point of comparison by selecting the lower value of the State or county’s 50th percentile, excluding the values of other overburdened communities. The practical effect of the Department’s proposed methodology of determining the geographic point of comparison is that the State’s 50th percentile will nearly always be the lowest as it includes all of the rural and most pristine areas. Thus, the proposed approach appears not to be based on the historic siting of industrial facilities and their associated stressors, but instead is based on population density. While in the preamble to the Proposed Rule the Department concluded that a ‘one-size-fits all’ approach is not appropriate, the Department’s proposed approach will lead to an inordinate percentage of communities being found to be disproportionately impacted. The language of the EJ Law describes comparing overburdened communities to “other communities within the State, county, or other geographic unit of analysis.” (Emphasis added.) This language suggests that smaller geographic areas, like census blocks, could and should be used to ensure that similarly situated communities are being compared, as opposed to comparing urban areas to

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24 Generally, in the construction of laws and statutes in the State, “words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language.” N.J.S.A. 1:1-1; see also Cherry Hill Manor Associates v. Faugno et al., 182 N.J. 64 (2004) (stating that statutory “language should be given its ordinary meaning, absent legislative intent to the contrary”).

25 In EPA’s Technical Guidance for Assessing Environmental Justice in Regulatory Analysis, dated June 2016, EPA highlighted this same concern, stating that it would not necessarily be appropriate to consider urban areas as a comparison group for a regulatory action that primarily affects rural areas and vice versa, as it would negatively impact the results of the analysis. See page 54.

26 See the preamble to the Proposed Rules, 54 N.J.R. 571(a) at 6.
rural areas.\textsuperscript{27} The proposed approach does not compare similarly situated areas to determine which have disproportionate impacts based on the historic siting of certain types of facility in these communities, but basically assumes that all overburdened communities have disproportionate impacts. While everyone might be exposed to less environmental and health stressors if they lived in the country, the purpose of the EJ Law is not to lessen stressors that result simply from people living in urban environments.

Additionally, the manner in which stressors have been identified and are measured, often counting the mere existence of certain facilities as stressors and comparing the area to locations that do not have similar types of facilities, necessarily results in overburdened communities being found to be disproportionately impacted. In fact, the definition of “geographic point of comparison” combined with the specified list of “stressors” and how they are being measured results in virtually all urban communities being found to be disproportionately impacted. The restrictions imposed by the Proposed Rules on development in overburdened communities coupled with the extensive development restrictions in existing environmentally sensitive areas, such as the Pinelands, the Highlands, and coastal zones leave less than 38\% of New Jersey available for potential development. When development limitations on preserved farmland and local residential and agricultural zoning restrictions are considered, as well as other land that is simply not developable, there is left a small percentage of actual land for scrap metal recycling facilities to legally operate. Scrap metal recycling facilities will effectively be regulated or zoned out of business. The Department should amend the proposed methodology to compare similarly situated communities with similar population density.

5. Proposed N.J.A.C. 7:1C-1.5: “Overburdened community” – The Department relies on unrepresentative data in identifying overburdened communities. The EJ Law defines an overburdened community as any census block group meeting one of three demographic criteria as determined in accordance with the most recent United States Census, which is performed decennially. N.J.S.A. 13:1D-158. Instead of relying on data from the most recent United States Census, the Department appears to have relied on data from the American Community Survey in identifying overburdened communities. American Community Survey demographics typically are based on a smaller sample of households (approximately 3\%) than the decennial census. The small sample size leads to wide variation in communities that will be identified as overburdened each year, creating significant uncertainty for facilities. Facilities are already seeing the effects of the Department’s reliance on American Community Survey data, as following the Department’s most recent update, facilities that were not previously located in overburdened communities are now covered and facilities that were located in an overburdened community are no longer covered. Consistent with the definition of overburdened community in the EJ Law, the Department should rely on United States Census data to identify overburdened communities to allow facilities to effectively plan permit applications, allocate resources, and proactively address EJ concerns.

\textsuperscript{27} For example, the California Environmental Protection Agency (“CalEPA”) evaluates and scores each community on the census track level and compares scores across the state to identify which communities are disproportionately impacted. See CalEPA’s description of scoring and modeling in CalEnviroScreen at https://oehha.ca.gov/calenviroscreen/scoring-model.
B. Applicability – Proposed Subchapter 2.

1. Proposed N.J.A.C. 7:1C-2.1(e): Treating zero population block groups that are adjacent to overburdened communities the same as overburdened communities is contrary to the EJ Law. The EJ Law states that it only applies to facilities “located, or proposed to be located, in whole or in part, in an overburdened community ... .” N.J.S.A. 13:1D-160 a. (emphasis added). The EJ Law defines an “overburdened community” as any census block group in which: (a) at least 35 percent of the households qualify as low-income households; (b) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or (c) at least 40 percent of the households have limited English proficiency. N.J.S.A. 13:1D-158. By definition, a census block that has no residents does not meet the definition of an overburdened community under the EJ Law. Thus, the specific language of the EJ Law does not allow the expansion of its requirements to a zero-population census block and N.J.A.C. 7:1C-2.1 should be removed from the Proposed Rules.

C. Environmental Justice Impact Statement – Proposed Subchapter 3

1. Proposed N.J.A.C. 7:1C-3.2 requires facilities to make assumptions that overstate potential impacts and are not narrowly tailored to potential impacts from the proposed activity. The EJ Law and Proposed Rules require an applicant to submit an EJIS to the Department that assesses the potential environmental and public health stressors associated with the new or expanded facility, or with the existing major source. See N.J.S.A. 13:1D-160 a.(1) and N.J.A.C. 7:1C-3-2(a)7. While evaluating potential stressors as part of a permit application is consistent with, and required by, the EJ Law, the Proposed Rules go beyond the statute to require applicants to make certain assumptions in its EJIS, such as assessing impacts “under conditions of maximum usage or output,” regardless of whether the facility operates or intends to operate at maximum operating conditions. The required assumptions would result in an overstatement of potential impact, thus requiring facilities to address an impact that may never exist based on actual operating conditions. The Department should amend the Proposed Rules to require applicants to analyze potential impacts based on actual operating conditions.

The Proposed Rules are also unclear and require the submittal of information even when an overburdened community is not subject to adverse cumulative stressors. For example, proposed N.J.A.C. 7:1C-3.2(a)(3)(i) requires applicants to discuss “how the project serves the needs of the individuals in the overburdened community” even if the overburdened community is not subject to adverse cumulative impact and the proposed activity will not cause or contribute to such an impact. The EJIS requirements and supplemental information should be narrowly tailored to address the adverse cumulative stressors faced by an overburdened community that are caused by or contributed to by the proposed activity. In addition, proposed N.J.A.C. 7:1C-3.2(a)(5) requires applicants to submit “evidence of satisfaction of any local environmental justice or cumulative impact analysis with which the applicant is required to comply.” It is not clear what “local environmental justice” or “cumulative impact analysis” the Department is referring to and should be removed from EJIS requirements.
2. **Proposed N.J.A.C. 7:1C-3.3 appears to arbitrarily require the submission of information that is unrelated to the permit being sought.** The EJ Law envisions looking at stressors already borne by the overburdened community, and potential stressors associated with the new or expanded facility or existing major source, including adverse stressors that cannot be avoided if a permit is granted. See N.J.S.A. 13:1D-160 a.(1). Proposed N.J.A.C. 7:1C-2.1(f) indicates that where an applicant is required to analyze the potential for a facility’s contribution to create additional adverse environmental and public health stressors, it shall be required to address only those stressors that are identified as being affected. However, Proposed N.J.A.C. 7:1C-3.3, as drafted, is ambiguous as to whether an applicant will be required to address all categories of information, or only the information relevant to the type of permit being sought and the affected stressors identified. Proposed N.J.A.C. 7:1C-3.3(a) identifies 14 categories of “supplemental information” that applicants need to include with its EJIS. If the Department’s intent, consistent with Proposed N.J.A.C. 7:1C-2.1(f), is to require applicants to address only those stressors that are potentially affected by the type of permit being sought, then the Department should clarify the language of Proposed N.J.A.C. 7:1C-3.3 consistent with such intent.

However, if the Department intends for an applicant to obtain and submit all of the categories of information identified in proposed N.J.A.C. 7:1C-3.3(a) across environmental media, regardless of the type of permit being sought and the potentially affected stressors, such a requirement is unreasonably burdensome and arbitrary. By way of example, if an applicant is seeking an air permit, a number of the categories of information specified in this section of the Proposed Rules are completely unrelated to air emissions, including, but not limited to:

- Drainage patterns and wetlands (see N.J.A.C. 7:1C-3.3(a)1.iii.);
- Subsurface hydrology that presents ground water quantity and quality data for aquifers beneath the site, including depth to ground water during seasonal high and low flow, flow direction, future supply capabilities, etc. (see N.J.A.C. 7:1C-3.3(a)4.);
- Localized climate and flooding impacts (see N.J.A.C. 7:1C-3.3(a)5.);
- Sewage facilities data (see N.J.A.C. 7:1C-3.3(a)7.); and
- Stormwater management and water supply information (see N.J.A.C. 7:1C-3.3 (a)8. and 9.).

Additionally, some of the information that may be required takes time to collect. For example, to comply with subsection (a)4., an applicant would be required to obtain site-specific groundwater data that an applicant may not have (especially if it is not relevant to the permit being sought) and may require the installation of groundwater monitoring wells to be able to determine “seasonal high and low flow” of the aquifers located beneath the site. The cost and time of collecting all the “supplemental information” specified in N.J.A.C. 7:1C-3.3 is likely to

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28 The performance of a traffic study and the evaluation of ambient air quality data would similarly be unrelated to an application for a stormwater discharge permit.
be significant. ISRI requests that NJDEP revise this section to make clear that only information related to the type of permit being sought will be deemed necessary.


1. Proposed N.J.A.C. 7:1C-4.1 – The notice provisions go well beyond the authority provided in the EJ Law and are ambiguous and unreasonable. The EJ Law identifies specific notice requirements that an applicant will need to follow prior to the submission of an application, including publishing a notice of the public hearing in at least two newspapers circulating within the overburdened community, including one local non-English language newspaper, at least 60 days prior to the public hearing, providing the notice to the Department who must publish it on the Department’s website and in the monthly New Jersey Bulletin, and providing the notice to the governing body and the clerk of the municipality in which the overburdened community is located. See N.J.S.A. 13:1D-160 a.(3). The EJ Law also provides a list of details that must be included in the public notice. These notice requirements are more than sufficient to ensure that the community is made aware of and can participate in the public hearing and are consistent with and more expansive than the public notice requirements imposed by many substantive environmental statutes. Despite the robust public participation process provided in the EJ Law, the Proposed Rules impose additional and burdensome notice requirements on applicants, including requiring written notice through certified mail to all persons owning land and/or residing on land located within 200 feet of the facility and any easement holders for that land, posting and maintaining a sign at the facility of the public hearing, and providing notice through other means, including but not limited to, automated phone messages or other electronic notices and flyers, without any demonstration or justification for the need for such enhanced or onerous requirements. The imposition of additional notice requirements, beyond those required in the EJ Law, is vague, overly burdensome, unnecessary, and beyond the authority granted to the Department by the Legislature.

The public notice requirements contained within Proposed N.J.A.C. 7:1C-4.1 are also ambiguous in that it is not clear whether an applicant must provide notice in all of the forms identified or if an applicant can choose which form of enhanced public notice to use. To the extent the Department intends the former, the Department should clarify how it expects an applicant to obtain the necessary information, such as phone numbers, to comply with the additional notice requirements. In addition, requiring an applicant to provide public notice in six different ways will only serve to create unnecessary concern in the community and will not further the goal of ensuring that the public is adequately and accurately informed. To the extent the Department intends the latter, the Department should clearly specify the minimum public notice that is required, as specified in N.J.S.A. 13:1D-160 a.(3), and only require more enhanced public notice in specific situations where the statutorily provided public notice is demonstrated by the Department to be insufficient.
2. Proposed N.J.A.C. 7:1C-4.3 combined with the definition of “material change” would disincentivize applicants from meaningfully incorporating public comments. After an applicant has provided the requisite public notice, conducted a public hearing and responded to the comments received, the Proposed Rules would require an applicant to go through the entire process again if the applicant makes a material change to the information set forth in the EJIS or its permit application. As drafted, the Proposed Rules would discourage applicants from meaningfully incorporating comments received during the public hearing in its application or EJIS, because doing so would subject applicants to additional rounds of public hearings and comments and would further delay the processing of its permit application. To encourage applicants to implement community input, the Department should define “material change” to only include material changes to the scope or footprint of the facility or material increases in contributions to environmental or public health stressors that would elicit different types or categories of comments and to exclude changes in the measures proposed to address the facility’s contributions to environmental and public health stressors.

3. The Department should clarify the public participation process described in proposed N.J.A.C 7:1C-4.3 to ensure that applicants can plan for and address comments by residents of overburdened communities. The Proposed Rules require that an applicant, after the close of the public comment period, provide a copy of the comments submitted along with the applicant’s response to the public comments to the Department. The applicant is also required to indicate how it will address the comments.

ISRI is supportive of a meaningful public participation process and an ongoing dialogue between community stakeholders and industry. Because one of the goals of the EJ Law and, more specifically, the public hearing process, is to amplify the voice of overburdened communities in connection with a proposed facility’s potential impact, ISRI asserts that the requirement to address public comments should be limited and the term “interested party” should be defined to include residents who live or work in the overburdened community (or organizations that are commenting on behalf of identified residents or workers in the community) that are related to the permit being sought and the potential impact of the facility. Persons and entities who live and work outside of the overburdened community may continue to offer comments to the Department as part of the permit application process, as may otherwise be appropriate under the Department’s existing public participation standards. It is also unclear how the Department will determine whether an applicant has sufficiently addressed the comments that are received. The Department should provide more guidance on the scope of responses that will be necessary to satisfy this proposed rule.

29 “Material change” is defined as “a modification of the facility or EJIS that, in the determination of the Department, requires further analysis or public comment to accurately assess the facility’s contribution to environmental and public health stressors in the overburdened community, such as, but not limited to: 1. A change to the basic purpose; 2. An expansion of the facility; 3. An increase in the potential contributions to environmental or public health stressors; or 4. A change in the measures proposed to address the facility’s contributions to environmental and public health stressors.” Proposed N.J.A.C. 7:1C-1.5 (emphasis added).

1. Proposed N.J.A.C. 7:1C-5.3 is inconsistent with the definition of “compelling public interest” and does not appropriately incorporate economic benefits.

Proposed N.J.A.C. 7:1C-5.3 would require the Department to deny an application for a new facility where the proposed new facility cannot avoid a disproportionate impact, unless the applicant demonstrates that the proposed facility will serve a compelling public interest. As noted in Section II.A.2 above, the exclusion of economic benefits from consideration of whether a new facility serves a compelling public interest goes beyond the requirements set forth in the EJ Law and is inappropriate, especially where the community is overburdened because of its percentage of low-income households or an identified stressor for the community is the percent of unemployed residents. Instead of restricting the facilities that could qualify as serving a compelling public interest to a narrow few, the Department should allow for the possibility that facilities could qualify as serving a compelling public interest by allowing consideration of economic and job benefits in appropriate circumstances.

Additionally, proposed N.J.A.C. 7:1C-5.3 identifies items that the applicant will need to address to demonstrate that the new facility will serve a compelling public interest, instead of simply relying on the definition of “compelling public interest” in proposed N.J.A.C. 7:1C-1.5. The Department’s definition of compelling public interest and the requirements in proposed N.J.A.C. 7:1C-5.3(b) are not the same. The definition of “compelling public interest” requires that there are “no other means reasonably available” to meet the essential environmental, health, or safety need. The requirements in proposed N.J.A.C. 7:1C-5.3(b) state there are “no feasible alternatives that can be sited outside the overburdened community” to serve the essential environmental, health, or safety needs. The definition only considers whether there any other reasonable alternatives in the overburdened community, while the requirements look at the feasibility of addressing the essential need outside the overburdened community. Both alternatives are problematic. As noted above, in Section III.A.1, the definition suggests that all other “reasonable” alternatives must be considered and ruled out, which is overly burdensome and ambiguous, nor is it clear what constitutes reasonable alternatives. The language in proposed N.J.A.C. 7:1C-5.3(b)3 suggests that all other “feasible” alternatives be considered and that these alternatives should be sited outside of the community. It is not clear whether there is a difference between reasonable and feasible alternatives, but the difference in language makes what is required unclear. Moreover, the indication in this proposed section that alternatives outside the overburdened community be considered makes this requirement even more burdensome and difficult to satisfy. In addition, it is not clear how far an applicant must look in analyzing feasible alternatives, whether one can only consider locations that are not overburdened, and if so, given that the Department’s definition of overburdened community results in the majority of the State meeting that classification, whether greenfields are the only option for new facilities. Thus, in addition to revising the definition of “compelling public interest” to include consideration of economic and job benefits in appropriate circumstances, proposed N.J.A.C. 7:1C-5.3(b) 1 through 3 should be deleted and this section should rely on the definition of compelling public interest found in N.J.A.C. 7:1C-1.5 so there is no confusion about what is required to show a compelling public interest.
2. Proposed N.J.A.C. 7:1C-5.4 and 7:1C-6.3 arbitrarily require applicants to consider a hierarchy of onsite and offsite control measures beyond what is authorized by the EJ Law. The sections of the EJ Law regarding conditions that can be imposed by the Department in permits for new facilities or expansion of existing facilities specifically limit the type of conditions to “conditions on [or concerning] the construction and operation of the facility.” See N.J.S.A. 13:1D-160 c and d. Thus, the EJ Law does not authorize or envision the Department imposing offsite control measures or other measures that are unrelated to the construction or operation of the applicant’s facility. Despite this limiting language, the Proposed Rules require new facilities and expansions of existing facilities to potentially evaluate offsite control measures that have nothing to do with the actual construction or operation of the applicant’s facility. As these types of control measures are not authorized by the EJ Law or the underlying substantive environmental statutes, the sections of the Proposed Rules that require consideration of such offsite measures should be deleted. The Department should amend Proposed N.J.A.C. 7:1C-5.4 and 6.3 to only require applicants to evaluate and propose feasible control measures within the fence line of the facility concerning the construction or operation of the facility, and allow, but not require, facilities to evaluate and propose other feasible control measures.

In addition, the hierarchy of how the specified control measures must be evaluated under proposed N.J.A.C. 7:1C-5.4 and 7:1C-6.3 is arbitrary and not consistent with implementing cost effective measures that will have the greatest reduction in environmental or public health stress. By way of example, the Proposed Rules identify a preference in the consideration of offsite measures for the reduction of stressors from highest to lowest percentile in relation to the geographic point of comparison. This seemingly would preclude an applicant from addressing several stressors listed at lower percentiles instead of one stressor at a higher percentile. Simply stated, an applicant should be able to determine what control measures provide the greatest efficiency without artificially requiring preference for the highest percentile stressors. Instead of placing limitations or preferences on control measures, the Department should allow applicants to propose a combination of control measures as long as there would be a net benefit to the community.

With respect to possible onsite control measures to be evaluated, and possibly required, the Proposed Rules provide no guidance on the type or number of such measures to be employed or whether they must relate to the environmental and public health stressors impacted by the proposed activity that requires a permit. Similarly, there are no standards or guidelines provided regarding how much “avoidance” or “minimization” of contributions to adverse stressors, or

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30 By requiring consideration of offsite measures, the Department is also placing an unreasonable burden on applicants to navigate the potential challenges, such as access, associated with facilities undertaking activities off of its property.

31 While the EJ Law only authorizes the imposition of conditions concerning “the construction and operation of the facility,” ISRI has no objection to having provisions that allow applicants to propose other types of control measures, including offsite ones, that may be more beneficial to the community and/or more technologically or economically feasible. However, such conditions that were not authorized by the EJ Law should be voluntary, not mandatory ones as currently envisioned by the Proposed Rules.
“reduction” to any identified adverse stressors, will be viewed as sufficient by the Department in evaluating applicants’ proposed control measures. See proposed N.J.A.C. 7:1C-5.4(b)1.-4. and 6.3(b)1.-4. For businesses to be able to reasonably plan future operations, it is crucial that they be able to predict the scope of control measures that might be required. As currently drafted, the Proposed Rules force facilities to expend significant time and money without ever being able to predict the likelihood of eventually obtaining the environmental permit sought. In summary, the Proposed Rules disincentivize scrap metal recycling facilities from making meaningful investments in overburdened communities by establishing vague requirements, beyond what is authorized in the EJ Law, that make it difficult for facilities to reasonably plan future operations, and by arbitrarily imposing a hierarchy of control measures.

The proposed hierarchy of control measures found in proposed N.J.A.C. 7:1C-5.4 and 7:1C-6.3 reflects the Department’s position that the EJ Law gives the Department unlimited and unchecked authority to impose any condition it desires in the subject permits as long as addressing alleged environmental and public health stressors is their goal. However, as noted above, while the language of the EJ Law is broad, it does specify the type of conditions that the Legislature authorized the Department to impose. Moreover, to the extent the Legislature had intended to confer this type of super power on the Department, allowing it to impose conditions and requirements that go well beyond the authority conferred by the underlying environmental permitting statutes, the Legislature would have needed to articulate such authority in clear and explicit terms, which was not done. If the Department’s apparent interpretation of the EJ Law is accepted, the constraints and authorizations of the underlying permitting statutes would no longer matter and the EJ framework would supplant all other NJ environmental permitting programs. Construing the EJ Law in this manner would also violate the nondelegation and major questions doctrines.32


1. The Department has not demonstrated that LICT is necessary or appropriate to address localized impacts. In proposed N.J.A.C. 7:1C-7.1, the Department would seek to impose Localized Impact Control Technology (“LICT”) on proposed new or expanded major source facilities. The Department bases the LICT requirement on the erroneous assumption that the Department’s existing standards for the control of air pollution are protective of “general populations spread over a wide geographic area but may fail to fully consider localized impacts.” ISRI disagrees with this statement; the Department’s existing air permitting regulations under Subchapters 8 and 22 specifically consider localized impacts, as is required under federal New Source Review requirements and pursuant to the Department’s extremely stringent air toxics program. For example, ambient air quality impact analyses conducted under Subchapter 18 specifically consider the impact of new or increased criteria pollutants emissions from the facility on the attainment area in which it is located. The Department’s air toxic program requires that facilities emitting air toxics above reporting thresholds (which in most cases are very low) conduct risk assessments to quantify potential impacts to health at the fence

32 See West Virginia, 142 S.Ct. at 4609 (finding that indirect and ambiguous language in a statute will not be interpreted as empowering an agency to make radical or fundamental changes to a statutory scheme).
line and beyond. Each of these programs require the Department to consider localized impacts, and where such an impact is determined to exist pursuant to established regulatory criteria, address that impact through the installation of controls or other measures. The Department has not demonstrated that these programs are insufficient to address localized risk or that a new articulation of a top-down control technology review is appropriate. Further, unlike established air permitting programs, which are based on well-established and objective ambient standards for pollutants (i.e. National Ambient Air Quality Standards for criteria pollutants and reference concentrations and unit risk factors for air toxics), the Proposed Rules would impose LICT without first determining that any actual impact to the community or surrounding area has occurred from the facility.

2. **Excluding consideration of economic infeasibility in determining LICT is inappropriate.** Although the Department purports to base LICT on existing State of the Art (“SOTA”) requirements, the new concept of LICT would completely replace and upend SOTA requirements for affected facilities by not allowing for the consideration of economic infeasibility. LICT would use the exact same thresholds for applicability as SOTA. However, existing SOTA requirements clearly and appropriately allow for consideration of economic feasibility, in longstanding recognition that controls achieving only marginal reductions at high costs make a control technology unreasonable. See N.J.A.C. 7:27-8.12 and New Jersey Department of Environmental Protection State of the Art Manual, July 1997. Further, by requiring an applicant to consider measures applied to similar source categories, innovative control technologies, and process modifications without regard to economic feasibility, the LICT requirement has the potential to subject applicants to implementing unproven technologies or fundamental changes to source operations that may only achieve the most minimal of reductions. In short, LICT wipes away any concept of ensuring an adequate environmental return on the investment required of an affected facility pursuant to the Proposed Rules.

G. **Requirements Specific to Renewal Applications for Major Source Facilities – Subchapter 8.**

1. **The Department should clarify and limit the broad language included in proposed N.J.A.C. 7:1C-8.2 and 7:1C-8.6.** In drafting the Proposed Rules, the Department should very clearly circumscribe the types of analyses or conditions that would be required of an existing major source facility applying for operating permit renewal. Because an operating permit renewal, by itself, would not be expected to increase the facility’s impact on the surrounding community, and the delegated Title V program is not intended to authorize the imposition of new substantive requirements on existing facilities at permit renewal, the Proposed Rules should clearly identify and limit the Department’s authority to require changes or installation of controls at these facilities. Instead, the language in proposed N.J.A.C. 7:1C-8.2 is very broad (“...analyze and propose all control measures necessary to avoid facility contributions to all adverse and public health stressors...”). The language in the Proposed Rules is directly inconsistent with the very purpose of Title V, and must be constrained and clarified at the time of renewal. Further, to the extent that the Department does intend to impose new
substantive requirements, the scope of those requirements must be clarified. For example, the Department should clarify that a control technology analysis for an existing facility would only be required in accordance with and pursuant to the criteria identified in proposed N.J.A.C. 7:1C-8.5, which specifically addresses technical feasibility analyses for equipment and control apparatus. Likewise, as written, proposed N.J.A.C. 7:1C-8.6 suggests that any aspect of the major source facility’s operations not addressed via section 8.2 must be evaluated to address “all feasible measures to avoid facility contributions to environmental and public health stressors” and “all feasible onsite measures to minimize facility contributions to environmental and public health stressors”. The Department states at page 28 of the preamble that this language applies to all stressors, whether adverse or not. This language places an enormous potential burden on existing major source facilities. Given the large number of operations at major source facilities, the large number of stressors identified in the Proposed Rules, and the undefined authority that would be conferred to the Department, this provision could be interpreted to require sweeping changes at existing sources to the extent deemed “feasible” by the Department. The uncertainty surrounding this process, and the potential scope of the Department’s authority, will create uncertainty and risk for existing facilities, and is entirely inconsistent with the Legislature’s determination that the EJ Law should not be used to push existing businesses out of New Jersey.

2. **The Department should allow for preservation of the major source application shield.** As set forth below, the Proposed Rules would add a significant (and undefined) amount of time to the application process for affected facilities by providing that a permit application cannot be considered complete for review before completing the EJ process. This is a particularly acute problem for major source facilities, which do not qualify for an application shield unless their renewal applications are determined to be administratively complete by the renewal deadline. See N.J.A.C. 7:27-22.30(c). The EJ Law, at N.J.S.A. 13:1D-160(d) and (f), provides the Department with the authority to define the conditions under which the application shield would apply to an existing major facility subject to the Proposed Rules by virtue of a renewal permit; the Department should streamline these processes to the extent possible and must ensure that major source facilities are not denied the application shield for renewal applications that are delayed as a result of the EJ process.

H. **Department Review and Decision - Proposed Subchapter 9.**

1. **Proposed N.J.A.C. 7:1C-9.1 would indefinitely delay an applicant’s ability to submit an application.** The EJ Law and the Proposed Rules add a substantial amount

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33 ISRI questions the selection of 20 years as the threshold at which 7:1C-8.5 requirements would apply, with the understanding that the anticipated lifespan of most equipment and control apparatus (for which facilities make calculated and substantial investments) far exceed 20 years. Further, a 20-year review of equipment and control devices, without regard to performance or actual impacts to the community, would seem to provide little actual benefit to the environment or public health.

34 54 N.J.R. 971(a) at 28.
of time to the permit application process. ISRI is concerned that, while the Proposed Rules provide time periods for public notice and hearing and for receiving written comments, there are no time periods prescribed for NJDEP’s review of the EJIS and supplemental materials that are required to be submitted pursuant to proposed N.J.A.C. 7:1C-9.1. The amount of time that it could take NJDEP to review and issue a decision on whether an applicant can move forward with the submission of an application is limitless. This will have negative implications for facilities; as one example, Title V facilities are required to submit administratively complete renewal applications at least twelve months prior to permit expiration every five years in order to qualify for an application shield. To the extent that such an application cannot be considered administratively complete prior to completion of the EJ process, permittees will potentially need to begin the EJ process halfway through the permit term in order to ensure adequate time prior to the renewal application due date. As such, Title V permittees are at risk of being put into an endless loop of EJ process. Because an applicant must obtain approval from the Department prior to submitting its environmental permit application, which, in turn, has its own review timelines that, in many cases, are subject to additional public participation, the Department should impose reasonable timeframes on its review of the relevant EJ materials to allow the regulated community to plan for the additional review time in the application process.

The Proposed Rules will also exacerbate the already well-known permitting backlogs that exist within the Department’s air permitting program and affect both Subchapter 8 and Subchapter 22 major source permits. A review of the section of the Department’s website listing permits subject to “enhanced public participation” reveals a long list of pending Title V renewals, some of which go back to renewal application submittals made in 2019. This is by no means a complete list of all pending Title V permits – the backlog is so great that the Department issued a Memorandum in June 2022 to Operating Permit Section Staff instructing them on how best to set expiration dates for renewals issued past the permit expiration date, including in cases where a second renewal application had been submitted because more than five years had passed since the initial renewal application submittal.

2. Proposed N.J.A.C. 7:1C-9.1 and 9.2 allow the Department to impose conditions unrelated to the construction and operation of a facility, beyond the authority provided by the EJ Law. The EJ Law provides that the Department “may grant a permit [for a new or expanded facility] that imposes conditions on the construction and operation of the facility to protect public health.” N.J.S.A. 13:1D-160 c and d. (emphasis added). Importantly,
the EJ Law does not provide any additional substantive authority under the existing environmental permitting statutes, including the types of permit conditions the Department may impose in a permit, and instead relies on existing statutory authority applicable to the permits. See N.J.S.A. 13:1D-158, definition of “Permit”. However, proposed N.J.A.C. 7:1C-9.1 and 9.2 are drafted broadly enough to allow the Department to impose conditions beyond the construction and operation of the facility, to include offsite measures to reduce stressors even if the facility itself will not contribute to the stressor, and other conditions that will “provide a net environmental benefit in the overburdened community.”

The range of conditions that NJDEP believes it can impose exceeds its delegated authority under the EJ Law and runs afoul of the nondelegation and major questions doctrines. As the United States Supreme Court recently held in West Virginia v. EPA, “extraordinary grants of regulatory authority are rarely accomplished through ‘modest words,’ ‘vague terms,’ or ‘subtle device[s].’ Nor does Congress typically use oblique or elliptical language to empower an agency to make a ‘radical or fundamental change’ to a statutory scheme.” 142 S.Ct. 2587, 2609 (2022). The Proposed Rules allow NJDEP to impose any condition in a permit, no matter the nexus to the permitted activity, which may require action outside of a facility’s property boundary. To the extent that the New Jersey Legislature had intended to convey unlimited power to the Department in imposing conditions, the Legislature would have clearly articulated such authority in the EJ Law.

The Department’s interpretation of the types of conditions that it can impose in permits represents a fundamental change from historic permitting practices. Historically, conditions imposed in permits under the substantive environmental statutes related to the subject matter of that permit, such that stormwater permits did not impose air emission restrictions and air permits did not impose water discharge restrictions. Similarly, the Department is not authorized to regulate the emissions from or usage of mobile sources at or in connection with individual facility permitting under the Air Pollution Control Act, consistent with the authority and constraints under the federal Clean Air Act. Under the proposed EJ framework, any constraints or limitations imposed by existing environmental statutes would no longer be relevant because the Proposed Rules appear to confer authority upon NJDEP to impose conditions on sources not regulated by the underlying environmental statutes and to impose conditions in permits not authorized by these underlying statutes.

In addition to the Department broadly exceeding its statutory authority, the Proposed Rules also provide no specifics on the types of conditions that may be imposed and the

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39 Proposed N.J.A.C. 7:1C-9.1(b) and 9.2(b) allow the Department to evaluate and impose conditions on a facility beyond those required to be evaluated by the applicant, including conditions that would require an applicant to take action outside of its property boundary. The Department defines “net environmental benefit” as a reduction of baseline environmental and public health stressors in an overburdened community or other action that improves environmental or public health conditions in an overburdened community, as determined by the Department. Proposed N.J.A.C. 7:1C-1.5.
40 See 42 U.S.C. §§ 7543(a) and (e).
information that the Department will consider in determining the necessary type and scope of conditions. This is particularly important given that the Department can suspend or revoke a permit for violation of conditions that it imposes. See Proposed N.J.A.C. 7:1C-9.4(b). The Department has not provided adequate notice to affected facilities of the costs and conditions associated with obtaining necessary environmental permits. The Department should revise proposed N.J.A.C. 7:1C-9.1 and 9.2 to expressly state the types of conditions that the Department can impose, which should be those conditions that are related to the type of permit sought, that can be feasibly implemented within the fence line of the facility, are feasibly related to the stressor to which the facility will contribute, and are limited to the “construction or operation of the facility” as required by the EJ Law.

3. Proposed N.J.A.C. 7:1C-9.1(c) allows the Department to impose unreasonable fees on the regulated community, contrary to the EJ Law. While the EJ Law allows the Department to impose a “reasonable fee” to cover the Department’s costs, including costs to provide technical assistance to permit applicants and overburdened communities, it does not allow the Department to charge potentially excessive and unlimited fees on applicants for the Department to engage an “expert” to evaluate any information submitted by the applicant. See N.J.S.A. 13:1D-160 g and proposed N.J.A.C. 7:1C-9.1(c). The Department has not provided any guidance as to when it will seek the assistance of an “expert,” who the “expert” will be, and any cap on the amount of money to be charged to an applicant. The Legislature made clear that the burden is on the Department to conduct a review of an EJIS and decide whether and under what conditions to issue a permit and has not expressly authorized the Department to hire outside “experts”. See N.J.S.A. 13:1D-160 c, d, and g. To the extent that the Department seeks outside assistance by “experts,” the Department, not the applicant, should cover the costs of such review.

4. Proposed N.J.A.C. 7:1C-9.4(b) improperly allows the Department to revoke or suspend a permit for violations of the Proposed Rules, contrary to the EJ Law. In enacting the EJ Law, the Legislature chose to structure the EJ process such that it would act as a prelude to the Department’s substantive environmental permitting process. See N.J.S.A. 13:1D-160. Despite the clear intent of the Legislature and the lack of authority provided by the EJ Law, proposed N.J.A.C. 7:1C-9.4(b) would allow the Department to suspend or revoke a Department-issued permit for any violation of the conditions imposed by the Proposed Rules. While the existing substantive environmental statutes and the regulations promulgated thereunder may allow the Department to suspend or revoke a permit under certain conditions, the Legislature did not convey such authority to the Department regarding conditions imposed in permits pursuant to the EJ Law. As such, the Department should delete proposed N.J.A.C. 7:1C-9.4(b).

5. Proposed N.J.A.C. 7:1C-9.5(h) inappropriately penalizes facilities that exercise their right to challenge the Department’s decisions. Although the Proposed Rules appropriately allow for an applicant to request an adjudicatory hearing to contest a Department decision, Section 9.5(h) provides that “the decision and any associated permits shall be automatically stayed in its entirety and all permitted activities shall stop as of the date the hearing request is submitted and shall not be started again until the matter is resolved.” The scope of this
provision is at best unclear, given that the EJ process envisioned under the Proposed Rules acts as a first step in the permitting process. Certainly, any appeal should not result in a halt of the permitting process and likewise cannot have the effect of halting facility operations. Any such directive would cause acute harm to applicants, and in the case of existing operations would be frankly unlawful. Further, such an automatic stay is entirely inappropriate – any action taken by the Department under the Proposed Rules would have already been determined by the Department to be appropriate and protective of public health, so a stay is not necessary to protect any legitimate interest of the Department and must only be intended to discourage adjudicatory hearing requests. This provision is completely inconsistent with New Jersey administrative rules and the appeal provisions of the permitting programs for which EJ review under the Proposed Rules would be conducted. For example, the provisions governing appeals from the Department’s air permitting decisions make clear that neither the filing of an adjudicatory hearing request nor the Department’s decision to grant a contested case hearing shall automatically result in a stay of challenged permit conditions. Instead, in order to obtain a stay of the challenged conditions, and move forward with the project without complying with the contested conditions, the applicant must bear the burden of proving that the granting of a stay is required as a constitutional or statutory right, or that the potential effect on human health and welfare or the environment which might result from a decision to grant a stay is greatly outweighed by immediate, irreparable injury to the specific party requesting such stay. Proposed section 9.5(h) flips this construct on its head because it would not allow an applicant to move forward in compliance with contested conditions while a hearing moves forward, or even after the applicant has made the requisite regulatory showing that compliance with the contested conditions is not necessary pending appeal. The broad type of stay envisioned by the Proposed Rules, which would require all permitted activities to “stop” as of the date of the hearing request until the matter is resolved, would prevent the applicant from constructing and/or operating its facility pending appeal, even where ongoing operations would be done in strict accordance with the Department’s current determinations. This provision is surely intended to discourage appeals of Department decisions by requiring as a price of such an appeal that the applicant’s project cannot proceed or that its operations must cease. Such a provision is inappropriate and unnecessary.

I. Appendix – Identified Stressors and Method of Measurement.

1. Measuring the environmental and public health stress associated with scrap metal facilities by the number of sites per square mile is an inaccurate and biased way to measure stress from these facilities. As discussed above, the EJ Law defines an “environmental or public health stressor” to include “scrap yards,” which NJDEP has improperly expanded to include all scrap metal recycling facilities. In the Appendix to the Proposed Rules, scrap metal facilities are counted as a stressor by their mere existence as their stress is measured.

41 See, e.g., N.J.A.C. 7:27-1.33.
42 Id.
43 The harm caused by this provision is made worse by the slow process for review of adjudicatory hearing requests. Referral to the Office of Administrative Law and ultimate disposition via adjudicatory hearing typically takes years to complete.
by sites per square mile. Yet, in the preamble to the Proposed Rules, the Department recognizes that not all scrap metal facilities cause negative environmental impacts and environmental stress, and that it is “[i]mproperly managed scrap metal facilities [that] can contaminate soils, groundwater, and surface waters with hazardous materials and release refrigerants containing fluorocarbons in the air.”\(^44\) The preamble goes on to note that the volume and quality of discharges from scrap metal facilities depends on a variety of site-specific factors.\(^45\) Yet, despite this qualifying language as to what causes stress, the Proposed Rules assume all such facilities are stressors and proposes to use the density of scrap metal facilities per square mile as the measurement of stress. Typically, any potential stress caused by scrap metal facilities are addressed through compliance with the substantive environmental statutes and the regulations promulgated thereunder. For example, the volume and quality of stormwater is addressed through the implementation of effective Best Management Practices. Accordingly, in measuring stress associated with scrap metal facilities, the Department should use a measurement that better correlates with the stress associated with this type of facility, such as looking at surrogates for emissions or discharges or for improper management. Examples of these types of possible metrics include number of material permit or regulatory violations.

By treating all scrap metal facilities as causing the same amount of stress, regardless of their compliance status or methods of addressing interaction with the environment, the Proposed Rules provide the wrong incentives. Moreover, the measurement of the number of scrap metal facilities per square mile, coupled with the proposed definition of “geographic point of comparison,” which will compare rural or residential areas with no scrap metal facilities to the area in question which will have at least one such facility, will always result in there being an adverse stressor. Thus, the Proposed Rules should be revised to measure stress from scrap metal facilities through more indicative metrics, such as number of material permit or regulatory violations. Additionally, the Department chose to exclude resource recovery facilities and other waste incinerators in the State from being considered under the “solid waste facilities” stressor in the Proposed Rules because such facilities “are captured under the regulated air pollution facilities stressor.”\(^46\) Scrap metal facilities are also captured under other stressors, yet the Department has proposed to identify such facilities as its own stressor category, without explanation. The Department should remove scrap metal facilities from its own stressor category and consider them as part of other stressors, such as the number of permitted air and NJPDES sites per square mile.

2. **The stressors identified and how they are measured result in the same environmental issue being double and triple counted.** The manner in which stressors have been identified and how they are measured results in certain environmental issues or emissions being counted repeatedly, and thus over consider the stress associated with certain types of facilities while potentially under measuring or not measuring at all other facilities. Scrap metal facilities are a good example of a type of facility whose purported stress is counted multiple times for the same issue. As noted above, the mere existence of a scrap metal facility is counted

\(^{44}\) See 54 N.J.R. 971(a) at 14.
\(^{45}\) See 54 N.J.R. 971(a) at 15.
\(^{46}\) See 54 N.J.R. 971(a) at 14.
as a stressor, measured as the number of sites per square mile. Yet, these facilities often have air permits and NJPDES permits, and so are also counted again, as “permitted air sites” and “NJPDES sites,” also measured by sites per square mile. Thus, the existence of a scrap metal facility will likely count as three separate adverse stressors whether or not it has emissions or discharges that exceed regulatory standards. In addition, due to the nature of their business, scrap metal facilities are likely to have considerable truck traffic, which is counted as another stressor under “Mobile Sources of Air Pollution.” Thus, as shown here, a scrap metal facility that is fully compliant with applicable regulations and requisite permits could account for four adverse stressors as compared to a rural or residential geographic point of comparison.

Similarly, certain identified stressors punish facilities for simply being located in urban environments and result in additional stressors being deemed as adverse despite a facility’s compliance with regulatory standards. Scrap metal facilities tend to be located in urban environments where scrap metal tends to be generated in order to lessen the distance of transportation both between sources of scrap metal and users of recycled scrap metal. Urban environments are likely to have a “lack of tree canopy,” and significant “impervious surface,” which are both identified as separate stressors. It is difficult to see how any scrap metal facility located in an urban environment will not be in a community determined to have adverse cumulative stressors or will not cause a disproportionate impact. This analysis shows that a regulatory compliant scrap metal facility that has obtained the necessary permits will be viewed as having more stressors than a similar facility that has failed to obtain requisite permits (since its lack of permits will not be counted in those categories). Thus, the manner in which the stressors have been identified and are proposed to be measured is arbitrary and does not accurately reflect the stress caused by the facilities in overburdened communities, and should be reevaluated to better reflect the actual stress caused by facilities and to be more equitable among different types of facilities.

3. The stressors identified in the Appendix do not reflect actual stress caused by facilities in overburdened communities. The EJ Law defines environmental or public health stressors as sources of environmental pollution or conditions that may cause potential public health impacts in the overburdened community. See N.J.S.A. 13:1D-158. The Department has included a list of 26 stressors as environmental or public health stressors in the Appendix to the Proposed Rules. The stressors that the Department has included go beyond those stressors that have been identified by EPA and CalEPA and do not necessarily reflect impacts from facilities that are regulated under the EJ law. As noted above, several of the stressors that specifically relate to scrap metal facilities are counted multiple times, and other stressors reflect very typical features of urban areas rather than actual negative health impacts caused by industrial facilities. For example, the stressors that NJDEP has identified as “may

47 To the extent that scrap metal recycling facilities choose to relocate their facilities, the distance that trucks will need to travel to transport scrap metal will increase, leading to more truck traffic and more emissions, and overburdened communities will lose the economic benefits provided by these facilities, such as providing well-paying jobs, which will further increase unemployment rates.

48 By way of comparison, CalEPA’s CalEnviroScreen identifies 13 environmental indicators, EPA’s EJScreen identifies 12 environmental indicators, and EPA’s CJEST identifies 13 environmental indicators.
cause potential public health impacts” and “social determinants of health,” such as lack of recreational open space, lack of tree canopy and impervious surface, are hallmarks of urban areas and are unconnected to potential impacts from industrial facilities generally or the associated potential “stress” faced by a community. As another example, the Department has proposed to include soil contamination deed restrictions and ground water classification exemption areas as separate stressors despite the fact that the Department’s cleanup regulations ensure that no undue risk to human health or the environment remain following signoff from NJDEP or a Licensed Site Remediation Professional. The sites that have been remediated under NJDEP’s Site Remediation Program are beneficial to the communities in which they are located, as they have taken otherwise contaminated properties and put them back into productive use.

The Department has made clear in the preamble its view that the Proposed Rules are meant to address localized impacts that are not adequately protected by existing environmental standards. However, NJDEP has proposed to use NAAQS data as indicators of stressors for ozone and PM2.5, which is intended to represent regional air quality, rather than localized impacts, in direct contradiction of the preamble language. Interpolated data collected from a network of monitoring stations (some of which are not operated year-round) would be used, as described in NJDEP’s Environmental Justice Mapping, Assessment and Protection Tool (“EJMap”) Technical Guidance (which the Department has repeatedly stated is not subject to public comment). NJDEP has not provided adequate support for using an AQI index of 100 as the threshold for determinant of a stressor, and in the case of PM2.5 seems to disregard the state’s attainment of the NAAQS standard. Further, NJDEP’s methods for interpolating monitoring data down to a localized block group is based on a series of assumptions, equations, and parameters that have no basis in air dispersion processes and may not reflect the actual impacts to communities at the block group level. As NJDEP is aware, dispersion of air pollution does not occur linearly with distance. Likewise, NJDEP’s proposed use of EPA’s AirToxScreen data to determine cancer risk including diesel particulate matter and cancer risk excluding diesel particulate matter, is expressly contrary to EPA’s instructions for use of the data. EPA makes clear that AirToxScreen data should not be used to either characterize or compare risks or exposures at local levels (such as between neighborhoods), to control specific source or pollutants, or as a basis for individual permitting decisions. Further, EPA notes that although results are reported at the census tract level, “average exposure and risk estimates are far more uncertain at this level than at the county or state level.”

In total, many of the metrics that the Department proposes to identify whether a particular community is “stressed” for each environmental or public health stressor are based on hypothetical impacts to communities based on the existence of certain infrastructure and facilities, as opposed to being based on localized impacts. In addition, the identification of “on-or-off switch” type stressors, such as soil contamination deed restrictions, ground water classification exemption areas, railways, solid waste facilities, and scrap metal facilities, bias the cumulative scoring for a given census tract and unnecessarily lead to urban communities being

49 See 54 N.J.R. 971(a) at 3.
50 See https://www.epa.gov/AirToxScreen/airtoxscreen-frequent-questions#background4.
51 Id.
identified as disproportionately impacted, thereby always triggering permit applicants in these communities to engage in the extensive EJ process.

4. The Department does not appear to have sufficient data to compare the stressors identified in the Appendix to the geographic point of comparison. The Department has proposed to use EJMap as the method by which applicants will determine whether an overburdened community is disproportionately impacted. See Proposed N.J.A.C. 7:1C-2.2. NJDEP has taken the position that EJMap and its associated Technical Guidance are not subject to the same public comment opportunity as the Proposed Rules. Given that EJMap is a fundamental part of the Proposed Rules and determinative of a facility’s obligations of the EJ process, a formal notice and comment period is critical to meet the requirements of the New Jersey Administrative Procedure Act.\(^{52}\) ISRI has evaluated the EJMap and identified a number of concerns that the Department should address before finalizing the Proposed Rules. First, there are no values in EJMap for several of the stressors identified in Appendix (identified as “NA”) in certain geographic areas. While there is no discussion in EJMap or the Technical Guidance for what “NA” means, it appears that the Department does not have sufficient data for these stressors to identify a value. This is problematic for a number of reasons, including that facilities will need to compare a value for an overburdened community against geographic points of comparison for which no data is available, further skewing the results. It also highlights the inappropriateness and overbreadth of the stressors identified in the Appendix.\(^{53}\) The Department should only identify stressors for which it has sufficient data across the State.

Second, EJMap does not provide a uniform metric of presenting data across different stressors and geographic areas. For example, the stressor in the overburdened community may be evaluated to two decimal places where the geographic point of comparison may be rounded to the nearest whole number. Without a uniform metric of presenting data, it is impossible to determine if the overburdened community is disproportionately impacted by a stressor, or if it is being counted as an adverse stressor simply due to rounding. The Department should ensure that stressors (and the underlying geospatial analyses used to score them) are evaluated at an equivalent level of precision to provide meaningful results.

The NJ Chapter of ISRI trusts that these comments demonstrate to the Department that the current Proposed Rules exceed the statutory authority, legislative intent and plain language of the EJ Law, provide scrap metal recyclers with insufficient notice of the requirements that will be imposed, and identify duplicative stressors that will likely regulate the scrap metal recycling

\(^{52}\) See Chemistry Council of New Jersey v. New Jersey Dep’t of Envtl. Prot., 2017 WL 6492521 (N.J.App. 2017) (finding that EPA’s posting of interim specific groundwater quality criteria or perfluorononanoic acid on its website without publishing notice in the New Jersey Register and without performing the required analyses under the Administrative Procedure Act was a violation of the Administrative Procedure Act).

\(^{53}\) In identifying indicators in EJScreen, EPA only identified indicators for which national, publicly-available data existed at sufficient geographic resolution. See EPA’s FAQ about EJScreen at https://www.epa.gov/ejscreen/frequent-questions-about-ejscreen.
industry out of existence in New Jersey. ISRI urges the Department to revise the Proposed Rules to allow for a fair and equitable permitting process that in fact protects overburdened communities without unnecessarily disabling and selectively targeting the scrap metal recycling sector in New Jersey. ISRI appreciates the opportunity to provide the foregoing comments to the Department.

Sincerely,

Jill Hyman Kaplan and Carol F. McCabe
For MANKO, GOLD, KATCHER & FOX, LLP
September 2, 2022

Via Email and Overnight Mail
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Re: NJ Chapter of ISRI Comments to Proposed New Environmental Justice Rules
Proposed New Rules: N.J.A.C. 7:1C
DEP Docket No.: 04-22-04
Proposal No.: PRN 2022-082

Dear Ms. Abatemarco:

On behalf of the New Jersey Chapter of the Institute of Scrap Recycling Industries, Inc. (“ISRI”),¹ please accept these timely submitted comments to the Proposed Environmental Justice Rules, proposed to be codified at N.J.A.C. 7:1C, which were published in the New Jersey Register on June 6, 2022 (the “Proposed Rules”). The ISRI New Jersey Chapter’s mission includes supporting the New Jersey-based scrap metal recycling industry, which employs 17,000 people in New Jersey. ISRI firmly supports environmental justice (“EJ”) principles and has actively participated in the stakeholder process, submitting comments and testimony on several topics covered in the prior public hearings. However, the Proposed Rules fall short of establishing a fair and effective EJ program designed to address actual community impacts. Instead, the Proposed Rules would establish a regulatory framework that would effectively prohibit scrap metal recycling in the State of New Jersey.

The Proposed Rules do not appear to take into consideration ISRI’s comments made during the stakeholdering process, and validate ISRI’s expressed concerns that one objective of the New Jersey Department of Environmental Protection (“NJDEP” or “the Department”) in

¹ As the Voice of the Recycling Industry™, ISRI represents more than 1,300 processors, brokers, and consumers of scrap materials, including ferrous and non-ferrous metals, paper, plastic, tire and rubber, glass textiles and electronics. The New Jersey Chapter of ISRI includes 50 member companies, employing more than 17,000 New Jersey residents that process and recycle the full range of scrap metal and other recyclable materials.
issuing the Proposed Rules is to selectively regulate scrap metal recycling facilities out of the State of New Jersey. At this point, the benefits and acute need for recycling in New Jersey, including scrap metal recycling, should not need to be described, but since the Proposed Rules affirmatively discourage the mere presence of New Jersey recycling facilities, we feel it incumbent on us to note that recycling not only “keeps millions of tons of materials out of landfills and other disposal facilities, but also... conserves natural resources, saves energy, and reduces emissions of water and air pollutants, including greenhouse gas emissions.”

Many of New Jersey’s statutes and regulations expressly identify and encourage recycling, including metal recycling. Most recently, scrap metal recycling facilities were identified as “critical infrastructure” during the COVID-19 pandemic, recognizing the important services that such facilities provide, such as the prevention of accumulation of trash and debris within New Jersey’s communities.

Consistent with the intent of the New Jersey Environmental Justice Law, N.J.S.A. 13:1D-157 et seq., (the “EJ Law”), ISRI members are committed to and are already working with local communities in which their facilities are located, considering cumulative environmental and health impacts in planning operations, and incorporating communities’ concerns into business decisions regarding siting new facilities or expanding existing facilities. However, the Proposed Rules go far beyond the intent, plain language and statutory authority of the EJ Law, imposing restrictive obligations and expansive definitions that prevent New Jersey scrap metal recyclers from being able to predict their ability to obtain necessary permits or the possible conditions that could be imposed. ISRI encourages NJDEP to consider the general and specific comments provided herein and those of others in the business and labor community and to revise the Proposed Rules to be consistent with the intent and plain language of the EJ Law, thereby protecting the interests of overburdened communities while preserving the ability of essential businesses to operate in New Jersey, including those that serve important public functions such as recycling. ISRI also supports the comments submitted by the New Jersey Business & Industry Association.

I. Executive Summary of ISRI Comments

ISRI members are in a unique and disadvantageous position under New Jersey’s EJ Law; scrap metal facilities, which includes scrap metal recycling facilities, are identified as a “Facility” subject to the EJ Law permitting process, and scrap yards are identified as an environmental public health stressor accounted for in determining the stressors that are borne by an overburdened community. The manner in which the Proposed Rules are written, however,

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further disadvantages scrap metal recycling facilities by defining terms and including provisions that make it virtually certain that the communities in which they operate will be found to be subject to adverse cumulative stressors and that they are determined to be contributing to the environmental and public health stressors in the overburdened community. ISRI believes that there are key aspects of the Proposed Rules that are unfairly prejudicial to these facilities based on metrics and assumptions that have no basis in actual impacts to the community. Set forth below, among all of ISRI’s comments, are key issues relating to the Proposed Rules’ lack of clear standards for affected facilities, a definition of the geographic point of comparison that will make siting in urban areas nearly impossible, the quantification of stressors in a manner that double and triple counts scrap metal recycling facilities, a definition of new facility that will promote targeted enforcement against scrap metal recycling facilities, an impossibly narrow definition of compelling public interest, and the disregard of economic benefits, including jobs, provided by scrap metal recycling facilities to the community, among other critical comments. None of these items are required by the EJ Law, and taken together, amount to discriminatory treatment by the Department of scrap metal recycling facilities in a manner that is inconsistent with equal protection and due process principles. The portions of the Proposed Rules that single out the scrap metal recycling industry are unnecessary to advance the goals of EJ, are not narrowly tailored to address any purported impact caused by scrap metal recycling facilities in comparison to other industries, will stymie New Jersey’s recycling goals, and will cost New Jerseyans thousands of jobs. We ask the Department to give full and fair consideration to ISRI’s comments and to correct these fundamental flaws in the Proposed Rules.

II. General Comments on the Proposed Rules

A. The Department has Not Evaluated the Public Benefits of Scrap Metal Recycling and the Socioeconomic and Jobs Impacts of the Proposed Rules as Required by the Administrative Procedure Act.

1. The potential loss of benefits provided by the scrap metal recycling industry are not accounted for in the Department’s socioeconomic impact analysis, which is required by the Administrative Procedure Act. Section 52:14B-4(a)(2) of the New Jersey Administrative Procedure Act requires the Department to evaluate the socioeconomic impact of its proposed regulations. N.J.S.A. 52:14B-4(a)(2). While the Department performed a cursory evaluation of the potential direct costs to comply with the Proposed Rule, it ignored the societal and economic benefits that the recycling industry provides to New Jersey residents, and did not consider costs associated with the negative impacts that the Proposed Rules will have on the recycling industry.\(^5\)

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\(^5\) The Department acknowledges in its economic impact statement that the benefits are “difficult to fully quantify” and therefore, only improvements to human health and increased amenity values were considered. The Department’s economic impact statement acknowledged that some affected entities will incur costs to comply with the Proposed Rule, but failed to evaluate the potential loss of industry and benefits that recycling provides to residents in New Jersey.
The State of New Jersey has a long history of supporting recycling as a benefit to the environment and public health, as shown through the multitude of statutes passed by the New Jersey Legislature that encourage recycling. Nearly fifty years ago, the Legislature passed the Solid Waste Management Act ("SWMA") to address the "rapid disappearance of available solid waste disposal facilities" by "encourag[ing] resource recovery through the development of systems to collect, separate, recycle and recover materials, glass, paper and other materials of value for reuse or for energy production." Furthermore, in 1987, the Legislature passed the New Jersey Statewide Mandatory Source Separation Recycling Act to bolster the rate of recycling in New Jersey, including the recycling of scrap metal, by requiring recycling in residential, commercial, and institutional sectors. Later, to help achieve the most ambitious New Jersey recycling plan goals, the Legislature passed the Recycling Enhancement Act, which imposed a tax on solid waste generation as another way of encouraging recycling, because it was in the "environmental and economic interests" of the State, and the Electronic Waste Management Act, which required certain electronic products be recycled, resulting in the increase of recycling of consumer electronics by over 700% from 2005 to 2017. The New Jersey Chapter of ISRI has long played a cooperative role in partnering with New Jersey in assisting it to meet the State's recycling goals.

In passing the above-referenced statutes, the New Jersey Legislature has continuously recognized the public and environmental benefits of recycling, including scrap metal recycling, finding that recycling not only saves waste disposal capacity "equal to the annual utilization of 3.5 solid waste incinerators or 4.5 solid waste landfills," but also allows for the recovery and saving of valuable resources, including over three million tons of iron, coal and limestone in the production of new ferrous metals, over nine million trees in the production of virgin paper from ferrous metals and paper recycling, and more than seven hundred million gallons of gasoline that would otherwise be used in the manufacturing process. Thus, recycling enables a reduction in air and water pollutants emitted during the manufacturing process by more than 134,000 metric tons. The Department has similarly recognized the wide range of environmental and economic benefits that recycling, including scrap metal recycling, provides to New Jersey residents. The Department has seemingly ignored the immense environmental, social, and economic benefits that scrap metal recycling provides to New Jersey residents and the negative impacts that the Proposed Rules will have on the recycling and scrap metal recycling industries in New Jersey in its socioeconomic impact analysis required pursuant to N.J.S.A. 52:14B-4(a)(2).

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6 N.J.S.A. 13:1E-2(b)(7); see also A. A. Mastrangelo, Inc. v. Comm’r of Dep’t of Env’tl. Prot., 449 A.2d 516, 519 (N.J. 1982).
7 The Legislature found that "it is in the public interest to mandate the source separation of marketable waste materials" so that less scrap material is disposed of in the state's "overburdened landfills." N.J.S.A. 13:1E-99.11.
8 N.J.S.A. 13:11E-96.3.
10 See N.J.S.A. 13:1E-96.3.
11 See id.
In addition, the Department has also overlooked the immense economic benefits that the scrap metal recycling industry provides. In New Jersey alone, the scrap recycling industry, which includes scrap metal recycling, provides 17,445 direct, indirect and induced jobs, over $1.2 billion in wages, and approximately $550 million in Federal and State tax revenue.\(^{13}\) As a result of the supply chain disruption caused by the COVID-19 pandemic, the scrap metal recycling industry is a key economic player providing critical resources for construction, infrastructure rehabilitation and other critical projects which should result in a corresponding rise in New Jersey employment.\(^{14}\) Of the jobs associated with the scrap metal recycling industry, many are direct, well-paying, union jobs. Nationally, scrap metal recycling is a critical first link in the manufacturing supply chain, supplying 40% of raw material needs for manufacturing in the United States.\(^{15}\) In the U.S. steel industry alone, scrap material accounts for more than 70 percent of processed steel, making ferrous scrap metal the most recycled material in the United States. More than half of all aluminum consumption by manufacturers in the United States comes from scrap.

In addition to being an important economic driver, the scrap recycling industry is a pivotal player in environmental protection, resource conservation, and sustainable development. The industry recycles more than 130 million metric tons of materials annually, transforming end-of-life or obsolete scrap materials into useful raw materials needed to produce a range of new products.\(^{16}\) The industry also plays a pivotal role in supporting the conversion to electric vehicles and in the recycling of end-of-life combustion engine vehicles. Consequently, scrap metal recycling: (1) reduces the need to mine for new ore, cut down more trees, and otherwise deplete our natural resources; (2) produces significant energy savings as compared to using virgin materials, thereby reducing greenhouse gas emissions; (3) reduces the amount of material being sent to landfills, saving the land for better uses; and (4) ensures the appropriate handling and recycling of abandoned end-of-life vehicles.

The Proposed Rules fail to recognize both the environmental and economic benefits of recycling, and do not reflect the requisite analysis and balancing required by the Administrative Procedure Act. While the EJ law identifies “scrap yards” as possible environmental or public health stressors, the Proposed Rules assume that all scrap metal recyclers will cause stress to the community, which is not the case, and fails to recognize the associated benefits of such recycling. Instead, a proper analysis and balancing of the benefits and impacts of the Proposed Rules, and their impact on scrap metal recycling, is necessary. As required by the Administrative Procedure Act, the Department is required to evaluate the full economic and societal impacts of the Proposed Rules, which necessarily include the impact on the environment.

\(^{14}\) In Executive Order 14017, entitled “America’s Supply Chains,” President Biden recognized the importance of strengthening the supply chains of critical goods and materials, including materials resulting from metal recycling. 86 Fed. Reg. 11849 (March 1, 2021).
\(^{16}\) See footnote 13.
and economy of New Jersey of discouraging recycling and recycling facilities. The Department should consider whether the Proposed Rules can be more narrowly tailored to ensure that the benefits provided by the scrap metal recycling industry in New Jersey are preserved.

2. The Department’s jobs impact analysis is inaccurate, incomplete, and fails to comply with the requirements of the Administrative Procedure Act. The Administrative Procedure Act requires that the Department assess the number of jobs to be generated or lost if the proposed rule takes effect. N.J.S.A. 52:14B-4(a)(2). Instead of conducting the required evaluation, the Department summarily concludes that “the proposed rulemaking will have little to no impact on job retention in the State and in overburdened communities.” The Department’s conclusion demonstrates that the Department has not performed a detailed analysis of potential job loss. As discussed above, the scrap recycling industry alone provides approximately 17,445 direct, indirect, and induced jobs in New Jersey. While the Department incorrectly assumes that jobs lost in overburdened communities will be relocated to other parts of New Jersey, the Department has also not considered the impact that the relocation of jobs will have on overburdened communities, which rely on industry to provide meaningful employment. The Department should fully evaluate the impact that the Proposed Rules will have on jobs both in overburdened communities and the State.

B. The Proposed Rules Do Not Provide Standards or Guidance that Would Allow Scrap Metal Recycling Businesses to Predict What Will Be Required to Obtain a Permit.

ISRI supports Environmental Justice concepts that ensure that local communities’ concerns and desires are heard and addressed by existing and proposed new businesses and by NJDEP. Scrap metal recyclers, like other businesses, already engage with local communities and take the community’s concerns into account as part of their business planning, and ISRI welcomes a rulemaking structure that facilitates further engagement. However, the Proposed Rules provide no standards or guidance for the types or numbers of conditions that NJDEP may impose in requisite permits to satisfy the goals of EJ. The Proposed Rules set up a process that is a moving target, both substantively and procedurally, that will create uncertainty for applicants and disincentivize investment in overburdened communities, including investments in new state-of-the-art pollution control technologies for scrap metal recycling facilities. This type of system, with no description of or constraints on NJDEP’s authority, acts to pit EJ communities’ interests against those of local recycling businesses. ISRI does not believe that these interests must be in opposition and strongly encourages NJDEP to revise the Proposed Rules to include reasonable

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18 The Proposed Rules in combination with the extensive restrictions on development in existing environmentally sensitive areas, such as the Pinelands, the Highlands, and coastal zones, development limitations on preserved farmland and local residential and agricultural zoning, and land that is otherwise unable to be developed, leave a very small percentage of actual developable land for scrap metal recycling facilities to locate. Thus, it will be difficult, if not impossible, for facilities to relocate in the State, further exacerbating unemployment rates in overburdened communities.

19 Pursuant to proposed N.J.A.C. 7:1C-9.2, the Department can impose any conditions “as necessary to ensure a disproportionate impact is avoided.”
standards regarding the scope of community comments to be addressed, the scope of conditions to be imposed, and the timeline for NJDEP’s review.

This lack of clarity and restraint on the scope of NJDEP’s authority will be particularly problematic for existing facilities. While new facilities that have not yet been constructed have the ability to incorporate conditions into design and operational plans, facilities that have existed for multiple decades may be subject to burdensome and unfeasible requirements that may not be possible to implement. It is imperative that, prior to submitting an application, businesses can predict whether permits can reasonably be obtained and whether the conditions that might be imposed are able to be implemented.

With respect to the timing involved in obtaining a permit, the Proposed Rules require that the public participation process start all over again if any material changes are made in response to community comments and specifies no definite end point for this public participation process. See Proposed N.J.A.C. 7:1C-4.3. An indefinite review time will further contribute to the Department’s existing permit backlog, which is substantial, and act as a further drain on agency resources. Instead of penalizing businesses who meaningfully incorporate community feedback into their plans and operations by requiring them to undergo an endless cycle of public notice and comment, the Department should encourage applicants to address community concerns by ensuring that applications are moved along efficiently, without requiring a restart of the public participation process.

III. Comments on Specific Portions of the Proposed EJ Rules


1. Proposed N.J.A.C. 7:1C-1.5: “Compelling public interest” – The proposed definition of Compelling Public Interest is too restrictive and improperly excludes consideration of economic benefits. The Department has proposed to define “compelling public interest” to include a stringent three-part test – the proposed new facility must (a) serve an essential environmental, health, or safety (“EHS”) need of the individuals in an overburdened community, (b) be necessary to serve the essential EHS need, and (c) there must be no other means reasonably available to meet the essential EHS need. As written, a proposed new facility would need to demonstrate that it is the one and only way to address not only an identified EHS need, but an essential one. Such a demonstration is unreasonably burdensome and would exclude businesses that provide vital services from being located in an overburdened community. For example, it would be difficult for scrap metal recycling facilities to qualify because, while serving an important need for the State and all communities, including preventing the abandonment of cars and metal appliances in the community, providing meaningful employment opportunities to the community, and providing other environmental benefits, this definition requires that there be no other possible solution for the EHS need. As there is no objective measure for when a possible solution is “reasonably available” to address an identified need, the specified criteria would enable NJDEP and community members to veto new facilities if any other hypothetical solution can be identified, even if the other solution has no realistic
chance of coming to fruition. Thus, as currently drafted the definition of “compelling public interest” is too narrow and disallows consideration of the essential role scrap metal facilities play in the recycling of post-consumer materials and avoiding the abandonment of scrap metal in communities, including overburdened communities. 20

Additionally, the proposed definition goes on to state that, "for purposes of this chapter, the economic benefits of the proposed new facility shall not be considered in determining whether it serves a compelling public interest in an [overburdened community]." Nothing in the EJ Law or in the legislative history indicates that the term “compelling public interest” was intended to exclude consideration of economic benefits. Excluding consideration of economic benefits is particularly inappropriate where a community qualifies as overburdened because of the percentage of low-income households. The criteria for an “overburdened community” includes any census block group in which at least 35 percent of the households qualify as low-income households. Similarly, in the Appendix to the Proposed Rules, the percent of unemployed residents in an area is identified as one of the stressors to be measured. Yet, under the proposed definition of compelling public interest, new businesses that would employ local residents and assist in making the community no longer overburdened would have their permits denied. During the stakeholder meetings, NJDEP representatives expressed concern that promised jobs sometimes do not materialize. However, there are many ways to address this identified concern short of ruling out all consideration of economic benefits. As discussed above, the scrap recycling industry are proven job creators, employing more than 17,000 New Jersey residents. Importantly, the industry employs individuals who have recently been released from jail, halfway houses, and other persons in transition, commonly referred to as “second chance employees,” that otherwise have difficulty finding gainful employment and integrating into society. If one of the goals of the EJ Law and the Proposed Rules is to assist overburdened communities in no longer being overburdened, then encouraging additional jobs and increased income must be viewed as a public benefit.

2. Proposed N.J.A.C. 7:1C-1.5: “Expansion” – The definition of Expansion is vague and contrary to the intent of the EJ Law. The EJ Law makes an important distinction between “new facilities” and “existing facilities” that are “expanding.” 21 The EJ Law requires the Department to deny a permit for a new facility if the environmental justice impact statement (“EJIS”) analysis shows a “disproportionate impact.” However, the Legislature made revisions from the original version of the EJ Law to make clear that for existing facilities, the Department could only add conditions to the requested permit as a result of the EJIS analysis, but could not deny the permit. In amending the original language of the EJ Law, the Legislature acknowledged that it would be unfair and inappropriate to push existing facilities out of the State that were not significantly changing their operations or their impact to the environment. At the Department’s stakeholder meeting on April 7, 2021, the Department agreed with the Legislature, indicating as a general principle that the purpose of the EJ Law is not to make it more difficult for existing facilities to continue operations, and that the

20 Therefore, municipalities or property owners that ordinarily recycle abandoned vehicles and other products at scrap metal recycling facilities will be forced to incur substantial disposal costs.

21 The EJ Law does not define the terms “new facility,” “existing facility,” or “expansion.”
Department considered “expansions” to be facility proposals that increase operational footprint or stressor contributions. Yet, the proposed definitions of “expansion,” and of “new facility” discussed below, are drafted in a way that do in fact threaten the continued existence of New Jersey’s scrap metal recycling facilities.

The proposed definition of “expansion” encompasses far more than what was intended by the Legislature and more than the typical construction of this word by including “modifications” of existing operations that have the “potential” to result in an increase of the facility’s contribution to “any” environmental and public health stressor. While the definition goes on to carve out “any such activity that decreases or does not otherwise result in an increase in stressor contributions,” the inclusion of any modifications that have the potential to increase contributions, whether or not they in fact do so, make this definition vague and overly broad. Since specific analyses are required to be performed in conjunction with a business’s planned operations, the concept of “potential” increases has no place in this definition and improperly pulls in changes in operations that will not negatively impact cumulative stressors. For example, the definition of expansion is broad enough to include the installation of an air pollution control technology or the replacement of older equipment with newer and more efficient equipment. Modifications to operations are not typically viewed as expansions unless they increase the footprint or overall production capacity of a facility. Deeming modifications to be an expansion of an existing facility will result in fewer facility upgrades, including upgrades aimed solely at improving pollution control, being made because of the lengthy and undefined EJ approval process that will be required. Accordingly, consistent with the Legislature’s intent and the assurances provided during the stakeholder meetings, ISRI proposes that the definition of “expansion” be amended to state as follows: “Expansion’ means an increase in the physical footprint of development or a material increase in maximum allowable emissions or discharges that results in an increase in an existing facility’s contribution to any environmental or public health stressor in an overburdened community and requires an application for a Permit. An expansion for purposes of this chapter shall not include a pollution control project and shall not include any activity that decreases or does not otherwise result in an overall increase in stressor contributions.”

3. Proposed N.J.A.C. 7:1C-1.5: “Existing Facility” and “New facility” — The proposed definitions of “new facility” and “existing facility” are contrary to the common understanding of the terms, plain language of the EJ Law and to the intent of the NJ Legislature. “New facility” is defined to include “an existing facility that has operated without a valid approved registration or permit required by the Department prior to (the effective date of this chapter)…” “Existing facility,” in contrast, is defined as a facility that possesses a

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22 The Department has proposed to define “expansion” to mean “a modification or expansion of existing operations or footprint of development that has the potential to result in an increase of an existing facility’s contribution to any environmental and public health stressor in an overburdened community, but shall not include any such activity that decreases or does not otherwise result in an increase in stressor contributions.” See proposed N.J.A.C. 7:1C-1.5.

23 Certain ISRI members are actively working with EPA and NJDEP to make potential improvements to their facilities, such as constructing shredder enclosures and installing air pollution control equipment. As drafted, the Proposed Rules would jeopardize these improvements by subjecting them to the EJ process.
valid approved registration or permit from the Department for its operation or construction and is in operation as of the effective date of the Proposed Rules. The Department has indicated that the definitions are based on the definitions contained in N.J.A.C. 7:26-1.4, regarding the permitting of solid waste facilities, broadened to apply to all permits covered by the Proposed Rules.

As noted above, the NJ Legislature revised the original version of the EJ Law to treat new facilities and existing facilities differently. If proposed new facilities would create adverse cumulative stressors their permits must be denied and they would not be able to be sited, while existing facilities could only have conditions imposed in their permits. The EJ Law reflects the Legislature’s desire not to close down existing businesses. Yet, the Proposed Rules require existing facilities, who have operated in the State for decades, but which NJDEP determines do not currently have all their necessary permits (even if the requirement reflects a new interpretation by NJDEP), to be considered “new” facilities. In previously submitted comments, ISRI highlighted its concern that NJDEP might construe situations where NJDEP changes its interpretation or application of its laws, or changes the scope of an existing regulatory program, such that a “new permit” is deemed necessary at an existing facility, as constituting a “new facility”. This is in fact what the Department is attempting to codify in the Proposed Rule. The consequence of being a new facility is that NJDEP must deny their permits, unless a compelling public interest can be shown, which under the current proposed definition will be extremely difficult for scrap metal facilities to meet. Consistent with the intent of the Legislature, the definitions of new and existing facility should be based on the date of construction of a facility, as opposed to whether the facility has obtained a permit.

With respect to scrap metal facilities, the possibility of NJDEP advancing novel permit interpretations against existing facilities is not merely a hypothetical. Recently, the Department has targeted certain scrap recycling facilities under Administrative Order No. 2021-25 in connection with NJDEP’s new interpretation that mobile equipment, like fork trucks that move scrap material, require a preconstruction air permit under the Department’s generic permitting category at N.J.A.C. 7:27-8.2(e)(19), governing “equipment in which the combined weight of all raw materials used exceeds 50 pounds in any one hour…” See Compliance Advisory #2021-03. ISRI and its members disagree with the Department’s new interpretation of permit applicability for these operations, which has no basis in either the regulatory language or the Department’s prior application of these standards. Further, the Department’s determination to require Subchapter 8 permits and initiate enforcement against scrap metal recycling facilities reveals the Department’s desire to selectively enforce against the industry. Notably, the regulatory citations that the Department offers in support make no mention of scrap metal recycling facilities at all, and the Department has made no efforts to expand its novel interpretation more broadly, despite the fact that thousands of facilities all over the State of New Jersey use material handling equipment on a daily basis utilizing such equipment to move material in excess of 50 pounds of material per hour and are not subject to the same novel interpretation of air permit applicability.

The clear result of the Department’s Compliance Advisory #2021-03, in combination with the proposed definition of “new facility,” is to position scrap metal recycling facilities as
new facilities subject to the EJ process, and subject them to potential permit denial. These facilities have been in New Jersey for decades, and until now, NJDEP inspectors have inspected this equipment and operations throughout that period and never suggested that air permits were necessary. If adopted as currently drafted, whenever NJDEP chooses to interpret its regulations differently, as it is doing under Compliance Advisory #2021-03, an existing facility could be artificially determined to be a new facility. Thus, the proposed definition of “new facility” is in direct opposition to the assurances provided by the Governor, Legislature and the Department when the EJ Law was passed that the EJ Law would not be used to push existing businesses out of the State. Accordingly, ISRI proposes that the definitions of “new facility” and “existing facility” be revised to be consistent with the common understanding and usage of the terms “new” and “existing.”

4. Proposed N.J.A.C. 7:1C-1.5: “Geographic point of comparison” – The proposed approach to identifying the geographic point of comparison results in finding disparate impacts simply because urban communities are being compared to rural communities. The EJ Law authorizes NJDEP to deny permits for a new facility or apply conditions to a permit for the expansion or renewal of an existing facility upon a finding that approval of a permit, as proposed, would “cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the State, county, or other geographic unit of analysis as determined by the department.” N.J.S.A. 13:1D-160 c and d. NJDEP is proposing to determine the geographic point of comparison by selecting the lower value of the State or county’s 50th percentile, excluding the values of other overburdened communities. The practical effect of the Department’s proposed methodology of determining the geographic point of comparison is that the State’s 50th percentile will nearly always be the lowest as it includes all of the rural and most pristine areas. Thus, the proposed approach appears not to be based on the historic siting of industrial facilities and their associated stressors, but instead is based on population density. While in the preamble to the Proposed Rule the Department concluded that a ‘one-size-fits-all’ approach is not appropriate, the Department’s proposed approach will lead to an inordinate percentage of communities being found to be disproportionately impacted. The language of the EJ Law describes comparing overburdened communities to “other communities within the State, county, or other geographic unit of analysis.” (Emphasis added.) This language suggests that smaller geographic areas, like census blocks, could and should be used to ensure that similarly situated communities are being compared, as opposed to comparing urban areas to

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24 Generally, in the construction of laws and statutes in the State, “words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language.” N.J.S.A. 1:1-1; see also Cherry Hill Manor Associates v. Faugno et al., 182 N.J. 64 (2004) (stating that statutory “language should be given its ordinary meaning, absent legislative intent to the contrary”).

25 In EPA’s Technical Guidance for Assessing Environmental Justice in Regulatory Analysis, dated June 2016, EPA highlighted this same concern, stating that it would not necessarily be appropriate to consider urban areas as a comparison group for a regulatory action that primarily affects rural areas and vice versa, as it would negatively impact the results of the analysis. See page 54.

26 See the preamble to the Proposed Rules, 54 N.J.R. 571(a) at 6.
rural areas. The proposed approach does not compare similarly situated areas to determine which have disproportionate impacts based on the historic siting of certain types of facility in these communities, but basically assumes that all overburdened communities have disproportionate impacts. While everyone might be exposed to less environmental and health stressors if they lived in the country, the purpose of the EJ Law is not to lessen stressors that result simply from people living in urban environments.

Additionally, the manner in which stressors have been identified and are measured, often counting the mere existence of certain facilities as stressors and comparing the area to locations that do not have similar types of facilities, necessarily results in overburdened communities being found to be disproportionately impacted. In fact, the definition of “geographic point of comparison” combined with the specified list of “stressors” and how they are being measured results in virtually all urban communities being found to be disproportionately impacted. The restrictions imposed by the Proposed Rules on development in overburdened communities coupled with the extensive development restrictions in existing environmentally sensitive areas, such as the Pinelands, the Highlands, and coastal zones leave less than 38% of New Jersey available for potential development. When development limitations on preserved farmland and local residential and agricultural zoning restrictions are considered, as well as other land that is simply not developable, there is left a small percentage of actual land for scrap metal recycling facilities to legally operate. Scrap metal recycling facilities will effectively be regulated or zoned out of business. The Department should amend the proposed methodology to compare similarly situated communities with similar population density.

5. Proposed N.J.A.C. 7:1C-1.5: “Overburdened community” – The Department relies on unrepresentative data in identifying overburdened communities. The EJ Law defines an overburdened community as any census block group meeting one of three demographic criteria as determined in accordance with the most recent United States Census, which is performed decennially. N.J.S.A. 13:1D-158. Instead of relying on data from the most recent United States Census, the Department appears to have relied on data from the American Community Survey in identifying overburdened communities. American Community Survey demographics typically are based on a smaller sample of households (approximately 3%) than the decennial census. The small sample size leads to wide variation in communities that will be identified as overburdened each year, creating significant uncertainty for facilities. Facilities are already seeing the effects of the Department’s reliance on American Community Survey data, as following the Department’s most recent update, facilities that were not previously located in overburdened communities are now covered and facilities that were located in an overburdened community are no longer covered. Consistent with the definition of overburdened community in the EJ Law, the Department should rely on United States Census data to identify overburdened communities to allow facilities to effectively plan permit applications, allocate resources, and proactively address EJ concerns.

27 For example, the California Environmental Protection Agency ("CalEPA") evaluates and scores each community on the census track level and compares scores across the state to identify which communities are disproportionately impacted. See CalEPA’s description of scoring and modeling in CalEnviroScreen at https://oehha.ca.gov/calenviroscreen/scoring-model.
B. Applicability – Proposed Subchapter 2.

1. Proposed N.J.A.C. 7:1C-2.1(e): Treating zero population block groups that are adjacent to overburdened communities the same as overburdened communities is contrary to the EJ Law. The EJ Law states that it only applies to facilities "located, or proposed to be located, in whole or in part, in an overburdened community ..." N.J.S.A. 13:1D-160 a. (emphasis added). The EJ Law defines an "overburdened community" as any census block group in which: (a) at least 35 percent of the households qualify as low-income households; (b) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or (c) at least 40 percent of the households have limited English proficiency. N.J.S.A. 13:1D-158. By definition, a census block that has no residents does not meet the definition of an overburdened community under the EJ Law. Thus, the specific language of the EJ Law does not allow the expansion of its requirements to a zero-population census block and N.J.A.C. 7:1C-2.1 should be removed from the Proposed Rules.

C. Environmental Justice Impact Statement – Proposed Subchapter 3

1. Proposed N.J.A.C. 7:1C-3.2 requires facilities to make assumptions that overstate potential impacts and are not narrowly tailored to potential impacts from the proposed activity. The EJ Law and Proposed Rules require an applicant to submit an EJIS to the Department that assesses the potential environmental and public health stressors associated with the new or expanded facility, or with the existing major source. See N.J.S.A. 13:1D-160 a.(1) and N.J.A.C. 7:1C-3-2(a)7. While evaluating potential stressors as part of a permit application is consistent with, and required by, the EJ Law, the Proposed Rules go beyond the statute to require applicants to make certain assumptions in its EJIS, such as assessing impacts "under conditions of maximum usage or output," regardless of whether the facility operates or intends to operate at maximum operating conditions. The required assumptions would result in an overstatement of potential impact, thus requiring facilities to address an impact that may never exist based on actual operating conditions. The Department should amend the Proposed Rules to require applicants to analyze potential impacts based on actual operating conditions.

The Proposed Rules are also unclear and require the submittal of information even when an overburdened community is not subject to adverse cumulative stressors. For example, proposed N.J.A.C. 7:1C-3.2(a)(3)(i) requires applicants to discuss "how the project serves the needs of the individuals in the overburdened community" even if the overburdened community is not subject to adverse cumulative impact and the proposed activity will not cause or contribute to such an impact. The EJIS requirements and supplemental information should be narrowly tailored to address the adverse cumulative stressors faced by an overburdened community that are caused by or contributed to by the proposed activity. In addition, proposed N.J.A.C. 7:1C-3.2(a)(5) requires applicants to submit "evidence of satisfaction of any local environmental justice or cumulative impact analysis with which the applicant is required to comply." It is not clear what "local environmental justice" or "cumulative impact analysis" the Department is referring to and should be removed from EJIS requirements.

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2. **Proposed N.J.A.C. 7:1C-3.3 appears to arbitrarily require the submission of information that is unrelated to the permit being sought.** The EJ Law envisions looking at stressors already borne by the overburdened community, and potential stressors associated with the new or expanded facility or existing major source, including adverse stressors that cannot be avoided if a permit is granted. See N.J.S.A. 13:1D-160 a.(1). Proposed N.J.A.C. 7:1C-2.1(f) indicates that where an applicant is required to analyze the potential for a facility's contribution to create additional adverse environmental and public health stressors, it shall be required to address only those stressors that are identified as being affected. However, Proposed N.J.A.C. 7:1C-3.3, as drafted, is ambiguous as to whether an applicant will be required to address all categories of information, or only the information relevant to the type of permit being sought and the affected stressors identified. Proposed N.J.A.C. 7:1C-3.3(a) identifies 14 categories of “supplemental information” that applicants need to include with its EJIS. If the Department’s intent, consistent with Proposed N.J.A.C. 7:1C-2.1(f), is to require applicants to address only those stressors that are potentially affected by the type of permit being sought, then the Department should clarify the language of Proposed N.J.A.C. 7:1C-3.3 consistent with such intent.

However, if the Department intends for an applicant to obtain and submit all of the categories of information identified in proposed N.J.A.C. 7:1C-3.3(a) across environmental media, regardless of the type of permit being sought and the potentially affected stressors, such a requirement is unreasonably burdensome and arbitrary. By way of example, if an applicant is seeking an air permit, a number of the categories of information specified in this section of the Proposed Rules are completely unrelated to air emissions, including, but not limited to:

- Drainage patterns and wetlands (see N.J.A.C. 7:1C-3.3(a)1.iii.);
- Subsurface hydrology that presents ground water quantity and quality data for aquifers beneath the site, including depth to ground water during seasonal high and low flow, flow direction, future supply capabilities, etc. (see N.J.A.C. 7:1C-3.3(a)4.);
- Localized climate and flooding impacts (see N.J.A.C. 7:1C-3.3(a)5.);
- Sewage facilities data (see N.J.A.C. 7:1C-3.3(a)7.); and
- Stormwater management and water supply information (see N.J.A.C. 7:1C-3.3 (a)8. and 9.).

Additionally, some of the information that may be required takes time to collect. For example, to comply with subsection (a)4., an applicant would be required to obtain site-specific groundwater data that an applicant may not have (especially if it is not relevant to the permit being sought) and may require the installation of groundwater monitoring wells to be able to determine “seasonal high and low flow” of the aquifers located beneath the site. The cost and time of collecting all the “supplemental information” specified in N.J.A.C. 7:1C-3.3 is likely to

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28 The performance of a traffic study and the evaluation of ambient air quality data would similarly be unrelated to an application for a stormwater discharge permit.
be significant. ISRI requests that NJDEP revise this section to make clear that only information related to the type of permit being sought will be deemed necessary.


1. Proposed N.J.A.C. 7:1C-4.1 – The notice provisions go well beyond the authority provided in the EJ Law and are ambiguous and unreasonable. The EJ Law identifies specific notice requirements that an applicant will need to follow prior to the submission of an application, including publishing a notice of the public hearing in at least two newspapers circulating within the overburdened community, including one local non-English language newspaper, at least 60 days prior to the public hearing, providing the notice to the Department who must publish it on the Department’s website and in the monthly New Jersey Bulletin, and providing the notice to the governing body and the clerk of the municipality in which the overburdened community is located. See N.J.S.A. 13:1D-160 a.(3). The EJ Law also provides a list of details that must be included in the public notice. These notice requirements are more than sufficient to ensure that the community is made aware of and can participate in the public hearing and are consistent with and more expansive than the public notice requirements imposed by many substantive environmental statutes. Despite the robust public participation process provided in the EJ Law, the Proposed Rules impose additional and burdensome notice requirements on applicants, including requiring written notice through certified mail to all persons owning land and/or residing on land located within 200 feet of the facility and any easement holders for that land, posting and maintaining a sign at the facility of the public hearing, and providing notice through other means, including but not limited to, automated phone messages or other electronic notices and flyers, without any demonstration or justification for the need for such enhanced or onerous requirements. The imposition of additional notice requirements, beyond those required in the EJ Law, is vague, overly burdensome, unnecessary, and beyond the authority granted to the Department by the Legislature.

The public notice requirements contained within Proposed N.J.A.C. 7:1C-4.1 are also ambiguous in that it is not clear whether an applicant must provide notice in all of the forms identified or if an applicant can choose which form of enhanced public notice to use. To the extent the Department intends the former, the Department should clarify how it expects an applicant to obtain the necessary information, such as phone numbers, to comply with the additional notice requirements. In addition, requiring an applicant to provide public notice in six different ways will only serve to create unnecessary concern in the community and will not further the goal of ensuring that the public is adequately and accurately informed. To the extent the Department intends the latter, the Department should clearly specify the minimum public notice that is required, as specified in N.J.S.A. 13:1D-160 a.(3), and only require more enhanced public notice in specific situations where the statutorily provided public notice is demonstrated by the Department to be insufficient.
2. Proposed N.J.A.C. 7:1C-4.3 combined with the definition of “material change” would disincentivize applicants from meaningfully incorporating public comments. After an applicant has provided the requisite public notice, conducted a public hearing and responded to the comments received, the Proposed Rules would require an applicant to go through the entire process again if the applicant makes a material change to the information set forth in the EJIS or its permit application. As drafted, the Proposed Rules would discourage applicants from meaningfully incorporating comments received during the public hearing in its application or EJIS, because doing so would subject applicants to additional rounds of public hearings and comments and would further delay the processing of its permit application. To encourage applicants to implement community input, the Department should define “material change” to only include material changes to the scope or footprint of the facility or material increases in contributions to environmental or public health stressors that would elicit different types or categories of comments and to exclude changes in the measures proposed to address the facility’s contributions to environmental and public health stressors.

3. The Department should clarify the public participation process described in proposed N.J.A.C 7:1C-4.3 to ensure that applicants can plan for and address comments by residents of overburdened communities. The Proposed Rules require that an applicant, after the close of the public comment period, provide a copy of the comments submitted along with the applicant’s response to the public comments to the Department. The applicant is also required to indicate how it will address the comments.

ISRI is supportive of a meaningful public participation process and an ongoing dialogue between community stakeholders and industry. Because one of the goals of the EJ Law and, more specifically, the public hearing process, is to amplify the voice of overburdened communities in connection with a proposed facility’s potential impact, ISRI asserts that the requirement to address public comments should be limited and the term “interested party” should be defined to include residents who live or work in the overburdened community (or organizations that are commenting on behalf of identified residents or workers in the community) that are related to the permit being sought and the potential impact of the facility. Persons and entities who live and work outside of the overburdened community may continue to offer comments to the Department as part of the permit application process, as may otherwise be appropriate under the Department’s existing public participation standards. It is also unclear how the Department will determine whether an applicant has sufficiently addressed the comments that are received. The Department should provide more guidance on the scope of responses that will be necessary to satisfy this proposed rule.

29 “Material change” is defined as “a modification of the facility or EJIS that, in the determination of the Department, requires further analysis or public comment to accurately assess the facility’s contribution to environmental and public health stressors in the overburdened community, such as, but not limited to: 1. A change to the basic purpose; 2. An expansion of the facility; 3. An increase in the potential contributions to environmental or public health stressors; or 4. A change in the measures proposed to address the facility’s contributions to environmental and public health stressors.” Proposed N.J.A.C. 7:1C-1.5 (emphasis added).

1. Proposed N.J.A.C. 7:1C-5.3 is inconsistent with the definition of “compelling public interest” and does not appropriately incorporate economic benefits. Proposed N.J.A.C. 7:1C-5.3 would require the Department to deny an application for a new facility where the proposed new facility cannot avoid a disproportionate impact, unless the applicant demonstrates that the proposed facility will serve a compelling public interest. As noted in Section II.A.2 above, the exclusion of economic benefits from consideration of whether a new facility serves a compelling public interest goes beyond the requirements set forth in the EJ Law and is inappropriate, especially where the community is overburdened because of its percentage of low-income households or an identified stressor for the community is the percent of unemployed residents. Instead of restricting the facilities that could qualify as serving a compelling public interest to a narrow few, the Department should allow for the possibility that facilities could qualify as serving a compelling public interest by allowing consideration of economic and job benefits in appropriate circumstances.

Additionally, proposed N.J.A.C. 7:1C-5.3 identifies items that the applicant will need to address to demonstrate that the new facility will serve a compelling public interest, instead of simply relying on the definition of “compelling public interest” in proposed N.J.A.C. 7:1C-1.5. The Department’s definition of compelling public interest and the requirements in proposed N.J.A.C. 7:1C-5.3(b) are not the same. The definition of “compelling public interest” requires that there are “no other means reasonably available” to meet the essential environmental, health, or safety need. The requirements in proposed N.J.A.C. 7:1C-5.3(b) state there are “no feasible alternatives that can be sited outside the overburdened community” to serve the essential environmental, health, or safety needs. The definition only considers whether there any other reasonable alternatives in the overburdened community, while the requirements look at the feasibility of addressing the essential need outside the overburdened community. Both alternatives are problematic. As noted above, in Section III.A.1, the definition suggests that all other “reasonable” alternatives must be considered and ruled out, which is overly burdensome and ambiguous, nor is it clear what constitutes reasonable alternatives. The language in proposed N.J.A.C. 7:1C-5.3(b)3 suggests that all other “feasible” alternatives be considered and that these alternatives should be sited outside of the community. It is not clear whether there is a difference between reasonable and feasible alternatives, but the difference in language makes what is required unclear. Moreover, the indication in this proposed section that alternatives outside the overburdened community be considered makes this requirement even more burdensome and difficult to satisfy. In addition, it is not clear how far an applicant must look in analyzing feasible alternatives, whether one can only consider locations that are not overburdened, and if so, given that the Department’s definition of overburdened community results in the majority of the State meeting that classification, whether greenfields are the only option for new facilities. Thus, in addition to revising the definition of “compelling public interest” to include consideration of economic and job benefits in appropriate circumstances, proposed N.J.A.C. 7:1C-5.3(b) 1 through 3 should be deleted and this section should rely on the definition of compelling public interest found in N.J.A.C. 7:1C-1.5 so there is no confusion about what is required to show a compelling public interest.
2. Proposed N.J.A.C. 7:1C-5.4 and 7:1C-6.3 arbitrarily require applicants to consider a hierarchy of onsite and offsite control measures beyond what is authorized by the EJ Law. The sections of the EJ Law regarding conditions that can be imposed by the Department in permits for new facilities or expansion of existing facilities specifically limit the type of conditions to “conditions on [or concerning] the construction and operation of the facility.” See N.J.S.A. 13:1D-160 c and d. Thus, the EJ Law does not authorize or envision the Department imposing offsite control measures or other measures that are unrelated to the construction or operation of the applicant’s facility. Despite this limiting language, the Proposed Rules require new facilities and expansions of existing facilities to potentially evaluate offsite control measures that have nothing to do with the actual construction or operation of the applicant’s facility. As these types of control measures are not authorized by the EJ Law or the underlying substantive environmental statutes, the sections of the Proposed Rules that require consideration of such offsite measures should be deleted. The Department should amend Proposed N.J.A.C. 7:1C-5.4 and 6.3 to only require applicants to evaluate and propose feasible control measures within the fence line of the facility concerning the construction or operation of the facility, and allow, but not require, facilities to evaluate and propose other feasible control measures.

In addition, the hierarchy of how the specified control measures must be evaluated under proposed N.J.A.C. 7:1C-5.4 and 7:1C-6.3 is arbitrary and not consistent with implementing cost effective measures that will have the greatest reduction in environmental or public health stress. By way of example, the Proposed Rules identify a preference in the consideration of offsite measures for the reduction of stressors from highest to lowest percentile in relation to the geographic point of comparison. This seemingly would preclude an applicant from addressing several stressors listed at lower percentiles instead of one stressor at a higher percentile. Simply stated, an applicant should be able to determine what control measures provide the greatest efficiency without artificially requiring preference for the highest percentile stressors. Instead of placing limitations or preferences on control measures, the Department should allow applicants to propose a combination of control measures as long as there would be a net benefit to the community.

With respect to possible onsite control measures to be evaluated, and possibly required, the Proposed Rules provide no guidance on the type or number of such measures to be employed or whether they must relate to the environmental and public health stressors impacted by the proposed activity that requires a permit. Similarly, there are no standards or guidelines provided regarding how much “avoidance” or “minimization” of contributions to adverse stressors, or

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30. By requiring consideration of offsite measures, the Department is also placing an unreasonable burden on applicants to navigate the potential challenges, such as access, associated with facilities undertaking activities off of its property.

31. While the EJ Law only authorizes the imposition of conditions concerning “the construction and operation of the facility,” ISRI has no objection to having provisions that allow applicants to propose other types of control measures, including offsite ones, that may be more beneficial to the community and/or more technologically or economically feasible. However, such conditions that were not authorized by the EJ Law should be voluntary, not mandatory ones as currently envisioned by the Proposed Rules.

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“reduction” to any identified adverse stressors, will be viewed as sufficient by the Department in evaluating applicants’ proposed control measures. See proposed N.J.A.C. 7:1C-5.4(b)1.-4. and 6.3(b)1.-4. For businesses to be able to reasonably plan future operations, it is crucial that they be able to predict the scope of control measures that might be required. As currently drafted, the Proposed Rules force facilities to expend significant time and money without ever being able to predict the likelihood of eventually obtaining the environmental permit sought. In summary, the Proposed Rules disincentivize scrap metal recycling facilities from making meaningful investments in overburdened communities by establishing vague requirements, beyond what is authorized in the EJ Law, that make it difficult for facilities to reasonably plan future operations, and by arbitrarily imposing a hierarchy of control measures.

The proposed hierarchy of control measures found in proposed N.J.A.C. 7:1C-5.4 and 7:1C-6.3 reflects the Department’s position that the EJ Law gives the Department unlimited and unchecked authority to impose any condition it desires in the subject permits as long as addressing alleged environmental and public health stressors is their goal. However, as noted above, while the language of the EJ Law is broad, it does specify the type of conditions that the Legislature authorized the Department to impose. Moreover, to the extent the Legislature had intended to confer this type of super power on the Department, allowing it to impose conditions and requirements that go well beyond the authority conferred by the underlying environmental permitting statutes, the Legislature would have needed to articulate such authority in clear and explicit terms, which was not done. If the Department’s apparent interpretation of the EJ Law is accepted, the constraints and authorizations of the underlying permitting statutes would no longer matter and the EJ framework would supplant all other NJ environmental permitting programs. Construing the EJ Law in this manner would also violate the nondelegation and major questions doctrines.32


1. The Department has not demonstrated that LICIT is necessary or appropriate to address localized impacts. In proposed N.J.A.C. 7:1C-7.1, the Department would seek to impose Localized Impact Control Technology (“LICT”) on proposed new or expanded major source facilities. The Department bases the LICIT requirement on the erroneous assumption that the Department’s existing standards for the control of air pollution are protective of “general populations spread over a wide geographic area but may fail to fully consider localized impacts.” ISRI disagrees with this statement; the Department’s existing air permitting regulations under Subchapters 8 and 22 specifically consider localized impacts, as is required under federal New Source Review requirements and pursuant to the Department’s extremely stringent air toxics program. For example, ambient air quality impact analyses conducted under Subchapter 18 specifically consider the impact of new or increased criteria pollutants emissions from the facility on the attainment area in which it is located. The Department’s air toxic program requires that facilities emitting air toxics above reporting thresholds (which in most cases are very low) conduct risk assessments to quantify potential impacts to health at the fence

32 See West Virginia, 142 S.Ct. at 4609 (finding that indirect and ambiguous language in a statute will not be interpreted as empowering an agency to make radical or fundamental changes to a statutory scheme).
line and beyond. Each of these programs require the Department to consider localized impacts, and where such an impact is determined to exist pursuant to established regulatory criteria, address that impact through the installation of controls or other measures. The Department has not demonstrated that these programs are insufficient to address localized risk or that a new articulation of a top-down control technology review is appropriate. Further, unlike established air permitting programs, which are based on well-established and objective ambient standards for pollutants (i.e. National Ambient Air Quality Standards for criteria pollutants and reference concentrations and unit risk factors for air toxics), the Proposed Rules would impose LICIT without first determining that any actual impact to the community or surrounding area has occurred from the facility.

2. Excluding consideration of economic infeasibility in determining LICIT is inappropriate. Although the Department purports to base LICIT on existing State of the Art ("SOTA") requirements, the new concept of LICIT would completely replace and upend SOTA requirements for affected facilities by not allowing for the consideration of economic infeasibility. LICIT would use the exact same thresholds for applicability as SOTA. However, existing SOTA requirements clearly and appropriately allow for consideration of economic feasibility, in longstanding recognition that controls achieving only marginal reductions at high costs make a control technology unreasonable. See N.J.A.C. 7:27-8.12 and New Jersey Department of Environmental Protection State of the Art Manual, July 1997. Further, by requiring an applicant to consider measures applied to similar source categories, innovative control technologies, and process modifications without regard to economic feasibility, the LICIT requirement has the potential to subject applicants to implementing unproven technologies or fundamental changes to source operations that may only achieve the most minimal of reductions. In short, LICIT wipes away any concept of ensuring an adequate environmental return on the investment required of an affected facility pursuant to the Proposed Rules.

G. Requirements Specific to Renewal Applications for Major Source Facilities – Subchapter 8.

1. The Department should clarify and limit the broad language included in proposed N.J.A.C. 7:1C-8.2 and 7:1C-8.6. In drafting the Proposed Rules, the Department should very clearly circumscribe the types of analyses or conditions that would be required of an existing major source facility applying for operating permit renewal. Because an operating permit renewal, by itself, would not be expected to increase the facility’s impact on the surrounding community, and the delegated Title V program is not intended to authorize the imposition of new substantive requirements on existing facilities at permit renewal, the Proposed Rules should clearly identify and limit the Department’s authority to require changes or installation of controls at these facilities. Instead, the language in proposed N.J.A.C. 7:1C-8.2 is very broad ("...analyze and propose all control measures necessary to avoid facility contributions to all adverse and public health stressors..."). The language in the Proposed Rules is directly inconsistent with the very purpose of Title V, and must be constrained and clarified at the time of renewal. Further, to the extent that the Department does intend to impose new
substantive requirements, the scope of those requirements must be clarified. For example, the Department should clarify that a control technology analysis for an existing facility would only be required in accordance with and pursuant to the criteria identified in proposed N.J.A.C. 7:1C-8.5, which specifically addresses technical feasibility analyses for equipment and control apparatus.\footnote{JSRI questions the selection of 20 years as the threshold at which 7:1C-8.5 requirements would apply, with the understanding that the anticipated lifespan of most equipment and control apparatus (for which facilities make calculated and substantial investments) far exceed 20 years. Further, a 20-year review of equipment and control devices, without regard to performance or actual impacts to the community, would seem to provide little actual benefit to the environment or public health.} Likewise, as written, proposed N.J.A.C. 7:1C-8.6 suggests that any aspect of the major source facility’s operations not addressed via section 8.2 must be evaluated to address “all feasible measures to avoid facility contributions to environmental and public health stressors” and “all feasible onsite measures to minimize facility contributions to environmental and public health stressors”. The Department states at page 28 of the preamble that this language applies to all stressors, whether adverse or not.\footnote{54 N.J.R. 971(a) at 28.} This language places an enormous potential burden on existing major source facilities. Given the large number of operations at major source facilities, the large number of stressors identified in the Proposed Rules, and the undefined authority that would be conferred to the Department, this provision could be interpreted to require sweeping changes at existing sources to the extent deemed “feasible” by the Department. The uncertainty surrounding this process, and the potential scope of the Department’s authority, will create uncertainty and risk for existing facilities, and is entirely inconsistent with the Legislature’s determination that the EJ Law should not be used to push existing businesses out of New Jersey.

2. **The Department should allow for preservation of the major source application shield.** As set forth below, the Proposed Rules would add a significant (and undefined) amount of time to the application process for affected facilities by providing that a permit application cannot be considered complete for review before completing the EJ process. This is a particularly acute problem for major source facilities, which do not qualify for an application shield unless their renewal applications are determined to be administratively complete by the renewal deadline. See N.J.A.C. 7:27-22.30(c). The EJ Law, at N.J.S.A. 13:1D-160(d) and (f), provides the Department with the authority to define the conditions under which the application shield would apply to an existing major facility subject to the Proposed Rules by virtue of a renewal permit; the Department should streamline these processes to the extent possible and must ensure that major source facilities are not denied the application shield for renewal applications that are delayed as a result of the EJ process.

H. **Department Review and Decision - Proposed Subchapter 9.**

1. **Proposed N.J.A.C. 7:1C-9.1 would indefinitely delay an applicant’s ability to submit an application.** The EJ Law and the Proposed Rules add a substantial amount
of time to the permit application process. ISRI is concerned that, while the Proposed Rules provide time periods for public notice and hearing and for receiving written comments, there are no time periods prescribed for NJDEP’s review of the EJIS and supplemental materials that are required to be submitted pursuant to proposed N.J.A.C. 7:1C-9.1. The amount of time that it could take NJDEP to review and issue a decision on whether an applicant can move forward with the submission of an application is limitless. This will have negative implications for facilities; as one example, Title V facilities are required to submit administratively complete renewal applications at least twelve months prior to permit expiration every five years in order to qualify for an application shield. To the extent that such an application cannot be considered administratively complete prior to completion of the EJ process, permittees will potentially need to begin the EJ process halfway through the permit term in order to ensure adequate time prior to the renewal application due date. As such, Title V permittees are at risk of being put into an endless loop of EJ process. Because an applicant must obtain approval from the Department prior to submitting its environmental permit application, which, in turn, has its own review timelines that, in many cases, are subject to additional public participation, the Department should impose reasonable timeframes on its review of the relevant EJ materials to allow the regulated community to plan for the additional review time in the application process.

The Proposed Rules will also exacerbate the already well-known permitting backlogs that exist within the Department’s air permitting program and affect both Subchapter 8 and Subchapter 22 major source permits. A review of the section of the Department’s website listing permits subject to “enhanced public participation” reveals a long list of pending Title V renewals, some of which go back to renewal application submittals made in 2019. This is by no means a complete list of all pending Title V permits – the backlog is so great that the Department issued a Memorandum in June 2022 to Operating Permit Section Staff instructing them on how best to set expiration dates for renewals issued past the permit expiration date, including in cases where a second renewal application had been submitted because more than five years had passed since the initial renewal application submittal.

2. **Proposed N.J.A.C. 7:1C-9.1 and 9.2 allow the Department to impose conditions unrelated to the construction and operation of a facility, beyond the authority provided by the EJ Law.** The EJ Law provides that the Department “may grant a permit [for a new or expanded facility] that imposes conditions on the construction and operation of the facility to protect public health.”\footnote{N.J.S.A. 13:1D-160 c and d. (emphasis added).} Importantly,
the EJ Law does not provide any additional substantive authority under the existing environmental permitting statutes, including the types of permit conditions the Department may impose in a permit, and instead relies on existing statutory authority applicable to the permits. See N.J.S.A. 13:1D-158, definition of “Permit”. However, proposed N.J.A.C. 7:1C-9.1 and 9.2 are drafted broadly enough to allow the Department to impose conditions beyond the construction and operation of the facility, to include offsite measures to reduce stressors even if the facility itself will not contribute to the stressor, and other conditions that will “provide a net environmental benefit in the overburdened community.”

The range of conditions that NJDEP believes it can impose exceeds its delegated authority under the EJ Law and runs afoul of the nondelegation and major questions doctrines. As the United States Supreme Court recently held in *West Virginia v. EPA*, “extraordinary grants of regulatory authority are rarely accomplished through ‘modest words,’ ‘vague terms,’ or ‘subtle device[s].’ Nor does Congress typically use oblique or elliptical language to empower an agency to make a ‘radical or fundamental change’ to a statutory scheme.” 42 S.Ct. 2587, 2609 (2022). The Proposed Rules allow NJDEP to impose any condition in a permit, no matter the nexus to the permitted activity, which may require action outside of a facility’s property boundary. To the extent that the New Jersey Legislature had intended to convey unlimited power to the Department in imposing conditions, the Legislature would have clearly articulated such authority in the EJ Law.

The Department’s interpretation of the types of conditions that it can impose in permits represents a fundamental change from historic permitting practices. Historically, conditions imposed in permits under the substantive environmental statutes related to the subject matter of that permit, such that stormwater permits did not impose air emission restrictions and air permits did not impose water discharge restrictions. Similarly, the Department is not authorized to regulate the emissions from or usage of mobile sources at or in connection with individual facility permitting under the Air Pollution Control Act, consistent with the authority and constraints under the federal Clean Air Act. Under the proposed EJ framework, any constraints or limitations imposed by existing environmental statutes would no longer be relevant because the Proposed Rules appear to confer authority upon NJDEP to impose conditions on sources not regulated by the underlying environmental statutes and to impose conditions in permits not authorized by these underlying statutes.

In addition to the Department broadly exceeding its statutory authority, the Proposed Rules also provide no specifics on the types of conditions that may be imposed and the

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39 Proposed N.J.A.C. 7:1C-9.1(b) and 9.2(b) allow the Department to evaluate and impose conditions on a facility beyond those required to be evaluated by the applicant, including conditions that would require an applicant to take action outside of its property boundary. The Department defines “net environmental benefit” as a reduction of baseline environmental and public health stressors in an overburdened community or other action that improves environmental or public health conditions in an overburdened community, as determined by the Department. Proposed N.J.A.C. 7:1C-1.5.

40 See 42 U.S.C. §§ 7543(a) and (e).
information that the Department will consider in determining the necessary type and scope of conditions. This is particularly important given that the Department can suspend or revoke a permit for violation of conditions that it imposes. See Proposed N.J.A.C. 7:1C-9.4(b). The Department has not provided adequate notice to affected facilities of the costs and conditions associated with obtaining necessary environmental permits. The Department should revise proposed N.J.A.C. 7:1C-9.1 and 9.2 to expressly state the types of conditions that the Department can impose, which should be those conditions that are related to the type of permit sought, that can be feasibly implemented within the fence line of the facility, are feasibly related to the stressor to which the facility will contribute, and are limited to the “construction or operation of the facility” as required by the EJ Law.

3. Proposed N.J.A.C. 7:1C-9.1(c) allows the Department to impose unreasonable fees on the regulated community, contrary to the EJ Law. While the EJ Law allows the Department to impose a “reasonable fee” to cover the Department’s costs, including costs to provide technical assistance to permit applicants and overburdened communities, it does not allow the Department to charge potentially excessive and unlimited fees on applicants for the Department to engage an “expert” to evaluate any information submitted by the applicant. See N.J.S.A. 13:1D-160 g and proposed N.J.A.C. 7:1C-9.1(c). The Department has not provided any guidance as to when it will seek the assistance of an “expert,” who the “expert” will be, and any cap on the amount of money to be charged to an applicant. The Legislature made clear that the burden is on the Department to conduct a review of an EJIS and decide whether and under what conditions to issue a permit and has not expressly authorized the Department to hire outside “experts”. See N.J.S.A. 13:1D-160 c, d, and g. To the extent that the Department seeks outside assistance by “experts,” the Department, not the applicant, should cover the costs of such review.

4. Proposed N.J.A.C. 7:1C-9.4(b) improperly allows the Department to revoke or suspend a permit for violations of the Proposed Rules, contrary to the EJ Law. In enacting the EJ Law, the Legislature chose to structure the EJ process such that it would act as a prelude to the Department’s substantive environmental permitting process. See N.J.S.A. 13:1D-160. Despite the clear intent of the Legislature and the lack of authority provided by the EJ Law, proposed N.J.A.C. 7:1C-9.4(b) would allow the Department to suspend or revoke a Department-issued permit for any violation of the conditions imposed by the Proposed Rules. While the existing substantive environmental statutes and the regulations promulgated thereunder may allow the Department to suspend or revoke a permit under certain conditions, the Legislature did not convey such authority to the Department regarding conditions imposed in permits pursuant to the EJ Law. As such, the Department should delete proposed N.J.A.C. 7:1C-9.4(b).

5. Proposed N.J.A.C. 7:1C-9.5(h) inappropriately penalizes facilities that exercise their right to challenge the Department’s decisions. Although the Proposed Rules appropriately allow for an applicant to request an adjudicatory hearing to contest a Department decision, Section 9.5(h) provides that “the decision and any associated permits shall be automatically stayed in its entirety and all permitted activities shall stop as of the date the hearing request is submitted and shall not be started again until the matter is resolved.” The scope of this
provision is at best unclear, given that the EJ process envisioned under the Proposed Rules acts as a first step in the permitting process. Certainly, any appeal should not result in a halt of the permitting process and likewise cannot have the effect of halting facility operations. Any such directive would cause acute harm to applicants, and in the case of existing operations would be frankly unlawful. Further, such an automatic stay is entirely inappropriate – any action taken by the Department under the Proposed Rules would have already been determined by the Department to be appropriate and protective of public health, so a stay is not necessary to protect any legitimate interest of the Department and must only be intended to discourage adjudicatory hearing requests. This provision is completely inconsistent with New Jersey administrative rules and the appeal provisions of the permitting programs for which EJ review under the Proposed Rules would be conducted. For example, the provisions governing appeals from the Department’s air permitting decisions make clear that neither the filing of an adjudicatory hearing request nor the Department’s decision to grant a contested case hearing shall automatically result in a stay of challenged permit conditions.\footnote{See, e.g., N.J.A.C. 7:27-1.33.} Instead, in order to obtain a stay of the challenged conditions, and move forward with the project without complying with the contested conditions, the applicant must bear the burden of proving that the granting of a stay is required as a constitutional or statutory right, or that the potential effect on human health and welfare or the environment which might result from a decision to grant a stay is greatly outweighed by immediate, irreparable injury to the specific party requesting such stay.\footnote{Id.} Proposed section 9.5(h) flips this construct on its head because it would not allow an applicant to move forward in compliance with contested conditions while a hearing moves forward, or even after the applicant has made the requisite regulatory showing that compliance with the contested conditions is not necessary pending appeal. The broad type of stay envisioned by the Proposed Rules, which would require all permitted activities to “stop” as of the date of the hearing request until the matter is resolved, would prevent the applicant from constructing and/or operating its facility pending appeal, even where ongoing operations would be done in strict accordance with the Department’s current determinations.\footnote{The harm caused by this provision is made worse by the slow process for review of adjudicatory hearing requests. Referral to the Office of Administrative Law and ultimate disposition via adjudicatory hearing typically takes years to complete.} This provision is surely intended to discourage appeals of Department decisions by requiring as a price of such an appeal that the applicant’s project cannot proceed or that its operations must cease. Such a provision is inappropriate and unnecessary.

I. Appendix – Identified Stressors and Method of Measurement.

1. Measuring the environmental and public health stress associated with scrap metal facilities by the number of sites per square mile is an inaccurate and biased way to measure stress from these facilities. As discussed above, the EJ Law defines an “environmental or public health stressor” to include “scrap yards,” which NJDEP has improperly expanded to include all scrap metal recycling facilities. In the Appendix to the Proposed Rules, scrap metal facilities are counted as a stressor by their mere existence as their stress is measured...
by sites per square mile. Yet, in the preamble to the Proposed Rules, the Department recognizes that not all scrap metal facilities cause negative environmental impacts and environmental stress, and that it is “[i]mproperly managed scrap metal facilities [that] can contaminate soils, groundwater, and surface waters with hazardous materials and release refrigerants containing fluorocarbons in the air.” See 54 N.J.R. 971(a) at 15. The preamble goes on to note that the volume and quality of discharges from scrap metal facilities depends on a variety of site-specific factors. Yet, despite this qualifying language as to what causes stress, the Proposed Rules assume all such facilities are stressors and proposes to use the density of scrap metal facilities per square mile as the measurement of stress. Typically, any potential stress caused by scrap metal facilities are addressed through compliance with the substantive environmental statutes and the regulations promulgated thereunder. For example, the volume and quality of stormwater is addressed through the implementation of effective Best Management Practices. Accordingly, in measuring stress associated with scrap metal facilities, the Department should use a measurement that better correlates with the stress associated with this type of facility, such as looking at surrogates for emissions or discharges or for improper management. Examples of these types of possible metrics include number of material permit or regulatory violations.

By treating all scrap metal facilities as causing the same amount of stress, regardless of their compliance status or methods of addressing interaction with the environment, the Proposed Rules provide the wrong incentives. Moreover, the measurement of the number of scrap metal facilities per square mile, coupled with the proposed definition of “geographic point of comparison,” which will compare rural or residential areas with no scrap metal facilities to the area in question which will have at least one such facility, will always result in there being an adverse stressor. Thus, the Proposed Rules should be revised to measure stress from scrap metal facilities through more indicative metrics, such as number of material permit or regulatory violations. Additionally, the Department chose to exclude resource recovery facilities and other waste incinerators in the State from being considered under the “solid waste facilities” stressor in the Proposed Rules because such facilities “are captured under the regulated air pollution facilities stressor.” See 54 N.J.R. 971(a) at 14. Scrap metal facilities are also captured under other stressors, yet the Department has proposed to identify such facilities as its own stressor category, without explanation. The Department should remove scrap metal facilities from its own stressor category and consider them as part of other stressors, such as the number of permitted air and NJPDES sites per square mile.

2. The stressors identified and how they are measured result in the same environmental issue being double and triple counted. The manner in which stressors have been identified and how they are measured results in certain environmental issues or emissions being counted repeatedly, and thus over consider the stress associated with certain types of facilities while potentially under measuring or not measuring at all other facilities. Scrap metal facilities are a good example of a type of facility whose purported stress is counted multiple times for the same issue. As noted above, the mere existence of a scrap metal facility is counted

44 See 54 N.J.R. 971(a) at 14.
45 See 54 N.J.R. 971(a) at 15.
46 See 54 N.J.R. 971(a) at 14.
as a stressor, measured as the number of sites per square mile. Yet, these facilities often have air permits and NJPDES permits, and so are also counted again, as “permitted air sites” and “NJPDES sites,” also measured by sites per square mile. Thus, the existence of a scrap metal facility will likely count as three separate adverse stressors whether or not it has emissions or discharges that exceed regulatory standards. In addition, due to the nature of their business, scrap metal facilities are likely to have considerable truck traffic, which is counted as another stressor under “Mobile Sources of Air Pollution.” Thus, as shown here, a scrap metal facility that is fully compliant with applicable regulations and requisite permits could account for four adverse stressors as compared to a rural or residential geographic point of comparison.

Similarly, certain identified stressors punish facilities for simply being located in urban environments and result in additional stressors being deemed as adverse despite a facility’s compliance with regulatory standards. Scrap metal facilities tend to be located in urban environments where scrap metal tends to be generated in order to lessen the distance of transportation both between sources of scrap metal and users of recycled scrap metal. Urban environments are likely to have a “lack of tree canopy,” and significant “impervious surface,” which are both identified as separate stressors. It is difficult to see how any scrap metal facility located in an urban environment will not be in a community determined to have adverse cumulative stressors or will not cause a disproportionate impact. This analysis shows that a regulatory compliant scrap metal facility that has obtained the necessary permits will be viewed as having more stressors than a similar facility that has failed to obtain requisite permits (since its lack of permits will not be counted in those categories). Thus, the manner in which the stressors have been identified and are proposed to be measured is arbitrary and does not accurately reflect the stress caused by the facilities in overburdened communities, and should be reevaluated to better reflect the actual stress caused by facilities and to be more equitable among different types of facilities.

3. The stressors identified in the Appendix do not reflect actual stress caused by facilities in overburdened communities. The EJ Law defines environmental or public health stressors as sources of environmental pollution or conditions that may cause potential public health impacts in the overburdened community. See N.J.S.A. 13:1D-158. The Department has included a list of 26 stressors as environmental or public health stressors in the Appendix to the Proposed Rules. The stressors that the Department has included go beyond those stressors that have been identified by EPA and CalEPA and do not necessarily reflect impacts from facilities that are regulated under the EJ law. As noted above, several of the stressors that specifically relate to scrap metal facilities are counted multiple times, and other stressors reflect very typical features of urban areas rather than actual negative health impacts caused by industrial facilities. For example, the stressors that NJDEP has identified as “may

47 To the extent that scrap metal recycling facilities choose to relocate their facilities, the distance that trucks will need to travel to transport scrap metal will increase, leading to more truck traffic and more emissions, and overburdened communities will lose the economic benefits provided by these facilities, such as providing well-paying jobs, which will further increase unemployment rates.

48 By way of comparison, CalEPA’s CalEnviroScreen identifies 13 environmental indicators, EPA’s EJScreen identifies 12 environmental indicators, and EPA’s CJEST identifies 13 environmental indicators.
cause potential public health impacts” and “social determinants of health,” such as lack of recreational open space, lack of tree canopy and impervious surface, are hallmarks of urban areas and are unconnected to potential impacts from industrial facilities generally or the associated potential “stress” faced by a community. As another example, the Department has proposed to include soil contamination deed restrictions and ground water classification exemption areas as separate stressors despite the fact that the Department’s cleanup regulations ensure that no undue risk to human health or the environment remain following signoff from NJDEP or a Licensed Site Remediation Professional. The sites that have been remediated under NJDEP’s Site Remediation Program are beneficial to the communities in which they are located, as they have taken otherwise contaminated properties and put them back into productive use.

The Department has made clear in the preamble its view that the Proposed Rules are meant to address localized impacts that are not adequately protected by existing environmental standards. However, NJDEP has proposed to use NAAQS data as indicators of stressors for ozone and PM2.5, which is intended to represent regional air quality, rather than localized impacts, in direct contradiction of the preamble language. Interpolated data collected from a network of monitoring stations (some of which are not operated year-round) would be used, as described in NJDEP’s Environmental Justice Mapping, Assessment and Protection Tool (“EJMap”) Technical Guidance (which the Department has repeatedly stated is not subject to public comment). NJDEP has not provided adequate support for using an AQI index of 100 as the threshold for determinants of a stressor, and in the case of PM2.5 seems to disregard the state’s attainment of the NAAQS standard. Further, NJDEP’s methods for interpolating monitoring data down to a localized block group is based on a series of assumptions, equations, and parameters that have no basis in air dispersion processes and may not reflect the actual impacts to communities at the block group level. As NJDEP is aware, dispersion of air pollution does not occur linearly with distance. Likewise, NJDEP’s proposed use of EPA’s AirToxScreen data to determine cancer risk including diesel particulate matter and cancer risk excluding diesel particulate matter, is expressly contrary to EPA’s instructions for use of the data. EPA makes clear that AirToxScreen data should not be used to either characterize or compare risks or exposures at local levels (such as between neighborhoods), to control specific source or pollutants, or as a basis for individual permitting decisions. Further, EPA notes that although results are reported at the census tract level, “average exposure and risk estimates are far more uncertain at this level than at the county or state level.”

In total, many of the metrics that the Department proposes to identify whether a particular community is “stressed” for each environmental or public health stressor are based on hypothetical impacts to communities based on the existence of certain infrastructure and facilities, as opposed to being based on localized impacts. In addition, the identification of “on-or-off switch” type stressors, such as soil contamination deed restrictions, ground water classification exemption areas, railways, solid waste facilities, and scrap metal facilities, bias the cumulative scoring for a given census tract and unnecessarily lead to urban communities being

49 See 54 N.J.R. 971(a) at 3.
50 See https://www.epa.gov/airtoxscreen/airtoxscreen-frequent-questions#background4.
51 Id.
identified as disproportionately impacted, thereby always triggering permit applicants in these communities to engage in the extensive EJ process.

4. The Department does not appear to have sufficient data to compare the stressors identified in the Appendix to the geographic point of comparison. The Department has proposed to use EJMap as the method by which applicants will determine whether an overburdened community is disproportionately impacted. See Proposed N.J.A.C. 7:1C-2.2. NJDEP has taken the position that EJMap and its associated Technical Guidance are not subject to the same public comment opportunity as the Proposed Rules. Given that EJMap is a fundamental part of the Proposed Rules and determinative of a facility’s obligations of the EJ process, a formal notice and comment period is critical to meet the requirements of the New Jersey Administrative Procedure Act.\textsuperscript{52} ISRI has evaluated the EJMap and identified a number of concerns that the Department should address before finalizing the Proposed Rules. First, there are no values in EJMap for several of the stressors identified in Appendix (identified as “NA”) in certain geographic areas. While there is no discussion in EJMap or the Technical Guidance for what “NA” means, it appears that the Department does not have sufficient data for these stressors to identify a value. This is problematic for a number of reasons, including that facilities will need to compare a value for an overburdened community against geographic points of comparison for which no data is available, further skewing the results. It also highlights the inappropriateness and overbreadth of the stressors identified in the Appendix.\textsuperscript{53} The Department should only identify stressors for which it has sufficient data across the State.

Second, EJMap does not provide a uniform metric of presenting data across different stressors and geographic areas. For example, the stressor in the overburdened community may be evaluated to two decimal places where the geographic point of comparison may be rounded to the nearest whole number. Without a uniform metric of presenting data, it is impossible to determine if the overburdened community is disproportionately impacted by a stressor, or if it is being counted as an adverse stressor simply due to rounding. The Department should ensure that stressors (and the underlying geospatial analyses used to score them) are evaluated at an equivalent level of precision to provide meaningful results.

***************

The NJ Chapter of ISRI trusts that these comments demonstrate to the Department that the current Proposed Rules exceed the statutory authority, legislative intent and plain language of the EJ Law, provide scrap metal recyclers with insufficient notice of the requirements that will be imposed, and identify duplicative stressors that will likely regulate the scrap metal recycling

\textsuperscript{52} See Chemistry Council of New Jersey v. New Jersey Dep’t of Envtl. Prot., 2017 WL 6492521 (N.J.App. 2017) (finding that EPA’s posting of interim specific groundwater quality criteria or perfluoronoanoic acid on its website without publishing notice in the New Jersey Register and without performing the required analyses under the Administrative Procedure Act was a violation of the Administrative Procedure Act).

\textsuperscript{53} In identifying indicators in EJScreen, EPA only identified indicators for which national, publicly-available data existed at sufficient geographic resolution. See EPA’s FAQ about EJScreen at https://www.epa.gov/ejscreen/frequent-questions-about-ejscreen.
industry out of existence in New Jersey. ISRI urges the Department to revise the Proposed Rules to allow for a fair and equitable permitting process that in fact protects overburdened communities without unnecessarily disabling and selectively targeting the scrap metal recycling sector in New Jersey. ISRI appreciates the opportunity to provide the foregoing comments to the Department.

Sincerely,

[Signature]

Jill Hyman Kaplan and
Carol F. McCabe
For MANKO, GOLD, KATCHER & FOX, LLP
Hello,

Attached are Stericycle’s comments to DEP Dtk. No. 04-22-04. Please let me know if a PDF is not acceptable, my understanding is that PDFs are compatible with current versions of MS Word but let me know if you have an issue. Thank you in advance for your consideration.

Sincerely,

Cara Simaga, CHMM
Senior Director, Regulatory Affairs

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September 2, 2022

Via electronic submission: www.nj.gov/dep/rules/comments

Melissa P. Abatemarco, Esq.
Attn: DEP Docket No. 04-22-04
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, NJ 08625-0402

RE: Comments on Proposed New Rule, N.J.A.C. 7:1C

Dear Ms. Abatemarco:

Stericycle, Inc. (Stericycle) is a leading provider of compliance-based solutions that protect people, promote health and safeguard the environment. Stericycle specializes in the collection, transportation, treatment and disposal of regulated medical waste (RMW). To our customers, team members and the communities we serve, Stericycle is a company that protects what matters. Stericycle currently operates RMW facilities in Keasbey (Woodbridge) and Elizabeth, New Jersey, in addition to Shred-it locations, which provide paper shredding for recycling and the destruction of confidential information and branded goods, in Secaucus, Parsippany and Lawrencevile. Stericycle provides essential services to hundreds of facilities across the state that generate RMW, including public and private hospitals, clinics, nursing homes and laboratories.

Stericycle supports and shares the Department of Environmental Protection’s (NJDEP’s) goals of ensuring environmental justice and reducing environmental impacts to overburdened communities. Stericycle appreciates this opportunity to provide comments on NJDEP’s proposed new rule, N.J.A.C. 7:1C, implementing the provisions of New Jersey’s Environmental Justice Law, N.J.S.A. 13:1D-157 et seq. (the Proposed Rule).

Under New Jersey’s Administrative Procedure Act, N.J.S.A. 52:14B, an administrative regulation should be an agency’s statement of general applicability and continuing effect that implements or interprets a law or policy. N.J.S.A. 52:14B-2. Agency rules must provide regulated parties with adequate notice and sufficient guidance as to how they will be applied. See State v. Cameron, 100 N.J. 586, 591 (S. Ct. N.J., 1985). As currently proposed, however, NJDEP’s regulations implementing the Environmental Justice Law do not meet this standard. That is, the Proposed Rule does not provide sufficient guidance to determine its applicability to certain types of facilities, what specific actions are required of covered facilities, under what circumstances various requirements are triggered, and how to comply with those requirements. Detailed below are Stericycle’s concerns with specific aspects of the Proposed Rule, which largely stem from this need for further guidance and clarity, and recommendations for modifications to the Proposed Rule.

The Proposed Definition/Scope of “Facility” Requires Clarification as to its Applicability to RMW Facilities

The Proposed Rule Should Exclude RMW Collection and RMW Treatment and Collection Facilities

Stericycle asks that NJDEP clarify and harmonize the Proposed Rule with other permitting programs under New Jersey regulations. Specifically, the fifth category of “facility” in the Proposed Rule, “transfer station or other solid waste facility,” should be clarified to align with NJDEP’s RMW rules and permitted facility types. By reference to N.J.A.C. 7:26-
1.4, the Proposed Rule expressly defines a “solid waste facility” as “any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste but shall not include ... a regulated medical waste collection facility authorized pursuant to N.J.A.C. 7:26-3A.39,” N.J.A.C. 7:26-1.4 (emphasis added). It will be challenging to apply the Proposed Rule’s RMW collection facility exclusion in practice because some RMW collection facilities are permitted under the facility type “RMW Treatment and Collection,” rather than as a collection facility alone. By excluding all RMW collection facilities from the definition of solid waste facility, this indicates that NJDEP views RMW collection facilities as separate and distinct from the facilities covered under the Proposed Rule; however, it is not clear from the Proposed Rule text that RMW treatment and collection facilities are also excluded. We request that NJDEP state expressly in the definition of “facility” that RMW collection facilities, including those collection facilities that are permitted as RMW treatment and collection facilities, are exempt, such as through the inclusion of the red, underlined text shown below:

(5) transfer station or other solid waste facility, except for a regulated medical waste collection or treatment and collection facility authorized pursuant to N.J.A.C. 7:26-A.39, or recycling facility intending to receive at least 100 tons of recyclable material per day;

This edit will provide clarification to the RMW industry, consistent with the permitting scheme in existing NJDEP RMW regulations for RMW treatment and collection facilities.

The Proposed Rule Should Exclude Autoclaves and Medical Waste Incinerators Not Associated with Hospitals or Universities

The eighth category in the Proposed Rule’s definition of “facility” explicitly excludes “a medical waste incinerator that accepts regulated medical waste for disposal, including a medical waste incinerator that is attendant to a hospital or university and intended to process self-generated regulated medical waste.” 54 N.J. Reg. 971(a), 991 (June 6, 2022). It is unclear from this definition whether it is intended to exclude all medical waste incinerators that process RMW, or only those affiliated with hospitals and universities, as is suggested throughout the preamble. Stericycle requests additional clarification on this important point and suggests that all medical waste incinerators used for the treatment of RMW be excluded.

If the exclusion is limited to those incinerators attendant to hospitals and universities, the Proposed Rule creates a preference for those incinerators even though they presumably have a similar potential for environmental impact. Such an exclusion puts unaffiliated facilities at a substantial disadvantage due to the cost and time needed to comply with the Proposed Rule’s requirements. Further, the proposed exclusion incentivizes waste treatment at hospitals rather than at off-site facilities that are specifically designed for the management of RMW. Hospitals are best equipped to provide medical care, and incentivizing hospitals to internalize the management of medical waste, by indirectly increasing the costs of treatment at unaffiliated facilities, may draw needed resources away from medical care for New Jersey residents. Off-site and unaffiliated facilities have specialized expertise that make them better equipped to handle waste in a way that maximizes efficiency and minimizes risk to the environment and public health.

In addition, the proposed exclusion creates an advantage for customers to use incinerators rather than autoclaves, even though autoclaves tend to have a much lower environmental impact, in particular with regard to air emissions. As such, the Proposed Rule undercuts its own goals of minimizing emissions and adverse impacts to overburdened communities. Stericycle recommends that NJDEP extend the exclusion to autoclave facilities as well as to all medical waste incinerators processing RMW, such as through the edits in the red, underlined text shown below:

(8) medical waste incinerator, except any medical waste autoclave and any medical waste incinerator accepting regulated medical waste for disposal or processing, including a medical waste incinerator, that is attendant to a hospital or university and intended to process self-generated regulated medical waste, as defined in this chapter.
These edits will provide clarification to the RMW industry and better serve the goals of NJDEP’s Proposed Rule.

The Proposed Definition of “Expansion” Requires Clarification

The Proposed Rule states that the program’s requirements apply “when an applicant submits a permit application to the NJDEP for a new or expanded facility, or the renewal of an existing major source permit.” 54 N.J. Reg. 992 (emphasis added). “Expansion” is defined as “a modification or expansion of existing operations or footprint of development that has the potential to result in an increase of an existing facility’s contribution to any environmental and public health stressor in an overburdened community, but shall not include any activity that decreases or does not otherwise result in an increase in stressor contributions.” 54 N.J. Reg. 990. The definition of “expansion” requires additional clarification so that applicants can better understand what triggers the requirements of the environmental justice review process.

The definition above of “expansion” provides scarcely more information or guidance to applicants than that which was provided in Administrative Order 2021-25 (AO 2021-25) or the accompanying FAQ, which included “any modification to a facility’s existing authorization that increases the facility’s environmental impact, such as an emission increase or an expansion of the facility’s footprint.” NJDEP, Administrative Order 2021-25 – FAQs.1 The Proposed Rule must provide regulated parties with adequate notice and sufficient guidance as to how they will be applied.

Based on the proposed definition, applicants appear to only trigger the requirements of the review process if their proposed “modification” or “expansion” “has the potential” to increase the facility’s contribution to a stressor in the community. 54 N.J. Reg. 990. However, the Proposed Rule does not provide any definition for “modification,” nor any guidance as to what constitutes a “potential” increase. Absent further guidance or guardrails, the review process would be triggered when any possibility, no matter how remote, exists that a facility’s plans would increase a stressor by any amount, no matter how small.

Moreover, the proposed definition of “expansion” may cause confusion with the proposed definition of “change in use,” which means “a change in the type of operation of an existing facility that increases the facility’s contribution to any environmental and public health stressor in an overburdened community, such as a change to waste processed or stored.” Id. (emphasis added). If a facility decides to offer new services that involve processing a new type of waste, such a decision could constitute either an “expansion” or a “change in use,” which may shift the application review standard from that applicable to “expansions” to that applicable to a “new facility.” While the information required for each of these applications is similar, the consequences are not, as NJDEP may deny a permit for a new facility outright if it cannot avoid a disproportionate impact and does not serve a compelling public interest.

Stericycle asks that the final rule more clearly define these terms so that applicants may understand what types of plans will trigger the environmental justice review process and what standards will apply.

The Proposed Provisions on Environmental Burdens and Stressors are Ill Defined

The Proposed Rule includes a list of 26 environmental and public health stressors, and it categorizes the stressors as “baseline” or “affected” stressors. 54 N.J. Reg. 990. To attempt to define the stressors, the Proposed Rule incorporates the statutory definition at N.J.S.A. 13:1D-158. However, neither the Proposed Rule nor N.J.S.A. 13:1D-158 define “baseline” or “affected” stressors, and those are not commonly understood terms. Understanding how the stressors are defined and categorized as “baseline” or “affected” is critically important because the Proposed Rule requires an applicant “to analyze, through appropriate modeling, the existing or proposed facility’s impact thereto when determining whether the facility can avoid a disproportionate impact” for a stressor listed as “affected.” 54 N.J. Reg. 975. If a stressor is “baseline,” then no additional analysis or modeling is required, but if a stressor is “affected,” then

additional analysis is required. NJDEP does not provide the underlying rational for how it categorizes each stressor as “baseline” or “affected,” or the parameters for these categories. Without knowing the rational and parameters for the stressor categorizations, whether the stressors are appropriately categorized cannot be assessed. Further, for “affected” stressors, an applicant needs to understand the parameters for that categorization to determine what modeling is “appropriate” for the impact analysis. NJDEP is taking a “black box” approach to categorizing the stressors, which is unacceptable, and it must provide details on how it determines whether each stressor is “baseline” or “affected.” That is a substantial oversight in the Proposed Rule. Clear, rational definitions and analysis must be provided for defining and categorizing stressors.

For stressors, the Proposed Rule requires analysis of the “potential to create additional adverse environmental or public health stressors.” 54 N.J. Reg. 983. A key term in that statement is “potential,” yet the Proposed Rule fails to define what constitutes “potential” and how such “potential” is to be analyzed. For example, one additional truck per day at a facility location is insignificant and not a potential stressor, whether in terms of particulate matter emissions, traffic, noise or light pollution. Attempting to model or assess the impact of minor, “potential” changes, like the addition of one truck, is unworkable and a distraction from the overarching contributions. As the Proposed Rule recognizes, “an individualized analysis of facility contribution to each of the environmental and public health stressors identified at the chapter Appendix is not always feasible or warranted.” Id. NJDEP should revise the Proposed Rule to only consider known—rather than potential, significant contributions because attempting to quantify and analyze minor, potential changes, such as each additional truck, is not feasible or warranted. The term “potential” should be removed from the Proposed Rule because it unnecessarily introduces an unmeasurable value and makes the process entirely subjective.

Alternatively, if not removed entirely, “potential” should be strictly defined to address the purpose of the rule, namely, to address known, significant impacts to environmental justice. N.J.S.A. 13:1D-158, as incorporated, includes a definition of major source as the “potential to emit, one hundred tons per year or more of any air pollutant” based on criteria set forth in the Clean Air Act. If the term “potential” remains in the Proposed Rule, it should similarly be defined with a significant, articulated metric for each stressor. An increase in traffic or increase in emissions, for example, should be defined and analyzed as such when it causes a significant impact. The Proposed Rule states that NJDEP will “analyze the single unit truck data” and “combined truck data” as “an indicator of increased truck-related air pollution” for proximity to traffic. 54 N.J. Reg. 976. A better way to define a stressor, such as air pollution from increased traffic, is based on a large, measurable, and clearly-defined increase in the number of vehicles or trucks—not one additional truck or “potential” emissions. Therefore, NJDEP should limit its review solely to combined truck data as the best, most efficient measure of traffic and air pollution changes instead of attempting to also include an analysis of “single unit truck data.” Id. Likewise, NJDEP should not attempt to assess “potential,” unknown public health stressors but should instead focus on reducing measurable stressors that significantly lessen environmental justice impacts.

AO 2021-25 directed NJDEP to develop a “transparent, objective, data-driven process” to address stressors. However, the individual types and definitions of the stressors themselves are not well defined. For example, solid waste facilities are defined as a de facto stressor. Solid waste facilities are broadly defined and will be analyzed as a stressor based on the density of solid waste facilities “per square [mile].” 54 N.J. Reg. 978. In theory, as defined, having a “medical waste incinerator” within a square mile of a “recycling facility” could be a stressor, regardless of the type of area, traffic, or resulting emissions. Solid waste facilities perform a vital public function and are already heavily regulated in a manner that helps reduce their potential stressors. Some of those facilities, like Stericycle’s, treat RMW entirely indoors and could not cause the pollution impacts the Proposed Rule assumes. A new warehouse distribution center with dozens of heavy duty trucks coming and going could be a significantly larger stressor than an existing solid waste facility processing RMW indoors. Yet a warehouse does not fall within a de facto stressor category in the Proposed Rule, nor is a large event venue or commercial center with significant traffic from thousands of individual vehicles per day. If a stressor is in fact a stressor, it should be assessed by a measurable impact, not just by the type of facility. A new shopping mall would have a much larger impact than one more truck at a solid waste facility, and the Proposed Rule must take into account such real-world considerations.
Other Proposed Provisions are Unduly Vague or Unjustified

The Proposed Rule Lacks Specific Submission Criteria

The Proposed Rule asserts that applicants are required to submit numerous documents and materials for review by NJDEP, such as a plan to modify operations depending on the outcome of a risk assessment based on “a protocol approved in advance” by NJDEP. 54 N.J. Reg. 997. As an example, rather than subjectively state that a protocol must be “approved in advance,” NJDEP should provide the protocol and risk assessment requirements explicitly so that an applicant can submit a protocol meeting NJDEP requirements, and perform a risk assessment under clear parameters, applied consistently to protocols submitted by all applicants. This example demonstrates a more general trend: the Proposed Rule does not sufficiently explain submission requirements, such as what information must be submitted, as well as the timing for submissions. The mechanics of how the submission process works is critical to ensure appropriate compliance and must include details such as the timelines to make a submission, the timelines for NJDEP to perform its review, and the specific information that must be submitted.

The Proposed Rule also does not adequately address how an applicant should contact NJDEP to discuss issues that may arise during the submission process. An adjudicatory hearing appeal process is provided in detail, 54 N.J. Reg. 999, but it is in everyone’s interest that a mechanism be provided to resolve any confusion or disagreements prior to having to engage in a formal hearing and appeal process. NJDEP should further consider and explain the “nuts and bolts” of how the submission process will work so that the regulated community knows what is required and can comply with that process.

The Proposed Rule Includes Inappropriate Expert Fee Requirements

The expert requirements of the Proposed Rule are unworkable. For example, the Proposed Rule provides that should NJDEP require “additional expert analysis of any information submitted … it may engage an expert at the applicant’s expense …. 54 N.J. Reg. 987. NJDEP may “engage one or more experts … and direct applicant to submit payment in full within 90 days ….” 54 N.J. Reg. 998. NJDEP should not force applicants to pay unspecified and unlimited costs for NJDEP to engage experts at its sole discretion and without any input or evaluation from the applicant. If NJDEP believes a third-party expert analysis is required at the applicant’s expense, the applicant should be allowed to independently engage and retain any necessary expert.

The Proposed Rule Requires Excessive Analysis for Permit Renewals

The Proposed Rule states that major source facility renewals and major facility permit renewals may be required to analyze and submit proposed control measures, a facility-wide risk assessment, and potentially a plan to lower risks. 54 N.J. Reg. 997. The Proposed Rule requires those steps and more for renewals without any exceptions for facilities with no or even de minimis changes, and despite the fact that new applicants and expanded facilities must already submit an extensive analysis before any permit is issued. 54 N.J. Reg. 996, 999. Requiring this wide-ranging analysis and documentation for every renewal—especially for facilities that continue to operate without change—is unwarranted, and a waste of time and resources. Facility owners make a significant investment in a facility to obtain a permit and operate in reliance on existing approvals by NJDEP. Requiring this lengthy, burdensome process for each renewal is excessive and patently unfair, particularly for facilities seeking to continue operations with de minimis or no change. As a practical and legal matter, NJDEP should focus its efforts on new facilities, not routine permit renewals.

The Proposed Rule Must Include Reasonable Limits on Controls and Conditions Imposed

The Proposed Rule fails to provide any explanation or limitations on the “control measures” or “conditions” which NJDEP may require when authorizing a permit application. The Proposed Rule requires applicants to propose and analyze the effectiveness of “control measures” as part of their environmental justice impact statement. The Proposed
Rule also gives NJDEP the authority to impose “conditions” before authorizing a permit for a renewal or expansion of an existing facility, or the construction of a new facility that serves a compelling interest, where the applicant cannot avoid a disproportionate impact. As an initial matter, the Proposed Rule does not define “control measure” or “condition.” While Stericycle appreciates that this provides flexibility for applicants in designing the proposed “control measures” that will work for their particular facility, it also provides no guidance for applicants as to what the NJDEP might accept or expect from applicants. Moreover, the Proposed Rule does not provide guardrails on the types of conditions that NJDEP might impose—particularly as the rules are very clear that NJDEP “shall not be limited to those conditions proposed by the applicant.” 54 N.J. Reg. 998.

Stericycle requests that the final rules provide more guidance on the types of control measures NJDEP would accept for a project and the types of conditions that may be imposed on a project to give applicants a better sense of their options and potential costs.

The Proposed Rule Provides an Inadequate Hearing Process and Consultation Procedure

The Proposed Rule requires an applicant to request an adjudicatory hearing to contest an NJDEP decision within 30 calendar days of its issuance, and states that any requests made after this 30-day period will be denied. 54 N.J. Reg. 998. Such a brief appeal period provides little time for applicants to review and analyze any conditions imposed by NJDEP—particularly any conditions the applicant did not propose itself—and very little time for any potential negotiations with NJDEP to discuss any modifications or alternatives to the required conditions. The rules as currently proposed provide for no such negotiation or discussion period between applicants and NJDEP.

Stericycle suggests that additional time and a procedure be put in place to allow applicants to discuss NJDEP’s decisions and accompanying conditions on a permit application beyond the 30 days currently allotted and to provide consultation procedures to directly remedy issues with NJDEP.

The Proposed Rule Ignores Economic Advantages Associated With Permitted Facilities

At least two sections of the Proposed Rule explicitly ignore important economic benefits that a new or expanded permitted facility may bring to a community. First, the proposed definition of “Compelling public interest” states that “the economic benefits of the proposed new facility shall not be considered in determining whether it serves a compelling public interest in an overburdened community.” 54 N.J. Reg. 990. This approach unfairly imbalances the ledger, weighing all the potential downsides of a new facility and disregarding its benefits. The preamble to the Proposed Rule specifically recognizes the importance of employment opportunities, recognizing unemployment as a social determinant of health stressor. New facilities provide not only jobs, but also important tax revenue to the communities in which they sit. These funds can ultimately be used to address a number of other community stressors including a lack of educational opportunities, recreational facilities, and green spaces. As such, the economic benefits of bringing a new facility to a community should not be ignored.

Second, the preamble notes that the proposed Localized Impact Control Technology (LICT) standard “would focus on technical feasibility rather than economic feasibility or cost-effectiveness in determining appropriate control technologies.” 54 N.J. Reg. 986. As above, this approach unfairly burdens the industry by only considering half of the equation. Under such a standard, a facility may be required to take an exponentially more expensive approach to limiting its environmental impact even if it results in only a marginal difference than a less expensive option. Stericycle asks that the applicable standard take into account all relevant factors—economic and non-economic.

* * * * *

Stericycle is committed to operating responsibly and compliantly in New Jersey, and to continuing to offer essential services to businesses, including the healthcare community, throughout the state. If the Proposed Rule were enacted
as currently drafted, it would make it extremely difficult for Stericycle, and industry generally, to operate with needed levels of efficiency and certainty. Although Stericycle supports and shares NJDEP’s goals of ensuring environmental justice and reducing environmental impacts to overburdened communities, that important work must be carried out in a clear, practical and cooperative manner.

If you have any questions, please do not hesitate to contact me at csimaga@stericycle.com. Thank you for your consideration of these comments.

Sincerely,

Cara Simaga
Senior Director, Regulatory Affairs
Stericycle, Inc.
** Electronic Rulemaking Comment **

Submission Date: 09/02/2022 15:12:18

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Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice

Comments: Vote Solar is a national nonprofit that works state by state to build a thriving clean economy with affordable solar energy for all. We believe that without a focus on environmental justice, the clean energy transition is neither just nor sustainable. We appreciate the opportunity to echo and stand in solidarity with environmental justice partners in our comments on these rules. While climate change and pollution impact us all, those impacts are not distributed equally: climate change and our energy system have disproportionate health impacts on low-income communities and communities of color, who have historically borne the burdens of the United States' fossil fuel-based energy system. Today those same communities remain most at risk from the harmful impacts of climate change. We are strongly in support of the proposed new Environmental Justice Rules, N.J.A.C. 7:1C. While we have a few concerns _ mostly around ensuring that implementation reflects the vision and values of New Jersey's landmark Environmental Justice law _ we believe that these rules are a major step forward for all New Yorkers, especially for communities of color and low income communities.

Our comments will focus on: Strengthening opportunities for democratic engagement; Ensuring a narrow, community-centric implementation of the public interest exception; Maintaining a strong and appropriately-stringent definition of a stressor; and Mandating accountability around the reduction of environmental and health impacts.

Opportunities for democratic engagement

Within that context, we advise that the requirements for public engagement around new permit applications be made more robust, to maximize the opportunity for public input. Currently, there is only one required hearing for each new permit application. Since many low-income community members have inflexible schedules, often exacerbated by a need to juggle multiple jobs alongside family obligations, this limits the opportunity for meaningful public engagement. We suggest that number be increased. Written notice should be extended beyond a 200-foot distance from the facility in question to at least a 1000-foot radius. Generally, written notice should be extended beyond a 200-foot distance from the facility in question to at least a 1000-foot radius. For these hearings, the required method of public notice is not aligned with the diversity of communication platforms that modern New Yorkers look to for their news. Notice should be issued across a variety of media: for instance posted online, announced through automated phone calls and signs at local community centers, schools, and churches, and more. Currently, the rules state that industry should notify community groups, rather than must. We urge that a robust swath of local community organizations be alerted in advance of any hearing, with sufficient time for them to alert their members and organize participation in advance of the event. Generally, written notice should be extended beyond a 200-foot distance from the facility in question to at least a 1000-foot radius. The proposed rules state 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. We at Vote Solar are committed to ensuring that the public engagement process remains robust, not just throughout the public comment process and through finalization of the rule, but also once the rule is implemented. Within that context, we advise that the requirements for public engagement around new permit applications be made more robust, to maximize the opportunity for public input. Currently, there is only one required hearing for each new permit application. Since many low-income community members have inflexible schedules, often exacerbated by a need to juggle multiple jobs alongside family obligations, this limits the opportunity for meaningful public engagement. We suggest that number be increased.

In addition, if community members are unable to join the hearing at the scheduled date, their only option is to submit their comments in writing. To increase accessibility, we recommend that DEP both allow and solicit video comments or voice memos from local community members. For these hearings, the required method of public notice is not aligned with the diversity of communication platforms that modern New Yorkers look to for their news. Notice should be issued across a variety of media: for instance posted online, announced through automated phone calls and signs at local community centers, schools, and churches, and more. Generally, written notice should be extended beyond a 200-foot distance from the facility in question to at least a 1000-foot radius. The proposed rules state that the information being presented is reliable and verified. Compelling Public Interest, and the Public Good Exception The proposed rule includes a _public good_ exception that can allow the construction of a facility despite a disproportional impact in an overburdened community. There are three key requirements in the proposed rule that are...
designed to stop the _public good_ exception from undermining the law’s impact, since the public good can be interpreted very broadly—and potentially in such a way as to favor developers over local communities—in the absence of clear guidance. We applaud these requirements, and hope that they are implemented stringently and uniformly. PPPPPPPPP First, we are pleased that the public good must accrue to the host community rather than society more broadly. PPPPPPPPP Second, we applaud the exclusion of economic benefits and job creation from the definition of a public good. Economic benefits do not outweigh public health and safety. PPPPPPPPP Finally, we support the specification that the public good must be the primary purpose of the facility, rather than some ancillary benefit. PPPPPPPPP Our last key note about the _public good exception_ is that local residents of host communities must have meaningful and decisive input into what qualifies as a public good for their own community, rather than leaving that decision to local governments or outside bodies. We recommend stating that compelling public interest must be demonstrated by the community in which the facility will be located under the 7:1C-1.5 definition. PPPPPPPPP Definition of a Stressor PPPPPPPPP The rules are very clear on what is meant by contributing to a stressor. Any increase in the stressor, no matter how small, is a contribution. Creating an arbitrary threshold in order for increases to _count_ would be to compromise the impact and intent of the rule. Adhering to the existing definition of what constitutes an increase in a stressor is common-sense, easily determined, and appropriately stringent when community health and wellbeing is at stake. PPPPPPPPP Accountability Measures PPPPPPPPP The most well-intentioned projects and processes risk being undermined by a lack of transparency, stringency, and enforcement around the achievement of desired outcomes.!

We agree with our environmental justice allies that the Environmental Justice Impact Statement Requirements should provide additional language on how a facility will demonstrate and avoid disproportionate impact. PPPPPPPPP The current language is not sufficiently enforcable, and we urge that facilities be required to provide a public report on a pre-specified timeline following their implementation of impact-reduction measures. If the report shows that the facility has failed to take adequate measures to avoid disproportionate impact, the permit should be suspended or revoked. PPPPPPPPP In closing, we reiterate Vote Solar’s support for these rules, and our gratitude for the leadership of groups like New Jersey Environmental Justice Alliance, Ironbound Community Corp. Environmental Justice, South Ward Environmental Alliance, and Clean Water Action, as well as the public servants who have worked alongside them to codify environmental justice into the law of the land. We are grateful for the opportunity to support this effort, and to bear witness to this truly historic victory for environmental justice. PPPPPPPPP Contact PPPPPPPPP Lowyn Corby, Mid-Atlantic Regional Director, Vote Solar | ecorby@votesolar.org
** Electronic Rulemaking Comment **

Submission Date: 09/02/2022 15:31:56
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Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice

Comments: This statement is being made on behalf of the Health, Education, Energy and Pollution Subcommittee of the Environmental and Climate Justice Committee of the NJ State Conference of the NAACP. This body stands in favor of the Environmental Justice Law N.J.S.A. 13: ID-157 (Law). The DEP should enact rules for implementation of the Law that do not weaken it in any way. The law, though far from a complete response to the environmental harms visited upon Black Americans, is worthy of support now as a step in the right direction. The successful passage of the Law was the result of literally decades of advocacy on the part of New Jersey’s environmental justice communities. These advocates faced stiff opposition from industrial interests bent on continuing a long history of environmental injustices against the state’s most vulnerable and overburdened communities. One ground breaking achievement of the EJ communities’ effort was to ensure that the Law contained a precise working definition of what an overburdened community is. A second was to definitively establish the connection between the cumulative effects of additional environmental and public health stressors and worsening health outcomes in those communities. With these two important understandings reflected in the Law, it will no longer be possible for new polluting facilities to be built in localities already struggling with pollution under the pretense that the new pollution is doing no harm. This is the heart of the EJ Law and it must be honored fully and robustly in the DEP’s ruling making. Any dilution in the strength of the Law would constitute a direct insult to those who worked long and hard to achieve its passage. The NJ NAACP, as part of our nation’s oldest organization standing in defense of Black Americans, has a vital stake in the outcome of the DEP’s rule making and will be strongly attentive to the outcome of that process.
For your review and consideration, and on behalf of the Glass Packaging Institute (GPI), the North American trade association for the glass container manufacturing companies, glass recycling and other partners and suppliers to the industry, please find our comments to Docket No. 04-22-04, the Department’s Proposed Environmental Justice Rules.

Background

The glass container industry is committed to conducting business in an environmentally responsible, sustainable, and socially responsible manner. The industry works in New Jersey, and throughout the country on issues surrounding sustainability, recycling, energy and greenhouse gas emissions reduction efforts. The country’s 47 operating food and beverage glass container plants are supported by a dedicated workforce of approximately 15,000 employees in high-paying, benefits-provided careers.

Glass has long been recognized as a core, and one of the original, recyclable packaging materials. For food and beverages packaging and storage, glass also enjoys GRAS status (Generally Recognized as Safe) within the U.S. FDA. Glass is a circular and sustainable packaging material that can be reused and infinitely recycled, back into containers with no loss of quality.

Glass Container Manufacturing New Jersey Footprint

The glass container industry has one manufacturing facility in New Jersey, Ardagh Group’s Bridgeton plant. Half of the employees at the manufacturing plant reside in the same county as the facility. Ardagh has actively supported local community projects since 2018. In addition to operational installations and other measures to reduce emissions and energy use at the plant, in 2020 the company also installed a new solar plant!

While GPI and its member companies support the spirit of the Environmental Justice (EJ) law, we have significant concerns that the rules as proposed fall short of this spirit. The proposed rule as written does not propose teamwork between industry and local communities. It includes undefined regulatory terms and vague metrics, preventing covered facilities from utilizing benchmarks, including unemployment, thereby creating an us vs. them mentality. Addressing these issues and reducing the ambiguity of the proposed rule is needed so the regulated community may be in a position to comply.

Definitions

The definition of expansion is linked to its potential to increase existing environmental and public health stressors. It is not linked to the process itself, or a covered facility’s increase in footprint as the term expansion implies. The definition does state that it excludes an activity that decreases or does not result in an increase in stressor contributions. However, the current definition is so vague that it can be extended to changes that have no impact on air emission increases, which is not the intent of the EJ process. In addition, no de minimis levels are included in the definition.

The definition of material change states that the definition itself is not exhaustive, leaving requirements uncertain and open-ended.

Both the definition of expansion and material change includes the term modification, but modification is not defined in the proposed rule. The definition of modification is defined in other regulations, such as N.J.A.C. 7:27-22 (Operating Permits rule). It should be noted that there are different types of modifications under N.J.A.C. 7:27-22, such as major modifications, minor modifications and 7-Day notices, and each handled differently. Some of these modifications do not include an increase in air emissions and do not influence existing stressors. The proposed EJ rules should
include a clear definition of modification, expansion, and material change, consistent with their respective metrics. These definitions/metrics should not conflict with N.J.A.C. 7-27-22. The proposed rule should also clearly state which types of modifications under N.J.A.C. 7-27-22 are exempt from the EJ proposed rule, and which are applicable. PPPPPPPNJDEP has already created procedures within their air rules to process certain air permit changes efficiently and effectively, so positive improvements can be made quickly. This proposed rule effectively negates these procedures. Unless these definitions are further clarified, the regulated community will be uncertain of what criteria must be met, and when they are regulated under EJ rules. Holding up such projects to incorporate this additional lengthy process is not protective of the environment or the overburdened community (OBC). PPPPThe definition of change in use is very broad and does not include any de minimis levels. Could a change to a more environmentally friendly raw material trigger the proposed rule? Again, GPI points to the spirit of the EJ law, and the unintended consequences of not considering the impact (or lack thereof), when positive changes are being pursued by industry. PPPPPPPP The definition of compelling public interest prohibits a new facility from using economic benefits when determining whether the facility serves a compelling public interest in the OBC. Not allowing a facility to cite economic benefits (e.g., local jobs) when deciding what is deemed a compelling public interest is in direct conflict with the use of unemployment as a stressor in defining an OBC. PPPPPPPP Terms PPPP The following terms are not defined in the proposed rule, but need to be included to avoid confusion and clarify the requirements of the proposed rule: PPPPPPPP Interested party__a definition should be added to clarify who is consider! ed an interested party. The intent and focus of the proposed rule are to benefit the local or immediate surrounding community. The New Jersey Department of Environmental Protection (NJDEP) should establish clear metrics to avoid influence from outside groups that may have an agenda not focused on the interests of the local or immediate surrounding community, to be considered an interested party. PPPPPPPP Significant degree of public interest__a definition should be added to identify the metrics that NJDEP will use to consider public interest significant. PPPPPPPP Modification__for the reasons stated above, a definition for modification needs to be included in the EJ rule. PPPPPPPP Clarifications PPPP The stressor analysis for the Environmental Justice Impact Statement (EJIS) is a qualitative vs. quantitative evaluation with undefined criteria. Such criteria should be defined so the regulated community is clear on what is required, and requirements are imposed equally. PPPPPPPP The NJDEP proposes to use State-of-the-Art (SOTA) standards as the basis for determining Localized Impact Control Technology (LICT), it should also be clearly stated in the proposed rule. PPPPPPPP Other Concerns PPPP Developing and issuing an EJIS to the public without prior NJDEP review should be reconsidered. Failure to do so will significantly delay the entire process. This can be detrimental to a business, especially when repairs need to be timed with operation shutdowns. Continuing to operate without necessary repairs can also have a direct negative impact (e.g., equipment failure) on the environment and surrounding OBC. It will also impede improvements that would benefit the process and/or the environment and OBC. It may even make such improvements infeasible. PPPPPPPP Current Title V renewals rules require an 18-month lead time. However, prior to the EJ Administrative Order and proposed EJ rules, the permit renewal turnaround has been approximately two to five years. These proposed rules will only lengthen this already long process. The proposed rule requires NJDEP to act within 10 days in some instances. How can the NJDEP meet this shortened timeframe, when the current timeframes are not met? PPPPPPPP If there are no disproportionate impacts as a result of facility modifications or similar changes, then NJDEP should not be allowed to impose additional and unnecessary control measures. PPPPPPPP The proposed rule should include provisions to allow a facility to proceed with a project that is protective of the environment (such as installation, replacement, or maintenance of control equipment), and process improvements that will benefit the environment and OBC without going through a lengthy EJIS process. An alternate process should be proposed when a change is made to address a facility’s positive contribution to stressors, removing the need to redo an EJIS. PPPPPPPNJDEP should also establish a _set point_ for stressor data extracted from EJMAP. The data in EJMAP is constantly in flux. This will create a significant issue when a facility is in the process of developing an EJIS and proceeding to public comment, only to find the data has changed. This creates the serious potential for the EJ process to be never ending. NJDEP should implement an outlined mechanism to allow data extracted from the EJMAP to be _set_ or _grandfathered_, once the EJ process begins. PPPPPPPP The proposed rule currently requires zero-population areas adjacent to an OBC to be included in the OBC. This is different from the EJ law, and both should be consistent. PPPPPPPP The proposed rule also provides the NJDEP discretion to hire experts at an applicant’s expense. There must be a clear cap on costs that may be incurred should experts or consultants be retained. If a cap is not put in place, project costs become uncertain and more industries are likely to leave New Jersey. In addition, new businesses will be less likely to situate operations in the state, having a direct effect on unemployment (one of the 26 stressors). PPPPPPP Will industry and public institutions, such as sc! hools, Publicly Owned Treatment Works (POTWs) or federal facilities that rely on taxpayers’ dollars to operate be
treated equally? Or will most of the burden of the proposed rules be placed disproportionally on private employers and industry? Some sources estimate that the EJIS and public comment process will add approximately $50,000 or more prior to accounting for additional costs which include a range of operational expenses, to a project.

In the case of a publicly funded entity, is it the intent of the proposed rule to have the taxpayers bare the cost of these additional EJ requirements? Clarification of terminology, definitions, and a thorough re-assessment of the proposed rule and its impact on industry will assist the glass container industry in planning for future facility improvements, to the benefit of the environment, employees and the local economy. Please contact me with any questions you may have, and to follow up. Thank you for your thoughtful consideration of our comments.

Sincerely,
Scott DeFife  
President
Attached are the comments of the Gateway Regional Chamber of Commerce regarding DEP Dkt. No. 04-22-04.

All the Best,

Jim Coyle
President
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September 2, 2022

Via Certified Mail R/R/R and Email:
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Re: Gateway Regional Chamber of Commerce
Comments on the NJDEP Environmental Justice Rules Proposal
DEP DOCKET NO. 04-22-04, PROPOSAL NO. PRN 2022-082

Dear Ms. Abatemarco,

On behalf of the governing body of the Gateway Regional Chamber of Commerce (the “Chamber”), please accept our comments on the Department of Environmental Protection’s proposed Environmental Justice Rules (the “Rules”). Notably, the Chamber is the fastest growing and largest Chamber in Northern New Jersey. Following a recent merger, the Chamber collectively represents and advances the business interests of its members which largely operate in the areas largely affected by the Rules, including the City of Elizabeth, County of Union, and throughout Central New Jersey. Please see the attached list of Members. Accordingly, the Chamber is fully supportive of the Department’s efforts to address environmental and health challenges.

However, with respect to the current language of the Rules, the Chamber wholeheartedly believes that the Rules have gone beyond the legislative language and intent which causes great concern in the Chamber’s community. As a result, the Rules will have a negative and disparate impact on the low-income and minority communities which the legislation seeks to protect. Here, if the Rules were implemented, it will be extremely difficult, if not impossible, for certain businesses located in the Chamber’s communities – including the City of Elizabeth, the County of Union, and Central New Jersey, to continue business operations.

Further, the Chamber urges amendment of the proposed Rule to address the following:

- **Geographic point of comparison.** By selecting parameters intended to deem as many overburdened communities as possible as being disproportionately impacted, the Rules have effectively eviscerated the Legislature’s direction to compare overburdened communities against other areas to determine which ones may be overburdened with stressors. During the stakeholder process, the DEP stated that the use of the parameters ultimately proposed in the Rule would result in over 90% of overburdened communities...
(OBCs) being deemed disproportionately impacted. Given this result, despite the statute’s requirement for a comparison and analysis, the Rules effectively deem nearly all OBCs as disproportionately impacted. Given that two-thirds of the State’s population is located in OBCs and given that much of the rest of the State is either regulated as Highlands, Pinelands, or wetlands, a large proportion of the populated and developable area of the State will be a disproportionately impacted OBC and largely precluded from any new or expanded facilities. If the Legislature had intended this result, they would have merely deemed all OBCs as disproportionate and not bothered with the comparison.

- **Zero population and adjacency.** The EJ law explicitly provides that it applies only to permits for facilities located, “in whole or in part, in an overburdened community.” An OBC is clearly defined based on it being a census block group with a specified percentage of certain populations. Despite this clear legislative language, the Rules state that they will also be applicable to block groups with a “zero population” if adjacent to an OBC. This provision makes even less sense when you consider the fact that a facility adjacent to an OBC but not in a zero-population block group would not be regulated but could have as much impact as those in zero block groups. The use of zero block groups to regulate facilities under the EJ law seems to be a means to regulate certain facilities and not a logical, or legal, means to address potential impacts. This extension of the Rules to block groups that do not meet the statutory definition of an OBC is clearly contrary to the underlying law and should not be adopted.

- **Renewal Provisions.** The provisions for renewals are of significant concern because these are existing facilities with substantial investments and often long histories in neighborhoods. The Legislature recognized their special nature and thus prohibited the DEP from denying their renewal permit. However, the Rules would effectively deny renewal applications, or substantially impact facilities, due to the overly burdensome requirements being imposed in order to obtain a renewal. Despite the fact that these facilities have and will continue to meet all DEP and federal air regulatory requirements, the Rules require them to propose measures to avoid “contribute to” all adverse stressors, perform a facility-wide risk assessment to limit hazardous air pollutants (HAPS) and toxic substances to negligible levels, implement a feasibility assessment to control fine particulate matter, NOx, and VOCs, and then implement control measures to address all stressors not otherwise covered. These analyses and control measures far exceed what is required by existing law and which the DEP has deemed to be safe levels of emissions even at a community level. The cost, time, and unpredictability of these requirements on existing facilities will no doubt influence business decisions on whether to continue operations in New Jersey. The benefits are likely minimal. At the end of the day, the Chamber fears that more facilities will shutter their doors. Jobs and tax revenues will be lost. The Chamber reminds the Department that these facilities all meet stringent DEP standards and are willing to do more to improve conditions in their communities. This Rule, however, is several steps too far.

- **Compelling public interest test must include economic benefits consideration.** Despite the fact that the law partly defines an OBC based on a low-income population and that the
proposed Rules include unemployment as a stressor, the Rules specifically do not allow consideration of the economic benefits to a community from a facility, the precise benefits that would help raise income levels and lower unemployment. By only looking at potential impacts and not economic benefits, the DEP is only looking at one side of the ledger. In fact, the Rules could have the absurd result of denying a permit even where good-paying jobs would be brought to a community, where the local elected officials want the facility, and even if the community itself wants the facility to be located in the OBC. The Rules allow for no flexibility to consider relevant factors.

- **The “no contribution to a stressor” standard is too strict.** In various provisions in the Rules, facilities can theoretically avoid certain conditions or procedures if they can demonstrate it would not contribute to an adverse stressor. Given the fact that many of the stressors are broad (e.g. air pollution impacts, traffic) it will be nearly impossible for any facility to meet this test. There needs to be some de minimis or minor impact threshold rather than a seemingly “zero impact” test. Otherwise, this provision will have no practical meaning other than to increase costs and cause confusion.

- **The definition of a “new” facility is overly broad and vague.** The EJ law makes a distinction between a “new” facility and the expansion of an “existing” facility. This distinction is significant as permits for “new” facilities can be denied whereas those for existing facilities cannot. Yet, despite this clear distinction and plain meaning of the word “new,” the DEP has blurred these lines by including “existing” facilities in the definition of “new” if an existing facility has had a change in use or failed to obtain a permit. The term “change in use” is further defined as “a change in the type of operation of an existing facility” that increases a contribution to a stressor. This is an extremely broad standard and ignores the plain language of the underlying statute. New should only mean new, as in not existing before. Under the proposed Rule’s definition, if a facility added a third shift, switched from making widgets to masks during a pandemic, or changed the formula of one of its products, it can be considered to be a new facility, trigger the EJ Rule process, and then have the DEP compelled by law to deny its permit. This term is so vague that facility operators may not even know their actions would trigger the EJ law. This is not what the EJ law intended when it carved out the category of a “new facility. “Further, failure to obtain a permit, or letting one lapse, no matter how insignificant, harmless, or innocent, should not result in an EJ new facility analysis that would very likely, result in the facility being denied a permit and forced to shut down.

- **The definition of an “expansion” is too broad and vague.** The Rules define “expansion” to be a “modification” of “existing operations or footprint of development that has the potential” to increase contributions to a stressor. A “modification” of operations or an increase of a footprint are extremely stringent standards, especially when combined with a “potential” to contribute to the broad categories of stressors. This term could include almost any change at a facility and will have facilities continually triggering the Rules and having to go through the EJIS and hearing process even if no further conditions are imposed, although they can be. This uncertainty and cost will undoubtedly make operating in OBCs difficult if not impossible. There needs to be some de minimis threshold below
which the Rules are not triggered. Similar de minimis thresholds already exist in land use regulations where permits are based on the size of a development’s expansion.

The Chamber believes the DEP is missing a critical opportunity to encourage facilities to better engage with their community neighbors and to take actions to improve conditions for the long term. Rather, the DEP’s new Rules seek to implicitly, if not explicitly, drive businesses out of OBCs. We can have both economic opportunities and healthy communities. These Rules are a significant step backward in achieving that goal: they will drive the businesses out of OBC thereby creating a higher rate of unemployment and more low-income residents. Consideration of the economic benefits of our industrial partners should very much be considered when evaluating a projects value to the community, as they support the tax base, employment and offer extensive philanthropic and charitable giving in our city and to our civic and nonprofit organizations. Accordingly, the Chamber recommends that substantial amendments be made to these Rules before they are considered for adoption.

Respectfully,

[Signature]

James Coyle, President
Gateway Regional Chamber of Commerce
Please find the attached comments of the Glass Packaging Institute for Docket No. 04-22-04.

These were also submitted online, but due to the type text field format, we wanted to make sure you had the word document as well should any formatting issues arise with our online submission.

Thank you for your consideration.

Bryan

Bryan Vickers
Member Services
Glass Packaging Institute (GPI)
4250 N. Fairfax Drive, Suite 600
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703-403-2882 (direct)
703-684-6359 (office-main)
September 2, 2022

New Jersey Department of Environmental Protection
East State Street
PO Box 402
Trenton, NJ 08625

Re: Comments of the Glass Packaging Institute for Docket No. 04-22-04, (Proposal No. PRN 2022-082) - NJDEP Proposed Environmental Justice Rules

For your review and consideration, and on behalf of the Glass Packaging Institute (GPI), the North American trade association for the glass container manufacturing companies, glass recycling and other partners and suppliers to the industry, please find our comments to Docket No. 04-22-04, the Department’s Proposed Environmental Justice Rules.

Background

The glass container industry is committed to conducting business in an environmentally responsible, sustainable, and socially responsible manner. The industry works in New Jersey, and throughout the country on issues surrounding sustainability, recycling, energy and greenhouse gas emissions reduction efforts. The country’s 47 operating food and beverage glass container plants are supported by a dedicated workforce of approximately 15,000 employees in high-paying, benefits-provided careers.

Glass has long been recognized as a core, and one of the original, recyclable packaging materials. For food and beverages packaging and storage, glass also enjoy “GRAS” status (Generally Recognized as Safe) within the U.S. FDA. Glass is a circular and sustainable packaging material that can be reused and infinitely recycled, back into containers with no loss of quality.

Glass Container Manufacturing New Jersey Footprint

The glass container industry has one manufacturing facility in New Jersey, Ardagh Group’s Bridgeton plant. Half of the employees at the manufacturing plant reside in the same county as the facility. Ardagh has actively supported local community projects since 2018. In addition to operational installations and other measures to reduce emissions and energy use at the plant, in 2020 the company also installed a new solar plant adjacent to the facility, supplying renewable energy for operations, further reducing their carbon footprint.
While GPI and its member companies support the spirit of the Environmental Justice (EJ) law, we have significant concerns that the rules as proposed fall short of this spirit. The proposed rule as written does not propose teamwork between industry and local communities. It includes undefined regulatory terms and vague metrics, preventing covered facilities from utilizing benchmarks, including unemployment, thereby creating an “us vs. them” mentality. Addressing these issues and reducing the ambiguity of the proposed rule is needed so the regulated community may be in a position to comply.

GPI’s concerns with the proposed rule are highlighted in detail below:

**Definitions**

The definition of expansion is linked to its potential to increase existing environmental and public health stressors. It is not linked to the process itself, or a covered facility’s increase in footprint as the term “expansion” implies. The definition does state that it excludes an activity that decreases or does not result in an increase in stressor contributions. However, the current definition is so vague that it can be extended to changes that have no impact on air emission increases, which is not the intent of the EJ process. In addition, no de minimis levels are included in the definition.

The definition of material change states that the definition itself is not exhaustive, leaving requirements uncertain and open-ended.

Both the definition of expansion and material change includes the term modification, but modification is not defined in the proposed rule. The definition of modification is defined in other regulations, such as N.J.A.C. 7:27-22 (Operating Permits rule). It should be noted that there are different types of modifications under N.J.A.C. 7:27-22, such as major modifications, minor modifications and 7-Day notices, and each handled differently. Some of these modifications do not include an increase in air emissions and do not influence existing stressors. The proposed EJ rules should include a clear definition of modification, expansion, and material change, consistent with their respective metrics. These definitions/metrics should not conflict with N.J.A.C. 7-27-22. The proposed rule should also clearly state which types of modifications under N.J.A.C. 7:27-22 are exempt from the EJ proposed rule, and which are applicable.

NJDEP has already created procedures within their air rules to process certain air permit “changes” efficiently and effectively, so positive improvements can be made quickly. This proposed rule effectively negates these procedures. Unless these definitions are further clarified, the regulated community will be uncertain of what criteria must be met, and when they are regulated under EJ rules. Holding up such projects to incorporate this additional lengthy process is not protective of the environment or the overburdened community (OBC).
The definition of **change in use** is very broad and does not include any de minimis levels. Could a change to a more environmentally friendly raw material trigger the proposed rule? Again, GPI points to the spirit of the EJ law, and the unintended consequences of not considering the impact (or lack thereof), when positive changes are being pursued by industry.

The definition of **compelling public interest** prohibits a new facility from using economic benefits when determining whether the facility serves a compelling public interest in the OBC. Not allowing a facility to cite economic benefits (e.g., local jobs) when deciding what is deemed a “compelling public interest” is in direct conflict with the use of unemployment as a stressor in defining an OBC.

**Undefined Terms**
The following terms are not defined in the proposed rule, but need to be included to avoid confusion and clarify the requirements of the proposed rule:

“Interested party” – a definition should be added to clarify who is considered an interested party. The intent and focus of the proposed rule are to benefit the local or immediate surrounding community. The New Jersey Department of Environmental Protection (NJDEP) should establish clear metrics to avoid influence from outside groups that may have an agenda not focused on the interests of the local or immediate surrounding community, to be considered an interested party.

“Significant degree of public interest” – a definition should be added to identify the metrics that NJDEP will use to consider public interest significant.

“Modification” – for the reasons stated above, a definition for modification needs to be included in the EJ rule.

**Clarifications**
The stressor analysis for the Environmental Justice Impact Statement (EJIS) is a qualitative vs. quantitative evaluation with undefined criteria. Such criteria should be defined so the regulated community is clear on what is required, and requirements are imposed equally.

If the NJDEP proposes to use State-of-the-Art (SOTA) standards as the basis for determining Localized Impact Control Technology (LICT), it should also be clearly stated in the proposed rule.

**Other Concerns**
Developing and issuing an EJIS to the public without prior NJDEP review should be reconsidered. Failure to do so will significantly delay the entire process. This can be detrimental to a business, especially when repairs need to be timed with operation shutdowns. Continuing to operate without necessary repairs can also have a direct
negative impact (e.g., equipment failure) on the environment and surrounding OBC. It will also impede improvements that would benefit the process and/or the environment and OBC. It may even make such improvements infeasible.

Current Title V renewals rules require an 18-month lead time. However, prior to the EJ Administrative Order and proposed EJ rules, the permit renewal turnaround has been approximately two to five years. These proposed rules will only lengthen this already long process. The proposed rule requires NJDEP to act within 10 days in some instances. How can the NJDEP meet this shortened timeframe, when the current timeframes are not met?

If there are no disproportionate impacts as a result of facility modifications or similar changes, then NJDEP should not be allowed to impose additional and unnecessary control measures.

The proposed rule should include provisions to allow a facility to proceed with a project that is protective of the environment (such as installation, replacement, or maintenance of control equipment), and process improvements that will benefit the environment and OBC without going through a lengthy EJIS process. An alternate process should be proposed when a change is made to address a facility’s positive contribution to stressors, removing the need to redo an EJIS.

NJDEP should also establish a “set point” for stressor data extracted from EJMAP. The data in EJMAP is constantly in flux. This will create a significant issue when a facility is in the process of developing an EJIS and proceeding to public comment, only to find the data has changed. This creates the serious potential for the EJ process to be never ending. NJDEP should implement an outlined mechanism to allow data extracted from the EJMAP to be “set” or “grandfathered”, once the EJ process begins.

The proposed rule currently requires zero-population areas adjacent to an OBC to be included in the OBC. This is different from the EJ law, and both should be consistent.

The proposed rule also provides the NJDEP discretion to hire experts at an applicant’s expense. There must be a clear cap on costs that may be incurred should experts or consultants be retained. If a cap is not put in place, project costs become uncertain and more industries are likely to leave New Jersey. In addition, new businesses will be less likely to situate operations in the state, having a direct effect on unemployment (one of the 26 stressors).

Will industry and public institutions, such as schools, Publicly Owned Treatment Works (POTWs) or federal facilities that rely on taxpayers’ dollars to operate be treated equally? Or will most of the burden of the proposed rules be placed disproportionately on private employers and industry?
Some sources estimate that the EJIS and public comment process will add approximately $50,000 or more prior to accounting for additional costs which include a range of operational expenses, to a project. In the case of a publicly funded entity, is it the intent of the proposed rule to have the taxpayers bare the cost of these additional EJ requirements?

Clarification of terminology, definitions, and a thorough re-assessment of the proposed rule and its impact on industry will assist the glass container industry in planning for future facility improvements, to the benefit of the environment, employees and the local economy.

Please contact me with any questions you may have, and to follow up. Thank you for your thoughtful consideration of our comments.

Sincerely,

Scott DeFife
President
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it’s a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

+ No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables.
+ No offsets (e.g. planting trees or bike lanes elsewhere).
+ Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

Diana Bohn
nicca@igc.org
618 San Luis Rd.
Berkeley, California 94707
To whom it may concern:

Please find attached a pdf and MS Word version of comments submitted by Owens Corning Roofing and Asphalt regarding the Environmental Justice Rule, Docket Number 04-22-04.

Thank you,

Madeline Fleisher

Madeline Fleisher
Senior Counsel, Environmental and Regulatory Law
Pronouns: She, Her, Hers
Owens Corning | Law
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Translations available: http://www.owenscorning.com/emailfooter.html
September 2, 2022

Via electronic mail

Attn: Docket Number: 04-22-04
New Jersey Department of Environmental Protection
401 East State Street
Trenton, New Jersey 08625
rulemakingcomments@dep.nj.gov


In response to the Environmental Justice Rule proposal published on June 6, 2022, Owens Corning reserves the right to submit comments by September 4, 2022 pursuant to N.J.A.C. 1:30-3.3(a)5. Owens Corning understands the new rules are being drafted to “implement the provisions of New Jersey’s Environmental Justice Law, codified at N.J.S.A. 13:1D-157 et seq., (Act), and establish the requirements for applicants seeking permits for certain pollution-generating facilities located, or proposed to be located, in overburdened communities, including the analysis of relevant environmental and public health stressors, as each are defined in the Act, as well as requirements intended to ensure applicants’ meaningful engagement with members of host overburdened communities, and community members’ participation in the Department’s decision-making process”. Owens Corning supports the goals of the Environmental Justice Law, which was enacted to address the disproportionately high number of environmental and public health stressors to which low-income communities and communities of color have been historically subjected. Additionally, Owens Corning believes all residents of the State of New Jersey, regardless of income, race, ethnicity, color, or national origin, should have a right to live, work, learn, and recreate in a clean and healthy environment.

Pursuant to N.J.A.C. 1:30-3.3(a)5, Owens Corning proposes the inclusion of the following comments to the proposed Environmental Justice rule and Technical Guidance Document:

Comments to Proposed EJ Rule (N.J.A.C. 7:1C)
In the statement, “Where this rulemaking applies, and as explained more fully below, an applicant seeking an individual permit for a new or expanded facility, or the renewal of an existing major source permit, for a facility located in an overburdened community will be required to analyze the comparative environmental and public health stressors affecting the overburdened community and seek, in the first instance, to avoid a disproportionate impact.” (Page 8)

Comment #1: Owens Corning recommends that the proposed Environmental Justice (EJ) rules allow for the designation of “De Minimis” level of air pollution increase that will not qualify as a facility “expansion” by adjusting the definition of that term to mean “a modification or expansion of existing operations or footprint of development that have the potential to result in a material increase of an existing facility’s contribution to any environmental and public health stressor in an overburdened community.” This recommendation reflects Owens Corning’s experience that minor plant changes may not contribute in any significant way to adverse cumulative stressors and should therefore not be subject
to a time-consuming EJ review process that is unlikely to lead to any material environmental control changes or improvements, especially if air modeling demonstrates impacts are below a determined De Minimis stressor level. Owens Corning recommends the inclusion of a list of exemptions or exemption criteria in the proposed EJ rules or associated guidance which do not reach a significance threshold. The De Minimis determination should consider specified factors such as facility proximity to a designated overburdened community (OBC), rate of emission of air contaminants, engineering judgment and experience, and determination that no adverse toxicological or health effects would occur off property. The Clean Air Act (CAA) contains analogous provisions that allow for modification or replacement of existing equipment at established sources without receipt of a permit, so long as the total amount of pollution from the site is not increased or deemed “insignificant”. Likewise, the New Jersey Department of Environmental Protection (NJDEP) has established De Minimis levels to determine if a permit applicant would not be required to document state of the art (SOTA) applicability. A De Minimis threshold should likewise be developed to allow for NJDEP to determine that a facility modification is not material to environmental and public health stressors of a designated OBC. This approach will allow community members in an OBC to meaningfully focus their time and attention on projects that are truly likely to have material effects on their health and environment.

In the statement, “The Department’s proposed list of 26 stressors follows below. For each stressor, the Department proposes, at the chapter Appendix, to indicate the statutory category it informs, whether it is a baseline or affected stressor, the appropriate unit of measurement, and, where appropriate, the specific data source to be used to conduct the comparative stressor analysis required pursuant to the proposed rule. Where a stressor is listed as “affected,” an applicant would be required to analyze, through appropriate modeling, the existing or proposed facility’s impact thereto when determining whether the facility can avoid a disproportionate impact.” (Page 21)

Comment #2: Owens Corning acknowledges the State’s OBCs 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. Additionally, it is understood the Department may not deem a permit application complete for review, unless the applicant completes the environmental justice impact statement (EJIS) process to assess the environmental and public health stressors in the OBC. To ascertain known stressors, NJDEP has developed the Environmental Justice Mapping, Assessment and Protection (EJMAP) tool to examine the presence of existing environmental and public health stressors in an OBC and compare the existing environmental and public health stressors to their appropriate geographic point of comparison to determine which, if any, stressors are considered adverse. As defined under the proposed EJ rule, facilities seeking permits or permit renewals in OBCs must analyze their potential contributions to environmental and public health stressors in their applicable OBC designation.

Facilities that fall under the proposed EJ rule commonly have several applicable environmental permits which focus on a facility’s contribution to environmental and public health stressors specific to air, soil, water contamination, and public health risks. When a modification to a certain environmental permit is proposed, it is important to note all known existing stressors in a facility’s OBC will not be impacted. Furthermore, the proposed EJ rule does not define whether a facility is obligated to review the Department’s list of 26 stressors when developing an EJIS. Per EPA memo “Guidance on Considering Environmental Justice During the Development of Regulatory Actions” the agency suggests when drafting subsequent permits, it is important to consider, where feasible and appropriate, whether the data and assumptions that form the basis of the regulatory standard being developed account for exposure to multiple stressors, even if particular stressors are not specifically affected by a facility’s operation. However, in the submission of a permit application specific to a specialized environmental media, the relevance to all known stressors in a facility’s OBC does not seem appropriate to review due to the scope of the permit subject matter. Owens Corning recommends applicants stick to the environmental media to which the application is impacting as applicants should only be concerned with the stressors germane to an application’s permit action. For example, if a proposed project has no effect on stormwater, the
project’s contribution to the affecting OBC should not require evaluation of stormwater related stressors which are outside of the environmental media of the application.

In the statement, “The Department proposes to use SOTA as the basis of the proposed LICT standard. However, LICT would focus on technical feasibility rather than economic feasibility or cost-effectiveness in determining appropriate control technologies. This reflects the Department’s goal to reduce emissions from new and expanding facilities as much as possible to reduce environmental and public health stressors in overburdened communities.” (Page 79)

Comment #3: Owens Corning understands that the Department seeks an evaluation of appropriate control technologies that should be based on detailed technical analysis. However, we recommend that the rule not mandate that an applicant “shall propose control measures in accordance with this evaluation” as proposed in N.J.A.C. 7:1C-6.3. Otherwise, the rules as proposed may create an untenable situation where an applicant has been required to propose control measures that the Department determines are not “feasible” in carrying out its evaluation under N.J.A.C. 7:1C-9.1(a)(2) or that are not necessary to avoid the facility contributing to a disproportionate impact in light of other onsite or offsite control measures. Therefore, Owens Corning recommends that N.J.A.C. 7:1C-6.3 simply require an applicant to “identify control measures in accordance with” the LICT provisions, which the Department may then consider in conducting its review under N.J.A.C. 7:1C-9.1 whether or not those measures were formally proposed by the applicant.

In the statement, “The Department also proposes to require a technical feasibility analysis for certain equipment or control apparatus as part of an applicant’s EJIS to ensure technical feasibility review for facilities operating with older equipment that may be able to be upgraded to emit fewer pollutants.” (Page 82)

Comment #4: As a practical matter, it is unrealistic to expect facilities to have the funding available to update necessitated controls all at once to maintain their permit, especially with respect to large capital costs that companies may not be able to anticipate ahead of time in long-range budget planning processes. Owens Corning therefore proposes that subjected facilities be permitted to create long-term plans establishing certain emissions control benchmarks to be met per renewal cycle in order to provide consistent progress in reducing environmental impacts while increasing the feasibility of incorporating control investments in long-term budget planning. This approach would eliminate with the imposition of large, one-time costs that might lead to projects being cancelled or facilities being shuttered that could otherwise in the long-term achieve an appropriate balance of environmental and economic interests in an OBC.

In the statement, “An applicant seeking approval for an expanded facility where a disproportionate impact is present shall conduct the analysis and provide the information required pursuant to N.J.A.C. 7:1C 6.3.” (Page 131)

Comment #5: For an expanding facility located in an overburdened community, Owens Corning recommends the use of contemporaneous reductions in air pollution stressors as part of the EJIS analysis in order to present an accurate picture of potential environmental impacts. An applicant could review all creditable emission changes related to permit modifications (both increases and decreases) within the contemporaneous period to offset the modeled ambient impact of new equipment and prove an avoidance to disproportionate impact to environmental and public health stressors of an OBC. Contemporaneous windows could reflect a 10-20 year look back on projects which were authorized to assess whether substantial emission offset can be determined for the purposes of modeling for disproportionate impact. Examples could include, but not be limited to reductions through process changes, production capacity reductions, and/or deactivation of emission units.
Proposed EJ Rule Definitions
Owens Corning recommends further explanation on the following terms which are considered ambiguous in the proposed EJ rules. The lack of detail in the definition can cause the terms to be too subjective to personal interpretation.

In the statement, “Pursuant to proposed N.J.A.C. 7:1C-2.1(d), the Department would indicate and identify, consistent with the requirements of the Act, the list of overburdened communities in the State that meet the statutory criteria based on the most recent complete U.S. census data (https://www.nj.gov/dep/ej/communities.html) published by the Department on January 16, 2021. As required by the Act at N.J.S.A. 13:1D-159, the Department would also update this list (overburdened communities) at least every two years thereafter utilizing the most recently published complete U.S. census data.” (Page 61-62)

Comment #6: When an overburdened community has received economic growth based on updated U.S. census data and no longer meets the statutory criteria of the definition, Owens Corning recommends the inclusion of a procedural process which describes how to remove an “overburdened community” status. Additionally, further explanation should be provided on whether a defined “overburdened community” should be considered once in/always in.

In the statement, “Compelling public interest” means a demonstration by a proposed new facility that primarily serves an essential environmental, health, or safety need of the individuals in an overburdened community, is necessary to serve the essential environmental, health, or safety need, and that there are no other means reasonably available to meet the essential environmental, health, or safety need. (Page 101)

Comment #7: Owens Corning recommends amending the definition of “compelling public interest” to ensure that it is consistent with proposed section N.J.A.C. 7:1C-5.3(d), which provides that “The Department may consider, as relevant, public input as to whether a compelling public interest is demonstrated if there is a significant degree of public interest in favor of or against an application from individuals residing in the overburdened community.” This proposed section appropriately allows input from affected community members as to whether granting a permit would serve a compelling public interest. However, the definition of “compelling public interest” unduly restricts that opportunity for community input by requiring that a proposed new facility “primarily serves an essential environmental, health, or safety need of the individuals in an overburdened community.” (Emphasis added.) A more flexible definition of “compelling public interest” that instead requires a demonstration that a proposed new facility “is necessary to serve the essential environmental, health, or safety need, and that there are no other means reasonably available to meet the essential environmental, health, or safety need” – without regard to the facility’s “primary” purpose – could better accommodate the full input of affected community members as to their public interest.

In the statement, “Where an overburdened community is located immediately adjacent to a block group that has zero population, and that zero-population block group is the existing or proposed location of a facility, the zero-population block group shall be deemed an overburdened community and shall utilize the highest combined stressor total of any immediately adjacent overburdened community for the purposes of this chapter. For the purposes of this section, immediately adjacent may include those communities separated by a street, road, or right-of-way.” (Page 110)

Comment #8: The Act, at N.J.S.A. 13:1D-158, defines an overburdened community 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.” A zero-population block group does not meet the definition of OBC. Facilities solely subject to the requirements of the rule due to be located adjacent to a zero-population group should be excluded from the requirements to perform a full EJIS.

In the alternative, any initial classification of a facility located in a zero-population block group as subject to the same requirements as a facility actually located in an adjacent OBC census block should be reevaluated if the facility can provide a reasonable demonstration that it does not materially impact any immediately adjacent OBC (based on the operating conditions to be authorized in a new permit, permit modification reflecting a facility expansion, or permit renewal). For example, Rule 7:1C-2.1(e) could be revised as follows:

(e) Where an overburdened community is located immediately adjacent to a block group that has zero population, and that zero-population block group is the existing or proposed location of a facility, the zero-population block group shall be deemed presumed to be an overburdened community and shall utilize the highest combined stressor total of any immediately adjacent overburdened community for the purposes of this chapter. For the purposes of this section, immediately adjacent may include those communities separated by a street, road, or right-of-way. This presumption shall not apply if the facility provides a reasonable demonstration that its operations, as proposed for approval by the Department, will not materially impact any of the stressors listed in the N.J.A.C. 7:1C Appendix that are relevant to any immediately adjacent census block that qualifies as an overburdened community.

Allowing this flexibility for the Department to determine the appropriate treatment of a zero-population census block on a case-by-case basis, by evaluating factual evidence of the environmental and public health impacts of a facility on immediately adjacent communities, is vital to ensure that the Environmental Justice Law is applied consistent with its intent to protect overburdened communities.

Respectfully submitted,

Owens Corning Roofing and Asphalt
The Independent Energy Producers of New Jersey (IEPNJ) appreciates the opportunity to comment on the proposed regulations that the Department of Environmental Protection (DEP or the Department) has issued to implement the provisions of the Environmental Justice law (Senate Bill No. 232) (the EJ Law), which was signed into law on September 18, 2020.

The IEPNJ is a not-for-profit trade association that represents New Jersey’s generators of electric power. As such, members of IEPNJ are active participants in the region’s wholesale power market and have a continuing interest in assuring reliable supplies of electricity to fuel the region’s growth in an environmentally and economically sound manner. IEPNJ has long supported state policies that contribute to the reduction of air pollution and ensure energy reliability for the State. Since 1992, IEPNJ has worked productively with stakeholders, including the DEP, the Board of Public Utilities (BPU), and the state legislature, to develop responsible environmental and energy policies. New Jersey needs power generation to serve economic growth and to provide reliable electricity to the residents of New Jersey and all sectors of the economy; therefore, power plants serve a critical role throughout all communities in New Jersey. The reliable supply of electricity is itself a stressor offset. Our reliance on electricity in daily life is most notable during a blackout, which most will agree can be a very stressful experience.

IEPNJ has been extensively involved in the development process at DEP leading to this rule proposal and appreciates the thoughtful attention the DEP has given to comments throughout the rulemaking process. IEPNJ respectfully offers the following comments for DEP consideration as it deliberates the proposed rule:

1) There Should be Strong Recognition and Promotion by the DEP of Proposed Mitigation Actions by the Applicant

In support of achieving the goals of the EJ Law, the rule should make clear that DEP should be permissive and creative in fostering mitigation activities by an applicant to reduce stressors and deliver benefits to the community. Mitigation actions by an applicant (for either a new permit or a renewal) can and should be a basis for permit approvals and conditions. It’s review process, the DEP should consider these actions collectively, recognizing applicants’ total efforts relative to all the applicable stressors as defined in Environmental and Public Health Stressors (N.J.A.C. 7:1C-1.4, pages 19-60). Applicants should be permitted (and encouraged) to be innovative in developing mitigation proposals. These can include items such as the applicant supporting and developing emission reduction activities directly in the overburdened community (either on the facility site or elsewhere in the applicable community) which can directly offset the environmental impact of the permitted emissions. This could include such items as: increased access to public transportation that reduces local pollution; development of clean energy alternatives and electrification; conversion of oil heat to cleaner heating sources at residences or other structures, green infrastructure, and access to resources to mitigate climate change stressors.

This should not be considered a comprehensive list as an applicant should be allowed to develop and propose approaches that meet the unique needs of the community and satisfy the requirements of the EJ Law. Mitigation actions can lead to highly valuable activities and investments in EJ communities that reduce the level of stressors and impacts in the community. This approach can unlock substantial benefits to these overburdened communities. By allowing the use of verifiable offsets in a community, the rule can not only reduce pollution in overburdened communities, but it can also create an
exciting catalyst for the development of clean resources, investment, economic activity, and collaboration between permit holders and community residents. PPPPP PPPPTThe EJ Law allows the DEP to consider mitigation in making its determination. Subsection a. of Section 4 of the EJ Law (13:1D-160) provides: PPPPPP Following the public hearing, the department shall consider the testimony presented and any written comments received, and evaluate the issuance of, or conditions to, the permit, as necessary to avoid or reduce the adverse environmental or public health stressors affecting the overburdened community. PPPPP If a mitigation action reduces a stressor such that the DEP finds that the cumulative impact is acceptable (i.e., not _higher than those borne by other communities_), then the DEP can issue a permit with the mitigation actions as a condition. The DEP should not require that the applicant_s mitigation actions address each specific stressor concern. Rather it should take a holistic approach to its evaluation, with consideration as to how the aggregate mitigation actions provided by the applicant will improve the community. PPPPPP Including this approach in the rule can unlock substantial environmental, health, and economic benefits in the community. The DEP should allow for flexibility with regard to the type of verifiable mitigation strategies implemented, as such flexibility will enable inventive and deliberative actions _ones that can provide substantial benefits to the impacted community. 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This would allow applicants an opportunity to avoid certain areas before the process even begins or to approach an application knowing that mitigation or other conditions will be required. By having a map of the existing stressors in overburdened communities, it will also permit the DEP and the state to better identify areas in which they should target resources and improvements. PPPPPPPPBy providing clear information! n the standing of communities and their associated risk level, applicants can make informed and educated decisions on siting and permit requests. It will also allow the DEP to be proactive and focus on improving conditions in communities that pose the greatest level of concern. 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The DEP Should Clarify the Distinction Between _Expansion_ and _Renewal_ for Title V Permit Renewals

The current definitions for expansion and renewal are inconsistent with respect to electric generators. The definition for expansion should be changed to align with the definition for renewal. Specifically, the following section from the Facilities section of Definitions (N.J.A.C. 7:1C-1.5, page 15) should be changed from:

The proposed definition for _expansion_ applies to modifications or changes in an existing facility’s operations that have the potential to result in an increase in the existing facility’s contribution to environmental and public health stressors. The proposed definition for _renewal_ is intended to apply to facilities that are continuing in their existing capacities and would include minor modifications made to major source permits that do not increase emissions.

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The DEP Should Not Include Zero Population Blocks as Part of an Adjacent OBC

The EJ Law explicitly applies only to facilities located, _in whole or in part, in an overburdened community._ With the definition of OBCs dependent on census block population calculations, any census block with a zero population is outside the intended reach of the EJ Law. Under the rule’s Applicability (N.J.A.C. 7:1C-2.1), Adjacency (pages 60-62) requirements, the Department is overreaching by including facilities in zero population blocks. Also, non-zero population census blocks are not subject to this OBC-adjacency rule. A zero population block adjacent to an OBC would be subject to the rule, but a populated non-OBC census block would not. By grouping zero-population blocks with adjacent OBCs, the DEP would be providing inconsistent regulation, needlessly over-regulating zero-population areas. To maintain consistency with the EJ Law, projects located in Zero Population Blocks should be excluded from the EJ Rules.

IEPNJ recognizes DEP’s substantial efforts in developing these groundbreaking Environmental Justice Rules. IEPNJ appreciates the opportunity to provide these comments and looks forward to working cooperatively with the DEP and all other stakeholders.
On Behalf of IEPNJ, attached are the IEPNJ comments – DEP EJ Proposed Rule. These comments were also submitted electronically today.

Thank you,

*Kisha Hicks*

Executive Assistant

609-530-1234 office

She, Her, and Hers
The Independent Energy Producers of New Jersey (IEPNJ) appreciates the opportunity to comment on the proposed regulations that the Department of Environmental Protection (DEP or the Department) has issued to implement the provisions of the Environmental Justice law (Senate Bill No. 232) (the EJ Law), which was signed into law on September 18, 2020.

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*Following the public hearing, the department shall consider the testimony presented and any written comments received, and evaluate the issuance of, or conditions to, the permit, as necessary to avoid or reduce the adverse environmental or public health stressors affecting the overburdened community.*
If a mitigation action reduces a stressor such that the DEP finds that the cumulative impact is acceptable (i.e., not “higher than those borne by other communities”), then the DEP can issue a permit with the mitigation actions as a condition. The DEP should not require that the applicant’s mitigation actions address each specific stressor concern. Rather it should take a holistic approach to its evaluation, with consideration as to how the aggregate mitigation actions provided by the applicant will improve the community.

Including this approach in the rule can unlock substantial environmental, health, and economic benefits in the community. The DEP should allow for flexibility with regard to the type of verifiable mitigation strategies implemented, as such flexibility will enable inventive and deliberative actions – ones that can provide substantial benefits to the impacted community.

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In its written comments provided during the stakeholder process, IEPNJ suggested that the Environmental Justice comparative analysis of community stressors be made efficient by having “the DEP adopt a simplified methodology to list, rank, cumulate, and compare risks among communities.”

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The DEP’s commitment to providing the initial screening information is an important contribution to the consistency and efficiency of the application process. To make this process more effective and efficient for the applicant, the community, and for the DEP, it is recommended that the DEP enhance its initial screening information by adding the relative ranking and comparative risks of the listed stressors as applicable to the local community. This ranking system can then be used to determine what information is needed by a permit applicant and provide the DEP with a workable model to make decisions.
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Please find Covanta’s comments attached.

Thanks!!

Scott Henderson  
Vice President, State and Corporate Relations  
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Our mission is to ensure no waste is ever wasted.

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September 2, 2022

Melissa P. Abatemarco, Esq.
Attn.: DEP Docket No. 04-22-04
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, New Jersey 08625-0402

Re:      NJDEP Proposed Environmental Justice Rules, Docket 04-22-04

Covanta is pleased to support New Jersey’s leadership in advancing the cause of Environmental Justice. In fact, we take pride knowing we were the only company in the industry to publicly support New Jersey’s groundbreaking Environmental Justice law when it was introduced in 2020. We are in lockstep with Environmental Justice advocates who say the effort to ease the burden on these communities is long overdue.

More than a decade ago, Covanta was the first company in the industry to create an Environmental Justice pledge, which served as a national model for how industry should support and engage with its community stakeholders in a fair and equitable manner. This became a guiding principle for our company in all our operational and environmental decision making. When it comes to supporting local communities, there is nothing more important than tenets like investment, innovation, transparency and engagement.

Through our endeavors as a leader in sustainable materials management, we have come to recognize those communities disproportionately burdened by the cumulative effects of industrial operations. Our facilities currently operate well below our permitted limits and contribute to only a small part of overall air emissions in the community. However, we are committed to measurable action to protect these communities, and all communities we serve and operate in.

In line with these steps, we have taken concrete actions to reduce our emissions over the past decade by up to 90% by investing over $100 million at our facility in Newark. Covanta Camden has begun permitting new air quality controls that will significantly reduce emissions from our facility. We currently operate well below our permitted limits and these facilities are only a small part of overall air emissions in their respective communities. Our new investment at the Camden facility will reduce emissions even further. We are going to install the most advanced air quality control system retrofit on an existing facility in the country that will reduce emissions by as much as 90%.

The new Environmental Justice law will have a particularly important bearing on communities such as Camden and Newark’s Ironbound section, which is surrounded by one of the world’s busiest airports, an entanglement of major interstate highways, heavy tractor trailer traffic and power plants. We believe all emissions, from all sources in the community, must be considered and addressed, starting with the largest sources first as they represent the greatest opportunity for measurable improvement.
The proposed rule represents an important first-step in addressing those inequities. To be most effective in bringing much needed change to overburdened communities, the final rules must be based on a foundation of science, consider the relative contributions of all potential health risks and exposure pathways, and focus efforts on those sources, be they point, mobile, or area sources, that have the largest impacts.

**The selection of control measures and the technical feasibility analysis applicable for major source permit renewals under N.J.A.C. 7:1C Subchapter 8 should consider both the history of air pollution control upgrades already completed and the relative contributions of the source to environmental and public health stressors.**

Over the past decade, we proactively took concrete actions to reduce our emissions up to 90% by investing over $100 million at our facility in Newark. Covanta Camden has begun permitting new air quality controls that will significantly reduce emissions from that facility by as much as 90%. The selection of control measures should consider these investments as well as their cumulative benefits achieved to date.

As a result of existing air pollution control equipment, both as retrofitted and initially installed, our facilities are relatively minor sources in the local air shed. As a result, further reductions in emissions may not produce a significant overall reduction in cumulative stressors in the local community.

Furthermore, our facilities may have no contribution to other stressors in the community. Therefore, we propose that the Department consider not only the reductions that might be achievable at a particular source, but to also consider that potential reduction relative to the cumulative individual and total stressors. Such an approach will help ensure that any eventual additional requirements imposed on the existing facility are proportional to its overall contribution and reflect performance gains already achieved.

To support this effort, we recommend that the Department specifically reference available tools, including the EPA’s National Emissions Inventory, for the evaluation of stressors and relative facility contributions.

Uncorrected, the existing proposal could be interpreted as requiring additional controls at an existing facility that is a minor source of a particular stressor. For example, at our Essex County facility, our contribution to volatile organic compound (VOC) emissions is less than 0.05%. However, as currently written, the technical feasibility analysis could result in the identification of new control technologies for VOCs, such as installation of a regenerative thermal oxidizer (RTO). Given the extremely low contribution of the Essex County facility to the local airshed, the installation of such equipment would not have a significant impact on cumulative stressors.

**Technology reviews already conducted under other existing environmental regulations and permitting processes should be eligible to demonstrate adherence with the technical feasibility analysis requirement.**

The proposed regulation requires that covered facilities undertake a detailed analysis of existing emissions control technology for permit renewals. The threshold criteria for this analysis relies on a ‘years-in-service’ and a ‘percent of emissions’ standard as opposed to an effectiveness or appropriateness standard.

The top-down review outlined in the proposed rule is similar to that used for Best Available Control Technology (BACT) analyses, which is required for certain modifications to major sources pursuant to the federal Clean Air Act. The use of this type of analysis may, in some instances, be appropriate for new permits and major permit modifications, however, the applicability of this requirement to permit renewals should be clarified. In addition,
controls developed as a result of an approved permit or regulatory action (e.g., RACT) should also be reflected in the implementation of any required controls.

We recommend that the Department allow for these other similar existing processes to be considered in lieu of a separate technical feasibility analysis under the EJ regulation. Lastly, as referenced above, facilities with de minimus emissions and/or risk analysis results should be provided exemptions from this process.

The Facility-wide Risk Assessment, as proposed in N.J.A.C. 7:1C-8.4, should be more clearly integrated into the determination of combined stressor totals and additional control requirements.

The Department’s inclusion of a risk assessment is an important step in understanding the relative impact of facilities on the local community. However, to ensure that this information is best used in driving toward an overall reduction in stressors, we recommend that its role be more clearly articulated in the rule. For example, the application of controls should relate directly to a facility’s risk. This ensures that all facilities are held to the same standard and controls are proportional to the identified risk.

To ensure a transparent and equitable process, we recommend that additional specificity be included in the rule, either through direct language, or subsequent guidance, wherever appropriate, but especially for those processes that are more qualitative in nature.

The proposed rule outlines a process whereby environmental and health stressors are identified and totaled, at which point facilities must then determine if their operations represent a disproportionate impact based on a ‘total value’. The process appears to be based on a quantitative analysis of stressors and impacts. However, there are several aspects of the rule that lack specificity and appear to rely on qualitative and/or subjective judgements that may lead to uncertainty in the calculation of disproportionate impacts. The following address specific instances in the proposed rule that utilize subjective and/or qualitative parameters.

- **Definitions (NJAC 7:1C-1.5), DISPROPORTIONATE IMPACT**
  
  This term is key in determining how a covered facility proceeds through the evaluation process outlined in the proposed rule. However, the definition of ‘disproportionate impact’ suggests a qualitative determination that may lead to misinterpretation on the part of the overburdened communities and covered facilities. We recommend that the Department issue for comment a quantitative screening process that outlines the calculation methodologies and procedures to be used so that the results are fully transparent.

- **Initial screening information (N.J.A.C. 7:1C-2.3), Combined Stressor Totals**
  
  The Department proposes to sum individual stressors to develop a combined stressor total. We recommend that the calculated total (including the calculation values and methodology) be available for public review and comment.

  Individual stressors may have a disproportionate impact on overburdened communities, and those impacts may vary from community to community. We recommend that the Department apply weights to individual factors to reflect their contribution to the overall stressor total. Such weights should be available for public review and comment.

- **Stressors- May Cause Potential Public Health Impacts (Appendix)**
The Department acknowledges that this is a qualitative stressor designed to addressed quality-of-life concerns. Qualitative measures are, by their nature, difficult to define and challenging to evaluate. We recommend that the Department develop specific criteria to better define this stressor so that both the EJ communities and the covered facilities can better evaluate its impact.

The Department should provide as much clarity as possible with regard to the Procedural Roadmap to ensure transparency in the process and avoid administrative delays that don't provide added value to the public participation process.

The Procedural Roadmap (N.J.A.C. 7:1C-2.2) provided in the draft rule outlines the significant milestones designed to implement both the intent and language of the EJ law. We recommend that estimated schedule targets be included with each milestone in order to provide regulatory certainty to both the EJ communities and the covered facilities.

In addition, the Roadmap presents a series of sequential steps that must be undertaken to ensure that the review process is completed. We recommend that Department include a provision in the Roadmap that minor changes to the EJ Impact Statement or related submittals (i.e., changes to address comments or provide additional data/clarifications that do not impact the outcome of the review) do not require that the review process be restarted, resulting in unwarranted delays.

Lastly, in order to ensure resources are allocated proportional to impacts, we recommend that the Department provide a streamlined process for projects at existing covered sources that yield a clear and demonstrable reduction in stressors. For example, facilities that propose to improve their environmental emission performance through changes or modifications to processes or air pollution control equipment should be expedited to ensure that community benefits are not delayed.

In summary, we are committed to measurable action to protect these communities, and all communities we serve and operate in. Our industry-first environmental justice policy has served as a national model and over a decade later this policy continues to evolve to guide our community engagement. To that end, we were among the first companies to support this landmark environmental justice legislation, and the first within our own industry to do so publicly. We look forward to working with the Department to advance the important goals of the proposed rule. It is through collective and collaborative action that we will be best able to reduce impacts in overburdened communities.

Sincerely,

Tequila Smith
Good afternoon:

Our office serves as Solicitor to the Camden County Municipal Utilities Authority. On behalf of the Authority, please see the attached comments in response to the Department’s proposed rules to implement the provisions of the New Jersey Environmental Justice (Docket No. 04-22-04). We thank the Department for its time and consideration of this matter.

Thank you,
Mike

Michael J. Watson
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I. INTRODUCTION

The Camden County Municipal Utilities Authority (the “CCMUA”) respectfully submits the following comments to the New Jersey Department of Environmental Protection (“DEP”) on the proposed rules to implement the provisions of the New Jersey Environmental Justice Law (the “Proposed Rules”). The CCMUA is a regional wastewater treatment system that collects and treats the sewage discharged from residences, businesses and industry in Camden County, New Jersey. The CCMUA treats 58 million gallons of sewage per day at its plant, the Delaware No. 1 Water Pollution Control Facility (the “WPCF”).

The CCMUA and WPCF are located in the City of Camden, New Jersey. Camden is a community that is burdened by a disproportionately high number of environmental and public health stressors and, as such, will benefit immensely from implementation of the Environmental Justice Law. The CCMUA has always aimed to be a strong ally with the Camden community and will continue our support through adherence to this law.

Not only does the CCMUA provide wastewater treatment for the whole of Camden County, but the CCMUA (along with the City of Camden and Gloucester City) is also charged with developing the Long Term Control Plan of Combined Sewer Overflows in the region. There are currently numerous incidences of street flooding with combined sewage during rain events. One of the CCMUA’s highest public health priorities is to reduce the street flooding that poses economic disruption, erosion of the quality of life, and potential health risks to impacted residents.

II. COMMENTS

The CCMUA respectfully submits the following comments and requests for clarification on the following aspects of the Proposed Rules:
1. **N.J.A.C. 7:1C-1.5: Definition of “Change in Use”**

As the owner of hundreds of miles of sewer infrastructure, as well as a party to the Long-Term Control Plan (“LTCP”), Combined Sewer Overflows (“CSO”) are an inherent part of the CCMUA’s operations.

Under the Proposed Rules, a “Change in use” means a change in the type of operation of an existing facility that increases the facility’s contribution to any environmental and public health stressor in an overburdened community, such as a change to waste processed or stored (emphasis added).

The CCMUA respectfully requests confirmation that CSO controls pursuant to an approved LTCP would not constitute a “change in use” per the definition, since existing CSOs are not among the eight (8) listed types of facilities.

2. **N.J.A.C. 7:1C-1.5: Definition of “Compelling Public Interest”**

A portion of the definition of “Compelling public interest” states: “…Facilities that directly reduce adverse environmental and public health stressors in the overburdened community may be considered as serving an essential environmental health or safety need of individuals in the overburdened community.” We believe that, as a wastewater treatment facility, the CCMUA provides a significant environmental and health benefit to the community. The core purpose of our operation alleviates a public health stressor.

The CCMUA respectfully requests clarification of whether control of CSOs is a “compelling public interest,” since control of CSOs would appear to serve an essential environmental, health, or safety need of the host overburdened community, for which there is no reasonable alternative to siting within the overburdened community.

3. **N.J.A.C. 7:1C-1.5: Definition of “Disproportionate Impact”**

Section 7:1C-1.5 of the definitions states that a “disproportionate impact” would occur if the facility cannot avoid either: “(1) creating adverse cumulative stressors in an overburdened community as a result of the facility’s contribution; or (2) contributing to an adverse environmental and public health stressor in an overburdened community that is already subject to adverse cumulative stressors” (emphasis added).

The terms “contribute,” “contribution,” and “contributing” do not appear to be defined anywhere in the Proposed Rules or preamble. There does not appear to be a de minimis threshold for a “contribution.” In situations where a facility is seeking an air quality permit for a new or expanded facility, the CCMUA respectfully asks whether a single molecule of an air pollutant would be considered as “contributing” to an existing adverse air pollution stressor in an area of cumulative stressors. Alternatively, the CCMUA requests clarification as to whether the DEP’s existing impact criteria would apply.

For example, the CCMUA is located in an Overburdened Community with existing adverse cumulative stressors. One of the existing adverse stressors is Cancer Risk from Air Toxics.
Excluding Diesel PM. If air quality health risk modeling for a proposed facility expansion followed the DEP’s current guidance in Technical Manuals 1002 and 1003 for air toxics emitted above Reporting Thresholds, and the results met the current criteria for “negligible” risk, would the expansion be considered not to contribute to an adverse health stressor?

Specifically, for renewal of a Title V Operating Permit for an existing facility, would any non-zero air emissions be considered “contributing” to existing adverse air quality stressors in a community subject to cumulative stressors? If so, this would seem to have an unfavorable and disproportionate impact on a facility that has operated in compliance with existing DEP air permits for an extended time period. The CCMUA respectfully requests that the DEP consider a more consistent approach, modeled on the DEP’s rules under N.J.A.C. 7:27-19 and 7:27-16. These existing DEP rules require Reasonably Available Control Technology for existing major sources of nitrogen oxides and volatile organic compounds. In this case, an existing facility would be considered to “contribute” for only those pollutants exceeding major source thresholds, and would be required to consider reasonably available controls only for individual pieces of equipment meeting specific applicability criteria.

4. **N.J.A.C. 7:1C-1.5; Definition of “Expansion”**

Under the definitions portion of the Rule, “Expansion” means, in part, “a modification or expansion of existing operations . . . that has the potential to result in an increase of an existing facility’s contribution to any environmental and public health stressor in an overburdened community . . .”

The CCMUA respectfully requests clarification as to how the above-referenced definition of an “expansion” would apply to our Delaware No. 1 WPCF. For instance, increased rainfall results in increased flow that the CCMUA’s WPCF must process. Thus, the CCMUA seeks clarification as to: (i) whether such increased rainfall/flow would be considered an “expansion” under the Rule; (ii) whether any modification to the CCMUA’s existing plant systems be considered an “expansion”; and (iii) whether new CSO controls would constitute an expansion of the existing treatment works.

In connection with above inquiries, the CCMUA notes its belief that the implementation of LTCPs will decrease stressor contributions.

5. **N.J.A.C. 7:1C-1.5; Definition of “Net Environmental Benefit”; Banking of Environmental and Public Health Stressor Reduction**

The Proposed Rule defines “Net environmental benefit” as a reduction of baseline environmental and public health stressors in an overburdened community. The CCMUA respectfully asks whether a facility could bank emission reduction credits from the environmentally beneficial projects implemented in the Overburdened Community in the past, and then apply these credits to offset any “contributions” for proposed facility expansions.
6. **N.J.A.C. 7:14A-1.5; Definitions of “Sewage Treatment Plant” and “Sewage Treatment Works”**

   a. **Whether Pumping Stations and Satellite Facilities (i.e. storage) that are not located at the main facility will be deemed not within the covered “overburdened community.”**

   The CCMUA’s WPCF is covered under the definition of “sewage treatment plant” since, pursuant to N.J.A.C. 7:14A-1.2, it has a “permitted flow” of more than 50 million gallons per day. While the CCMUA’s WPCF is within a community that is defined under the Proposed Rules as an “overburdened community” (i.e. the City of Camden), many of the CCMUA’s pumping stations and other satellite facilities are located outside Camden’s boundaries. The CCMUA respectfully asks whether: (i) the definition of “sewage treatment plant” includes all of the CCMUA’s associated pumping stations; and (ii) the requirements under the Proposed Rule will be applicable to any modifications of the CCMUA’s pumping stations and satellite facilities.

   b. **Whether Combined Sewer Overflows (CSOs) are covered under the Proposed Rule.**

   CSOs are noted as an environmental stressor. However, CSOs are not listed under the definition of “facilities” at N.J.A.C. 7:1c-1.5. Thus, it is unclear whether combined sewer systems (CSS) including outfalls are considered to be “treatment works” under N.J.A.C. 7:14A-1.2 or “sewage treatment plants” under N.J.A.C. 7:14A-1.2. None of the potential satellite facilities identified in the 2020 CCMUA/Camden/Gloucester City LTCP are currently projected to reach a design flow of 50 MGD. The peak flow rate characteristics of a satellite treatment facility are very different than a conventional sewage treatment plant. A satellite CSO treatment facility is likely to operate at its peak design flow rate for durations far less than 24 hours. The CCMUA respectfully seeks clarification of whether a satellite CSO facility is covered under the Proposed Rule.

7. **N.J.A.C. 7:1C-1.4; Relationship with Other Regulatory Programs**

   Subsection (b) states that: “In the event of a conflict between this chapter and another Department rule, this chapter shall supersede. . . .” Pursuant to the Water Pollution Control Act (N.J.S.A. 58:10A-6, the CCMUA is considered a “delegated local agency.” Accordingly, the CCMUA is required to apply the requirements of the Water Pollution Control Act to any entity that may introduce pollutants into the treatment works and, moreover, the CCMUA has the authority to exercise right of entry, inspection, sampling, as well as the imposition of remedies, fines, and penalties, upon such entities.

   The CCMUA respectfully requests further clarification regarding the interplay between its obligations as a “delegated local agency” under the Water Pollution Control Act and adherence to the Proposed Rules. In particular, as a delegated local agency, will the CCMUA be required to ensure that Water Pollution Control Act permittees are in compliance with the Environmental Justice rules obligations?
8. **N.J.A.C. 7:1C-6.3: Feasible Control Measures to Avoid or Minimize Contributions**

The Proposed Rule states that where the overburdened community is already subject to adverse cumulative stressors or the applicant cannot demonstrate that a disproportionate impact would be avoided, the applicant would be required to propose *appropriate control measures to avoid or minimize contributions* to environmental and public health stressors. Section 7:1C-6.3 addresses control measures for facility expansions (emphasis added). 6.3(a) requires Localized Impact Control Technology (LICT) for the proposed new/modified/reconstructed significant source operations in the expansion. 6.3(b) then requires additional measures at the other existing facility operations. The first measure provides: (1) “*All feasible measures to avoid facility contributions to environmental and public health stressors*” (emphasis added).

The CCMUA is located in an Overburdened Community with existing adverse cumulative stressors. The adverse stressors include the Air Pollution stressors. The CCMUA respectfully requests further clarification of what it means “avoid” contributions. For instance, should the CCMUA interpret “avoid” to mean: (i) reducing the proposed expansion’s increase in emissions to zero (0) by offsetting the increase elsewhere on the site; or (ii) alternatively, for any air permit modification, the facility would be required to evaluate reducing to zero all of its existing permitted equipment’s air pollutant emissions.

The CCMUA respectfully suggests that “avoid” should be interpreted as a reduction of the proposed expansion’s modeled air and health risk impacts to be below de minimis or significance levels (not to zero [0]), as defined in the DEP’s existing regulations (see Comment No. 1 above). In addition, applicants should be given the option to “avoid” significant increases by committing to making actual emission reductions elsewhere on their site that would offset projected actual increases from the proposed expansion.

Moreover, 6.3(b) 2. states that: “For any contribution that cannot be avoided, *all feasible onsite measures to minimize facility contributions* to environmental and public health stressors” (emphasis added). “Feasible” is defined under N.J.A.C. 7:1C-1.5 as “measures addressing contributions to environmental or public health stressors that are reasonably capable of being accomplished by taking into account economic and technological factors” (emphasis added). The CCMUA respectfully requests additional clarification as to the meaning of “economic factors.”

9. **N.J.A.C. 7:1C-8: Control Measures for Title V Permit Renewals**

Subchapter 8 of the Proposed Rule contains three (3) sets of control requirements for existing equipment at facilities located in an Overburdened Community subject to existing adverse cumulative stressors: (i) control measures to make facility-wide health risks “negligible”; (ii) technically feasible control measures for older equipment (see Comment No. 3 above); and (iii) a general requirement under Section 7:1C-8.6 to address “any aspects of the existing major source facility’s operations not addressed” by factors (i) or (ii). In response, the CCMUA respectfully requests further clarification as to the intended meaning of “any aspects.”

In addition, this section also requires that the facility propose:
1. All feasible measures to avoid facility contributions to environmental and public health stressors; and

2. For any contribution that cannot feasibly be avoided, all feasible onsite measures to minimize facility contributions to environmental and public health stressors.”

The CCMUA respectfully requests clarification as to the intended meaning of “all feasible measures,” as set forth above.

III. CONCLUSION

The CCMUA appreciates the opportunity to provide the above comments, questions, and requests for clarification. We thank the Department for its time and consideration.

Respectfully submitted,
CAMDEN COUNTY MUNICIPAL UTILITIES AUTHORITY

s/Scott Schreiber
Scott Schreiber, Executive Director

Date: September 3, 2022
Dear Ms. Melissa P. Abatemarco, Esq.,

Attached please find our comments on the Proposed Environmental Justice Rules, DEP Docket No. 04-22-04. We appreciate the opportunity to comment and the NJDEP’s consideration of our suggestions. If possible, please confirm receipt of this email and letter attachment.

Thank you,

Tiffany L. Medley, Ph.D | Client Manager
Tetra Tech | Leading with Science® | Cornerstone Environmental Group
16 Pearl Street, Suite 210 | Metuchen, NJ 08840 | tetratech.com

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September 2, 2022

Melissa P. Abatemarco, Esq.
Attn: DEP Docket No. 04-22-04
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, New Jersey 06825-0402

Re: Proposed New Rules N.J.A.C. 7:1C (Environmental Justice)
Comments and Recommendations

Dear Ms. Abatemarco, Esq:

Cornerstone Environmental Group, a Tetra Tech company (Tetra Tech), has reviewed the proposed Environmental Justice Rules (N.J.A.C. 7:1C). Tetra Tech’s comments and proposed revisions (as applicable) are enclosed as an attachment to this letter.

We appreciate the opportunity to review and comment on the proposed N.J.A.C 7:1C rules.

Sincerely,

CORNERSTONE ENVIRONMENTAL GROUP, LLC – A TETRA TECH COMPANY

Tiffany L. Medley, PhD
Client Manager

Enclosure: Comments regarding the Proposed Environmental Justice Rules
Cornerstone Environmental Group, a Tetra Tech Company
Comments regarding the Proposed Environmental Justice Rules

7:1C-1.4 and Chapter Appendix - Environmental and Public Health Stressors

Comment 1: The Department has provided a technical guidance document for the proposed rules and online betamapping tool. While the document references data sources and methods for calculating specific stressors, the Department should host the raw and derived data on a dedicated server. This allows interested parties to validate the Department’s derivation and perform additional analyses. Furthermore, the underlying data should periodically be updated, and obsolete data archived made accessible to the public. Data formats should be available for download and open-source (i.e., non-proprietary formats) for use by researchers, regulated entities, and the public.

7:1C-1.5 – Definitions

Section 7:1C-1.5 “Facility” means any (1) major source of air pollution; (2) resource recovery facility or incinerator; (3) sludge processing facility, combustor, or incinerator; (4) sewage treatment plant with a “permitted flow,” as defined at N.J.A.C. 7:14A-1.2, of more than 50 million gallons per day; (5) transfer station or other solid waste facility, or recycling facility intending to receive at least 100 tons of recyclable material per day; (6) scrap metal facility; (7) landfill, including, but not limited to, a landfill that accepts ash, construction or demolition debris, or solid waste; or (8) medical waste incinerator, except a medical waste incinerator that accepts regulated medical waste for disposal, including a medical waste incinerator, that is attendant to a hospital or university and intended to process self-generated regulated medical waste, as defined in this chapter.

Comment 2: The definition of “Facility” includes under item No. (5) transfer station or recycling facilities that intend to receive at least 100 tons or more of recyclable material per day. This definition should be further clarified to include if the definition applies to facilities that receive 100 tons or more material on any working day or if that is an average for a seven-day week.

Comment 3: Recycling facilities that accept 100 tons or more of material every day are relatively small recycling facilities. The application of the environmental justice rules to such small facilities is disproportionate to the threshold set for large sewage treatment facilities with permitted flows of 50 million gallons per day, in which currently appear to include only four (4) of New Jersey’s treatment facilities. Is there justification that can be provided for how the NJDEP determined the thresholds for what constitutes a facility that should be further evaluated under the environmental justice rules specifically for applicable facilities (4) and (5) above?

Comment 4: Applicable facilities, specifically those noted under (5) transfer station and recycling facilities and (6) scrap metal facilities, include small to medium size businesses in New Jersey. The costs of compliance with the new environmental justice (EJ) regulations will have a disproportionate impact on these smaller businesses, may drive some out-of-business and will contribute to a monopoly of only large waste management and recycling companies being able to financially operate in the State. Will the NJDEP assist smaller businesses with funding opportunities to help cover the costs of environmental justice impact statement (EJIS) preparation, public participation costs or for mitigative measures, if required, in the community?

Comment 5: The definition of a facility includes (7) landfill, including, but not limited to, a landfill that accepts ash, construction or demolition debris, or solid waste.

It is not clear if the Department intended to include closed landfills in this definition. When filtering applicable facilities in the EJ MAP and choosing “landfills” only the 12 active landfills in the State are shown. If the intent is to exclude closed landfills no longer accepting any waste or fill material, then the applicability should specifically state so. Otherwise, management of closed landfills in an overburdened community that are under the 30-yr post closure care will be subject to these regulations, for example, when applying for landfill disruption permits for beneficial re-use projects.
7:1C-1.5 – Definitions

“Change in use” means a change in the type of operation of an existing facility that increases the facility’s contribution to any environmental and public health stressor in an overburdened community, such as a change to waste processed or stored.

A “new facility” means: 1) any facility that has not commenced operation as of (the effective date of this chapter); or 2) a change in use of an existing facility.

Comment 6: “The “change in use” definition implies that, if an existing facility has a change in operation that increases the facility’s contribution to any environmental and public health stressor, it will be considered a new facility. “New Facilities” are subject to proof that they serve a compelling public interest as defined under this Subpart and permits can be denied. The change in use definition should be clarified and further defined.

Specifically, at a minimum, the example of “such as a change to waste processed and stored” should be stated as “such as a change in the type of waste processed and stored”. If there is a change in the amount of waste processed, that would be an expansion. Expansions should not be viewed as new facilities.

The Department should consider adding an example that relates to all applicable facilities, such as those with Title V Operating Permits in the manufacturing and fossil fuel industries. A suggestion to clarify the “change in use” definition is to expand the example to “such as a change in the type of material processed or manufactured”.

7:1C-1.5 – Definitions

“Overburdened community” means any census block group as determined by the Department 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.

Comment 7: The definition of “overburdened community” (OBC) is being described based solely on socio-economic factors. The community has yet to be determined if it is overburdened by evaluation of the EJIS required in the regulation. Approximately half of the state’s population resides in “overburdened communities” based on the NJDEP’s socio-economic definition of an overburdened community. This statement is misleading since it can be interpreted that half of the state’s population has an “overburden” of environmental contamination around them. The Department may want to consider re-naming to “environmental justice (EJ) community” or “EJ sensitive community” to not cause confusion in reading the regulation and to not cause concern that the NJDEP considers being of low-income or part of a minority group as an overburden to a community.

7:1C-2.1 Applicability

(a) The requirements of this chapter apply when an applicant submits a permit application to the Department for a new or expanded facility, or the renewal of an existing major source permit, for a facility located or proposed to be located, in whole or in part, in an overburdened community, or to Solid Waste Management Plan actions as provided at N.J.A.C. 7:1C-4.4(b).

Comment 8: The Department should consider exempting closed landfills that are Title V Operating Facilities only due to methane emissions exceeding 100 tons per year from the requirement of the EJ procedures during Title V renewal. There are currently at least four (4) closed landfills located in overburdened communities in New Jersey that will be subject to these regulations: These closed landfills often have set escrow budgets that were established prior to enactment of the EJ act. As these and future closed landfills are no longer active, there is limited travel to the site and waste is no longer placed there. Landfill gas production will continue to decline. There are no alternatives to maintaining closed landfills in compliance with their Solid Waste Facility Permit. These landfills were active and closed long before the communities were developed around them. Landfills closed and capped in compliance with Solid Waste regulations should be exempted from complying with EJ regulations.
7:1C-2.1 Applicability

(d) As of January 16, 2021, the Department has published on its website a list of overburdened communities utilizing data from the most recently published U.S. census. This information can be found at https://www.nj.gov/dep/ej/communities.html. At least every two years thereafter, the Department shall update the list utilizing the most recently published U.S. census data.

Comment 9: The regulations do not provide guidance on application procedures for those facilities that are initially applicable to the EJ regulations and submit a permit application and then are no longer part of an OBC per new census data. Specifically, there were 342 block groups that were designated as an OBC per 2019 census data and then not designated as an OBC according to 2020 census data. In turn, the regulations do not provide guidance on application procedures for those facilities that submit permit applications at times when their location is not an OBC and then later becomes an OBC per census data. There were 468 new OBC block groups per 2020 census data that were not OBC’s in 2019.

As the NJDEP develops guidance, we are suggesting that the regulation make the rules applicable to those facilities in an OBC per the EJMAP data at the time of the application submittal. Should the EJMAP data change for the location per new census data, the facility should not be required to revisit the EJ regulations in the middle of a permit review. In turn, should a facility no longer be located in an OBC during the permit review, if public participation procedures have been published, then public participation should continue, but the NJDEP should not require a revised EJIS or incorporate mitigative or other conditions in the permits when issued.

Comment 10: The Act at N.J.S.A. 13:1D-158, requires that determination of overburdened community be “determined in accordance with the most recent United States Census” on a “census block group” basis. Absent a definition in the Act and the proposed Rules this is interpreted to refer to the Decennial Census (“Census”) conducted by the US Census Bureau in accordance with applicable law. The Department in mapping overburdened communities is relying on survey data provided by the 5-year American Community Survey (“ACS”). The two data sets are distinct and not interchangeable. Whereas the Census is an enumeration of the population, the ACS is survey based and extrapolated from a representative sample to the population. The US Census Bureau discusses the distinction on its website1. In an email exchange on February 8, 2022, the Department confirmed its use of ACS data in lieu of census data, which does not provide poverty and English proficiency information.

Being survey-based, ACS data has a level of uncertainty expressed as a tolerance, i.e., sampling error. The error is proportional to the sample size2. Census block groups are “statistical divisions of census tracts, that are generally defined to contain between 600 and 3,000 people3.

The US Census Bureau is implementing the Disclosure Avoidance System (“DAS”), designed to withstand re-identification of individuals responding to questionnaires. DAS works by introducing “noise” into the data of group blocks. The noise is designed to cancel out over entire census data set. The degree of noise is a function of group block population and composition but ranges between 4.61 individuals (for blocks with total population less than 249 individuals) and 22.32 individuals for blocks with populations greater than 3,250 individuals.

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2 More accurately, as the sampling error or margin of error is proportional to the inverse square root of the sample size, the error decreases as the sampling size increases.
3 https://www.census.gov/programs-surveys/geography/about/glossary.html#:~:text=Back%20to%20top-Block%20Group%20data%20and%20control%20block%20numbering.
The EJ Act is by design and intent, a local act to provide representation for specific communities in the permitting process. Reliance on survey data, i.e., ACS, and the privacy-focused effect of DAS on census data obscures block group information and will result in false-positives. Providing for appropriately sized tolerances rather than adherence to rigid cutoff values could counter the combined effects of DAS and the margin of error of the ACS. The tolerance would have to be at least the greater of the two and is specific based on the block group size.

7:1C 2.1 Applicability, Analysis of Contribution to Environmental and Public Health Stressors

In assessing a facility’s ability to avoid a disproportionate impact that would occur by creating adverse cumulative stressors in an overburdened community, an applicant would conduct modeling of the facility’s operations to determine how those operations would impact levels of stressors identified as affected, by utilizing the data and metrics set forth at the chapter Appendix.

Comment 11: Certain stressors identified in the Appendix to the chapter are unlikely to be affected if the application is approved. For example, it is unclear how siting a new facility, as defined in the proposed regulations, will affect the number of contaminated sites per square mile, the percent area of a community where deed notices (listed in the Appendix as “soil contamination deed restrictions) have been established, or the percent area of a community where Ground Water Classification Exception Area/Known Contaminated Extent Restrictions have been established. Only if facility operations result in a discharge of a hazardous substance to the lands or waters of the State of New Jersey will any of these metrics increase in a community due to the siting of a facility in that community. Therefore, the environmental assessment should not consider these three stressors.

Comment 12: The percent of Private Well Testing Act (PWTA) impacts to potable wells is a poor metric of environmental quality in a community. PWTA impacts to potable wells may occur across significant sections of the state due to naturally occurring conditions, for example. Such conditions are often due to the minerals in the soil and bedrock, rather than any anthropogenic sources. Further, the effect is limited to the population served by the potable well. Potable wells tested under the PWTA tend to supply only a single residence or a relatively small number of leaseholds. Community supply wells that supply larger populations with potable water have other testing requirements. As such, the percent of PWTA impacts to potable well exceedances should not be a stressor listed in the Appendix or considered under the chapter. In addition, it is unclear how siting a new facility, as defined in the proposed regulations, will affect the percentage of private well testing act exceedances. As such, an applicant will not be able to address this stressor in their prepared EJIS.

7:1C-3.4 Review of Environmental Justice Impact Statement and authorization to proceed

(b) Within 10 days of receipt of the EJIS, and any supplemental information, the Department shall either request revisions or the inclusion of additional information in the EJIS or provide the applicant with authorization to proceed with the public participation process pursuant to N.J.A.C. 7:1C-4.

Comment 13: This self-imposed time limit on the NJDEP to respond to the submitted EJIS is fair to the applicant to ensure that the EJ process does not further delay a project. However, the Department should include the format that the applicant should expect to receive the formal response by the Department and specify if the time frame is 10 business days or 10 calendar days. An additional clause should include “should the applicant not receive a response by the Department in 10 days, the applicant has authorization to proceed with the public participation process in accordance with the submitted EJIS.”

7:1C-7.1 Localized impact control technology (LICT) for new or expanded major source facilities

Pursuant to the proposed N.J.A.C. 7:1C-7.1(c), proposed new or expanded major source facilities that meet the emissions thresholds at subsection (a) are required to conduct a top-down consideration to determine the most
effective technically feasible control technology that can be implemented and not eliminated due to environmental or energy impacts.

**Comment 14:** Demonstration of state-of-the-art (SOTA) in Subchapter 22 includes the option for the applicant to document compliance with a SOTA Manual (available from the Department at the address in N.J.A.C. 7:27-8.4(b)) that applies to the source). Similarly, LICT should include this option as an alternative to conducting a top-down analysis.

Specifically, 7:27-22.35 (c) 5 ii. states once the Department has published a technical manual for advances in the art of air pollution control pursuant to (c) 5 i, *any application submitted that shows compliance with the technical manual shall be considered to incorporate advances in the art of air pollution control for the source operations covered by the technical manual.* Therefore, we are requesting that the Department consider compliance with the technical manual, if applicable to the source, as a demonstration of meeting the requirements of LICT.

**7:1C-9.1 Department review**

(c) If it is necessary for the Department to engage one or more experts to evaluate any information submitted by the applicant, the Department shall notify the applicant, include an estimate of the cost to the Department to engage the expert(s), and direct the applicant to submit payment in full within 90 days of the Department’s notice in order to obtain further review of its application. An application for which the Department finds it necessary to engage an expert for alternatives analysis review shall not be considered complete before the Department has received and reviewed the recommendations of the expert.

**Comment 15:** The State employs experts in their various NJDEP Divisions and Bureaus. The proposed regulations state if the Department employs an expert for an application alternative analysis review, the review will not be considered complete before the Department has received and reviewed the recommendations of the expert. This process could set back a project timeline by months and potentially create a backlog of applications at the NJDEP. In addition, the cost of permits fees, consultant costs of preparing an EJIS along with control or mitigative measures that may be necessary under the environmental justice regulations are already exorbitant. In fairness to the applicant, the Department should consider a maximum of “not to exceed twice that of the cost of the initial NJDEP application fee” (currently $3,900.00) for the cost of experts outside of the NJDEP. A limit to the review time for an expert to provide a written response to any information submitted by the applicant should also be specified, similar to the 10-day limit for the response noted in 7.1C-3.4 (b).

**Comment 16:** The citation suggests that the State is proposing regulations that require the regulated community to prepare certain reports, while indicating that its experts may not be capable of reviewing the reports. Moreover, the State gets to determine when such expert review is needed and to bill the regulated party for the cost to hire outside expert review. We note that other jurisdictions’ environmental quality review regulations, for example, the City Environmental Quality Review (CEQR) in New York City, restrict the required review to technical areas where City agencies are competent to review the submitted documents. For example, New York City has determined that it has experts in noise via the NYC Department of Environmental Protection, in open spaces via the NYC Department of City Planning, etc. CEQR does not require evaluation in a technical area that City agencies are unqualified to review.

Further, if the State cannot arrive at a reasonable cap for such expenses (as is recommended in Comment 15), we recommend that this provision be deleted in its entirety. It is feasible that an applicant could retain a subject matter expert (SME) to review existing and proposed conditions, then need to pay a second SME to review its SME’s findings. The applicant would not be able to assess the need for the second SME’s qualifications, potential conflicts of interest, or in any other way select the second subject matter expert. In a worst-case yet conceivable scenario, it is possible that the applicant would pay fees for both SMEs, even if the SMEs arrived at contradictory conclusions or prepared contradictory documents. As such, either the fees should be capped at a reasonable value, the State should bear its own cost for hiring experts to review documents that it (the State) requires, or this provision should be removed from the regulations.
**Comments on Proposed N.J.A.C. 7:1C Rules**
September 2, 2022

**7:1C-9.2 Department Decision**

*If the Department finds that a new facility cannot avoid a disproportionate impact, the Department would be required to deny the permit application absent a finding of compelling public interest. If the Department finds that the facility would serve a compelling public interest pursuant to N.J.A.C. 7:1C-5.3, the Department would impose permit conditions necessary to avoid or minimize contributions to adverse environmental and public health stressors, reduce adverse environmental and public health stressors, and/or provide a net environmental benefit in the overburdened community.*

**Comment 17:** The New Jersey Food Waste Recycling and Food Waste-to-Energy Production Act (Act) was signed into law in April 2020. The Act requires large food waste generators located within 25 road miles of an authorized food waste recycling facility to source-separate their food waste for recycling at a facility capable of handling the material and having the available processing capacity to accept their food waste. Food Waste facilities are likely to accept more than 100 tons of material a day and will be required to obtain a Class C Recycling Center Permit, therefore subjecting them to the EJ regulations in overburdened communities. However, moving food waste processing facilities away from overburdened communities, which are often populated areas, will decrease their profits and in turn discourage their development.

These facilities are serving a public service by diverting food waste from landfills and producing renewable energy or beneficial end-products. There are currently only two authorized food waste recyclers in the State, one is Waste Management CORe® in Elizabeth, NJ and the other is Trenton Renewable Power in Trenton, NJ, both of which are located in overburdened communities. If there is risk in development of a new food waste recycling facility in an overburdened community, due to being subject to the possibility of denial through the EJ regulations, this will discourage development and in turn undermine the intent of the Food Waste Recycling Act. The Department should exempt new food waste recycling facilities from having to demonstrate that they are of compelling public interest. The Department already recognizes that food waste facilities serve a compelling public interest as noted in the Background to the compelling public interest component of the regulation “This standard would enable consideration of projects that address host community needs, including appropriately scaled food waste facilities, public water infrastructure, renewable energy facilities, and projects designed to reduce the effects of combined sewer overflows”. However, the Department has failed to define the term “appropriately scaled”.

We propose that if food waste processing facilities cannot be exempted from proof of compelling public interest, then the definition should be extended to state that “appropriately scaled” means sized to handle the food waste from generators within 25 road miles of the facility. This clarification will help to ease the concerns of food waste facility developers that they will not be restricted in populated areas of the State, to be sized at a lesser capacity than that of which could handle food waste from large generators within 25 road miles of the facility.
Hello,

Please see attached a word document of the New Jersey Progressive Equitable Energy Coalition's ("NJPEEC") comments on the proposed Environmental Justice Regulations, submitted on behalf of NJPEEC by the Eastern Environmental Law Center ("EELC"). Thank you very much for the opportunity to participate in this important process.

All the best,

**Maggie Broughton**  
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September 3, 2022

VIA ELECTRONIC MAIL
Melissa P. Abatemarco, Esq.
Attn.: DEP Docket No. 04-22-04
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, NJ 08725-0402

New Jersey Department of Environmental Protection
rulemakingcomments@dep.nj.gov

Re: DEP Dkt. No. 04-22-04
The New Jersey Progressive Equitable Energy Coalition’s Comments on New Jersey’s Proposed Environmental Justice Regulations at N.J.A.C. 7:1C-1.1 et seq.

Dear Ms. Abatemarco and DEP Officials,

Eastern Environmental Law Center (“EELC”) submits this comment on behalf of its client, the New Jersey Progressive Equitable Energy Coalition (“NJPEEC”), a Black and Brown-led coalition that works to bridge the equity gap in energy and climate justice arenas to ensure inclusivity from the inception to implementation of policies and proposed energy reforms.¹

NJPEEC largely supports the proposed implementing rules for New Jersey’s 2020 Environmental Justice Law (“EJ Law”), codified at N.J.S.A. 13:1D-157 et seq.; however, NJPEEC proposes a number of changes that would help ensure that the regulations are specific, enforceable, and the most protective of New Jersey’s overburdened communities (“OBCs”). Specifically, NJPEEC Chairman Marcus Sibley and the coalition’s steering committee of dedicated NJ climate and justice leaders including Maria Santiago-Valentin, propose changes to the public participation process, the enforcement mechanisms and violations provisions, and the process for assessing environmental and public health stressors that would ensure the EJ Law maintains its strength and enforceability through time.

The purpose of the EJ Law and these implementing regulations is not to facilitate the development of polluting industries in OBCs but, rather, to create a framework for sustainable and responsible development that allows OBCs to recover from the historic over-siting of polluting facilities in their neighborhoods. Accordingly, the regulations should (i) contain explicit language that widens the reach of public notice and makes all Environmental Justice Impact Statements (“EJISs”), permit applications, final permits, and relevant information publicly available; (ii) require the applicant to facilitate a minimum of two public hearings; (iii) create

2 N.J.A.C. 7:1C-1.1 et seq.
3 See N.J.S.A. 13:1D-158(2) (defining Overburdened Communities as those with (1) at least 35% of households qualifying as low-income; (2) at least 40% of residents identifying as minorities; or (3) at least 40% of households being categorized as low-income); N.J.A.C. 7:1C-4.1–4.3, 7:1C-5.2(b), 7:1C-6.1, 7:1C-8.1, 7:1C-9.4, app.
4 N.J.S.A. 13:1D-157(1) (stating that the policy of the 2020 Environmental Justice Law is to “correct [the] historical injustice” of New Jersey’s low-income communities and communities of color having been subject to disproportionately high environmental and public health stressors).
6 N.J.A.C. 7:1C-4.2(a)(1)–(2), 7:1C-4.2(b).
new positions within the Department of Environmental Protection ("DEP") to assist in dissemination of public notices and information, and industry oversight; (iv) explicitly state in the compelling public interest exception that specific economic factors will not be considered; (v) allow DEP to deny permits for facility expansions and to deny permit renewals;\(^7\) (vi) impose monitoring, reporting, and recordkeeping requirements on applicants in a manner similar to other state and federal environmental laws;\(^8\) (vii) create additional consequences and accountability mechanisms for noncompliance, such as monetary penalties and the establishment of a public list of violators;\(^9\) and (viii) mandate updating data collection methods to ensure there is adequate, complete, and meaningful data to create baselines for the analysis of environmental and public health stressors.\(^{10}\)

I. The Public Participation Process Must be Expanded to Include Modern Methods of Notice and Greater Public Access to Project Information

The proposed regulations require that the permit applicant publish notice in limited ways that do not utilize the full range of technology that applicants and DEP have at their disposal to

\(^7\) See N.J.A.C. 7:1C-5.2(b) ("Where the control measures proposed by the applicant [for a new facility], [DEP] shall deny the subject application . . . unless the applicant demonstrates that the proposed facility will serve a compelling public interest in the [OBC].") (emphasis added); N.J.A.C. 7:1C-6.2(b) ("Where the control measures proposed by the applicant [for an expanded facility] cannot avoid a disproportionate impact, [DEP] shall impose conditions [on the permit].") (emphasis added); N.J.A.C. 7:1C-8.2(b) ("Where the control measures proposed by the applicant [for a major-source permit renewal], [DEP] shall impose conditions [on the permit].") (emphasis added).

\(^8\) See 33 U.S.C. 1318 (stating the requirement in the Federal Clean Water Act for owners or operators of point sources of water pollution to maintain records, create reports, install monitoring equipment and methods, sample water effluents, and provide other necessary information to the Administrator of the Environmental Protection Agency); see also N.J.A.C. 7:14A-6.5 (outlining NJPDES monitoring requirements), 7:14A-6.6 (outlining NJPDES recordkeeping requirements); N.J.A.C. 7:26-2.13 (New Jersey state solid waste regulations requiring that "[e]ach solid waste facility permittee shall maintain a daily record of wastes received.").

\(^9\) See N.J.A.C. 7:14-8.3 (providing the process by which DEP can assess civil penalties and other costs against violators of the state Water Pollution Control Act); N.J.A.C. 7:26-5.2 (outlining procedures for determining civil penalties under the state Solid Waste Management Act); A901 Debarment List, N.J. Dep’t Envt’l Prot https://www.nj.gov/dep/dshw/a901/A901debarmentlist.pdf (maintaining a list of individuals associated with organized crime who may no longer participate in the solid waste industry in New Jersey because of those associations) (last visited Aug. 15, 2022).

\(^{10}\) See N.J.A.C. 7:1C appx.
reach community members. Applicants should also be required to disseminate notices and project information to a wider audience through a specific list of local community, conservation, and environmental justice (“EJ”) groups; and to property owners and residents within at least 1,000 feet of the facility. Notice should also be provided to government entities and public and private utilities, which already engage in outreach to OBCs and provide residents with notices of important events and projects. Further, while it is appropriate for notices to contain brief summaries of information related to the proposed or existing facility, applicants should be required to make the entire completed permit application, EJIS, and any other relevant information—as well as the final permit itself, if granted by DEP—publicly available on the internet.

As the proposed regulations stand, applicants are only required to publish, at least 60 days before the public hearing, “notice of the [public] hearing in at least two newspapers circulating within the [OBC], including, at a minimum, one local non-English language newspaper in a language representative of residents of the [OBC], if applicable.” Applicants must also provide

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11 See Id. 7:1C-4.1.
12 See e.g., Email Updates, N.J. Dep’t Envt’l Prot. https://public.govdelivery.com/accounts/NJDEP/subscriber/new (providing a way for interested parties to sign up for email updates from DEP on a number of topics) (last visited Aug. 15, 2022); NJ Environmental Protection (@nj.dep), Instagram https://www.instagram.com/nj.dep/?hl=en (showing DEP’s posts on the social media platform, Instagram) (last visited Aug. 15, 2022).
13 N.J.A.C. 7:1C-4.1(a)(iv) (stating that, as proposed, the regulations only require residents within 200 feet of a facility to be notified).
15 N.J.A.C. 7:1C-4.1(b) (outlining multiple pieces of information that must be included in public notices including a general description of the facility, a map with the location and address of the facility, and a brief summary of the prepared Environmental Justice Impact Statement).
16 Id. 7:1C-4.1(a)(1), 7:1C-4.1(a)(1)(ii) (emphasis added).
notice to all property owners and residents within 200 feet of the proposed or existing facility, post a sign at the site, and “[p]rovide notice through other methods identified by the applicant to ensure direct and adequate notice to individuals in the [OBC].” These three notice methods, under the proposed regulations, are the only ways the applicant is required to relay information to the impacted community. The proposed regulations also require the applicant to provide notice to DEP, the relevant governing body, and the municipal clerk, and to provide the municipal clerk with a copy of the facility’s EJIS as well.

Providing adequate notice and information from DEP and the applicant according to these proposed changes would be consistent with the United Nations’ (“UN”) policy on Free, Prior, and Informed Consent (“FPIC”) that the UN recognizes and abides by when interacting with or otherwise impacting Indigenous communities. This policy outlined in the UN Declaration on the Rights of Indigenous Peoples (“UNDRIP”) states generally that when states take actions that could potentially impact Indigenous communities, that they must obtain the FPIC of those communities. FPIC is an international right retained by Indigenous peoples that allows them to “give or withhold consent to a project that may affect them or their territories,” that may be withdrawn by these communities at any point, and allows Indigenous Peoples to “negotiate the conditions under which [state] projects will be designed, implemented, monitored and evaluated.” For example—and very relevant to the EJ regulations—, Article 19 of UNDRIP states that:

18 Id. 7:1C-4.1(a)(1)(iii).
States shall consult and cooperate in good faith with the [I]ndigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.22

Articles 10, 11(2), 28(1), 29(2), and 32(2) also use the FPIC standard to ensure that any development, land and resource use, relocation, and other state actions are only taken when states cooperate with and obtain the free, prior, and informed consent of the potentially impacted Indigenous communities.23

The public notice, hearing, and comment processes outlined in the EJ regulations need to reflect the same level of respect and participation for individuals in OBCs as UNDRIP policies do for Indigenous Communities in the international context. The EJ regulations must ensure that residents of OBCs provide DEP with their free, prior, and informed consent about projects that could increase environmental and public health stressors in their communities. In order to ensure DEP has the consent of OBCs, the public participation processes in the EJ Law must be very strong and provide full and transparent information to communities, along with multiple opportunities for DEP to consult with OBCs before imposing historically harmful polluting facilities on them and their environments. Currently, the proposed regulations do not go far enough to provide OBCs with an amount of deference, communication, or transparency that they need to be fully informed of the projects happening in their communities and the impacts those projects on their health and environment. Therefore, the final regulations should incorporate the following changes to ensure that the public participation processes mirror the UN’s FPIC standard and that OBCs are adequately informed about and part of DEP’s decision-making process.

23 See Id. arts. 10, 11(2), 19, 28(1), 29(2), 32(2) (these provisions additionally provide for redress where Indigenous Communities were not consulted and where states did not obtain Indigenous Peoples’ FPIC before taking action).
A. DEP should Provide Notice to all Residents and Property Owners within 1,000 Feet

Consistent with the recommendations of the Ironbound Community Corporation, Clean Water Action, New Jersey Environmental Justice Alliance, and the New Jersey Chapter of the Sierra Club; and as voiced by Anjuli Ramos-Busot at the Newark Public Hearing on July 27, 2022; NJPEEC supports mandatory notice to all residents and property owners within 1,000 feet—not the currently mandated 200 feet—of any facility.\textsuperscript{24} Expanding this radius would be appropriate because of the widespread impacts of pollution—especially air pollution—, and would be consistent with current DEP practices. Specifically, Ramos-Busot said the following at the Newark Public Hearing in support of a 1,000 foot notice requirement:

The public notice, as stated in the rule, it just says up to 200 feet to provide notice to the neighboring communities. In reality, it should really be way more than that, at a minimum, 1,000 feet, and the reason for that is very technical. The New Jersey DEP, when they’re evaluating an air pollution control permit [], conducts an air dispersion modeling and a risk assessment and that eventually informs the actual permits and informs the emission rates for each air contaminant that that facility is allowed to emit. And so, in that dispersion modeling, the Department goes [] up to five kilometers, which, if you convert that into feet, that’s 16,000 feet. And, in my personal experience of what I have seen, these evaluations often show health impacts up to thousands and thousands of feet from the center of the facility. So the least [] the New Jersey DEP can do is provide notice to what their actual evaluations go up to, so, thousands and thousands of feet.\textsuperscript{25}


Anjuli Ramos-Busot is the Director of the New Jersey Chapter of the Sierra Club and a former climate research scientist and air quality specialist with the New Jersey DEP. https://www.sierraclub.org/new-jersey/blog/2021/12/sierra-club-new-jersey-announces-new-chapter-director.

\textsuperscript{25} Discover DEP-New Jersey Department of Environmental Protection, \textit{NJDEP Environmental Justice Rule Public Hearing (07/27/22, 6:00pm, Newark)}, YouTube (July 27, 2022) https://www.youtube.com/watch?v=d7DUSJnC_Q (showing Ramos-Busot speaking on the 1,000 foot buffer at approximately 26:15).
As Ramos-Busot testified to, DEP’s current Technical Manual on air pollution modeling and risk assessments includes a health risk assessment as a “special modeling consideration” that may need to be done for certain pollutants, which supports a 1,000 foot notification radius.26 These health risk assessments need to measure the impact of air pollutants from facilities on “sensitive receptors,” which include residences, hospitals, schools, and parks.27 For example, the Hess Newark Energy Center conducted air modeling and health risk assessments concerning, for instance, Newark’s Ironbound Community.28 In this application, the applicants used “[a]ir dispersion modeling . . . to determine which EJ communities have the potential to be significantly impacted by the project.”29 The permit also determined that this modeling, coupled with a cumulative impacts analysis, would have a significant impact on areas “about 1500 feet to the north, east and south of the facility.”30 This is just one example where a polluting facility was predicted to have significantly greater than a 200 foot impact on its surroundings, and even greater than a 1,000 foot impact. Therefore, consistent with Ramos-Busot’s comments and DEP’s current air modeling and risk assessment practices, DEP must mandate notice to all property owners and residents living within 1,000 feet of any proposed or existing facility covered by these regulations, because the significant impacts of air pollution reach communities much farther away than 200 feet.

27 Id.
29 Id.
30 Id. (emphasis added).
B. DEP and the Applicant should Provide Automatic Notices to Interested Persons through Cell Phones and Email, and Should Publish Project Information on the Internet and Social Media

Given the current state of available technology, the notice requirements in the proposed regulations are wildly insufficient. In DEP’s statement on the regulations, DEP asserts that “public notice and hearing provisions are essential to accomplish the [EJ Law’s] purpose of ensuring meaningful public participation by members of the [OBC].” DEP has recognized it is imperative that this law achieves a new level of meaningful public participation; therefore, DEP and the applicant should be required to provide public notice through all reasonable means, including electronic ones.

For example, DEP maintains Instagram pages, environmental permitting bulletins, email listservs for various topics, and regularly-updated website pages. The Office of Environmental Justice within DEP also recently launched a biweekly email newsletter. This newsletter should include all notices of permit applications covered by the EJ Law in its “Summary of Important Dates” with hyperlinks that will bring the recipient to relevant project information. Other State government entities also send out automatic cell phone alerts in emergency events, for example, AMBER Alerts disseminated by the New Jersey State Police. Because of the urgency of the

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33 Relevant project information includes the whole permit application, EJIS, any supplemental information required by the regulations, the conditions DEP applies to any granted permits, and the full granted permit, if applicable. Email Updates, N.J. Dep’t Envt’l Prot. https://public.govdelivery.com/accounts/NJDEP/subscriber/new (showing where individuals can sign up for automatic email notifications from DEP on various topics, including environmental justice).
34 Id.
climate crisis and the severe impact that the covered facilities have on OBCs, a similar alert structure should be utilized by DEP to notify the impacted communities when a new or existing facility is seeking a permit in their community. Automatic alerts would ensure that residents of impacted counties are sufficiently notified. These emergency notifications should also include hyperlinks to information on how to access the full notice, permit application, EJIS, and other relevant information.

Both DEP itself and the DEP Commissioner, Shawn LaTourette, maintain Instagram pages where notices and general information on projects covered by the EJ Law could be posted.36 Additionally, DEP’s Office of Environmental Justice maintains a number of helpful webpages that outline important environmental justice issues, including a list of permits covered by Administrative Order 2021-25 (“AO 2021-25”)—the interim rule that regulates facilities and permits under DEP’s current powers before the EJ Law’s rules are fully implemented—and hyperlinks to relevant information.37 DEP should make mobile versions of their websites to make the information on those websites easily accessible by cell phone. Cell phones are the most commonly owned computing device according to a 2018 report from the U.S. Census Bureau, so it is very appropriate under the EJ Law’s meaningful public participation policy to have all project information (i.e. the permit application, EJIS, etc.) easily accessible on and appropriately formatted for cellular devices.38 DEP very clearly has the technical capability and expertise to make information and resources widely available to the public through the internet and social media.

Publication of this important and highly relevant information needs to be mandated in these regulations so the public is guaranteed to have access to the information that impacts them and their communities. Requiring such methods of notice would also allow younger generations that may not utilize newspapers as their primary source of news and information to participate more fully in hearings and comment processes. Internet resources also have more staying power, meaning that they can be accessed time and time again in the same place, whereas physical newspapers are usually limited in quantity and contain new information with each publication. Mandating both types of notice (i.e., internet and newspapers) would greatly improve the accessibility and availability of information, which is consistent with the purpose of the EJ Law.39

C. The Applicant Should be Required to Notify a Set List of Local Environmental Justice, Community, and Conservation Groups About the Project

The burden of providing notice should not be solely on DEP’s shoulders, but on the applicant’s as well. The applicant should be required to provide notice to a predetermined, publicly-available list of local environmental justice (“EJ”), community, and conservation groups. Larger state-wide and regional groups on the list should be notified to promote awareness of projects, and, at the very least and more importantly, local county-level groups should be notified. A minimum number of three local groups should be listed per county to ensure that the local community has adequate access to information, resources, and an organizing group. Additionally, whenever a project is proposed in a specific county, the three county-level organizations should be notified automatically, along with all listed regional- and state-wide entities. For example, if a

0laptop. (“Smartphone ownership surpassed ownership of all other computing devices. Smartphones were present in 84% of households, while 78% of households owned a desktop or laptop.”).

39 See N.J.S.A. 13:1D-157 (“[T]he State’s overburdened communities must have a meaningful opportunity to participate in any decision to allow in such communities certain types of facilities which, by the nature of their activity, have the potential to increase environmental and public health stressors.”) (emphasis added).
new or existing facility is seeking a permit in Hudson County, a minimum of three local Hudson County EJ, community, and conservation groups will receive automatic notice of the project, and the regional- and state-wide entities will be notified as well. This list should be initially set and determined by DEP with meaningful input from EJ, community, and conservation groups and the communities those groups serve. Meaningful input could include stakeholder meetings, surveys, or other information-gathering from these groups and communities.

Currently, the proposed regulations only vaguely require the permit applicant to:

[Provide] notice through other methods identified by the applicant to ensure direct and adequate notice to individuals in the [OBC] including, but not limited to, providing information directly to active community groups or organizations, automated phone, voice, or electronic notice, flyers, and/or utilization of other publications utilized within the [OBC].

Under this language, applicants might determine that additional notice is not necessary simply because that would make the process easier for the applicant or invite less public scrutiny of the applicant’s proposed project. In the interest of providing clear and inclusive public notice, DEP must mandate that applicants notify a minimum number of community groups through specific electronic and written means, rather than giving the applicant the power to determine what “other methods” are appropriate to ensure “direct and adequate notice” to the communities they will impact. Communities have the right to have reliable access to all information on the projects happening in their communities and DEP has the resources and authority to make that a reality. Therefore, the applicant should be required to provide notice to a predetermined, publicly-available list of local environmental justice, conservation, and community groups, in addition to

40 N.J.A.C. 7:1C-4.1(a)(1)(vi) (emphasis added).
41 Id. 7:1C-4.1(a)(1)(vi).
notice via internet, automatic cell phone alerts, and social media, and the notice methods already identified in the proposed regulations.42

However, this list should not be set in stone after its initial publication. More environmental justice, conservation, and community groups that are interested in projects covered by the EJ Law should have the opportunity to be put on this list at any point after the regulations are implemented. In order to allow more groups to be added, DEP should create and make available an application requiring basic information about the groups and why those groups should be included. DEP currently maintains a list of documents and forms—including a variety of environmental permit applications, forms for residential water structure licenses, well-driller license applications, and many more—and DEP could easily add a section for Environmental Justice and attach the new application form for groups to receive automatic notifications under the EJ Law and regulations.43 Like the other forms on this webpage, a PDF of the application form should be listed, along with a physical address and email address that the form should be sent to.44 DEP should not impose any fines to apply so that any group that wishes to apply may do so without having to consider costs.

D. Government and Commercial Entities that Already Provide Notices to Communities or Already Engage in Targeted Outreach to Communities Should be Notified and Provide Notice to OBCs About Relevant Projects

Existing entities with experience providing notice to communities and engaging and connecting with targeted groups within communities should be provided with notice of projects in OBCs and should be utilized to provide notice and educate those communities about these projects. For example, public and private utilities already provide timely notices to residents on important matters. These companies should partner with DEP to ensure that notifications on projects go out to customers and residents in areas where announcements are made. For instance, electric utility companies like PSE&G regularly provide notice to their customers for billing and outage notifications, and customers can enroll in an alert system, which will send them updates on power outages in their communities, among other things.45 Water and sewer utilities, public and private, should also be included, among other utilities.

Jersey City Water and Sewerage Services provides a great example of how other utilities already provide notice to communities of important projects, which should include notices of projects covered by the EJ Law once implemented. Jersey City Water and Sewerage Services, like PSE&G, allows residents to sign up for important alerts, but also posts notices of community meetings, road closures, water and sewer main replacements and shutdowns, and other important and pressing information.46 Since public and private utility services already have alert systems and post notices that are pertinent to the community, including those for community meetings,

45 MyAlerts, PSE&G, https://nj.myaccount.pseg.com/myalertsloggedout (providing instructions on how PSE&G customers can sign up for MyAlerts, which allows them to report power outages, receive updates on outages, get reminders of bill payments, and to opt-in to receive other alerts) (last visited Sept. 1, 2022).
these services should be utilized to provide yet another avenue through which residents and community members can become informed about important events and projects happening in their communities that impact their health and well-being.

Additionally, the New Jersey Governor’s Office houses an Outreach Department, with different Aides specializing in outreach to certain communities, including Aides who engage youth and faith-based institutions. These Aides should be notified and tasked with providing that notice to the specific groups they interact with. For example, the expertise and resources of the Aide specializing in outreach to youth and youth groups should be utilized to educate New Jersey’s young people on environmental justice issues and should help reach and engage youth in the public participation process under the EJ Law. Doing so would ensure that this demographic of individuals is not left out of the conversation; youth are especially susceptible to the impacts of polluting facilities in their communities and the EJ Law recognizes this fact in its policy:

[H]istorically, 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[,] [and] that, as a result, residents in the State’s [OBCs] have suffered from increased adverse health effect including ... asthma, cancer, elevated blood lead levels, cardiovascular disease, and developmental disorders[,] [and] that children are especially vulnerable to the adverse health effects caused by exposure to pollution, and that such health effects may severely limit a child’s potential for future success.47

Therefore, New Jersey’s youth should be encouraged and given the resources to participate in government decision making processes through the Outreach Department in the Governor's Office.

The EJ regulations should also include required notification to the Aide in the Outreach Department specializing in outreach to faith-based community groups. Because of faith-based and community-based organizations’ close ties to their communities, these entities would be very

effective in sharing information on projects covered by the EJ Law to the communities they serve. One example is Waterspirit, a Ministry within the Sisters of St. Joseph of Peace that works to educate and advocate their community about “the importance of the right to clean, safe water for the poor and disadvantaged.”⁴⁸ Since the Outreach Department within the Governor’s Office already has Aides that work with faith-based groups, this Aide should be additionally responsible for educating these entities and notifying them of projects that could negatively impact their communities.

E. Notices Made in Advance of Public Hearings Should Provide Information on Technical Assistance Access for Community Members and Should Contain More Project Information

More information should be required to be made publicly available before any public hearings on a proposed project take place. The proposed regulations state that the public notice must only contain the name of the applicant; when and where the public hearing will be held; a map of the facility including the address, municipality, county, block, lot, and size of the property; a short summary of the EJIS and any required supplemental information; how an interested party can obtain a copy of the EJIS and supplemental information; a statement inviting people to participate in a public hearing with information on how to submit a comment; and “[a]ny other information deemed appropriate by [DEP].”⁴⁹ This is not enough information for the public to be truly informed before any public hearings, and is yet another reason that the full permit application and EJIS should also be made available when public notice of the project is given.⁵⁰

Further, to be truly accessible to the community, technical assistance should be made available and information on how to seek such assistance should be included in the notice. The

⁴⁹ N.J.A.C. 7:1C-4.1(a)(1), 7:1C-4.1(b).
⁵⁰ Id. 7:1C-4.1 (stating that public notice is required to be given by the applicant to the required parties and using required methods 60 days in advance of the scheduled public hearing under the proposed regulations).
EJ Law itself provides that DEP may issue fees to cover the costs of implementing the EJ Law “including costs to provide technical assistance to permit applicants and [OBCs].”51 The fee calculation provision in the proposed regulations also incorporates this issue, stating that DEP’s EJIS review budget should include “costs to provide technical assistance to . . . [OBCs],” consistent with the EJ Law.52 However, what is not included is how information on technical assistance will be made available to OBCs, in spite of the costs being incorporated into DEP’s budget. To make the answer to this question clear in the final regulations, DEP should include a provision in the public participation requirements at N.J.A.C. 7:1C-4.1 that specifies exactly how community members can access technical assistance on permit applications and EJISs well in advance of public hearings.53 Doing so will allow community members attending hearings to have a full understanding of the project application and the EJIS when they arrive, which will lead to a truly robust and meaningful public participation process in line with the policy of the EJ Law.54

All of the information currently required by the proposed regulations should be included with the notice, as well as the full permit application, EJIS, supplemental information, and information on how to access technical assistance to interpret the application and EJIS. Additionally, all of these resources should be provided by the applicant and posted on an internet database, maintained by DEP, similar to DEP’s current list of public hearing notices under AO 2021-25.55 The permit application, EJIS, notice of the public hearing, technical assistance access, and all other relevant information should also be posted on the applicants’ website, just as the Passaic Valley Sewerage Commission did for an AO 2021-25 hearing for its fossil-fuel backup

51 N.J.S.A. 13:1D-160(g) (emphasis added).
52 N.J.A.C. 7:1C-10.3(a)(1).
53 Id. 7:1C-4.1(a).
power generating facility. Based on the existence of this list, which names the date, location, applicant, mode (in person or virtual), and hyperlinks to any relevant public documents, DEP has the technology and know-how to create a similar webpage for applicants for projects covered by the EJ Law. This webpage is a great start and a great example. DEP should create and maintain a similar webpage with public hearing notices and information, full permit applications, EJISs, supplemental information, and technical assistance information at least 60 days before any public hearings when the notice is initially required to be posted. Further, on this same webpage, DEP should post the finalized permit if it grants the permit application.

Explicitly including these steps in the final regulations would allow the community to go into public hearings fully informed about the purposes of the facility, its impacts on the community, and to formulate any questions they might have for the applicant. This will result in a more robust and meaningful public process than would likely happen under the proposed regulations that is consistent with the EJ Law and DEP guidance. According to the DEP guidance document, “Furthering the Promise,” “meaningful involvement” means “that people have an opportunity to participate in decisions about activities that may affect their environment and/or health; . . . community concerns will be considered in the decision-making process; and decision makers will seek out and facilitate the involvement of those potentially affected.” DEP will truly facilitate meaningful involvement if these changes are included in the final regulations, consistent

57 N.J.A.C. 7:1C-4.1(a)(1).
with its guidance and the policy of the EJ Law. More individuals will be able to learn about the application and the facility through electronic and physical methods of public notice; specific mandates for the applicant to notify local EJ, community, and conservation groups; and a greater quantity of accessible information will be available to the public.

II. DEP Should Require at Least Two Public Hearings to Give the Applicant an Opportunity to Incorporate Community Feedback into the Permit Application

Although providing all of the information listed above well in advance of any required public hearings would increase community awareness and participation, there should also be at least two total mandatory public hearings. Facilitating at least one additional public hearing would allow the community to observe and provide comments on how the applicant’s plan changes based on the information the applicant receives from the community in the first hearing. Currently, the proposed regulations require that the applicant only hold one meeting in the relevant OBC on a weekday at 6PM EST or later.

However, it would greatly benefit the community if there were a minimum of two required public hearings. The first public hearing would allow the applicant to state their plans to an informed audience of community members and to receive feedback on those plans. This would closely reflect the current requirements where the applicant must “provide a clear, accurate, and complete presentation of the information contained in the EJIS,” any supplemental information, and “accept written and oral comment from any interested party regarding the application” at the public hearing. In addition to this first hearing, there should be a second required hearing that allows the applicant to demonstrate that they took the feedback and recommendations from the

60 N.J.A.C. 7:1C-4.2(a)(1)–(2).
61 Id. 7:1C-4.2(b).
community seriously, and have incorporated this feedback into the plans for the facility to meaningfully address the community’s concerns. This would facilitate continued engagement by the applicant with the community and would mandate that the applicant treats the public hearings and overall public participation process as more than just a box to check to get a permit.

III. **DEP Must Add Positions to its Department to Increase Capacity and Ensure that Information Updates and Notices are Timely and that DEP has Adequate Oversight of Facilities**

To ensure that DEP actually has the capacity to create social media posts on public notices, maintain websites and update them with information relevant to permit applications, to handle other tasks related to the EJ law, and do so in a timely and meaningful way, new positions should be added to DEP’s Office of Environmental Justice in order to accommodate these obligations. At this moment, the only explicit position housed in DEP’s Office of Environmental Justice is Director, which is filled by Kandyce Perry.\(^\text{62}\) One person can surely not shoulder all of this work, nor should it fall to one person or a small group of people because it is an immense amount of work that needs to be done in a timely fashion. DEP should create a webmaster position so that one or multiple individuals can focus entirely on uploading information on applications to DEP’s and the applicants’ websites; looking over requests from the community for technical assistance on EJISs and permit materials; maintaining DEP’s websites and webpages with this information; looking over applications to be added to the list of notified community, conservation, and EJ groups; and other like tasks. DEP’s Division of Land Resource Protection has a webmaster that the public can submit questions to, and multiple federal government entities also have webmasters.

maintaining their websites, for example, the Department of Energy and Department of Justice.\textsuperscript{63} DEP should also create a social media position so one individual can focus on creating content for DEP’s social media pages on the EJ Law and any notices for public hearings on covered projects.

There should also be positions created at DEP within the Office of Environmental Justice—or another appropriate office—in order to facilitate oversight of facilities covered by the EJ Law. DEP needs to have capacity to ensure that proposed and existing facilities are complying with the EJ Law and to effectuate the enforcement mechanisms currently in the regulations, as well as the ones proposed in this comment.\textsuperscript{64} Industries should not feel like they are able to slip through the cracks or skip any steps in the processes required by the EJ Law, and one way DEP can be sure that industries attempting to do so are held accountable and are fully complying with the law is to add individuals on its staff that will exclusively focus on industry oversight.

Currently, the Office of Environmental Justice is charged with supporting EJ in New Jersey and, more specifically, to conduct “outreach and educational efforts to municipalities and community-based organizations”; to aid in the “development and/or implementation of department policy, regulations, and procedures to increase opportunities for meaningful public participation”; and to inform “community members of opportunities for public participation.”\textsuperscript{65} These pre-delegated duties to the Office of Environmental Justice make it a great candidate to house additional positions to help distribute information to communities, which will help bolster the public participation process and bring as many community members to the table as possible.


\textsuperscript{64} N.J.A.C. 7:1C-9.4(b) (describing consequences of noncompliance with the EJ Law and regulations, currently only limited to permit suspension or revocation).

IV. DEP Must Not Take Economic Benefits into Consideration under the Compelling Public Interest Exception for New Proposed Facilities

The proposed rules allow DEP to approve permits for new facilities, even if they cannot avoid disproportionate impacts on the OBCs, under a “compelling public interest” exception.\(^{66}\) This exception states that DEP cannot grant permits for new facilities that create disproportionate impacts “unless the applicant demonstrates that the proposed facility will serve a compelling public interest in the [OBC].”\(^{67}\) Facilities serving a compelling public interest have to meet three criteria: the facility must (1) “primarily serve an essential environmental, health, or safety need[] of the individuals in an [OBC]”; (2) be “necessary to serve the essential environmental, health, or safety needs of the individuals in the [OBC]”; and (3) there cannot be any “feasible alternatives that can be sited out of the [OBC] to serve the essential environmental, health, or safety needs of the individuals in an [OBC].”\(^{68}\) Alternatively, the rules also provide that proposed facilities that “directly reduce adverse environmental and public health stressors in the [OBC]” may be considered to serve a compelling public interest and meet the requirements of this exception.\(^{69}\)

The regulations also provide that DEP may—but is not required to—consider public input as to whether or not the public interest exception is met and to take into account whether there is a “significant degree of public interest in favor or against” the facility from residents of the OBC.\(^{70}\) However, there is a significant omission in this section of the regulations. The definition of compelling public interest states that “the economic benefits of the proposed new facility shall not be considered in determining whether [the facility] serves a compelling public interest in an

\(^{66}\) See N.J.A.C. 7:1C-5.3.
\(^{67}\) Id. 7:1C-5.3(a) (emphasis added).
\(^{68}\) Id. 7:1C-5.3(b)(1)–(3).
\(^{69}\) Id. 7:1C-5.3(c).
\(^{70}\) Id. 7:1C-5.3(d).
DEP elaborated on this definition in its statement on the regulations, noting that DEP “determined to expressly exclude reliance on economic factors to justify applicability of the compelling public interest exception.” Specific economic benefits that DEP cannot consider include “employment opportunities, increased municipal tax revenue, or increased demand for services.” DEP also included in the statement examples of facilities that might fit the compelling public interest exception including “appropriately scaled food waste facilities, public water infrastructure, renewable energy facilities, and projects designed to reduce the effects of combined sewer overflows.”

NJPEEC strongly supports DEP’s decision to expressly exclude economic benefits from the compelling public interest exception analysis. This decision was well-reasoned because, historically, even when polluting facilities promise jobs and economic revitalization, they fail to deliver. Oftentimes, the jobs offered are dangerous and expose employees to harmful pollutants at close proximity. Additionally, the few—and often temporary—jobs that the facilities covered by the EJ Law offer to communities comes at a great price; all members of the community, whether or not they directly or indirectly benefit from the jobs or tax revenue created, are still subject to the pollution created. The practice of siting polluting facilities and offering high-risk jobs is commonplace in Newark’s Ironbound community. For example, the Covanta waste incinerator, which began its incineration program in 1990 and has significantly contributed to air pollution in

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71 N.J.A.C. 7:1C-1.5 (emphasis added).
73 Id.
74 Id. at 15.
Newark, took advantage of desperate residents by offering high-risk jobs. Thus, Newark’s Covanta incinerator is one of the many examples of the promise of jobs not outweighing the public health and environmental harms experienced by the whole community.

The health and environmental impacts of this pollution on OBCs is not outweighed by any economic benefit these industries say they provide to communities, and the regulations for the EJ Law must explicitly reflect that. Therefore, despite DEP’s recognition of the importance of excluding economic benefits from the compelling public interest exception analysis, the regulations should be revised to make it clear that specific economic benefits—e.g. job creation and municipal tax revenue—will not be considered. DEP should also include in the regulations the types of facilities that it may consider to fit this exemption—e.g. renewable energy facilities, public water infrastructure, etc.—so that this exception is more narrowly defined.

It is especially important for DEP to make these regulations as specific as possible and to incorporate the language of the statement in the actual regulations because the statement does not have the effect of law. In other words, although DEP recognizes that it should not and will not take economic benefits into consideration in this analysis, once the rules are officially adopted, DEP will not be legally required to comply with this statement. Although the statement may be used to interpret the regulations once implemented, it would be best and most efficient to avoid this step altogether by including these factors in the regulations themselves. The regulations

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76 Arqum Masood, Newark’s Ironbound Community Loses Against Incinerator, Envt’l Justice History in Am., https://ejhistory.com/newarks-ironbound/ (“Corporations such as Covanta have taken advantage of [desperate citizens] and tried to mask its environmental impact with the jobs it has provided for the community.”) (last visited Sept. 3, 2022).

77 Id. (“The [Covanta] incinerator has not only harmed the health of people living outside the Incinerator, but it has also poisoned its workers. The Incinerator was built on the promise that it would provide 500 jobs during construction and 60 jobs once constructed and operating. However, it is providing these jobs at the cost of its workers’ health.”) (last visited Sept. 3, 2022).

78 N.J.A.C. 1:30-2.5 (“The statements for a proposed rule . . . and for any change upon adoption of a rule . . . are not part of the rule, but are intrinsic parts of the proposal and adoption has published in the [New Jersey] Register. As such, these statements may be used in interpreting the rule.”).
should be as clear and explicit as possible so that there is no need for the courts or other entities to have to interpret them; this will avoid unnecessary litigation and will allow for the quick and simple interpretation, application, and enforcement of the EJ Law.

V. **DEP Must be Allowed to Deny Permits for Expansions and Permit Renewals for Facilities Creating Disproportionate Impacts on OBCs in order to Fully Implement the Intent and Policy of the EJ Law**

While the proposed regulations *do* provide DEP with the power to impose conditions on facility expansions and permit renewals, this does not go far enough toward *improving* conditions in OBCs and effectuating the State’s public policy of achieving environmental justice.\(^{79}\) The EJ Law itself recognizes that “. . . it is in the public interest for the State, where appropriate, to limit the future placement and expansion of [] facilities [which have the potential to increase environmental and public health stressors] in [OBCs].”\(^{80}\) Similarly, DEP’s “Furthering the Promise” guidance document acknowledges that, in order to further the promise of environmental justice, DEP must “identify and reduce disproportionate environmental and public health stressors[] and identify and increase environmental and public health benefits.”\(^{81}\)

While the proposed regulations would require DEP to deny permits for any *new* facilities determined to have disproportionate impacts on host OBCs, the proposed regulations stop short of explicitly authorizing DEP to *deny* permits for existing facilities—either for facility expansions or major-source permit renewals—that are already operating within and polluting the environment of OBCs.\(^{82}\) Allowing existing facilities, through expansion or permit renewal, to continue

\(^{79}\) N.J.A.C. 7:1C-6.2(b), 7:1C-8.2(b).


\(^{82}\) N.J.A.C. 7:1C-5.2(b) (“Where the control measures proposed by the applicant cannot avoid a disproportionate impact, [DEP] shall deny the subject application.”) (emphasis added); see N.J.A.C. 7:1C-6.1–6.3, 7:1C-8.1–
contributing to disproportionate impacts on OBCs would run contrary to the policy of the EJ Law and DEP’s own guidance. As long as facilities are allowed to create or contribute to disproportionate impacts on OBCs, those OBCs will remain overburdened. Therefore, DEP must have the authority to deny applications for permit expansions and renewals in order to fully effectuate the spirit and intent of the EJ Law. Denial of such permit applications will allow conditions on OBCs to improve, rather than merely maintaining the status quo by continuing to allow existing facilities to pollute in OBCs.

VI. DEP Should Impose Monitoring, Reporting, and Recordkeeping Requirements on Covered Facilities; and Additional Consequences for Violating the EJ Law

Regulated facilities should be subject to additional requirements that would improve DEP oversight and allow facilities to be accountable to the community. The proposed regulations offer limited avenues for holding violators of the EJ Law accountable. The only compliance mechanism currently in the proposed regulations provides that if a facility is found to have violated the EJ Law’s requirements, then the permit they applied for—and in this scenario, obtained—is subject to suspension or revocation.\(^8^3\) This is not sufficient to ensure adequate oversight by DEP and accountability to the OBCs facilities may be allowed to build and operate in. Once facilities get the permits they seek, they should be required to monitor data relevant to the environmental and public health stressors outlined in the regulations, to keep records of this data, and to report such information to DEP regularly.\(^8^4\) This will increase government oversight of operations that are

\(^{8^3}\) N.J.A.C. 7:1C-9.4(b) (“Any violation of the conditions imposed pursuant to this chapter shall constitute grounds for suspension or revocation . . ., or the underlying permitting authorities of any [DEP]-issued permits.”).

\(^{8^4}\) See, e.g., N.J.A.C. 7:14A-6.5 (outlining monitoring requirements applicable to all issued NJPDES permits, including sampling and measurements, analytical testing, installation of monitoring equipment and use of proper monitoring methods, and so forth), 7:14A-6.6 (outlining recordkeeping requirements applicable to all issued NJPDES permits including retaining “records of all monitoring information including all calibration and
permitted in OBCs to ensure facilities are complying with all conditions placed on their permits, as well as to encourage transparency of information and accountability for violations.

These measures would ensure that DEP-imposed conditions on permits are being complied with well after the public participation period concludes. To prevent facilities from fabricating fake data and reports, the regulations should mandate that all monitoring, recordkeeping, and reporting documents are created by a third party chosen by DEP, not the applicant or facility itself. Other state and federal environmental regulations, including the Federal Clean Water Act (“CWA”), New Jersey’s Water Pollution and Control Act (“WPCA”), and New Jersey’s Solid Waste Management Act (“SWMA”), impose similar requirements on facilities. Therefore, imposing monitoring, recordkeeping, and reporting requirements is well within DEP’s expertise and experience. Additionally, these records should be made publicly available on a regularly maintained website or database, similar to or within DEP’s DataMiner, and on the same website that the EJIS, supplemental information, permit application, technical assistance access, and finalized permits as proposed in Section I.B of these comments. Requiring monitoring and reporting will allow for DEP and the community to see any violation of a facility’s permit and any permit conditions imposed by DEP under the EJ regulations.

Additionally, when applicants violate the EJ Law, not only should the permit be suspended or revoked (as the proposed regulations currently provide), but an appropriate monetary penalty

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should be imposed and all interested local community groups should be immediately notified.\textsuperscript{88} In addition to this notification, DEP should maintain a list of all facilities that violate the EJ Law on its website and they should remain on that list even after they come into compliance with the EJ Law.\textsuperscript{89} There should be ramifications for violations beyond what is required in the facility’s permit because the additional measures outlined above will make sure that violating facilities are held accountable both by DEP and the surrounding community. Although DEP has the enforcement authority, residents living in impacted communities have a right to know which facilities are historic bad actors. The publicity of such violations, coupled with adequate monetary penalties and the risk of permit suspension or revocation, should deter applicants from attempting to skirt any of the requirements of the EJ Laws or permit conditions.

VII. The Regulations Must Require Environmental and Public Health Stressor Baselines to be Determined Based on Accurate, Comprehensive, and Timely Data

The proposed regulations define environmental and public health stressors as:

[S]ources of environmental pollution, including but not limited to, concentrated areas of air pollution, mobile sources of air pollution, contaminated sites, transfer stations or other solid waste facilities, recycling facilities, scrap yards, and point-sources of water pollution . . . ; or conditions that may cause potential public health impacts including, but not limited to, asthma, cancer, elevated blood lead levels, cardiovascular disease, and developmental problems in the [OBC].\textsuperscript{90}

The regulations list 26 environmental and public health stressors in the proposed Appendix and provide methods for measuring those stressors and the source of data that the measurements are

\textsuperscript{88} N.J.A.C. 7:1C-9.4(b); see e.g. N.J.A.C. 7:14-8.3 (providing the process by which DEP can assess civil penalties and other costs against violators of the state Water Pollution Control Act); N.J.A.C. 7:26-5.2 (outlining procedures for determining civil penalties under the state Solid Waste Management Act).

\textsuperscript{89} See e.g. A901 Debarment List, N.J. Dep’t Envt’l Prot https://www.nj.gov/dep/dshw/a901/A901debarmentlist.pdf (maintaining a public list of individuals associated with organized crime who may no longer participate in the solid waste industry in New Jersey because of those associations) (last visited Aug. 15, 2022).

\textsuperscript{90} N.J.A.C. 7:1C-1.5.
based on. The analysis of these stressors is the backbone behind determining whether a new or existing facility has a disproportionate impact on OBCs and, therefore, determines whether or not DEP can deny a permit or impose conditions on permits. Therefore, it is imperative that this analysis be based on accurate and timely data. This should be done through regular studies that will be done to update the data supporting the analysis of the 26 stressors. This will ensure that there are sufficient monitoring stations in OBCs to collect data—for instance, air monitoring stations to collect data on ground-level ozone and other listed stressors—and creating lower baselines for stressors over time so that the environmental and public health conditions in OBCs and New Jersey overall improve, rather than plateauing at current levels.

The Chapter Appendix lists one source of data for each of the 26 listed stressors. For example, ground-level ozone is based on a 3-year average of days that are above a standard determined by the “most recent” EPA Ambient Air Quality Summary data. In other words, much of the baseline standards for the environmental and public health stressors in the Appendix are based on dynamic and changing data that needs to be regularly updated to ensure that standards

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91 N.J.A.C. 7:1C appx. The 26 environmental and public health stressors are divided into eight broad categories: (1) Concentrated Areas of Air Pollution; (2) Mobile Sources of Air Pollution; (3) Contaminated Sites; (4) Transfer Stations or Other Solid Waste Facilities, Recycling Facilities, and Scrap Metal Facilities; (5) Point-Sources of Water Pollution; (6) Stressors that May Cause Potential Public Health Impacts; (7) Density/Proximity Stressors; and (8) Social Determinants of Health.

92 A facility is determined to have a disproportionate impact on an OBC—and, therefore, its permit would be subject to mandatory denial by DEP or conditions imposed by DEP—if, when the combined stressor total in the relevant OBC is greater than the number of stressors present in non-OBCs in the county or state. N.J.A.C. 7:1C-1.5 (defining environmental and public health stressors, adverse cumulative stressors, and disproportionate impact). This means, under the proposed regulatory scheme, that the OBC is subject to adverse cumulative stressors and when a facility cannot avoid creating adverse cumulative stressors or contributing to existing adverse cumulative stressors in an OBC that is it or is proposed to be located in, then it has a disproportionate impact on that OBC. Id. If a new facility cannot avoid a disproportionate impact, then DEP must deny its permit. Id. 7:1C-5.2(b). If an existing facility is applying for a permit for an expansion or is applying to renew a major source permit, then DEP must impose conditions on that permit to mitigate the impact the facility will have on the OBC. Id. 7:1C-6.2(b), 7:1C-8.2(b).


94 N.J.A.C. 7:1C appx.
and analyses are accurate, thus, allowing the EJ Law to be as effective and protective of OBCs as possible.\textsuperscript{95} Therefore, the final regulations should contain a provision mandating that data are updated on a regular basis, for example, once every two years or once every five years, or basing stressor analyses on data from sources that are regularly updated, not just the “most recent” data available.\textsuperscript{96}

Similarly, if data are lacking in any one location or concerning any stressor, the burden should be on the applicant to produce data or improve data-collection methods.\textsuperscript{97} This will ensure that the data used in the stressor analysis are up-to-date and accurate by increasing the overall amount of data available—especially in OBCs, where monitoring stations and other methods of data collection may be lacking. Accurate and comprehensive data will result in more accurate analyses, leading to the best implementation and enforcement of the EJ Law.

**Conclusion**

In order to maintain consistency with the legislative intent of the EJ Law and to correct the historical inequities imposed upon New Jersey’s OBCs, NJPEEC calls upon DEP to bolster, add to, and clarify provisions in the proposed regulations regarding public participation, public access to information, adding to DEP’s capacity to effectuate adequate and timely dissemination of information, the compelling public interest exception, DEP’s enforcement authority, violations to incentivize applicants to strictly comply with their permit requirements, and data used to determine baselines for environmental and public health stressors. Doing so will allow more individuals in OBCs to participate in the permitting process and to help shape their communities for the better.

\textsuperscript{95} N.J.A.C. 7:1C appx.
\textsuperscript{96} Id.
\textsuperscript{97} See Air Quality, Energy & Sustainability: Division of Air Quality – Air Monitoring, Official Site of the State of N.J. https://www.nj.gov/dep/airmon/ (stating that New Jersey only operates 30 air monitoring stations throughout the entire state) (last visited Aug. 16, 2022).
This will also allow DEP and the impacted communities to hold accountable those actors that were once able to site polluting facilities in OBCs without consequences. Thank you for this opportunity to provide comments on these important regulations.

Respectfully submitted,

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Hello,

ACC appreciates the opportunity to provide the attached comments to the New Jersey Department of Environmental Protection on its proposed environmental justice rules as published in the June 6, 2022 New Jersey Register. As noted in these comments, ACC and its members support the overall goals of New Jersey’s authorizing EJ law (P.L. 2020, Chapter 92) to avoid disproportionately negative impacts on overburdened communities from permitted facilities. This document offers some important recommendations as NJDEP proceeds with implementation of its proposed rule, particularly with regard to proposed provisions for environmental justice impact statements, definitions for elements like “material change” and “interested party,” and the approach to evaluation of stressors. If you have any questions or would like to discuss these comments further, please do not hesitate to reach out to me any time via email or phone. Thanks very much.

Regards,
Brendan

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Department of Environmental Protection
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Submitted electronically to rulemakingcomments@dep.nj.gov


The American Chemistry Council (ACC) appreciates the opportunity to provide the following comments to the New Jersey Department of Environmental Protection (NJDEP or the state) on its proposed environmental justice (EJ) rules as published in the June 6, 2022 New Jersey Register (the Proposal or Proposed EJ Rule).\(^1\) ACC is committed to continual improvement in both environmental performance and impacts from our member company facilities and surrounding areas. As part of that commitment, ACC and its members support the overall goals of New Jersey’s authorizing EJ law (P.L. 2020, Chapter 92) to avoid disproportionately negative impacts on overburdened communities from permitted facilities.

ACC member companies operate in New Jersey and across the country in compliance with existing local, state, and federal statutory requirements. The environmental impact of our facilities’ operations is assessed according to permit conditions approved by state regulators and administered under the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, and others. In addition, ACC has strong sustainability principles, and numerous member companies have robust sustainability goals and environmental/health and safety policies. ACC’s Responsible Care\(^\text{®}\) requires ACC members to have processes in place for receiving and responding to community concerns about chemical facilities and our operations. Responsible Care\(^\text{®}\) and similar programs are critical particularly given growing concern that low-income and minority neighborhoods may be disproportionately affected by pollutants from abandoned waste sites and industrial operations. Our member’s proud commitment to the Responsible Care\(^\text{®}\) program is one example of our commitment to the communities around member facilities.

\(^1\) ACC represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier, and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care\(^\text{®}\), common sense advocacy designed to address major public policy issues, and health and environmental research and product testing.
ACC provided input in response to NJDEP’s 2021 public stakeholder sessions, which were held to inform the current Proposal, to address NJDEP’s consideration and treatment of potential stressors and environmental justice impact statements (EJIS). As raised in those comments, ACC continues to stress that NJDEP implement its EJ law through proposed rules that result in a streamlined regulatory process incorporating decisions based on the best available science, avoiding duplication with existing requirements, and providing full consideration of the range of sources of potential impact, particularly those external to permit applicants. New regulatory requirements should not create unreasonable additional hurdles that hinder an already cumbersome permitting process. To achieve a constructive final rule, ACC offers the below comments on NJDEP’s Proposed EJ Rule. ACC also supports and incorporates by reference the separate comments on this proposal as submitted by the Chemical Council of New Jersey (CCNJ).

I. NJDEP should ensure that its Proposed Rule creates a permitting process that prioritizes components that are efficient and streamlined, transparent, based on best available science, and that uses appropriate risk characterizations.

As ACC detailed in our April and June 2021 comments to NJDEP, it is critical that the Department implement its EJ law in a way that results in permitting processes that are clear, flexible, risk-based, and refrain from duplicative or overly burdensome requirements. As detailed later in these comments, NJDEP should review impact analyses and permit applications using clear criteria and definitions that articulate scientifically credible risks supported by causal inference instead of ‘potential’ stressors and associated impacts. Without these and other appropriate considerations, NJDEP faces the possibility of not protecting public health while creating an overly burdensome permitting process that is unnecessarily onerous, inconsistent, and arbitrary in its application. To avoid this result, ACC offers the following recommendations.

**Permit Reviews**

At N.J.A.C. 7:1C-2.2, NJDEP provides a procedural overview of the permitting process that will incorporate the proposed new EJ review requirements, including permit impact analysis and evaluation, stakeholder engagement, and department review. As a general matter, ACC strongly urges NJDEP to allow the EJ review process to run concurrently with existing statutory permit renewal processes. As an example, if a facility must first complete its EJ review and impact assessment/approval process prior to receiving an administrative completeness determination for its separate Title V renewal application, NJDEP faces the possibility of delaying the important timeline of separate statutory permit renewals in favor of its own EJ review, further compounding the uncertainty and onerous burdens that facilities must face throughout this process. Even with a proposed timeline for the EJ review, these requirements would create unnecessary logistical complications, significant unpredictability, and much longer timeframes for the Title V permitting process. This will result in a more delayed and inefficient permitting process, hindering overall economic activity and productivity within the state. To avoid this result, ACC encourages CCNJ to allow these separate processes to run concurrently rather than sequentially.
Environmental Justice Impact Statements

In ACC’s June 2021 comments, we encouraged NJDEP to develop EJIS and permitting processes that are clear, flexible, risk-based, and refrain from duplicative or overly burdensome requirements. We further recommended that NJDEP evaluate identified EJIS stressors and associated impacts on public health or the environment utilizing clear criteria and definitions that articulate scientifically credible risks. As stated in those comments, absent those considerations, NJDEP faces the possibility of the creating an overly burdensome permitting process that is unnecessarily onerous, inconsistent in its application, and arbitrary and capricious.

ACC appreciates the efforts of NJDEP to introduce the EJIS requirements in a way that promotes stakeholder engagement and includes public involvement with notice and comment. However, after reviewing the Proposed Rule, we are concerned that the proposed EJIS requirements lack adequate detail and robust criteria, resulting in subjective and unnecessarily complicated requirements that will only serve to further burden facilities and the overall permitting process without any clear benefit to public health.

As an initial matter, the Proposed Rule’s general requirement that facilities prepare an EJIS prior to permit application review by the NJDEP creates a potential causation issue, especially for new or expanding sources. As an example, NJDEP may go back to a facility during the permit review process and request discrete changes to the project design (e.g., emission control equipment, stack parameters, etc.) as a result of the Department’s questions and comments during its evaluation process. It is unclear if a new EJIS requirement would be triggered for these potential changes, or whether a review would proceed on schedule. NJDEP should provide additional detail that would address potential situations that would and would not trigger an EJIS requirement.

Separately, the proposed EJIS requirements that specify stressors listed in the Appendix and the criteria for how they will be evaluated lack necessary details. In ACC’s previous comments, we strongly urged NJDEP to provide detailed scientific and risk-based criteria to inform its consideration and evaluation of stressors. In the current Proposal, NJDEP fails to provide detail sufficient to evaluate its approach, lacking a clear methodology for evaluating creation or contribution of adverse cumulative stressors to determine “disproportionate impact” and failing to establish essential applicability criteria, e.g., a de minimis threshold to inform consideration of “creating adverse cumulative stressors.” The latter point is particularly significant as in the absence of a threshold, even the bare minimum presence of any stressor(s) would likely result in permit denial or imposition of conditions, likely for extremely minimal or no public health or environmental benefit.

ACC also echoes CCNJ’s request for clarification as to whether stressors are only evaluated for the OBC where a new or expanded facility is located or whether other affected OBCs need to be considered. For instance, the EJIS requires a description of a new or expanded facilities’ traffic routes, among other information. It is unclear whether this encompasses traffic routes exclusive
to the OBC in which the facility is located only, adjacent OBCs in the event of a zero-population block facility location, and/or traffic routes within another OBC.

There are certain stressors, such as ground-level ozone, which cannot be easily modeled to determine the facility’s impact on the OBC. Modeling of ground-level ozone requires sophisticated and complex models that simulate the photochemical reactions of Volatile Organic Compounds (VOCs) and NOx in the environment under different meteorological conditions. These models are used by EPA and state agencies and are beyond the reach of most manufacturing site environmental professionals.

As such, ACC supports the recommendation of CCNJ that if the initial screening information for the OBC collected pursuant to N.J.A.C. 7:1C-2.3 indicates the community is not subject to a disproportionate impact of adverse environmental and public health stressors, then an applicant seeking to renew an existing permit should not be required to complete an EJIS.

**Interested Party**

In the Proposal, NJDEP requires that permit applicants hold public hearings in OBCs to provide “a clear, accurate, and complete presentation of the information contained in the EJIS and any supplemental information required by this chapter and accept written and oral comment from any interested party regarding the application.”\(^2\) The applicant is further required to ensure that all persons considered “interested parties” have an opportunity to provide oral comment at the hearing. While ACC supports NJDEP’s efforts to create robust and meaningful stakeholder engagement, we are concerned that the lack of clarity or qualifications for who may be considered an “interested party” creates a broader issue with the development and perspectives considered by NJDEP as it conducts important permitting reviews and decisions.

NJDEP does not provide any definition or detail regarding who may qualify as an “interested party” and thus be entitled to certain rights in the permitting process. In the absence of any qualifications, NJDEP creates the ability for anyone, including and especially those external to the state and lacking any meaningful connection, to potentially influence permitting outcomes that do not impact them.

As such, NJDEP risks jeopardizing the integrity of its Proposed Rule and permitting process by allowing external parties to influence state-specific outcomes. In doing so, NJDEP creates an avenue for parties who may not act within the best interests of the state or the very communities this proposal is intended to help. Unless the scope of community input is limited, any third party, including competitors, could unduly influence an internal EJ review process regardless of whether they live outside the impacted community.

To avoid this, ACC recommends that NJDEP provide a definition of “interested party” that limits the scope of direct participation to only those residents, individuals, regulated entities, and organizations with an objective and defined connection to the relevant OBC. These qualifications

\(^2\) Proposal at 126.
will help ensure that those parties with a vested interest in the direct outcome of a permitting decision are given their due consideration.

Finally, the Proposed Rule does not provide a mechanism for determining applicability of public comments to the facility or permit at issue. Facilities are unable to respond to comments that facilities do not impact, such as unrelated, but local traffic issues, or comments generated from other companies located at the same site or in close proximity. ACC supports the recommendation of CCNJ that NJDEP provide a clear and defined process for facilities to identify public comments that are not germane to the permit or facility, and not be required to respond to them and not allow the NJDEP to attach special conditions to the permit resulting from said comments.

**Administrative Completeness**

In proposed N.J.A.C. 7:1C-2.1(c), NJDEP states that in its consideration of applicability for the proposed requirements, “any application complete for review prior to (the effective date of this chapter), shall not be subject to the requirements” in the Proposal.\(^3\) To streamline the implementation of these proposed requirements, ACC supports the recommendation of CCNJ to replace the term “complete for review” in paragraph N.J.A.C. 7:1C-2.1(c) with “administratively complete,” meaning that permit applications that have been submitted by the Department and classified as administratively complete before the effective date of the EJ regulations will not be subject to the requirements of the Proposed Rules.

ACC and CCNJ are concerned that without this clarification, many permit applications that have already completed a lengthy compilation and submittal process will be unfairly pulled and made subject to new EJ requirements that were not contemplated at the time of drafting or application. As such, it seems unfair to subject those pending permits to a host of requirements that were not in force at the time of their application. It would also almost certainly create unnecessary and substantial delays in the permitting process. Overall, the retroactive application of these proposed requirements would not only be significantly unnecessarily burdensome, but also represents a potential legal inconsistency through a seemingly ex post facto application of the EJ law. Thus, NJDEP should avoid these serious consequences and revise its regulatory language to note that permit applications that are “administratively complete” are not subject to the proposed requirements.

As a separate matter, ACC also supports the recommendation from CCNJ in its comments that request that NJDEP clarify the applicability of the Proposed Rules to those who completed the Administrative Order 2021-25 EJ process, received a letter from the NJDEP Office of Permit and Project Navigation, but have not been issued a permit yet. This would help streamline the universe of facility permits that are appropriately covered by the requirements in the Proposed Rules.

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\(^3\) Proposal at 109.
Material Change

In proposed N.J.A.C. 7:1C-4.3, NJDEP lays out separate requirements for facilities under the EJ law after satisfying their initial public hearing and comment requirements. Specifically, N.J.A.C. 7:1C-4.3(b) requires that after completing these requirements:

If the applicant makes a material change to the information set forth in the EJIS, its permit application, or an application pursuant to N.J.S.A. 13:1E-23, after it has submitted its EJIS pursuant to N.J.A.C. 7:1C-3, or after it has completed the public notice or public hearing requirements pursuant to this subchapter, the Department will require the applicant to amend its EJIS to reflect the material change and conduct additional public notice and public hearing, pursuant to this subchapter.4

NJDEP defines “material change” in proposed N.J.A.C. 7:1C-1.5 as a “modification of the facility or EJIS that, in the determination of the Department, requires further analysis or public comment to accurately assess the facility’s contribution to environmental and public health stressors in the overburdened community.”5 As potential examples, NJDEP states elsewhere in the Proposed Rule that these types of changes encompass a broad range of activities, including “a change to a facility or EJIS’ basic purpose, an expansion of the facility, an increase in the potential contributions to environmental or public health stressors or a change in measures addressing them constitute a material change requiring further Departmental analysis.”6 ACC has significant concerns about the substantial consequences of such a broad and unlimited trigger for permit process requirements.

Under this sweeping definition, it appears that essentially any modification to the facility or EJIS that needs to be addressed after the initial public hearing and comment period could start the entire process over and require the facility to conduct a second public hearing due to a change in any of the criteria in the definition. As an example, as currently drafted, updates to the data used in the EJMAP tool will constitute a material change and may require a resubmission of the EJIS and a new public engagement process and meeting. This can cause unreasonable delays in the permitting process for applicants who are complying with the EJ requirements and operating with good faith. ACC supports the recommendation provided in the CCNJ comments for NJDEP’s Proposed Rule to include language that addresses using the current (i.e. as of the permit application submittal) EJMAP data. We also strongly encourage NJDEP to provide some necessary clarity and refinement to application of post-hearing requirements for material changes by revising its proposed definition as follows:

- “Material change” means a major modification of the facility or EJIS that, in the determination of the Department, requires further analysis or public comment to accurately assess the facility’s contribution to environmental and public health stressors in the overburdened community, such as, but not limited to: 1. A change to the basic

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4 Proposal at 127.
5 Id. at 104.
6 Id. at 18.
purpose; 2. An expansion of the facility; 3. An increase in the potential contributions to environmental or public health stressors; or 3.4. A change in measures proposed to address the facility’s contributions to environmental and public health stressors.

These revisions would provide that any material changes sufficient to warrant the substantial time and effort commitments associated with new public hearings and comment periods would only be focused on the most relevant and worthwhile operational changes at the facility level.

ACC also echoes the recommendation from CCNJ to include an effective date (not retroactive) when updated EJMAP outputs should be used. The Proposed Rules do not describe the process for updating the EJMAP tool, the frequency with which it will be updated, or how the NJDEP will update the EJMAP tool once a facility reduces environmental, health, and safety stressors in the OBC. It is similarly unclear how updates to the EJMAP tool affect nearby facilities, or new facilities that are just starting the EJ evaluation process. Furthermore, there is no indication or process set forth as to whether the NJDEP will notify municipalities when the census data blocks are updated or designation as an OBC is removed. Accordingly, ACC and CCNJ encourage NJDEP to provide further clarification on the procedures and timeline for updates to the tool.

II. NJDEP’s interpretation of the term “adjacency” will inappropriately expand the applicability of the Proposed Rule to facilities that should not be in the scope of the proposed requirements.

In the Proposed Rule, NJDEP states that the requirements would apply in locations for new and expanded facilities “or the renewal of an existing major source permit, located, or proposed to be located, in whole or in part, in an overburdened community.” NJDEP expands this requirement to also include facilities located or proposed to be located in census blocks with zero population that are adjacent to OBC given its assumption that these facilities “have similar potential for impacts to environmental and public health stressors as those located directly in the overburdened community.” NJDEP notes specifically that:

To the extent these zero population census blocks are immediately adjacent to statutorily defined overburdened communities, the operations of new or existing facilities in the zero population block groups have similar potential for impacts to environmental and public health stressors as those located directly in the overburdened community that would not otherwise be considered. Accordingly, the Department proposes to require an analysis of impacts of those facilities on the immediately adjacent overburdened community.

As such, the Proposal requires applicants to evaluate the potential impacts of relevant operations and activities as though the facility or expansion is located in an OBC even if it is completely geographically outside the relevant area.

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7 Proposal at 60-61.
8 Proposal at 62.
ACC is concerned that NJDEP’s language as proposed represents an inappropriate expansion of the requirements of its EJ law outside of the statutorily authorized areas. The EJ Law is clear that to be subject to its requirements, a facility must be located in an OBC as defined by the statute.\(^9\) The relevant statutory language provides that:

“Overburdened community” means 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.\(^10\)

In issuing its Proposed Rule, NJDEP echoes the statute in the regulatory language:

The Department is proposing new rules to implement the provisions of New Jersey’s Environmental Justice Law, codified at N.J.S.A. 13:1D-157 et seq. (Act), and establish the requirements for applicants seeking permits for certain pollution-generating facilities located, or proposed to be located, in overburdened communities…(emphasis added).

The proposal also states that:

*The Department’s authority, pursuant to the Act, 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 Act; (2) the applicant seeks a Department permit or approval enumerated in the Act; and (3) the facility is located or proposed to be located, in whole or in part, in an overburdened community as defined by the Act.* (emphasis added).

Despite acknowledging the limitation on its own authority, NJDEP’s Proposed Rule would extend the reach of the EJ Act requirements to facilities in non-OBC census block groups through N.J.A.C. 7:1C-2.1(e) despite the complete lack of mention of these types of areas either in the EJ Law or in the definitions of the Proposal Rule. Indeed, NJDEP affirmatively recognizes the distinction between zero-population areas and its statutorily covered OBCs in the proposed language above. The distinction is important as the clear scope of OBCs creates discrete and targeted boundaries for the application and administration of the proposed requirements. Without it, NJDEP risks significantly and arbitrarily expanding the reach of its new requirements to areas that the statute itself never intended to address. In doing so, NJDEP’s Proposed Rule appears to run counter to the original language of the EJ law.

Additionally, NJDEP did not identify these adjacent zero-population blocks as being covered by the law when it was required to do so. Specifically, NJDEP provided public notice of the census block groups that were considered OBCs and thereby subject to the new requirements through a

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\(^9\) See N.J.S.A. § 13:1D-160 (states the requirements for permit applicants under the EJ Law “if the facility is located, or proposed to be located, in whole or in part, in an overburdened community…”) (emphasis added).

\(^10\) N.J.S.A. 13:1D-158.
list no later than 120 days of enactment. NJDEP provided this list along with corresponding maps, which identified only census block groups that met the EJ Law’s required criteria. In these resources, no census block groups were identified as covered because they were “adjacent.” In fact, the concept of applying the EJ Law requirements to “adjacent” census block groups was never revealed until June 2022. NJDEP’s effort to now expand the reach of the proposed requirements runs contrary to the overall spirit of the EJ Law, which prioritizes transparency in permitting actions and decision-making.

NJDEP’s extension of the EJ Law requirements to zero population census block groups is arbitrary on its face and creates significant uncertainty for facility operations across the state. Facilities in some census block groups immediately adjacent to OBCs may be covered by the requirements (those in zero-population census block groups) and others, even if located closer to the OBC, would not be (those census block groups with any residences). ACC strongly encourages NJDEP to provide a robust explanation for this distinction, which it currently does not adequately address in the Proposal. On this point, ACC also supports the request from CCNJ’s comments that NJDEP clarify the Proposed Rules’ applicability in general and particularly for situations in which facilities may be located in both an OBC and a populated non-OBC, i.e., not a block group with zero residents, as contemplated in § 7:1C-2.1(d), particularly if the majority of the operations and impacts are in the non-OBC.

III. NJDEP should use a risk-based process to identify and assess cumulative impacts.

In ACC’s April and May 2021 comments, we strongly encouraged NJDEP to establish scientifically justified and appropriately risk-based processes to identify and assess any cumulative impacts (which include both chemical and non-chemical stressors) evaluated in conjunction with EJ permit reviews. In these comments, ACC stressed the importance of a risk-based approach based best available science in any effort to review cumulative impacts from identified stressors. We also made it clear that “…there is currently no accepted methodology for quantifying the resulting cumulative impacts through integrating geographic factors, such as proximity to sources, health status, and socioeconomic status into a risk assessment.” This remains the case. Indeed, EPA recently sought the input if its Science Advisory Board regarding research needs and recommendations for incorporating cumulative impacts in human health risk assessment.12

This lack of methodology means that it is currently not possible to 1) determine which adverse health effects observed in a community are caused by which chemical or non-chemical stressors; 2) what the magnitude of the health effects are that have been determined to be caused by different chemical/non-chemical stressors; 3) which communities have elevated health risks that could actually be mitigated by regulatory actions under NJDEP’s purview; and 3) measure the

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11 See N.J.S.A. § 13:1D-159. “No later than 120 days after the effective date of this act, the department shall publish and maintain on its Internet website a list of overburdened communities in the State.”

magnitude of the impact of regulatory actions on improving public health. In the absence of this methodology, the 2020 Act has taken a legislative one, where “overburdened communities” and “environmental or public health stressors” have been defined not by science, but arbitrarily by statute. It is assumed this will improve public health locally in communities and throughout the state.

These arbitrary statutory definitions and directives provided to NJDEP pursuant to the Act, as well as the lack of scientific methodology, gravely limit the ability of NJDEP to implement a robust science- and risk-based process. Considering these limitations, the best solution is clear policy that avoids overlap with existing federal and state regulations and also avoids double counting (or multiple counting) of stressors. In this Rulemaking pursuant to the 2020 Act, the NJDEP has identified 26 specific public health stressors with metrics and comparators. In several instances, these metrics/comparators make use of existing tools, which are described in detail below. We note that, in addition to the limitations of the existing tools, many of these stressors are likely ‘double counted’ or ‘multiply counted’ because they likely inter-related. For example, both light-medium and heavy-duty vehicle traffic contribute to ground-level ozone and fine particulate matter, yet these are all counted as individual stressors with their own individual metrics, which could reasonably be anticipated to lead to over-estimates.

A requirement to assess cumulative impacts to the surrounding population necessitates assumptions regarding impacts on a community from a wide variety of other sources outside the control of the applicant. These sources can include impacts from other potentially competing facility operations, transit authorities and shipping companies, and unaccounted for or as yet unidentified sources of impact. Absent validated publicly available data and a proven cumulative impact assessment method, these assumptions and public statements about cumulative impacts are speculative at best and pose a risk of unnecessary legal and competitive claims. The process for EJIS review and evaluation of environmental stressors should be crafted so as not to require disclosure of confidential business information or create an increased risk of legal claims or business risk. These evaluations of cumulative impacts should be conducted and revisited on a regular basis prior to the submission of a permit application or initiation of the permit review process, so that NJDEP can expedite its permitting process and minimize unnecessary delays.

NJDEP should ensure that any cumulative impact assessment follows a predictable, well-documented, transparent, and efficient process that is scientifically supported and proven in practice. NJDEP’s review of EJIS and associated stressors should be based upon sound science, including validated, publicly available data, and recognized and validated analytical methodologies to achieve consistency in the evaluation process.

A. Review of NJ EJ Screening Mapping Tool Stressors

To assess the methodology and context of NJDEP’s Environmental Justice Mapping, Assessment, and Protection (EJMAP) tool, ACC commissioned a review of the tool and technical guidance to evaluate its functionality in selecting impacted areas. Appendix 1 of these comments provides an overview of selected indicators and associated data sources and
calculation methods, along with some general notes and recommendations for improvement for of the indicators used in the tool.

Overall, many of the indicators in the EJMAP tool are useful for characterizing communities with potential EJ concerns. Some of those indicators are logical additions to those that are evaluated under EPA’s EJSCREEN and California’s CalEnviroScreen. However, one key overarching issue is that the simple combination of these various indicators to develop a cumulative risk score can be problematic, as discussed above. If the process involves adding up indicator scores, NJDEP should provide greater attention to how many indicators are included and how closely each indicator is correlated with one another. A high-level summary of the review and comment/recommendations are provided below:

1. **NJDEP’s Methodology for Developing and Comparing the Combined Stressor Total (CST) Score**

   - EJMAP uses a novel scoring methodology that diverges from other EJ mapping and scoring tools. The guidance document starts with a presentation of EPA’s EJSCREEN and CalEnviroScreen but devotes very little time to explaining why the approaches of these tools were deficient and the value added to the EJMAP-selected approach. The novel approach used in the EJMAP tool derives scores by comparing exposure indicators in non-overburdened communities (non-OBCs) to overburdened communities (OBCs) rather than understanding the rank (or percentile) of the individual indicator over the full set of communities (i.e., block groups). This approach seems tenable when the comparison is performed at the level of individual exposure indicator; the implications of conducting this comparing for the CST needs to be further validated. For example, it is reasonable to “score” an indicator (e.g., fine particulate matter [PM$_{2.5}$]) in an OBC census block if an individual indicator score in an OBC is above the 50$^{th}$ percentile of a non-OBC. This preserves information on the elevated individual indicator. However, information on the individual stressors at issue is lost once all the stressors over the median are aggregated and communities considered to have adverse cumulative stress are identified by comparing the total number of exceedances in OBC communities to non-OBC communities. This may result in the inclusion of communities with CST scores based on less important measures of cumulative stress.

   - Moreover, the EJMAP approach is highly sensitive to the number of stressors that are examined. This is particularly problematic when several stressors are reflective of a similar measure of environmental burden and each stressor is given equal weight. For example, PM$_{2.5}$, Cancer Risk from Diesel particulate matter, and Measures of Mobile Sources of Air Pollution (which includes three separate indicators) are all measuring different versions of the same exposure (PM$_{2.5}$), but each indicator contributes separately to the CST score. Similarly, Lack of Recreational Open Space, Lack of a Tree Canopy, and Impervious Surface are measures of very similar features that are highly correlated. While the overall comparison of CST scores will not likely affect results for the communities with a high number of indicator exceedances, it can have a significant
impact on communities with CSTs that hover around the margins (i.e., in the combined stressor range of 10-16). NJDEP may want to consider if averaging certain highly correlated indicators together and “counting” them as a single indicator (i.e., counting as one stressor rather than three or five separate stressors) in the CST score is more supportable.

- The use of the 50th percentile as a benchmark differs from the other mapping tools, and creates decidedly broad and liberal inclusion criteria. Because the block groups are scored for exceeding the median (of the non-OBC block groups), communities (OBC and non-OBC block groups) with very marginal EJ concerns may be identified as communities with an adverse cumulative stress issue. For example, two communities may have very similar profiles that hover around median values, but if just one indicator is slightly above the median, one community would be identified as having a high cumulative stress profile while the other would not. This problem is exacerbated if the underlying data has an abundance of “noise” or uncertainty (i.e., misclassification could easily occur). It may make more sense to score a block group as a "yes/no" against a higher percentile value. This will reduce the noise around exceedances just above the median and bring focus on those communities with more significant indicator exceedances (i.e., those communities that have clear issues related to environmental burden).

- Aside from being highly correlated with one another, the Social Determinants of Health (i.e., unemployment, education) and NJ's definition of OBC communities (i.e., income, minority status, and English proficiency) are more appropriate for identifying an OBC and are less useful as an environmental or public health stressor.

- Overall, given the novel approach used in the EJMAP tool, the guidance document needs to spend more time providing information on the benefits of this approach. NJDEP should include a detailed sensitivity analysis on how the inclusion and exclusion of different environmental and public health stressors and the number of stressors impact results, especially those that measure similar conditions and are highly correlated.

2. NJDEP's Use of GIS Tools Within Calculation Methods for Many of the Stressor Values.

- The EJMAP (NJDEP, 2022) technical guidance document lacks sufficient explanation for the geospatial methodology used in the tool, including the projection system and data normalization for each dataset. The projection system is important to minimize distortions of areas and distances of mapped data, and a single projected coordinate system should be used. Data normalization is important for many datasets (including census data) because both representative areas and population distribution vary.

- Seventeen (17) of the 26 indicators used in EJMAP are calculated using ArcGIS geospatial tools that require additional explanation or justification for their application to
the various datasets. ArcGIS' geospatial tools included in EJMAP's indicator value calculation methods are Inverse Distance Weighting (IDW) interpolation, Line Density Function, Kernel Density Function, Intersect Geoprocessing tool, Dissolve Geoprocessing tool, and Zonal Statistics. Many of these geospatial tools or methods have the potential to compound errors and uncertainty inherent in underlying spatial and demographic datasets.

- NJDEP’s technical guidance does not provide sufficient sensitivity and uncertainty analyses to allow users to understand if the tools and default values used in ArcGIS for datasets are appropriate for EJ mapping.
- ArcGIS tools that interpolate chemical concentrations data are highly uncertain and do not consider any of the environmental factors that are used in even the most basic screening models.

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Thank you for your consideration of these comments. If you have any questions or would like more information, please free to contact me via phone at (202) 249-6423 or email Brendan_Mascarenhas@americanchemistry.com.

Sincerely,

Brendan Mascarenhas
Director, Regulatory and Technical Affairs
American Chemistry Council
### Appendix 1: Summary of indicators Included in NJDEP’s Environmental Justice Mapping, Assessment and Protection (EJMAP) Tool

<table>
<thead>
<tr>
<th>Category</th>
<th>Indicator</th>
<th>Value</th>
<th>NJDEP Calculation Method</th>
<th>Data Source</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concentrated areas of air pollution</td>
<td>Ground-Level Ozone</td>
<td>3-year average of Air Quality Index (AQI) days greater than 100 for ozone</td>
<td>Estimated daily grid level concentrations of ozone and applied ArcGIS' Inverse Distance Weighting (IDW) interpolation tool to estimate daily grid level concentrations of ozone in parts per million (ppm).</td>
<td>Air monitoring sites from New Jersey and nearby monitors in Connecticut, Delaware, Pennsylvania, and New York from US EPA’s Daily Summary Data Site for 2018-2020</td>
<td>Limited coverage of ozone air monitors may result in the application of specific ozone concentrations to large swaths of land. This could over- and underestimate this indicator for communities. ArcGIS tools that interpolate chemical concentration data are highly uncertain and do not consider any of the environmental factors that are used in even the most basic screening models. <strong>RECOMMENDATION</strong>: NJDEP should provide additional technical information detailing the use of the specific geospatial tool used to calculate this indicator.</td>
</tr>
<tr>
<td>Concentrated areas of air pollution</td>
<td>Fine Particulate Matter (PM2.5)</td>
<td>3-year average of Air Quality Index (AQI) days greater than 100 for fine particulate matter</td>
<td>Estimated daily grid level concentrations of ozone and applied ArcGIS' Inverse Distance Weighting (IDW) interpolation tool to estimate daily grid level concentrations of PM2.5 in micrograms per cubic meter (ug/m3).</td>
<td>Air monitoring sites from New Jersey and nearby monitors in Connecticut, Delaware, Pennsylvania, and New York from US EPA's Daily Summary Data Site for 2018-2020</td>
<td>Limited coverage of PM2.5 air monitors may result in the application of specific PM2.5 concentrations to large swaths of land. This could over- and underestimate this indicator for communities. ArcGIS tools that interpolate chemical concentration data are highly uncertain and do not consider any of the environmental factors that are used in even the most basic screening models. This indicator is highly correlated with Cancer Risk from Diesel Particulate Matter and the three indicators of Measures of Mobile Sources of Air Pollution. NJDEP should consider if averaging certain highly correlated indicators together and &quot;counting&quot; as a single indicator in the CST score is more supportable. <strong>RECOMMENDATION:</strong> NJDEP should consider if averaging certain highly correlated indicators together and &quot;counting&quot; as a single indicator in the CST score is more supportable. <strong>RECOMMENDATION:</strong> NJDEP should provide additional technical information detailing the use of the specific geospatial tool used to calculate this indicator.</td>
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<td>Concentrated areas of air pollution</td>
<td>Cancer Risk from Diesel Particulate Matter</td>
<td>2017 AirToxScreen estimate of cancer risk and noncancer health effects for diesel PM at the census tract level</td>
<td>Obtained 2017 New Jersey AirToxScreen State Summary Files and isolated Diesel PM concentrations from the Ambient Concentration; applied Diesel exhaust particulate Unit Risk Factor from NJ Toxicity Values for Inhalation Exposure to estimate potential cancer risk in risk/million.</td>
<td>EPA AirToxScreen (2017) NJ Toxicity Values for Inhalation Exposure 2020 NJ Census block group file</td>
<td>Although the air concentrations modeled under the AirToxScreen program are uncertain and derived using many simplifying assumptions, the modeling in AirToxScreen is preferable to the interpolation methods used for some of the other indicators in the tool.</td>
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| Concentrated areas of air pollution | Cancer Risk from Air Toxics Excluding Diesel Particulate Matter | 2017 AirToxScreen estimate of cancer risk and noncancer health effects for all air toxics except diesel PM at the census tract level | Obtained 2017 New Jersey AirToxScreen State Summary Files and excluded Diesel PM concentrations from the Ambient Concentration; estimated each applicable pollutant's estimated ambient concentration to estimate each pollutant's cancer risk in risk per million | EPA AirToxScreen (2017) NJ Toxicity Values for Inhalation Exposure 2020 NJ Census block group file | Although the air concentrations modeled under the AirToxScreen program are uncertain and derived using many simplifying assumptions, the modeling in AirToxScreen is preferable to the interpolation methods used for some of the other indicators in the tool. |
| Concentrated areas of air pollution | Non-Cancer Risk from Air Toxics | Estimated non-cancer risks from 138 air toxics from EPA's AirToxScreen 2017 (ppm) | Applied corresponding Reference Concentration (RfC) from NJ's Toxicity Values for Inhalation Exposure to each pollutant's estimated ambient concentration to estimate pollutants' potential noncancer hazard quotient. Only pollutants without carcinogenic impacts were included. All pollutant hazard quotients were summed for each census tract | EPA AirToxScreen (2017)NJ Toxicity Values for Inhalation Exposure2020 NJ Census block group fileData are available at: https://www.epa.gov/AirToxScreen/2017-airtoxscreen-assessment-results#statehttps://www.state.nj.us/dep/aqpp/downloads/risk/ToxAll2020.pdf https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-geodatabase-file.2020.html | Although the air concentrations modeled under the AirToxScreen program are uncertain and derived using many simplifying assumptions, the modeling in AirToxScreen is preferable to the interpolation methods used for some of the other indicators in the tool. |
| Mobile Sources of Air Pollution | Traffic - Cars, Light-and Medium-Duty Trucks | Federal Highway Administration's (FHWA) Highway Performance Monitoring System (HPMS) Average Annual Daily Traffic (AADT)-mile per square mile within a census block group | Acquired NJ's 2018 HPMS GIS file data and summed single unit and combined truck AADT values for each road segment in NJ to determine the total AADT Truck values; subtracted AADT truck values from total AADT to calculate AADT for cars and light- and medium-duty trucks only for each road segment. Applied ArcGIS' line density function to create a raster surface file, and then used zonal statistics | NJ HPMS GIS file data (2018) 2020 NJ Census block group file Data are available at: https://geo.dot.gov/server/rest/services/Hosted/NewJersey_2018_PR/FeatureServer https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-geodatabase-file.2020.html | This indicator is highly correlated with Fine Particulate Matter (PM2.5), Cancer Risk from Diesel Particulate Matter and the other two indicators of Measures of Mobile Sources of Air Pollution.  
**RECOMMENDATION:** NJDEP should consider if averaging certain highly correlated indicators together and "counting" as a single indicator in the CST score is more supportable.  
**RECOMMENDATION:** NJDEP should provide additional technical information detailing the use of the specific geospatial tool used to calculate this indicator. |
<table>
<thead>
<tr>
<th>Mobile Sources of Air Pollution</th>
<th>Traffic-Heavy-Duty Trucks</th>
<th>To determine spatially weighted average AADT for each 2020 NJ census block group.</th>
</tr>
</thead>
</table>
| Acquired NJ's 2018 HPMS AADT-mile per square mile within a block group as an indicator of heavy-duty truck traffic proximity to residences and other institutions | FHWA HPSM AADT-mile per square mile within a block group | NJ HPMS GIS file data (2018)  
2020 NJ Census block group file |
| Applied ArcGIS' line density function to create a raster surface file, | Data are available at:  
https://geo.dot.gov/server/rest/services/Hosted/NewJersey_2018_PR/FeatureServer  
https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-geodatabase-file.2020.html | This indicator is highly correlated with Fine Particulate Matter (PM2.5), Cancer Risk from Diesel Particulate Matter and the other two indicators of Measures of Mobile Sources of Air Pollution.  
**RECOMMENDATION:** NJDEP should consider if averaging certain highly correlated indicators together and  
"counting" as a single indicator in the CST score is more supportable.  
**RECOMMENDATION:** NJDEP should provide additional technical information detailing the use of the specific geospatial tool used to calculate this indicator. |
and then used zonal statistics to determine spatially weighted average AADT for each 2020 NJ census block group.

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<tr>
<th>Mobile Sources of Air Pollution</th>
<th>Railways</th>
<th>Railways</th>
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</table>
| NJ Department of Transportation's rail miles per square mile within a block group as an indicator of rail traffic proximity to residences and other institutions | Obtained NJDOT ArcGIS REST Railroad Network layer and applied the ArcGIS line density function to railroad length to create a raster surface file. Applied zonal statistics to determine spatially weighted average rail length for each 2020 NJ census block | N JDOT ArcGIS REST Railroad Network layer 2020 NJ Census block group file

Data are available at: https://njgis-newjersey.opendata.arcgis.com/datasets/NJDOT::railroads-network/about

The many air quality indicators in EJMAP (PM, cancer risk from PM, Car/Light/Medium Truck Traffic, Heavy Truck Traffic, Railways) are likely duplicative of one another.

**RECOMMENDATION:** NJDEP should strive to include indicators that provide unique sources of information to identify disadvantaged communities. NJ should provide sensitivity analyses to justify inclusion of these five indicators and demonstrate sensitivity of selecting each of these 5 indicators.

**RECOMMENDATION:** NJDEP may want to consider if averaging certain highly correlated indicators together and "counting" as a single indicator in the CST score is more supportable.
| Contaminated Sites | Known Contaminated Sites | Weighted Known Contaminated Sites (KCS) per square mile as an indicator of proximity to residents and other institutions | Assigned sites from the NJ Known Contaminated Sites List (KCSL) scores of 1-3 based on their likeliness to be environmental indicators. Applied ArcGIS' Kernel Density function using the weighted KCSL values as input. Used NJ Known Contaminated Sites List GIS File Data2020 NJ Census block group fileData are available at: https://njgis-newjersey.opendata.arcgis.com/datasets/b167bb2ae09c43fbab9e954700be45d9_0/explore?location=40.132824,-74.746500,7.96 https://www.census.gov/geographies/mapping-files/time-series/NJDEP assigns weighting scores of 1, 2, or 3 to KSCs within this indicator category. | RECOMMENDATION: NJDEP should document a rationale within the technical guidance for assigning these scores. RECOMMENDATION: NJDEP should provide additional rationale for score based on the number of Areas of Concern (AOCs) within a site given that AOCs do not necessarily have any correlation with exposure or risk and may be a function of engineering, sampling, or logistical considerations at a site. RECOMMENDATION: NJDEP should provide additional technical information |
| Contaminated Sites | Soil Contamination Deed Restrictions | Percent of acreage within a census block group with Deed Notice restrictions | Obtained Deed Notice Area GIS file and isolated the Deed Notice Percent Areas for all block groups data file in each. Then, applied the Intersect geoprocessing tool to calculate geometric intersection between 2020 NJ census block group file and Deed Notice Area GIS File Data 2020 NJ Census block group file | Deed Notice Area GIS File Data 2020 NJ Census block group file | Data are available at: https://gisdata-njdep.opendata.arcgis.com/datasets/deed-notice-extent-in-new-jersey/explore?location=40.062414%2C-74.733500%2C8.74 | RECOMMENDATION: NJDEP should provide additional technical information detailing the use of the specific geospatial tool used to calculate this indicator. |
| Contaminated Sites          | Ground Water Classification Exception Areas / Currently Known Extent Restrictions | Percent of acreage within the block group with Classification exemption areas (CEA)/Currently Known Extents (CKEs) restrictions | Obtained CEA and CKE GIS files and isolated CEA/CKE Percent Areas for all block groups data file in each. Applied Intersect geoprocessing tool to determine geometric intersection between 2020 NJ Census and 2020 NJ Census block group file | CEA/CKE GIS File Data 2020 NJ Census block group file Data are available at: https://njgis-newjersey.opendata.arcgis.com/datasets/njdep::classification-exception-areas-well-restriction-areas-for-new-jersey/explore?location=40.137747%2C-74.879021 | RECOMMENDATION: NJDEP should provide additional technical information detailing the use of the specific geospatial tool used to calculate this indicator. |
Block Group file and CEA/CKA Percent Area data file. Applied Dissolve geoprocessing tool to the output coverage to aggregate features based on percentage of each block group that is groundwater restricted.

2020 NJ Census block group file Data are available at: https://gisdata-njdep.opendata.arcgis.com/datasets/solid-hazardous-waste-RECOMMENDATION: NJDEP should provide additional technical information detailing the use of the specific geospatial tool used to calculate this indicator. |
| Transfer Stations or other Solid Waste Facilities, Recycling Facilities, Scrap Metal Facilities | Scrap Metal Facilities | Density of scrap metal facilities per square mile in the block group | Obtained Scrap Metal Facilities in NJ GIS file and applied ArcGIS' Kernel Density function to create a raster density file. Applied zonal statistics in ArcMapSpatial Analyst to determine spatially weighted average number of sites for each 2020 | Scrap Metal Facilities in New Jersey 2020 NJ Census block group file | Data are available at: https://njdep.maps.arcgis.com/home/item.html?id=30a7f4e4be7c4b6ea15bbfe82cce37bd#overview | RECOMMENDATION: NJDEP should provide additional technical information detailing the use of the specific geospatial tool used to calculate this indicator. |
| Point Sources of Water Pollution | Surface Water | Water quality results from the 2016 Integrated Report at the Assessment Unit (AU) level | Obtained NJ Surface Water Nonattainment GIS file, calculated the percent of impaired designated uses for each United States Geological Service (USGS) Hydrologic Unit Code 14 (HUC14) by dividing the number of impaired designated uses by the total number of assessed | NJ Surface Water Nonattainment2020 NJ Census block group file. Data are available at: https://njogis-newjersey.opendata.arcgis.com/datasets/njdep::2016-integrated-list-of-waters-for-new-jersey/explore?location=40.102978%2C-74.744750%2C8.62 https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-geodatabase-file.2020.html | **RECOMMENDATION:** NJDEP should provide additional technical information detailing the use of the specific geospatial tool used to calculate this indicator. |
designated uses applicable. The higher the percentage, the worse the overall water quality. Then applied ArcMap's Polygon to Raster tool and applied Zonal Statistics to determine spatially weighted average of nonattainment surface waters for each 2020 NJ Census block group.
| Point Sources of Water Pollution | Combined Sewer Overflow (CSO) | The presence of any Combined Sewer System in the block group | Obtained New Jersey's CSO GIS file, applied ArcMap's Spatial Join tool to match rows based on their relative spatial locations to determine which block group had at least one CSO. | NJ Surface Water Nonattainment 2020 NJ Census block group file Data are available at: https://njgis-newjersey.opendata.arcgis.com/datasets/njdep::2016-integrated-list-of-waters-for-new-jersey/explore?location=40.102978%2C-74.744750%2C8.6274.744750%2C8.62 https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-geodatabase-file.2020.html | RECOMMENDATION: NJDEP should provide additional technical information detailing the use of the specific geospatial tool used to calculate this indicator. |
May Cause Potential Public Health Impacts | Drinking Water | Counts of community drinking water violations or exceedances, or percent of NJ Private Well Testing Act (PWTA) exceedances | Obtained 3-year sum of Maximum Contaminant Level (MCL) and/or Treatment Techniques (TT) violations and/or Action Level Exceedances from annual drinking water violation Public Drinking Water Reports. Also obtained data from all private wells with at least one exceedance of a primary standard. For Community drinking water data, created a drinking water purveyor polygon file | Public Drinking Water Reports Private Well Testing Act Data Public Drinking Water Purveyor GIS File 2020 NJ Census block group file Data are available at: https://www.state.nj.us/dep/watersupply/dwc_systems.html https://njdep.maps.arcgis.com/apps/MapSeries/index.html?appid=826ec9f6e77543ca58c5870d5f088e7 https://njogis-newjersey.opendata.arcgis.com/datasets/njdep::purveyor-service-areas-of-new-jersey/explore?location=40.105794%2C-74.748900%2C8.77

This indicator combines many sources of data - some of these sources are known to be of low quality. Drinking water data points for private wells are not applicable to nearby homes. Even community drinking water data are not consistently reported with high data quality. Community drinking water data often does not distinguish between samples of raw, pre-treatment, post-treatment, and tap water. There are serious issues with using data that are of poor quality to represent drinking water quality on a community level. Rural areas are likely more impacted by the poor data quality due to increased use of private vs public water sources.

**RECOMMENDATION:** NJDEP should provide additional technical information detailing the use of the specific geospatial tool used to calculate this indicator.
and determined the geometric intersection between 2020 NJ Census block group and drinking water purveyor polygon file. Applied Dissolve geoprocessing tool to output coverage to select drinking water area with the maximum size area in each block group; used attribute join to link violation records to maximum data area.

May Cause Potential Public Health Impacts

<table>
<thead>
<tr>
<th>May Cause Potential Public Health Impacts</th>
<th>Potential Lead Exposure</th>
<th>Age of housing (percent of houses older than 1950 in the block group)</th>
<th>Obtained New Jersey American Community Survey (ACS) summary data and isolated</th>
<th>New Jersey American Community Survey (ACS) summary data Data are available at: [Under further review]</th>
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<tr>
<th>May Cause Potential Public Health Impacts</th>
<th>Lack of Recreational Open Space</th>
<th>Population per acre of open space within one quarter mile of a census block group</th>
<th>Obtained NJ Open Space polygon GIS files and determined residential land use areas in each block group by selecting residential land use from land use land cover and applied the Intersect geoprocessing tool to determine the geometric intersection</th>
<th>New Jersey Open Space polygon GIS files 2020 NJ Census block group file</th>
<th>The three indicators: Recreational Space, Tree Canopy, and Impervious Surfaces are likely duplicative of one another. NJDEP should strive to include indicators that provide unique sources of information to identify disadvantaged communities.</th>
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<td><strong>RECOMMENDATION:</strong> NJDEP should provide sensitivity analyses to justify inclusion of all 3 indicators and demonstrate sensitivity of selecting each of these 3 indicators.</td>
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The Housing Age field data. Percent of housing built before 1950 calculated as housing built 1940-1949 and 1939 and earlier divided by total housing.

https://www.census.gov/data/developers/data-sets/acss5-year.html

May Cause Potential Public Health Impacts

Lack of Recreational Open Space

Population per acre of open space within one quarter mile of a census block group

Obtained NJ Open Space polygon GIS files and determined residential land use areas in each block group by selecting residential land use from land use land cover and applied the Intersect geoprocessing tool to determine the geometric intersection

New Jersey Open Space polygon GIS files 2020 NJ Census block group file

Data are available at: https://gisdata-njdep.opendata.arcgis.com/datasets/njdep::state-local-and-nonprofit-open-space-of-new-jersey/about

https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-
between the data and 2020 NJ census block data. Used ArcMap buffer tool to add 1/4 mile buffers to the residential land use areas for each block group and aggregated features based on the number of acres of open space within 1/4 mile of the block group. Then used this information to calculate population density by dividing the population in the block group by the number of open space

geodatabase-file.2020.html

RECOMMENDATION: NJDEP should provide additional technical information detailing the use of the specific geospatial tool used to calculate this indicator.
| May Cause Potential Public Health Impacts | Lack of Tree Canopy | Spatially weighted average of lack of tree canopy within the block group | Obtained 2016 US Forest Service "Analytical" Tree Canopy Cover (TCC) Dataset and created a mirror image raster file by subtracting this file from 100 to represent Lack of Tree Canopy Cover, with water and salt marsh land uses erased. Applied Zonal Statistics in ArcMap | 2016 US Forest Service "Analytical" Tree Canopy Cover (TCC) Dataset2020 NJ Census block group fileData are available at: https://data.fs.usda.gov/geodata/rastergateway/treecanopycover/#table1https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-geodatabase-file.2020.html | The three indicators: Recreational Space, Tree Canopy, and Impervious Surfaces are likely duplicative of one another. NJDEP should strive to include indicators that provide unique sources of information to identify disadvantaged communities.

**RECOMMENDATION:** NJDEP should provide sensitivity analyses to justify inclusion of all 3 indicators and demonstrate sensitivity of selecting each of these 3 indicators. NJDEP may want to consider if averaging certain highly correlated indicators together and "counting" as a single indicator in the CST score is more supportable.

**RECOMMENDATION:** NJDEP should provide additional technical information detailing the use of the specific geospatial tool used to calculate this indicator. |
| May Cause Potential Public Health Impacts | Impervious Surface | Percent of impervious surface in a block group | Obtained county files separately from NJ DEP's Open Data site and then combined into a complete state file; searched for "Impervious Surface" to find the county files. Erased water and salt marsh land uses in Land Use/Land Cover 2015 from 2020 NJ census block group. Applied Spatial Analyst to determine spatially weighted average for each block group. | NJ DEP Open Data Site 2020 NJ Census block group file Data are available at: https://gisdata-njdep.opendata.arcgis.com/ https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-geodatabase-file.2020.html | The three indicators: Recreational Space, Tree Canopy, and Impervious Surfaces are likely duplicative of one another. NJDEP should strive to include indicators that provide unique sources of information to identify disadvantaged communities.

**RECOMMENDATION:** NJDEP should provide sensitivity analyses to justify inclusion of all 3 indicators and demonstrate sensitivity of selecting each of these 3 indicators. NJDEP may want to consider if averaging certain highly correlated indicators together and "counting" as a single indicator in the CST score is more supportable.

**RECOMMENDATION:** NJDEP should provide additional technical information detailing the use of the specific geospatial tool used to calculate this indicator.
<p>|   |   | the Intersect geoprocessing tool to determine geometric intersection between block groups and building footprint data to link the amount of impervious surface to each block group. Applied the Dissolve geoprocessing tool to aggregate features to calculate acres of impervious surface for each block group and calculated percent of each block group. |   |   |
| Density/Proximity indicators | Emergenc y Planning Sites | Number of applicable sites per square mile | Obtained the appropriate data source GIS file for each proximity indicator: o EJ Air Facilities, EJ EJ Air Facilities EJ Major Water Facilities EJ Sludge Facilities EJ TCPA Facilities EJ DPCC Facilities EJ CRTK Facilities 2020 NJ census | RECOMMENDATION: NJDEP should provide additional technical information detailing the use of the specific geospatial tool used to calculate these indicators. |</p>
<table>
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<tr>
<th>Density/Proximity indicators</th>
<th>NJPDES Sites</th>
<th>Number of applicable sites per square mile</th>
<th>Major Water Facilities, EJ Sludge Facilities, EJ TCPA Facilities, EJ DPCC Facilities, EJ CRTK Facilities. Combined the EJ Major Water and EJ Sludge Facilities files to get one water sites file for analysis. Combined the EJ TCPA, DPCC, and CRTK Facilities files to get one Emergency Planning file for analysis. Applied ArcGIS’ Kernel Density function using the each block groups</th>
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<td>Data are available at:</td>
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<td><a href="https://njdep.maps.arcgis.com/home/item.html?id=e7231feb13c64477ba739fc97ccf91c8#overview">https://njdep.maps.arcgis.com/home/item.html?id=e7231feb13c64477ba739fc97ccf91c8#overview</a></td>
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proximity data source file (EJ Air Facilities, EJ Combined Water file and EJ Combined Emergency Planning) separately as the input with the following parameters:

- Search radius of 5 kilometer (approximately 3 miles), which is consistent with the distance requirements in EPA’s EJSCREEN User Guide.
- Grid size of 100 ft.

This calculated a raster density file for each proximity indicator. Applied Zonal Statistics as a

rcgis.com/home/item.html?id=4dd5fd6c435e4641957fb169df39a0dc
Table function in ArcMap Spatial Analyst using each separate raster density file as the input to determine the spatially weighted average density for each 2020 NJ census block group as the indicator for proximity to each site.

| Social Determinants of Health | Unemployment | Percent unemployed in a block group | Obtained New Jersey's American Community Survey (ACS) summary data Sequence Table 78 e2019nj0078000 and used the following fields: | NJ ACS Data Data are available at: https://www.census.gov/data/developers/data-sets/acs-5year.html | Aside from being highly correlated with one another, the Social Determinants of Health (i.e. unemployment, education) as well as NJ's definition of OBC communities (i.e., income, minority status, and English proficiency) are more appropriate for identifying an OBC and are less useful as an environmental or public health indicator. |
| Social Determinants of Health | Education | Percent without a high school diploma in a block group | Obtained New Jersey's American Community Survey (ACS) summary file sequence table and selected fields. | NJ ACS Data Data are available at: https://www.census.gov/data/developers/data-sets/acs-5year.html | Aside from being highly correlated with one another, the Social Determinants of Health (i.e., unemployment, education) as well as NJ’s definition of OBC communities (i.e., income, minority status, and English proficiency) are more appropriate for identifying an OBC and are less useful as an environmental or public health indicator. |

**Notes:**

Data sourced from:
https://experience.arcgis.com/experience/548632a2351b41b8a0443cfc3a9f4ef6

Waterspirit is a nonprofit center for ecology and spirituality sponsored by the Sisters of St. Joseph of Peace. Since 1998, we have been committed to our moral duty of hearing the cry of the Earth and the cry of her most vulnerable people. We applaud the State of New Jersey for passing this landmark environmental justice law, which is an important tool for putting our moral responsibility to our communities and our environment into practice. However, in order to safeguard our communities in the spirit of the law, we must make it as strong as possible. Enacting environmental justice is urgent, and the need for strong community and public health safeguards will only increase with the climate crisis. Additional pollution exacerbates storms, floods, droughts, costly public health crises and rebuilding. Unequal as we are economically, the climate crises harms first and worst those with the fewest resources to protect themselves and their families. New Jersey's leadership must use this opportunity to prioritize public health and equity. We are all interconnected, and this law will impact all New Jerseyans just as we are affected by the storms, tornadoes, fires, pandemics, manifestations of a warming planet. Tangible costs are a cumulative burden on public health and areas of the state deemed sacrificial have endured this ecological sin for long enough. Waterspirit has been participating in the rulemaking process since the bill (S232) became law back in 2020. We have delivered oral testimony and written comment. With these comments below, we are highlighting what people living and working in overburdened areas are simply stating: We deserve the same air quality as wealthier, predominantly white areas of the state. Waterspirit's recommendations are listed here, with expanded explanations available below:

__This law should be strengthened for the benefit of workers and residents alike!__

Any pollution emissions reductions recognized by the law must come directly from the facility applying for the pollution permit. Offsets are a scheme and pollution offsets do not apply here. The NJDEP is not equipped to ensure compliance with an economic benefits standard to establish a compelling public interest. __The regulation should be modified from the Department may consider public input regarding the compelling public interest exception to _shall_ consider public input. Furthermore, robust public engagement should be ensured through varied notification across multiple forms of media, translated into multiple host community languages, in the area surrounding at least 1000 feet from the proposed site. Expanded explanations below:__

Air and water know no bounds. Businesses operating in or as part of facilities where chemicals are handled pose real ongoing risks and threats to surrounding areas. At a recent public hearing, NJDEP heard comments from a minister in South Jersey who asked, _Do we not deserve to breathe the same air quality as people in Cherry Hill?_ A business in Cherry Hill, trying to be a good neighbor by recycling metal, still conducts business operations that affect local air and water quality. A metal fire recently took place at said business, releasing toxins into the air without penance. This problem is akin to a metal fire in Newark. Environmental injustice is environmental injustice regardless of the New Jersey county. Human beings living in communities in overburdened areas of the state must no longer be extorted. They must not be coerced into a false choice between health and jobs. (Green jobs and green job training is expanding in New Jersey.) Trust needs to be established in communities that have, for generations, been dumped upon while companies
The status quo is morally wrong. These communities deserve full, strong protections from this landmark law. Any pollution emissions reductions recognized by the law must come directly from the facility applying for the pollution permit. Offsets are a scheme and pollution offsets do not apply here. The NJDEP is not equipped to ensure compliance with an economic benefits standard to establish a compelling public interest. Pollution offsets must not be included in this law. Any pollution emissions reductions recognized by the law must come directly from the facility applying for the pollution permit. Offsets are a scheme and pollution offsets do not apply here. The NJDEP is not equipped to ensure compliance with an economic benefits standard to establish a compelling public interest. Morally, it is unjust to allow facilities that do not meet the aforementioned conditions to operate. All pollution reductions must be on-site and codified in the permit. It is crucial that we achieve actual pollution reduction in overburdened communities. The regulation should be modified from _the Department _may_ consider public input regarding the compelling public interest exception_ to __shall_ consider public input._ Furthermore, robust public engagement should be ensured through varied notification across multiple forms of media, translated into multiple host community languages, in the area surrounding at least 1000 feet from the proposed site. Enhancing public input will embrace the spirit of this law. The more dynamic the engagement opportunities, the more potential there will be for enhanced, enduring public trust. 1000 feet of the proposed site should be the marker by which education and outreach decisions are made. We recommend a mix of paid social media, local press and language translation services, alongside virtual and dial-in options for the public engagement effort to be adequate. The media outlets that will regularly be used to announce such meetings should be well-publicized ahead of time. Meetings after 6:00PM during week days allow for more working people and parents to have the opportunity to partake, with support from virtual and geographically diverse location options. Engagement with residents and commercial business renters/owners must include opportunities for the public to submit audio or video comments as well as through the regular mail. During public engagement sessions, the NJDEP should be present and fact-checking in real-time. This is a tremendous opportunity for the New Jersey Department of Environmental Protection to make enhanced environmental health and quality of life a priority, benefiting those who have been extorted and harmed for generations. In New Jersey, a failure to keep this law strong will only perpetuate the very problems the law set out to correct. Waterspirit urges ongoing dialogue with overburdened community leaders and members throughout the finalization of these rules. All across Turtle Island, people are looking to New Jersey and its official, strong demonstration of environmental justice. We remain open to continuing this discussion directly at water@waterspirit.org. Testimony delivered by South Jersey based minister, during one of 5 public engagement opportunities, 2022.
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

+ No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables.
+ No offsets (e.g. planting trees or bike lanes elsewhere).
+ Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

Diane Heyer
53 Providence Blvd.
Kendall Park, New Jersey 08824
From: Eddie Konczal
To: DEP rulemaking comments [DEP]
Subject: [EXTERNAL] DEP Docket Number: 04-22-04
Date: Sunday, September 4, 2022 10:15:15 AM

DEP Rulemaking DEP Rulemaking,

I believe that all communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

- No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables.
- No offsets (e.g. planting trees or bike lanes elsewhere).
- Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

Thank you for considering my comments on this important matter.

Eddie Konczal

22 1st Ave
Monroe Township, New Jersey 08831-8720
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it’s a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

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Marilyn Hartford

33 Dunstable Rd.
Southampton, New Jersey 08088
Please the attached...

Warm regards,
AJ
September 2, 2022

Melissa P. Abatemarco, Esq.
DEP Docket No. 04-22-04
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, New Jersey 08625-0402

Re: Environmental Justice Rules rule proposal (54 N.J.R. 971(a))

Dear Ms. Abatemarco,

On behalf of the New Jersey State Building and Construction Trades Council (NJBCTC) would like to comment on Environmental Justice Rules rule proposal (54 N.J.R. 971(a)) published in Volume 54, Issue 11, June 6, 2022, New Jersey Register.

We applaud the sponsors for taking on the long overdue effort to begin addressing the cumulative effects of environmental impacts on communities that already serve hosts to industrial facilities. During the legislative process, we appreciated the DEP's willingness to maintain an open dialogue and listen to our concerns about the impact of the environmental justice policy and process on public works construction vital to the state of New Jersey's infrastructure.

In addition, we would like to thank the DEP for including Public Works Projects in the definition of Compelling Public Interest at N.J.A.C. 7:1C-1.5. However, we are concerned that this provision is too discretionary and fails to consider other essential factors. We recommend changing the definition of Compelling Public Interest to account for completing deferred maintenance on vital infrastructure and the ability to manage other critical capital assets to allow the State of New Jersey to continue to meet the needs of residents as they heat and cool their homes, travel to work and have access to critical State services. We also are concerned that the definition of “Compelling Public Need” is missing essential factors such as consideration of economic variables.
We believe other aspects of this rule are too broad and extend beyond the underlying statute and original intent of protecting residents that historically are subjected to development projects that have a severe public health impact on their community. In their current form, we are concerned that these rules will add uncertainties and delays to many significant infrastructure projects and facilities due to the broad application and definitions of many provisions. The men and women of the NJBCTC serve as strategic partners with industrial property owners, developers, and union contractors. We want applicants under this new rule to have a predictable process that they can reasonably get through.

To that end, the underlying law gives the DEP discretion to determine the appropriate geographic unit of analysis upon which to base the required comparative analysis of environmental and public health stressors in N.J.S.A. 13:1D-160. We are concerned that the Geographic Point of Comparison section is too broad. Under the proposed rule, the hybrid approach compares environmental and public health stressor values of an overburdened community to the State or county’s 50th percentile. It selects the lower value as the appropriate geographic point of comparison. We are concerned that the 50th percentile selection is too discretionary and not in the underlying law.

Similar to our concern with the Geographic Point of Comparison, we also are concerned that there are too many screening variables. The Department has identified an extensive list of environmental variables to be assessed. We are concerned about the broader capture of facilities that would need to undergo the Environmental Justice process. We request a review to provide a much narrower threshold and a reduction in screening variables.

We also wanted to highlight a concern with the “Adjacency” provision proposed at N.J.A.C. 7:1C-2.1(e). We understand certain census block groups may now or, because of census reconfiguration, have zero population. There are facilities in census blocks with zero population located far from an overburdened community. We are concerned that the “Adjacency” provision will purposefully capture those facilities under the Environmental Justice process.

Suppose no one lives in a zero-populated census block. In that case, we are trying to understand the direct impact of such a facility on the Environmental Justice law and regulations. We are concerned that the trigger is too low in no-population areas adjacent to statutorily defined overburdened communities.

We are concerned that the DEP is overreaching to require an analysis of the impacts of those facilities immediately adjacent to the overburdened community. We recommend that the DEP substantially scale back the Adjacency” provision proposed at N.J.A.C. 7:1C-2.1(e) by removing the requirement for an analysis of the impacts of those facilities on the immediately adjacent overburdened community be required.

Regarding the noticing requirements, we are asking for clarification on whether an applicant for a new or renewed permit, triggering a full Environmental Justice review, must re-notice after the applicant agrees to actions that will lower the impact of their operations. We request
clarification that re-noticing is unnecessary if the impact variables have been reduced. Our concern if this noticing provision is not clarified is that objectors will use it to wait out the clock and “timeout” projects seeking financing or on a tight deadline.

Finally, we would like to highlight that the DEP has no specified timeline to act or respond to various essential steps outlined in the Environmental Justice process under the proposed rule. Most Land Use agencies in the State that issue permits require “Act By” dates. We respectively request including “Act By” in the Environmental Justice Regulations.

Thank you for your attention to this matter, and we look forward to working with the DEP through the rest of the regulatory process.

Fraternally,

William Mullen President
**Electronic Rulemaking Comment**

Submitted Date: 09/04/2022 22:08:35

First Name: Monkonjai Bryant
Last Name: David P. Brook
Affiliation: Private Citizens
City: Hillsborough
State: NJ
Zip: 08844
Email: dpbrook@comcast.net

Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice

Comments: September 4, 2022

Written Comments submitted as to 54 N.J.R. 971(a): Environmental Justice Rules Submitted via access through www.nj.gov/dep/rules/comments submitted in a Word Format Comments presented by: PPPPPPPPMonkonjai Bryant, J.D., LL.M., Resident of an Overburdened Community, and PPPP_David P. Brook, Esq., New Jersey Resident Comments submitted are applicable to the entire proposal and also N.J.A.C. 7:1C-1.5 Definitions As a person of color who lives in a State mapped low-income and minority Overburdened Community and as a white person who does not, we are both concerned and disappointed that these proposed regulations implementing the Environmental Justice Act fall short of accomplishing the statutory objective of protecting the health of all people in New Jersey living in Overburdened Communities. P PPPPPP These proposed regulations at, 54 N.J.R. 971(a) and the Environmental Justice Act, N.J.S.A. 13:1D-157, et seq., are both taking steps in the right direction for addressing historic environmental racism in New Jersey. The problem is that the law and now the proposed regulations are in themselves creating racial injustice against some of same people that the law and the proposed regulations are supposed to be helping. P PPPPPP If the New Jersey Department of Environmental Protection (_DEP_) and ultimately the New Jersey State Legislature actually want to implement a true Environmental Justice Law with true racial environmental equity, then the law should not protect some and then discriminate against other low-income people, minorities and people with limited English proficiency, as it does now. This law and proposed regulations now establishes two classes of residents in Overburdened Communities: a class that is protected and a class that is completely unprotected from all of the environmental harms in their communities. Laws are not meant to be applied unequally, especially laws that are meant to address racial injustices. This law and these proposed regulations do exactly that, they both promote racial discrimination, except the only difference is that the same class of people are being divided into the two groups, the haves and the have-nots. P PPPPPP How has the State and now the DEP accomplished this racially discriminatory result? One word in the law created this entire problem, that is the word: _Facility._ The law defines _Facility_ to only cover the eight big polluters such as major sources of air pollution, incinerators, landfills, big transfer stations, big sewage treatment plants, etc., so all of the operative components of the law only applies to resident members of Overburdened Communities who live within the same location as one of those eight defined _Facilities._ P PPPPPP What happens to residents living in the other Overburdened Communities in New Jersey with polluting companies that do not fit into the big eight defined Facilities? What rights do they have under the Law and how will they be protected by smaller polluting companies that are not defined as a Facility? Are smaller polluting facilities less harmful to our health? Do smaller polluting facilities not cause asthma, cancer, cardiovascular disease and other adverse health effects to children and adults? Is there less of a potential impact to members of an Overburdened Community by 100 small polluting facilities, than one big one? The answer is simple: the Law and the proposed regulations affords those people NO PROTECTION to this second class of residents in Overburdened Communities with all kinds of polluting companies, but no _Facilities_ by definition. That simply does not make any sense and what does it say about a State law that protects some people of color in a class and ignores the rest of the people of color in that same class? Is this law meant to rectify historical racial injustice or just provide symbolic assurance without fully accomplishing its objectives? P PPPPPP On one hand the Legislature and the DEP state that Overburdened Communities are disproportionately impacted and must be protected, on the other hand what both are really saying is that we don't really care about the people of color and lower income people who are now getting their lives adversely impacted by the
hundreds or maybe even thousands of smaller polluting facilities in their neighborhoods, since the law and now these regulations only cover the big polluters defined as a Facility. Monkonjai Bryant and David P. Brook

environment and ultimately the United States Constitution. Thank you for your interest and regulations are currently doing. To do anything less violates all notions of fairness, justice, the right to a healthy

or all people in all Overburdened Communities, without discriminating against other residents as the Law and regulations do not! real all members of a class of people equally. The Legislature has defined __Overburdened community_ means 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._ Thus, just like in real estate, three words will determine if all residents of all Overburdened Communities will be treated equally, and that is, location, location, location. If a Facility is located in your community, you are protected, if one non-facility, for example produces 99 tons of an air pollutant, then you are not, since it needed to be discharging 100 tons. Does that sound fair, we don_t think so.PPPPPPPPPWhat good is a law or a regulation if it is written in a fashion that directly excludes members of a supposedly protected class, i.e. certain residents in Overburdened Communities? We are sure that the passage of this Law and promulgation of these regulations will definitely help some members of Overburdened Communities, but, what about the others? The legal difficulty arises when that Law and regulation do not t!

living in overburdened communities; 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; and that it is past time for the State to correct this historical injustice."PPP PPPPPP_The Legislature further finds and declares that no community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State_s economic growth; that the State_s overburdened communities must have a meaningful opportunity to participate in any decision to allow in such communities certain types of facilities which, by the nature of their activity, have the potential to increase environmental and public health stressors; and that it is in the public interest for the State, where appropriate, to limit the future placement and expansion of such facilities in overburdened communities." (Emphasis Added)PPP PPPPPP_The sad result of this Law and soon to be regulations is that residents in Overburdened Communities believe and expect that they will be helped and protected from further environmental insults and health threats that they have historically endured. They believe that they will no longer have to bear that disproportionate share of pollution. That may be true or it may not be true depending on which Overburdened Community you live in. Trying to correct a wrong is a good idea, but creating additional wrongs, as this Law and regulations will do, fails to accomplish the Legislative findings and declarations and the Law itself.PPP PPPPPP_The New Jersey Legislature and the DEP need to act to amend the Environmental Justice Law (and regulations) by changing the definition of __Facility_ to be defined as __any operating entity that requires a State or federal environmental permit, or one that discharges pollutants, into the ground, water or air.__ PPP PPPPPIf that change is made, then the State will really be acting to address this historical injustice f! or all people in all Overburdened Communities, without discriminating against other residents as the Law and regulations are currently doing. To do anything less violates all notions of fairness, justice, the right to a healthy environment and ultimately the United States Constitution.PPPP PPPPPPMonkonjai Bryant and David P. BrookPPP PPPPPP
September 4, 2022
Dear DEP Folks, enclosed are Written Comments submitted as to 54 N.J.R. 971(a): Environmental Justice Rules

We also submitted these via access through www.nj.gov/dep/rules/comments submitted in a Word Format, but the copy that we received back looked jumbled, so we are sending the same comments as an attached Word Document.

Comments presented by:
Monkonjai Bryant, J.D. , LL.M., Resident of an Overburdened Community, and
David P. Brook, Esq., New Jersey Resident

Comments submitted are applicable to the entire proposal and also N.J.A.C. 7:1C-1.5 Definitions

Please let me know if you have any questions or need additional information.

Thank you,

David Brook, and
Monkonjai Bryant

908-359-1121
September 4, 2022

Written Comments submitted as to 54 N.J.R. 971(a): Environmental Justice Rules

Submitted via access through www.nj.gov/dep/rules/comments submitted in a Word Format

Comments presented by:
Monkonjai Bryant, J.D., LL.M., Resident of an Overburdened Community, and
David P. Brook, Esq., New Jersey Resident

Comments submitted are applicable to the entire proposal and also N.J.A.C. 7:1C-1.5 Definitions

As a person of color who lives in a State mapped low-income and minority “Overburdened Community” and as a white person who does not, we are both concerned and disappointed that these proposed regulations implementing the Environmental Justice Act fall short of accomplishing the statutory objective of protecting the health of all people in New Jersey living in Overburdened Communities.

These proposed regulations at 54 N.J.R. 971(a) and the Environmental Justice Act, N.J.S.A. 13:1D-157, et seq., are both taking steps in the right direction for addressing historic environmental racism in New Jersey. The problem is that the law and now the proposed regulations are in themselves creating racial injustice against some of same people that the law and the proposed regulations are supposed to be helping.

If the New Jersey Department of Environmental Protection (“DEP”) and ultimately the New Jersey State Legislature actually want to implement a true Environmental Justice Law with true racial environmental equity, then the law should not protect some and then discriminate against other low-income people, minorities and people with limited English proficiency, as it does now. This law and proposed regulations now establishes two classes of residents in Overburdened Communities: a class that is protected and a class that is completely unprotected from all of the environmental harms in their communities. Laws are not meant to be applied unequally, especially laws that are meant to address racial injustices. This law and these proposed regulations do exactly that, they both promote racial discrimination, except the only difference is that the same class of people are being divided into the two groups, the haves and the have-nots.

How has the State and now the DEP accomplished this racially discriminatory result? One word in the law created this entire problem, that is the word: “Facility.” The law defines “Facility” to only cover the eight big polluters such as major sources of air pollution, incinerators, landfills, big transfer stations, big sewage treatment plants, etc., so all of the operative components of the law only applies to resident members of Overburdened Communities who live within the same location as one of those eight defined “Facilities.”

What happens to residents living in the other Overburdened Communities in New Jersey with polluting companies that do not fit into the big eight defined Facilities? What rights do they have under the Law and how will they be protected by smaller polluting companies that are not defined as a Facility? Are smaller polluting facilities less harmful to our health? Do smaller polluting facilities not cause asthma, cancer, cardiovascular disease and other adverse health effects to children and adults? Is there less of a potential impact to members of an Overburdened Community by 100 small polluting facilities, than one big one? The answer is simple: the Law and the proposed regulations affords those
people NO PROTECTION to this second class of residents in Overburdened Communities with all kinds of polluting companies, but no “Facilities,” by definition. That simply does not make any sense and what does it say about a State law that protects some people of color in a class and ignores the rest of the people of color in that same class? Is this law meant to rectify historical racial injustice or just provide symbolic assurance without fully accomplishing its objectives?

On one hand the Legislature and the DEP state that Overburdened Communities are disproportionately impacted and must be protected, on the other hand what both are really saying is that we don’t really care about the people of color and lower income people who are now getting their lives adversely impacted by the hundreds or maybe even thousands of smaller polluting facilities in their neighborhoods, since the law and now these regulations only cover the big polluters defined as a Facility.

How many people who live in Overburdened Communities will be environmentally ignored and how many will be protected, all because the definition of “Facility” limits the applicability of this regulation? We don’t know the answer, but based upon some of the polluting companies that we know of, it could be a large number of people, but, does it matter how many people, as much as the fact that this Law and this proposed regulation are fostering racial discrimination? We are sure that was not the intent of the Legislature, but that is the result.

The Fourteenth Amendment of the United States Constitution guarantees that no state shall, “deny to any person within its jurisdiction the equal protection of the laws.” This Environmental Justice Law and these draft regulations are doing exactly that to some members of overburdened communities, since the DEP by law and now proposed regulation is actually charged with ignoring pollution in Overburdened Communities and the DEP will do nothing to involve those communities, to act to deny permits, to reduce adverse impacts or to prepare an Environmental Justice Impact Statement when the offending facilities are not by definition a “facility.”

What good is a law or a regulation if it is written in a fashion that directly excludes members of a supposedly protected class, i.e. certain residents in Overburdened Communities? We are sure that the passage of this Law and promulgation of these regulations will definitely help some members of Overburdened Communities, but, what about the others? The legal difficulty arises when that Law and regulation do not treat all members of a class of people equally. The Legislature has defined “Overburdened community” means 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.” Thus, just like in real estate, three words will determine if all residents of all Overburdened Communities will be treated equally, and that is, location, location, location. If a Facility is located in your community, you are protected, if one non-facility, for example produces 99 tons of an air pollutant, then you are not, since it needed to be discharging 100 tons. Does that sound fair, we don’t think so.

The legislative findings of this Law are also laudable:

The Legislature finds and declares 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; 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; that, as a result, residents in the State’s overburdened communities have suffered from increased adverse health effects including, but not limited to, asthma, cancer, elevated blood lead levels, cardiovascular disease, and developmental disorders; that children are especially vulnerable to the adverse health effects caused by exposure to pollution, and that such health effects may severely limit a child’s potential for future success; that the adverse effects caused by pollution impede the growth, stability, and long-term well-being of individuals and families living in overburdened communities; 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; and that it is past time for the State to correct this historical injustice.

**The Legislature further finds and declares that no community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State’s economic growth;** that the State’s overburdened communities must have a meaningful opportunity to participate in any decision to allow in such communities certain types of facilities which, by the nature of their activity, have the potential to increase environmental and public health stressors; and that it is in the public interest for the State, where appropriate, to limit the future placement and expansion of such facilities in overburdened communities. (Emphasis Added)

The sad result of this Law and soon to be regulations is that residents in Overburdened Communities believe and expect that they will be helped and protected from further environmental insults and health threats that they have historically endured. They believe that they will no longer have to bear that disproportionate share of pollution. That may be true or it may not be true depending on which Overburdened Community you live in. Trying to correct a wrong is a good idea, but creating additional wrongs, as this Law and regulations will do, fails to accomplish the Legislative findings and declarations and the Law itself.

The New Jersey Legislature and the DEP need to act to amend the Environmental Justice Law (and regulations) by changing the definition of “Facility” to be defined as “any operating entity that requires a State or federal environmental permit, or one that discharges pollutants, into the ground, water or air.”

If that change is made, then the State will really be acting to address this historical injustice for all people in all Overburdened Communities, without discriminating against other residents as the Law and regulations are currently doing. To do anything less violates all notions of fairness, justice, the right to a healthy environment and ultimately the United States Constitution.

Thank you for your interest and consideration.

Monkonjai Bryant and David P. Brook
As a resident in North Elizabeth it is in my right to preserve and advocate for safe and healthy air quality in the Elizabeth and Newark areas. Newark NJ is under going a large redevelopment. Residents have the right to be a part of this development process. I stand for clean energy and sustainable jobs. I advocate for less air and land pollution because of the detrimental effects it has on human, animal and plant ecosystems. Companies like Aries Corporation, PSVC and Covanta, to name a few, harm Newark and Elizabeth residents by polluting our air quality and doing nothing to offset their emissions. I believe Newark to be an amazing city with transformative leadership. I know the proper decisions will be made to protect Newark and grow the city to a sustainable and healthy future.
Comments: As a resident in North Elizabeth it is in my right to preserve and advocate for safe and healthy air quality in the Elizabeth and Newark areas. Newark NJ is undergoing a large redevelopment. Residents have the right to be a part of this development process. I stand for clean energy and sustainable jobs. I advocate for less air and land pollution because of the detrimental effects it has on human, animal and plant ecosystems. Companies like Aries Corporation, PSVC and Covanta, to name a few, harm Newark and Elizabeth residents by polluting our air quality and doing nothing to offset their emissions. I believe Newark to be an amazing city with transformative leadership. I know the proper decisions will be made to protect Newark and grow the city to a sustainable and healthy future.
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it’s a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

- No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables.
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Dein Shapiro
11 Edna Horn Dr
Stockton, New Jersey 08559
New Jersey LCV is pleased to submit comments for the cumulative impacts rule 7:1C. Our organization expresses gratitude to the NJ Department of Environmental Protection (DEP) for providing multiple authentic opportunities for community engagement on this pertinent ruling. The Environmental Justice Rule, if written and implemented effectively, will protect New Jerseyans in marginalized communities. We are grateful to environmental justice leaders for their decades of advocacy, and for working with the DEP on this robust regulation. To strengthen the proposed regulations to ensure they will achieve our shared equity and justice goals we recommend the following: require projects seeking relief demonstrate compelling public interest by the community in which the facility will be located; ensure that the environmental and public health stressor data utilize the most reliable and current resource available; verify that all control measures and equipment will reduce rather than displace pollution to another community; require facilities to produce a public report assessing the effectiveness of proposed measures and a public follow up report on the implementation of those measures to ensure the mitigation of negative environmental and health impacts; and enhance requirements to ensure meaningful public participation. The impacts of pollution from industrial practices on human health are only amplified by the effects of climate change, which causes warmer temperatures and aggravates the urban heat island effect. This dangerous combination of pollutants, heat, and lack of ecological buffers has contributed to higher rates of asthma in urban areas and communities of color, with asthma rates as high as 14% for Black adults according to the NJ Department of Health. His rule will ensure that those who have disproportionately been impacted can at the very least be protected from further harm from facilities that have historically caused negative health impacts in Black and Brown and low-income communities. When we look at some of the most affected communities that this regulation would benefit, like the Ironbound in Newark and Camden City, it is clear that the people in these vibrant, established communities deserve the protections this rule would offer. Residents of overburdened communities should not have to consider moving out of their communities to improve their own and their loved ones' health, nor is it an option many of them can afford to consider. General Provisions Protecting physical and mental health by eliminating pollutants supersedes any other cost. We applaud excluding economic benefits from the definition of compelling public interest in an overburdened community (OBC), and only considering the essential environmental, health and safety needs of the community as the social and environmental benefits from pollution reduction outweigh the costs. The rule itself states that the Department anticipates the proposed rulemaking will have a positive economic impact through reducing exposure to pollution from diesel engines or major air sources which will likely lead to reduced incidences of cardiovascular diseases, respiratory disease, and mortality throughout New Jersey (p. 90). Numerous bodies of work have drawn parallels between human health costs and economic and social impacts. Using nitrogen oxides (NOx) as an example, this pollutant causes significant damage to the respiratory system, causing short-term symptoms of a cough or sore throat, and long-term conditions such as asthma and chronic bronchitis. Additionally, there is a direct correlation between exposure to nitrogen oxide and increased risk for developing and/or requiring treatment for a mental health disorder. The EPA's COBRA model estimates the avoided health costs [of a one percent reduction in NOx] is estimated to be between $2.7 and $6.3 million dollars (pg 90). To
strenthen the definition of _compelling public interest_ and more directly target the communities this rule is intended to serve, we recommend stating that compelling public interest must be demonstrated by the community in which the facility will be located under the 7:1C-1.5 definition. The environmental and public health stressors, chosen based on quality of available data and potential health impacts, should be enforced using the highest quality measurement and data standards available. For example, ozone source data is presently sourced from the USEPA with specific measurements classifying the community as _affected_. If another reliable entity, such as the NJDEP, collects new, high quality data that would suggest a change in measurement standards, this should replace the source data. We recommend including language stating that the environmental and public health stressors will be updated to reflect the most current and highest quality data available from vetted and reliable sources as the data becomes available. 

Subchapter 3. Environmental Justice Impact Statement The requirements for the EJIS in 7:1C-3.2 - 9 should provide additional language on how a facility will define and therefore avoid disproportionate impact. Presently, the language does not provide sufficient enforceability. We suggest requiring that a facility provide a follow up report on the implementation of the demonstrated measures to reduce impacts, which shall be made publicly available. If the report shows that the facility has failed to avoid disproportionate impact, the violations in section 7:1C-9.4 should take effect and the permit shall be suspended or revoked. Prime example of this would be transportation and distribution-related impacts from related facilities. Diesel exhaust in urban areas may increase cancer risk by as much as 70 percent, which would make diesel emissions more harmful than all other toxic air contaminants combined. Over 100,000 work days are lost as a result of medical issues related to diesel pollution in New Jersey according to the National Institutes of Health. Facilities should provide additional information on diesel truck and transportation use once a facility is operating to ensure that facility-related transportation is not disproportionately impacting the community.

Subchapter 4. Public Participation The draft rule states that _the EJIS process would empower overburdened communities to raise issues affecting their communities and have those issues responded to, and addressed by, applicants_. (Pg 90) To fulfill that definition of meaningful public participation, accessibility of information, types, varieties and platforms should be central and required at every stage of the process. We recommend revising or adding to the language to include the following: Written notice should be extended to at least a 1000-foot radius instead of a 200-foot radius, as we know that pollution does not stop 200-feet from its source. Media types should include social media and other sources of digital news, in addition to the existing requirements, to increase engagement to a broader audience, and there should be monetary investment put towards digital promotion of social media efforts. All resources must be available in the predominant languages of the community in which the facility will be located in clear locations with legible font type and size. Predominant languages should be identified as a language minority group that 1) has limited English proficiency and 2) compromises 2% or more of the total population in the community. Translated information and promotional materials should be provided at least 60 days prior to the hearing, in line with the applicant_s requirements under 7:1C-4.1-1-vii (p. 124) of the proposed rule, the applicant should invite community groups to participate in the public hearing through mail, email, and/or phone call in the preferred language of said community group. Public sessions should be in well-known and familiar locations to the predominant community to access, such as schools, community centers, and other gathering places. Instead of one, there should be three public sessions, two of which should be in person with one session being hybrid, and the last session being virtual. In addition, the virtual component(s) should include interpreter services for the predominant languages of the community and American Sign Language (ASL) services. As stated in 7:1C-4.2-2 (p. 126), all hearings should be conducted no earlier than 6:00 pm EST when held on a weekday. There should also be the opportunity to hold these sessions on the weekends no earlier than 10 am and no later than 6 pm. The applicant must pay for these accessibility services, including language and ASL interpreting and other means of accessibility. The applicant can utilize community groups to accomplish accessibility and interpretative services, but must reimburse community groups for any and all of their services as it pertains to meeting accessibility needs of the community. The public comment period following the hearing(s) should include voice memos and audio recordings to provide alternative means of communication for those who may struggle with written communication. Therefore, the public shall be able to submit comments on a digital platform hosted by the NJDEP that provides the same level of accessibility as all aforementioned materials, in addition to the option of submitting comments through the mail. The Department could create regional listservs for the Office of Environmental Justice, which would allow the public to subscribe and receive notifications of upcoming facility permitting hearings in their region, thus facilitating more consistent communication and engagement.

Subchapter 8. Requirements Specific to Renewal Applications for Major Source Facilities The requirements employed should reduce pollution rather than move pollution in the community to minimize its effects on human and environmental health. 7:1C-8.4 suggests that if a facility_s risk assessment produces above-negligible levels, a facility can reduce health
risks in the overburdened community through modification to stack height, however, certain weather and wind patterns could minimize the effectiveness of stack height as a control measure. Therefore, we encourage the removal of stack height as a control measure as it only displaces rather than reduces the pollution. The air pollutants listed under in 7:1C-8.5-3 of the technical feasibility analysis do not encompass the many emissions known to cause human health issues and that were previously mentioned in the background information of this rule. This list should include the emissions aforementioned, including ozone, and cancerous and non-cancerous air toxics, which are sourced from the AirToxScreen NJ state summary file as noted in the Appendix. The technical feasibility analysis also requires emissions to calculated for 1) the equipment or control apparatus [that] was installed at least 20 years prior to the current operating permit or 2) that which was not subject to review in the 15 years prior, however with the condition that it comprise at least 20 percent of the facility’s overall potential to emit that pollutant. We recommend that the equipment/control apparatus in question should require all emissions to be calculated regardless of the potential amount of the pollutant that could be emitted. This transformative rule has the potential to improve air, water and environmental quality in overburdened communities if it maintains a rigorous permitting process for major-industry facilities, holds polluters accountable, and effectively includes the communities the rule is meant to serve in the public participation process. Maintaining and strengthening these measures will create a new model of how to protect vulnerable communities for polluters. It could remove the difficult decision for residents in overburdened communities of choosing between a place they call home, their health, and the financial/emotional hardship associated with relocating. Overburdened communities are more than their designation. They are culturally-rich gems of the state that deserve the same protections as other communities. We must give the most robust protections to these communities that have been historically disenfranchised - and are in danger of continued disenfranchisement - without a strong cumulative impacts law. Thank you for your careful consideration of our comments on this important rule. Please contact New Jersey LCV’s Environmental Justice Policy Associate Isabel Molina at isabel.molina@njlcv.org with any questions.
** Electronic Rulemaking Comment **

Submission Date: 09/06/2022 08:24:37

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Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: Melissa P. Abatemarco, Esq.

To Whom it May Concern:

We, the undersigned organizations, are pleased to submit comments in support of the landmark Environmental Justice Proposed Rule 7:1C. The Environmental Justice Rule, if written and implemented effectively, will protect New Jerseyans in vulnerable and marginalized communities, and we are grateful to environmental justice leaders for their decades of advocacy and for working with the Department of Environmental Protection (DEP) on this robust regulation. To strengthen the proposed regulations to ensure they will achieve our shared equity and justice goals we recommend the following: require projects seeking relief demonstrate compelling public interest by the community in which the facility will be located; require facilities to produce a public report assessing the effectiveness of proposed measures to reduce negative environmental and health impacts; and enhance requirements to ensure meaningful public participation. Stronger regulations accounting for cumulative impacts and externalized stressors are needed to protect human health from high-impact businesses and polluters. Industrial operations in particular release air, water and other pollutants such as NOx, SOx, particulate matter, volatile organic compounds (VOCs), and carbon monoxide, which have significant negative impacts on human health. Certain groups, such as children, the elderly, people of color, and low-income and limited-english speaking individuals, have a higher risk of exposure to these pollutants, which is a major risk factor in developing a long-term negative health outcome. Climate change only amplifies the impacts of pollution on human health, as warmer temperatures aggravate urban heat island effect, which is a common affliction of minority and low-income urban communities. The dangerous combination of pollutants, heat and lack of ecological buffers has contributed to higher rates of asthma in urban areas and communities of color, with asthma rates as high as 14% for black adults according to the NJ Department of Health. This rule will ensure that those who have disproportionately been impacted can at the very least be protected from further harm from facilities that have historically caused negative health impacts in Black and Brown and low-income communities. Protecting human health by eliminating pollutants supersedes any other cost, which is why we applaud excluding economic benefits from the definition of compelling public interest in an OBC and only considering the essential environmental, health and safety needs of the community. To narrow and therefore strengthen this definition, we recommend stating that compelling public interest must be demonstrated by the community in which the facility will be located under the 7:1C-1.5 definition. The Environmental Justice Impact Statement Requirements, 7:1C-3.2 - 9, should provide additional language on how a facility will demonstrate and therefore avoid disproportionate impact. Presently, the language does not provide sufficient enforceability. We suggest requiring that a facility provide a follow up report on the implementation of the measures to reduce impacts, which shall be made publicly available. If the report shows that the facility has failed to avoid disproportionate impact, the violations in section 7:1C-9.4 should take effect and the permit shall be suspended or revoked subject to their compliance with the stated conditions. To encourage meaningful public participation, information should be accessible on a variety of platforms, and access to information should be central and required at every stage of the process. We recommend revising or adding to the language in Subchapter 4. Process for Meaningful Public Participation to include the following: Written notice should be extended beyond a 200-foot distance from the facility in question to at least a 1000-foot radius, as we know that pollution does not stop 200-feet from its...
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This transformative rule has the potential to improve air, water and environmental quality in overburdened communities if it maintains a rigorous permitting process for major-industry facilities, holds polluters accountable, and effectively includes the communities the rule is meant to serve in the public participation process. Maintaining and strengthening these measures will create a new model of how to protect vulnerable communities for polluters. It could remove the difficult decision for residents in overburdened communities of choosing between a place they call home and one’s own health and financial/emotional hardship that comes with relocating. Overburdened communities are more than their designation. They are culturally-rich gems of the state that deserve the same protections as other communities. We must give the most robust protections to these communities for polluters. It could remove the difficult decision for residents in overburdened communities of choosing between a place they call home and one’s own health and financial/emotional hardship that comes with relocating. Overburdened communities are more than their designation. They are culturally-rich gems of the state that deserve the same protections as other communities. We must give the most robust protections to these communities that have been historically disenfranchised and are in danger of continued disenfranchisement without a strong cumulative impacts law. Thank you for your careful consideration of our comments on this important rule. Please contact New Jersey LCV’s Environment!
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All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it’s a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

+ No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables.
+ No offsets (e.g. planting trees or bike lanes elsewhere).
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Sue Altman
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Martin Andersen

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Eric Benson
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Joann Ramos

64 Fiume St
Iselin, New Jersey 08830
DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it’s a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

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David Lavender
441 Raritan Ave
Atco, New Jersey 08004
DEP Rulemaking DEP Rulemaking,

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Pamela Kane

1101 Timberbrooke Drive
Bedminster, New Jersey 07921
DEP Rulemaking DEP Rulemaking,

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Rosalind Doremus

522 Blackpoint Rd
Hillsborough, New Jersey 08844
DEP Rulemaking DEP Rulemaking,

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Thanks for listening!!

David Snope
31 School St.
Califon, New Jersey 07830
DEP Rulemaking DEP Rulemaking,

Why is NJ under assault by so many forces, gas pipelines and warehouses? NJ IS THE GARDEN STATE, leave it so, not damaging every empty space.

NO PIPELINES and NO WAREHOUSES, enough.

LaVonne Heydel

19 Westlake Court
Somerset, New Jersey 08873
DEP Rulemaking DEP Rulemaking,

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Vikram Sikand
39 King Avenue
Weehawken, New Jersey 07086
DEP Rulemaking DEP Rulemaking,

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Bella August
530 valley rd apt 4A
Montclair, New Jersey 07043
DEP Rulemaking DEP Rulemaking,

I support the following criteria:

Pollution reductions must be on site and explicitly spelled out in the permit.
No offsets allowed; for instance, no offsets for jobs or tax reductions

Steve Miller
151 Borden Rd
Middletown, New Jersey 07748
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

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Jaszmene Smith
1017 School Vlg
Bridgeton , New Jersey 08302
DEP Rulemaking DEP Rulemaking,

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ZaSah Khademi

4 Dawes Avenue
West Orange, New Jersey 07052-2317
DEP Rulemaking

Dear DEP Rulemaking,

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Edward Maxedon

161 Hillside Drive
Nashville, Indiana 47448-8127
DEP Rulemaking DEP Rulemaking,

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Jessica Hunsdon
304 Montgomery St
Highland Park, New Jersey 08904
DEP Rulemaking DEP Rulemaking,

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Victor Sytzko
0-47 27th Street
Fair Lawn, New Jersey 07410
DEP Rulemaking DEP Rulemaking,

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Demetria Marshall
155 W Palisade Ave
Englewood, New Jersey 07631
DEP Rulemaking DEP Rulemaking,

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Rebecca Hughes

16 Byron Drive
Phillipsburg, New Jersey 08865
DEP Rulemaking DEP Rulemaking,

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Morgan Spicer
6 Victorian woods drive
Atlantic highlands, New Jersey 07716-1500
DEP Rulemaking

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Carolyn Johnson
72 Patricia Ave
Colonia, New Jersey 07067
DEP Rulemaking

I am writing you again because I take environmental justice very seriously.

All communities, not just my upscale, well-heeled neighbors, deserve good, healthy, clean, dignified jobs, but it must not come at the expense of more pollution. I've always believed that the promise of economic gains and jobs is a false promise - it's a lie that EJ communities have been told for a long time. It has produced only enough for them to be hanging on by their fingernails, not wealth. It's a King Solomon dilemma in which they often find themselves, and it is morally wrong for government to be behind it.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

1. No economic allowances under compelling public interest language i.e. not allowed to trade fewer pollution reductions for more jobs and tax rateables.
2. No offsets (e.g. planting trees or bike lanes elsewhere).
3. Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

Jo Sippie-Gora
4 Dogwood Trl
Kinnelon, New Jersey 07405
DEP Rulemaking DEP Rulemaking,

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Barbara Rippert
342 Georgia Court
Sewell, New Jersey 08080
DEP Rulemaking DEP Rulemaking,

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Robert Focht
312 21st Street
Union City, New Jersey 07087
DEP Rulemaking DEP Rulemaking,

I have been incredibly disheartened recently with how environmental impacts to my neighborhood in Jersey City have been ignored at the state level.

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities. We will not benefit from expanded turnpikes or giant for profit stadiums being dropped in our neighborhood.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

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Dana Patton
311 Whiton St
Jersey City, New Jersey 07304
DEP Rulemaking DEP Rulemaking,

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Mary Gallagher

60 Salter Pl
Maplewood , New Jersey 07040
DEP Rulemaking

DEP Rulemaking DEP Rulemaking,

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Dan Battey
304 Montgomery St.
Highland Park, New Jersey 08904
DEP Rulemaking DEP Rulemaking,

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Michael Madden

50 Germonds Road
New City , New York 10956
August 30, 2022

Melissa P. Abatemarco, Esq.
Attn.: DEP Docket No. 04-22-04, PRN 2209-089
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, New Jersey 08625-0402

Re: Comments on NJDEP Proposed New Environmental Justice Rules
(NJDEP Docket No. 04-22-04, Proposal No. PRN 2022-082)

Dear Ms. Abatemarco:

On behalf of the Commerce and Industry Association of New Jersey (CIANJ), we submit the following comments on the Department of Environmental Protection’s proposed Environmental Justice Rules (Proposed Rules). CIANJ supports the intent of New Jersey’s Environmental Justice (EJ) Law. Our member companies recognize the importance of constructive engagement with communities to address EJ concerns; however, the Proposed Rules do not sufficiently take into account the significant and inevitable challenges that they present for businesses operating in the State. There are many significant issues with the Proposed Rules language, including concepts not aired in the stakeholder process, and we strongly urge the NJDEP to consider and address the deficiencies we have identified before the rules are finalized.

We highlight below CIANJ’s key concerns with the Proposed Rules; however, this is by no means an exhaustive list. Many of CIANJ’s members will be submitting more detailed and entity-specific letters, as will many other members of the business and labor communities who we support.

The New Jersey Environmental Justice Mapping, Assessment, and Protection (EJMAP) tool - The EJMAP tool is a foundational tool under the Proposed Rules that sets forth the key information required to identify overburdened communities (OBCs) and the components of the environmental justice impact statement (EJIS). However, the NJDEP has not provided the public a formal opportunity to provide feedback on this tool. CIANJ urges the NJDEP to allow stakeholders to provide feedback on this information in a formal rulemaking procedure, as the tool and the Proposed Rules are inextricably linked. We also request clarification on when and how stakeholders will be notified of any updates to the EJMAP tool, and recommend that NJDEP create and share with the public a calendar schedule of when the EJMAP tool will be updated with the most recent United States Census data and environmental and public health stressors. This is a critical step for facilities to evaluate whether the facility is regulated under the EJ program at the time of any environmental permit submittal to NJDEP.

Geographic point of comparison - The proposed definition of “geographic point of comparison” is overly broad. Using the 50th percentile approach, in addition to making comparison at state and county levels and also to non-OBCs, will result in the vast majority of OBCs considered “higher than” for almost every stressor,
which in turn will stifle economic development in the State. Undoubtedly, baseline community scores in populated areas—including towns and cities where labor resides—that are situated along major transportation means (e.g., ports, navigable waterbodies, railways, interstates, buses) are going to fall in OBCs that score as “already subject to adverse cumulative stressors.” We strongly urge the NJDEP to reconsider this approach.

EJIS Requirements - The requirements of the EJIS also present significant burdens on industrial facilities without due consideration to the benefits and investments of a particular facility to the local community. We urge the NJDEP to consider and address the positive impacts that economic investment and job creation will have on an OBC. The NJDEP should similarly consider how to reconcile the apparent conflict between making unemployment a stressor with potential negative health consequences, while simultaneously not including the economic benefits of direct and indirect jobs and tax revenue in their review. In addition, the EJIS should take into account community service and community support that companies often provide to residents living near industrial facilities, such as increased volunteerism, educational and workforce training programs, and grants to improve services or quality of life in the city and/or county.

Permit denials and conditions - The Proposed Rules provide the NJDEP with vast discretion to deny applications for new facilities and to impose significant conditions or restraints on existing facilities. Specifically, the provisions for renewals are of significant concern for existing facilities with substantial investments and often-times long histories in their communities. Since there are no prescribed limits in the Proposed Rules on what the NJDEP can impose as conditions, the Proposed Rules have the potential to effectively deny renewal applications, or substantially impact facilities, due to the overly burdensome requirements that may be imposed in order to obtain a permit renewal. These analyses and control measures far exceed what is required by existing law and which the NJDEP has deemed to be safe levels of emissions even at a community level. Facilities that presently meet NJDEP standards and are willing to do more to improve conditions in their communities, may be forced to shut their doors if permit conditions become too costly or burdensome for operations.

Moreover, given the scope and cost of compliance with the Proposed Rules, facilities seeking to renew a permit should be able to build upon and update the first (or immediately prior) EJIS, public process and engagement, and not start over for every renewal period. Subsequent evaluations should only consider increased environmental impacts that have occurred since the previous evaluation.

For new facilities that cannot avoid a disproportionate impact, consideration will be given if the facility provides a “compelling public interest.” However, this term is vaguely defined, and without further clarification, could be a very difficult or impossible standard to meet. Moreover, the NJDEP will not allow consideration of economic benefits as justification for compelling public interest, which is arbitrary and capricious, and fails to accurately and holistically consider net cumulative impacts, especially in light of the fact that “unemployment” is a listed stressor.

Additional delays and costs - CIANJ members are concerned with additional delays and cost burdens in the overall permitting process as established in the Proposed Rules. Specifically, the EJ process, including preparation of an EJIS, is going to significantly delay the NJDEP’s administrative completeness determination and, therefore, cause prejudicial delay for permit review and issuance of approvals. Critically, the Proposed Rules fail to provide any clearly defined timeframe for when EJIS statements must be submitted in the permit application process, and when the NJDEP must issue its decision beyond stating that the decision shall not be issued until at least 45 days after the public hearing. In light of these concerns, CIANJ reiterates the need for the NJDEP to provide clarification on the anticipated timeline for the NJDEP’s EJ review, and how it intends to address a situation where a permit that is being renewed expires during the EJ review process.
Community engagement - CIANJ recommends that the NJDEP recognize and incentivize through the Proposed Rules facilities that already have successful Community Advisory Panels (CAPs) and/or community engagement with community members, first responders, and elected officials. A simplified and flexible process will be more productive compared to a straight command and control-mandated approach. The NJDEP should encourage successful CAPs as a robust form of community engagement by allowing CAPs that meet a defined level of engagement to be deemed an acceptable public process in lieu of public hearings.

Adjacent zero population census blocks - The EJ law explicitly provides that it applies only to permits for facilities located, “in whole or in part, in an overburdened community.” An OBC is clearly defined based on it being a census block group with a specified percentage of certain populations. Despite this clear legislative language, the Proposed Rules state that they will also be applicable to block groups with a “zero population” if adjacent to an OBC. Zero-population census block groups are not mentioned in the EJ Law, nor are they defined in the EJ Law or the Proposed Rules. The NJDEP failed to comply with the EJ Law in withholding from the public and the stakeholder process its intent to expand the applicability of the EJ Law requirements beyond an OBC. Even more concerning, the extension of the EJ Law requirements to zero population census block groups is arbitrary on its face. Facilities in some census block groups immediately adjacent to OBC would be covered by the requirements (those in zero-population census block groups) and others, even if located closer to the OBC, would not be (those census block groups with any residences). No explanation is provided by NJDEP for this distinction.

“New facility” definition - The EJ law makes a distinction between a “new” facility and the expansion of an “existing” facility. This distinction is significant as permits for “new” facilities can be denied whereas those for existing facilities cannot. Yet, despite this clear distinction and plain meaning of the word “new,” the NJDEP has blurred these lines by including “existing” facilities in the definition of “new” if an existing facility has had a change in use or failed to obtain a permit. For one, failure to obtain a permit, or letting one lapse, no matter how insignificant or unintentional, should not result in an EJ “new” facility analysis that would, very likely, result in the facility being denied a permit and forced to shut down. Second, including a “change of use of an existing facility” in this definition creates confusion between what is new versus an expansion of an existing facility, and would add significant burdens and uncertainty to companies; indeed, this term is so vague that facility operators may not even know their actions would trigger the EJ law. This is not what the EJ law intended when it carved out the category of a “new facility.”

“Interested party” definition - The Proposed Rules allow for an “interested party” to submit written and oral comments regarding an application; however, no definition on who qualifies as an “interested party” exists. This allows for anyone from outside an affected area to comment, including those with a competitive or personal interest outside of EJ or even the State, to participate. Instead, the NJDEP should limit the scope of public comment to residents and individuals or organizations with an objective, defined connection to the OBC.

“Expansion” definition - The proposed rules define “expansion” to be a “modification” of “existing operations or footprint of development that has the potential” to increase contributions to a stressor. A “modification” of operations or an increase of a footprint is an extremely stringent standard, especially when combined with a “potential” to contribute to the broad categories of stressors. This term could include almost any change at a facility and will have facilities continually triggering the EJ rules and having to go through the EJIS and hearing process even if no further conditions are imposed, although they can be. This uncertainty and cost will undoubtedly make operating in OBCs difficult if not impossible. There needs to be some de minimis threshold below which the EJ rules are not triggered. Similar de minimis thresholds already exist in land use regulations where permits are based on the size of a development’s expansion.
The “no contribution to a stressor” standard - As part of the Proposed Rules, facilities can theoretically avoid certain conditions or procedures if they can demonstrate it would not contribute to an adverse stressor. As many of the stressors are broad (e.g., air pollution impacts, traffic) it will be a practical impossibility for many facilities to meet this test. NJDEP should include a de minimis or minor impact threshold rather than a seemingly “zero impact” test. Otherwise, this provision will have no practical meaning other than to increase costs and cause confusion.

Thank you for your consideration of our comments on this important rulemaking effort. Although we appreciate the NJDEP’s efforts, we believe the NJDEP is missing an opportunity to encourage facilities to better engage with their communities and instead, is proposing rules that will have the ultimate effect of driving businesses out of OBCs. Again, we urge the NJDEP to consider and address our concerns before the Proposed Rules are considered for adoption.

Sincerely,

Anthony Russo
President
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it’s a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

+ No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables.
+ No offsets (e.g. planting trees or bike lanes elsewhere).
+ Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

Melissa Schaffer
115 Edgemont Road
Montclair, New Jersey 07043
August 17, 2022

Melissa P. Abatemarco, Esq.
Attn: DEP Docket #04-22-04, PRN 2201-082
Office of Legal Affairs
Department of Environmental Protection
401 E. State Street, 7th Floor
Mail Code 401-04L
P.O. Box 402
Trenton, New Jersey 08625-0402

RE: Environmental Justice Rules Proposal

On behalf of the governing body of the City of Linden ("City" or "Linden"), our Linden Economic Development Corporation and myself, please accept this correspondence as our response in regard to the Department of Environmental Protection’s proposed Environmental Justice Rules ("EJ rules")

First, we applaud and fully support the efforts of the DEP that are addressed in these rules, and we care about the need to protect all of our residents, however we wholeheartedly believe that the rules have gone beyond the legislative intent and verbiage of the bill causing great concern here in the City. If we are to implement all these EJ rules, it will make it extremely difficult, if not impossible, for certain businesses to be located here in Linden and the State of New Jersey. It would also harm the overall economic competitiveness of our State.

Linden is presently feeling an economic boom in these troubling times which we are very proud of and the EJ rules could only delay infrastructure projects and facilities and will unquestionably impact the construction of new and
existing facilities here in our community. The proposed regulations make it
difficult if not impossible for any new facility to be approved. There is no
consideration for facility expansion for new technology that is imperative for
existing facilities to remain competitive, instead the EJ rules propose an
over-burdensome process threatening their ability to continue to operate in the
future.

As you may know the Bayway Refinery has been a staple in Linden since John
D. Rockefeller purchased the land in 1907 and built the Standard Oil Plant.
This plant has had many different owners and names over the years and is now
known as Phillips 66 Bayway Refinery. The Refinery has been a long-time
corporate neighbor and has been a major life blood of our community. They
have been good to Linden and responsive to the many environmental issues
and concerns of our residents and our neighboring community, the City of
Elizabeth.

In the EJ Rules, aside from the 64 stresses, the Title V permit renewal criteria
is of particular concern for us. The rules indicate that every permit no matter
how small will trigger the extensive EJ process, the EJIS, and public hearings
which can be detrimental to the survival of Phillips 66 and all Title V facilities
in our city and in our state. This law as written creates a great deal of
uncertainty of approval and conditions placed by the discretion of DEP and
community input on our businesses and we are very concerned that not only
Phillips 66 but other businesses that may want to come to Linden or need to
expand their businesses to stay competitive will look to options available in
other states rather than here in our city and state.

Although this law was created to protect Overburden Communities ("OBC")
which by their definition are considered as low-income areas which also
includes unemployment, its implementation will ultimately hurt these very
areas the law was intended to protect. The EJ Rules will drive the businesses
out of OBC thereby creating a higher rate of unemployment and more
low-income residents. Consideration of the economic benefits of our industrial
partners should very much be considered when evaluating a project's value to
the community, as they support the tax base, employment and offer extensive
philanthropic and charitable giving in our city and to our civic and nonprofit
organizations.

In conclusion, we the governing body of Linden implore you to please
reconsider the overreaching requirements placed on Title V renewal permits
and needed expansion projects. The delay and uncertainty of the EJ process associated with evaluation of the many stressors in these rules for every permit or change to Title V Permits will drive business from our state. New Jersey is already in the top 10 of all 50 states that are seeing a loss in population because people are moving to more business and tax friendly states. Implementation of the EJ Rules “as is” will only compound this exodus.

Respectively,

Derek Armstead
Mayor City of Linden

DA/rkt
DEP Rulemaking DEP Rulemaking,

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Diana Bohn
nicca@igc.org
618 San Luis Rd.
Berkeley, California 94707
DEP Rulemaking DEP Rulemaking,

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David Williams
85 Highland Street, Highland Park, MI, USA
Highland Park, MI, Michigan 48203
DEP Rulemaking, DEP Rulemaking,

As a concerned citizen of New Jersey and a voter, I hope that you will take these concerns seriously. I believe strongly that all communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

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Mark Lowenthal
17 Claremont Dr.
Maplewood, New Jersey 07040
DEP Rulemaking DEP Rulemaking,

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Barbara Miller

12 Ben Franklin Dr.
Franklin, New Jersey 07416
DEP Rulemaking DEP Rulemaking,

I realize this is a cut and paste message and I support it one hundred percent. As I write this, there is a street and sewer construction project going on on my street. I watch as workmen use electric saws to cut cement, dig holes, sweep up and run Diesel engines. Dust and exhaust covers them head to toe, then plumes into the air landing on moms and dads and kids and pets and cars. and every tree, bush and blade of grass. This has to stop. I can't imagine the damage this is doing to the workmen. And do they bring it home to their families on their clothes and in their hair. What about them. What about all of this. It's outrageous. This kind of workplace is awful for everyone and everything. Measures must be taken. Measures can be taken. Do it and codify that into law. Thank you

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Anne Stires
1 Ann Street
Verona, New Jersey 07044
DEP Rulemaking DEP Rulemaking,

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ROBERT MOORE
75 CATLIN ROAD
FRANKLIN, New Jersey 07416
DEP Rulemaking DEP Rulemaking,

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Herb Tarbous

411 New Market Road
Piscataway, New Jersey 08854
DEP Rulemaking DEP Rulemaking,

We need to address a continuing, material need for the dignity of good jobs that are safe, clean and in healthy spaces, but this must be balanced against a growing imperative - that we don't add more weight to the already overwhelming problem of environmental pollution.

Promises of economic gains and jobs for challenged, deprived communities have regularly proved to be false, convenient lies told for too long, lies which never produced wealth for Environmental Justice communities.

Nobody buys it any more. The negative effects of polluting facilities that poison water or air, that leach through piles of waste, "!! are in the news today !!" - right now, in Jackson, Mississippi or Benton Harbor, Michigan. Because of our own ongoing history of racism right here in NJ, the very communities who suffer being poisoned have been targeted as sites for dangerous facilities for ages - and then, were discounted. This needs to stop.

It is not okay with me, a white teacher, that my black and brown sisters and brothers - the old and the young - suffer the most immediate and direct effects of toxic pollutants. If this "remains okay* with certain powerful, wealthy and self-interested parties, perhaps we all need to realize that "these effects will get to the privileged communities, eventually". Maybe this could be some motivation to change ... but I would hope that fairness and compassion would be sufficient - and right now. Climate change comes for us all - and flooding carries pollutants where it will.

Therefore, I strongly urge you pass "real regulations": the strongest Environmental Justice rules possible - because 'the creek', she is rising. Please, implement the following criteria:

+ No economic allowances under 'compelling public interest' language - do not allow "trade* of *fewer pollution reductions* for more jobs and tax ratables!
+ *No offsets* (e.g. planting trees or adding some bike lanes, elsewhere).
+ Achieve "Actual Reduction or Avoidance of Pollution" in the community - more specifically, *at the facility* - where it is already located or proposed - either by setting permit conditions for renewal/ expansion permits for existing facilities - or by denying any new pollution permits in already overburdened communities. All pollution reductions must be on site and codified in the permit.

Thank you for your kind attention and readiness for constructive action...

Elizabeth Seaton-Frankfort
22 Cross St
DEP Rulemaking DEP Rulemaking,

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Matt Santaiti
26 Patriot Hill Drive
Basking Ridge, New Jersey 07920
DEP Rulemaking DEP Rulemaking,

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Hailey Benson

1315 51ST ST
NORTH BERGEN, New Jersey 07047-3111
DEP Rulemaking DEP Rulemaking,

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Lindsay Lowry
45 Columbia Ave.
Hopewell Borough Mercer), New Jersey 08525
DEP Rulemaking DEP Rulemaking,

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Dana Hiscock
8 East Elbrook Drive
Allendale, New Jersey 07401
DEP Rulemaking DEP Rulemaking,

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Asma Dost-Sayany

10 St. Moritz Lane
Cherryhill, New Jersey 08003
DEP Rulemaking DEP Rulemaking,

As the DEP, we rely on you to recognize how important it is that people shouldn't have to choose between a healthy environment and jobs. All residents - no matter their zip code - deserve a seat and a voice at the table in decisions that will impact the health of their water, air, and neighborhoods.

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Barbara Cuthbert
260 Bunker Hill Rd
Princeton, New Jersey 08540
DEP Rulemaking DEP Rulemaking,

The Department of Environmental Protection has a unique and vital role in protecting the health and ecosystems where NJ residents live and work, and the long-term planning needed to ensure their health and well-being for generations.

This means all proposed energy and industrial enterprise meets strict and fair rules that ensure justice for communities overburdened by pollution and devastating health and wealth consequences. Such areas become undesirable as a direct result of industrial activity. This must be stopped.

Industry does not exist above the rules and beyond the reach of health and environmental oversight. Enterprise must be held accountable for the extreme, externalized real costs of profiteering and lying about good job creation and economic and social benefits that never materialize. This is abominable.

The only way to stop this rampant abuse is to assert firm rules founded in just law and due process to protect all communities from pollution and profiteering at inception, before they take hold.

All communities deserve good, healthy, clean, dignified jobs -- but never at the expense of pollution.

I strongly urge you to pass the strongest Environmental Justice rules possible by implementing the following requirements:

!! -- No economic allowances under compelling public interest language -- Do not permit pollution to be traded for jobs and tax rateables. A short-term balanced municipal budget achieved by selling out the long-term health and wellness of the community and ecosystem is a formula for ultimate disaster. This enables cynical, shortsighted political whitewashing and perpetuates moral and economic impoverishment across society.

!! -- No offsets (e.g. planting trees or bike lanes elsewhere), because like economic allowances, this exchanges true long-term reengineering of our ways of creating prosperity for short-term profiteering and perpetuating the unsustainable, cruel status quo.

!! -- Truly reduce or avoid pollution in the community and at the facility where it is already located or proposed. Do this by setting permit conditions for renewal / expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. All pollution reductions must be on site and codified in the permit.
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Bharat Adarkar
18 Shiloh Road
Manalapan Township, New Jersey 07726
On behalf of the undersigned business entities, please accept our comments on the Department of Environmental Protection's proposed Environmental Justice Rules. The business community is fully supportive of efforts to address the environmental and health challenges being faced in many areas of the state where pollution impacts and social conditions may have led to conditions with enhanced risks and a lower quality of life. We were also largely supportive of the underlying Environmental Justice Law which these proposed rules seek to implement. However, it is our strong belief that the proposal, as currently drafted, will not serve the interests of the communities it seeks to protect, but will rather lead to less economic opportunities, more abandoned properties, with only minimal, if any, environmental and health benefits. This proposal has significantly strayed from the balanced approach required by the underlying legislation and has, instead, imposed an overly proscriptive, command and control approach that will likely prove to be unnecessarily costly and unworkable in the real world. These rules represent a lost opportunity to improve conditions in these communities. This letter will highlight our key concerns, but it is by no means an exhaustive list. Many of the signatories to this letter will be submitting more detailed, and entity-specific letters, as will many other members of the business and labor communities. There are however, two themes that connect the concerns reflected in this letter: The rules would be more effective in achieving real improvements in communities by relying on a more cooperative and less proscriptive approach; and these rules have not only stretched the parameters of the underlying statutory authority, they go beyond legislative intent. By selecting parameters intended to deem as many overburdened communities as possible as being disproportionately impacted, the proposed rules have effectively eviscerated the Legislature's direction to compare overburdened communities against other areas to determine which communities may be overburdened with stressors. During the stakeholder process, the DEP stated that the use of the parameters ultimately proposed in the rule would result in over 90% of overburdened communities (OBCs) being deemed disproportionately impacted. Given this result, despite the statute's requirement for a comparison and analysis, the rules effectively deem nearly all OBCs as disproportionately impacted. Given that two-thirds of the state's population is located in OBCs and given that much of the rest of the state is either regulated as Highlands, Pinelands, or wetlands, a large proportion of the populated and developable area of the state will be a disproportionately impacted OBC and largely precluded from any new or expanded facilities. If the Legislature had intended this result, they would have merely deemed all OBCs as disproportionate and not bothered with the comparison. In addition, the determination of whether an OBC is disproportionately impacted by adverse stressors is made by comparing the impacts on the OBC to the more restrictive of the countywide or statewide level. Thus, the OBC is not compared to an average community, but rather, it is compared to a community that is above average in every single category. The EJ law explicitly provides that it applies only to permits for facilities located, in whole or in part, in an overburdened community. An OBC is clearly defined in the statute as a census block group with a specified percentage of certain populations. Despite this clear legislative language, the proposed rules seek to expand the statutory definition of overburdened community to...
include all unpopulated census block groups adjacent to an OBC. This provision exceeds DEP_s jurisdiction under the EJ Law, which is limited to the communities that meet the statutory criteria for an OBC. Had the Legislature intended the EJ Law to apply in unpopulated areas, it would have included it in the statutory text. In addition, this provision is counterproductive, as one of the goals of the EJ Law is for new facilities to be located in areas that are not populated. Nevertheless, the adjacency rule makes this more difficult, by holding certain unpopulated areas to a higher standard than populated areas. This provision makes even less sense when you consider the fact that a facility adjacent to an OBC, but not in a zero population block group would not be regulated but could have as much impact as those in zero block groups. The use of zero block groups to regulate facilities under the EJ law seems to be a means to regulate certain facilities and not a logical, or legal, means to address potential impacts. This extension of the rules to block groups that do not meet the statutory definition of an OBC clearly exceeds DEP_s statutory authority, is contrary to the underlying law and should not be adopted.

Renewal Provisions _ The provisions for renewals are of significant concern because they impact existing facilities with substantial investments and often long histories in neighborhoods. The Legislature recognized their special nature and thus prohibited the DEP from denying their renewal permit. However, the proposed rules would effectively deny renewal applications for facilities that are fully in compliance with all other laws due to the overly burdensome requirements being imposed to obtain a renewal. Requiring major source facilities to produce a new EJIS, host public hearings, and address all public comments every five years is excessive and unduly burdensome. Give!

In these circumstances, the compliance period for major source facilities should be extended to every other permit renewal, instead of every permit renewal, especially if the permit renewal contains few or no changes.

The proposed rules require existing facilities to propose measures to avoid _contributing_ to all adverse stressors, perform a facility-wide risk assessment to limit hazardous air pollutants (HAPS) and toxic substances to negligible levels, implement a feasibility assessment to control fine particulate matter, NOx, and VOCs, and then implement control measures to address all stressors not otherwise covered. In addition, for major sources, compliance with the EJIS requirements is duplicative of many of the requirements for Title V air permits. These analyses and control measures are being imposed on existing businesses which already meet DEP_s emissions requirements at a community level. These analyses and control measures far exceed what is required by existing law and require existing businesses to go beyond the levels of emissions the DEP has already deemed to be safe even at a community level. The cost, time, and unpredictability of these requirements on existing facilities could negatively impact the ability of businesses to operate in New Jersey. The benefits are likely minimal.

We remind the Department that these facilities all meet stringent DEP standards and are willing to do more to improve conditions in their communities. This rule, however, is several steps too far. Compelling public interest test should include economic benefits _ Despite the fact that the law partly defines an OBC based on a low-income population and that the proposed rules include unemployment as a stressor, the rules specifically do not allow consideration of the economic benefits to a community from a facility, the precise benefits that would help raise income levels and lower unemployment. By considering potential impacts but not economic benefits, the DEP is only looking at one side of the ledger. In fact, these rules could have the absurd result of denying a permit even where good-paying jobs would be brought to a community where the local elected officials and even if the community itself wants the facility to be located in the OBC. The rules allow for no flexibility to consider relevant factors, especially given the economic benefits can directly impact both the number of low-income families in the community and the unemployment rate _ one of the factors used to determine OBC status and one of the environmental and public health stressors sought to be addressed by the EJ Law, respectively. The no contribution to a stressor_ standard is too strict _ In various provisions in the proposed rules, facilities can avoid certain conditions or procedures if they can demonstrate it would not _contribute_ to an adverse stressor. Given the fact that many of the stressors are broadly defined (e.g. air pollution impacts, traffic) it will be difficult, if not outright impossible for any facility to meet this test. By having a hard and fast rule, it also discourages facilities from changing processes or installing new equipment where the net environmental benefit may far outweigh a minimal contribution to a stressor. There needs to be some de minimis or minor impact threshold, especially with regard to minor modifications under a permit, rather than a seemingly _zero impact_ test. Otherwise, this provision will have no practical meaning other than to increase costs and cause confusion.

The definition of a _new_ facility is overly broad and vague _ The EJ law makes a distinction between a _new_ facility and the expansion of an _existing_ facility. This distinction is significant as permits for _new_ facilities can be denied whereas those for existing facilities cannot. Yet, despite this clear distinction and plain meaning of the word _new_, the DEP has blurred these lines by including _existing_ facilities in the definition of _new_ if an existing facility has had a change in use or failed to obtain a permit. Absent a specific statutory definition, DEP is required to follow the plain and
generally understood meaning of the phrase _proposed new facility_, which does not include existing unpermitted facilities. DEP therefore does not have the authority to require existing unpermitted or lapsed permit facilities to comply with the requirements for _a proposed new facility_. PPPPPPPP

The term _change in use_ is ambiguously and broadly defined as _a change in the type of operation of an existing facility_ that increases a contribution to a stressor. This is an extremely broad standard and ignores the plain language of the underlying statute. _New_ should be defined by the plain meaning of that word: not existing before. Under the proposed rule_s definition, if an existing facility fully in compliance with all laws added a third shift, switched from making widgets to masks during a pandemic, or changed the formula of one of its products, it will be treated as a new facility, trigger the EJ rule process, and then have the DEP compelled by law to deny its permit. This term is so vague that facility operators may not even know their actions would trigger the EJ law. This is not what the EJ law intended when it carved out the category of a _new facility_. PPPPPPPP

Further, failure to obtain a permit, or letting one lapse, no matter how insignificant, harmless, or innocent, should not result in an EJ new facility analysis that would, very likely, result in the facility being denied a permit and forced to shut down. PPPPPPPP

The definition of an _expansion_ is too broad and vague. The proposed rules define _expansion_ to be a _modification_ of _existing operations or footprint of development that has the potential_ to increase contributions to a stressor. A _modification_ of operations or an increase of a footprint are extremely stringent standards, especially when combined with a _potential_ to contribute to the broad categories of stressors. This term could include almost any change!

at a facility and will have facilities continually triggering the EJ rules. Even if no further conditions are warranted or imposed, the facility will nevertheless be required to go through the costly and time-consuming EJIS and hearing process for every minor change. This uncertainty and cost could undoubtedly make operating in OBCs difficult if not impossible. There needs to be some de minimis threshold below which the EJ rules are not triggered. Similar de minimis thresholds already exist in land use regulations where permits are based on the size of a development_s expansion. PPPPPPPP

Conclusion _ We believe the DEP is missing an opportunity to encourage facilities to better engage with their community neighbors and to take actions to improve conditions for the long term. Rather, the DEP has proposed rules that seek to implicitly, if not explicitly, drive businesses out of OBCs. We can have both economic opportunities and healthy communities. These rules are a step backward in achieving that goal. We recommend that substantial amendments be made to these rules before they are considered for adoption. PPPPPPPP-Ray Cantor, VP Government Affairs, New Jersey Business & Industry Association (NJBIA) PPPPP-Michael Fesen, Executive Director, Norfolk Southern Corporation & NJ Railroad Association PPPPP-Anthony Russo, President, Commerce and Industry Association of - Christina Renna, President & CEO, Chamber of Commerce Southern New Jersey PPPPP-Lewis Dubuque, Vice President, National Waste & Recycling Association PPPPP-Joseph De Flora, Director, The American Fuel & Petrochemical ManufacturersPPPPPP-Robert Briant, Chief Executive Officer, Utility & Transportation Contractors AssociationPPPPPP-Mark Longo, Director, ELEC825 _ Labor Management Fund_ of Operating Engineers Local 825 PPPPP-Michael Giaimo, Regional Director, American Petroleum InstitutePPPPPP-Michael Miller, President, ISRI New Jersey ChapterPPP
DEP Rulemaking DEP Rulemaking,

DEP Commissioner Shawn LaTourette,

The Friends of Liberty State Park urge you to pass the strongest Environmental Justice rules possible. There must be no loopholes for profiteers to get around the language and spirit of the legislation.

Governor Murphy's environmental credibility is on the line, as it remains on the line for his not supporting protection legislation for Liberty State Park public land against privatization. Put the Governor's lip service to the environment into action for urban communities.

Please do what the former DEP Deputy Commissioner for Environmental Justice and Equity Olivia Glenn would want the DEP to do, with the tightest, strictest rules possible and requiring maximum public input in any Environmental Justice decision.

Please carry out the bullet points below.

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, we are strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

+ No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables.
+ No offsets (e.g. planting trees or bike lanes elsewhere).
+ Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

Sincerely,
Sam Pesin, president of the Friends of LSP

Sam Pesin
pesinliberty@earthlink.net
580 Jersey Ave #3L
Jersey City, New Jersey 07302
DEP Rulemaking DEP Rulemaking,

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Ellen Hill
40-3 Tamaron Dr.
Waldwick, New Jersey 07463
DEP Rulemaking DEP Rulemaking,

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ann malyon
1seminoleave
oak, New Jersey 07436
DEP Rulemaking DEP Rulemaking,

We need the strongest possible EJ rules completed quickly—N.J. residents are waiting impatiently! All communities deserve good, healthy, clean, dignified jobs—not at the expense of more pollution, and not low-wage, go-nowhere jobs at companies that do not contribute to local prosperity. The promise of economic gains and jobs is too often a false promise — it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities, but has produced lots of pollution and wealth for corporate stockholders at the expense of the health of EJ communities..

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

+ No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables. Not at all, nowhere, nohow.
+ No offsets (e.g. planting trees or bike lanes elsewhere). Not at all, nowhere, nohow
+ Achieve *ACTUAL* reduction or avoidance of pollution *in the community* (and more specifically *at the facility*) where it is already located or proposed either by setting stringent permit conditions for any renewal/ expansion permits for existing facilities that ensure that there is actual improvement in air, water, and overall environmental quality—without this, each and every new pollution permit in already overburdened communities must be DENIED. All pollution reductions must be on site, codified in the permit, and the site monitored for ongoing compliance.

Let’s get this done and in place quickly—environmental-justice communities have waited for far too long!

Sally G

210 Broadway
Woodcliff Lake, New Jersey 07677
DEP Rulemaking DEP Rulemaking,

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Tracey katsouros
1322 Harwich Dr
Waldorf, Maryland 20601
DEP Rulemaking DEP Rulemaking,

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Ralph Zelman

4N Dennison Drive
East Windsor, New Jersey 08520
DEP Rulemaking DEP Rulemaking,

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Cheryl Dzubak
69 Elton Avenue,
Yardville, New Jersey 08620
DEP Rulemaking DEP Rulemaking,

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Alicia Marshall
155 West Palisade Ave
Englewood, New Jersey 07631
DEP Rulemaking, DEP Rulemaking,

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Patricia Ruggles
52 Briarwood Rd
Florham Park, New Jersey 07932
DEP Rulemaking DEP Rulemaking,

Thank you for reading this. All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it’s a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

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Please!

Bonnie McCay Merritt
26 Grafton Road
Stockton, New Jersey 08559
DEP Rulemaking DEP Rulemaking,

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Kevin Kimmel

46 Linden w
Summit, New Jersey 07901
DEP Rulemaking, DEP Rulemaking,

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Carol Kuehn
4291 Route 27
Princeton, New Jersey 08540
DEP Rulemaking DEP Rulemaking,

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Nicholas Huss
14 Overbrook road
Somerset, New Jersey 08873
DEP Rulemaking DEP Rulemaking,

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Karen Diehl
527 Riverwood Avenue
Point Pleasant Boro, New Jersey 08742
DEP Rulemaking DEP Rulemaking,

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Pauline Saade

211 grant ave
Cliffside park, New Jersey 07010
DEP Rulemaking DEP Rulemaking,

Dear leaders,

When I think of my daily choices and how it impacts the climate I think mainly of my 5 year old nephew and what type of climate and world I'm leaving him and his children behind. I want him to breathe clean air, drink fresh clean water, eat organic food that was grown in soil that is not over sprayed with chemicals, swim in an ocean that is alive with living reefs, I want him to experience and see snow on top of the mountains and see animals that are not near extinctions.

I know I'm just one normal human being but I dream that now is the time for us all to take the right action. To implement environmental laws that protect 7 generations to come. It will only be insanity if we continue to go against the science and facts that shows over and over again how we are hurting the climate (we need laws, regulations) plastic, fossil fuel and polluting our elements with chemicals should be a thing of the past it has done enough damage not only to our health but our environment. We have the technology and intelligence to make those changes today. Maybe covid has given us the opportunity to pause and assess. I am just one voice out the many that are ready to see this change today. I am pleading for the future of my nephew, I look into his eyes and I don't want to regret not doing my best to help build a better future and climate for him. Our children deserve this fight!

Thank you,
Pauline Saade

The Action Network

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211 grant ave
Cliffside park, New Jersey 07010
DEP Rulemaking

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Jeanne Golden

131 Princeton Rd
Linden, New Jersey 07036
From: Kathryn Hiscock
To: DEP rulemakingcomments [DEP]
Subject: [EXTERNAL] DEP Docket Number: 04-22-04
Date: Tuesday, September 6, 2022 11:35:54 AM

DEP Rulemaking

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Kathryn Hiscock
8 East Elbrook Drive
Allendale, New Jersey 07401
DEP Rulemaking DEP Rulemaking,

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Eileen Mahood-Jose
153 Elm Street Apt. 4
Newark, New Jersey 07105
DEP Rulemaking DEP Rulemaking,

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Holly Cox

1 Dey Court
Towaco, New Jersey 07082
DEP Rulemaking DEP Rulemaking,

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Pat Balko
118 Lakewood Dr
Denville, New Jersey 07834
DEP Rulemaking DEP Rulemaking,

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Don Vonderschmidt

9 Buckley Ln
Marlton, New Jersey 08053
DEP Rulemaking DEP Rulemaking,

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Michael Buckley
16 Briarbrook Drive
Briarcliff, New York 10510
DEP Rulemaking DEP Rulemaking,

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Gary Dunn

335 Brighton Ave
Long Branch, New Jersey 07740
DEP Rulemaking DEP Rulemaking,

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Sara Buckley
16 Briarbrook Drive
Briarcliff, New York 10510
DEP Rulemaking

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Lee Barile
8305 Bergenline Ave Apt 24
North Bergen, New Jersey NJ
From: Bambi Magie
To: [EXTERNAL] DEP Docket Number: 04-22-04
Subject: DEP Rulemaking
Date: Tuesday, September 6, 2022 12:04:43 PM

DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it’s a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

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Bambi Magie
213 McGuire Blvd
Brick, New Jersey 08724
DEP Rulemaking DEP Rulemaking,

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Joann Eckstut
je@theroomworks.com
26 Marston Place
Glen Ridge, New Jersey 07028
DEP Rulemaking DEP Rulemaking,

Vote for LSP PROTECTION ACT. All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

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Laura Sariego
28 Duncan Ave
Jersey City , New Jersey 07304
DEP Rulemaking DEP Rulemaking,

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Susan Mikaitis

63 Pape Drive
Atlantic Highlands, NJ, New Jersey 07716
DEP Rulemaking DEP Rulemaking,

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ann malyon
1seminoleave
oak, New Jersey 07436
DEP Rulemaking DEP Rulemaking,

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Jeany Myers

19 Hopkins Court
Parsippany, New Jersey 07054
DEP Rulemaking DEP Rulemaking,

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Mon Mor

888 Westfield Ave Apt C1
Elizabeth City, New Jersey 07208
DEP Rulemaking DEP Rulemaking,

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GAIL Arnold
68 North 6th Avenue
Highland Park, New Jersey 08904
DEP Rulemaking DEP Rulemaking,

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Marilynn Benim

121 Roosevelt Ave
Hasbrouck Heights, New Jersey 07604
DEP Rulemaking DEP Rulemaking,

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Laurel Kornfeld
106 North Sixth Avenue
Highland Park, New Jersey 08904
DEP Rulemaking DEP Rulemaking,

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Jay Wiesenfeld
15 Oak St
Lincroft, New Jersey 07738
DEP Rulemaking DEP Rulemaking,

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Robyn Gorman
4 Constellation Pl, Apt 304
Jersey City, New Jersey 07305
DEP Rulemaking DEP Rulemaking,

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Dawn Zelinski

140 Deepdale Dr.
Middletown, New Jersey 07748
DEP Rulemaking DEP Rulemaking,

A good sounding idea needs to be actually implemented. Please use you discretion to provide the most relief possible with the new legislation that professes to improve communities that have been degraded by previous governmental environmental choices.

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Frank Battaglia
44 S. Aberdeen Place
Atlantic City, New Jersey 08401
DEP Rulemaking DEP Rulemaking,

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Sheila Ward
1057 Calle 8
San Juan, Puerto Rico 00927
DEP Rulemaking DEP Rulemaking,

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Frank Battersby
217 Vanneman Avenue
Swedesboro, New Jersey 08085-1021
DEP Rulemaking DEP Rulemaking,

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M Rute Correia

1052 North Ave
Elizabeth, New Jersey 07201
DEP Rulemaking DEP Rulemaking,

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Melissa Pflugh
10 Colgate Rd.
Oakland, New Jersey 07436
DEP Rulemaking DEP Rulemaking,

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Michael Cloud

208 Cinnaminson Avenue
Palmyra, New Jersey 08065
DEP Rulemaking DEP Rulemaking,

Earth can't wait!

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Louis Discepola
314B 3rd St
Hackensack, New Jersey 07601
DEP Rulemaking DEP Rulemaking,

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ANGELA KAVALESKY

1 Hale Place
Somerset, New Jersey 08873
DEP Rulemaking DEP Rulemaking,

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Miriam MacGillis
41 A Silver Lake Rd
Blairstown, New Jersey 07825
DEP Rulemaking DEP Rulemaking,

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3204 Enclave Cir
Somerset, New Jersey 08873-7452
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Joseph Pepe
1073 Maplecrest Rd, County Route 40
East Jewett, New York 12424
DEP Rulemaking DEP Rulemaking,

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Janet E Goldstein
47 Saratoga Court
Somerset, New Jersey 08873
DEP Rulemaking DEP Rulemaking,

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Jerry Rivers
8 Gombert place
Roosevelt, New York 11575
DEP Rulemaking DEP Rulemaking,

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Richard Askins
87 Oak Trail Rd
Hillsdale, New Jersey 07642-1217
DEP Rulemaking DEP Rulemaking,

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George Bourlotos

49 Flanders Bartley Road,
Flanders, New Jersey 07836
DEP Rulemaking DEP Rulemaking,

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Somerset, New Jersey 08873
DEP Rulemaking DEP Rulemaking,

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Katherine Scott
632 Garden Street
Hoboken, New Jersey 07030
DEP Rulemaking DEP Rulemaking,

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Margaret Ragazzo
58 Patriots Way
Somerset, New Jersey 08873
DEP Rulemaking DEP Rulemaking,

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Mary Ann Aktay

9 Colonial Terrace
Pompton Plains, New Jersey 07444
DEP Rulemaking DEP Rulemaking,

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7315 minuteman ln
Somerset , New Jersey 08873
DEP Rulemaking DEP Rulemaking,

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Brian Greenberg

18 Borden st.
Shrewsbury, New Jersey 07702
DEP Rulemaking

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Joseph Marchica
10 Sheffield Rd
Hamilton, New Jersey 08619
Attached are the Environmental Technology Council comments in the above-referenced docket in MS Word format.
Thank you for your assistance.

David R. Case
General Counsel
Environmental Technology Council
1112 16th Street NW, Suite 420
Washington DC 20036
(202) 783-0870 x201

Environmental Technology Council

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Filed via electronic mail

September 6, 2022

Melissa P. Abatemarco, Esq.
Attn.: DEP Docket No. 04-22-04
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, New Jersey 08625-0402

Re: Comments On NJDEP Proposed Environmental Justice Rule, Docket No. 04-22-04

Dear Ms. Abatemarco:

The Environmental Technology Council (ETC) submits these comments on the New Jersey Department of Environmental Protection (NJDEP) Proposed Rule on Environmental Justice Procedures, N.J.A.C. 7:1C. The ETC and its member companies support the goals of the New Jersey Environmental Justice Law, N.J.S.A. 13.: 1D-157, but we believe the proposed rule must be substantially improved by taking into account our serious concerns as described below.

**Statement of Interest**

The ETC is the national trade association for the commercial hazardous waste management industry. ETC member companies provide technologies and services to customers for the safe and effective recycling, treatment, and secure disposal of hazardous wastes through spent industrial solvent recovery, re-refining of used oil, high-temperature incineration, secure landfill disposal, and other advanced technologies. Our member companies must comply with the safety, security and environmental regulations of the Resource Conservation and Recovery Act (RCRA), the Department of Transportation (DOT) hazardous materials program, the Chemical Facilities Anti-Terrorism Standards, and the Risk Management Program, just to name a few. ETC member companies own and operate permitted facilities and conduct business in the State of New Jersey.

As part of their business practices, ETC member companies are continuously engaging with the communities in which they operate to ensure that their facilities are operating in a responsible, safe, and secure manner to protect against environmental injustices (EJ). Regular community outreach also allows our member companies the
opportunity to have meaningful dialogue with the community and allows the community to share information and their views regarding the operations of our member companies.

While ETC understands and appreciates the importance of protecting communities of color, indigenous communities and low-income communities from environmental injustices, we believe some of the provisions of the proposed rule would limit, and in some cases completely eliminate, the ability of our member companies to safely and securely treat and dispose of RCRA hazardous waste that has the potential, if not properly managed, to negatively impact those communities and cause harm to human health and the environment. Our reading of the proposed rule has identified many significant issues with the scope and specificity of the proposed rule’s language, including concepts not aired in the stakeholder process, and thus we encourage the NJDEP to seriously consider and address the concerns we have identified before the rule is finalized. NJDEP should rely on data gathered from the technical environmental analyses performed as part of the permit review process, rather than establishing new policies and procedures that could lead to process redundancies, lack of coordination, less effective and efficient regulatory reviews, and conflicts with New Jersey’s goal of safely managing hazardous waste.

Make no mistake, the ETC and its member companies strongly support the goals of the EJ legislation and proposed regulations. However, we encourage the NJDEP to provide balance to the implementation process in order to both achieve the goals of the New Jersey Environmental Justice Law and provide flexibility in the permitting process so that businesses can continue to operate, expand, modernize, remain competitive, and bring benefits to the residents of New Jersey while meeting the NJDEP’s permitting requirements.

**Background**

The Environmental Justice Law was enacted to require the Department to assess relevant environmental and public health stressors affecting overburdened communities and to deny or condition permits where facilities cannot avoid the occurrence of disproportionate environmental or public health stressors in overburdened communities. The Department’s authority, pursuant to the law, applies in circumstances where three criteria are met:

- the proposed or existing facility is one of the eight types of facilities enumerated in the law;
- the applicant seeks a Department permit or approval enumerated in the law; and
- the facility is located or proposed to be located, in whole or in part, in an overburdened community as defined by the law.
The eight specific types of facilities covered by the law are:

- major sources of air pollution;
- incinerators and resource recovery facilities;
- large sewage treatment plants that process more than 50 million gallons per day;
- transfer stations and solid waste facilities;
- recycling facilities that receive at least 100 tons of recyclable material per day;
- scrap metal facilities;
- landfills; and
- medical waste incinerators, with certain exceptions.

With this background, ETC submits the following comments on the NJDEP proposed rule.

**Permit Conditions (New Facility, Facility Expansions/Title V Renewal) & Permit Application Evaluation**

To avoid unnecessary costs and burdens, ETC recommends that the EJ process for future Title V renewals should initiate from the first environmental justice impact statement (EJIS) public process and engagement, and not start over every 5 years. After completing the evaluations for the first Title V renewal that triggers the EJ process for a given facility, subsequent evaluations for the same facility should only consider increased potential environmental impacts that have occurred since that first evaluation.

Additionally, to be equitable, the environmental impact analysis should include benefits as well as stressors. ETC recommends that the final rule allows future environmental regulations that mitigate environmental or public health stressors to be viewed as a benefit for the regulated community in the environmental impact analysis. Instead of solely focusing on a sum of all negative stressors, the NJDEP should clearly define the universe of conditions that may be applied to permit holders and allow consideration for reduction of stressors as well as improvements to environmental and public health benefits. Measures that exceed minimum regulatory requirements should also be considered as part of the cumulative assessment of stressors that may be present near covered facilities.

Along these lines, we also encourage the NJDEP to consider and address the positive impacts that economic investment, tax base, and job creation will have on an
overburdened community. The NJDEP should similarly consider how to reconcile the apparent conflict between making unemployment a stressor with potential negative health consequences, while simultaneously not including the economic benefits of direct and indirect jobs and tax revenue in the review. In addition, community service and community support that companies often provide to residents living near industrial facilities, such as volunteer programs, educational and workforce training programs, and grants to improve services or quality of life in the city and/or county should also be considered.

**Delays and Cost Burdens**

ETC and its member companies are concerned with additional delays and cost burdens in the overall permitting process as established in the proposed rule. Specifically, the EJ process, including preparation of an EJIS, is going to significantly delay the NJDEP’s administrative completeness determination and, therefore, cause delays for permit review and issuance of approvals. As written, the proposed rule establishes no clear timeframe for when an EJIS must be submitted in the permit application process and when the NJDEP must issue its decision (beyond stating that the decision shall not be issued until at least 45 days after the public hearing). As many projects are time sensitive, the Department should include an end date by which a final decision will be made, such as 90 days from the date of the public hearing unless the Department requires additional expert analysis. In those instances, the NJDEP should issue a final decision within 90 days of when the expert is assigned the work.

In addition, the proposed rule provides that the NJDEP may engage experts at the applicant’s expense without any reasonable constraint. The NJDEP should not be able to force applicants to pay unlimited and potentially high costs to engage experts at its sole discretion and without any input from the applicant. If the Department believes an independent expert is needed, the applicant should be allowed to identify and engage an expert acceptable to the NJDEP.

**Procedure to Request an Adjudicatory Hearing**

For new facilities, if an NJDEP ruling is appealed, the proposed rule would prohibit the facility from starting operations until the appeal is resolved. However, for existing facilities, ceasing operations until an appeal is resolved is unreasonable and unjust, especially if the renewal involves no change in facility operations. The grounds for requesting an adjudicatory hearing are minimal, and we fear that since a hearing automatically stays the permit action, the adjudicatory process could potentially be abused by opponents to the facilities and used as a tactic to force the facility to cease operations. The NJDEP should follow the RCRA permitting standard that allows permittees to continue operations under the terms of an existing permit while an application is being considered.
Community Engagement

Many ETC member companies, as part of their business practices, continuously engage with the communities in which they operate to ensure that their facilities are operating in a responsible, safe, and secure manner to protect against environmental injustices. This engagement also allows for meaningful dialogue with the community and allows the community to share information and their viewpoints regarding the operations of our member companies. Therefore, we urge the NJDEP through the proposed rule to recognize and incentivize facilities that already have successful, transparent Community Advisory Panels (CAPs) and/or community engagement with first responders, community members, and elected officials. A simplified and flexible process will be more productive than a command-and-control mandated approach. The NJDEP should encourage successful CAPs as a robust form of community engagement by allowing CAPs that meet a defined level of engagement to be deemed an acceptable public process in lieu of public hearings.

Public Participation

Under the proposed rule, an “interested party” can submit written and oral comments regarding an application. However, no definition on who qualifies as an “interested party” exists. This allows for anyone from outside an affected area to comment, including those with a competitive interest or personal agenda outside of EJ or even New Jersey. Instead, the NJDEP should limit the scope of public comment to residents and individuals or organizations with an objective and defined connection to the overburdened community in question.

The covered permits identified in the state law are regulated by environmental statutes and regulations. There are specific conditions or activities that exempt the requirements to prepare and submit an environmental permit in these environmental statutes and regulations. We request that the final rule ensure that all identified permit exemptions continue to apply. Based on our review, we have identified the permit exemptions to include, but may not be limited to, the following: all solid waste and recycling exemption activities cited in N.J.A.C. 7:26-1.1 and 7:26A-1.1; the water supply allocation permit exemption cited in N.J.A.C. 7:19-1.4; the New Jersey Pollutant Discharge Elimination System permit (NJPDES; N.J.A.C. 7:14A-2.5); the Coastal Area Facility Review Act (CAFRA; N.J.A.C. 7:7-2.2(c) through (f)); and the Waterfront Development Law set forth at N.J.A.C. 7:7-2.4(d), (f), and (h).

In addition, we urge the NJDEP to exempt all Class A recycling facilities. These operations do not require solid waste permits as they are exempt by statute and regulation and, therefore, should not trigger the EJ process.
Conclusion

In closing, the ETC would like to acknowledge that some of its member companies – Stericycle, Veolia and Clean Harbors – have submitted comments to this proposed rule that make additional specific recommendations, all of which we support and incorporate by reference.

The ETC would like to thank you for the opportunity to submit comments on this particularly important proposed rule. Along with our member companies, we look forward to working with the NJDEP as the process moves forward. Should you have any questions or concerns please feel free to contact me at 202-731-1815 or via e-mail at jwilliams@etc.org.

Sincerely,

James A. Williams
Executive Director
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

+ No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables.
+ No offsets (e.g. planting trees or bike lanes elsewhere).
+ Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

Zoe Leach
810, Lawrenceville Rd
Lawrence, New Jersey 08648
** Electronic Rulemaking Comment **
Submission Date: 09/06/2022 16:16:49
First Name: Tracy
Last Name: Carluccio
Affiliation: Delaware Riverkeeper Network
City: Bristol
State: PA
Zip: 19007
Email: tracy@delawareriverkeeper.org
Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: September 6, 2022

Melissa P. Abatemarco, Esq.
Attn.: DEP Docket No. 04-22-04
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L, PO Box 402
Trenton, New Jersey 08625-0402


Delaware Riverkeeper Network (DRN) submits this comment letter on behalf of our more than 26,000 members. DRN submits this comment in addition to DRN’s verbal testimony at the Department’s public hearing. DRN is supporting and incorporating by reference the comments submitted by Ironbound Community Corporation, New Jersey Environmental Justice Alliance, South Ward Environmental Alliance, Clean Water Action, Earthjustice, Tishman Environment and Design Center at the New School, the Center for the Urban Environment of the John S. Watson Institute for Urban Policy and Research at Kean University, et al. Respectfully submitted,

Maya K. van Rossum, the Delaware Riverkeeper
Tracy Carluccio, Deputy Director

Delaware Riverkeeper Network
DEP Rulemaking DEP Rulemaking,

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Ron De Stefano
113 Crestview Lane
MOUNT ARLINGTON, New Jersey 07856
DEP Rulemaking DEP Rulemaking,

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Ted Glick
indpol@igc.org
500 Broughton Ave.
Bloomfield, New Jersey 07003
DEP Rulemaking DEP Rulemaking,

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Michele Turansick
64 Crest Avenue
Trenton, New Jersey 08690
DEP Rulemaking

I am writing to strongly urge the NJ Department of Protection to support the strong implementation of the Environmental Justice Law.

It is critical that New Jersey no longer pass legislation or create regulations that harm or take advantage of Environmental Justice communities. Residents of these communities cannot be subject to health hazards so that people of means can have economically comfortable lives.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

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I look forward to learning that you have taken the actions that benefit ALL communities.

Thank you,

Rick Kalish
South Orange

Richard Kalish
10 N. Ridgewood Rd., APT 403
South Orange, New Jersey 07079-1544
DEP Rulemaking DEP Rulemaking,

People shouldn't have to choose between a healthy environment and jobs. All residents - no matter their zip code - deserve a seat and a voice at the table in decisions that will impact the health of their water, air, and neighborhoods.

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Anne A Shirinian-Orlando

68 Koenig Ln
Freehold, New Jersey 07728
DEP Rulemaking DEP Rulemaking,

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Ruth Boice
162 Willow Grove Rd
Shamong, New Jersey 08088
Subject: DEP Dkt. No. 04-22-04 Environmental Justice

Comments: The proposed rule is fatally flawed, will not provide protections for EJ communities, and should be withdrawn and re-proposed for the following reasons:

1. The Technical Guidance document is not enforceable as a regulation. The Guidance is broader in scope than the EJ statute and thus, because it is linked to the regulation as the basis for impact assessment, the Guidance impermissibly attempts to broaden the authorizing law. Specifically, the Guidance applies to a broader universe of pollutant sources and "stressors" than the authorizing statute, including pollution from mobile sources, contaminated sites, and small point sources of air pollution. The Guidance also applies to a broader universe of regulated activities than the authorizing statute.

2. The proposed regulation will not protect communities because it does not apply to significance sources of pollutants and stressors and risks, including toxic waste sites (see statutory definition of "permit" which explicitly exempts site remediation).

3. The proposed regulation will not protect communities because it does not apply to extraordinarily hazardous chemicals, sites, and activities regulated under the "Toxic Catastrophe Prevention Act" (TCPA).

4. The proposed regulation will not protect communities because it does not apply to hazardous chemicals, sites, and activities regulated by the NJ Worker and Community Right to Know Act.

5. The proposed regulation will not protect communities because it does not apply to non "major" source of air pollution and mobile source pollution. These pollutants, sources and activities create harmful public health and environmental impacts and are regulated by the federal Clean Air Act and the NJ Air Pollution Control Act but not the EJ authorizing statute or the proposed rules.

6. The proposed rules do not authorized the DEP to require the reduction of pollutants emitted by existing sources that are creating the current conditions that cause "disproportionate impacts" in EJ communities. This flaw exists even if the DEP determines that cumulative impacts of existing and/or proposed new sources have violated existing standards (e.g. ambient air quality standards).

7. The cumulative impact methodology is flawed and does not provide standards or a basis to deny permits for new or existing sources. It fails to address cumulative impacts of multiple exposure routes or multiple pollutants. It fails to consider synergistic effects. It fails to consider vulnerability and susceptibility of exposed populations.

8. The proposed rule fails to revise the DEP's current risk screening methods and criteria, risk assessment methods, ambient air quality monitoring, air pollution dispersion modeling methods, Technical Manuals, Guidance documents and risk management policies that the Department relies on as the basis for issuing various permits and approvals. At a minimum, this failure creates inconsistencies and conflicts between the underlying permit program requirements and decision standards and the proposed new EJ rules. This will create chaos and not protect public health and environment of listed EJ communities.

9. The proposal fails to establish a science based standard that can be legally enforced. For example, individual cancer risks are legislatively established as 1 in a million for drinking water, but air permit regulations use an order of magnitude higher risk and DEP's fish consumption advisories are based on two orders of magnitude higher risks. There are no numeric or even narrative standards proposed for unacceptable risks, disproportionate risks, or stressor impacts. The result is a vague regulatory framework that is unworkable and raises unconstitutionally vague due process legal vulnerabilities.

10. The proposal fails to address greenhouse gas emissions. This flaw is totally unacceptable given the climate emergency.
fails to address risks and impacts - current and projected by the Department and betta available science - regarding climate change. These include extreme weather events, urban heat island effects, increases in ambient ground level ozone, among others. PPPPPPP12. The proposal misleads the public by failing to disclose numerous loopholes in the authorizing statute in terms of applicability to pollution sources and stressors that crate current conditions. That failure to disclose is magnified by the misleadingly broad scope of the unenforceable Guidance document. This is dishonest and unacceptable practice.PPPPPPPP
DEP Rulemaking DEP Rulemaking,

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Nikki Nafziger
1101 Porter St
Vallejo, California 94590
DEP Rulemaking DEP Rulemaking,

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Emily Wallace
453 Alexander Ave
08052, New Jersey 08052
DEP Rulemaking DEP Rulemaking,

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Enid Doyle
37 Bryant Court
Somerset, New Jersey 08873
Comments: The proposed rule is fatally flawed and should be withdrawn. The DEP permit denial authority is destroyed by an exception, a huge loophole provision that allows DEP to waive the mandatory permit denial and issue the permit if a polluter claims that there is a compelling public interest for the industry or facility seeking the permit, even if there are disproportionate and unjust impacts. Contrary to the proposal, the authorizing law does NOT exclude economic considerations. Contrary to the proposal, the authorizing law does NOT require that the primary purpose of the facility must be to serve an essential environmental, health, or safety need of the host overburdened community for which there is no reasonable alternative to sitting within the overburdened community. That text is from the DEP proposed rule, not from the statute. Here’s the relevant text of the DEP regulatory proposal: 1. The proposed new facility will primarily serve an essential environmental, health, or safety needs of the individuals in an overburdened community; 2. The proposed new facility is necessary to serve the essential environmental, health, or safety needs of the individuals in an overburdened community; and 3. There are no feasible alternatives that can be sited outside the overburdened community to serve the essential environmental, health, or safety needs of the individuals in an overburdened community. But compare that regulatory text to the text from the law: except that where the department determines that a new facility will serve a compelling public interest in the community where it is to be located, the department may grant a permit that imposes conditions on the construction and operation of the facility to protect public health. The law does not limit the scope of the compelling public interest. It does not limit that interest to essential environmental, health, or safety needs, or that no feasible alternative can be sited outside the community. Just like DEP can not expand the scope of a legislative provision in regulations, DEP can not narrow one either. This is a fatal legal flaw. It would be better for DEP to withdraw and re-propose than to have a judge strike down these rules or have the Legislature veto them as "inconsistent with legislative intent".
DEP Rulemaking DEP Rulemaking,

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Nick Berezansky
pigboy@dotswillecho.com
123 Washington Place
Ridgewood, New Jersey 07450
** Electronic Rulemaking Comment **
Submission Date: 09/06/2022 17:46:33
First Name: Mark
Last Name: Longo
Affiliation: ELEC825
City: Springfield
State: NJ
Zip: 07081
Email: gsullivan@elec825.org
Rule Proposal: DEP Dkt. No. 04-22-04 Environmental Justice
Comments: September 4, 2022

The Engineers Labor-Employer Cooperative (ELEC) is a labor-management organization representing the combined interests of the more than 8,000 members of the Operating Engineers Local 825 and the nearly 1,000 signatory contractors who employ them throughout the entire State of New Jersey. Our members and contractors are responsible for billions of dollars in commercial, industrial, highway, utility and institutional construction projects annually. We also invest heavily in our two-state-of-the-art training facilities, apprenticeship and continuing education and credentialing so that our workforce is the best-trained, most highly-skilled available providing efficiency and safety. That is why our organization continually advocates for legislation and regulations that seek to raise the standards of construction in New Jersey and protect our residents and taxpayers while encouraging capital projects are built safely, responsibly and efficiently.

While both the enabling legislation and subsequent rule-making have noble and admirable intentions, our organization remains concerned that this policy will have adverse impacts not only on the State as a whole, but specifically within EJ (Environmental Justice) communities, that could lead to larger overall social injustice outcomes. These unintended consequences include limiting industrial redevelopment opportunities, dis-incentivizing private investment in newer, cleaner technologies, chilling environmental remediation and recycling projects and increasing the cost and timing of major public works projects, most notably, water/sewage treatment.

In order to assuage the above concerns, it is crucial that the regulations provide as much clarity as possible regarding the NJ DEP’s (Department of Environmental Protection) scope of authority and the process rules, and timelines associated with this new regulatory scheme.

1. Geographic Point of Comparison is Too Broad: More than 50% of the state’s total municipalities contain EJ communities by the statutory definition alone. Therefore, the department’s decision to set the GPC threshold at the 50th percentile, is extreme and far too broad, and will serve only to increase the number of facilities impacted, therefore exceeding statutory intent of preventing _dis-proportionate impact._

2. Too Many Individual Screening Variables: NJ is proposing to expand beyond what the Federal government and California consider in terms of the number of stressors to be included in the analysis up to 26 individual stressors, which again goes beyond the statute.

3. Adjacency provision is unnecessary and goes beyond statutory authority.

4. Definition of _Compelling Public Need_ is far too narrow and excludes major variables that bring benefits to the community such as economic variables.

5. Process Lacks Predictability

1. Re-Noticing Requirements Unclear

2. No Clear Timelines for DEP: Land Use permits have required _act by_ dates and the EJ law should too

3. Door Open for Additional Transportation Project Delivery Delays: while nothing in the rule directly impacts transportation - social justice advocates are actively using the _spirit of the EJ law_ to sue on a critical project in North Jersey. Scope is Still too Broad

4. Need Clarity on Mobile Pollution Sources (trucks) and any project that requires a major air permit, especially NEW facilities

5. Need Clarity on Requirements and Process for Projects that Result from Remediation

There is a misconception that the economic impacts will only be felt by the private sector, howe!
regulations seek to protect. It is also important to realize that this will not only impact new facilities, but expansions, and source permit renewals as well. This will severely limit the State’s ability to attract new businesses and industries but will also drive existing companies to reconsider investments in upgraded technology and/or expansions, impacting our state’s business retention as well and leading to less beneficial environmental outcomes. This also limits the home-rule ability for individual communities to make decisions about these projects, and will increase public works project costs, create delays and will inject politics into important infrastructure projects. New Jersey land decision have always been left to the local residents and these regulations are counter to that process. Lastly and most troubling is that the Department of Environmental Protection has already begun filing legal actions against numerous entities citing environmental justice before any regulations have been completed. The regulatory process needs to be completed, and the DEP has gone significantly beyond their statutory and constitutional authority. The precedent this sets alone will have negative economic and environmental impacts for generations. It is our sincere hope that DEP takes these considerations seriously, perform the proper policy stress tests and regional economic analysis instead of jumping to more enforcement even before the goal post have been moved. Sincerely, Mark Longo Director Engineers Labor-Employer Cooperative The Labor Management Fund of IUOE825
From: Gina Sullivan <gsullivan@elec825.org>
Sent: Tuesday, September 6, 2022 5:47 PM
To: DEP rulemakingcomments [DEP] <rulemakingcomments@dep.nj.gov>
Subject: [EXTERNAL] ELEC825 - EJ Rules Comments

Good Afternoon,

Attached please find comments on the Environmental Justice Rules from Mark Longo, Director, ELEC825 – The Labor Management Fund of Operating Engineers Local 825.

Thank You,

Gina Sullivan
Business Development
Engineers Labor-Employer Cooperative
The Labor Management Fund of IUOE 825
Office: 973-671-6754
Mobile:

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September 4, 2022

Melissa P. Abatemarco, Esq.
DEP Docket No. 04-22-04
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
PO Box 402
Trenton, New Jersey 08625-0402

**Re: DEP Docket No. 04-22-04 Environmental Justice Rule Proposal (54 N.J.R. 971(a))**

The Engineers Labor-Employer Cooperative (ELEC) is a labor-management organization representing the combined interests of the more than 8,000 members of the Operating Engineers Local 825 and the nearly 1,000 signatory contractors who employ them throughout the entire State of New Jersey.

Our members and contractors are responsible for billions of dollars in commercial, industrial, highway, utility and institutional construction projects annually. We also invest heavily in our state-of-the-art training facilities, apprenticeship and continuing education and credentialing so that our workforce is the best-trained, most highly-skilled available providing efficiency and safety. That is why our organization continually advocates for legislation and regulations that seek to raise the standards of construction in New Jersey and protect our residents and taxpayers while encouraging capital projects are built safely, responsibly and efficiently.

While both the enabling legislation and subsequent rule-making have noble and admirable intentions, our organization remains concerned that this policy will have adverse impacts not only on the State as a whole, but specifically within EJ (Environmental Justice) communities, that could lead to larger overall social injustice outcomes. These unintended consequences include limiting industrial redevelopment opportunities, dis-incentivizing private investment in newer, cleaner technologies, chilling environmental remediation and recycling projects and increasing the cost and timing of major public works projects, most notably, water/sewage treatment.

In order to assuage the above concerns, it is crucial that the regulations provide as much clarity as possible regarding the NJ DEP’s (Department of Environmental Protection) scope of authority and the process rules, and timelines associated with this new regulatory scheme. While we appreciate the long stakeholder process, we continue to be concerned about the following items:
1. Geographic Point of Comparison is Too Broad: More than 50% of the state’s total municipalities contain EJ communities by the statutory definition alone. Therefore, the department’s decision to set the GPC threshold at the 50th percentile, is extreme and far too broad, and will serve only to increase the number of facilities impacted, therefore exceeding statutory intent of preventing “dis-proportionate impact.”

2. Too Many Individual Screening Variables – NJ is proposing to expand beyond what the Federal government and California consider in terms of the number of stressors to be included in the analysis up to 26 individual stressors, which again goes beyond the statute.

3. “Adjacency” provision is unnecessary and goes beyond statutory authority.

4. Definition of “Compelling Public Need” is far too narrow and excludes major variables that bring benefits to the community such as economic variables.

5. Process Lacks Predictability
   1. Re-Noticing Requirements Unclear
   2. No Clear Timelines for DEP: Land Use permits have required “act by” dates and the EJ law should too

6. Door Open for Additional Transportation Project Delivery Delays: while nothing in the rule directly impacts transportation - social justice advocates are actively using the “spirit of the EJ law” to sue on a critical project in North Jersey.

7. Scope is Still too Broad
   1. Need Clarity on Mobile Pollution Sources (trucks) and any project that requires a major air permit, especially NEW facilities
   2. Need Clarity on Requirements and Process for Projects that Result from Remediation

There is a misconception that the economic impacts will only be felt by the private sector, however those are the same facilities that provide local jobs and tax revenue in the same communities the legislation and regulations seek to protect. It is also important to realize that this will not only impact new facilities, but expansions, and source permit renewals as well.

This will severely limit the State’s ability to attract new businesses and industries but will also drive existing companies to reconsider investments in up-graded technology and/or expansions, impacting our state’s business retention as well and leading to less beneficial environmental outcomes.

This also limits the home-rule ability for individual communities to make decisions about these projects, and will increase public works project costs, create delays and will inject politics into important infrastructure projects. New Jersey land decision have always been left to the local residents and these regulations are counter to that process.

Lastly and most troubling is that the Department of Environmental Protection has already begun filing legal actions against numerous entities citing environmental justice before any regulations have been completed. The regulatory process needs to be completed, and the DEP has gone significantly beyond their statutory and constitutional authority. The precedent this sets alone will have negative economic and environmental impacts for generations.
It is our sincere hope that DEP takes these considerations seriously, perform the proper policy stress tests and regional economic analysis instead of jumping to more enforcement even before the goal post have been moved.

Sincerely,

Mark Longo
Director
Engineers Labor-Employer Cooperative
The Labor Management Fund of IUOE825
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it’s a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

+ No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables.
+ No offsets (e.g. planting trees or bike lanes elsewhere).
+ Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

Zoe Leach
810, Lawrenceville Rd
Lawrence, New Jersey 08648
DEP Rulemaking DEP Rulemaking,

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Rachael Violett
16 north Main Street
Farmingdale, New Jersey 07727
DEP Rulemaking DEP Rulemaking,

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Bill McClelland
101 74th St.
North Bergen, New Jersey 07047
DEP Rulemaking DEP Rulemaking,

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Sean Hickey
92 Elm St
Dumont, New Jersey 07628
DEP Rulemaking DEP Rulemaking,

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Jean McClelland

101 74th St
North Bergen, New Jersey 07047
DEP Rulemaking DEP Rulemaking,

Please do not weaken this law in any manner. I live in an overburdened community and we need the strongest protections with NO EXCEPTIONS for any reasons. There are very high rates of asthma in our area!! Please do not allow offsets—we need actual direct reductions in ALL pollutants!! All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

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Pranita Bijlani
103 Princeton Ave
Rahway, New Jersey 07065
DEP Rulemaking DEP Rulemaking,

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Jonathan Salazar
240 Cator Ave.
Jersey City, New Jersey 07305
DEP Rulemaking

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Annette Coomber

33 Sweetwater Lane
Ringwood, New Jersey 07456
DEP Rulemaking DEP Rulemaking,

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Michele Ochsner
63 Deer Path Rd.
Princeton, New Jersey 08540
DEP Rulemaking DEP Rulemaking,

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Lorna Henkel
105 1st Ave
Secaucus, New Jersey 07094
DEP Rulemaking DEP Rulemaking,

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Victor Rivera
3 PEREGRINE WAY
Burlington, New Jersey 08016
DEP Rulemaking DEP Rulemaking,

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Susan Druckenbr?d
162 Valley Run
Cherry Hill, New Jersey 08002
DEP Rulemaking

DEP Rulemaking,

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Dipali N
14 Howell Ct
West Windsor, New Jersey 08550
DEP Rulemaking DEP Rulemaking,

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Ronald Harkov
81 Coppermine Rd
Princeton, New Jersey 08540-8602
DEP Rulemaking DEP Rulemaking,

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Keely McLeod
3009 Yoakum Street
Fort Worth, Texas 76108
DEP Rulemaking DEP Rulemaking,

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laura dickey
917 main st 3l
boonton, New Jersey 07005
DEP Rulemaking DEP Rulemaking,

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Lela Charney
140 Highwood Ave
Leonia, Saint Croix Island 07605
DEP Rulemaking DEP Rulemaking,

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Kathryn Hjelle

124 E Bergen Pl
Red Bank, New Jersey 07701
DEP Rulemaking DEP Rulemaking,

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Teresa Brown

1353 GEORGIA AVE
WEST DEPTFORD, New Jersey 08093
DEP Rulemaking DEP Rulemaking,

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Julia Cranmer

2393 Route 206
Southampton, New Jersey 08088
DEP Rulemaking

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Poor rural communities are environmental justice communities too. We never receive any benefits because our vote numbers are too small to matter to the politicians. So we turn against them for ignoring us. Then they stick their dirty polluting pipelines and compressor stations in our communities, because again, we don’t have enough votes to fight back. We are the doormats of the politicians. We actually had a judge refer to rural communities as "Sacrificial Zones". Human sacrifice is supposed to be illegal. But our judges and fossil fuel infrastructure are bringing it back. The worst is when the children get sick and die. Fossil fuels cause endocrine disruption and cancers like leukemia that affect fetuses and children the most. Child sacrifice was supposed to have ended in biblical times. But here we have fossil fuel companies, complacent politicians, and NJDEP bringing it back.

Margaret Wood
324 Germantown Road
West Milford, New Jersey 07480
DEP Rulemaking DEP Rulemaking,

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Doris Lin
2 Legend Hollow Court
Freehold, New Jersey 07728
DEP Rulemaking DEP Rulemaking,

I feel very strongly about the issues addressed in this legislation. As a more privileged resident of NJ, I rarely had the concerns addressed here, but I now know what happens in communities when their voice is ignored and equity is dismissed. Please require strong implementation of the Environmental Justice Law!

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Leslie Moran
20 Village Dr
Basking Ridge, New Jersey 07920
DEP Rulemaking DEP Rulemaking,

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Linda Brown
149 Edgar St Apt 1
Weehawken, New Jersey 07086
DEP Rulemaking DEP Rulemaking,

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Hallie Wannamaker
148 Church street
Teaneck, New Jersey 07666
DEP Rulemaking DEP Rulemaking,

As a mother and a citizen, I urge you to listen. All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

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Thank you for your kind attention.

Noemi Giszpenc
17 Marston Place
Glen Ridge, New Jersey 07028
DEP Rulemaking

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Mary Agnes Sullivan, OP
42 Ryerson ave
Caldwell, New Jersey 07006
DEP Rulemaking

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Jennifer Downing
70 Glen Ave
Stockholm, New Jersey 07460
DEP Rulemaking DEP Rulemaking,

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Margaret Yelenik
22 Mallard Ct.
Howell, New Jersey 07731-4029
DEP Rulemaking DEP Rulemaking,

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John Schreiber
4471 Nottingham Way
Trenton, New Jersey 08690
DEP Rulemaking DEP Rulemaking,

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Lise Sayer

156 E Cedar Street, Apt 1303
Livingston, NJ, New Jersey 07039-4147
DEP Rulemaking DEP Rulemaking,

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Diane Heyer
53 Providence Blvd.
Kendall Park, New Jersey 08824
DEP Rulemaking, DEP Rulemaking,

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Elizabeth Bennett

404 Coldsprings Ave
Oaklyn, New Jersey 08107
DEP Rulemaking DEP Rulemaking,

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Susan Eckstein
9 Beverly Rd
Stanhope, New Jersey 07874
DEP Rulemaking DEP Rulemaking,

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Joseph Ponisciak

30 Nottingham Dr
Willingboro, New Jersey 08046
DEP Rulemaking DEP Rulemaking,

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+ No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables.
+ No offsets (e.g. planting trees or bike lanes elsewhere). We need real reductions in emissions now.
+ Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

Ivy Sheibar
64 Glenwood Rd
Montclair, New Jersey 07043
DEP Rulemaking DEP Rulemaking,

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Tracy Young
283 Auten Rd
Hillsborough, New Jersey 08844
DEP Rulemaking DEP Rulemaking,

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Jodi Schreiber
35 Sea View Ter
Highlands, New Jersey 07732-2124
DeP Rulemaking,

I am writing because I believe that this is such an important issue. All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

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DAVID Sanders

425 Park Street
MONTCLAIR, New Jersey 07043
DEP Rulemaking DEP Rulemaking,

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Marco Palladino
86 Tuers Ave
Jersey City, New Jersey 07306
DEP Rulemaking DEP Rulemaking,

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Pamela Barroway
18 Whitby Road
Cherry Hill, New Jersey 08003-2253
DEP Rulemaking DEP Rulemaking,

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Martin Horwitz

1326 23rd Avenue
San Francisco, California 94122
DEP Rulemaking DEP Rulemaking,

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Eleana Little
280 3rd St, Apt 2
Jersey City, New Jersey 07302
DEP Rulemaking DEP Rulemaking,

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Katie Little

881 W Lombard St
Baltimore, Maryland 21201
DEP Rulemaking DEP Rulemaking,

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ELYSE STERNBERG

25 Abington Ave.
Marlton, New Jersey 08053
DEP Rulemaking DEP Rulemaking,

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Gigi Ventola
8 james st
florham park, New Jersey 07932
From: rulemakingcomments@dep.nj.gov <rulemakingcomments@dep.nj.gov>
Sent: Sunday, September 4, 2022 10:31 PM
To: DEP rulemakingcomments [DEP] <rulemakingcomments@dep.nj.gov>
Subject: Select Rulemaking

** Electronic Rulemaking Comment **
Submission Date: 09/04/2022 22:31:09
First Name: Daniella
Last Name: Olan
Affiliation:
City:
State:
Zip:
Email:
Rule Proposal: Select Rulemaking
Comments: Background: The law says that new permits for facilities in overburdened communities that add to the existing pollution or adding even more shall be denied. There is an exception for a compelling public interest in the host community when the facility primarily serves an environmental, safety, or public health purpose. This exception excludes positive economic proposals. This means a polluting facility promising some (italics) jobs to the community may get approved even if they are contributing to pollution and poor health outcomes. This part of the rule is very important because industries could use economic arguments to justify any permit application and create a loophole in the rule. The reasoning for keeping the scope of compelling public interest narrow and excluding economic interests from the exception:

Environmental Justice communities (overburdened communities) should not have to choose between a healthy environment and jobs - it's environmental racism and extortion. This is the business as usual model that has allowed economic interests to exploit vulnerable areas with the promise of economic development that does not actually happen. The current permitting model already allows for economic interests to weigh heavily in facility siting. If we reinforce this economic model, it only serves to maintain the existing system where poor communities of color are forced to take dirty industries and rich communities will always be able to say no. Dirty industries are not the kind of jobs we want to encourage in EJ communities. We deserve good, healthy, clean, dignified jobs, not at the expense of more pollution. We want the kinds of jobs that don't need an exemption to be allowed into our communities. If you are a legitimately clean business or can lessen your impact, you don't need to extort the community with the promise of economic development that can never be held accountable for after the permitting process.

The promise of economic gains and jobs is a false promise - it's a lie! We've been told for a long time that has never produced wealth for EJ communities. We have decades upon decades of examples and experiences with companies promising jobs and economic gains to EJ communities that deliver nothing but pollution and tax exemptions that they profit from. Just take a look at Covanta - where are all the hundreds of jobs from that industry? They employ 20 people, few if any from Newark or Camden or Rahway, they're not union jobs and they dump millions of pounds of chemicals into our air and reduce our property values. Dirty industries are actually bad for the economy and for our economic survival and our future prosperity. These dirty industries that cannot mitigate their impacts and contribute more pollution are not the answer to our
economic future. They view and stereotype our communities as dumping grounds, they concentrate all the pollution in communities that have historically gotten the bad end of the stick of _economic_ engines for the rest of the region to prosper. While EJ communities suffer from chronic unemployment and low-wage jobs, we host the highest concentration of dirty industries. Many industries and businesses that are good actors, and employ many union people are not covered by this rule. Warehouses, logistics centers, public works projects, hotels, hospitals, etc. none of these businesses trigger this rule. Thus the industries that will be most impacted are actually large, dirty polluting entities that profit from the divisive language of jobs vs the environment. If you remove the economic factors exclusion and make the compelling public interest clause broad in its application - you essentially create an enormous loophole that makes this landmark EJ bill a complete failure. The intention of the law was to fundamentally change the approach to business as usual that allows the constant dumping of dirty industries in overburdened communities. By allowing economic factors to trump these considerations - you essentially leave in place the system we have now!

- one that continues to sacrifice public health and maintain the patterns of environmental racism that have left EJ communities vulnerable to the impacts of pollution. It is not the NJDEP's job to ensure or measure "economic benefit" - it is the NJDEP's job to protect communities and enforce policy that is in line with EJ. The promise of economic gains based on things such as local employment, number of jobs, and tax ratables, are all difficult to measure post permitting by an agency like NJDEP that does not have any authority or to enforce these claims. Participation

The goal is to maximize a) how many people in our communities know about a facility b) the number of people who participate in support of or against a facility. Communities that are aware and participate are better able to shape their neighborhoods.

What type of _notice_ would you like to see? Notice to neighbors is currently set to those living within 200 feet of the site. This could be increased to those living within 1000 feet of the proposed site. Where should the _notice_ of new facilities be in today's modern age? Social media? Phone calls? Specific newspapers?

Currently, public comments happen either at the hearing or by writing comments and submitting them to the DEP. How else should public comments be received that would help more people participate? Should you be able to submit videos, voice memos, or something else?

Definition of a Facility

Expand the definition of _facility_ to include newer, polluting technology such as gasification, pyrolysis, or similar conversion technologies.

Permit Conditions for Renewal and Expansion of Existing Permits

All permit conditions must avoid or minimize additional pollution in overburdened communities. All conditions must be incorporated into the facility's permit and be subjected to monitoring, recordkeeping, and recording requirements to ensure compliance and enforceability!

Environmental Justice Analysis

We are supportive of any overall EJ analysis contained in the proposed regulations. A facility applying for a pollution permit would make a contribution to an adverse environmental or public health stressor if it would increase that stressor in any absolute amount, regardless of the amount of the increase; _offsets_, or combats of pollution can not be used to justify approval of a pollution permit application that is subject to the Environmental Justice Law. Any pollution reductions recognized by the law must come directly from the facility applying for the pollution permit.
Comments: SLOTPG _____________________ slot online _____________________ ____________________________________ ... ___________________________

Rule Proposal: Select Rulemaking

Email:
Zip: 4441
State: WV
City: Badhof
Affiliation:
Last Name: Grimes
First Name: Alex

** Electronic Rulemaking Comment **

Subject: Select Rulemaking

Cc: DEP rulemakingcomments [DEP] <rulemakingcomments@dep.nj.gov>
To: rulemakingcomments@dep.nj.gov <rulemakingcomments@dep.nj.gov>

Wednesday, September 7, 2022 9:11:07 AM
Date:

Subject: Fw: Select Rulemaking 04-22-04

DEP rulemakingcomments [DEP]
To: From:

___________________________ SLOT,__________________ ,PPPPbaccarat , ROULETTE , ______________________________ , ... _____________________________________________________________________
________________________ _______________________________________slot online ___________________________ casino online

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Comments: SLOTPG _____________________ slot online _____________________ ____________________________________ ... ___________________________

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City: Badhof
Affiliation:
Last Name: Grimes
First Name: Alex

** Electronic Rulemaking Comment **

Subject: Select Rulemaking

Cc: DEP rulemakingcomments [DEP] <rulemakingcomments@dep.nj.gov>
To: rulemakingcomments@dep.nj.gov <rulemakingcomments@dep.nj.gov>

Wednesday, September 7, 2022 9:11:07 AM
Date:

Subject: Fw: Select Rulemaking 04-22-04

DEP rulemakingcomments [DEP]
To: From:

___________________________ SLOT,__________________ ,PPPPbaccarat , ROULETTE , ______________________________ , ... _____________________________________________________________________
________________________ _______________________________________slot online ___________________________ casino online

________________________ _______________________________________
Comments: SLOTPG _____________________ slot online _____________________ ____________________________________ ... ___________________________

Rule Proposal: Select Rulemaking

Email:
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Wednesday, September 7, 2022 9:11:07 AM
Date:

Subject: Fw: Select Rulemaking 04-22-04

DEP rulemakingcomments [DEP]
To: From:
Comments: You have very nice post and pictures, please have a PPPPlook at our photo tours in the temples of Angkor
Hi,

Please find attached NJPP's comments on the EJ rules.

Warmly,
Alex

--
Alex Ambrose
Transportation & Climate Policy Analyst
New Jersey Policy Perspective
Pronouns: she/they

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Thank you for the opportunity to comment on N.J.A.C. 7:1C, the proposed Environmental Justice rules.

On behalf of New Jersey Policy Perspective (NJPP), I applaud the New Jersey Department of Environmental Protection (DEP) for the proposed rules regarding the Environmental Justice Law. This is a transformative law that will make New Jersey a leader in the fight for environmental justice and give overburdened communities a powerful tool in reclaiming their right to clean air and clean water.

NJPP urges you to keep the law as strong as possible to ensure that all New Jerseyans get to enjoy the benefits of strong environmental protections. Most importantly, we urge you to keep out an economic exemption for polluting facilities. This is essential to the livelihood of families in overburdened communities that have borne the burdens of energy generation, and not the benefits. We know that a person’s zip code, more than their genetic code, predicts their health status and life expectancy [source]. This is not a mystery; this is due to social and political determinants of health including the history of overburdened communities acknowledged in this law. Air pollution cuts life expectancy by over 2 years [source], cuts GDP by 5% [source], and harms economic growth [source]. In fact, particulate air pollution poses more of a threat to human health than cigarettes [source].

It is also proven that higher temperatures increase the deleterious long-term effects of particulate matter on a person’s health, and with record-setting temperatures making headlines, we need to do everything we can to reduce the amount of pollution in the air to take care of our fellow New Jerseyans [source].

It is a false dichotomy to force families to choose between jobs and healthy air, especially when there is no promise of economic benefits to communities in which the polluting facilities are located. In fact, a new study from the US Census Bureau and UVA found that early life exposure to fine particulate matter is one of the top five predictors of intergenerational income mobility in the US [source]. It also found that reducing pollution has the potential to increase economic prosperity for families in overburdened communities.

Aside from keeping out an economic exemption, we also ask that the DEP creates a more robust public participation process in the environmental impact hearings, including requiring the applicant to publish notice on social media platforms, allowing for video and voice testimony submissions, maintaining a list of community groups to inform if and when a hearing occurs in their community, and creating a list of designated newspapers for public notice in overburdened communities.

For too long, we have let the empty promise of profitability for the wealthiest among us guide siting decisions in our state, leading to undue burdens on our most vulnerable families. I applaud the Murphy Administration and the NJDEP for taking the first steps towards correcting the years of environmental racism that have brought us to where we are today. With this law, we can protect both New Jersey families and the state’s economic wellbeing if we keep this law as strong as possible. Thank you.

Alex Ambrose, Policy Analyst
New Jersey Policy Perspective
Thank you. Please confirm receipt.

----------------------------------

Dan Kennedy, MCRP, PP
Utility & Transportation Contractors Association of NJ
www.utcanj.org - @UTCANJ on Twitter
“Constructing a Better New Jersey”
Senior Director / Environmental & Utility Operations
kennedy@utcanj.org - 732.292.4300 (office) - (cell)
Connect on LinkedIn
September 2, 2022

Melissa P. Abatemarco, Esq.
Attn.: DEP Docket No. 04-22-04, PRN 2202-082
Office of Legal Affairs
TRANSMITTED VIA EMAIL TO: rulemakingcomments@dep.nj.gov

Re: Environmental Justice Proposed New Rules N.J.A.C. 7:1C

Dear Mrs. Abatemarco:

Please accept the following comments on the above referenced rule proposal on behalf of the Utility and Transportation Contractors Association of NJ (UTCA). The public works construction projects delivered by UTCA members and our partners in labor serve to improve the real-world challenges in communities that meet the new statutory definition as “overburdened communities” (OBCs). These civic improvements are just one example of how the members of our organization have been supportive of the underlying need to improve the environmental conditions in these communities well before N.J.S.A. 13:1D-157 (the “EJ Law”) became law.

We thank the Department for preparing this proposal with meaningful stakeholder input from a range of interests. We have signed onto a joint comment letter (attached) to efficiently weigh in with the Department on areas we believe need to be corrected before the rules are finalized and adopted.

UTCA does not oppose using new regulatory or programmatic tactics to address the environmental and health challenges being faced in some areas of the state where legacy facilities and social conditions have led to conditions with enhanced risks and a lower quality of life. As we stated during the legislative process, there was a fundamental technical error made that has resulted in over 300 municipalities with one or more OBCs within them. We continue to disagree with the Legislature that over 2/3 of the state’s population is part of an OBC. The Department appears to be making this situation worse by effectively declaring that over 90% of the OBCs are already disproportionately impacted. This extremely broad application will have detrimental impacts on the state’s future economic growth potential and disrupts the balance the Legislature stated they were seeking.

While addressing the public comments, we encourage NJDEP to clarify the following process related items:

- Re-Noticing Requirements: The proposal is unclear as to whether or not an applicant for a new or renewed permit that triggers a full EJ review has to re-notice page 1 of 2

AFFILIATIONS
American Road & Transportation Builders Association
Clean Water Construction Coalition
after they agree to new actions that will lower the impact of their operations. UTCA recommends that the final rule proposal clarify that re-noticing is not required if the impacted variables that were originally triggered have been lowered.

- **Clear Timelines for DEP to Act:** The Department has no affirmative timeline to act or respond in various essential steps in the process. Land Use permits have these required “act by” dates and the EJ regulations must as well.

Thank you for the opportunity to comment on this proposal.

Sincerely,

Dan Kennedy  
Senior Director / Environmental and Utility Operations

---

**About the UTCA of NJ**

The Utility and Transportation Contractors Association of New Jersey is a non-profit trade association headquartered in Wall Township, New Jersey. Founded in 1965, UTCA represents approximately 1,000 member firms in the public and private sectors, active in all phases of heavy, highway, utility, and marine construction, as well as site work including remediation of brownfields and contaminated sites.

On behalf of its member firms, UTCA strives to create a positive impact on New Jersey citizens, the health of the environment and our shared economic prosperity by leveraging its respected expertise and relationships to promote a sustainable infrastructure sector. We assist our members in achieving success through a collective focus on infrastructure funding, legislative and regulatory advocacy, labor relations, improved working conditions and project-based problem solving.
Dear Melissa Abatemarco,

We respectfully submit the attached Phillips 66 comments regarding the proposed Environmental Justice Rules.

Nancy P. Sadlon
Manager of Public Affairs

O: (+1) 908 523 6041  C: [redacted]
1400 Park Avenue South, Linden, NJ 07036
Email: nancy.p.sadlon@p66.com

PHILLIPS66.COM

PROVIDING ENERGY. IMPROVING LIVES.
September 2, 2022

Melissa P. Abatemarco, Esq.
Attn.: DEP Docket No. 04-22-04, PRN 2202-082
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, New Jersey 08625-0402

Re: DEP Dkt. No. 04-22-04
Proposal Number: PRN 2022-082

Phillips 66 Company Bayway Refinery (P66) appreciates the opportunity to provide comments to the New Jersey Department of Environmental Protection (NJDEP, Department) on the Proposed New Environmental Justice (EJ) Rule published in the New Jersey Register on June 6, 2022 (Proposed Rule).

Phillips 66 believes in fair treatment and meaningful involvement of all stakeholders throughout the development, implementation, and enforcement of environmental laws. We seek to create an atmosphere of trust among our stakeholders, which includes the surrounding communities that live and work near our facilities and rely on our products. Our commitment to safety and environmental protection is integral to who we are. We fully understand and respect that this commitment to safety and environmental protection is vital to building community trust in our continued operations.

P66 fully supports the Department’s efforts to protect New Jersey’s environment and residents. We are not only neighbors and partners to our surrounding communities, but many P66 employees at the Bayway Refinery proudly call New Jersey home. They have a personal stake in ensuring the Bayway Refinery is a responsible environmental steward, and that it continues to operate safely and reliably.

That said, P66 firmly and respectfully believes that the Proposed Rule, as currently drafted, will not serve the overall interests of our surrounding communities, the intent of New Jersey’s Environmental Justice Law, or the Department’s efforts to ensure facilities covered by the Proposed Rule have a clear understanding of their compliance requirements. The proposed rules as written set difficult if not impossible criteria to be met for new or expanding facilities. Below, you will find P66’s specific comments regarding the Proposed Rule.

A. The Department Should Clarify the Proposed Rule to Ensure Both Compliance and Continued Operations During the Review Process.

The Proposed Rule entails an extensive process which must be completed before the Department shall consider an application “complete for review.” This applies to an application for the renewal of an existing facility’s major source permit. N.J.A.C. 7:1C-2.1(b). The Department should clarify that existing facilities have the authority to continue to operate during the period while the applicant and the Department are engaging in the process required by this rule. Existing rules require a permit renewal application to be deemed administratively
complete for authority to operate to be extended under the expired permit. The Department should clarify that application for an operating permit is “administratively complete” as that term is used in N.J. Admin. Code Title 7, Chapter 7, Subchapter 22, as long as, the existing requirements of N.J.A.C. 7:27-22.30 are met and further that the application shield set forth at N.J.A.C. 7:27-22.7 is in effect during the period the requirement of this new rule is being satisfied by the applicant and the Department. This clarification is critical given the length of time the EJ process may take. This includes preparation of the EJIS; providing public notice at least 60 days prior to a hearing (N.J.A.C. 7:1C-4.1(a)); providing 60 days for the public hearing and comment process (N.J.A.C. 7:1C-4.2(c)); and allowing the Department time for the post-public comment period process, which provides the Department a minimum of 45 days and no maximum limit to issue a decision. During that time the Department can also request an unlimited expert review. This process may take much longer than the 12 months that renewal applications are required to be submitted before the date the operating permit expires. (N.J.A.C. 7:27-22.30(g)). A definitive and clear statement is necessary to avoid a potential future enforcement position in which existing, responsible facilities are instructed to cease operations during the operating permit renewal process. P66 believes that such a potential outcome would have negative economic impacts to local communities and would exceed the intent of New Jersey’s Environmental Justice Law. In addition, the Department should add predictable mandatory response times to the various steps in the process set forth in the proposed rule to promote the orderly processing of operating permit renewals.

B. The Department Should Incorporate Already-Existing Significance Thresholds for Environmental and Public Health Stressors and Engage Stakeholders to Develop Significance Thresholds Where None Currently Exist.

Large facilities have numerous ongoing activities that should be considered insignificant with respect to stressor contributions, when considering whether an “expansion” is triggered under the proposed rule. Examples include land use and wetland permits related to historical remediation or pipeline or unit maintenance that are very minor “inside the fence” site changes that would not be expected to have any impact on the surrounding communities. Similarly, the refinery (and other affected major sources of air pollution state-wide) may go through many minor environmental permitting activities that have minimal or zero impact on environmental stressors over the course of a year (e.g., temporary use of gas- or diesel-powered equipment or other modifications to the existing permit where the emission increases are below the State-of-the-Art significance levels). There do not appear to be any provisions for emissions or other thresholds that prevent major sources from repeatedly triggering the requirements of the proposed rule for inconsequential permitting activities. The definition of “expansion” sets the triggering threshold as the “potential to result in an increase of an existing facility’s contribution to any environmental and public health stressor.” “Any increase” is impractical and will result in confusion and significant time and effort wasted addressing low or no impact activities. The Department should include in the final rule significance thresholds that are already established in New Jersey regulations for each of the 26 environmental and public health stressors. Examples of significance thresholds include the 20% footprint expansion that is used in the land use regulations, and the N.J.A.C. 7:27-17.9 air pollutant reporting thresholds and excluding “minor modifications” of Title V permits (as defined in N.J.A.C. 7:27-22.2). In hindsight, it would have been helpful for NJDEP to include development of these significance thresholds in the stakeholder process. It is recommended that NJDEP revisit the development of significance.
thresholds for all environmental and public health stressors in a new stakeholder process and adopt them in the final rule.

C. The Department Should Provide Guidance to Facilities to Help Identify the Appropriate OBC Representatives and Meeting Venues to Ensure OBC Are Meaningfully Engaged.

The EJ rule stipulates clearly that the overburdened community (OBC) must have meaningful engagement in the process. Many facilities may be located in multiple census blocks. The Department should clarify how an applicant should identify the representatives from the OBCs. For example, the proposal requires the public hearing to be scheduled in the OBC. The Department should clarify that any suitable hearing space in the OBC in which the facility is located will be acceptable.

D. The Department Should Clarify the Role and Scope of The Community Consensus, Agreement, and Public Hearing Process.

The Department needs to clarify what role community consensus and agreement on the applicant’s plans will play and how that consensus will be determined. The Department should also clarify that participation in the public hearing and the opportunity to make oral comments is limited to members of the OBC and that the applicant is not required to respond to comments from an OBC in which the facility is NOT located. We suggest that the Department add language to clarify when the OBC is satisfied with the permit such as: “If, after public notice and hearing, local officials in the OBC (examples: mayor, council members, environmental commission), Community Advisory Panels (CAPs) members, and majority of OBC residents do not oppose the proposed application(s), then the Department shall issue a decision requiring no further conditions under this Chapter and proceed to process and approve the permit application in accordance with applicable State and federal regulation.”


Many facilities in the state have active Community Advisory Panels (CAPs) to better understand and address the concerns of fence-line communities. CAPs are comprised of community volunteers from surrounding neighborhoods. Facility leaders and community volunteers meet regularly to answer questions and dialogue about the company’s presence, operations, and initiatives. CAPs have been an effective tool for addressing community concerns and building trust. Given the importance that CAPs have played in providing for engagement with the public in New Jersey, the Department should recognize and incentivize in the proposed rules well-established CAPs public hearing comments.

F. The Department Should Build Upon the Mapping Tool by Adopting User-Friendly Mechanisms That Facilitate Sharing Accurate Information.

The Mapping Tool provided by DEP to identify stressors and to identify comparable communities presents a concern for frequent updates, version tracking and change management. The underlying data for the 26 environmental and public health stressors and census data are constantly changing and will require frequent updates. If these updates are not predictable and transparent, applicants will likely find that their EJIS and public hearing
presentations are unknowingly relying on out-of-date information. The Department should create or identify a published update schedule, so that all applicants will know when upcoming updates are due. This should include appropriate version control documentation, so it is clear which version is being used and whether it is the latest version. Finally, the Department should include provisions that allow use of the data available at the beginning of the process to be valid for the entire EJ and permit review process. New data should not require updates to all of the documents that have already been prepared and reviewed. The proposed rule needs provisions that make clear there is not a requirement to restart the process every time new data become available.

G. **The Department Should Establish Express Timelines for Facilities to Satisfy Conditions Imposed Upon Them For Not Avoiding Disproportionate Impacts.**

The proposed rule states that if an affected facility cannot avoid disproportionate impacts, proceeding with the permit request will require certain conditions to be met that are not clearly defined. We request that the Department address the following:

a. Department should explain how long the approval process will take. This is likely another area that require mandatory response timeframes for resolution to avoid indefinite permitting delays.

b. It is expected that compliance with some of the conditions might require design, financing, procurement, installation, etc., which all require time to complete. In the final rule, the Department should make clear that a reasonable time frame will be allowed to implement any permit conditions with long lead times that are established as a result of this EJ review.

H. **Before Implementing the Proposed Rule’s Pollution Control Methods, the Department Should Engage Stakeholders to Help Develop More Manageable, Predictable, and Easily Understood Pollution Control Methods**

The EJ Rule contains various requirements related to pollution control analyses (e.g., Localized Impact Control Technology [7:1C-7.1], Technical Feasibility Analysis [7:1C-8.5]). These requirements create uncertainty for applicants because these approaches are inconsistent with each other and differ from established methods for determining appropriate levels of pollution control (RACT, BACT, State of the Art, etc.). These differences seem arbitrary, as the Department has not distinguished why various methods are needed and why they should be different. Considering this proposed rule requires control measure and options analysis for a very high volume of these reviews, and conceivably any and all of the 26 environmental and public health stressors, the new program warrants specific guidance on options analysis and control measure selection that is streamlined to account for the high volume of reviews and simplified to account for very low impact increases in stressors. The department should provide guidance documents that should be addressed in a stakeholder process. We ask that NJDEP not move forward with these confusing and overly detailed methods, and instead take the time to engage stakeholders in developing a set of methods that are manageable, easily understood by all stakeholders and predictable.
Conclusion: We are concerned about the impacts to the state economy and to our surrounding communities that these regulations, if implemented as written, are anticipated to create. We support comments submitted by CCNJ (Chemistry Council of New Jersey) and NJBIA (New Jersey Business and Industry) and the LEDC (Linden Economic Development Commission).

Thank you for your consideration.

Respectfully,

Chris Gallo

General Manager, Bayway Refinery
From: rulemakingcomments@dep.nj.gov <rulemakingcomments@dep.nj.gov>
Sent: Friday, September 2, 2022 7:17 AM
To: DEP rulemakingcomments [DEP] <rulemakingcomments@dep.nj.gov>
Cc: connorsw@cleanharbors.com <connorsw@cleanharbors.com>
Subject: Select Rulemaking

** Electronic Rulemaking Comment **
Submission Date: 09/02/2022 07:17:49
First Name: William
Last Name: Connors
Affiliation: Clean Harbors Environmental Services, Inc.
City: Norwell
State: MA
Zip: 02061-9149
Email: connorsw@cleanharbors.com
Rule Proposal: Select Rulemaking
Comments: Dear Sir or Madame:

These comments are submitted on behalf of Clean Harbors Environmental Services, Inc. and its affiliated companies, including Safety-Kleen Systems, Inc. and other companies within the Clean Harbors' family (collectively, "Clean Harbors"), which own and operate permitted hazardous waste management facilities in the state of New Jersey. These facilities are major providers of commercial hazardous waste management services to New Jersey businesses and other generators of hazardous waste, including the collection and management of used motor oil and spent industrial solvents and collection and trans-shipment of containerized hazardous wastes. These facilities also provide critical support services to emergency response activities conducted by Clean Harbors, including those related to spills and releases of hazardous substances, the COVID-19 pandemic, and others. Clean Harbors appreciates the opportunity to comment on the Department's proposed new rules: N.J.A.C. 7:1C for Environmental Justice.

Permitted hazardous waste management facilities, such as those owned and operated by CleanHarbors are essential to the State's ability to treat and manage its own generated hazardous wastes. The maintenance of adequate in-state treatment, storage and disposal capacity for the thousands of waste streams generated by the commercial/industrial activities that contribute to the collective well-being is vital to the Department's achievement of its stated mission: To protect New Jersey's people, communities, and environment from toxic substances so 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. We believe that all the Department's programs, including those that seek to achieve environmental justice, must be designed and implemented in a manner that remains true to these core values and fairly balances all of the competing factors that should inform sound public policy.

Clean Harbors acknowledges the importance of the Department's obligation under New Jersey's Environmental Justice Law, codified at N.J.S.A. 13:1D-157 et seq. (Act), to implement its hazardous waste permitting program in a manner that takes into consideration the circumstances of communities that are located near permitted facilities, particularly those communities that are classified in state statute as disadvantaged or vulnerable in some way. As a matter of corporate policy and environmental ethics, Clean Harbors adheres strictly to all terms and conditions of its hazardous waste permits and has implemented
extensive internal procedures to ensure that its operations do not pose a risk to human health, public safety or the environment, regardless of the socio-economic status of the individuals in the surrounding community. Many of our facilities were acquired from entities that struggled to comply with Department regulations, and we have a long and well-documented history of making major improvements to these newly-acquired facilities by upgrading equipment and infrastructure, implementing more rigorous monitoring and testing procedures, developing and establishing standard operating procedures and best industry practices, improving the frequency and quality of employee training, conducting self-audits and ensuring timely follow-up to identified concerns, and the like. As a result of these and many other efforts, Clean Harbors is confident that its facilities do not pose a threat to any of the communities in which we operate. Yet the existence of many of these facilities will be threatened if the Department's proposed approach is implemented. PPPPPPPPWith this perspective in mind, we offer the following comments on the Department's proposed Environmental Justice regulations:

New vs. Existing Facilities: PPPPPPPPWhile Clean Harbors does not object to application of new standards for new facilities, the application of such standards to existing facilities is inherently unfair. A hazardous waste facility, particularly a large and complex site with substantial existing infrastructure is not easily able to rebuild or reconfigure operations, or relocate altogether, to comply with new requirements. These facilities are usually located in areas that are zoned for heavy industrial activity. The gradual transition of these industrialized areas to include a higher percentage of residential and other sensitive uses is not, by itself, sufficient justification for adoption of policies that either directly or indirectly place pressure on lawful industrial operations to relocate to other areas or significantly scale back their operations. PPPPPPPPAs the Department moves forward to carry out the legislative intent behind this statute, it must do so in a manner that is fair and balanced and does not result in the effective "taking" of duly permitted, lawful businesses. In this regard, the statute required the Department to adopt regulations establishing or updating criteria that it uses to determine whether to issue or renew a permit, including the vulnerability and existing health risks to nearby populations. As such we did not understand that to be a directive to the Department to revamp its permitting program in a manner that seeks to place the burden of correcting societal inequities on permitted hazardous waste facilities merely because they happen to be located in or near those communities. Fundamental notions of fairness and due process require, at the very least, that there be a nexus between the facility's operations and the vulnerability sought to be addressed. PPPPPPPPForm and Timing of Decision (N.J.A.C. 7:1C-9.3): PPPPPPPPThe Department sets forth a minimum time to a decision of at least 45 days after the public hearing but there is no end date when it is required to make a decision. Many of these projects are time sensitive and the Department should include an end date by which a final decision will be made. 90 days from the date of the public hearing is reasonable unless the Department requires additional expert analysis. In those instances, the Department should issue a final decision within 90 days of when the expert is assigned the work. PPPPPPPPPublic Notice (N.J.A.C. 7:1C-4.1) PPPPPPPPSection (a)1.ii introduces the requirement of publishing of notice of the public hearing in non-English publications. It specifically notes: "Publish notice of the hearing in at least two newspapers, circulating within the overburdened community, including, at a minimum, one local non-English newspaper in a language representative of the residents of the overburdened community, if applicable". The Department should provide more guidance or direction on this requirement. It is unclear what is the criteria to determine applicability. It is also unclear in what language the notice should be published if there are multiple non-English speaking groups in a given community. PPPPPPPPPProcedure to Request an Adjudicatory Hearing (N.J.A.C. 7:1C-9.5) PPPPPPPPPFor new facilities, it is appropriate that if the ruling is appealed, the facility should be barred from starting operations until the appeal is resolved. However, for existing facilities, ceasing operations until an appeal is resolved is unjust, especially if the renewal involves no change in facility operations. The threshold for grounds to request an adjudicatory hearing are very low. Clean Harbors fears that because a hearing automatically stays the permit action, that the adjudicatory process will be abused by opponents to the facilities and used as a tactic to force cessation of operations. The Department should follow the RCRA permitting
standard that permittees can continue operations under the terms of an existing permit while an application is being considered. Thank you for the opportunity to submit these comments. We look forward to learning how the Department intends to resolve these significant concerns.

Sincerely,

William F. Connors
Sr. Vice President of Compliance
From: rulemakingcomments@dep.nj.gov <rulemakingcomments@dep.nj.gov>
Sent: Thursday, September 1, 2022 4:34 PM
To: DEP rulemakingcomments [DEP] <rulemakingcomments@dep.nj.gov>
Cc: newarknaaacp@gmail.com <newarknaaacp@gmail.com>
Subject: Select Rulemaking

** Electronic Rulemaking Comment **
Submitison Date: 09/01/2022 16:34:15
First Name: Deborah
Last Name: Smith Gregory
Affiliation: NAACP Newark
City: Newark
State: NJ
Zip:
Email: newarknaaacp@gmail.com
Rule Proposal: Select Rulemaking
Comments: Environmental Justice activists supported the Environmental Justice Law so residents would not have to choose between a healthy environment and jobs. The compelling Public Interest part of the law states that new permits for covered facilities in overburdened communities that contribute to the existing or new disproportionate pollution shall be denied. There is an exception for a compelling public interest in the host community when the facility primarily serves an environmental, safety, or public health purpose. This exception excludes economic considerations. This means that industry cannot use economic arguments to push through permits that contribute to pollution in overburdened communities. This part of the rule is very important because industries could use economic arguments to justify any permit application and essentially create a loophole in the rule. In addition, Dirty industries are not the kind of jobs we want to encourage in EJ communities. We deserve good, healthy, clean, dignified jobs, not at the expense of more pollution. We want the kinds of jobs that don't need an exemption to be allowed into our communities. If you are a legitimately clean business or can mitigate your impact, you don't need to extort the community with the promise of economic development that can never be fully accounted for after the permitting process. Lastly, communities in Newark are surrounded by warehouses and polluting industries who are bad neighbors to our community. Unfortunately, Warehouses, logistics centers, public works projects, hotels, hospitals, etc. none of these businesses trigger this rule. Thus the industries that will be most impacted are actually large, dirty polluting entities that profit from the divisive language of jobs vs the environment. NJDEP can not remove the economic factors exclusion because if you do, this will make the EJ Bill a complete failure.
Communities should not have to chose between a healthy environment & jobs. Urban areas are already overburdened, have high rates of asthma & lower life expectancy due to air pollution. Both the soil & water are contaminated. Emissions are leading to an unstable climate resulting in higher frequency of catastrophic climate events. Adding to emissions is ultimately bad for the economy as money that could be used investing in healthcare, education or renewable energy leads to the necessity to fund families, businesses and cities when a catastrophe is experienced. It is essential to do everything we can to limit emissions and invest in stabilizing our climate and protecting our water & air. There should be no exceptions for so called economic relief. There are a wide range of sustainable energy projects that can be pursued or developed and no justification for sacrificing the health and land of the community.
Good evening, I’m Yasmin Ayan, a senior in Glen Ridge high school. I’d like to thank the New Jersey DEP for hosting this hearing, and for the Environmental Justice associations in New Jersey for furthering our goal of speaking up for the communities whose health is exchanged for profit. As someone who has struggled with breathing problems, but is privileged enough to live in a town without facilities dumping harmful chemicals at close range, I cannot begin to imagine what children growing up in towns near these facilities face.

Children are disproportionately affected in relation to asthma and breathing problems, low income communities are constantly the ones taking the burden of industrial sites and cities like Newark and Camden are barely getting any of the supposed benefits of these industrial facilities, such as the increase of jobs for the people living in the cities that are being poluted), and all of the harmful developmental impacts for their children. As others have said before me, and which I cannot eloquently enunciate as well, the 200 feet public notice for these industrial sites is not nearly enough for the residents here to breathe clean air, and should be increased to the 1000s. Again, allowing economic exemption for sites will only serve to deepen the health AND economic risks that residents face.

Thank you.
** Electronic Rulemaking Comment **
Submission Date: 08/10/2022 11:46:51
First Name: Maria
Last Name: E Gross
Affiliation: 
City: NEWARK
State: NJ
Zip: 07105
Email:  
Rule Proposal: Select Rulemaking
Comments: STRONG regulation is necessary to protect the welfare of citizens. I am a resident of Newark and a rower on the Passaic and I want to draw attention to the issue of the cleanup of the river as evidence of why the business sector cannot be relied upon to do the right thing. The Cooperating Parties spent enormous sums hiring lawyers and pr firms to shirk their responsibility in the contamination of the river and the efforts to clean it up. The business sector MUST BE REINED IN!
Comments: I do not support any exceptions for economic purposes. Our community is already overburdened. The effects from fossil fuel projects are already causing a declining life expectancy, high rates of asthma & deaths related from pollution as well as damages to our homes, businesses & other infrastructure due to climate events. We must do everything we can do to to end the use of fossil fuels and limit emissions. Scientists agree that we are on track for a growth of beyond 1.5% celsius. The sea level will rise about 2 feet within the next 20 years and NJ’s temperatures are rising at a rate higher than most places. It is unfair to the neighborhoods where these projects take place. The cost of allowing projects like this is far to great.
** Electronic Rulemaking Comment **
Submision Date: 08/08/2022 18:28:34
First Name: Julia
Last Name: Cranmer
Affiliation: 
City: 
State: 
Zip: 
Email: 
Rule Proposal: Select Rulemaking
Comments: All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities. Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables. No offsets (e.g. planting trees or bike lanes elsewhere). Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.
Comments: All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities. Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:  

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- No offsets (e.g. planting trees or bike lanes elsewhere).  
- Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.  

Let's empower the people not the polluters!
Comments: All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria: No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables. No offsets (e.g. planting trees or bike lanes elsewhere). Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.
Comments: All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:  
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From: rulemakingcomments@dep.nj.gov <rulemakingcomments@dep.nj.gov>
Sent: Monday, August 8, 2022 12:49 PM
To: DEP rulemakingcomments [DEP] <rulemakingcomments@dep.nj.gov>
Cc: [Redacted] <[Redacted]>
Subject: Select Rulemaking

** Electronic Rulemaking Comment **
Submission Date: 08/08/2022 12:49:36
First Name: Laurel
Last Name: Kornfeld
Affiliation:
City: Highland Park
State: NJ
Zip: 08904
Email: [Redacted]

Rule Proposal: Select Rulemaking
Comments: All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie. EJ communities have been told for a long time that has never produced wealth for EJ communities. Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

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From: rulemakingcomments@dep.nj.gov <rulemakingcomments@dep.nj.gov>
Sent: Monday, August 8, 2022 12:35 PM
To: DEP rulemakingcomments [DEP] <rulemakingcomments@dep.nj.gov>
Cc: < >
Subject: Select Rulemaking

** Electronic Rulemaking Comment **
Submission Date: 08/08/2022 12:35:43
First Name: Joann
Last Name: Ramos
Affiliation:
City: Iselin
State: NJ
Zip: 08830
Email: 
Rule Proposal: Select Rulemaking
Comments: All communities deserve good, healthy, clean, dignified jobs but not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it's a lie. EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

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** Electronic Rulemaking Comment **
Submitison Date: 08/08/2022 12:34:35
First Name: Nicholas
Last Name: Homyak
Affiliation: Volunteer in Parks/ NJ Highlands Advoca
City: Lake Hiawatha
State: NJ
Zip: 07034
Email: 

Rule Proposal: Select Rulemaking

Comments: NJDEP officials PPPPSubject: Rule Making Environmental JusticePPPPTherefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:PPPPPPPNo economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables. PPPPNo offsets (e.g. planting trees or bike lanes elsewhere). PPPPAchieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit. PPPPAll we seem to be doing is allowing a unsustainable economy to nowhere to continue. We have already Over-Shoot our sustainable possibilities. Sustainable scale Ecological economics contend that for any given ecosystems setting, there is an optimum scale of the economy beyond which physical growth in the economy (throughput)(waste) starts costing more than it is worth in terms of human welfare.PPPWithout good government we are doomed. No economic interest, under any circumstances, can ever be above the reverence for life. A huge part of the problem is the Jeffersonian notion that" the government that governs best is the one that governs least". While it is true as regards individual liberties, it is absolutely dangerous to think that way as regards economy. PPPP Our Constitution is outdated and the once greatness of nature has been replaced with senseless progress in an economy to nowhere that exist in a vacuum, outside the laws of nature, unsustainable.Government is the "Means Proper" to remedy this!.."Means Proper", was a common phrase in early American to overcome the powers of division...another forgotten term...instead we only remember laissez fair, a once rejected concept...PPPWhat's the dif!ference between a pessimist and an optimist? The pessimist says, "It can't possibly get any worse than this." The optimist says, "Of course it can!" : Pessimist is a well educated optimist PPPPPPPPWhen will Science and Politics be the same?New Jersey, needs to do all in it's power to support this initiative in reducing fossil fuel infrastructure and advance a green sustainable, slowing down of the economy to nowhere.There can no longer be sides in this predicament. The science is sound, and any common sense, would see by probability alone, this man-induced anthropocentric phenomena is occurring. Even our remaining public forest are now under threat from private sources. PPPPPPSo Finally a common geopolitical dynamic; Climate change that
can unite US; Life or Death, Science or Political garbage. shall we chose the political inappropriate paradigm of business over science, garbage; further injury, through additional induced entropic forces of continued use of fossil fuels and their waste products? PPPPPPPPSincerely
July 25, 2022

NJ Department of Environmental Protection
P. O. Box 402
Trenton, NJ 08625

Dear Commissioner LaTourette:

I write in strong support of one of the nation’s strongest environmental justice laws (S232/A2212) that I was very proud to be a primary sponsor. Environmental justice is a global human right that interconnects communities nationwide. New Jersey’s urban areas remain overburdened for decades with pollutants, including contaminated air, water, and soil.

To fulfill our commitment to underserved communities, the DEP must enforce analysis of the public health impact in environmental justice communities and ensure compliance from applicants looking to build or continue projects. Regardless of zip code, residents deserve access to clean jobs that reduce pollutants and improve public health benefits overall.

I hope that the Department of Environmental Protection is committed to regulating the permitting standards and meeting our goal of promoting a healthy environment. I look forward to speaking on this issue at the public hearing at the NJIT campus on July 27th.

Should you wish to speak to me directly regarding the proposed regulations, please do not hesitate to contact me in my district office at (973) 395-1166.

Best Regards,

Assemblywoman Britnee Timberlake
Legislative District 34
East Orange, Orange, Montclair, Clifton
Dear madam/sir:

Attached please find comments (in both word and PDF format) and one attachment file we would like to submit on behalf of the Ironbound Community Corporation, New Jersey Environmental Justice Alliance, South Ward Environmental Alliance, Clean Water Action, Earthjustice, Tishman Environment and Design Center at the New School, and the Center for the Urban Environment of the John S. Watson Institute for Urban policy and Research at Kean University to the New Jersey Department of Environmental Protection on the New Jersey Environmental Justice Law Proposed Rule (DEP Docket Number: 04-22-04, Proposal Number: PRN 2022-082). Another attachment file will follow shortly.

If you should have any questions on anything in the comments, please do not hesitate to contact us.

Sincerely,

Nicky Sheats, Esq., Ph.D.
Director, Center for the Urban Environment
John S. Watson Institute for Urban Policy and Research at Kean University
Via E-Mail

Melissa P. Abatemarco, Esq.
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Trenton, New Jersey 08625-0402
rulemakingcomments@dep.nj.gov

CC: Shawn LaTourette, Commissioner, DEP
    Sean Moriarty, Deputy Commissioner, DEP

Re: Comments on Proposed Environmental Justice Rules, DEP Docket No. 04-22-04

I. INTRODUCTION

For years the Environmental Justice (EJ) community in New Jersey and nationally has insisted that, at some point, applications for pollution permits must be denied for new facilities seeking to locate in Of Color communities and low-income communities already suffering from more than their fair share of polluting facilities. However, these protestations were seemingly falling on deaf ears in legislatures and the governmental policy making community. Until now.

The New Jersey Legislature signaled that it heard the EJ community when it adopted a law to address pollution permits in an EJ context and stated in the EJ Law’s legislative findings and declarations that “historically, New Jersey’s low-income communities and [C]ommunities [O]f [C]olor have been subject to a disproportionately high number of environmental and public health stressors,” and that this “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.”1 The New Jersey Department of Environmental Protection (DEP) has signaled that it heard both the EJ community and the State’s Legislature by proposing rules that

will implement the New Jersey EJ Law in a manner that will protect New Jersey EJ communities, i.e., Communities Of Color and communities with low income.

While the New Jersey community and its close allies believe that overall, the Proposed Rule will be a significant step towards addressing disproportionate levels of pollution in New Jersey EJ communities, there are portions of the Rule that can be improved. The Ironbound Community Corporation, New Jersey Environmental Justice Alliance (NJEJA), Clean Water Action, South Ward Environmental Alliance, Earthjustice, Tishman Environment and Design Center at the New School, and the Center for the Urban Environment of the John S. Watson Institute for Urban Policy and Research at Kean University submit the following comments in support of DEP’s Proposed EJ Rule, and to provide concrete ways in which the Rule can be improved.

Our comments begin with specific recommendations for changes that DEP should make when finalizing the EJ Rule, covering the categories of the “compelling public interest” component of the Law (Section II), public participation (Section III), facility definitions (Section IV), cumulative impacts analysis and disproportionality (Section V), permit conditions (Section VI), general permits (Section VII), and cross-references with other DEP rules (Section VIII). The comments end with additional background on the association between pollution burden and Communities Of Color in Section IX. In each section, specific recommendations to DEP are in bold.

II. COMPPELLING PUBLIC INTEREST

In informal comments submitted in March of 2021, we discussed how the compelling public interest exception mandated by the New Jersey EJ Law should be treated in regulations issued pursuant to the Law. We argued that requiring a facility to demonstrate that it is fulfilling a compelling public interest before it would be granted an exception to the Law is a very high standard to meet. We further reasoned that the regulations should interpret this exception extremely narrowly so that very few are granted, because otherwise the very purpose of the Law, which is to protect communities Of Color and low-income communities from disproportionate pollution loads, would be flaunted and defeated. We reiterate those arguments here and adopt our previously submitted informal comments by reference. In addition, we have identified concerns

2 We prefer to use the terms “People of Color,” “Communities Of Color,” and simply “Of Color” instead of “minority,” but we use the term “minority” when referring to the EJ Law and Proposed Rule for consistency.
3 Comments of Ironbound Community Corporation et al. on New Jersey Environmental Justice Law Rulemaking: Stakeholder Comments, at 17-24 (March 10, 2021) (Attachment 1) (“March 2021 Stakeholder Comments”); see also Comments of Ironbound Community Corporation et al. on New Jersey Environmental Justice Law Rulemaking: Compelling Public Interest Addendum Comments (May 21, 2021) (Attachment 2); Comments of Ironbound Community Corporation et al. (Sept. 8, 2021) (Attachment 3).
5 March 2021 Stakeholder Comments, supra note 3, Att. 1 at 17-18.
6 See id. at 18-19.
with the compelling public interest exception as it is detailed in the Proposed Rule. Those concerns are discussed below.

A. Economics Should Not Be A Consideration When DEP Is Deciding If A Compelling Public Interest Exception Should Be Granted.

Even though the narrative that accompanies the Proposed Rule states that economic considerations will not be taken into account by DEP when deliberating on whether or not to grant a compelling public interest exception,7 industry and some union members have testified at public hearings held on the Proposed Rule that polluting facilities which produce jobs should be eligible for the exception. The New Jersey EJ community and its allies adamantly oppose this suggestion since it would undermine the entire Law with persistent requests for exceptions that would most likely be granted if DEP were to finalize an EJ Rule that allows economic reasons as a basis to obtain the compelling public interest exception. Allowing consideration of economics would also be profoundly unfair to overburdened Communities Of Color and low-income communities since it would essentially be allowing our state to attempt to bribe these communities with the promise of needed jobs if they are willing to accept health-harming and life-ending pollution. In reality, such a proposition delivered to a community comes closer to extortion than bribery. Other communities do not have to make a choice between needed jobs and dangerous pollution and these communities should not have to make that choice either. There are other aspects of trading jobs for pollution that are problematic, and they are presented briefly below in a bulleted format.

- Unfortunately, we also feel it is important to point out that false promises have been made before regarding jobs and other benefits that will be produced by polluting facilities, which far too often fail to materialize.8 If they don’t materialize how will the facilities be held accountable? Or will the host communities be left with the pollution but without the promised benefits? However, we must reiterate our position: trading jobs for pollution is problematic and not fair to Communities Of Color and low-income communities. Even if the promised jobs were actually produced by the polluting facility it is still unacceptable to offer EJ communities a pollution for jobs trade-off.

- Polluting industry is not how we want to grow the economy in communities that already have more than their fair share of pollution. In fact, they are probably not the preferred way to improve the economy in any community. Our society must deliver jobs to communities without them being accompanied by dangerous pollution. There is industry that produces good jobs without pollution and many of them, such as hotels, hospitals, schools, and public infrastructure, do not fall under the auspices of the New Jersey EJ Law. The facilities that will be affected by the law are those that will add pollution to an already overburdened neighborhood.

- In addition to communities rejecting the idea of sacrificing lives for jobs, DEP has a history of finding that other economic reasons are not sufficient for industry to obtain a

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7 Proposed Rule at 973 (narrative section on “compelling public interest”).
“compelling public interest” waiver from environmental laws.9 DEP must not change course now and allow economic reasons to provide a “compelling public interest” exception for the EJ Law.

For all these reasons, **DEP’s Chapter 7:1C regulations must expressly state that the supposed economic benefits of the proposed facility cannot be considered when determining whether the facility serves a compelling public interest.**

B. Other Potential Problems With the Compelling Public Interest Exception.

There are other potential problems with the compelling public interest exception that should be addressed. One is that proposed N.J.A.C. 7:1C-5-4(a) might be interpreted as allowing the control measures that are enumerated in proposed N.J.A.C. 7:1C-5-4(b) to be considered when DEP is deciding if it will grant a compelling public interest exception. Such an interpretation could be based on the language of N.J.A.C. 7:1C-5-4(a), which states, “An applicant for a proposed new major source facility that seeks to demonstrate a compelling public interest, shall propose control measures in accordance with N.J.A.C. 7:1C-7.1.”10 What is noteworthy regarding the wording of this section of the Proposed Rule is that it refers to an applicant who “seeks” the exception as opposed to one who has already been granted an exception. Control measures should not be one of the factors considered when DEP is deliberating on whether or not to grant the exception, and the Proposed Rule should be changed to clarify this point.

The language in the Proposed Rule regarding what constitutes an essential environmental, health, or safety need should also be clarified.11 Currently the only activity that is specifically identified as constituting an essential need is the direct reduction of adverse environmental and public health stressors in the overburdened community (OBC).12 However, even this language could be problematic since, for example, it could allow the reduction of two stressors to be considered fulfilling an essential need even if granting a permit for the facility would result in increasing two or more other stressors. Perhaps under these circumstances, the applicant facility would not be given an exception because reducing these two stressors would not be its “primar[y]” purpose as would seem to be required by N.J.A.C. 7:1C-5.3(b)(1). However, the meaning of “primary purpose” could also be disputed. To prevent future confusion and to provide more precise guidance for future administrations that will have to implement the regulations, **we recommend more specificity regarding what comprises a compelling public interest.**

Perhaps the best way to achieve this specificity would be to delineate what type of activities will constitute a compelling public interest and then restrict granting an exception to facilities that are engaged in those specific activities. **The activities that we believe should qualify for an exception are the following: (1) Municipal or neighborhood scale food waste composting**

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9 For example, DEP has found that being a “major source of property tax revenue,” causing an “increase [to a] financial rate of return,” or providing “access for customers” or “needs of . . . tenants” do not show a “compelling public need” that justifies exemption from freshwater wetland protection regulations. *Twp. of Wayne & Farcal Realty, Inc., Petitioners*, No. ESA 392, 2003 WL 21362758, at *6 (EFPS May 13, 2003); *Tanurb, an Ontario Gen. P’ship, Petitioner*, No. ESA 118, 2002 WL 512145, at *14 (EFPS Mar. 20, 2002).

10 Proposed N.J.A.C. 7:1C-5-4(a) (emphasis added).

11 See proposed N.J.A.C. 7:1C-5.3(b)(1), (b)(2) and (b)(3).

12 Proposed N.J.A.C. 7:1C-5.3(c).
facilities or small to medium scale (i.e., institutional, neighborhood, municipal) food waste anaerobic digesters; (2) Public water infrastructure; and (3) Photovoltaic Arrays or On-Shore Wind generators and related infrastructure. The facilities involved in these types of activities would most likely improve the quality of life in the neighborhood in which they are located, and probably in other neighborhoods as well, without significant negative impacts. However, we are not proposing a blanket exception for facilities that further these activities. Instead, any facility applying for such an exception would have to undergo significant individual scrutiny. If DEP wanted to add other activities that would also be eligible for a compelling public interest exception, it should do so only after an extensive public stakeholder process.

Other New Jersey regulations come very close to setting a precedent for detailing what should constitute a compelling public interest under the New Jersey EJ Law regulations. For example, regulations implementing the Highlands Water Protection and Planning Act set a “compelling public need” standard that must be met before expedited development can occur in areas protected by the Act. The implementing regulations provide specific examples of what could constitute a compelling public need, although it is important to note that in this instance activities that fulfill the standard are not limited to those identified in the regulations. However, in the case of the New Jersey EJ Law, as stated above, we believe it would be important to limit fulfillment of the compelling public interest standard to those activities specified in the regulations.

Another part of the compelling public interest exception of the Proposed Rule that we want to address is proposed N.J.A.C. 7:1C-5.3(d) which states that DEP “may” consider public input as it is pondering whether or not to grant an exception. We recommend that “may” be changed to “shall” in Section 7:1C-5.3(d) to help ensure that political administration changes will not leave communities without a voice in this important matter.

Finally, we recommend above that control measures should not be part of the calculus when DEP is deciding if it should grant a compelling public interest exception. We further recommend that even when it is appropriate for control measures to be considered by DEP, the concept of “net environmental benefit” which is currently contained in N.J.A.C. 7:1C-5.4(b)(5) is insufficiently defined and should be removed from the Proposed Rule. We discuss

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13 In combination with other efforts this type of facility should, among other benefits, help to significantly reduce the use of incineration.
14 These facilities cannot be associated with sewage treatment plants, or otherwise cannot be industrial-scale operations designed to produce methane for export.
15 This type of facility would include sewage treatment plants and combined sewage overflow infrastructure. Even though our society as a whole needs these types of facilities, it should be ensured that any new infrastructure which falls in this category that receives an exception under the EJ Law is needed by the overburdened block group in which it would be located for a beneficial purpose, such as flood mitigation or improving climate resiliency.
16 Renewable energy installations that benefit the local host community and help to displace fossil fuel energy generating units should qualify for consideration. Along with these facilities, consideration can also be given to the infrastructure related to wind or solar energy production such as renewable battery storage or microgrids, charging stations for light, medium and heavy-duty electric vehicles, and electrification infrastructure needed for non-road and port-related equipment.
17 N.J.S.A. 13:20-1 et seq.
18 See N.J.A.C. 7:38-6.5.
III. PUBLIC PARTICIPATION

It is extremely important that the outreach to the community is honest and fair. Residents in EJ communities deserve to be notified of polluting facilities being proposed within five kilometers of their communities, since DEP’s Technical Manual 1002 recognizes that air emissions from facilities can have impacts out to five kilometers (distance of required modeled receptors). The Proposed Rule’s current notification to residents within only 200 feet is insufficient. The EJ Law was written to protect the communities most impacted. As such, community residents need text messages and phone calls, in addition to newspaper notification, informing them of potential facilities being sited in their neighborhood. Communities that are aware and given a chance to participate are better able to shape their neighborhoods.

Communities are hampered if they do not receive the comprehensive and complete communication necessary for them to engage in projects that directly impact their public health. For example, on July 21, 2022, the Covanta Essex Resource Recovery Facility sent its first direct email notice to community members of any information about the public participation process for Covanta’s permit renewals under DEP Administrative Order No. 2021-25 (AO-25), which implements some aspects of the EJ Law participation process before finalization of the EJ Rule. But Covanta’s email – which merely referenced a “Virtual Public Information Session” – failed to indicate that this “Information Session” was intended to be the AO-25 public hearing, failed to provide a link to the permit application materials, failed to indicate that the 60-day AO-25 public comment period would end on September 8, 2022, and failed to indicate that Covanta had already opened the 60-day comment period on July 8 – some two weeks before the email. This notice was clearly insufficient, and were it not for EJ advocates raising the issue with DEP, the agency would have let this insufficient notice stand, and the affected communities would not have been given adequate opportunity to participate. It should not be the burden of community members and community groups to daily scour all local newspapers in order to be notified of applications under the EJ Law. Future notifications under the EJ Law must be better than this poor example.

It is also essential that the manner in which notice is provided for proposed new projects and renewals of major permits be updated so it reaches more members of the community, especially the next generation of EJ advocates. The future EJ advocates (many of whom are less than 30 years old) are more likely to become aware of an issue via Instagram, TikTok, and other social media platforms. DEP must strive to include these forms of communication in their outreach plans, and the Department should continually be updating outreach to be more inclusive of

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19 See Proposed N.J.A.C. 7:1C-6.3(b)(5).
21 See Covanta Essex, Virtual Information Session Notice (Attachment 4).
technological changes and the evolving way that residents receive information. DEP should also allow for the submission of comments via video, voice memos, and other, newer forms of feedback.

Additionally, the number of EJ advocates in any given overburdened community (OBC) may be quite limited. However, there will often be advocates in adjacent OBCs who can assist in understanding and responding to a proposed permit and the related Environmental Justice Impact Statement (EJIS). Therefore, we recommend that DEP include advocates in adjacent OBCs in the public participation procedures as described in Subchapter 4 of the Proposed Rule, and in other guidelines established by the DEP.

In addition, and as we previously recommended to DEP in our March 10, 2021 Stakeholder Comments:\(^\text{22}\)

- It is critical that DEP work closely with municipalities and their staff to help translate and communicate the materials generated by the EJIS review process. This can be achieved by offering training(s) to key municipal staff such as the zoning officers, planning staff, environmental commission, and planning and zoning boards, for example.
- The public process must ensure that local community groups and residents are properly notified beyond just the notification to municipal officials or the clerks. A successful public process requires investing in DEP’s capacity to conduct community-friendly outreach and then use that to ensure that industry applicants adhere to this model.
- **DEP staff should work with the applicant to ensure that the information and technical assistance disseminated prior to the public hearing to the public and local officials is clear and can be easily understood in the context of the EJ Law.** This information is required by the Law, which directs DEP to assess permit application fees that cover “costs to provide technical assistance to . . . overburdened communities,” among other costs.\(^\text{23}\) 
  Thus, we recommend that the DEP develop internal processes for conducting enhanced outreach along with the applicant in the public process leading up to the hearing. This includes sharing educational materials regarding regulation processes (orienting maps and existing conditions), the definition of cumulative impacts, information about the impact of regulated pollutants, etc. to help residents have a baseline understanding prior to the hearing. DEP should invest in public education that is accessible to make the whole process much more engaging.
- **DEP should maintain a list of active community groups and use that list to notify them about hearings.** The agency should allow residents to easily sign up to receive email and text alerts for new EJ Law applications for their municipalities/counties of interest, for example by signing up on the DEP website. DEP should also convey information about

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\(^{22}\) See March 2021 Stakeholder Comments, *supra* note 3, Att. 1.

\(^{23}\) N.J.S.A. 13:1D-160(g).
new applications to existing municipality text alert/reverse 911 systems so that these can send out information.

- **DEP should ensure that the applicant provides clear, accurate, and complete information about the proposed new, expanded, or renewing facility by reviewing all the public hearing presentation materials for accuracy and completeness prior to the meeting.** Any fact sheets, presentations, or other supporting materials should be reviewed by DEP prior to dissemination to the public.

- **Notifications to community members and community groups need to be specific and clear about the operations of the facility, the pollution that would be emitted, and the EJ Law process the facility is engaged in.**

- **Automated phone calls or text messages, the use of social media platforms and other methods of communication should be considered in addition to, or instead of, the newspaper ads.** If newspaper ads are included, they should be issued multiple times and in newspapers with wide readership in the community where a facility is proposed, as well as adjacent communities.

- **Notification must be available in the languages of the local community.** This is particularly important given that the EJ Law expressly applies in communities with limited English proficiency.

- **Notification to the municipality via the clerk should also include a notification to the municipality’s Environmental Commission or Municipal Green Team if such a Commission or Team is established in the host community.**

- **In order for community members to have a “meaningful opportunity” to participate in permitting decisions as required by the EJ Law,** they must be informed whether the applicant will claim the facility will serve a “compelling public interest in the community where it is to be located.”

- **DEP must require that the permit applicant’s notice of public hearing explicitly state whether the applicant will seek a “compelling public interest” determination from DEP, along with a brief summary of the EJIS and any other information the Department thinks is necessary to include.**

- **To enable the public participation and transparency intended by the Legislature, DEP must maintain a publicly accessible record, both online and in-person at applicable public libraries, of any findings of a “compelling public interest” under N.J.S.A. 13:1D-160(c).**

- **The EJ Law requires an EJIS to “assess the potential environmental and public health stressors” associated with the facility, and DEP must make clear that “potential” stressors are not limited to those stressors which “cannot be avoided if the permit is granted.”**

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In summary, to adequately and sincerely engage the community, DEP should expand public notice requirements to communities within five kilometers of any proposed facility, and revamp the channels through which they interact with and inform the public, among other things. For additional, more in depth suggestions regarding public comments, please refer to the Stakeholder Comments document in Attachment 1.

IV. FACILITY DEFINITIONS

A. The Final EJ Rule Should Continue to Treat a Change of Use at an Existing Facility as a “New Facility.”

We strongly agree with the inclusion of “a change in use at an existing facility” in the Proposed Rule’s definition of “new facility.” Such a provision will help ensure that entirely new sources of pollution in an OBC do not escape the highest level of EJ Law protections simply because the new source happens to be built within the property line of an existing facility or use existing equipment.

A recently proposed gas plant in the Ironbound section of Newark – one of the most overburdened communities in the state – shows just how critical this provision is. The Passaic Valley Sewerage Commission wastewater treatment plant is proposing to build a gas-fired power plant – an entirely new operation – within the wastewater facility’s site. But the wastewater treatment plant is already a “major source” of air pollution that “possesses a valid approved registration or permit from [DEP] for its operation or construction and is in operation,” so the wastewater treatment facility itself would be an “existing facility” under the EJ Rule. Thus, without DEP’s clarification of the definition of “new facility,” the proposed, entirely new source of pollution in the Ironbound – the fourth gas plant in the neighborhood – could be considered a facility expansion instead of a new facility, and Ironbound residents would be deprived of the heightened EJ Law protections that apply to new facilities.


We also agree with the EJ Rule’s definition of facility expansion, which includes expansions that have “the potential to result in an increase of an existing facility’s contribution to any environmental and public health stressor in an overburdened community,” but not necessarily any facility expansions or modifications that decrease or cause no change to such contribution.28

27 Proposed N.J.A.C. 7:1C-1.5 (definition of “new facility”); see also id. (defining “change in use” as “a change in the type of operation of an existing facility that increases the facility’s contribution to any environmental and public health stressor in an overburdened community, such as a change to waste processed or stored.”).
29 Proposed N.J.A.C. 7:1C-1.5 (definitions of “facility” and “existing facility”).
30 Proposed N.J.A.C. 7:1C-1.5 (definition of “expansion”).
This definition properly balances the intent of the law to scrutinize any potential increase in stressors in an OBC, while also not requiring EJ Law documentation and submittals for decreases in stressor contributions, which do not carry regulatory implications under the EJ Law anyway. Accordingly, no “de minimis” exception to the definition of facility expansion is warranted, since the proposed definition already properly furthers the intent of the EJ Law without overreach.


The New Jersey Legislature passed the EJ Law to address “numerous” polluting facilities concentrated in OBCs which, “by the nature of their activity, have the potential to increase environmental and public health stressors.”

DEP must define the categories of facilities in the EJ Law in a way that avoids “frustrat[ing] the policy embodied in the statute.”

To implement the legislative intent of the statute, DEP should clarify that “incinerator,” “sludge incinerator,” and “resource recovery facility” definitions include pyrolysis, gasification, plasma processing, chemical recycling, vitrification, and other forms of incineration and similar technologies or processes by another name. As with traditional incinerators, these facilities use high temperatures and combustion to break down or transform waste. These facilities also emit many of the same pollutants as traditional incinerators, including carbon monoxide, dioxins, furans, sulfur dioxide, hydrogen sulfide, benzene, particulates, nitrogen oxides, and chloride.

DEP should directly address these facilities by adding the definition of “incinerator” from N.J.A.C. 7:27-8.1 – which expressly includes facilities utilizing “pyrolysis” – to the EJ Rule’s definition of incinerator. Currently, the Proposed Rule’s definition of “incinerator” points only

to definitions in N.J.A.C. 7:26-1.4, and 7:27-11.1, but neither of these definitions expressly mention “pyrolysis” or similar terms.  

In addition, and at the very least, DEP must recognize that even its definitions of incineration that do not expressly reference “pyrolysis” or “gasification” do indeed apply to these facilities because these processes also involve combustion – a high-temperature chemical reaction between a fuel and oxygen. Pyrolysis, gasification, chemical recycling, and similar industries often claim that they are not subject to incinerator regulations based on their assertions that their processes are done in the absence of oxygen and so do not involve combustion. But “it is not possible to eliminate the presence of all oxygen in real-world pyrolysis units,” and so “some combustion is inevitable during pyrolysis/gasification and always occurs.” For this reason, EPA has described these facilities as “two chamber incinerators with a starved air primary chamber followed by an afterburner to complete combustion.” Thus, even DEP’s definitions of “incinerator,” like those in N.J.A.C. 7:26-1.4 and 7:27-11.1 that use terms like burning, fire, or combustion, equally apply to pyrolysis and gasification facilities, and the final EJ Rule should make that clear.

These principles similarly apply to the Proposed Rule’s definition of “sludge incinerator,” defined as “any facility that incinerates or combusts sludge in an enclosed device.” The final EJ Rule should make clear that sludge pyrolysis facilities, sludge gasification facilities, and similar facilities are covered under the Rule’s definition of “sludge incinerator.”

Given the emissions from facilities utilizing pyrolysis and similar thermal processes, DEP’s omission of these facilities would ultimately be harmful to OBCs, and thus would contravene the central intent of the EJ Law. DEP cannot implement a law designed to correct a “legacy of siting sources of pollution in overburdened communities” by unnecessarily excluding pyrolysis-based incinerators and similar facilities from the protections of the EJ Law.  

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36 See proposed N.J.A.C. 7:1C-1.5 (definition of “incinerator”).
37 Comments of Earthjustice et al. on Potential Future Regulation Addressing Pyrolysis and Gasification Units: Advanced Notice of Proposed Rulemaking, Ex.M Sahu Decl. ¶¶ 8, 11 [EPA-HQ-OAR-2021-0382-0165 ex. M] (Attachment 5); see also Federal Remediation Technologies Roundtable, Remediation Technologies Screening Matrix and Reference Guide, 4.24 Pyrolysis, https://frtr.gov/matrix2/section4/4-25.html (“In practice, it is not possible to achieve a completely oxygen-free atmosphere; actual pyrolytic systems are operated with less than stoichiometric quantities of oxygen. Because some oxygen will be present in any pyrolytic system, nominal oxidation will occur.”)
39 Proposed N.J.A.C. 7:1C-1.5 (definition of “sludge incinerator”).
D. “Sludge Processing Facility” Should Include Land Application of Sludge.

The EJ Law provides OBCs with protections against “sludge processing facilities,” but this term is not defined in the statute or elsewhere in New Jersey law. DEP has defined this term using components of the New Jersey Pollutant Discharge Elimination System (NJPDES) regulations to include facilities that store, process, treat, or transfer sludge, but excludes “the land to which residual is applied or will be applied.”

This exclusion of land application sites arbitrarily departs from existing NJPDES regulations, which recognize that land application of sludge poses public health risks that deserve elevated scrutiny. Accordingly, DEP regulations require the review of applications for land application of residuals, including an analysis of the residual for signs of chemicals such as arsenic, lead, and mercury. Indeed, by DEP’s own account, DEP chose to promulgate a residual land application program that is even more “stringent” and “restrictive” than the federal baseline because of the heightened need to protect “New Jersey’s high population density [and] limited agronomic land base,” etc. But despite these heightened regulations, New Jersey still allows for the land application of more hazardous residuals like industrial residuals or Class B / non-“exceptional quality” residuals. Given DEP’s recognition of the potential harms and need for an overview of land-application sites, land application sites should not be excluded from the protections of the EJ Law.

If DEP intended to exclude land application sites from the EJ Law for fear of administrative burden, that should not be the case. The NJPDES Active Permit List from DEP Dataminer shows only 10 permits for the land application of industrial residuals, 5 permits for land application of Class A Biosolids, and 4 permits for land application of Class B Biosolids. And of course, only those land application sites located in OBCs would be covered by the EJ Law. Thus, inclusion of land application permits under the EJ Law would not add a long list of new sites that would be covered by the Law.

E. “Transfer Station” Should Include Intermodal Container Facilities.

The final EJ Rule should clarify that “intermodal container facilities” are also covered by the EJ Law. The Proposed Rule defines “transfer stations,” by applying the definition

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41 Proposed N.J.A.C. 7:1C-1.5 (definition of “sludge processing facility”).
42 See N.J.A.C. 7:14A–20.7 (creating specific NJPDES permit review requirements for land application of sludge); U. Krogmann et al., Land application of sewage sludge: perceptions of New Jersey vegetable farmers, https://journals.sagepub.com/doi/abs/10.1177/0734242X0101900204 (noting New Jersey farmer’s concerns about land application of sludge because of “heavy metals in sewage sludge (soil-build up, crop-uptake), negative public perception, odour complaints, and increase of contaminants in the water supply.”).
from DEP’s solid waste regulations at N.J.A.C. 7:26-1.4. But DEP regulations define “intermodal container facilities” in such a way as to make clear that they are a subset of “transfer stations” that transfer solid waste in containers, and so they should also fall under the EJ Law definition of “transfer station.”\textsuperscript{46} And DEP’s regulations require the registration and licensing of intermodal container facilities,\textsuperscript{47} so these facilities must obtain the “permit, registration, or license issued by the department” that triggers the EJ Law process.\textsuperscript{48} Thus, DEP’s final EJ Rule should make clear that these intermodal container facilities are also covered by the EJ Law.

V. EJ ANALYSES AND DISPROPORTIONALITY

A. Defining Facility “Contributions”

It is important that the Department clearly define what constitutes a “contribution” to a stressor since the term is critical in making a determination if a facility is creating or furthering adverse cumulative stressors. DEP does not specify exactly how it will interpret the contribution of the facility to the impacted stressors. We believe that the intent of the law and the appropriate interpretation of “contributing to” should be that any detectable, absolute amount of a pollutant or density increase related to affected stressor categories would constitute a contribution to or creation of an adverse environmental or public health stressor in an OBC. This determination should not necessarily require modeling.

For example, if an OBC is adverse for “Ground Level Ozone,” then a facility that emits any detectable amount of ozone precursors would “contribute” to that stressor, and no modeling is needed to determine how those emissions would affect the OBC’s three-year average days above the EPA ozone standard (the stressor metric). Similarly, a facility that contributes any level of lead into the environment would “contribute” to the “Potential Lead Exposure” stressor, and there is no need to show an increase in the stressor metric of “percent houses older than 1950” – indeed, it is impossible for the percentage of housing older than 1950 in an OBC to ever increase, let alone show how a facility would contribute to an increase in this percentage. So the principle that “contribution” means any pollution or density increase – and not a change in the metric – is especially important to stressors like “Potential Lead Exposure” where facility operations are tenuously tied to the stressor metric, even if facility operations are directly tied to pollution increases.

\textsuperscript{46} See N.J.A.C. 7:26-1.4 (defining “transfer station” as “a solid waste facility at which solid waste is transferred from one solid waste vehicle to another solid waste vehicle, including a rail car, for transportation to an off-site solid waste facility...” and defining “intermodal container facility” as “a facility where containerized solid waste is transferred from one mode of transportation, such as trucks, rail cars, ships and barges, to another, or from one vehicle to another within one mode of transportation.”).

\textsuperscript{47} N.J.A.C. 7:26–3.6.

\textsuperscript{48} N.J.S.A. 13:1D-158.
In addition, DEP should add a definition of “contribute” and “contribution” to the Rule’s definitions section at N.J.A.C. 7:1C-1.5, defining these terms to mean “any detectable, absolute amount of a pollutant or density increase related to a stressor.” Including this definition in the Rule would assist with the Rule’s clarity and ensure that a consistent definition of “contribute” is used throughout as the Law is applied.

B. Modeling Impacts to Stressors

With respect to permit applicants for new facilities in an OBC without adverse cumulative stressors, and where disproportionate impacts can be avoided, the Proposed Rule states the following concerning modeling: “In assessing a facility’s ability to avoid a disproportionate impact that would occur by creating adverse cumulative stressors in an overburdened community, an applicant would conduct modeling of the facility’s operations to determine how those operations would impact levels of stressors identified as affected, by utilizing the data and metrics set forth at the chapter Appendix.”

This section of the Proposed Rule raises questions about how and under what circumstances the applicant will be directed to conduct “modeling” of the facility’s operations’ impact on the stressors. An assessment of a facility’s contribution to, or creation of, an adverse impact in an OBC doesn’t necessarily entail modeling. For example, when the facility will effectively increase the density of adverse environmental and public health stressors such as permitted air facilities or scrap metal facilities, modeling would not be required. Rather, a simple calculation of density could be submitted. Where the term “modeling” is applied, the language should also include the additional term “calculate” or “assess,” so as to not only refer to modeling. It should also specify that if the modeling, calculation, or assessment yields any detectable addition to the stressor, then this constitutes a contribution to that stressor.

C. Stressor Measures

The proposed measurements of the fine particulate matter (PM2.5) and ozone stressors as a “three-year average of Air Quality Index (AQI) days greater than 100” will not be sufficiently sensitive to facility contributions that impact health. Neither of these pollutants has an established threshold below which there is no risk of adverse health effects. For both PM2.5 and ozone, health risks have been found at concentrations below the current EPA National Ambient Air Quality Standards.
Standards (NAAQS) (i.e., below AQI 100 values). The AQI 100 concentration for PM$_{2.5}$, established in 2012, is 35 ug/m$^3$ averaged over 24-hours. But the recently revised World Health Organization (WHO) guidelines for 24-hour PM$_{2.5}$ is 15 ug/m$^3$. As for ozone, when the EPA updated the eight-hour ozone standard in 2015, the EPA Clean Air Scientific Advisory Committee (CASAC) had recommended 60-70 ppm and noted that the 70 ppm standard might not protect vulnerable populations as the law required. The WHO guideline for ozone is 50 ppb over 8-hours compared to the EPA AQI 100 value of 70 ppb. Based on the WHO guidelines and the CASAC recommendations, EPA should strongly consider lowering the 24-hour EPA PM$_{2.5}$ standard and the eight-hour EPA ozone standard, thus making them both more health protective. PM$_{2.5}$ certainly remains a threat to health in New Jersey communities even though the 24-hour EPA standard is rarely exceeded. Urban OBCs in the state where there is concern about local sources of air pollution could receive a “zero” value for PM$_{2.5}$ using the proposed stressor standard (number of days above the EPA standard) even if there are polluting facilities emitting harmful PM$_{2.5}$. Although the eight-hour ozone standard is exceeded more frequently than the 24-hour PM$_{2.5}$ standard, it remains an unstable metric. Rather than a threshold-based metric, continuous metrics such as annual mean PM$_{2.5}$ and peak season ozone (averaged eight-hour values over the ozone season) would be more appropriate for comparing overburdened communities to non-overburdened communities at their geographic point of comparison for determining the presence of adverse PM$_{2.5}$ and ozone levels.

DEP should strongly consider using the CalEPA CalEnviroScreen PM$_{2.5}$ indicator instead of the days above the National Ambient Air Quality Standard (NAAQS) (i.e., 100 AQI) as a measure of the PM$_{2.5}$ stressor. CalEnviroScreen uses a combination of air monitoring, modeling, and satellite observations to assign ambient mean PM$_{2.5}$ concentrations to census tracts in California. Three years of data from the air monitors are used to calculate mean ambient PM$_{2.5}$ concentrations. A model was created using a combination of the air monitoring data and satellite observations to estimate ambient PM$_{2.5}$ concentrations for census tracts that are within 50 km of an air monitor. If a census tract is more than 50 km from a monitor, then satellite observations are utilized to assign a PM$_{2.5}$ concentration to the census tract. The CalEnviroScreen PM$_{2.5}$ indicator is the annual ambient mean PM$_{2.5}$ concentration for a census tract. We recommend that DEP

55 World Health Organization, supra note 53 at 4.
replace the current proposed PM$_{2.5}$ stressor with the annual mean PM$_{2.5}$ concentration for a block group.

Similar to the PM$_{2.5}$ stressor, the ozone stressor should be changed from the three-year average number of days above the ozone NAAQS to the three-year mean ambient summer ozone concentration for each block group. This would mimic the ozone stressor used in CalEnviroScreen and would be more protective of communities. The additional protection is created because an increase in an ozone concentration can be harmful to health even if the NAAQS is not violated. This is especially so when you consider that the increased ozone concentration is contributing to cumulative impacts in neighborhoods where cumulative impacts is an important potential or actual issue. In California the daily maximum eight-hour ozone concentration for the months from May to October is calculated using data collected by air monitors over a three-year period. An air model was created utilizing air monitoring data that estimates ozone concentrations for every census tract in the state within 50 km of a monitor. Any census tract that is more than 50 km from an air monitor is assigned the ozone concentration measured by the nearest monitor.\textsuperscript{57} \textbf{We recommend that the DEP replace the current proposed ozone stressor with the mean eight-hour ozone concentration during the peak ozone season.} DEP should use whatever resources are available and the scientific methods it believes are the most appropriate to establish and assign these annual mean PM$_{2.5}$ and peak ozone season concentrations.

The methods for how one would reasonably model or account for contributions from facilities for impacts to the PM$_{2.5}$ stressor and the ozone stressor are unclear. For example, a community that is already overburdened by ambient concentrations of PM$_{2.5}$, for which there is no known threshold for health effects, will be adversely impacted by any detectable increase in these emissions. Furthermore, as noted above, the three-year average of days exceeding the AQI 100 value will often not be useful in assessing the impact to the community, because there are so few days per year that the state has exceeded the 24-hour NAAQS for PM$_{2.5}$.\textsuperscript{58} The adequacy of modeling is particularly concerning for secondary pollutants such as ozone and secondary formation of PM$_{2.5}$. \textbf{It would be preferable if, instead of modeling, the Department stipulates that the applicant can “quantify or express,” in some reasonable manner, the impact of the facility’s operations on stressors.} Instead of modeling, the applicant could account for the net emissions profile and absolute contributions to each stressor using specific annual pollutant totals and density measures. For example, if a facility applying for a new permit under the Rule where the OBC is already subject to adverse cumulative stressors is expected to emit PM$_{2.5}$ and the facility cannot demonstrate the elimination of PM$_{2.5}$ emissions to zero on-site, then the contribution of any amount of PM$_{2.5}$ pollutants would be considered a “facility contribution” to the PM$_{2.5}$ stressor.\textsuperscript{59}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{57} See California Office of Environmental Health Hazard Assessments, \textit{Air Quality: Ozone}, https://oehha.ca.gov/calenviroscreen/indicator/air-quality-ozone.
\item \textsuperscript{59} See Proposed N.J.A.C. 7:1C Subchapter 5.
\end{itemize}
\end{footnotesize}
In addition to primary emissions of PM$_{2.5}$, emissions of precursors, such as NO$_x$ and SO$_2$, to the formation of secondary PM$_{2.5}$ should also be considered contributions from a facility to the PM$_{2.5}$ stressor.\textsuperscript{60} DEP should determine and declare all pollutants it considers secondary PM$_{2.5}$ precursors and consider any detectable emissions of any of the identified precursors as contributions from a facility to the PM$_{2.5}$ stressor.

Similarly, the emissions of ozone precursors, such as NO$_x$ and VOCs, should be considered contributions from a facility to the ozone stressor.\textsuperscript{61} As with PM$_{2.5}$, DEP should determine and declare all pollutants it considers ozone precursors and consider any detectable emissions of any of the identified precursors as contributions from a facility to the ozone stressor.

We recognize that the formation of secondary PM$_{2.5}$ and ozone may not occur in the immediate vicinity of precursor emissions. However, we still believe that precursor emissions should be considered contributions to stressors in the block group where they occur since controlling these precursor emissions is the only way to lower concentrations of secondary PM$_{2.5}$ and ozone anywhere. Ensuring they are considered as contributors to stressors in the block group of their emission could lead to reduction in their emissions levels due to the New Jersey EJ Law and its regulations. NO$_x$, SO$_2$, VOCs, and other precursors also cause harm within OBCs before they react to create secondary PM$_{2.5}$ and ozone. In addition, the formation of secondary PM$_{2.5}$ and ozone in the block group where the precursors are emitted cannot be totally excluded.

The Department should also detail how specific pollutant emissions associated with a facility will relate to multiple stressor categories. For example, if a facility emits benzene, DEP should consider any emissions above zero of benzene from a proposed new facility in an OBC that is already subject to adverse cumulative stressors as a “facility contribution” to the Air Toxics Non-Cancer Risk stressor and the Non-Cancer Risk stressor.

Regarding the “air toxics noncancer risk” stressor, while the chart in the proposed Appendix lists this stressor’s metric as “Combined Hazard Quotient,”\textsuperscript{62} the Proposed Rule’s preamble states that “the Department proposes to consider the air toxics non-cancer stressor in risk per million from the 138 air toxics.”\textsuperscript{63} Noncancer risk is usually expressed as a Hazard Quotient or Hazard Index, and it is not clear how the DEP is proposing to measure this stressor in risk per million. A continuous scale of the cumulative hazard index for all 138 air toxics would seem to be

\textsuperscript{60} See EPA, Particulate Matter (PM) Basics (last updated July 18, 2022), https://www.epa.gov/pm-pollution/particulate-matter-pm-basics.

\textsuperscript{61} See EPA, Ground-level Ozone Basics (last updated June 14, 2022), https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics.

\textsuperscript{62} Proposed N.J.A.C. Chapter 7:1C Appendix.

\textsuperscript{63} Proposed Rule at 976.
a reasonable metric, although it would presume additive effects of compounds with many different modes of action and health effects.

D. Net Environmental Benefit

DEP proposes consideration of a “net environmental benefit” for those new facilities that trigger a compelling public interest or for expansions where the permit is to be conditioned. DEP defines a net environmental benefit as “either a reduction of baseline environmental and public health stressors in an overburdened community, or another action that improves environmental and public health conditions in an overburdened community.”64 This construction leaves open the definition of a baseline reduction in environmental and public health stressors by allowing “another action that improves environmental and public health conditions in an overburdened community.”65 In addition, the definition is unclear about whether a facility that decreases some stressors could meet the “net environmental benefit” standard even if it increases other stressors, and there is no indication whether the reduced stressors must be stressors considered adverse in the OBC. Net benefits should be removed altogether from consideration in new facilities, expansions, and compelling public interest considerations because the definition is unclear. At the very least, DEP should clarify the use of the term “baseline” in the definition here, which could be confused with DEP’s use of the terms “baseline” stressor versus “affected” stressor in the chart in the proposed Appendix.

E. EJIS Information

The Rule’s section on EJIS components requires “[e]vidence of satisfaction of any local environmental justice or cumulative impact analysis with which the applicant is required to comply.”66 It is important that the EJIS include evidence of satisfactory completion of any local EJ analysis, law, or policy requirement, as well as the local body’s resulting determination. DEP should consider any recommendations or determinations made by the governing body or oversight group with authority to review the submission of local EJ analyses. Consideration should be given to the ruling or recommendations from these local entities with respect to acceptance, denial, or modifications to the local application submitted in compliance with the local law or policy. Thus, the submission of an applicant’s proposal is not sufficient - a completion of the local review should be required for the EJIS to be complete. If the local review recommends declining or significantly modifying the proposal, the Department should consult with local authorities before moving forward with the EJIS review.

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64 Proposed N.J.A.C. 7:1C-1.5 (definition of “net environmental benefit”).
65 Id.
66 Proposed N.J.A.C. 7:1C-3.2(a)(5).
Under proposed Section 7:1C-3.3 on supplemental information for submission with the EJIS, there is a listing of all the relevant site mapping the applicant must submit. This section should also include a description and the location of any sensitive receptors such as hospitals, daycares, schools, senior living facilities, dialysis centers, public recreation sites, detention centers, and any other locations where particularly vulnerable populations may be concentrated. Also relevant for this section may be the inclusion of any local land use controls or overlay zones that pertain to the area where the proposed facility will be located.

F. Risk Assessment

The facility-wide risk assessment section should include criteria pollutant emissions in addition to hazardous air pollutants and should be a cumulative assessment of all emissions from all sources that impact an OBC, not just emissions from the facility in question. Section 7:1C-8.4(c) states, “If the outcome of the facility-wide assessment is above a negligible level…” However, “negligible” is not defined. The significance level of the risk assessment should be examined from a cumulative impact perspective to be as protective as possible in determining if a facility’s emissions are impactful. While this type of cumulative risk assessment should not be required of new facilities, it should be mandated for facilities seeking to expand operations as well as facilities applying for pollution permit renewals.

G. Reasonableness of Approach

Finally, it seems to the New Jersey EJ community and its allies that the method DEP is proposing to utilize to determine if there is a disproportionate level of pollution in an OBC is extremely reasonable and could even be described as conservative. We believe this is true because there must be multiple stressors in excess of the 50th percentile, as opposed to just one or even several, before there is a disproportionate pollution finding.

VI. CONDITIONING PERMITS

The EJ Law provides for DEP’s imposition of permit conditions on new, expanded, or renewing facilities to eliminate or reduce their environmental impact, but DEP must strengthen the Proposed Rule’s provisions about conditions in order to meet the EJ Law’s goal to address “the legacy of siting sources of pollution in overburdened communities.”

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67 Proposed N.J.A.C. 7:1C-3.3(a).
68 Proposed N.J.A.C. 7:1C-8.4(a).
69 Proposed N.J.A.C. 7:1C-8.4(c).
70 See proposed N.J.A.C. 7:1C-1.5 (definition for “adverse cumulative stressors”).
71 N.J.S.A. 13:1D-160(c), (d).
A. DEP Cannot Impose More Lenient Permit Condition Standards on Permit Renewals.

DEP must apply the same standards to renewal applications as it applies to other facilities subject to the EJ Law. The EJ Law treats facility expansions and renewals equally, with N.J.S.A. 13:1D-160(d) setting forth one set of requirements for “apply[ing] conditions to a permit for the expansion of an existing facility, or the renewal of an existing facility’s major source permit.”\footnote{N.J.S.A. 13:1D-160(d).} And while the EJ Law imposes additional requirements on new facilities in OBCs, such as the required showing of a compelling public interest, the Law does not indicate that the “conditions” imposed on new facilities that demonstrate a compelling public interest differ from the “conditions” imposed on expansions or renewals.\footnote{Compare N.J.S.A. 13:1D-160(c) with id. 13:1D-160(d).} But DEP’s Proposed Rule would impose less stringent requirements for renewal applications compared to the requirements for permit expansions. For example, renewal applications need not undergo the Localized Impact Control Technology (LICT) analysis that expansions must undergo.\footnote{Compare proposed N.J.A.C. Subchapter 6 & 7 with Subchapter 8.} DEP is not permitted to deviate from the text of the statute in this manner by treating conditions on renewals different from conditions on new facilities or expansions. Further, the purpose of the EJ Law is not only to prevent the addition of new pollution in OBCs, but also to reduce the pollution from existing facilities in OBCs wherever possible. As written, the Proposed Rule places the least amount of scrutiny on existing sources of pollution by subjecting renewals to less stringent requirements, frustrating this legislative purpose. For these reasons, the EJ Rule must require all permit renewals to undergo the same heightened analysis of permit conditions currently required of new and expanding facilities.

It is critical that DEP require conditions for renewals to meet the heightened requirements of conditions for new and expanding facilities particularly because the Proposed Rule’s current provisions for renewal conditions are especially weak. The “technical feasibility analysis” that DEP proposes to apply to renewals falls far short of the requirements for new and expanding facilities like the LICT analysis. First, the technical feasibility analysis would apply only to equipment or control apparatuses that are at least 20 years old, and the analysis itself is required only once every 15 years.\footnote{Proposed N.J.A.C. 7:1C-8.5(a)(1), (2).} This means that OBCs would have to wait decades for the protections of the EJ Law even if better control technology is developed just a year or two after the most recent technical feasibility review, and facilities will therefore evade the review required by the EJ Law. DEP should require renewing facilities to review all control technology with every renewal, no matter how old the equipment is or how recently the last analysis was conducted. An analysis at that frequency should not be particularly burdensome to facilities, who could reuse portions of the prior analysis for technology and processes that have not seen technological advancements in the interim.
Second, to trigger the technical feasibility analysis, a piece of equipment’s emissions of fine particulate matter, nitrogen oxide, and volatile organic compounds must represent more than 20% of the facility’s emissions for that pollutant. This provision is unclear as to whether emissions of other health-harming pollutants, such as SO\textsubscript{x}, CO, mercury, dioxins, or lead, must also go through such an analysis. As currently written, this provision may allow control technology specifically designed for these other pollutants to fall through the cracks, like activated carbon to control mercury and dioxins. The Proposed Rule must require renewing facilities to review equipment emissions of all pollutants, not merely particulate matter, NO\textsubscript{x}, and VOCs.

An additional deficiency of the technical feasibility analysis standard is that it expressly allows facilities to not adopt the most protective technology because of cost considerations. The LICT standard, on the other hand, does not include such direct cost considerations. As noted in Section II above, the EJ Law was written so that cost and economic considerations do not override the protection of already overburdened communities from more pollution. DEP should do away with cost exceptions for control technology required of renewals.

And as noted above in Section V, DEP should require facilities seeking expansion applications to complete a facility-wide risk assessment. Currently, the Proposed Rule requires facility-wide risk assessments solely for renewal applications. If the findings of a risk-assessment are above a “negligible” level, the facility must include an emissions reduction plan in its EJIS. However, “negligible” is not defined. In addition, the significance level of the risk must be examined through a cumulative impact lens to accurately measure the impact of a facility’s emissions. To maximize protections in overburdened communities, this revised, cumulative risk assessment must be required for renewal applications and expansions.

B. DEP Must Expand the Scope of the Localized Impact Control Technology Standard.

DEP must expand the scope of the Localized Impact Control Technology (LICT) standard to include additional types of pollution, not just air pollution. While the novel LICT standard includes strong, protective measures that reduce or eliminate air pollution, DEP must expand the scope of the standard’s reach by requiring an LICT analysis for additional pollutants. After all, the EJ Law applies to all manner of DEP permits, not just air permits, so the LICT process should not be limited to air pollutants only. For example, if a facility would emit water pollution or contaminate soil, that facility should be required to complete an LICT analysis to identify and adopt the best methods to eliminate or mitigate such pollution.

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77 Proposed N.J.A.C. 7:1C-8.5(a)(3).
78 Proposed N.J.A.C. 7:1C-8.5(c)(2)(iii).
79 Proposed N.J.A.C. 7:1C-7.1(c)(2).
80 Proposed N.J.A.C. 7:1C-8.4.
81 Id.
82 N.J.S.A. 13:1D-158 (definition of “permit”).
C. Principles for Consideration in Permit Conditioning

While the Proposed Rule outlines DEP’s considerations for permit conditions, it does not explicitly include a number of important principles to ensure efficacy of the EJ Law. DEP must adopt the following principles when identifying permit conditions for new facilities, expansions, and renewals: (1) specificity to directly address the stressors that the facility causes or contributes to, (2) additionality, and (3) conditions must be included in the facility’s permit.

i. Specificity to address stressors that the facility causes or contributes to.

The Proposed Rule states that DEP would impose conditions that “reduce” environmental and public health stressors. Of utmost importance is what pollutants will be reduced and where those reductions will occur. Regarding which pollutants will be reduced, permit conditions must address stressors that the facility directly causes or contributes to, rather than stressors unrelated to the facility’s operations. Regarding where emission reductions will occur, the EJ Law requires conditions that “avoid or reduce the environmental or public health stressors affecting the overburdened community.” Indeed, the permit conditions must reduce environmental and public health stressors within the overburdened community.

The Proposed Rule requires facilities to list proposed control measures in a specific order, but the Proposed Rule does not expressly state that control measures will be prioritized in that order. Direct emission reductions at the facility should be prioritized first and foremost before the facility then considers offsite emission reduction measures. **DEP must amend the language of the aforementioned provisions so that “facility measures” and “onsite” control measures are expressly prioritized.** For example, DEP could add language to N.J.A.C. 7:1C-5.4(b), 7:1C-6.3(b), and 7:1C-8.6(b) indicating, “The Department shall prioritize requiring all possible requirements in the first listed category before moving onto the next category.”

ii. Additionality

The Proposed Rule states the DEP would impose conditions “necessary” to avoid or minimize contributions to adverse and environmental and public health stressors. **The final regulations must emphasize that conditions must go above and beyond conditions that the facility would already be subject to.** The permit condition must not be generally applicable or conditions that would otherwise have been applied anyway if the facility was not in an overburdened community. Benefits provided under the “permit conditions” provision must be in addition to requirements that the facility is already subject to.

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84 Proposed N.J.A.C. 7:1C-5.4(b), 7:1C-6.3(b), and 7:1C-8.6(b).
iii. Conditions must be included in the facility’s permit

DEP must ensure all conditions required under the EJ Rule are incorporated into the permit and enforceable. Conditions must have the same monitoring, recordkeeping, and reporting requirements that DEP uses to ensure enforceability. Though the Proposed Rule requires DEP to issue a written summary of its analysis and any conditions to be imposed in subsequently issued permits, it does not explicitly mention that permit conditions will be included in the facility’s permit.85 The Proposed Rule should clearly state that all permit conditions must be incorporated into the facility’s permit. Community members should not have to search far and wide to learn what additional protections DEP requires of polluting facilities in their OBC. Enshrining these conditions within the facility’s permit improves accessibility, transparency, and public engagement.

DEP must make the edits above to ensure that communities with renewing facilities and facilities with non-air permits are not subject to weaker protections, and to ensure that conditions required under the EJ Rule are additional, enforceable, and directly related to the facility’s pollution.

VII. GENERAL PERMITS

The final EJ Rule must make clear that facilities are not exempt from the EJ Law merely because they seek coverage under a general permit instead of an individual permit. The EJ Law defines “permit” to include not only “any individual permit . . . issued by [DEP]” but also “any . . . registration, or license issued by [DEP].”86 Thus, the Law broadly covers any document issued by DEP that allows pollution, including authorization under a general permit. Indeed, the Law’s definition of “facility” includes facilities like New Jersey’s “scrap metal facilit[ies],” most or all of which are currently covered by NJPDES general permits only, and not individual NJPDES permits. So to exempt all facilities covered by general permits from the EJ Law process would effectively write “scrap metal facility” out of the law, and is therefore inconsistent with the statutory text. Thus, any application from a facility in an OBC for coverage under a general permit must go through the EJ Law process, and the final EJ Rule should make that clear.

VIII. CROSS-REFERENCES WITH OTHER REGULATIONS

In addition to setting forth the EJ Law implementing rules in new Chapter 7:1C, DEP should also amend its regulations for all permitting programs covered by the EJ Law to cross-reference the Chapter 7:1C regulations. For example, since the EJ Law says DEP “shall not consider complete” any application for a permit in an OBC that has not completed the Law’s

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85 Proposed N.J.A.C. 7:1C-9.3.
86 N.J.S.A. 13:1D-158.
requirements. The State of New Jersey made the right choice by taking a three-pronged approach to the classification of OBCs. Including English proficiency, income, and minority categories are crucial to achieving the objectives of the EJ Law: addressing and alleviating the inordinate pollution burden that continues to be placed on these communities. However, multiple nationwide studies have shown that race is frequently found to be the most determinative factor for pollution exposure. A formative study on PM_{2.5} pollution found that PM_{2.5} disproportionately and systemically affects People of Color in the United States regardless of income. The study concluded that “POC at every income level are disproportionately exposed by the majority of sources.” Even though race and income are correlated, race can, and does, act independently of

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88 See, e.g. N.J.A.C. 7:27–22.30(d) (setting forth requirements for air operating permit renewal to be deemed administratively complete).
89 See Abdulrahman Jbaily et al., Air pollution exposure disparities across U.S. population and income groups, Nature (2022), https://www.nature.com/articles/s41586-021-04190-y (“[A]s the Black population increased in a ZCTA [zip code tabulated area], the PM2.5 concentration likewise consistently increased, with a steep incline seen for ZCTAs with more than 85% of their population being Black. The trend for the Hispanic or Latino population is similar…”). (Attachment 6); Jiawen Liu et al., Disparities in air pollution exposure in the United States by race-ethnicity and income, 1990 – 2010, https://chemrxiv.org/engage/api-gateway/chemrxiv/assets/orp/resource/item/61953348a831ec6f51d2e065/original/disparities-in-air-pollution-exposure-in-the-united-states-by-race-ethnicity-and-income-1990-2010.pdf (“[R]acial-ethnic exposure disparities were distinct from, and were larger than (on average, ~6× larger than), absolute exposure disparities by income. The findings here are inconsistent with the idea that racial-ethnic exposure disparities can be explained by, or are “merely” a reflection of, income disparities among racial-ethnic groups.”) (Attachment 7); Christopher W. Tessum et al., PM_{2.5} polluters disproportionately and systemically affect people of color in the United States, Science Advances (2021), https://www.science.org/doi/full/10.1126/sciadv.abf4491 (Attachment 8).
90 Tessum et al., supra note 89, Att. 8; see also EPA, Study Finds Exposure to Air Pollution Higher for People of Color Regardless of Region or Income (Sept. 20, 2021), https://www.epa.gov/sciencematters/study-finds-exposure-air-pollution-higher-people-color-regardless-region-income; Paul Mohai & Robin Saha, Which came first, people or pollution? Assessing the disparate siting and post-siting demographic change hypotheses of environmental injustice, Environmental Studies Faculty Publications (2015), https://scholarworks.umt.edu/environstudies_pubs/7 (Attachment 9).
91 Tessum et al., supra note 89, Att. 8 (“[W]e find that racial disparities are not simply a proxy for economic-based disparities. POC at every income level are disproportionately exposed by the majority of sources. Exposures vary
income. Lower and middle-class Communities Of Color are still more likely to have disproportionate pollution burden than non-minority communities. Likewise, a thirty-year study of toxic waste treatment, storage, and disposal facilities (TSDFs) revealed that “race variables remain statistically significant predictors of TSDF siting throughout all the siting periods in spite of controlling for mean property values and other socioeconomic characteristics of the census tracts.” When analyzing the patterns of disparate siting of TSDFs nationwide, decades-long studies have revealed the same truth repeatedly: “Race continues to be the predominant explanatory factor in facility locations and clearly still matters.” Nationwide, Superfund sites, like TSDFs, are also mostly located in or near Communities Of Color that are often low-income and/or have limited English proficiency. New Jersey is home to high numbers of these disparately-located facilities, being one of the top ten states with the highest number of TSDFs and the state with the most Superfund sites.

ii. New Jersey data show a direct correlation between the percentage of minorities in a neighborhood and the amount of polluting activity DEP allows.

Paralleling the national studies, studies specific to New Jersey also show a strong association between race and pollution burden within the state. For example, a 2001 study by Dr. Michel Gelobter submitted as evidence in litigation surrounding a proposed cement processing facility in an environmental justice community (South Camden Citizens in Action v. NJDEP) concluded: “the state of New Jersey, at both the Zip Code and County level, shows a strong, highly statistically significant, and disturbing pattern of association between the racial and ethnic composition of communities, the number of EPA-regulated facilities, and the number of facilities with Air Permits.” Specifically, the Gelobter Study found that zip codes with a higher than average Of Color population had about 2 to 2.4 times more air-permitted and EPA-regulated facilities than zip codes with below average Of Color populations, and predominantly Of Color
zip codes (70% or greater People Of Color) similarly had twice as many air-permitted facilities as predominantly white zip codes.\textsuperscript{100} The correlation between Of Color populations and number of EPA-regulated facilities was positive and highly statistically significant, with even higher correlation when looking at Hispanic population.\textsuperscript{101} A regression analysis showed that every 10% increase in a zip code’s percentage of People of Color resulted in approximately 6 more EPA-regulated facilities in the zip code, and a 10% increase in the Hispanic population resulted in 14 more EPA-regulated facilities – a 37% increase.\textsuperscript{102} The \textit{South Camden} Court found Dr. Gelobter’s conclusions to be “sound,” “reveal[ing] a statistically significant association between the permitting and placement of environmentally regulated facilities in New Jersey and the percentage of minority residents in those communities.”\textsuperscript{103}

Another study considered in that case by Dr. Jeremy Mennis similarly found that New Jersey’s Communities Of Color bore a higher brunt of the state’s polluting facilities. That study found that in New Jersey, census tracts within one, two, or three kilometers of an air-permitted facility consistently had minority populations about 2 to 2.8 times larger than the minority populations of tracts that were not near these facilities,\textsuperscript{104} and that “[p]ercent minority is highly significant in estimating the density of [air-permitted] facilities even after controlling for other factors.”\textsuperscript{105} Dr. Mennis therefore concluded that “race is a significant predictor of the density of polluting facilities in New Jersey,” that “[t]he evidence clearly shows that air polluting facilities tend to be located nearby high percent minority tracts; those tracts farther away from these facilities tend to be disproportionately non-minority,”\textsuperscript{106} and that “minorities are disproportionately exposed to environmental risk in New Jersey.”\textsuperscript{107}

DEP’s own research echoes Dr. Gelobter’s and Dr. Mennis’s findings that New Jerseyans Of Color are exposed to higher rates of pollution. Some 20 years ago, DEP scientist Dr. Robert E. 

\textsuperscript{100} Id. ¶ 17 (finding that “[z]ip codes that are 70% and greater non-white have an average of 14 [air-permitted] facilities. Zip codes that are 70% and greater white have an average of 7.1 [air-permitted] facilities.”).

\textsuperscript{101} Id. ¶ 20 (finding a 0.40 correlation coefficient between number of EPA-regulated facilities and non-white residents in a zip code, indicating a “strong linear relationship between these two variables” which was “highly statistically significant,” and that “the correlation for all EPA-regulated facilities and Hispanics at the Zip Code level to be even higher, 0.42, and even more statistically significant.”); id. ¶ 21 (finding that the correlation between EPA-regulated facilities and non-white residents in New Jersey counties was “0.49, again indicating a strong linear relationship” and “very statistically significant,” while “the correlation for all EPA-regulated facilities and Hispanics at the County level to be even higher, 0.63, with a high level of significance (about 2 in 1,000),” and that “the correlation between non-whites and [air-permitted] facilities at the County level is 0.69, and between Hispanics and [air-permitted] facilities at the County level 0.73” at “a very high level of statistical significance.”).

\textsuperscript{102} Id. ¶ 22.


\textsuperscript{105} Mennis Cert., supra note 104, Att. 14 ¶ 8.

\textsuperscript{106} Id. ¶¶ 8, 11; Mennis Study, supra note 104, Att. 13 at 419.

\textsuperscript{107} Mennis Study, supra note 104, Att. 13 at 420.
Hanzen created a screening model to test whether different ethnic groups in New Jersey were exposed to different levels of environmental hazards and air pollutants. Dr. Hanzen found disproportionate pollution burden among New Jersey’s People of Color – as the court explained,

Dr. Hazen testified that statewide “African–Americans and Hispanic Americans . . . had more than average exposure to air toxics.” Id. at 47:22–24. Dr. Hazen also identified areas in the state where exposure to one ethnicity was at least three to four times as high as was exposure to another ethnicity, an area roughly two percent of the area of the state. Id. at 60:12–17, 61:14–16. . . . Using the screening model to determine where risk borne by people of color was above that borne by whites, Dr. Hazen found that roughly one-third of the state, including Camden, fit that pattern. Id. at 63:5–16.

It was because of this compelling evidence that the South Camden Court granted the plaintiffs’ request for preliminary injunction and declaratory judgment, finding that “NJDEP’s permitting practices result in an adverse, disparate impact on the basis of race, color, or national origin . . . [and] that Plaintiffs have made a prima facie case of disparate impact discrimination under Title VI.” Though the U.S. Supreme Court subsequently limited the legal theory on which this South Camden decision relied, the decision has continued relevance today, e.g., being used in recent EPA Office of External Civil Rights Compliance trainings.

A few years later, in 2009, DEP followed up with additional research about the connection between demographics and cumulative impacts, which DEP calculated using a score of stressors such as NATA cancer risk and density of known contaminated sites. As the DEP table below shows, the agency found that as the percentage of residents Of Color in a New Jersey census block group increased, so too did the cumulative impact score increase for that block group.

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109 Id.
110 S. Camden, 145 F. Supp. 2d at 495.
111 Shortly after the South Camden holding, the U.S. Supreme Court held that private individuals can no longer sue to enforce disparate impact regulations promulgated under Title VI, so the South Camden Court subsequently explored other legal theories for plaintiff’s disparate impact claims. See S. Camden Citizens in Action v. NJDEP, 145 F. Supp. 2d 505, 508-09 (D.N.J.), rev’d, 274 F.3d 771 (3d Cir. 2001).
Thus, just like nationwide studies, studies specific to New Jersey similarly find a correlation between race and pollution, with at least one study finding that race is a “significant predictor” of pollution burden in the state.\textsuperscript{115}

When analyzing the location of facilities that are covered under the EJ Law, we are met with a similar truth.\textsuperscript{116} Of the 449 facilities in OBCs, 94% (or 421) are in cumulatively adverse OBCs, and of these 421 facilities, 350 (83%) are in a cumulatively adverse OBC that meets the minority criterion (whether or not the OBC also meets another criterion), with 212 (50%) in a cumulatively adverse OBC that meets the minority criterion only. Thus, the minority criterion effectively furthers the objectives of the EJ Law by single-handedly doubling the number of covered facilities in cumulatively adverse OBCs, compared to if only the low-income and limited English proficiency criteria were used.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|}
\hline
Facilities in OBCs & Cumulative Stressor Totals (CST) &  \\
\hline
Minority & 212 & 16  \\
Low-Income & 128 & 8  \\
Adjacent & 48 &  \\
Low-Income, Minority & 23 & 4  \\
Low-Income, Minority, & Limited English & 6 &  \\
Minority & Limited English & 2 &  \\
\hline
\end{tabular}
\caption{Number of Facilities in OBCs and their Respective Cumulative Stressor Totals (CST)}
\end{table}

\textsuperscript{115} Mennis Cert., supra note 104, Att. 14 ¶¶ 8, 11.
This analysis of DEP’s EJ Law tool, especially when viewed within the context of the nationwide and statewide studies provided above, highlights the importance of race as the main predictor of pollution burden in the state.

B. Government action contributed to New Jersey’s decades-long problem of environmental racism and disproportionate pollution.

The disparate pollution burden faced by People of Color nationwide and in New Jersey did not occur by happenstance, but was furthered by government action. New Jersey’s enabling of redlining and racially restrictive covenants, in combination with DEP’s refusal to acknowledge its responsibilities under Title VI of the Civil Rights Act of 1965 in the permitting context and disparities in environmental enforcement, set the stage for the predatory cycle we see today in which polluters flock to Communities Of Color. Just as the State allowed racially restrictive covenants to persist on land records up until recent legislation required their removal from deeds statewide, pollution actors could not have burdened Communities Of Color to the extent they have if DEP had not also allowed the patterns of disproportionate pollution and facility siting in Communities Of Color to persist, despite Title VI mandates.

i. Government-sanctioned programs of redlining and racially restrictive covenants laid the blueprint for segregation in New Jersey that polluters have exploited.

New Jersey’s disproportionate pollution burdens did not come about simply because of facility siting decisions, but also because of government-sanctioned programs that led to racial segregation in the first place. One of the government programs that led to the State’s disparate pollution burdens is redlining. Redlining — the post-Great Depression practice of the federal Home Owners’ Loan Corporation delineating which neighborhoods should be targeted for real estate development and investment by grading the “desirability” of neighborhoods by race, with Black and “Foreign” neighborhoods marked as undesirable — was actively practiced in New Jersey. This practice set the tone for property ownership and development across New Jersey, creating a self-perpetuating cycle in which residents Of Color could not get home loans for homes in “good neighborhoods” due to discrimination, and the most affordable land and housing were in areas that were considered undesirable because they were majority People of Color or “foreign,” experiencing minority “infiltration” or “invasion,” and/or had undesirable industry present. In

119 Mapping Inequality: Redlining in New Deal America, University of Richmond, https://dsl.richmond.edu/panorama/redlining/#loc=5/39.1/-94.58 (last visited Aug. 11, 2022) (See maps for Bergen Co., NJ; Camden, NJ; Essex County, NJ; Hudson County, NJ; Union County, NJ. This list is not exhaustive as
turn, the property values in these “C” (categorized as “definitely declining”) or “D” (categorized as “hazardous”) graded communities remained low because they were deemed undesirable for housing development, which further attracted industry due to the cheaper land and sometimes outright lack of zoning restrictions. While the federal government pioneered the creation of redlining maps which were then used by private parties such as banks, investors, and developers nationwide, individual states such as New Jersey failed to protect their citizens from predatory and discriminatory practices of private actors under this redlining regime. When analyzing redlining maps of various counties throughout New Jersey, a visible pattern emerges in which “detrimental influences” such as freight and coal yards, factories, sewage disposal plants, and other “heavy industry” were most often located in low-income neighborhoods and neighborhoods Of Color, the combination of factors resulting in the areas being labeled “declining,” “slum areas,” and “on the down-grade,” which in turn successfully redirected healthy investment out of those neighborhoods while simultaneously luring more polluters. Redlined communities were also identified as having sparse tree cover and greater impervious surface cover, and those patterns persist today as formerly redlined communities continue to be denied these government-sponsored environmental benefits.

additional redlining maps for New Jersey are being researched and digitized; Erasing New Jersey’s Red Lines, supra note 118, Att. 16 at 10 (“Redlining’s impact lingered well after the HOLC went defunct in 1954, affecting New Jersey urban centers like Atlantic City and Camden. Recent examples of redlining highlight this pattern. For example, the U.S. Department of Justice in 2015 determined that the Hudson City Savings Bank denied qualified borrowers of color access to fair mortgage loans in communities throughout New Jersey, New York, Connecticut, and Pennsylvania. The racially discriminatory redlining practices of the New Jersey-based bank were so egregious that the U.S. Department of Justice issued the largest redlining settlement in its history, requiring Hudson to pay $33 million in restitution.”); see also Zhong & Popovich, supra note 118.

120 Zhong & Popovich, supra note 118; see generally Mapping Inequality: Redlining in New Deal America, supra note 119.

121 See e.g., Mapping Inequality: Redlining in New Deal America, supra note 119, at D2 Union Vauxhall, Union Co., NJ (“Negroes and poor classes of Italians are scattered throughout the area. It is estimated that 80% of the recipients of relief in Union Township live in this area. Foreclosure experience has been heavy. B & L share trading for properties and dumping appear to be the only means of making sales. Because of the mixed population, congestion, poor, non-conforming types of property, narrow streets, and lack of pride, this is a fourth grade area.”); id. at D17 Linden, Union Co., NJ (“Smoke, soot, and odors from industry and the B&O Railroad are unfavorable … Negroes are scattered throughout the area.”); id. at D1, Kearney, Hudson County, NJ (“An old and congested neighborhood which has deteriorated into a slum area and which is being encroached upon by industry.”); id. at D3 Ironbound, Essex County, NJ (80% “Foreign Families [of] Italian descent, etc.” and 20% “Negro.” “The largest and poorest section of the Ironbound district of Newark. It is a slum area, although not as bad as the Third Ward. Being primarily industrial it is largely the residence of the poorer paid employees of the local plants.”); id. at D22 Montclair North Side, Essex County, NJ (“This area also houses a substantial portion of Montclair’s large negro population … There is some local industry, coal yards, etc.”).

122 David J. Nowak, Alexis Ellis, Eric J. Greenfield, The disparity in tree cover and ecosystem service values among redlining classes in the United States, USDA Landscape and Urban Planning 221 (2022), https://www.fs.usda.gov/nrs/pubs/jrnl/2022/nrs_2022_nowak_001.pdf (“[R]edlined areas (class D) have lower tree cover, greater impervious cover and lower forest ecosystem service values than other classes, with tree cover declining and impervious cover increasing as security risk class increased… Summertime land surface temperature differences among redline classes in 108 urban areas reveal that 94 % of studied areas had elevated land surface temperatures in formerly redlined areas (Class D) relative to their non-redlined neighbors, by up to 7◦ C.”); see also Mapping Inequality: Redlining in New Deal America, supra note 119, at C50 Garfield, Bergen Co., NJ (“The land is low and flat with few trees. Houses are close together on small lots with no set-back.”); id. at D2
Hand-in-hand with redlining practices were racially restrictive covenants, which the New Jersey government tacitly condoned, and at one point, actively enforced. Racially restrictive covenants are limitations placed on land that prevent its transfer to, or use by, people of specific racial, ethnic and/or religious groups. These covenants were historically used on the local level by white communities trying to keep others out and enforced by community associations. New Jersey courts enforced these covenants until a 1948 U.S. Supreme Court case found them judicially unenforceable, though even after that decision, New Jersey courts continued to uphold the covenants themselves as constitutional. These covenants remained on the books until 2021 when the New Jersey Legislature finally took the initiative to eradicate restrictive covenants based on race, national origin, and more, decreeing they be removed from deeds pursuant to the State’s 1945 Law Against Discrimination. When taking both restrictive covenants and redlining into account, it is no surprise that industry has been excessively polluting Communities Of Color for decades, and DEP has perpetuated this through their permitting program.

Enforcing racist property restrictions is one way the State of New Jersey has perpetuated systemic racism within its borders. As uncomfortable of a truth as it may be, the New Jersey EJ community and its close allies believe that racism is endemic in New Jersey and the United States. The racially restrictive covenants and redlining discussed in these comments are explicit examples of how racism operates and has operated in our state. Racism also operates on an unconscious level. The combination of explicit and unconscious racism makes it a very insidious force in our communities.

Westwood, Bergen Co., NJ (“This is a sparsely built up area, rolling and open with few trees… borders on Westwood sewage disposal plant and wells… have been condemned for typhoid… Negro development… ”); id. at D3 Union, Union Co., NJ (“The northern part of the area has a mixed population of Negroes and Italinians. Houses are… in a disorderly arrangement… Roads are muddy and ill-kept. There is a public dump in the middle of the area. Obnoxious odors come from a cork manufacturing plant in Hillside adjacent… Schools are remote, and the children must cross the highway.”).

123 Cheryl W. Thompson et al., Racial covenants, a relic of the past, are still on the books across the country, Nat’l Public Radio, Nov. 17, 2021, https://www.npr.org/2021/11/17/1049052531/racial-covenants-housing-discrimination (“While most of the covenants throughout the country were written to keep Blacks from moving into certain neighborhoods — unless they were servants — many targeted other ethnic and religious groups, such as Asian Americans and Jews, records show.”); see also Erasing New Jersey’s Red Lines, supra note 118, Att. 16 at 8 (“While the Supreme Court held in 1917 that racially exclusionary zoning mandated by municipalities was unconstitutional, the ruling did not apply to individuals or private agreements. As a result, due to New Jersey’s strong local control through home rule, racially restrictive covenants flourished throughout the state. Only with the Supreme Court’s 1948 Shelley v. Kraemer decision—which held that judicial enforcement of racially restrictive covenants in private agreements was unconstitutional—did enforcement of such covenants end.”).

124 Erasing New Jersey’s Red Lines, supra note 118, Att. 16 at 8; Steven Lemongello, Black History Month: Whites-Only ‘Covenants’ Shaped Region’s Racial Makeup, Press of Atlantic City, Feb. 13, 2012, https://pressofatlanticcity.com/news/top_three/black-history-month-whites-only-covenants-shaped-regions-racial-makeup/article_09232f80-55dc-11e1-9e40-0019bb2963f4.html (updated June 20, 2019); Decades-old racist covenants on property deeds have lasting effect in New Jersey, News12 New Jersey, Feb 14, 2022, https://newjersey.news12.com/decades-old-racist-covenants-on-property-deeds-have-lasting-effect-in-new-jersey (stating that property deeds in New Jersey from the 1940s included clauses such as: “No person of any race other than the Caucasian race shall use or occupy any building or lot” and “No person of the negro blood or race shall be permitted to own rent or occupy any part of said premises.”).


127 SB2861, P.L.2021, c.274, supra note 117.

society. Using race to partly define overburdened communities in the New Jersey EJ Law is an acknowledgement by elected officials in the state that race has played a role in the siting of polluting facilities, and in order to successfully address the problem of disproportionate pollution in EJ communities, race must be part of the solution.

ii. Historically, DEP’s Permitting Program Ignored its Obligations Under Civil Rights Law.

Of course, government action not only allowed the segregation of New Jerseyans Of Color into discrete communities, but also permitted polluting facilities to be placed in those same communities, since these facilities needed DEP permits and authorization to be built and to operate. Title VI of the federal Civil Rights Act of 1965 was designed to prevent such a disparate impact on Communities Of Color. That law, and EPA’s implementing regulations, prohibit recipients of federal funding, like DEP, from discriminating “on the ground of race, color, or national origin” in any of their programs or activities, including permitting programs.129 But DEP has historically refused to incorporate Title VI considerations in its permitting actions. In South Camden, for example, the court concluded that “it is abundantly clear . . . [that EPA’s Title VI regulations] impose a burden on recipients of EPA funding, such as the NJDEP, to consider the potential adverse, disparate impacts of their permitting decisions which are independent of environmental regulations.”130 But DEP nevertheless failed to consider these adverse, disparate impacts in its permitting, “insist[ing] that it is neither obligated to consider the data [on disproportionate health conditions], nor conduct its own inquiry before permitting” the facility in question.131 The court found DEP’s legal interpretation that it need not consider the disproportionate effects of its permitting decisions “not only erroneous, but [it] would eviscerate the intent of Title VI, namely, to prevent agencies which receive federal funding from having the purpose or effect of discriminating in the implementation of their program on the basis of race, color, or national origin.”132 DEP’s refusal in South Camden to recognize its obligation to consider the disparate impacts of its programmatic actions unfortunately parallels other New Jersey state agencies’ attempts to similarly disavow their Title VI obligations in other legal proceedings.133 So not only did DEP ignore, for decades, its obligations under federal law to consider the disparate

129 42 U.S.C. § 2000d; 40 C.F.R. Part 7; see also EPA, Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions at 6 (Aug. 2022), https://www.epa.gov/system/files/documents/2022-08/EJ%20and%20CR%20in%20PERMITTING%20FAQs%20compliant.pdf (“State, local, and other recipients of federal financial assistance have an independent obligation to comply with federal civil rights laws with respect to all of their programs and activities, including environmental permitting programs”).
130 S. Camden, 145 F. Supp. 2d at 480.
131 Id. at 487–88.
132 Id. at 481 (citing 42 U.S.C. § 2000d–1).
133 See, e.g., Bryant v. New Jersey Dep’t of Transp., 987 F. Supp. 343, 346 (D.N.J.), order vacated in part on reconsideration, 998 F. Supp. 438 (D.N.J. 1998) (New Jersey Department of Transportation (NJDOT) and other state agencies argued that residents of African-American neighborhood that would be demolished by a new highway and tunnel were not with the “zone of interests protected by Title VI” and so did not have standing to bring Title VI challenge); Bryant v. New Jersey Dep’t of Transp., 1 F. Supp. 2d 426, 429 (D.N.J. 1998) (NJDOT and other state agencies argued that Title VI review was unconstitutional to avoid court review of decision to demolish African-American neighborhood to build a highway and tunnel).
rational impacts of its permitting decisions, DEP went so far as to disclaim any such obligation at all in court.

iii. DEP Data Shows Disparities in Environmental Enforcement Based on Race.

DEP’s action – and inaction – not only helped cause the disproportionate siting of polluting facilities in Communities Of Color, but also allowed more pollution to occur in those communities once the facilities were built because of unequal enforcement. In addition to finding disparity in the siting of air-permitted facilities, the Mennis Study discussed above also analyzed disparities in DEP’s enforcement of these facilities, and found that “[h]igh-percent minority areas tend to have a weaker record of environmental enforcement as compared to low-percent minority areas.” Specifically, the study found that “facilities in areas with high minority concentrations are associated with higher rates of significant violation, lower rates of state administrative orders issued, and lower penalty amounts assessed as compared to those facilities in areas with lower minority concentrations,” and that among all socioeconomic and land use variables analyzed, the high-percent minority category was “unique” for having the counterintuitive combination of high significant violation and low penalty amount. The Mennis Study stressed that, while many factors outside of a state agency’s control may explain, in part, the siting of polluting facilities, “[e]nvironmental enforcement…is a direct result of decisions made by environmental enforcement agencies.” Thus, DEP action and inaction had a hand not only in the disparate siting of polluting facilities, but also in disparities in enforcement and levels of pollution emanating from those facilities.

C. New Jersey’s Prior Attempts to Address Environmental Justice and Race-Neutral Attempts to Address Pollution Have Not Solved Environmental Injustices in the State.

While the EJ Law is not the State’s first attempt to address environmental justice concerns, it is by far the most promising. Since at least the 1950’s, New Jersey has passed many race-neutral laws and regulations to directly address pollution and its permitting, but they have failed to address the disparity because DEP did not consider racial disparity in the decision-making (and refused to recognize an obligation to do so under Title VI, as explained above). The State has also adopted several executive orders that directly address race and environmental justice, but they

134 Mennis Study, supra note 104, Att. 13 at 420.
135 Id. at 419.
136 Id. at 420.
too have often lacked the force of law or did not directly address pollution sources. Despite decades of implementation, these various state actions failed to adequately protect the most vulnerable communities in the state, which is precisely why a law that specifically identifies and directly protects overburdened Communities Of Color and overburdened low-income communities was necessary and long overdue. The State’s new EJ Law is promising because it is the first time the State both considers race and also impacts permitting and pollution directly.\textsuperscript{139} The clear, historic correlation between race and pollution demands that race be named forthright when addressing environmental justice and be used in environmental justice analyses.

D. Income Is a Secondary Indicator of Pollution Burden.

The EJ Law’s inclusion of income in the definition of OBC, in addition to race, reflects the association between lower income areas and increased pollution exposure. For example, DEP’s 2009 study discussed above in Section IX.A.ii, shows a relationship between increased percentage of low-income population and increased cumulative impact score within the state.\textsuperscript{140}

![Figure 2: Relationship Between Cumulative Impact and Poverty](https://tishmancenter.github.io/CumulativeImpacts/cumulative_impacts.html)

But studies comparing both race and income with pollution burden find that race is the stronger predictor of pollution exposure. Nationwide studies find racial disparities in pollution exposure are up to six times larger than economic disparities in pollution exposure, and that racial recommendations to DEP’s commissioner about EJ, which DEP is required to review and consider. Also required all bodies of the State’s executive branch to “provide appropriate opportunities for all persons, regardless of race, ethnicity, color, religion, income, or education level to participate in decision-making”, and that programs promoting and protecting human health be periodically reviewed to ensure they are meeting “the needs of persons living in low-income communities and communities of color” and are addressing “disproportionate exposure to environmental hazards”); Admin. Order No. 2016-08, Comm’r Bob Martin (Sept. 12, 2016), [https://www.nj.gov/dep/ej/docs/ao2016-08.pdf](https://www.nj.gov/dep/ej/docs/ao2016-08.pdf) (expanding upon E.O. 131).

\textsuperscript{139} Tishman Environment and Design Center, Cumulative Impacts Definitions, Indicators and Thresholds in the US, (May 24, 2022), [https://tishmancenter.github.io/CumulativeImpacts/cumulative_impacts.html](https://tishmancenter.github.io/CumulativeImpacts/cumulative_impacts.html) (Similar to New Jersey, many other states have recognized the need to tackle the cumulative impacts faced by EJ communities without mincing words. As of May 2022, twelve states other than New Jersey have legislation, mapping tools, or agency guidance that specifically include consideration of cumulative impacts.).

\textsuperscript{140} DEP, A Preliminary Screening Method to Estimate Cumulative Environmental Impacts at 5 (Dec. 22, 2009), [https://www.state.nj.us/dep/ej/docs/ejc_screeningmethods20091222.pdf](https://www.state.nj.us/dep/ej/docs/ejc_screeningmethods20091222.pdf).
disparities are not merely a proxy for economic disparities.\textsuperscript{141} Even just looking at New Jersey data, the Gelobter Study discussed in Section IX.A.ii similarly found that, while there did exist a correlation between higher income and fewer EPA-regulated facilities, income contributed “significantly less” as a causal factor than race.\textsuperscript{142}

Additionally, DEP’s facility and OBC mapping tool also reinforces that income is only secondarily determinative. While 374 (or 83\%) of all facilities are in OBCs that meet the minority criterion, only 171 facilities (or 38\%) are in OBCs that meet the low-income criterion. When looking at OBCs that meet only the low-income criterion, and not any other criteria, only 27 facilities (6\%) fall in this category.\textsuperscript{143} This data further reinforces that the minority criterion plays a more significant role in the OBC classification.

Indeed, attempts to identify disproportionately burdened communities without explicitly using race are not as sufficiently predictive. Prime examples are the EJ tools created by California\textsuperscript{144} and the federal government, both of which use a collection of factors that do not explicitly recognize race, have resulted in significant gaps in application that exclude many vulnerable peoples who most need the protections and assistance that the tools aim to provide.\textsuperscript{145}

\textsuperscript{141} Jiawen Liu et al., \textit{supra} note 89, Att. 7; Tessum et al., \textit{supra} note 89, Att. 8; Mohai & Saha, \textit{supra} note 90, Att. 9 at 14.

\textsuperscript{142} Gelobter Cert., \textit{supra} note 98, Att. 12 ¶ 23 (“I found that for every $1,000 increase in a Zip Code area’s median income, the number of facilities dropped by approximately 1.5\% (0.55 facilities) from the state average for Zip Code areas. This result was also highly statistically significant. When income was hypothesized as a causal factor with percent non-white or percent Hispanic for EPA-regulated facilities in a Zip code area, it proved to be less important than the latter two factors. This was demonstrated in two ways. First, the median income of a Zip Code area contributed significantly less to the statistical strength of the overall regression than did either percent non-whites or percent Hispanics. Second, the statistical significance of median income as a causal variable dropped below a rigorous threshold. That is to say that the odds that a Zip Code area’s median income was not a causal factor rose to close to 5\%, while the causal influence of both percent non-white and percent Hispanic retained odds of being a random error of considerably less than 1 in 10,000 and 7 in 100 million, respectively.”).

\textsuperscript{143} See Table 1, Section IX.A.ii.

\textsuperscript{144} Under California’s Proposition 209, the State is precluded from directly addressing race in its laws– a restriction that New Jersey does not share. \textit{See} California Secretary of State, Proposition 209 (Nov. 1996), https://vigarchive.sos.ca.gov/1996/general/pamphlet/209text.htm (prohibiting the State of California from “discriminat[ing] against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin . . .”).

\textsuperscript{145} \textit{See} Neil Maizlish et al., \textit{California Healthy Places Index: Frames Matter}, 134 Public Health Rep. 4 (2019), https://doi.org/10.1177%2F0033354919849882 (Instead of including any racial-ethnic classifications in creating its CalEnviroScreen EJ community identifying tool, California organized “19 indicators into 2 domains, pollution burden and population characteristics, the second of which includes sensitive populations (i.e., sensitive to the effects of pollution) and socioeconomic factors.” By using these proxies instead of race, however, the screening tool left out about 3 million people in 649 tracts in some of the most disadvantaged areas, and thereby “failed to detect one-third of census tracts with the worst conditions for population health.” A subsequent, 4.0 version of this program released in October of 2021 added more indicators, but was still missing these census tracts.); \textit{see also} Jean Chemnick, \textit{Experts to White House: EJ screening tool should consider race}, E&E News, June 1, 2022, https://www.eenews.net/articles/experts-to-white-house-ej-screening-tool-should-consider-race/ (Not only does CEQ’s tool exclude “all middle-income neighborhoods from the ‘disadvantaged’ designation,” regardless of histories of environmental racism, its reliance on other factors instead of race itself is leaving behind many of the communities it should be including. For example, the tool excluded a New Orleans community of Black residents who live on top of a Superfund site near excessive traffic pollution and a Black community in West Virginia living near a Dow Chemical plant emitting cancerous pollutants.).
Simply put, as numerous studies, statistics, scholarly publications, and articles have shown, factors or indicators such as income – or even history of home ownership, property values, or education levels – though useful, cannot entirely substitute for the inclusion of racial classifications, especially since data collection is rife with racial bias. Including other factors predicated on this type of data without explicitly including race may, in fact, end up perpetuating disparities due to the institutional racism already woven into the underlying data. This disparity in data collection adds to the list of reasons to directly target racial inequality in regulations, rather than including surrogates.

There is no doubt, however, that both the minority and income OBC categories of the EJ Law are overwhelmingly and excessively burdened by detrimental levels of pollution. Regardless of which OBC category is analyzed, the fact remains that nearly all of the facilities located within OBCs have cumulative stressor totals in excess of the 50th percentile, save for 6%. And, while race may be the most indicative of proximity to pollution, income is also a statistical predictor of pollution burden in the State. This further reinforces the need for this robust EJ Law that includes multiple categories.

Thus the EJ Law’s minority criterion, and to a lesser extent the low-income and limited English proficiency criteria, capture communities overburdened by pollution who have historically been excluded from the protections of New Jersey law. The EJ Law, as implemented in DEP’s EJ Rule, is New Jersey’s opportunity to stand with EJ communities and help ensure that they no longer must suffer disproportionate environmental burdens.

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146 See Jbaily et al., supra note 89, Att. 6; Liu et al., supra note 89, Att. 7; Bullard et al., supra note 94, Att. 10 at 396; Mohai & Saha, supra note 90, Att. 9 at 15 (“Thus, although there is some limited evidence that property values are related to facility siting, the racial disparities observed around facility sites are independent of them and other socioeconomic characteristics for the entire 30-year period we examined.”).

147 See Chapin Hall at the University of Chicago, New Tool to Assess Survey Data for Racial Bias, https://www.chapinhall.org/project/new-tool-to-assess-survey-data-for-racial-bias/ (last visited Sept. 1, 2022) (noting “it is unclear how often researchers consider whether the dataset could be racially or ethnically biased. Such a bias could have implications for their analysis and the interpretations drawn from the data.”).

148 Mennis Cert., supra note 104, Att. 14 ¶¶ 8, 11; Gelobter Cert., supra note 98, Att. 12 ¶ 23.
X. CONCLUSION

The New Jersey Environmental Justice Law can be the most protective EJ law in the nation if DEP prioritizes the health of residents in overburdened communities. DEP must maintain the political will to do what is right for overburdened communities who suffer just because of the zip code they live in. These EJ regulations cannot be business as usual. The Department must evolve and ensure this EJ Law protects residents from all environmental injustices within the state. New Jersey can achieve actual reductions of pollution in EJ communities by denying any new permits in already overburdened communities.

Respectfully,

Ironbound Community Corporation
New Jersey Environmental Justice Alliance
Clean Water Action
South Ward Environmental Alliance
Earthjustice
Tishman Environment and Design Center at the New School
Center for the Urban Environment of the John S. Watson Institute for Urban Policy and Research at Kean University

The following groups sign on in agreement with these comments:

Empower New Jersey
GreenFaith
New Jersey Sierra Club
New Jersey Alliance for Immigrant Justice
NAACP-Newark Branch
Salvation and Social Justice
Urban Mayors Association of the John S. Watson Institute for Urban Policy and Research at Kean University
Attachment 1
March 10, 2021

Via E-mail

Shawn LaTourette, Acting Commissioner (shawn.latourette@dep.nj.gov)
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New Jersey Environmental Justice Law Rulemaking: Stakeholder Comments

I. INTRODUCTION

The frustration is never higher in a state’s environmental justice (EJ) advocacy community than when an additional polluting facility is sited in a community Of Color or low-income community that is already burdened by more than its fair share of pollution. The concern is that these vulnerable and overburdened communities already suffer from health disparities rooted in race and income that will be exacerbated by additional pollution emitted by an additional facility. Risks and impacts created by multiple pollutants emitted by multiple sources in a community that interact with each other and social vulnerabilities have been termed cumulative impacts, and the EJ community has been calling for the development of policies to address this threat to neighborhoods for well over a decade. Frustration over the siting of polluting facilities in EJ communities.

1 This point has been made in a number of other comments submitted to the state by the New Jersey EJ community. For example, see New Jersey Environmental Justice Alliance, Comments on the Newark Energy Center Application for a Title V Operating Permit Significant Modification (Program Interest Number 08857, Permit Activity Number BOP160001, prepared by Nicky Sheats, at 2-3 (11/14/16)). Here we reproduce the citations on health disparities: Health, United States, 2012: With Special Feature on Emergency Care, NATIONAL CENTER FOR HEALTH STATISTICS (2013); Rachel Morello Frosch et al., Understanding the Cumulative Impacts of Inequalities In Environmental Health: Implications for Policy 30 HEALTH AFF. 879, 880-881 (2011); Nancy Adler and David Rehkopf, US Disparities in Health: Descriptions, Causes, and Mechanisms, 29 ANN. REV PUB, HEALTH 235 (2008); William Dressler et al., Race and Ethnicity in Public Health Research: Models to Explain Health Disparities, 34 ANN. REV. ANTHROPOLOGY 231 (2005); Roberta Spalter-Roth et al., Race, Ethnicity, and the Health of Americans, American Sociological Association Series On How Race And Ethnicity Matter, SYDNEY S. SPIVACK PROGRAM IN APPLIED SOC. RSCH. AND SOC. POL’Y (2005), http://www2.asanet.org/centennial/race_ethnicity_health.pdf; George Mensah et al., State of Disparities in Cardiovascular Health in the United States, 111 CIRCULATION 1233 (No. 10) (2005).

communities, *i.e.*, communities Of Color and low-income communities, was particularly high in New Jersey for many years partly because the State had not only acknowledged, but also developed important information on, the issue. In 2009, the New Jersey Department of Environmental Protection (NJDEP) released a cumulative impacts screening tool that confirmed what many in the EJ community already knew: there exists a problematic relationship between race, income, and pollution in New Jersey. Figures made possible by the screening tool show that the estimated amount of pollution and the number of polluting facilities in New Jersey communities increases as the proportion of either low-income or Of Color residents increases.\(^3\) In 2012, NJDEP acknowledged that New Jersey’s largest city was suffering from a cumulative impacts problem when it stated in a fact sheet that accompanied the application for an air pollution permit for the then proposed Hess power plant (current Newark Energy Center) that “Newark is an area where the NJDEP has recognized there are disproportionate impacts from multiple sources of pollution.”\(^4\)

It is also important to note that the data that reveals higher estimated pollution loads in New Jersey EJ communities is part of a trend that has been known and understood for quite some time in our nation. For example, a number of studies have demonstrated that residents of EJ communities experience elevated exposures to air pollution\(^5\) including a recent EPA study that calculated that Blacks face a fine particulate matter burden that is 1.54 times that of the general population.\(^6\)

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\(^3\) These figures can be found on page five of a technical report and slide 19 of a power point which are both entitled “A Preliminary Screening Method to Estimate Cumulative Environmental Impacts.” The report and power point can be accessed at [http://www.state.nj.us/dep/ej/docs/ejc_screeningmethods20091222.pdf](http://www.state.nj.us/dep/ej/docs/ejc_screeningmethods20091222.pdf) and [http://www.state.nj.us/dep/ej/docs/ejc_screeningmethods_pp20091222.pdf](http://www.state.nj.us/dep/ej/docs/ejc_screeningmethods_pp20091222.pdf), respectively.\(^4\) NJDEP Fact Sheet for the proposed Hess NEC power plant (Program Interest Number 08857, Permit Activity Number BOP11000; hereinafter referred to as the NJDEP Fact Sheet) at 24.\(^5\) This has also been noted by the New Jersey EJ community in a number of other comments submitted to the state. For example, see New Jersey Environmental Justice Alliance, *supra* note 1. Here we reproduce the citations on differential exposure to air pollution: Michael Ash et al., *Justice in the Air: Tracking Toxic Pollution from America's Industries and Companies to Our States, Cities, and Neighborhoods* (2009); Manuel Pastor et al., *The Air is Always Cleaner on the Other Side: Race, Space, and Ambient Air Toxics Exposures in California*, 27 J. OF URB. AFFS. 127 (No. 2) (2005); Douglas Houston et al., *Structural Disparities of Urban Traffic in Southern California: Implications for Vehicle Related Air Pollution Exposure in Minority and High Poverty Neighborhoods*, 26 J. OF URB. AFFS. 565 (No. 5) (2004); Manuel Pastor et al., *Waiting to Inhale: The Demographics of Toxic Air Release Facilities in 21st-Century California*, 85 SOC. SCI. Q. 420 (No. 2) (2004); Michael Jerrett et al., *A GIS- Environmental Justice Analysis of Particulate Air Pollution in Hamilton, Canada*, 33 ENV'T AND PLAN. A 955 (No. 6) (2001); D.R. Wernette and L.A. Nieves, *Breathing Polluted Air*, 18 EPA JOURNAL 16 (1992).\(^6\) Ihab Mikati et al., *Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status*, 108 AJPH 4 (2018).
The acknowledgement of a cumulative impacts problem by NJDEP and the knowledge of a relationship between pollution, race and income that violates a sense of justice often espoused not only by our State but also by our country made it imperative that New Jersey directly address this issue through some type of substantive policy. The Environmental Justice Law (“EJ Law”) adopted by the state of New Jersey in late August 2020 is a significant positive step in this direction. It calls for the state to deny or place conditions on pollution permit applications under certain circumstances.8

In many ways, addressing cumulative impacts in the context of pollution permits, as the New Jersey legislation does, has been the holy grail of the EJ movement. But even though the New Jersey law is a meaningful start, it should not be expected to completely address the state’s cumulative impacts problem by itself. It might best be seen as a lifeline to New Jersey residential EJ communities when it comes to disproportionate pollution burdens, but more needs to be done to achieve a full rescue. The EJ advocacy community in New Jersey and its allies have come to believe that it will take a suite of policies to coherently address cumulative impacts in the state; in other words, it will require cumulative policies to address cumulative impacts. Some of these policies will directly address cumulative impacts, as does the recent New Jersey legislation, and others will address specific types of pollution that contribute to disproportionate pollution burdens in EJ communities. One type of policy that should be used in this battle is climate change mitigation policy, and the EJ community has already submitted a proposal to the state that would require power plants located in EJ communities to reduce their emissions and in that way, reduce locally harmful GHG co-pollutants.9

Of primary importance at the moment is the development of a strong set of regulations that will implement New Jersey’s EJ law. New Jersey must not shrink from this task which is as important as the adoption of the legislation itself. The regulations should ensure that the law fulfills its intent, which is to prevent New Jersey EJ communities from enduring more pollution than other communities. They must also break the very disturbing and unacceptable relationship that now exists in New Jersey between race, income and pollution. If these two objectives are achieved, the New Jersey EJ community and its allies believe that eventually pollution will be reduced everywhere because our state will be forced to develop methods and operations to

8 Id. at 3(3)(b)
9 Nicky Sheats, Achieving Emissions Reductions For Environmental Justice Communities Through Climate Change Mitigation Policy, 41 William and Mary Env’t L. and Pol’y Rev. 377 ( 2017); New Jersey Environmental Justice Alliance Climate Change and Energy Policy Platform, NEW JERSEY ENVIRONMENTAL JUSTICE ALLIANCE (2017).
decrease pollution in general, since EJ residential communities will no longer be available to receive pollution on behalf of other communities.

This document contains informal comments submitted to NJDEP by the Ironbound Community Corporation (ICC), Clean Water Action, the New Jersey Environmental Justice Alliance (NJEJA), and Earthjustice on the regulations being developed to implement the New Jersey EJ Law. They contain preliminary thinking from these groups on the following issues relevant to the regulations: the scope of the definition of “facility;” the type of public participation that should be part of the development process for, and the operations of, the regulations; the meaning of “compelling public interest”; the types of conditions that can and should be placed on pollution permit applications; and the types of environmental and public health stressors the regulations should utilize and consider. ICC, Clean Water Action, NJEJA, and Earthjustice will submit additional informal comments in several months as our thinking develops and evolves on the topics detailed above, and on other important and relevant issues related to the regulations. These organizations will also file formal comments on the regulations at the appropriate time.

II. DEFINITION OF “FACILITY”

The EJ Law defines the term “facility” to include eight categories of facilities:

“Facility” means any: (1) major source of air pollution; (2) resource recovery facility or incinerator; (3) sludge processing facility, combustor, or incinerator; (4) sewage treatment plant with a capacity of more than 50 million gallons per day; (5) transfer station or other solid waste facility, or recycling facility intending to receive

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10 The Ironbound Community Corporation’s mission is to engage and empower individuals, families, and groups in realizing their aspirations and, together, work to create a just, vibrant and sustainable community.
11 Clean Water Action’s mission statement reads as follows: “Since our founding during the campaign to pass the landmark Clean Water Act in 1972, Clean Water Action has worked to win strong health and environmental protections by bringing issue expertise, solution-oriented thinking and people power to the table.”
www.cleanwater.org/nj.
12 The NJEJA mission statement reads as follows: “The New Jersey Environmental Justice Alliance is an alliance of New Jersey-based organizations and individuals working together to identify, prevent, and reduce and/or eliminate environmental injustices that exist in communities of color and low-income communities. NJEJA will support community efforts to remediate and rebuild impacted neighborhoods, using the community’s vision of improvement, through education, advocacy, the review and promulgation of public policies, training, and through organizing and technical assistance.”
13 The Earthjustice mission statement reads as follows: “Earthjustice is the premier nonprofit public interest environmental law organization. We wield the power of law and the strength of partnership to protect people’s health, to preserve magnificent places and wildlife, to advance clean energy, and to combat climate change.”
at least 100 tons of recyclable material per day; (6) scrap metal facility; (7) landfill, including, but not limited to, a landfill that accepts ash, construction or demolition debris, or solid waste; or (8) medical waste incinerator; except that “facility” shall not include a facility as defined in section 3 of P.L.1989, c. 34 (C.13:1E-48.3) that accepts regulated medical waste for disposal, including a medical waste incinerator, that is attendant to a hospital or university and intended to process self-generated regulated medical waste.

NJDEP must interpret each of these categories broadly so that its regulations do not “alter the terms of [the] legislative enactment or frustrate the policy embodied in the statute.” T.H. v. Div. of Developmental Disabilities, 189 N.J. 478, 491 (2007). Declaring that “it is past time” to correct the “legacy of siting sources of pollution in overburdened communities,” the Legislature emphasized the impacts of “pollution from numerous industrial, commercial, and governmental facilities.” N.J.S.A. 13:1D-157. The Legislature described these “numerous” polluting facilities as those “certain types of facilities which, by the nature of their activity, have the potential to increase environmental and public health stressors.” Id. NJDEP must therefore interpret “facility” to include those types of facilities that are known to cause, or have the “potential” to cause, increases in public health stressors.15 In addition, nothing in the EJ Law would allow NJDEP to exclude from the term “facility” those polluting facilities that also provide some public benefit to a given community. The language of the EJ Law already incorporates consideration of a facility’s public benefits by allowing conditioned permits based on “a compelling public interest in the community where it is to be located.” N.J.S.A. 13:1D-160(c). If “facility” were defined according to whether facilities potentially provide benefits to the community, NJDEP would impermissibly render the Legislature’s “compelling public interest” provision superfluous and bypass the public process that the Legislature clearly intended to precede the “compelling public interest” determination.16

1. Definition of “Major Source of Air Pollution”

The EJ Law defines “major source of air pollution” as:17

[A] major source of air pollution as defined by the federal “Clean Air Act,” 42 U.S.C. s.7401 et seq., or in rules and regulations adopted by the department pursuant to the “Air Pollution Control Act,” P.L.1954, c. 212 (C.26:2C-1 et seq.)

15 Id.; See also N.J.S.A. 13:1D-160(1),(3) (Applicants must include “potential environmental and public health stressors” associated with facility in their EJIS and at the public hearing.).
16 Paff v. Ocean Cnty. Prosecutor’s Off., 235 N.J. 1, 22 (2018) (“Legislative language must not, if reasonably avoidable, be found to be inoperative, superfluous or meaningless.”) (alterations omitted).
17 N.J.S.A. 13:1D-158
or which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant, or other applicable criteria set forth in the federal “Clean Air Act,” 42 U.S.C. s.7401 et seq.

a. **NJDEP Should Define “Major Source of Air Pollution” According to the Lowest Available Emission Thresholds.**

When determining whether a facility is a “major source of air pollution” under the EJ Law, NJDEP must apply the lowest applicable “major source” emission thresholds available in either the federal Clean Air Act, the New Jersey Air Pollution Control Act and its implementing regulations, or the EJ Law’s own “one hundred tons per year” threshold. N.J.S. 13:1D-158. Any other approach would “frustrate the policy of the statute” by failing to properly protect community members’ “right to live, work, and recreate in a clean and healthy environment.” N.J.S.A. 13:1D-157. NJDEP’s EJ Law rules should incorporate by reference the New Jersey Air Pollution Control Act thresholds, so that any future changes to these thresholds are automatically applied to the EJ Law. As for air pollutants like carbon dioxide, for which the threshold under the Clean Air Act or New Jersey Air Pollution Control Act is above 100 tons/year or for which no threshold is defined under those laws, NJDEP must apply the 100 tons/year threshold of the EJ Law.

b. **NJDEP Should Apply the EJ Law to Facilities that Narrowly Estimate Avoidance of the “Major Source” Threshold.**

In order to adequately address facilities’ public health on overburdened communities, NJDEP should apply margins of safety to ensure that facilities – especially new facilities – that narrowly avoid the “major source” threshold should be subject to the EJ Law process. This would account for errors in monitoring, estimation, and reporting of air emissions.

One approach is for NJDEP to utilize a ten percent buffer for the emission thresholds. For example, a facility that estimates its PM10 emissions at 90 tons/year should be considered a “major source” for the purpose of the EJ Law, since its emissions are within 10% of the 100 tons/year PM10 threshold. This approach is supported by the EJ Law, which defines “major source” facilities to include those with the “potential” to emit 100 tons of any air pollutant, and requires facilities’ environmental justice impact statement (“EJIS”) to assess the “potential environmental and public health stressors” they may cause. Given that the EJ Law requires NJDEP to account for facilities’ potential emissions and public health impacts, applying a ten

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percent buffer to predicted or reported emissions for the “major source” threshold would ensure that communities are appropriately protected from errors in estimation, measurement, or reporting.\textsuperscript{22} As the EPA suggested in comments on the Newark Energy Center air permit application – which estimated PM10 and PM2.5 emissions within 4–7% of the major source threshold – assumptions about inputs such as manufacturer-specified equipment emission rates can determine whether a facility exceeds the major source threshold.\textsuperscript{23} “Potential-to-emit” should clearly be defined as in the NJDEP Emissions Statement Guidance document: “Potential-to-Emit means the maximum aggregate capacity of a source operation or of a facility to emit an air contaminant under its physical or operational design.”\textsuperscript{24}

NJDEP should also ensure that facilities with emissions that are \textit{not} within 10% of the emissions threshold, but nevertheless narrowly avoid “major source” thresholds because of other types of assumptions, are considered a “major source.” For example, the air permit for the Aries Newark Sludge Processing Plant from August 20, 2020 estimated carbon monoxide (“CO”) emissions by assuming 99.99% removal efficiency of CO emission controls.\textsuperscript{25} If the applicant had only assumed 99% removal efficiency, then its CO emissions would be above the 100 ton/year “major source” threshold.\textsuperscript{26} NJDEP should apply the EJ Law to these types of facilities that may be avoiding “major source” thresholds by using unusual assumptions for control efficiencies or other factors.

2. Definition of “Incinerator”
   a. NJDEP should define “Incinerator” Broadly and Include Facilities Combusting or Reducing Non-Hazardous Secondary Materials.

To fulfill the EJ Law’s purpose of protecting overburdened communities, NJDEP should interpret “incinerator” broadly. First, NJDEP should include any facilities covered by the definition of “incinerator” in N.J.A.C. 7:27–11.1, which applies to any facility that destroys or

\textsuperscript{22} See e.g., Kavan Peterson, \textit{State, EPA Environmental Monitoring Goes Online}, Pew Trusts (June 16, 2004), \url{https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2004/06/16/state-epa-environmental-monitoring-goes-online} (Reporting on historic reporting “error rates of 4 percent to 10 percent” among facilities in Michigan.).

\textsuperscript{23} Steven Riva, Chief Permitting Section Air Programs Branch, EPA, Comments on the Prevention of Significant Deterioration (PSD) and the New Source Review (NSR) Preconstruction Permit Application, Newark Energy Center Project (Apr. 17, 2012).

\textsuperscript{24} NJDEP Division of Air Quality, Emission Statement Guidance Document 28 (Feb. 19, 2018), \url{https://www.state.nj.us/dep/aqm/es/guide.pdf}.

\textsuperscript{25} Preconstruction Permit Application No. PCP-20-0001, Aries Newark Sludge Processing Plant (09444), at 9,41 (Aug. 20, 2020).

\textsuperscript{26} Id.
reduces “any material or substance including but not limited to refuse, rubbish, garbage, trade waste, debris or scrap or a facility for cremating human or animal remains.” *Id.* This definition is “not limited to” the listed categories of waste, and NJDEP should likewise not limit the meaning of “incinerator” to exclude facilities that combust, destroy, or otherwise reduce other materials such as scrap tires, treated wood, sewage sludge/biosolids, wastewater, waste-derived pellets, automotive shredder residues, or fuel. NJDEP should include in the definition of “incinerator” those facilities that combust, destroy, or reduce “secondary materials,” including “materials that are not the primary product of a manufacturing or commercial process, and can include post-consumer material, post-industrial material, and scrap.”

b. **NJDEP should define “Incinerator” to Include Two-Step Incineration and Related Processes such as Pyrolysis, Gasification, Plasma Technologies, and Vitrification.**

NJDEP should interpret “incinerator” to include facilities employing pyrolysis, gasification, plasma processing, vitrification, and related technologies. NJDEP has defined “incinerator” in the Air Pollution Control rules at N.J.A.C. 7:27–8.1 to include equipment using “pyrolysis.” Gasification, plasma processes, and vitrification are similar processes to pyrolysis: like traditional incineration, all these waste processing methods “are thermal processes that use high temperatures to break down waste.” These processes emit the same pollutants as traditional incinerators, such as carbon monoxide, dioxins, sulfur dioxide, hydrogen sulfide, benzene, particulates, and chloride. Based on these shared issues, the European Union’s Waste Incineration Directive included “pyrolysis, gasification [and] plasma process” in the definition of “waste incineration plant.” Given the potential air emissions from these technologies, facilities using them have “potential public health impacts” that the EJ Law was written to address.


29 *Id.* (Explaining that “[a]ir emissions include acid gases, dioxins and furans, nitrogen oxides, sulphur dioxide, particulates, cadmium, mercury, lead and hydrogen sulphide.”); Sue Alston et al., *Environmental Impact of Pyrolysis of Mixed WEEE Plastics Part 1: Experimental Pyrolysis Data*, 45 Envt’l Sci. & Tech. 9380, 9381 (2011), [https://doi.org/10.1021/es201664h](https://doi.org/10.1021/es201664h) (Describing pyrolysis as producing waste gas composed of “42% carbon monoxide,” in addition to producing sulfur dioxide and benzene.); Umberto Arena, *Process and Technological Aspects of Municipal Solid Waste Gasification. A Review*, 32 Waste Mgmt.t 625, 626 (2011), [https://doi.org/10.1016/j.wasman.2011.09.025](https://doi.org/10.1016/j.wasman.2011.09.025) (Describing syngas, a byproduct of gasification, which is “generally contaminated by undesired products such as particulate, tar, alkali metals, chloride and sulphide.”).

For these reasons, NJDEP should similarly include pyrolysis, gasification, plasma processing, and vitrification facilities in its definition of “incinerator.”

3. Definition of “Sludge Processing Facility, Combustor, or Incinerator”

NJDEP should define a “sludge processing facility, combustor, or incinerator” to include any facility that processes sludge as defined in N.J.A.C. § 7:26-1.4. NJDEP should include all types of “sludge” as defined in those rules, including any “solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility.” Id. Additionally, NJDEP should include any facilities that process or incinerate sludge products including biosolids, biochar, and other emergent technologies for processing sludge-related byproducts. Sludge byproducts contain numerous contaminants that endanger the public health of overburdened communities through air pollution, soil contamination, and by directly causing illness.31 According to the U.S. EPA Office of Inspector General, biosolids contain hundreds of pollutants including dozens of acutely hazardous contaminants.32 NJDEP’s definition of the “processing” of sludge should include those processes used to prepare sludge byproducts for land application, secondary processing in manufacturing applications, or other related activities using sludge byproducts.

4. Definition of “Sewage Treatment Plant”

The EJ Law defines “facility” to include any “sewage treatment plant with a capacity of more than 50 million gallons per day.” N.J.S.A. 13:1D-158. NJDEP should include in the definition of “sewage treatment plant” all facilities covered as sewage “treatment works” under NJAC 7:14A-1.2. That definition includes:

[A]ny device or system whether public or private, used in the storage, treatment, recycling, or reclamation of municipal or industrial waste of a liquid nature… and any other works including sites for the treatment process or for ultimate disposal of residues resulting from such treatment. Additionally, “treatment works” means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of pollutants, including stormwater runoff, or industrial waste in combined or separate stormwater and sanitary sewer systems.

For the purpose of the EJ Law, each component of NJDEP’s “treatment works” definition should be interpreted broadly to afford proper protections to overburdened communities.

5. Definitions of “Transfer Station or Other Solid Waste Facility,” “Solid Waste,” and “Recycling Facility”

The EJ Bill defines “facility” to include any “transfer station or other solid waste facility, or recycling facility intending to receive at least 100 tons of recyclable material per day.” N.J.S.A. 13:1D-158.

a. NJDEP Should Define “Transfer Station” and “Other Solid Waste Facility” Broadly and to Include Intermodal Container Facilities.

NJDEP should define “transfer station” and “other solid waste facility” broadly, and should not exclude any major categories of facilities which store, process, transfer, transport, recycle or dispose of any type of solid waste. NJDEP should define “transfer station” expansively, to cover all facilities included in the definition of “transfer station” under N.J.S.A. 13:1E-3 and under N.J.A.C. § 7:26-1.4.

NJDEP should include all facilities that fall under the definition of “solid waste facility” under the Solid Waste Act found at N.J.S.A. 13:1E-3, or under the Solid Waste Rules at N.J.A.C. § 7:26-1.4. Those rules define “solid waste facility” to include “any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste…” N.J.A.C. § 7:26-1.4. NJDEP should include facilities which process solid waste (including waste byproducts and secondary materials) by remanufacturing or reprocessing waste to create fuel, additives, electronics, or other products. NJDEP should also include those facilities processing waste through shredding, autoclaving, de-manufacturing, biogenesis, washing, chemical treatment, dewatering, thermal depolymerization, or otherwise treating solid waste.

NJDEP should not exclude intermodal container facilities or barging facilities from the definition of “transfer station or other solid waste facility.” The EJ Law stresses that overburdened communities are subjected to stressors from “numerous industrial, commercial, and governmental facilities,” and made no indication that intermodal container facilities should be exempt from the meaning of “transfer station or other solid waste facility.” N.J.S.A. 13:1D-157.
The EJ Law explicitly applies to permits granted under the Solid Waste Management Act, and that Act’s definition of “solid waste” does not exclude intermodal container facilities.

b. **NJDEP Should Define “Solid Waste” to Include All Types of Solid Waste Without Excluding Materials Approved for Beneficial Use.**

NJDEP should interpret “solid waste” to include all materials defined as “solid waste” under N.J.A.C. 7:26–1.6, including “other waste material” as defined in subsection (b) and materials that are “disposed of” as defined in subsection (c). In N.J.A.C. 7:26–1.6(a), “solid waste” is defined as:

[A]ny garbage, refuse, sludge, processed or unprocessed mixed construction and demolition debris, including, but not limited to, wallboard, plastic, wood, or metal, or any other waste material…

NJDEP should define “solid waste” to include any sludge byproducts or derivatives including biosolids, biomass, and biochar. NJDEP should also include all “secondary materials” including “post-consumer material, post-industrial material, and scrap” such as shredded tires and waste-derived fuel pellets.

For the purpose of the EJ Law, NJDEP should not exclude “materials approved for beneficial use… pursuant to N.J.A.C. 7:26-1.7(g)” from the definition of “solid waste.” As discussed in the beginning of Section II of these comments, the EJ Law provides no basis for excluding certain facilities from the definition of “facility” simply because they provide certain public benefits to the community. The Legislature intentionally created an explicit mechanism for consideration of benefits a facility may provide to the community: the “compelling public interest” analysis in N.J.S.A. 13:1D-160(c). By excluding categories of “beneficial” solid waste in its definition “transfer station” or “other solid waste facility,” NJDEP would impermissibly frustrate the purpose and provisions of the EJ Law.

c. **“Recycling Facility” Should be Defined to Include ‘Class A’ Recycling Facilities.**

The EJ Law defines “facility” to include any “recycling facility intending to receive at least 100 tons of recyclable material per day.” N.J.S.A. 13:1D-158. Under the policy and plain language of the statute, NJDEP must define “recycling facility” to include all recycling facilities, including

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33 N.J.S.A. 13:1D-158.
the Class A recycling facilities that receive and process “source separated non-putrescible metal, glass, paper, plastic containers, and corrugated and other cardboard.” Just because Class A recycling facilities are exempt from certain NJDEP preapproval processes that apply to other types of recycling facilities does not mean that these facilities would not seek other types of NJDEP permits, and thereby be covered by the EJ Law.

The materials recycled at Class A facilities are by far the most commonly recycled materials in the country (see Figure 1 below). While Class A facilities like paper recycling plants have undeniable environmental benefits, they also produce certain types of pollution such as contaminated water releases and emissions from the transportation of materials. The EJ Law requires that NJDEP weigh the potential harms and potential benefits of new Class A recycling

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37 See N.J.A.C. 7:26A-4.1.
facilities on a case-by-case basis through the public EJIS process, and does not allow NJDEP to entirely exclude Class A recycling facilities from the definition of “facility.”

6. Definition of “Scrap Metal Facility”
   a. “Scrap Metal Facility” Should be Defined Broadly to Incorporate Multiple Regulatory Definitions.

NJDEP should interpret “scrap metal facility” to include all types of facilities defined in N.J.A.C. 7:26–1.4, N.J.A.C. 12:58–4.4, and N.J.A.C. 7:14A–1.2, covering “scrap metal shredding facilities,” “junk or scrap metal yards,” and “metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards.”

Under N.J.A.C. 7:26–1.4, a “scrap metal shredding facility” includes any facility which:

1. Receives and stores motor vehicles, appliances, other source separated, non-putrescible ferrous and non-ferrous metals;
2. By mechanical shredding, reduces materials listed in paragraph 1 above in volume and alters the physical characteristics of such materials; and
3. Transfers the ferrous and non-ferrous metals remaining after shredding of materials listed in paragraph 1 above, for reintroduction into the economic mainstream for sale or reuse.

Under N.J.A.C. 12:58–4.4, “junk or scrap metal yard” includes:

[A]ny place where old iron, metal, paper, cordage and other refuse may be collected and deposited or both and sold or may be treated so as to be again used in some form or discarded or where automobiles or machines are demolished for the purpose of salvaging of metal or parts.

NJDEP should also include those facilities required to have a permit under NJPDES, particularly “metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards.” N.J.A.C. 7:14A–1.2.


The language and intent of the EJ Law require that NJDEP include hazardous waste landfills in its interpretation of the term “facility.” The EJ Law applies to landfills “including, but not limited to, a landfill that accepts ash, construction or demolition debris, or solid waste.” N.J.S. 13:1D-158 (emphasis added). This text clearly covers hazardous waste, since NJDEP regulations define
hazardous waste as a subset of solid waste.\textsuperscript{40} To exclude hazardous waste landfills from EJ Law applicability would run contrary to the Legislature’s intent to reduce environmental impacts on overburdened communities,\textsuperscript{41} and contrary to the NJDEP’s hazardous waste regulations, which are to be “liberally construed to permit the Department to discharge its statutory functions.” N.J.A.C. 7:26G–1.2(a).

III. PUBLIC PROCESS

At N.J.S.A. 13:1D-160(a)(3), the EJ Law specifies:

The permit applicant shall publish a notice of the public hearing in at least two newspapers circulating within the overburdened community, including one local non-English language newspaper, if applicable, not less than 60 days prior to the public hearing. The permit applicant shall provide a copy of the notice to the department, and the department shall publish the notice on its Internet website and in the monthly bulletin published pursuant to section 6 of P.L.1975, c.232 (C.13:1D-34). The notice of the public hearing shall provide the date, time, and location of the public hearing, a description of the proposed new or expanded facility or existing major source, as applicable, a map indicating the location of the facility, a brief summary of the environmental justice impact statement, information on how an interested person may review a copy of the complete environmental justice impact statement, an address for the submittal of written comments to the permit applicant, and any other information deemed appropriate by the department. At least 60 days prior to the public hearing, the permit applicant shall send a copy of the notice to the department and to the governing body and the clerk of the municipality in which the overburdened community is located. The applicant shall invite the municipality to participate in the public hearing. At the public hearing, the permit applicant shall provide clear, accurate, and complete information about the proposed new or expanded facility, or existing major source, as applicable, and the potential environmental and public health stressors associated with the facility. The permit applicant shall accept written and oral comments from any interested party, and provided an opportunity for meaningful public participation at the public hearing. The permit applicant shall transcribe the public hearing and, no later than 10 days after the public hearing, submit the transcript along with any written comments received, to the department. Following the public hearing, the

\textsuperscript{40} See N.J.A.C. § 7:26G–5.1 (incorporating by reference 40 C.F.R. § 261.3); Id. § 7:26G-16.2.

\textsuperscript{41} See also Martine Vrijheid, Health Effects of Residence Near Hazardous Waste Landfill Sites: A Review of Epidemiologic Literature, 108 Env’t Health Persp. 101 (2000), https://dx.doi.org/10.1289%2Fehp.00108s1101.
department shall consider the testimony presented and any written comments received, and evaluate the issuance of, or conditions to, the permit, as necessary in order to avoid or reduce the adverse environmental or public health stressors affecting the overburdened community. The department may require the applicant to consolidate the public hearing held pursuant to this paragraph with any other public hearing held or required by the department regarding the permit application, provided the public hearing meets the other requirements of this paragraph. The department shall consider a request by a permit applicant to consolidate required public hearings and, if the request is granted by the department, the consolidation shall not preclude an application from being deemed complete for review pursuant to subsection a. of this section.

It is critical that NJDEP work closely with municipalities and their staff to help translate and communicate the materials generated by the EJIS review process. One suggestion would be to offer training to key municipal staff such as the zoning officers, planning staff, environmental commission and planning and zoning boards. Also, the public process must ensure that local community groups and residents are properly notified beyond just the notification to municipal officials or the clerks. A successful public process requires investing in NJDEP’s capacity to conduct community friendly outreach and then use that to ensure that industry applicants adhere to this model.

For effective and meaningful participation of EJ communities, it is important that the NJDEP staff work with the applicant to ensure that the information being disseminated prior to the public hearing with the public and local officials is clear and can be easily understood in the context of the EJ Law. Thus, we recommend that the NJDEP develop internal processes for conducting enhanced outreach along with the applicant in the public process leading up to the hearing:

- Share educational materials regarding: regulation process (orienting maps and existing conditions), Definition of Cumulative Impacts, Impact of regulated pollutants, etc. This is to help residents have a baseline understanding prior to the hearing. NJDEP should invest in public education that is accessible to make the whole process much more engaging.
- NJDEP should maintain a list of active community groups and use that list to notify them about hearings. In addition, prioritize community partnerships with the NJDEP Community Collaborative Initiative for transformative outreach & communication.
- NJDEP should ensure that the applicant provides clear, accurate, and complete information about the proposed new or expanded facility by reviewing all the public hearing presentation materials for accuracy and completeness prior to the meeting. Any fact sheets, presentations or other supporting materials should be reviewed by NJDEP prior.
• Email notifications need to be specific and include clarity regarding the high-level request.
• Automated phone calls or text messages, the use of social media platforms and other vehicles for communication should be considered in addition to, or instead of the newspaper ads. If newspaper ads are included, it must be newspapers with wide readership in the community where a facility is proposed. Newspaper ads should appear more than one time.
• Notification must be available in languages of the local community.
• Notification to the municipality via the clerk should also include a notification to the municipality’s Environmental Commission or Municipal Green Team if such a Commission or Team is established in the host community.
• NJDEP can prepare PSAs to inform residents about the EJ law and what to look out for. To maximize the public participation process NJDEP should present a community primer explaining the implications of the law and how communities can participate as soon as the rules are finalized.
• NJDEP must require that permit applicants’ notice of public hearing explicitly state whether the applicant will seek a “compelling public interest” determination from NJDEP under N.J.S.A. 13:1D-160(c). In order for community members to have a “meaningful opportunity” to participate in permitting decisions as required by the EJ Law, N.J.S.A. 13:1D-157, they must be informed whether the applicant will claim the facility will serve a “compelling public interest in the community where it is to be located.” N.J.S. 13:1D-160(c). NJDEP should thus require that the “brief summary of the environmental justice impact statement” and “any other information deemed appropriate by the department” in the notice of public hearing, N.J.S. 13:1D-160(a)(3), specify whether the applicant will seek a “compelling public interest” determination from NJDEP, to properly inform the comments and engagement from affected communities. Therefore, NJDEP should require applicants to explicitly state whether they will seek a “compelling public interest” determination as part of their notice of public hearing.
• Any determination by NJDEP that a facility serves a “compelling public interest” under N.J.S.A. 13:1D-160(c) should be included in publicly-accessible records. Such records would serve the EJ Law’s requirement that “the State's overburdened communities . . . have a meaningful opportunity to participate in any decision” to permit a facility that has the potential to increase public health stressors in those communities.\textsuperscript{42} To enable the public participation and transparency intended by the Legislature, NJDEP must maintain a publicly accessible record, both online and in-person at applicable public libraries, of any findings of a “compelling public interest” under N.J.S.A. 13:1D-160(c).

\textsuperscript{42} N.J.S.A. 13:1D-157 (emphasis added).
The EJ Law requires an EJIS to “assess the potential environmental and public health stressors” associated with the facility, and NJDEP must make clear that “potential” stressors are not limited to those stressors which “cannot be avoided if the permit is granted.” N.J.S.A. 13:1D-160(a)(1).

IV. SCOPe OF “COMPELLING PUBLIC INTEREST”

The EJ Law, at N.J.S. 13:1D-160(c), states:

[T]he department shall... deny a permit for a new facility upon a finding that approval of the permit, as proposed, would... cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities... except that where the department determines that a new facility will serve a compelling public interest in the community where it is to be located, the department may grant a permit that imposes conditions on the construction and operation of the facility to protect public health.

The “compelling public interest” provision of this section creates a high standard that strongly circumscribes the exceptional instances in which NJDEP may conditionally permit a new facility that contributes to higher public health stressors in overburdened communities.

1. Case Law Demonstrates that “Compelling Public Interest” is a High Standard.

The Legislature is presumed to be aware of case law applicable in its jurisdiction, and is presumed to consciously adopt particular judicial standards when its statutory language utilizes those standards.43 So here, the Legislature knew that its use of the term “compelling public interest” in the EJ Law would incorporate the high standard that similar language has in the caselaw.44

43 DiProspero v. Penn, 183 N.J. 477, 494-95 (2005) (Citing multiple cases where the Legislature was held to have codified standards from case law, the Court noted: “We hardly need state that the Legislature knows how to incorporate into a new statute a standard articulated in a prior opinion of this Court.”).
44 See id. (The Court stated that the Legislature is presumed to have adopted the Court’s “objective medical standard” by requiring “objective clinical evidence” in a provision of the Automobile Insurance Cost Reduction Act. The Court made this conclusion by comparing the language of its previous opinion (“plaintiff must show a material dispute of fact by credible, objective medical evidence”) with similar language in the statute (“[physician’s certification of threshold-vaulting injury] shall be based on and refer to objective clinical evidence”) (emphasis in original)).
The “compelling public interest” standard has been established as a high standard by federal and New Jersey courts, and is most often used to protect legal rights of the highest order. This standard (also referred to as the “compelling government interest” or “compelling state interest” standard) is a key element of the strict scrutiny test, used when considering challenges brought on the basis of certain fundamental rights. The U.S. Supreme Court notes that the “compelling interest standard… is not watered down” and “really means what it says.” Furthermore, a New Jersey appellate court described the “compelling public interest” standard as describing a “profoundly important interest,” and “not a standard to be lightly applied.” New Jersey courts require a compelling public interest for a government to abridge weighty constitutional rights like the right to free speech. By only allowing new facilities to be permitted in overburdened communities if they serve a “compelling public interest,” the Legislature demonstrated that the EJ Law protects communities’ weighty legal interests against experiencing disproportionate public health stressors.

Given the Legislature’s adoption of the “compelling public interest” standard, NJDEP must implement the standard according to the case law that establish “compelling public interest” as a high standard. Since this is “not a standard to be lightly applied,” NJDEP must avoid a broad or lenient interpretation of “compelling public interest” in its rulemaking. An appropriate “compelling public interest” standard must exclude consideration of the permit applicants’ economic preferences or financial convenience in complying with the EJ Law.

2. Statutory Language and Legislative Intent Require the “Compelling Public Interest” Exception to be Interpreted Narrowly.

NJDEP must interpret the “compelling public interest” exception according to the policy and legislative intent embodied in the language of the EJ Law. Interpretations of the EJ Law must avoid any interpretations that “frustrate the policy embodied in a statute.” The declarations of the New Jersey Legislature demonstrate an unambiguous intent to address severe, long-standing environmental injustices in overburdened communities by empowering and mandating NJDEP to rigorously implement the requirements of the EJ Law. N.J.S.A. 13:1D-157. The Legislature declared 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; and that it is past time for the State to correct this historical injustice.”\(^5\)

If NJDEP were to define “compelling public interest” broadly and regularly allow new polluting facilities in overburdened communities, it would impermissibly frustrate the policy the Legislature resoundingly declared. Furthermore, such an interpretation would render the EJ Law’s rule against permitting new facilities in overburdened communities ineffective and practically meaningless. NJDEP must not interpret the EJ Law to “render any part of a statute inoperative, superfluous, or meaningless.” *State v. Reynolds*, 124 N.J. 559, 564 (1991). NJDEP cannot allow the exception to swallow the rule – a lenient interpretation of “compelling public interest” would contravene the explicit language of the EJ Law.

3. **The “Compelling Public Interest” Standard is Distinct from and Stricter than Waiver Provisions in Other New Jersey Environmental Laws and Regulations.**

The mere fact that a facility satisfies conditions for certain waivers under other provisions does not entail that the EJ Law’s more exacting “compelling public interest” standard is also satisfied. The Legislature is presumed to be aware of all pre-existing waiver provisions, but it nevertheless chose to apply a new, explicit standard for exceptions to the EJ Law. The Legislature is also presumed to have purposefully omitted any qualifications that might have otherwise been included in the statutory language.\(^5\) The “compelling public interest” language is unprecedented among NJ environmental laws, and the Legislature used that language to imply a higher standard than the waiver or exception standards in other NJ environmental laws.\(^5\) For example, the Highlands Water Protection and Planning Act (“HWPPA”) provides for waivers “on a case-by-case basis if determined to be necessary by the department in order to protect public health and safety... [or for] redevelopment in certain previously developed areas in the preservation area... [or] in order to avoid the taking of property without just compensation.”\(^5\) Unlike the HWPPA,


\(^5\) *DiProspero v. Penn*, 183 N.J. 477, 493 (2005) (Noting the general rule that courts are “enjoined from presuming that the Legislature intended a result different from the wording of the statute or from adding a qualification that has been omitted from the statute.”).

\(^5\) Only two other New Jersey statutes use the phrase “compelling public interest”: one for public funding for gubernatorial primary elections (N.J.S.A. § 19:44A-27 (West 2009), and the second allowing a limit to be placed on bond for the largest tobacco manufacturers in a nation-wide, 45-state lawsuit against those companies (N.J.S.A. § 52:4D-13(a)(4)). Unlike the NJ EJ law, neither of the above statutes direct an agency to determine where a compelling public interest exists.

the “compelling public interest” language of the EJ Law does not allow for a new facility based on similar facilities previously located at the same site.

Other NJ environmental laws create explicit exceptions based on hardship, which are notably absent in the EJ Law. For example, the Freshwater Wetlands Act states that NJDEP “shall” grant waivers in certain circumstances to “avoid a substantial hardship to the applicant.”\(^5^4\) The Coastal Area Facility Review Act allows waivers for violations “warranted as a result of a storm, natural disaster or similar act of God.”\(^5^5\) The Flood Hazard Area Control Act allows for waivers “where necessary to alleviate hardship.”\(^5^6\)

The “compelling public interest” provision also prohibits NJDEP from waiving the requirements of the EJ Law under the Department’s general waiver provisions. Those provisions at N.J.A.C. 7:1B allow NJDEP to prospectively waive strict compliance with NJDEP rules based on “exceptional hardship” or “excessive cost,” among other things.\(^5^7\) As discussed in the following section, factors such as “excessive cost” should not justify an exception under the EJ Law’s “compelling public interest” standard. Given that the Legislature already provided the “compelling public interest” standard in the EJ Law, NJDEP should add the EJ Law to the list of provisions that cannot be waived under distinct standards of the NJDEP waiver provisions at N.J.A.C. 7:1B–2.1(b).

To assume that this “compelling public interest” standard is the same as NJDEP pre-existing standards would impermissibly render the “compelling public interest” provision superfluous.\(^5^8\) Thus, the EJ Law’s “compelling public interest” exception is not a mere proxy for the pre-existing waivers in other laws, but must instead be distinct and stronger than those other provisions.

4. A Permit Applicant’s Unrealized Economic Gains do not Constitute a “Compelling Public Interest” under the EJ Law.

The Legislature’s use of the “compelling public interest” standard, drawn from the strict scrutiny standard of case law, demonstrates that mere economic interests of a permit applicant cannot constitute a “compelling public interest.”\(^5^9\)

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\(^5^5\) N.J.S.A. § 13:19-5.3.
\(^5^6\) N.J.S.A. § 58:16A-55(b).
\(^5^7\) N.J.A.C. 7:1B-1.2; 7:1B–2.1.
Courts have repeatedly and explicitly distinguished merely financial interests from genuine “compelling public interests.” For instance, in *Shapiro v. Thompson* the U.S. Supreme Court held that the State’s financial interest in saving costs for its public assistance programs was a “valid” interest but not a “compelling government interest” as required under the strict scrutiny test.\(^60\) Furthermore, the Third Circuit Court of Appeals, which hears appeals from federal courts in New Jersey has characterized protection from environmental harms as a “compelling public interest” that is not overcome by the state’s mere economic interests in the continued operation of steel facilities.\(^61\) In the same vein, the D.C. Circuit Court of Appeals stated that there is a “compelling public interest” in the enforcement of National Environmental Protection Act, regardless of “substantial additional cost” that may result from the law’s enforcement.\(^62\)

Furthermore, the Legislature already concluded that the EJ Law’s environmental protections serve the “health, well-being, and economic success” of overburdened communities.\(^63\) Therefore, to find a “compelling public interest” based on the economic interests of a polluting facility sited in an overburdened community would contradict the legislative intent present in the language of the EJ Law.

As noted above, though existing NJDEP provisions allow waivers from some regulations based on economic interests like “exceptional hardship” and “excessive cost” to the regulated entity, the Legislature purposefully departed from this standard for the EJ Law. So a “compelling public interest” must mean something different than hardship or cost to the permit applicant. And as discussed above, caselaw holds that while saving costs may be a “valid interest,” it is not a “compelling governmental interest.”\(^64\) The Legislature’s intentional use of the “compelling public interest” standard, and its strongly-worded legislative findings cited above, require that NJDEP excludes permit applicants’ economic costs from the meaning of “compelling public interest.”

5. NJDEP’s Analysis of a “Compelling Public Interest in the Community” Must Consider the Facility’s Impacts on Communities within at least a Three-Mile Radius of the Site.

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\(^{60}\) *Shapiro v. Thompson*, 394 U.S. 618, 627–28 (1969), overruled in part by *Edelman v. Jordan*, 415 U.S. 651 (1974) (Finding that the State’s interest in preserving the fiscal integrity of its public assistance programs was not a compelling government interest as required under the strict scrutiny test.).

\(^{61}\) U.S. v. Wheeling-Pittsburgh Steel Corp., 818 F.2d 1077, 1088 (3d Cir. 1987)

\(^{62}\) *Realty Income Tr. v. Eckerd*, 564 F.2d 447, 456 (D.C. Cir. 1977)


\(^{64}\) *Shapiro*, 394 U.S. at 627–28.
The EJ Law states that NJDEP shall deny a permit for a new facility that causes higher adverse environmental impacts in overburdened communities, “except that where the department determines that a new facility will serve a compelling public interest in the community where it is to be located.” Based on the Legislature’s express statutory intent, NJDEP’s analysis must focus on whether the “overburdened communities” within the area impacted by the facility’s emissions will benefit from such a “compelling public interest.” Therefore, NJDEP must not interpret “community” so narrowly as to exclude contiguous overburdened communities that would be impacted by a nearby facility. For instance, a facility being proposed in any of the overburdened communities in the map below may have adverse public health impacts on dozens of overburdened communities, even though it is only physically sited within a single overburdened community. The detrimental impacts caused by a facility outside of the census tract in which it is located must also be taken into account in the EJIS, and thus NJDEP must interpret “community” to ensure that impacts on those communities are not ignored in the “compelling public interest” analysis. Therefore, NJDEP’s “compelling public interest” analysis should consider all “overburdened community” block groups that are wholly or partially within a geographic radius of three-mile or greater around the facility. NJDEP should not find a “compelling public interest in the community” to exist unless the facility serves the public interest of all overburdened block groups in the affected area.

The use of radius-based approach (also known as a ‘concentric buffer’) is supported by regulatory and scientific literature dealing with environmental justice and related regulations. In its guidance on regulatory analysis for assessing environmental justice, U.S. EPA highlighted an example where a three-mile radius was used to examine the environmental justice implications of the Clean Power Plan Final Rule. EPA noted that “an important co-benefit of this rule is a reduction in the adverse health impacts of air pollution on low-income communities and communities of color in closest proximity to power plants.” To understand these air quality co-benefits for those “closest” communities, “EPA conducted a proximity analysis” and found that “the percentage of the population that is minority or low-income within 3 miles of EGUs is greater than national averages.” EPA explains that in choosing parameters for a proximity-analysis, “[a]nalysts must decide what distance from the facility most accurately reflects the community’s exposure to a stressor.” If anything, a 3-mile proximity analysis may be too

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65 N.J.S.A. § 13:1D-160(c) (emphasis added).
67 Id. at C-16.
68 Id. (emphasis added).
69 Id. (emphasis added).
70 Id. at 50.
conservative to capture health stressors specifically included in the EJ Law, such as cancer. N.J.S.A. 13:1D-158. For example, a recent scientific study found that people residing within 10 miles of an oil refinery were statistically significantly more likely to be diagnosed with certain types of cancer.\footnote{Stephen Williams et al., Proximity to Oil Refineries and Risk of Cancer: A Population-Based Analysis, 4 JNCI Cancer Spectrum 6 (2020), \url{https://doi.org/10.1093/jncics/pkaa088}.}

**Figure 2**

A three mile radius around an example facility site located in an overburdened community, Block Group 340139802001 in Newark, Essex County. Block groups that are wholly or partially within that radius are

In Section III. of these comments, we stated that NJDEP must require permit applicants to inform community members whether the applicant will seek a “compelling public interest” determination from NJDEP. The EJ Law requires permit applicants to “publish a notice of the public hearing in at least two newspapers circulating within the overburdened community, including one local non-English language newspaper, if applicable, not less than 60 days prior to the public hearing.” N.J.S.A. 13:1D-160(3). For the purpose of these notice publication
requirements, NJDEP should require notice to the overburdened block groups wholly or partially within a three-mile radius of the facility.

6. Any NJDEP Determination that a Facility Serves a “Compelling Public Interest” Must Only be Based on the Record Created by the EJIS and Public Hearing Process.

NJDEP should only find that a facility serves a “compelling public interest in the community where it is to be located” based on the record established by the applicant’s environmental justice impact statement, the public hearing, and written comments made during the hearing process. N.J.S.A. 13:1D-160(c). The community should be notified and have the opportunity to comment on all considerations that led to a determination that is a compelling public interest exists “in the community where it is to be located.” Id. To do otherwise would contravene the integrity of the public hearing process, by allowing permit applicants to avoid community input or scrutiny while claiming its facility serves the public interest in that same community.

V. CONDITIONING PERMITS

NJDEP should adopt detailed rules that comply with the following principles when developing regulatory language for conditions added to permits, pursuant to the Environmental Justice Law. The EJ Law authorizes NJDEP to add “conditions” to a permit “as necessary in order to avoid or reduce the adverse environmental or public health stressors affecting the overburdened community.” N.J.S.A. § 13:1D-160(a)(3). These conditions apply in two situations.

First, when NJDEP considers new permit applications for new facilities, NJDEP must deny permits for new facilities that would cause or contribute to burdens in an overburdened community, except that if NJDEP makes a finding of a “compelling public interest for the facility, “the department may grant a permit that imposes conditions on the construction and operation of the facility to protect public health.” N.J. Stat. Ann. § 13:1D-160(c) (emphasis added). Additionally, when NJDEP considers permit renewal or modification applications for existing facilities, NJDEP 4(d) “may . . . apply conditions to a permit for the expansion of an existing facility, or the renewal of an existing facility’s major source permit, concerning the construction and operation of the facility to protect public health” upon a finding that the permit as proposed would cause or contribute to burdens in an overburdened community. N.J. Stat. Ann. § 13:1D-160(d).

Specifically, NJDEP should adopt the following principles: (1) addionality, (2) specificity to directly address the stressors that adversely affect the community that the facility causes or contributes to, (3) the conditions must be adaptive, and (4) the conditions must be included in the facility’s permit or otherwise enforceable.
1. **Additionality**

The EJ Law requires NJDEP to enforce conditions that go above and beyond conditions that the facility would already be subject to, absent the existence of the law. Permit conditions that are generally applicable or conditions that NJDEP would have applied anyway, assuming the facility was not in an overburdened community, cannot qualify as a “condition” under the law. The benefits provided under the conditions must be in addition to the requirements and conditions that facilities are subjected to.

2. **Specificity to Directly Address the Facility’s Own Adverse Impacts**

The EJ Law states that NJDEP shall evaluate the issuance of conditions, “as necessary in order to avoid or reduce the adverse environmental or public health stressors affecting the overburdened community.” N.J.S.A. § 13:1D-160(a)(3) (emphasis added). Permit conditions must address stressors that the facility directly causes or contributes to, rather than stressors that are unrelated to the facility’s operations. For example, if a facility contributes to PM emissions in an overburdened community, the permit conditions must directly decrease PM emissions, rather than address stressors that are not related to its operation. Examples of unrelated stressors, in this context, include park restoration programs or reforestation projects.

The EJ Law requires conditions that “avoid or reduce the adverse environmental or public health stressors affecting the overburdened community.” Accordingly, the conditions must reduce stressors in the overburdened community where the facility is located and in overburdened communities wholly or partially within a three-mile radius surrounding the facility, as explained in the section above. This radius will capture census blocks directly near the facility and those that are located slightly further away, but still within the reach of emissions.

3. **Conditions must adapt to the facility’s operations and address all environmental harms.**

NJDEP must apply adaptive conditions, depending on the type of facility and its operations. The conditions must address all environmental harms caused by a facility, including those that are not specifically regulated by the permit. For example, when considering a scrap yard facility’s application for a storm water permit, NJDEP must consider conditions that address harms broader than just those regulated by the storm water permit, such as harms to air, land, traffic, etc. Similarly, if a facility has multiple sources of emissions through a combination of mobile

\[72\] N.J.S.A. § 13:1D-160(d)
and stationary sources, NJDEP should apply conditions that would address pollutants emitted from both sources.

4. **Conditions must be included in the facility’s permit or otherwise enforceable.**

NJDEP must ensure that all conditions are enforceable. Conditions must have the same monitoring, recordkeeping, and reporting requirements that NJDEP uses to ensure enforceability. Those conditions must be incorporated into the facility’s permit. If NJDEP imposes conditions that it determines are outside the scope of the facility’s permit, NJDEP must ensure those conditions are enshrined in an otherwise enforceable document, such as a consent agreement. This agreement would monitor compliance with the permit conditions and create a mechanism for enforceability.

VI. **UNIT OF COMPARISON FOR EJ BLOCK GROUPS**

N.J.S.A. 13:1D-160(c) states that:

[T]he department shall… deny a permit for a new facility upon a finding that approval of the permit, as proposed, would… cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the State, county, or other geographic unit of analysis as determined by the department...

1. **Unit of comparison for EJ Impact Statement**

   a. **Compare EJ Block Group to Non EJ Block Groups**

   Our recommendation is that the geographic unit of comparison for the EJ Block group should be the lower of the countywide or statewide average of Non EJ block groups. This ensures that the comparison of the conditions in an EJ area are fairly assessed in relation to the conditions experienced by non EJ areas. Inclusion of all block groups, whether at the county or state level, risks diluting or masking the disparate conditions across EJ vs Non EJ areas (since we know EJ areas tend to have a greater presence or concentration of stressors).

   i. **Use Whichever Average is Lower (More Protective) from the County or State Level Averages in Comparison to the EJ Block Group.**

   The flexibility to use either state or county level (non EJ) averages ensures that the comparison is reflective of different patterns of distribution of stressors across the state. For example, in northern, densely populated and industrial areas of the state, county averages of certain stressors may be higher than the state average due to the relative uniformity of distribution of the stressors across the county.
ii. Use Median (50th Percentile) Threshold

When comparing the EJ block group where the proposed facility would be located to the statewide or county (non EJ only) average for stressors - a median (50th percentile) threshold should be used to indicate when an EJ block group would be considered having cumulative environmental or public health stressors that are “higher” than in other communities. This would be a fair and reasonable interpretation of the term “higher” expressed in the legislative language since it indicates that the conditions on the block group reflect a level of stressors higher than that experienced by most non EJ areas. The Legislature’s choice of “cause or contribute” language also suggests that any increase above the median threshold, no matter how slight, should trigger the EJ Law’s requirements.73 Furthermore, this is a reasonable interpretation of the bill’s language since the legislature chose not to use words like “substantially higher” or “significantly higher” which would suggest something above a 50th percentile like 75th or 80th.

VII. METHODOLOGIES FOR THE EJ IMPACT STATEMENT

The recommendation for the selection of public health and environmental indicators would be to ensure there are sufficient environmental exposure, environmental burden, social vulnerability and health stressors that can reasonably be ascertained at the census block group level and that are well known to be associated with environmental justice communities. Some researchers familiar with the development of the CalEnviroScreen suggested that indicators first be grouped into three or four categories of stressors (Exposure, Burden, Climate Risk, Social Vulnerability) so they could be summed across these different categories (and potentially weighted) to produce a single cumulative impacts score for each block group. Generally, we recommend using the best available data for New Jersey for indicators in each of these categories and including the use of publicly available datasets outside of public agency purview that are consistent with a robust stressor indicator.74 Understanding the limitations on available public health data sets, the agency may consider using public health data that is available at a sub county level that can be reasonably proportioned to the census block group level or be indicated using rates of occurrence for the health outcome.

After consultation with leading academics in the field of cumulative impacts methodologies, we recommend that the NJDEP adopt a cumulative impacts scoring approach similar to the

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73 See Massachusetts v. EPA, 549 U.S. 497, 523 (2007) (finding even "insignificant[]" and "marginal" increases satisfy an analogous "cause or contribute" standard in the Clean Air Act).

CalEnviroScreen 3.0 methodology (draft version of the updated CalEnviroScreen 4.0 released recently)\textsuperscript{75} to calculate relative scores for all census block groups in the state.\textsuperscript{76} We recommend that the NJDEP adopt a similar methodological approach as the CalEnviroScreen tool to determine a cumulative impact score for each census block group in the state. This score would produce both an absolute and percentile score for each block group based on the indicators selected. The cumulative impacts score for a block group would be determined by converting the raw data for each stressor in a block group into a percentile for each stressor. The data for each stressor would also be scaled in a manner that would allow all stressors in a block group to be summed so that an overall cumulative impact score could be calculated for the block group. The scores of all non-burdened communities would then be ranked by raw score and also converted into a percentile ranking.

VIII. CONCLUSION

The Legislature passed the EJ Law because “it is past time” to correct the historical environmental and public health injustices caused by siting polluting facilities in New Jersey overburdened communities. N.J.S.A. 13:1D-157. NJDEP is required to implement the EJ Law according to that fundamental legislative priority, as embodied in the statutory language and declarations of the Legislature. NJDEP must define statutory terms to include the appropriate facilities within the EJ Law’s purview, while proactively supporting community engagement and limiting the ability of permit applicants to skirt the law through its “compelling public interest” provisions. In addition, NJDEP must ensure that conditions on permits are constructed to effectively protect public health, that the most protective geographic unit of comparison is applied, and that the methodology for the EJIS properly takes full account of cumulative impacts. We look forward to continued engagement with NJDEP on this matter through the stakeholder process and formal rulemaking.

Respectfully,

Ironbound Community Corporation

New Jersey Environmental Justice Alliance

\textsuperscript{75} OEHHA, \textit{Draft CalEnviroScreen 4.0} (last updated Feb. 22, 2021) \url{https://oehha.ca.gov/calenviroscreen/report/draft-calenviroscreen-40}.

\textsuperscript{76} Rachel Morello-Frosch et al., \textit{Update and Statewide Expansion of the Environmental Justice Screening Method (EJSM)}, Cal. Air Res. Bd., \url{https://ww2.arb.ca.gov/sites/default/files/classic//research/apr/past/11-336.pdf}. 
Clean Water Action

Earthjustice
Attachment 2
May 21, 2021

Via E-mail

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New Jersey Environmental Justice Law Rulemaking: Compelling Public Interest Addendum Comments

Compelling Public Interest Exception
The cumulative impacts law requires several steps to be completed before an application for a new pollution permit is considered for the compelling public interest exception. First, it must be determined if the proposed facility is to be located in an overburdened community (census block group) as defined by the law. If the relevant census block group does fall into the overburdened community category then an environmental justice (EJ) analysis must be performed and incorporated into the required EJ impact statement. If the EJ analysis determines that granting the permit would contribute to adverse cumulative environmental and public health stressors that are higher in the prospective host block group than in other block groups in the state (county or other geographic unit) then the application will usually be denied. However, before denial of the permit application, the application can be considered for the compelling public interest exception. Consideration of the compelling public interest determination occurs only AFTER the completion of the EJ Impact Analysis and the determination by the state that, upon review of the analysis, the facility would in fact contribute to impacts in the host overburdened community that are higher than in communities used for comparison.

Facilities that will qualify for the compelling public interest exception should be very few since the exception should be narrowly construed. Consideration of what is deemed “compelling” should be limited to those facilities whose purpose reflects a significant contribution to the host community, despite the higher impact determination. DEP’s analysis should not consider any other factors, such as a municipality’s approval of a facility or economic considerations. The facilities that would satisfy such an exception should include only the following types of facilities:
Municipal or neighborhood scale food waste composting facilities: in combination with other efforts this type of facility should, among other benefits, help to significantly reduce the use of incineration.

Small to medium scale (i.e institutional, neighborhood, municipal) food waste anaerobic digesters: these facilities cannot be associated with sewage treatment plants, or otherwise cannot be industrial-scale operations designed to produce methane for export.

Public water infrastructure: this type of facility would include sewage treatment plants and combined sewage overflow infrastructure. Even though our society as a whole needs these types of facilities, it should be ensured that any new infrastructure which falls in this category that receives an exception under the cumulative impacts law is needed by the overburdened block group in which it would be located for a beneficial purpose, such as flood mitigation or improving climate resiliency.

Photovoltaic Arrays or On-Shore Wind generators and related infrastructure: renewable energy installations that benefit the local host community and help to displace fossil fuel energy generating units would qualify for consideration. Along with these facilities, consideration can also be given to the infrastructure related to wind or solar energy production such as renewable battery storage or microgrids, charging stations for light, medium and heavy duty electric vehicles, and electrification infrastructure needed for non-road and port related equipment.

Any facility that does not fall in the above specified categories would NOT be considered for a compelling public interest exception.

Respectfully,

Ironbound Community Corporation

New Jersey Environmental Justice Alliance

Clean Water Action

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Attachment 3
September 8, 2021

Via E-mail

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Introduction

In conversations with the New Jersey Department of Environmental Protection (NJDEP),¹ we recommended the use of a methodology similar to CalEnviroscreen to perform an environmental justice (EJ) analysis that determines whether granting a pollution permit application would result in adverse cumulative environmental and health stressors that are higher in the relevant overburdened block group (the block group in which the proposed facility would be located) than in non-overburdened block groups in the state.² It appears that NJDEP is proposing to use a different methodology and the Ironbound Community Corporation, New Jersey EJ Alliance, Clean Water Action and Earthjustice do not necessarily disagree with the methodology but do believe it would be beneficial for NJDEP to compare the two methodologies and discuss the advantages and disadvantages of using the proposed methodology instead of CalEnviroscreen.³ One reason this type of comparison could be beneficial is because CalEnviroscreen is probably the best-known and most vetted cumulative impacts methodology currently being utilized and stakeholders might wonder why it is not

¹ Personal communication with members of the Ironbound Community Corporation, New Jersey Environmental Justice Alliance, Clean Water Action and Earthjustice.
² See N.J.S.A. 13:1D-160(c) (“[T]he department shall . . . deny a permit for a new facility upon a finding that approval of the permit, as proposed, would, together with other environmental or public health stressors affecting the overburdened community, cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the State, county, or other geographic unit of analysis as determined by the department . . .”); id. 13:1D-160(d) (“[T]he department may . . . apply conditions to a permit for the expansion of an existing facility, or the renewal of an existing facility’s major source permit, concerning the construction and operation of the facility to protect public health, upon a finding that approval of a permit or permit renewal, as proposed, would, together with other environmental or public health stressors affecting the overburdened community, cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the State, county, or other geographic unit of analysis as determined by the department . . .”).
³ If NJDEP can informally share the results of any preliminary analysis of the two methodologies in some form, that would be beneficial for internal deliberations of the New Jersey EJ community and its allies.
being employed. Juxtaposing the methodologies, and explaining the advantages of using NJDEP’s proposed methods, would improve the public’s understanding of the proposed methodology and therefore increase confidence in its performance. Sharing this analysis could also allow the public to provide suggestions for improving the methodology.

The following paragraph describes our understanding of the operations of the two methodologies so that we can ensure our understanding matches that of NJDEP and any discrepancies can be discussed. NJDEP’s methodology is also described in more detail in the first paragraph of the next section. CalEnviroscreen ranks individual stressors using a percentile system derived from raw data.\(^4\) It then combines individual stressor rankings into an overall cumulative impacts score for each census tract in the state, which can also be converted into a percentile ranking.\(^5\) Similarly, this method could be used in New Jersey to develop an overall cumulative impacts score for each block group in the state. NJDEP’s proposed methodology also converts raw data into a percentile ranking for individual stressors from non-overburdened block groups in the state, and a raw score for stressors in overburdened block groups, but does not calculate an overall cumulative impacts score for each New Jersey block group.\(^6\) Instead it simply counts how many individual stressors in the relevant overburdened block group would be above the 50\(^{th}\) percentile of the same stressors in non-overburdened block groups across the state. It then compares the number of exceedances in the relevant overburdened block group to the number in the appropriate geographic unit of comparison. This count is performed both without consideration of any pollution permit application and taking into account any influence granting the permit would have on the raw score and percentile ranking of individual stressors in the relevant block group.

An advantage of CalEnviroscreen is that it captures variations in individual stressors through the overall cumulative impacts score, or if there are differences in the importance of individual stressors, there can be differential weighing of the stressors.\(^7\) The method proposed by NJDEP would not capture this variation or differences because individual stressor scores are not incorporated into an overall cumulative impacts score and all individual stressors are weighed equally. However, calculating and capturing this variation could also be viewed as a weakness if there are questions about whether the data upon which it is based is sufficiently abundant or reliable. If the calculation of this variation is not deemed quantitatively robust by key actors then the entire methodology may be open to criticism and legally vulnerable. The abundance and reliability of data may vary between states, in general, and California and New Jersey, in particular. Capturing the variation in stressors and the differential importance of stressors is discussed further below in order to provide actionable suggestions that could be used if NJDEP does decide it would be productive to address these issues.

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\(^4\) See California Environmental Protection Agency and Office of Environmental Health Hazard Assessment, CalEnviroscreen 3.0 - Update To The California Communities Environmental Health Screening Tool, January 2017.

\(^5\) Id.

\(^6\) See New Jersey Department of Environmental Protection, 6th EJ Rulemaking Stakeholder Meeting, June 2021.

\(^7\) See California Environmental Protection Agency and Office of Environmental Health Hazard Assessment, CalEnviroscreen 3.0 - Update To The California Communities Environmental Health Screening Tool, January 2017.
An exploration of the differences in the two methodologies could reveal insights about each. We would further suggest, if time permits, that one way the methodologies could be compared is by demonstrating: 1) Which overburdened block groups at this time would exceed the average number of stressors that are above the 50th percentile of stressors in non-overburdened communities in the state using NJDEP’s methodology; and 2) Which overburdened block groups in the state would currently be above the 50th percentile of cumulative impacts scores if such scores were computed using the CalEnviroscreen method.

The EJ Analyses

As we understand it, NJDEP’s proposed methodology would use data to create a percentile ranking for each individual stressor in non-overburdened block groups in the state by ranking raw scores for each stressor. When a facility applied for a pollution permit the number of individual stressors in the relevant overburdened block group that exceeded the 50th percentile of the same stressors in all non-overburdened block groups in the state, would be counted. If the number of stressors in the relevant overburdened block group that exceeded the 50th percentile of stressors in non-overburdened block groups in the state is greater than the number of exceedances in the appropriate geographical unit of comparison, then the block group would be considered cumulatively or disproportionately overburdened and the permit application would have the potential to be denied. The count of the number of 50th percentile exceedances would be performed in two ways. First, not including the contribution of the proposed facility to the existing stressors in the relevant overburdened block group and then, at a later point in the process, including the contribution.

There are a number of issues regarding this process that we discuss in these comments: 1) What is the appropriate geographic unit of comparison; 2) Under what circumstances will a facility be considered to have contributed to a stressor within the meaning of the cumulative impacts legislation; 3) What role should NJDEP play in the EJ analyses; 4) Are there any changes that NJDEP should consider incorporating into its proposed methodology; 5) How should a permit applicant represent the contribution its facility’s operations will make to existing stressors in the relevant overburdened block group; 6) What should be included in the EJ Impact Statement (EJIS) developed by the permit applicant; and 7) What should be included in NJDEP’s final review of the EJIS that occurs after the public hearing and after public input has been obtained? This is a set of questions that is particularly important to our organizations and we believe also for EJ residential communities. We discuss these questions immediately below. There is another set of questions posed by NJDEP concerning their proposed methodology that we attempt to answer in the next section of these comments.

1) What is the appropriate geographic unit of comparison?

It appears that NJDEP is recommending that the geographic unit of comparison should be either: 1) the average number of exceedances of the 50th percentile of individual stressors in non-overburdened block groups on a state level; or 2) the average number of exceedances of
the 50th percentile of individual stressors in non-overburdened block groups in the county in which the proposed facility would be located; whichever of those two geographic comparison units has the lowest number of exceedances. We suggest another geographic unit of comparison to replace number two above: the average number of exceedances of the county in the state with the lowest average number of exceedances, even if this is not the county in which the proposed facility would be located. Comparing the average number of exceedances on a state level to the lowest average number of exceedances in any county would provide the most protection to overburdened communities and perhaps be the quickest way to bring the number of facilities in these communities into alignment with the number of facilities in the state’s non-overburdened block groups. Comparing the block group to non-overburdened block groups within the same county may penalize those overburdened block groups for which permits are under consideration in counties with an existing higher burden of facilities.

2) Under what circumstances will a facility be considered to have contributed to a stressor within the meaning of the cumulative impacts legislation?

A facility should be considered to have caused or contributed to a stressor being higher in the relevant overburdened block group than other block groups in the state or county, if approving the permit application results in any absolute increase, irrespective of the amount of the increase, in any single stressor that was found to be higher than the 50th percentile relative to the appropriate geographic unit of comparison. This definition of a contribution from a facility is consistent with the language of the statute, which applies to all facilities that would:

“...together with other environmental or public health stressors affecting the overburdened community, cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the state, county or other geographic unit of analysis....”

It is important to note that the language of the statute does not specify a minimum amount before emissions or impacts from the applicant are considered to contribute to stressors. Thus it is consistent with the statute to consider any emission or impact from a facility, irrespective of size, to constitute a contribution to an existing stressor. This is also consistent with courts’ interpretations of the terms “cause or contribute” in federal environmental laws.

3) What role should NJDEP play in the EJ analyses?

NJDEP should perform the initial analyses that convert raw data into a statewide percentile ranking for each individual stressor in every non-overburdened block group in the state. Each individual stressor in every block group would have a raw score. In non-over-burdened block groups

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8 N.J.S.A. 13:1D-160(c), (d) (emphasis added).

groups these raw scores would be converted into a statewide percentile ranking. The raw scores of the individual stressors in the overburdened block groups would be used to determine if those stressors would exceed the 50th percentile of the ranking for the same stressor in the statewide ranking of stressors from the non-overburdened block groups. NJDEP should make the percentile rankings and the methodology used to derive them available to the public, as well as to any facility applying for a pollution permit, on a publicly accessible website. NJDEP should also calculate the number of exceedances for each block group, the average number of exceedances for non-overburdened block groups on a state level and the average number of exceedances for non-overburdened block groups on a county level for every county in the state. NJDEP should indicate which overburdened block groups have more exceedances than: the statewide average number of exceedances for non-overburdened block groups, the average number of exceedances for non-overburdened block groups in its own county, or more exceedances than the county with the lowest average number of exceedances. Again, these data and the methodology used to derive them should be made available to the public on a publicly accessible website. The publicly available website should also include an online mapping tool that can display the individual stressors.

4) Are there any changes that NJDEP should consider incorporating into its proposed methodology?

NJDEP should consider whether any of the individual stressors should be weighed more than others and whether there is any reliable manner to capture variation between and in individual stressors that can be reflected in the overall analyses. For example, consider the possibility of assigning different weights to different stressors. We understand that the raw scores used for the 31 stressors vary significantly. This variation reflects very different characteristics such as the amount of direct health impact or risk, the quality and availability of data, and the factors that go into deriving the raw data. Consider the example of NATA cancer risk, which is derived from modeling and has a measure of risk to public health whereas the number of CSOs in a block group does not have a direct health risk measurement. How the addition of contributions from a single proposed plant will influence national modeling results of cancer risk are much less clear than how a single facility might contribute to density of permitted facilities or CSO outfalls. But NATA cancer risks may be a much more direct and impactful stressor than CSOs. The ability of NJDEP to distinguish more impactful stressors may be important to consider in the decision about whether or not to weigh certain stressors differently than others.

If NJDEP wanted to reflect the elevated impact of the NATA cancer risk stressor in the outcome of the overall methodology it could assign it the value of two stressors, if its value in the relevant overburdened block group exceeds the 50th percentile of the value of the stressor in the non-overburdened block groups in the state. In other words, an exceedance of this stressor would be counted twice and not just once, even though it is only a single stressor. Therefore, an exceedance of this stressor would move the count of stressor exceedances from, for example, ten to 12 instead of from ten to 11.
Similarly, an exceedance of the 50th percentile of the stressor from the non-overburdened block groups could be counted twice if the score of that stressor in the relevant overburdened group demonstrated a high variation from the average statewide stressor score, i.e. if the score was relatively high when compared to the scores of the same stressor in other block groups. Or perhaps even if it was in a relatively high percentile when compared to the percentile score of other different stressors. For example, if an individual stressor falls into the 95th percentile or above, because it will be at a relatively high level for that stressor, or probably for any other stressor, it could be counted twice to reflect its high value. Currently, NJDEP’s proposed method would not capture this relatively high level of, or high variation in, this individual stressor score. The suggestion in this section is just one way in which some individual stressors could be weighed more than others or variation within stressors could be captured by the NJDEP’s proposed methodology.

There are almost certainly other manners in which these goals could be achieved. Of course, NJDEP must first determine if it believes it would be beneficial to do so.

5) How should a permit applicant reflect the contribution its facility’s operations will make to existing stressors in the relevant overburdened block group?

If the applicant is applying for a permit in an overburdened block group in which the number of stressors that exceed the 50th percentile in the statewide ranking of the same stressor in non-overburdened block groups is greater than that in the appropriate geographic unit of comparison, then the applicant would be required to describe the types and absolute amounts of pollution (i.e. for exposure and environmental effects stressors such as traffic, PM, ozone, etc.) that would be emitted and their potential to contribute to stressors related to population characteristics (i.e. socio-economic stressors, health stressors, etc.). Any absolute amount of pollution or impacts to any of the stressors would be considered a “contribution” (see (2) above).

If the applicant is applying for a permit in a block group in which the number of stressors that exceed the 50th percentile in the statewide ranking of the same stressor in non-overburdened block groups is less than that in the appropriate geographic unit of comparison, then the applicant would be required to not only describe their absolute contributions to stressors or the potential to impact stressors, but to also calculate the amount the facility would contribute to the score of stressors that are below the 50th percentile.

The permit applicant should use the same method to calculate its contribution to existing stressors as NJDEP used to calculate the raw values for stressors and then to convert those raw values to a percentile ranking. If guidance is needed in addition to the manner in which NJDEP developed the raw scores and percentile rankings for the stressors, then NJDEP should develop such guidance. All applicants should use the same methods to calculate their contributions to existing stressors and the use of NJDEP methodology and guidance would ensure this occurred uniformly across all applications and stressor types.
There also needs to be a method by which applicants can report their contribution to environmental and health stressors that have not yet been identified as one of the 31 that would be addressed by the cumulative impacts law and its implementing regulations. In addition, it would be important for these additional stressors to be factored into NJDEP’s analysis.

6) What should be included in the EJIS submitted by the permit applicant?

The EJIS should include the following:

a) Identification of existing stressors in the relevant overburdened block group;

b) Identification of the appropriate geographic unit of comparison;

c) The number of stressors in the relevant overburdened block group that are above the 50th percentile of the same stressors in non-overburdened block groups in the state, not including any contribution from the proposed facility;

d) A determination of whether the number of stressors in the relevant overburdened block group that are above the 50th percentile of the same stressors in non-overburdened block groups in the state is higher than the average number above the 50th percentile in the appropriate geographic unit of comparison not including any contribution from the proposed facility.

e) If the number of stressors in the relevant overburdened block group, without any contribution from the proposed facility, exceeding the 50th percentile is greater than that in the geographic unit of comparison then the applicant should describe all direct and indirect contributions the proposed facility would make to any stressors. This should include the amount of those contributions;

f) If the number of stressors in the relevant overburdened block group, without any contribution from the proposed facility, exceeding the 50th percentile is less than that in the geographic unit of comparison then, in addition to the description of contributions mandated in section (e) immediately above, the applicant should also include how any contributions to stressors will affect the raw score of the stressors;

g) Any pollution prevention measures that will be included in the design of the facility and any alternative designs or pollution control measures that were considered for the facility;

h) The basis for a claim that a facility should be granted compelling public interest status.

The items that should be included in the EJIS are, of course, a very important issue. But what is also important is what should not be included in the EJIS. NJDEP has discussed whether other types of analyses, such as risk analyses and health impacts assessments, should be included in the EJIS, in addition to the methodology needed to determine whether granting the permit application would result in a disproportionate impact (i.e. the number of stressors in the relevant overburdened block that exceed the 50th percentile of the same stressors in non-overburdened block groups being higher than the number of exceedances in the appropriate geographic unit of comparison). We urge NJDEP to generally not allow any type of environmental or health impact analyses outside of the descriptions of contributions to
stressors that each proposed facility would have the potential to make directly or indirectly or a calculation of the contribution to stressors under the appropriate circumstances (see(6)(f) above). Other types of analyses would most likely be used in an attempt to convince NJDEP not to reject a permit even if the facility makes a contribution towards stressors and NJDEP determines there would be a disproportionate impact associated with the application. For example, facilities could hire consultants to conduct a modeling exercise using traditional environmental risk assessment methods to demonstrate that their relative contribution to PM levels, NOx levels or HAP levels are negligible in relation to stressor categories such as ozone days, NATA respiratory risk or even density of facilities. In areas that are highly impacted, with high relative concentrations of facilities and emissions, it might also be difficult to demonstrate how one facility would move a specific stressor score. Additionally, the applicant, with the assistance of risk analyses, might attempt to define a disproportionate or significant impact, or significant risk, differently than NJDEP’s interpretation of these terms. In those cases where the number of stressor exceedances in the relevant overburdened block group is greater than in the geographic unit of comparison, a simple description of the direct and indirect contributions, as described in (6)(e) above, should suffice to demonstrate the facility’s impact, without any additional modeling or calculations of cumulative risk.

It is also conceivable that these other analyses could be used to argue to NJDEP that a permit application should be rejected even if a disproportionate impact has not been found. However, given the difference in resources between community groups and proposed facilities, it is perhaps overwhelmingly likely that additional analyses will be used in an attempt to negate a rejection rather than to negate an approval. By routinely allowing additional analyses NJDEP would be inviting facilities to attempt to undermine the intended operation of the cumulative impacts law and regulations.

However, an option to allow for additional analysis could productively be given to facilities under certain limited circumstances in the case of applications for permit renewals or expansions. The applicant could be given the option to include collaborative health or environmental impacts analyses in the EJIS. If the analyses are performed it would be for the express purpose of weighing alternatives for conditioning permits. The applicant would review options for first avoiding on site detrimental impacts, then second for directly mitigating on site detrimental impacts and lastly for offsite or near-site mitigation options. The applicant should be required to involve local stakeholders and experts to help weigh various conditioning options, if the additional analyses are conducted. The local stakeholders and experts could also serve as a resource for establishing the feasibility and potential impact of the various proposed options. Examples of this type of analysis can be found at:

https://www.neha.org/eh-topics/healthy-homes-0/health-impact-assessments
or
https://www.epa.gov/healthresearch/health-impact-assessments
7) What should be included in NJDEP’s final review of the EJIS which occurs after the public hearing and after public input has been obtained?

First, NJDEP should re-affirm that the correct methodology was utilized, in the correct manner, in the facility’s determination of whether or not there will be a disproportionate impact connected to the facility’s operation. The phrase “re-affirm” is used here because an initial review of the methodology should occur before the EJIS is issued to the public (see below). Both reviews should also ensure that any calculations not only used the correct methodology but were also performed correctly. The presentation of the analysis by permit applicants in the public process should also be vetted for accuracy and clarity.

Based on the finding in the EJIS of whether granting the permit would cause stressors in the relevant block group to be higher than in other block groups, NJDEP should officially approve or reject the permit application in this final review of the EJIS.

Another important question this review should answer is whether or not conditions should be placed on permits that do not cause stressors to be higher in the relevant overburdened block groups than other block groups? From an EJ perspective, under certain circumstances the answer to this question is in the affirmative. Even if a stressor is not above the 50th percentile of the same stressor in non-overburdened block groups across the state, if it is close to this mark and therefore in danger of exceeding it at some time in the near future, then it would be appropriate for NJDEP to condition a permit in a manner that would prevent an increase in the value of this stressor. That is, NJDEP should take steps to prevent this stressor from becoming worse. This is true if the application is for a new permit, a permit renewal or for a facility expansion. We suggest that if an individual stressor is above the 40th percentile then NJDEP should place conditions on an approved pollution permit in an effort to prevent the stressor from worsening.

Questions Posed by NJDEP

The following questions were posed by NJDEP to stakeholders at one of the Department’s public informational meetings on the cumulative impacts law and its regulations.

1) Are the statutory methods of making the EJIS available (by the governing body, the clerk of the municipality and NJDEP website) sufficient?

We suggest that the NJDEP share with the applicant, relevant contact lists of local civic organizations and EJ organizations that should receive the EJIS materials and meeting notifications via email or mail. The materials should also be shared with NJDEP’s EJ Advisory Council.
2) **Should the regulations have a pre-application phase where NJDEP determines if the EJIS is sufficient?**

Yes, this pre-application phase should occur before the EJIS is distributed to the public. Prior to being subjected to public scrutiny, the EJIS should be reviewed by NJDEP to ensure the correct methodology has been used in the correct manner to determine if there would be a disproportionate impact, and under certain circumstances, the amount of that impact. This review should include a check of all calculations. In addition to this more technical type of review NJDEP should also make sure the EJIS can be understood by the lay public. (see below)

3) **Should NJDEP be able to request revisions to the EJIS after the applicant has distributed the EJIS for the public hearing?**

NJDEP should be able to request a revision in the EJIS after public distribution for at least two reasons. First, if NJDEP discovers an error in the EJIS that it did not identify in its initial review before the document was made public then it would be in the best interest of all stakeholders to allow such an error to be corrected. The second reason would be if NJDEP believes revisions should be made to the EJIS in response to input obtained from the public, including community residents, through the public hearing, written comments or other methods. This would seem reasonable because the primary purpose of public participation is to influence the regulatory process by raising valid concerns and providing new ideas. One way to respond to public input, in addition to appropriate denials of or conditions on permits, is an appropriate revision of the EJIS.

4) **Should NJDEP include the final EJIS with a final issued permit?**

It would be a good idea to ensure that if and when a final permit is issued, any EJIS that has been prepared in connection with the facility in question is attached to the permit. At the very least this would make it easier for an interested stakeholder, especially a community resident or community group, to ascertain and follow any changes in stressors connected to the facility from before the beginning of the facility’s operation to any later point in time.

5) **What support, if any, should NJDEP provide to ensure the EJIS is understandable and to facilitate a response to its contents?**

NJDEP should provide at least two types of support in an effort to ensure the EJIS is comprehensible to the lay public and to enable a meaningful response to its contents. We first suggest that, in addition to a technical review, the contents of the EJIS should be reviewed by NJDEP regarding how easily it can be understood by the lay public, including community members. More specifically, within NJDEP, the EJ Office should review the EJIS to ensure it is understandable to the lay public since this office has experience working with the public and therefore has some expertise in determining what is likely to be easily utilized by community residents. The EJ Office should, of course, suggest any changes that would make the document more comprehensible by non-technical stakeholders.
NJDEP should also strongly consider organizing public workshops for each permit application, which explain the general operation of the law and its regulations, and then apply the law and regulations to the particular application in question. The methodology NJDEP is considering adopting is new and will challenge members of the public, and others, to fully understand its complexities. Therefore, NJDEP should be prepared to conduct public workshops for each permit application that will take community residents from the beginning of an EJIS to its end, using language that is accessible to a lay audience. These workshops should be held before, and in addition to, the required public hearing for a permit application so the public can make full use of the hearing.

Conclusion

The Ironbound Community Corporation, New Jersey EJ Alliance, Clean Water Action and Earthjustice would welcome continued conversations with NJDEP on any of the ideas contained in these comments.

Respectfully submitted,

Ironbound Community Corporation

New Jersey Environmental Justice Alliance

Clean Water Action

Earthjustice
Attachment 4
Covanta Essex is proud of its record of sustainably managing waste for 22 municipalities in Essex County and the surrounding region. Our state-of-the-art facility produces energy and preserves metal for recycling, allowing for a net reduction in greenhouse gas emissions compared to landfilling.

Covanta Essex will hold a Public Information Session as part of renewing our Title V Operating Permit and our Solid Waste Facility Permit. The public is invited to attend this virtual meeting. Please RSVP by scanning the QR code or clicking the below link.

Please RSVP by scanning the QR code or visiting the below website:
COVANTA ESSEX

SESSÃO DE INFORMAÇÃO VIRTUAL

Quarta-feira, 10 de Agosto | 18h00 - 20h00

A Covanta Essex orgulha-se do seu histórico de gestão sustentável de resíduos em 22 municípios no Condado de Essex e região circundante. A instalação de última geração produz energia e preserva o metal para reciclagem, permitindo uma redução líquida nas emissões de gases de efeito estufa em comparação com o aterro.

A Covanta Essex realizará uma Sessão de Informação Pública como parte da renovação da Licença de Operação do Título V e a Licença de Instalação de Resíduos Sólidos. O público está convidado a participar nesta sessão virtual. Por favor, RSVP digitalizar o código QR ou clicando no link abaixo.

Por favor, RSVP digitalizar o código QR ou vistando o link abaixo:
Covanta Essex se enorgullece de su historial de gestión sostenible de residuos para 22 municipios del condado de Essex y la región circundante. Nuestras instalaciones de última generación producen energía y conservan el metal para su reciclaje, lo que permite una reducción neta de las emisiones de gases de efecto invernadero en comparación con el depósito en vertederos.

Covanta Essex celebrará una sesión de información pública como parte de la renovación de nuestro Título V del Permiso de Explotación y de nuestro Permiso de Instalación de Residuos Sólidos. El público está invitado a participar en esta reunión virtual. Por favor, confirme su asistencia escaneando el código QR o haciendo clic en el siguiente enlace.
Declaration of Dr. Ranajit (Ron) Sahu

1. My name is Dr. Ranajit (Ron) Sahu. A copy of my resume is provided in Attachment A to this Declaration. I have a Bachelor’s of Technology degree in Mechanical Engineering from the Indian Institute of Technology (IIT) followed by M.S and Ph.D degrees in Mechanical Engineering from the California Institute of Technology (Caltech). My Ph.D work focused on pyrolysis and combustion, which are directly relevant to this Declaration.

2. In my opinion, all gasification and pyrolysis of waste necessarily involves the combustion of at least some of the material being gasified or pyrolyzed (i.e., the waste materials).

3. Broadly, combustion is a subset of a broader set of chemical reactions, called oxidation. While typically oxidation involves oxygen, from a chemistry standpoint oxidation is defined more broadly where the agent causing oxidation can be different than oxygen.

4. Combustion is the “burning” that occurs for various materials in the presence of oxygen. Most commonly the source of the oxygen is ambient air. Typically combustion releases heat – i.e., it is exothermic. The most common form of oxidation and combustion that takes place in pyrolysis and gasification units is the reaction of carbon with oxygen to create a combination of carbon dioxide (CO₂) and also some carbon monoxide (CO), accompanied with a release of heat.

5. Other examples of oxidation include formation of rust (or oxidation of iron, but not carbon) which is a very slow form of oxidation. At the other end in terms of speed, explosions are also often caused by rapid oxidation of fuels which can contain carbon. Combustion, in terms of speed, falls somewhere in between. Within the set of oxidation reactions that involve the combination of carbon with oxygen, all reactions that are not explosions are combustion..

6. Combustion typically requires the presence of a source of carbon (i.e., the materials to be combusted either intentionally or not), the oxidant (i.e., typically oxygen or air), and the presence of sufficient energy. A flame is not necessary for combustion because, if the temperature of a material is raised significantly it can “autoignite” and there is no need for a separate ignition source. Thus, in simple terms combustion can occur when there is a source of carbon, a source of oxygen and an energy source either from an ignitor or due to the material temperature being high enough to cause auto-ignition.

7. Theoretically, pyrolysis is the chemical decomposition of typically organic (i.e., carbon-based) materials via the application of heat but in the absence of oxygen. The absence of oxygen, however, is an aspirational goal, because it is not possible to eliminate the presence of all oxygen in real-world pyrolysis units.

8. In general terms all materials that can be pyrolyzed/gasified contain some oxygen or oxygen compounds. Also, if the pyrolysis chamber or container is not perfectly sealed and maintained at greater than atmospheric pressure, external oxygen can be introduced into the pyrolysis process. For both reasons, it is impossible to operate a pyrolysis unit in the absence of all oxygen.

9. As the temperature of organic material that is to be pyrolyzed/gasified is increased in order to effect the pyrolysis/gasification, the presence of some of the inherent oxygen in the material and/or
any externally introduced oxygen will initiate combustion reactions while pyrolysis/gasification is going on. Thus, some combustion is impossible to avoid in pyrolysis/gasification units.

10. Pyrolysis/gasification is often the first stage or first step in combustion. Heat causes the waste materials to release volatile organic materials which then react with available oxygen (always present to some degree), releasing more heat and causing the formation of carbon dioxide and carbon monoxide along with other products of complete and incomplete combustion.

11. Because some oxygen is always unavoidably present in organic materials (which consist of carbon, hydrogen, oxygen, and other elements such as sulfur, nitrogen, etc.), some combustion is inevitable during pyrolysis/gasification and always occurs.

12. Further proof that some combustion always occurs in pyrolysis/gasification units is the invariable presence of products of complete combustion (such as carbon dioxide and water vapor as well as sulfur oxides, if sulfur compounds are present in the “fuel”) as well as the products of incomplete combustion such as carbon monoxide in the product gases from pyrolysis. These products of complete combustion would not be present if at least some materials had not been combusted.

13. Based on the inevitable and unavoidable aspects of both gasification/pyrolysis and some combustion occurring simultaneously, it is futile to artificially “separate” these processes into idealized forms where only one of these processes can occur to the exclusion of the other(s). Thus, in a practical incinerator, including one designed to first pyrolyze/gasify substances, followed by the subsequent combustion of the gaseous products, some combustion is inevitable in the first or pyrolysis chamber. It is impossible to separate such multi-component devices and call them separate names. They are collectively as a whole an incinerator. They work together to combust the substances in the waste that is fed into them.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 17th day of December, 2021.

Ranajit Sahu, Ph.D.
EXPERIENCE SUMMARY

Dr. Sahu has over thirty one years of experience in the fields of environmental, mechanical, and chemical engineering including: program and project management services; design and specification of pollution control equipment for a wide range of emissions sources including stationary and mobile sources; soils and groundwater remediation including landfills as remedy; combustion engineering evaluations; energy studies; multimedia environmental regulatory compliance (involving statutes and regulations such as the Federal CAA and its Amendments, Clean Water Act, TSCA, RCRA, CERCLA, SARA, OSHA, NEPA as well as various related state statutes); transportation air quality impact analysis; multimedia compliance audits; multimedia permitting (including air quality NSR/PSD permitting, Title V permitting, NPDES permitting for industrial and storm water discharges, RCRA permitting, etc.), multimedia/multi-pathway human health risk assessments for toxics; air dispersion modeling; and regulatory strategy development and support including negotiation of consent agreements and orders.

He has over twenty eight years of project management experience and has successfully managed and executed numerous projects in this time period. This includes basic and applied research projects, design projects, regulatory compliance projects, permitting projects, energy studies, risk assessment projects, and projects involving the communication of environmental data and information to the public.

He has provided consulting services to numerous private sector, public sector and public interest group clients. His major clients over the past twenty six years include various trade associations as well as individual companies such as steel mills, petroleum refineries, chemical plants, cement manufacturers, aerospace companies, power generation facilities, lawn and garden equipment manufacturers, spa manufacturers, chemical distribution facilities, land development companies, and various entities in the public sector including EPA, the US Dept. of Justice, several states (including Oregon, New Mexico, Pennsylvania, and others), various agencies such as the California DTSC, and various municipalities. Dr. Sahu has performed projects in all 50 states, numerous local jurisdictions and internationally.

In addition to consulting, for approximately twenty years, Dr. Sahu taught numerous courses in several Southern California universities including UCLA (air pollution), UC Riverside (air pollution, process hazard analysis), and Loyola Marymount University (air pollution, risk assessment, hazardous waste management). He also taught at Caltech, his alma mater (various engineering courses), at the University of Southern California (air pollution controls) and at California State University, Fullerton (transportation and air quality).

Dr. Sahu has and continues to provide expert witness services in a number of environmental areas discussed above in both state and Federal courts as well as before administrative bodies (please see Annex A).

EXPERIENCE RECORD

2000-present Independent Consultant. Providing a variety of private sector (industrial companies, land development companies, law firms, etc.), public sector (such as the US Department of Justice), and public interest group clients with project management, environmental
consulting, project management, as well as regulatory and engineering support consulting services.

1995-2000 Parsons ES, **Associate, Senior Project Manager and Department Manager for Air Quality/Geosciences/Hazardous Waste Groups, Pasadena.** Responsible for the management of a group of approximately 24 air quality and environmental professionals, 15 geoscience, and 10 hazardous waste professionals providing full-service consulting, project management, regulatory compliance and A/E design assistance in all areas.

Parsons ES, **Manager for Air Source Testing Services.** Responsible for the management of 8 individuals in the area of air source testing and air regulatory permitting projects located in Bakersfield, California.

1992-1995 Engineering-Science, Inc. **Principal Engineer and Senior Project Manager** in the air quality department. Responsibilities included multimedia regulatory compliance and permitting (including hazardous and nuclear materials), air pollution engineering (emissions from stationary and mobile sources, control of criteria and air toxics, dispersion modeling, risk assessment, visibility analysis, odor analysis), supervisory functions and project management.

1990-1992 Engineering-Science, Inc. **Principal Engineer and Project Manager** in the air quality department. Responsibilities included permitting, tracking regulatory issues, technical analysis, and supervisory functions on numerous air, water, and hazardous waste projects. Responsibilities also include client and agency interfacing, project cost and schedule control, and reporting to internal and external upper management regarding project status.

1989-1990 Kinetics Technology International, Corp. **Development Engineer.** Involved in thermal engineering R&D and project work related to low-NOx ceramic radiant burners, fired heater NOx reduction, SCR design, and fired heater retrofitting.

1988-1989 Heat Transfer Research, Inc. **Research Engineer.** Involved in the design of fired heaters, heat exchangers, air coolers, and other non-fired equipment. Also did research in the area of heat exchanger tube vibrations.

**EDUCATION**

1984-1988 Ph.D., Mechanical Engineering, California Institute of Technology (Caltech), Pasadena, CA.

1984 M.S., Mechanical Engineering, California Institute of Technology (Caltech), Pasadena, CA.

1978-1983 B. Tech (Honors), Mechanical Engineering, Indian Institute of Technology (IIT) Kharagpur, India

**TEACHING EXPERIENCE**

Caltech


"Air Pollution Control," Teaching Assistant, California Institute of Technology, 1985.

"Caltech Secondary and High School Saturday Program," - taught various mathematics (algebra through calculus) and science (physics and chemistry) courses to high school students, 1983-1989.


U.C. Riverside, Extension


"Advanced Hazard Analysis - A Special Course for LEPCs," University of California Extension Program, Riverside, California, taught at San Diego, California, Spring 1993-1994.


Loyola Marymount University


"Air Pollution Control," Loyola Marymount University, Dept. of Civil Engineering, Fall 1994.


“Hazardous Waste Remediation” Loyola Marymount University, Dept. of Civil Engineering. Various years since 2006.

University of Southern California

"Air Pollution Controls," University of Southern California, Dept. of Civil Engineering, Fall 1993, Fall 1994.


University of California, Los Angeles


International Programs

“Environmental Planning and Management,” 5 week program for visiting Chinese delegation, 1994.

“Environmental Planning and Management,” 1 day program for visiting Russian delegation, 1995.

“Air Pollution Planning and Management,” IEP, UCR, Spring 1996.

**PROFESSIONAL AFFILIATIONS AND HONORS**

President of India Gold Medal, IIT Kharagpur, India, 1983.

Member of the Alternatives Assessment Committee of the Grand Canyon Visibility Transport Commission, established by the Clean Air Act Amendments of 1990, 1992.


Air and Waste Management Association, West Coast Section, 1989-mid-2000s.

**PROFESSIONAL CERTIFICATIONS**

EIT, California (#XE088305), 1993.

REA I, California (#07438), 2000.

Certified Permitting Professional, South Coast AQMD (#C8320), since 1993.

QEP, Institute of Professional Environmental Practice, since 2000.


**PUBLICATIONS (PARTIAL LIST)**


PRESENTATIONS (PARTIAL LIST)


"Physical Characterization of a Cenospheric Coal Char Burned at High Temperatures," with R.C. Flagan and G.R. Gavalas, presented at the Fall Meeting of the Western States Section of the Combustion Institute, Laguna Beach, California (1988).


Annex A

Expert Litigation Support

A. Occasions where Dr. Sahu has provided Written or Oral testimony before Congress:

1. In July 2012, provided expert written and oral testimony to the House Subcommittee on Energy and the Environment, Committee on Science, Space, and Technology at a Hearing entitled “Hitting the Ethanol Blend Wall – Examining the Science on E15.”

B. Matters for which Dr. Sahu has provided affidavits and expert reports include:

2. Affidavit for Rocky Mountain Steel Mills, Inc. located in Pueblo Colorado – dealing with the technical uncertainties associated with night-time opacity measurements in general and at this steel mini-mill.


7. Affidavit (March 2005) on behalf of the Minnesota Center for Environmental Advocacy and others in the matter of the Application of Heron Lake BioEnergy LLC to construct and operate an ethanol production facility – submitted to the Minnesota Pollution Control Agency.


9. Affidavits and deposition on behalf of Basic Management Inc. (BMI) Companies in connection with the BMI vs. USA remediation cost recovery Case.


12. Expert Report, deposition (via telephone on January 26, 2007) on behalf of various Montana petitioners (Citizens Awareness Network (CAN), Women’s Voices for the Earth (WVE) and the Clark Fork Coalition (CFC)) in the Thompson River Cogeneration LLC Permit No. 3175-04 challenge.

13. Expert Report and deposition (2/2/07) on behalf of the Texas Clean Air Cities Coalition at the Texas State Office of Administrative Hearings (SOAH) in the matter of the permit challenges to TXU Project Apollo’s eight new proposed PRB-fired PC boilers located at seven TX sites.

15. Affidavit (July 2007) Comments on the Big Cajun I Draft Permit on behalf of the Sierra Club – submitted to the Louisiana DEQ.


17. Expert Reports and Pre-filed Testimony before the Utah Air Quality Board on behalf of Sierra Club in the Sevier Power Plant permit challenge.


19. Expert Report and Deposition (June 2008) on behalf of Sierra Club and others in the matter of permit challenges (Title V: 28.0801-29 and PSD: 28.0803-PSD) for the Big Stone II unit, proposed to be located near Milbank, South Dakota.


23. Declaration (August 2008) on behalf of the Sierra Club in the matter of Dominion Wise County plant MACT.us.


25. Expert Report (February 2009) on behalf of Sierra Club and the Environmental Integrity Project in the matter of the air permit challenge for NRG Limestone’s proposed Unit 3 in Texas.


27. Expert Report (August 2009) on behalf of Sierra Club and the Southern Environmental Law Center in the matter of the air permit challenge for Santee Cooper’s proposed Pee Dee plant in South Carolina.

28. Statements (May 2008 and September 2009) on behalf of the Minnesota Center for Environmental Advocacy to the Minnesota Pollution Control Agency in the matter of the Minnesota Haze State Implementation Plans.


32. Pre-filed Testimony (October 2009) on behalf of Environmental Defense and others, in the matter of challenges to the proposed White Stallion Energy Center coal fired power plant project at the Texas State Office of Administrative Hearings (SOAH).

33. Pre-filed Testimony (July 2010) and Written Rebuttal Testimony (August 2010) on behalf of the State of New Mexico Environment Department in the matter of Proposed Regulation 20.2.350 NMAC – Greenhouse Gas Cap and Trade Provisions, No. EIB 10-04 (R), to the State of New Mexico, Environmental Improvement Board.


36. Expert Report and Deposition (August 2010) as well as Affidavit (September 2010) on behalf of Kentucky Waterways Alliance, Sierra Club, and Valley Watch in the matter of challenges to the NPDES permit issued for the Trimble County power plant by the Kentucky Energy and Environment Cabinet to Louisville Gas and Electric, File No. DOW-41106-047.

37. Expert Report (August 2010), Rebuttal Expert Report (September 2010), Supplemental Expert Report (September 2011), and Declaration (November 2011) on behalf of Wild Earth Guardians in the matter of opacity exceedances and monitor downtime at the Public Service Company of Colorado (Xcel)’s Cherokee power plant. No. 09-cv-1862 (District of Colorado).

38. Written Direct Expert Testimony (August 2010) and Affidavit (February 2012) on behalf of Fall-Line Alliance for a Clean Environment and others in the matter of the PSD Air Permit for Plant Washington issued by Georgia DNR at the Office of State Administrative Hearing, State of Georgia (OSAH-BNR-AQ-103707-98-WALKER).

39. Deposition (August 2010) on behalf of Environmental Defense, in the matter of the remanded permit challenge to the proposed Las Brisas coal fired power plant project at the Texas State Office of Administrative Hearings (SOAH).


41. Expert Report (October 2010) and Rebuttal Expert Report (November 2010) (BART Determinations for PSCo Hayden and CSU Martin Drake units) to the Colorado Air Quality Commission on behalf of Coalition of Environmental Organizations.

42. Expert Report (November 2010) (BART Determinations for TriState Craig Units, CSU Nixon Unit, and PRPA Rawhide Unit) to the Colorado Air Quality Commission on behalf of Coalition of Environmental Organizations.

43. Declaration (November 2010) on behalf of the Sierra Club in connection with the Martin Lake Station Units 1, 2, and 3. Sierra Club v. Energy Future Holdings Corporation and Luminant
Generation Company LLC, Case No. 5:10-cv-00156-DF-CMC (Eastern District of Texas, Texarkana Division).

44. Pre-Filed Testimony (January 2011) and Declaration (February 2011) to the Georgia Office of State Administrative Hearings (OSAH) in the matter of Minor Source HAPs status for the proposed Longleaf Energy Associates power plant (OSAH-BNR-AQ-1115157-60-HOWELLS) on behalf of the Friends of the Chattahoochee and the Sierra Club.

45. Declaration (February 2011) in the matter of the Draft Title V Permit for RRI Energy MidAtlantic Power Holdings LLC Shawville Generating Station (Pennsylvania), ID No. 17-00001 on behalf of the Sierra Club.


47. Declaration (April 2011) and Expert Report (July 16, 2012) in the matter of the Lower Colorado River Authority (LCRA)’s Fayette (Sam Seymour) Power Plant on behalf of the Texas Campaign for the Environment, Texas Campaign for the Environment v. Lower Colorado River Authority, Civil Action No. 4:11-cv-00791 (Southern District of Texas, Houston Division).

48. Declaration (June 2011) on behalf of the Plaintiffs MYTAPN in the matter of Microsoft-Yes, Toxic Air Pollution-No (MYTAPN) v. State of Washington, Department of Ecology and Microsoft Corporation Columbia Data Center to the Pollution Control Hearings Board, State of Washington, Matter No. PCHB No. 10-162.


52. Declaration (October 2011) on behalf of the Plaintiffs in the matter of American Nurses Association et. al. (Plaintiffs), v. US EPA (Defendant), Case No. 1:08-cv-02198-RMC (US District Court for the District of Columbia).


56. Declaration (March 2012) in the matter of Sierra Club v. The Kansas Department of Health and Environment, Case No. 11-105,493-AS (Holcomb power plant) (Supreme Court of the State of Kansas).
57. Declaration (March 2012) in the matter of the Las Brisas Energy Center Environmental Defense Fund et al., v. Texas Commission on Environmental Quality, Cause No. D-1-GN-11-001364 (District Court of Travis County, Texas, 261st Judicial District).


59. Declaration (April 2012) in the matter of the EPA’s EGU MATS Rule, on behalf of the Environmental Integrity Project.

60. Expert Report (August 2012) on behalf of the United States in connection with the Louisiana Generating NSR Case. United States v. Louisiana Generating, LLC, 09-CV100-RET-CN (Middle District of Louisiana) – Harm Phase.

61. Declaration (September 2012) in the Matter of the Application of Energy Answers Incinerator, Inc. for a Certificate of Public Convenience and Necessity to Construct a 120 MW Generating Facility in Baltimore City, Maryland, before the Public Service Commission of Maryland, Case No. 9199.


64. Pre-filed Testimony (October 2012) on behalf of No-Sag in the matter of the North Springfield Sustainable Energy Project before the State of Vermont, Public Service Board.

65. Pre-filed Testimony (November 2012) on behalf of Clean Wisconsin in the matter of Application of Wisconsin Public Service Corporation for Authority to Construct and Place in Operation a New Multi-Pollutant Control Technology System (ReACT) for Unit 3 of the Weston Generating Station, before the Public Service Commission of Wisconsin, Docket No. 6690-CE-197.


68. Declaration (April 2013) on behalf of Petitioners in the matter of Sierra Club, et al., (Petitioners) v Environmental Protection Agency et al. (Respndents), Case No., 13-1112, (Court of Appeals, District of Columbia Circuit).


72. Statement (November 2013) on behalf of various Environmental Organizations in the matter of the Boswell Energy Center (BEC) Unit 4 Environmental Retrofit Project, to the Minnesota Public Utilities Commission, Docket No. E-015/M-12-920.


76. Declaration (March 2014) on behalf of the Center for International Environmental Law, Chesapeake Climate Action Network, Friends of the Earth, Pacific Environment, and the Sierra Club (Plaintiffs) in the matter of Plaintiffs v. the Export-Import Bank (Ex-Im Bank) of the United States, Civil Action No. 13-1820 RC (District Court for the District of Columbia).

77. Declaration (April 2014) on behalf of Respondent-Intervenors in the matter of Mexichem Specialty Resins Inc., et al., (Petitioners) v Environmental Protection Agency et al., Case No., 12-1260 (and Consolidated Case Nos. 12-1263, 12-1265, 12-1266, and 12-1267), (Court of Appeals, District of Columbia Circuit).


81. Declaration (July 2014) on behalf of Public Health Intervenors in the matter of EME Homer City Generation v. US EPA (Case No. 11-1302 and consolidated cases) relating to the lifting of the stay entered by the Court on December 30, 2011 (US Court of Appeals for the District of Columbia).


84. Declaration (January 2015) relating to Startup/Shutdown in the MATS Rule (EPA Docket ID No. EPA-HQ-OAR-2009-0234) on behalf of the Environmental Integrity Project.

85. Pre-filed Direct Testimony (March 2015), Supplemental Testimony (May 2015), and Surrebuttal Testimony (December 2015) on behalf of Friends of the Columbia Gorge in the matter of the Application for a Site Certificate for the Troutdale Energy Center before the Oregon Energy Facility Siting Council.


92. Declaration (September 2015) in support of the Draft Title V Permit for Dickerson Generating Station (Proposed Permit No 24-031-0019) on behalf of the Environmental Integrity Project.


94. Declaration (December 2015) in support of the Petition to Object to the Title V Permit for Morgantown Generating Station (Proposed Permit No 24-017-0014) on behalf of the Environmental Integrity Project.


99. Declaration (June 2016) relating to deficiencies in air quality analysis for the proposed Millenium Bulk Terminal, Port of Longview, Washington.

100. Declaration (December 2016) relating to EPA’s refusal to set limits on PM emissions from coal-fired power plants that reflect pollution reductions achievable with fabric filters on behalf of Environmental Integrity Project, Clean Air Council, Chesapeake Climate Action Network, Downwinders at Risk represented by Earthjustice in the matter of ARIPPA v EPA, Case No. 15-1180. (D.C. Circuit Court of Appeals).


106. Expert Report (March 2017) on behalf of the Plaintiff pertaining to non-degradation analysis for waste water discharges from a power plant in the matter of Sierra Club (Plaintiff) v. Pennsylvania Department of Environmental Protection (PADEP) and Lackawanna Energy Center, Docket No. 2016-047-L (consolidated), (Pennsylvania Environmental Hearing Board).

107. Expert Report (March 2017) on behalf of the Plaintiff pertaining to air emissions from the Heritage incinerator in East Liverpool, Ohio in the matter of Save our County (Plaintiff) v. Heritage Thermal Services, Inc. (Defendant), Case No. 4:16-CV-1544-BYP, (US District Court for the Northern District of Ohio, Eastern Division).

108. Rebuttal Expert Report (June 2017) on behalf of Plaintiffs in the matter of Casey Voight and Julie Voight (Plaintiffs) v Coyote Creek Mining Company LLC (Defendant), Civil Action No. 1:15-CV-00109 (US District Court for the District of North Dakota, Western Division).


112. Declaration (December 2017) on behalf of the Environmental Integrity Project in the matter of permit issuance for ATI Flat Rolled Products Holdings, Breckenridge, PA to the Allegheny County Health Department.


114. Declaration (February 2018) on behalf of the Chesapeake Bay Foundation, et. al., in the matter of the Section 126 Petition filed by the state of Maryland in State of Maryland v. Pruitt (Defendant), Civil Action No. JKB-17-2939 (Consolidated with No. JKB-17-2873) (US District Court for the District of Maryland).

115. Direct Pre-filed Testimony (March 2018) on behalf of the National Parks Conservation Association (NPCA) in the matter of NPCA v State of Washington, Department of Ecology and BP West Coast Products, LLC, PCHB No. 17-055 (Pollution Control Hearings Board for the State of Washington).

116. Expert Affidavit (April 2018) and Second Expert Affidavit (May 2018) on behalf of Petitioners in the matter of Coosa River Basin Initiative and Sierra Club (Petitioners) v State of Georgia Environmental Protection Division, Georgia Department of Natural Resources (Respondent) and Georgia Power Company (Intervenor/Respondent), Docket Nos: 1825406-BNR-WW-57-Howells and 1826761-BNR-WW-57-Howells, Office of State Administrative Hearings, State of Georgia.

117. Direct Pre-filed Testimony and Affidavit (December 2018) on behalf of Sierra Club and Texas Campaign for the Environment (Appellants) in the contested case hearing before the Texas State Office of Administrative Hearings in Docket Nos. 582-18-4848, 582-18-4847 (Application of GCGV Asset Holding, LLC for Air Quality Permit Nos. 146425/PSDTX1518 and 146459/PSDTX1520 in San Patricio County, Texas).

118. Expert Report (February 2019) on behalf of Sierra Club in the State of Florida, Division of Administrative Hearings, Case No. 18-2124EPP, Tampa Electric Company Big Bend Unit 1 Modernization Project Power Plant Siting Application No. PA79-12-A2.

119. Declaration (March 2019) on behalf of Earthjustice in the matter of comments on the renewal of the Title V Federal Operating Permit for Valero Houston refinery.

120. Expert Report (March 2019) on behalf of Plaintiffs for Class Certification in the matter of Resendez et al v Precision Castparts Corporation in the Circuit Court for the State of Oregon, County of Multnomah, Case No. 16cv16164.

121. Expert Report (June 2019), Affidavit (July 2019) and Rebuttal Expert Report (September 2019) on behalf of Appellants relating to the NPDES permit for the Cheswick power plant in the matter of Three Rivers Waterkeeper and Sierra Club (Appellants) v State of Pennsylvania Department of Environmental Protection (Appellee) and NRG Power Midwest (Permittee), before the Commonwealth of Pennsylvania Environmental Hearing Board, EHB Docket No. 2018-088-R.


124. Expert Report (December 2019), Affidavit (March 2020), Supplemental Expert Report (July 2020), and Declaration (February 2021) on behalf of Earthjustice in the matter of Objection to the
125. Affidavit (December 2019) on behalf of Plaintiff-Intervenor (Surfrider Foundation) in the matter of United States and the State of Indiana (Plaintiffs), Surfrider Foundation (Plaintiff-Intervenor), and City of Chicago (Plaintiff-Intervenor) v. United States Steel Corporation (Defendant), Civil Action No. 2:18-cv-00127 (US District Court for the Northern District of Indiana, Hammond Division).


129. Direct Pre-filed Testimony (July 2020) on behalf of the Sierra Club in the matter of the Application of the Ohio State University for a certificate of Environmental Compatibility and Public Need to Construct a Combined Heat and Power Facility in Franklin County, Ohio, before the Ohio Power Siting Board, Case No. 19-1641-EL-BGN.

130. Expert Report (August 2020) and Rebuttal Expert Report (September 2020) on behalf of WildEarth Guardians (petitioners) in the matter of the Appeals of the Air Quality Permit No. 7482-M1 Issued to 3 Bear Delaware Operating – NM LLC (EIB No. 20-21(A) and Registrations Nos. 8729, 8730, and 8733 under General Construction Permit for Oil and Gas Facilities (EIB No. 20-33 (A)), before the State of New Mexico, Environmental Improvement Board.


133. Expert Report (August 2020) and Supplemental Expert Report (December 2020) on behalf of Plaintiffs in the matter of PennEnvironment Inc., and Clean Air Council (Plaintiffs) and Allegheny County Health Department (Plaintiff-Intervenor) v. United States Steel Corporation (Defendant), Civil Action No. 2-19-cv-00484-MJH (US District Court for the Western District of Pennsylvania.)

134. Pre-filed Direct Testimony (October 2020) and Sur-rebuttal Testimony (November 2020) on behalf of petitioners (Ten Persons Group, including citizens, the Town of Braintree, the Town of Hingham, and the City of Quincy) in the matter of Algonquin Gas Transmission LLC, Weymouth MA, No. X266786 Air Quality Plan Approval, before the Commonwealth of Massachusetts, Department of Environmental Protection, the Office of Appeals and Dispute Resolution, OADR Docket Nos. 2019-008, 2019-009, 2019010, 2019-011, 2019-012 and 2019-013.


137. Pre-filed Testimony (January 2021) on behalf of the Plaintiffs (Shrimpers and Fishermen of the Rio Grande Valley represented by Texas RioGrande Legal Aid, Inc.) in the matter of the Appeal of Texas Commission on Environmental Quality (TCEQ) Permit Nos. 147681, PSDTX1522, GHGSDTX172 for the Jupiter Brownsville Heavy Condensate Upgrader Facility, Cameron County, before the Texas State Office of Administrative Hearings, SOAH Docket No. 582-21-0111, TCEQ Docket No. 2020-1080-AIR.

138. Expert Report (June 2021) and Declarations (May 2021 and June 2021) on behalf of Plaintiffs in the matter of Sierra Club (Plaintiff) v. Woodville Pellets, LLC (Defendant), Civil Action No. 9:20-cv-00178-MJT (US District Court for the Eastern District of Texas, Lufkin Division.)

139. Declaration (July 2021) on behalf of Plaintiffs in the matter of Stephanie Mackey and Nick Migliore, on behalf of themselves and all others similarly situated (Plaintiffs) v. Chemtool Inc. and Lubrizol Corporation (Defendants), Case No. 2021-L-0000165, State of Illinois, Circuit Court of the 17th Judicial Circuit, Winnebago County.


141. Expert Witness Disclosure (June 2021) on behalf of the Plaintiffs in the matter of Jay Burdick, et. al., (Plaintiffs) v. Tanoga Inc. (d/b/a Taconic) (Defendant), Index No. 253835, (State of New York Supreme Court, County of Rensselaer).

142. Expert Report (June 2021) on behalf of Appellants in the matter of PennEnvironment and Earthworks (Appellants) v. Commonwealth of Pennsylvania Department of Environmental Protection (Appellee) and MarkWest Liberty Midstream and resource, LLC (Permittee), before the Commonwealth of Pennsylvania Environmental Hearing Board, EHB Docket No. 2020-002-R.

143. Expert Reports (March 2021 and May 2021) regarding the Aries Newark LLC Sludge Processing Facility, Application No. CPB 20-74, Central Planning Board, City of Newark, New Jersey.


147. Expert Report (June 2021) for Antonia Saavedra-Vargas (Plaintiff) v. BP Exploration and Production Inc., et. al. (Defendant), Civil Action No. 2:18-CV-11461 (US District Court for the Eastern District of Louisiana, New Orleans Division).

148. Affidavit (June 2021) for Lourdes Rubi in the matter of Lourdes Rubi (Plaintiff) v. BP Exploration and Production Inc., et. al., (Defendants), related to 12-968 BELO in MDL No. 2179 (US District Court for the Eastern District of Louisiana, New Orleans Division).
C. Occasions where Dr. Sahu has provided oral testimony in depositions, at trial or in similar proceedings include the following:

151. Deposition on behalf of Rocky Mountain Steel Mills, Inc. located in Pueblo, Colorado – dealing with the manufacture of steel in mini-mills including methods of air pollution control and BACT in steel mini-mills and opacity issues at this steel mini-mill.

152. Trial Testimony (February 2002) on behalf of Rocky Mountain Steel Mills, Inc. in Denver District Court.


156. Oral Testimony (August 2006) on behalf of the Appalachian Center for the Economy and the Environment re. the Western Greenbrier plant, WV before the West Virginia DEP.

157. Oral Testimony (May 2007) on behalf of various Montana petitioners (Citizens Awareness Network (CAN), Women’s Voices for the Earth (WVE) and the Clark Fork Coalition (CFC)) re. the Thompson River Cogeneration plant before the Montana Board of Environmental Review.

158. Oral Testimony (October 2007) on behalf of the Sierra Club re. the Sevier Power Plant before the Utah Air Quality Board.


160. Oral Testimony (February 2009) on behalf of the Sierra Club and the Southern Environmental Law Center re. Santee Cooper Pee Dee units before the South Carolina Board of Health and Environmental Control.


163. Deposition (October 2009) on behalf of Environmental Defense and others, in the matter of challenges to the proposed Coleto Creek coal fired power plant project at the Texas State Office of Administrative Hearings (SOAH).

164. Deposition (October 2009) on behalf of Environmental Defense, in the matter of permit challenges to the proposed Las Brisas coal fired power plant project at the Texas State Office of Administrative Hearings (SOAH).

165. Deposition (October 2009) on behalf of the Sierra Club, in the matter of challenges to the proposed Medicine Bow Fuel and Power IGL plant in Cheyenne, Wyoming.
166. Deposition (October 2009) on behalf of Environmental Defense and others, in the matter of challenges to the proposed Tenaska coal fired power plant project at the Texas State Office of Administrative Hearings (SOAH). (April 2010).


168. Deposition (December 2009) on behalf of Environmental Defense and others, in the matter of challenges to the proposed White Stallion Energy Center coal fired power plant project at the Texas State Office of Administrative Hearings (SOAH).


172. Oral Direct and Rebuttal Testimony (September 2010) on behalf of Fall-Line Alliance for a Clean Environment and others in the matter of the PSD Air Permit for Plant Washington issued by Georgia DNR at the Office of State Administrative Hearing, State of Georgia (OSAH-BNR-AQ-1031707-98-WALKER).


175. Oral Testimony (November 2010) regarding BART for PSCo Hayden, CSU Martin Drake units before the Colorado Air Quality Commission on behalf of the Coalition of Environmental Organizations.

176. Oral Testimony (December 2010) regarding BART for TriState Craig Units, CSU Nixon Unit, and PRPA Rawhide Unit) before the Colorado Air Quality Commission on behalf of the Coalition of Environmental Organizations.

177. Deposition (December 2010) on behalf of the United States in connection with the Louisiana Generating NSR Case. United States v. Louisiana Generating, LLC, 09-CV100-MSK-MEH (District of Colorado).

178. Deposition (February 2011 and January 2012) on behalf of Wild Earth Guardians in the matter of opacity exceedances and monitor downtime at the Public Service Company of Colorado (Xcel)’s Cherokee power plant. No. 09-cv-1862 (D. Colo.).

179. Oral Testimony (February 2011) to the Georgia Office of State Administrative Hearings (OSAH) in the matter of Minor Source HAPs status for the proposed Longleaf Energy Associates power plant (OSAH-BNR-AQ-1115157-60-HOWELLS) on behalf of the Friends of the Chattahoochee and the Sierra Club.

181. Deposition (July 2011) and Oral Testimony at Hearing (February 2012) on behalf of the Plaintiffs MYTAPN in the matter of Microsoft-Yes, Toxic Air Pollution-No (MYTAPN) v. State of Washington, Department of Ecology and Microsoft Corporation Columbia Data Center to the Pollution Control Hearings Board, State of Washington, Matter No. PCHB No. 10-162.

182. Oral Testimony at Hearing (March 2012) on behalf of the United States in connection with the Louisiana Generating NSR Case. United States v. Louisiana Generating, LLC, 09-CV100-RET-CN (Middle District of Louisiana).


184. Oral Testimony at Hearing (November 2012) on behalf of Clean Wisconsin in the matter of Application of Wisconsin Public Service Corporation for Authority to Construct and Place in Operation a New Multi-Pollutant Control Technology System (ReACT) for Unit 3 of the Weston Generating Station, before the Public Service Commission of Wisconsin, Docket No. 6690-CE-197.


186. Deposition (August 2013) on behalf of the Sierra Club in connection with the Luminant Big Brown Case. Sierra Club v. Energy Future Holdings Corporation and Luminant Generation Company LLC, Civil Action No. 6:12-cv-00108-WSS (Western District of Texas, Waco Division).

187. Deposition (August 2013) on behalf of the Sierra Club in connection with the Luminant Martin Lake Case. Sierra Club v. Energy Future Holdings Corporation and Luminant Generation Company LLC, Civil Action No. 5:10-cv-0156-MHS-CMC (Eastern District of Texas, Texarkana Division).

188. Deposition (February 2014) on behalf of the United States in United States of America v. Ameren Missouri, Civil Action No. 4:11-cv-00077-RWS (Eastern District of Missouri, Eastern Division).

189. Trial Testimony (February 2014) in the matter of Environment Texas Citizen Lobby, Inc and Sierra Club v. ExxonMobil Corporation et al., Civil Action No. 4:10-cv-4969 (Southern District of Texas, Houston Division).

190. Trial Testimony (February 2014) on behalf of the Sierra Club in connection with the Luminant Big Brown Case. Sierra Club v. Energy Future Holdings Corporation and Luminant Generation Company LLC, Civil Action No. 6:12-cv-00108-WSS (Western District of Texas, Waco Division).

191. Deposition (June 2014) and Trial (August 2014) on behalf of ECM Biofilms in the matter of the US Federal Trade Commission (FTC) v. ECM Biofilms (FTC Docket #9358).


194. Deposition (August 2015) on behalf of Plaintiff in the matter of Conservation Law Foundation (Plaintiff) v. Broadrock Gas Services LLC, Rhode Island LFG GENCO LLC, and Rhode Island


197. Trial Testimony (October 2015) on behalf of Plaintiffs in the matter of Northwest Environmental Defense Center et al., (Plaintiffs) v. Cascade Kelly Holdings LLC, d/b/a Columbia Pacific Bio-Refinery, and Global Partners LP (Defendants), Civil Action No. 3:14-cv-01059-SI (US District Court for the District of Oregon, Portland Division).


199. Trial Testimony at Hearing (July 2016) in the matter of Tesoro Savage LLC Vancouver Energy Distribution Terminal, Case No. 15-001 before the State of Washington Energy Facility Site Evaluation Council.

200. Trial Testimony (December 2016) on behalf of the challengers in the matter of the Delaware Riverkeeper Network, Clean Air Council, et. al., vs. Commonwealth of Pennsylvania Department of Environmental Protection and R. E. Gas Development LLC regarding the Geyer well site before the Pennsylvania Environmental Hearing Board.

201. Trial Testimony (July-August 2016) on behalf of the United States in United States of America v. Ameren Missouri, Civil Action No. 4:11-cv-00077-RWS (Eastern District of Missouri, Eastern Division).

202. Trial Testimony (January 2017) on the Environmental Impacts Analysis associated with the Huntley and Huntley Poseidon Well Pad Hearing on behalf citizens in the matter of the special exception use Zoning Hearing Board of Penn Township, Westmoreland County, Pennsylvania.

203. Trial Testimony (January 2017) on the Environmental Impacts Analysis associated with the Apex energy Backus Well Pad Hearing on behalf citizens in the matter of the special exception use Zoning Hearing Board of Penn Township, Westmoreland County, Pennsylvania.

204. Trial Testimony (January 2017) on the Environmental Impacts Analysis associated with the Apex energy Drakulic Well Pad Hearing on behalf citizens in the matter of the special exception use Zoning Hearing Board of Penn Township, Westmoreland County, Pennsylvania.

205. Trial Testimony (January 2017) on the Environmental Impacts Analysis associated with the Apex energy Deutsch Well Pad Hearing on behalf citizens in the matter of the special exception use Zoning Hearing Board of Penn Township, Westmoreland County, Pennsylvania.

206. Deposition Testimony (July 2017) on behalf of Plaintiffs in the matter of Casey Voight and Julie Voight v Coyote Creek Mining Company LLC (Defendant) Civil Action No. 1:15-CV-00109 (US District Court for the District of North Dakota, Western Division).

207. Deposition Testimony (November 2017) on behalf of Defendant in the matter of Oakland Bulk and Oversized Terminal (Plaintiff) v City of Oakland (Defendant,) Civil Action No. 3:16-cv-07014-VC (US District Court for the Northern District of California, San Francisco Division).


211. Trial Testimony (April 2018) on behalf of the National Parks Conservation Association (NPCA) in the matter of NPCA v State of Washington, Department of Ecology and BP West Coast Products, LLC, PCHB No. 17-055 (Pollution Control Hearings Board for the State of Washington).


213. Trial Testimony (July 2018) on behalf of Petitioners in the matter of Coosa River Basin Initiative and Sierra Club (Petitioners) v State of Georgia Environmental Protection Division, Georgia Department of Natural Resources (Respondent) and Georgia Power Company (Intervenor/Respondent), Docket Nos: 1825406-BNR-WW-57-Howells and 1826761-BNR-WW-57-Howells, Office of State Administrative Hearings, State of Georgia.


215. Deposition (February 2019) and Trial Testimony (March 2019) on behalf of Sierra Club in the State of Florida, Division of Administrative Hearings, Case No. 18-2124EPP, Tampa Electric Company Big Bend Unit 1 Modernization Project Power Plant Siting Application No. PA79-12-A2.

216. Deposition (June 2019) relating to the appeal of air permits issued to PTTGCA on behalf of Appellants in the matter of Sierra Club (Appellants) v. Craig Butler, Director, et. al., Ohio EPA (Appellees) before the State of Ohio Environmental Review Appeals Commission (ERAC), Case Nos. ERAC-19-6988 through -6991.

217. Deposition (September 2019) on behalf of Appellants relating to the NPDES permit for the Cheswick power plant in the matter of Three Rivers Waterkeeper and Sierra Club (Appellants) v. State of Pennsylvania Department of Environmental Protection (Appellee) and NRG Power Midwest (Permittee), before the Commonwealth of Pennsylvania Environmental Hearing Board, EHB Docket No. 2018-088-R.

218. Deposition (December 2019) on behalf of the Plaintiffs in the matter of David Kovac, individually and on behalf of wrongful death class of Irene Kovac v. BP Corporation North America Inc., Circuit Court of Jackson County, Missouri (Independence), Case No. 1816-CV12417.


220. Hearing (July 14-15, 2020, virtual) on behalf of the Sierra Club in the matter of the Application of the Ohio State University for a certificate of Environmental Compatibility and Public Need to Construct a Combined Heat and Power Facility in Franklin County, Ohio, before the Ohio Power Siting Board, Case No. 19-1641-EL-BGN.

221. Hearing (September 2020, virtual) on behalf of WildEarth Guardians (petitioners) in the matter of the Appeals of the Air Quality Permit No. 7482-M1 Issued to 3 Bear Delaware Operating – NM LLC (EIB No. 20-21(A) and Registrations Nos. 8729, 8730, and 8733 under General Construction
Permit for Oil and Gas Facilities (EIB No. 20-33 (A), before the State of New Mexico, Environmental Improvement Board.

222. Deposition (December 2020, March 4-5, 2021, all virtual) and Hearing (April 2021, virtual) in support of Petitioner’s Motion for Stay of PSCAA NOC Order of Approval No. 11386 in the matter of the Puyallup Tribe of Indians v. Puget Sound Clean Air Agency (PSCAA) and Puget Sound Energy (PSE), before the State of Washington Pollution Control Hearings Board, PCHB No. P19-088.

223. Hearing (September 2020, virtual) on the Initial Economic Impact Analysis (EIA) for A Proposal To Regulate NOx Emissions from Natural Gas Fired Rich-Burn Natural Gas Reciprocating Internal Combustion Engines (RICE) Greater Than 100 Horsepower prepared on behalf of Earthjustice and the National Parks Conservation Association in the matter of Regulation Number 7, Alternate Rules before the Colorado Air Quality Control Commission.

224. Deposition (December 2020, virtual and Hearing February 2021, virtual) on behalf of the Plaintiffs (Shrimpers and Fishermen of the Rio Grande Valley represented by Texas RioGrande Legal Aid, Inc.) in the matter of the Appeal of Texas Commission on Environmental Quality (TCEQ) Permit Nos. 147681, PSDTX1522, GHGPSDTX172 for the Jupiter Brownsville Heavy Condensate Upgrader Facility, Cameron County, before the Texas State Office of Administrative Hearings, SOAH Docket No. 582-21-0111, TCEQ Docket No. 2020-1080-AIR.

225. Deposition (January 2021, virtual) on behalf of Plaintiffs in the matter of PennEnvironment Inc., and Clean Air Council (Plaintiffs) and Allegheny County Health Department (Plaintiff-Intervenor) v. United States Steel Corporation (Defendant), Civil Action No. 2-19-cv-00484-MJH (US District Court for the Western District of Pennsylvania.)

226. Deposition (February 2021, virtual) on behalf of Plaintiffs in the matter of Sierra Club Inc. (Plaintiff) v. GenOn Power Midwest LP (Defendants), Civil Action No. 2-19-cv-01284-WSS (US District Court for the Western District of Pennsylvania.)

227. Deposition (April 2021, virtual) on the Potential Remedies to Avoid Adverse Thermal Impacts from the Merrimack Station on behalf of Plaintiffs in the matter of Sierra Club Inc. and the Conservation Law Foundation (Plaintiffs) v. Granite Shore Power, LLC et. al., (Defendants), Civil Action No. 19-cv-216-JL (US District Court for the District of New Hampshire.)

228. Deposition (June 2021, virtual) on behalf of Plaintiffs in the matter of Sierra Club (Plaintiff) v. Woodville Pellets, LLC (Defendant), Civil Action No. 9:20-cv-00178-MJT (US District Court for the Eastern District of Texas, Lufkin Division).

229. Deposition (June 2021, virtual) on behalf of the Plaintiffs in the matter of Modern Holdings, LLC, et al. (Plaintiffs) v. Corning Inc., et al. (Defendants), Civil Action No. 5:13-cv-00405-GFVT, (US District Court for the Eastern District of Kentucky, Central Division at Lexington).

230. Testimony (June 2021, virtual) regarding the Aries Newark LLC Sludge Processing Facility, Application No. CPB 20-74, Central Planning Board, City of Newark, New Jersey.
Attachment 6
Air pollution exposure disparities across US population and income groups

Air pollution contributes to the global burden of disease, with ambient exposure to fine particulate matter of diameters smaller than 2.5 μm (PM$_{2.5}$) being identified as the fifth-ranking risk factor for mortality globally. Racial/ethnic minorities and lower-income groups in the USA are at a higher risk of death from exposure to PM$_{2.5}$ than are other population/income groups. Moreover, disparities in exposure to air pollution among population and income groups are known to exist. Here we develop a data platform that links demographic data (from the US Census Bureau and American Community Survey) and PM$_{2.5}$ data across the USA. We analyse the data at the tabulation area level of US zip codes (N is approximately 32,000) between 2000 and 2016. We show that areas with higher-than-average white and Native American populations have been consistently exposed to average PM$_{2.5}$ levels that are lower than areas with higher-than-average Black, Asian and Hispanic or Latino populations. Moreover, areas with low-income populations have been consistently exposed to higher average PM$_{2.5}$ levels than areas with high-income groups for the years 2004–2016. Furthermore, disparities in exposure relative to safety standards set by the US Environmental Protection Agency and the World Health Organization have been increasing over time. Our findings suggest that more-targeted PM$_{2.5}$ reductions are necessary to provide all people with a similar degree of protection from environmental hazards. Our study is observational and cannot provide insight into the drivers of the identified disparities.
which can mask the relationship between income and pollution levels of neighbourhoods within large ZCTAs, and are subject to more error in cases in which substantial within-ZCTA variation in pollution occurs.

Disparities among racial/ethnic groups

The US EPA is required to reexamine the NAAQS every five years, and in 2012, the EPA set the NAAQS for PM$_{2.5}$ to 12 $\mu$g m$^{-3}$ (refs. 3,19,36). On average across the US, we found that PM$_{2.5}$ concentration levels decreased from 2000 to 2016, with the population-weighted average of PM$_{2.5}$ having decreased by 40.4% from the year 2000 (12.6 $\mu$g m$^{-3}$) to 2016 (7.5 $\mu$g m$^{-3}$) (see Supplementary Video 1 and Extended Data Figs. 1a, b). We also found that the percentage of the population exposed to PM$_{2.5}$ levels higher than 12 $\mu$g m$^{-3}$ decreased from 57.3% in 2000 to 4.5% in 2016.

Next, we visualized and examined disparities in exposure to air pollution among racial/ethnic groups. For each racial/ethnic group (white, Black, Asian, Native American and Hispanic or Latino), we constructed a map that shows ZCTAs in which the race/ethnicity is overrepresented. In the case of the white population, for example, we used the white population fraction of the ZCTA population to compute the average white population fraction (aWpf) across all ZCTAs (approximately 84%). Similarly, we computed the average Black population fraction (aBpf) (approximately 7%).

**Fig. 1** Average PM$_{2.5}$ concentration in 2000 and 2016 across ZCTAs in which Black or white populations are overrepresented. We used the white population fraction of the ZCTA population to compute the average white population fraction (aWpf) across all ZCTAs (approximately 84%). Similarly, we computed the average Black population fraction (aBpf) (approximately 7%).

a, PM$_{2.5}$ levels for the year 2000 in ZCTAs with a Black population fraction of greater than aBpf (left), and in ZCTAs with a white population fraction of greater than aWpf (right). In this year, high PM$_{2.5}$ concentrations exist in almost all ZCTAs with a Black population of more than aBpf, while a wide range of low and high PM$_{2.5}$ concentrations exist in ZCTAs with a white population of more than aWpf. b, The same information for the year 2016. Similar maps for other racial/ethnic groups for 2000 and 2016 are shown in Extended Data Fig. 3a, b and Supplementary Videos 2, 3. Note that Hawaii and Alaska are not shown. Imagery provided courtesy of Esri, HERE, Garmin, FAO, NOAA, USGS, ©OpenStreetMap contributors, and the GIS User Community.

We also computed the population-weighted average PM$_{2.5}$ concentration for every racial/ethnic group (see Methods) (Extended Data Fig. 1b). For all years, we found that the Black, Asian and Hispanic or Latino populations experienced somewhat similar levels of PM$_{2.5}$, which were higher than those experienced by the white population. In 2016, for example, the average PM$_{2.5}$ concentration for the Black population was 13.7% higher than that of the white population and 36.3% higher than that of the Native American population. The Native American population was consistently exposed to the lowest levels of PM$_{2.5}$.

Further, we illustrate for the year 2016 how the population-weighted PM$_{2.5}$ average concentration has changed as ZCTAs became more populated by a certain race/ethnicity (see Fig. 1c). We found that the Black population increased in a ZCTA, the PM$_{2.5}$ concentration likewise consistently increased, with a steep incline seen for ZCTAs with more than 85% of their population being Black. The trend for the Hispanic or Latino population is similar to that of the Black population. The opposite is seen for the white population: the PM$_{2.5}$ concentration decreased as the density of the white population increased in a ZCTA,
and a steeper decrease is found for those ZCTAs with a white population fraction exceeding 70%. Furthermore, in ZCTAs in which the population of Native Americans is at least 20%, the average PM$_{2.5}$ concentration dropped to less than 4 μg m$^{-3}$. For the Asian population, a low number of ZCTAs has a population density above 60%, so data beyond this point are not representative and are not shown.

**Disparities among income groups**

We next visualized and summarized disparities among income groups. We assigned all ZCTAs percentile ranks from 1 to 100 based on median household income, and categorized them into ten income groups. We designated the lowest and highest three income groups as ‘low income’ and ‘high income’, respectively. **a**, PM$_{2.5}$ levels for the year 2000 in low-income (left) and high-income (right) ZCTAs. **b**, The same information for the year 2016. Disparities in exposure to PM$_{2.5}$ between the two groups are apparent, and it can be seen that in both 2000 and 2016, low-income ZCTAs were exposed to higher PM$_{2.5}$ concentrations than were high-income ZCTAs (Supplementary Video 4). Note that Hawaii and Alaska are not shown. Imagery provided courtesy of Esri, HERE, Garmin, FAO, NOAA, USGS, ©OpenStreetMap contributors, and the GIS User Community.

**Disparities relative to policy standards**

We investigated relative disparities in PM$_{2.5}$ exposure in the context of the current NAAQS (12 μg m$^{-3}$), the guidelines set by the WHO (10 μg m$^{-3}$), and a lower limit that might be considered in the future (8 μg m$^{-3}$). To do so, we estimated across the study period the proportion of every racial/ethnic group that was exposed to PM$_{2.5}$ levels higher than one of the listed safety standards. We defined a state of equality (or lack of relative disparities) among various populations as a state of equal proportions above the chosen safety standard across groups.

First, we ranked the US ZCTAs from the least to the most dense with respect to every racial/ethnic group for each year. For the Black population, for example, we used the Black population fraction in every ZCTA to split ZCTAs into 100 quantiles (Extended Data Fig. 4a); the dark-blue region on the map, representing the ZCTA ranking for the Black population, contains the ZCTAs with the highest ratios of Black population to total ZCTA population, and the light-yellow region contains the ZCTAs with the lowest ratios of Black population to total ZCTA population. Similarly, for the remaining populations, the dark-blue and light-yellow regions on their corresponding maps, respectively, signify high and low proportions of that racial/ethnic group. In Fig. 3a, we again focus on two groups for ease of exposition (Black and white groups are chosen for consistency), and we show the ZCTAs with a PM$_{2.5}$ concentration higher than a threshold of 8 μg m$^{-3}$ for the year 2000. Figure 3a shows that almost half of the ZCTAs with PM$_{2.5}$ concentrations above 8 μg m$^{-3}$ are where the Black
population is concentrated (the southern part of the map, as indicated by the dark-blue region on the Black population map), and the other half is where the white population is concentrated (the northern part of the map, as indicated by the dark-blue region on the white population map). We reproduced the scenario for 2016 (Fig. 3b), finding that the majority of ZCTAs still above 8 μg m⁻³ were those with a concentrated Black population (the majority of the 2016 map representing the Black population (left) is dark blue and the majority of that representing the white population map (right) is light yellow). This visualization shows that PM₂.₅ reductions between 2000 and 2016 have not benefited all areas of the US equally, and consequently resulted in an increase in relative disparities in exposure to air pollution (as will be shown numerically later). We also extended Fig. 3 to include the Asian, Native American and Hispanic or Latino populations, and present the results in Extended Data Fig. 4. Here we used a threshold of 8 μg m⁻³ to allow clearer visualization of the disparities. A lower number of ZCTAs is exposed to PM₂.₅ concentrations above 10 μg m⁻³ and 12 μg m⁻³, so visualizations at these thresholds are not as clear. Nevertheless, the same visualization is repeated for multiple thresholds, including 10 μg m⁻³ and 12 μg m⁻³, in Supplementary Videos 5–8.

Second, we provide numerical summaries of disparities in the proportions of racial/ethnic groups exposed to PM₂.₅ levels above the chosen standard by using the coefficient of variation (CoV) (Fig. 4 and Methods). The solid blue line in Fig. 4 shows that 89% of the population was exposed to PM₂.₅ levels higher than 8 μg m⁻³ in 2000, but only 41% in 2016. However, Fig. 4 also reveals that relative disparities among racial/ethnic groups in exposure to PM₂.₅ levels higher than 8 μg m⁻³ (solid blue bars) have increased from 2000 to 2016 (see Methods for more details on interpreting change in disparities across years using CoV). This result aligns with the relative pollution reductions shown in Fig. 3; while the trend of the increasing relative disparities in Fig. 4 may be partially driven by the overall decrease in pollution levels, targeted air pollution reduction strategies (affecting different areas of the maps in Fig. 3 by varying amounts) may be needed to cause a decrease in relative disparities. Figure 4 also shows the analysis for thresholds T = 10 μg m⁻³ and T = 12 μg m⁻³. A consistent trend in disparities over time is seen across the different thresholds. Moreover, as expected from our definition of relative disparities, as the set threshold increases, relative differences across racial/ethnic groups become more pertinent for a given year. In addition to using the easily interpretable CoV, we repeated the disparities analysis of Fig. 4 with Atkinson and Gini indices—alternative metrics used in the literature. These findings can be seen in Extended Data Figs. 5 and 6 and are similar to those of Fig. 4.

**Discussion**

We have built a data set that includes around 32,000 US ZCTAs with detailed information on demographic and pollution data for the period
2000 to 2016. Our study provides a transparent and reproducible data-science perspective and unique visualizations of the exposure to PM$_{2.5}$ in the US and the associated disparities among racial/ethnic and income groups. Our work is descriptive in nature and is not meant to investigate causal aspects of PM$_{2.5}$ reductions and disparities in the US. When possible, we have applied sensitivity analyses to confirm our findings. For example, our results were consistent across both urban and rural areas of the US (Extended Data Fig. 7). In addition, we have applied our analyses to two independent data sets of predicted PM$_{2.5}$ levels for the US, and our findings were consistent (Extended Data Fig. 8). Nonetheless, our study could be strengthened by addressing some caveats. First, we used average PM$_{2.5}$ concentrations across ZCTAs. This is an important limitation, because there could be substantial within-ZCTA variation in pollution. A smaller unit of analysis such as a Census block group might have further strengthened our findings, but at the cost of higher uncertainty in the estimated levels of PM$_{2.5}$ for this smaller spatial scale. Also, PM$_{2.5}$ concentrations rely on AOD estimates and are therefore subject to error. The performance of this approach has been evaluated, finding that PM$_{2.5}$ values estimated in this way are generally consistent with direct ground-based PM$_{2.5}$ values. Still, it is important to interpret these values with caution.

Second, we used US Census data that span the years 2000 to 2016, during which period demographic changes may have occurred that could (together with changes in pollution levels) have contributed to our findings. To mitigate this challenge, we recalculated the distributions of different populations across the US for every year, before computing pollution-exposure values for those populations, but we have not carried out tests related to demographic changes such as residential sorting.

Third, because US Census data are not available for every year (see Methods), we have used interpolation techniques for parts of the study period, and hence inequalities between years (especially in the earlier years) are subject to the assumptions made in the interpolation. Fourth, the CoV has been used frequently for economic applications, but we are not aware of its prior application to pollution studies. Although the CoV captures our definition of disparities, caution should be applied before applying it to other disparity measures. Researchers use the Atkinson index widely, but it is a measure that suffers from low interpretability and user subjectivity owing to its dependence on an inequality aversion parameter set by the user. We have computed the Atkinson index for a full range of values of the inequality aversion parameter (Extended Data Fig. 6), as well as the Gini index, and compared the results with those obtained using the CoV. The implications of using the Atkinson and Gini indices on a small data set such as these exposure data ($n = 5$ for racial/ethnic groups) are not well documented in the literature. Nonetheless, we found similar trends in disparities across the three metrics.

Finally, determining whether disparities in air pollution have been increasing or decreasing is a cumbersome task, owing to the various units of analysis one can investigate. The population-weighted PM$_{2.5}$ mean is one possible unit, but here, our interest in the implications of our findings for pollution-related regulations in the US led us to set the unit of analysis as the exposure of populations to PM$_{2.5}$ levels above pollution thresholds defined by the EPA and WHO. Additionally, disparities may be defined as an absolute or relative concept, and each scenario may lead to different interpretations. For example, other studies have reported that the pollution decrease tends to be targeted around the dirtiest monitor in counties in nonattainment with NAAQS, and a related study found that these areas are regions within a nonattainment county that are poorer and have a higher share of non-white residents.

Further research could explore the underlying drivers of the observed disparities, and investigate how future national air-quality standards could encourage more equitable attainment. This could help to inform the EPA’s strategies for reducing air pollution, in order to decrease nationwide PM$_{2.5}$ concentration levels as well as relative disparities, to better address environmental injustice.

Online content

Any methods, additional references, Nature Research reporting summaries, source data, extended data, supplementary information, acknowledgements, peer review information; details of author contributions and competing interests; and statements of data and code availability are available at https://doi.org/10.1038/s41586-021-04190-y.
36. EPA proposes to retain NAAQS for particulate matter. https://www.epa.gov/newsreleases/epa-proposes-retain-naaqs-particulate-matter

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Methods

Our data set includes US ZCTAs for 2000–2016 (N is approximately 32,000). For each ZCTA, we obtained demographic and socioeconomic variables from the US Census Bureau wherever available, and used interpolation techniques (moving average) to determine those of the missing years. More specifically, for the years 2000 and 2010, we used ZCTA estimates from the decennial census. For the period 2001–2009, we interpolated the data using moving averages for each census variable and for each ZCTA using the ‘ImputeTS’ R package. For the period 2011–2016, we used the five-year data from the American Community Survey (ACS5). Documentation of all calculations and source data used is available in the following GitHub repository: https://github.com/NSAPH/National-Causal-Analysis/tree/master/Confounders/census.

Variables of interest comprised median household income, proportions of Native Americans, Asian, white, Black, and Hispanic or Latino residents, and population density. For each year, we assigned all ZCTAs percentile ranks from 1 to 100 on the basis of median household income, and categorized them into ten income groups. Throughout the paper, we use ‘low income’ and ‘high income’ to label the lowest three and highest three income groups, respectively.

We also used a publicly available data set containing predicted PM$_{2.5}$ concentration levels in the US\(^{18}\). This study estimated ground-level total PM$_{2.5}$ concentrations over North America by combining aerosol optical depth (AOD) retrievals from the NASA MODIS, MISR and SeaWIFS instruments with the GEOS-Chem chemical transport model, subsequently calibrated to regional ground-based observations of total mass using geographically weighted regression (GWR). The authors\(^{18}\) evaluated the performance of their approach and reported that the estimated PM$_{2.5}$ concentrations were generally consistent with direct ground-based PM$_{2.5}$ measurements (R² varying between 0.6 and 0.8). Their collocated comparison of the trends of population-weighted annual average PM$_{2.5}$ from their estimates and ground-based measurements was highly consistent. They also reported that the accuracy of the PM$_{2.5}$ prediction models was similar for low and high levels of exposure, implying no large differences in performance between urban and rural areas. Using this data set, for each ZCTA we computed annual averages of PM$_{2.5}$. We built one data set by combining the demographic and PM$_{2.5}$ variables across all US ZCTAs for 2000–2016. Our data set analysis reveals time patterns in air pollution across the US and disparities in exposure to air pollution among racial/ethnic and income groups. We use dynamic videos to communicate our findings, along with plots that summarize and clarify the information embedded in our visualizations.

We first defined a group population-weighted PM$_{2.5}$ concentration, in which a group can be an income group such as the first decile, or an ethnic group such as the Hispanic or Latino population. In the case of racial/ethnic groups, the population-weighted PM$_{2.5}$ concentration in racial/ethnic group \(k\) is given by:

\[
PM_{2.5k} = \frac{\sum_j PM_{2.5j} p_{kj}}{\sum_j p_{kj}},
\]

where summation occurs over all ZCTAs, \(p_{kj}\) is the number of people in racial group \(k\) living in the ZCTA \(j\), and PM$_{2.5j}$ is the PM$_{2.5}$ level in the ZCTA \(j\). In the case of income groups, the population-weighted PM$_{2.5}$ concentration of income group \(i\) is:

\[
PM_{2.5i} = \frac{\sum_j PM_{2.5j} p_{ij}}{\sum_j p_{ij}},
\]

where summation occurs only over ZCTAs belonging to income group \(i\), \(p_{ij}\) is the total population of ZCTA \(j\), and PM$_{2.5j}$ is the PM$_{2.5}$ level in ZCTA \(j\).

We also computed relative disparities in exposure to PM$_{2.5}$ among different populations. We define a state of equality (or lack of relative disparities) among various populations as a state in which equal proportions of the various populations are exposed to pollution levels higher than a threshold of interest, chosen in relation to the EPA standard and WHO guidelines for PM$_{2.5}$. To estimate such disparities, we first defined an additional PM$_{2.5}$-related variable \(q\) and used it to quantify the level of disparities in exposure to PM$_{2.5}$ concentrations among the different racial/ethnic groups. The variable \(q\) is defined as the percentage of a population exposed to PM$_{2.5}$ levels above a certain threshold, \(T\). We can calculate \(q\) for specific population subgroups. For example, we can compute the percentage of a racial/ethnic group (such as Native Americans) that is exposed to PM$_{2.5}$ levels above \(T = 8\) μg m$^{-3}$.

To measure the degree of disparities across racial/ethnic groups in exposure to PM$_{2.5}$ concentrations above \(T\) for a specific year, we first computed \(q\) for each racial/ethnic group. We then computed the coefficient of variation (CoV), also referred to as the ‘between group’ variance:

\[
CoV = \frac{\sqrt{\text{Var}(q)}}{\mu(q)}
\]

where \(\text{Var}\) is the variance of \(q\), and \(\mu\) is the mean of \(q\). CoV measures the variability of a series of numbers independently of the data magnitude, so it captures the variation in \(q\) among racial/ethnic groups in a given year relative to the mean exposure levels to pollution during that year. The choice of CoV is supported by its multiple attributes, such as its independence of ordered social groups and of an inequality aversion parameter\(^{18}\). It is also easily interpretable and sensitive to large differences from the average.

For example, consider three years, \(Y_1, Y_2,\) and \(Y_3\), where the percentages of five racial/ethnic groups being exposed to PM$_{2.5}$ levels above a threshold \(T\) are, respectively: \(q_1 = (11\%, 13\%, 14\%, 15\%, 17\%); q_2 = (10\%, 12\%, 14\%, 16\%, 18\%); q_3 = (1\%, 1.2\%, 1.4\%, 1.6\%, 1.8\%)\). From \(Y_1\) to \(Y_2\), the coefficient of variation increases from CoV$_1 = 0.160$ to CoV$_2 = 0.226$, which indicates that the variation in exposure to air pollution relative to the mean (and, equivalently, relative disparities among the racial/ethnic groups) increased by a factor of 1.41. On the other hand, although the pollution levels decreased drastically between \(Y_2\) and \(Y_3\), as can be seen by the different orders of magnitude of \(q_2\) and \(q_3\), the coefficient of variation remained unchanged (CoV$_3 = 0.226$), indicating that the relative disparities in exposure to air pollution among the racial/ethnic groups is the same between \(Y_2\) and \(Y_3\). These examples highlight the power of using CoV to capture relative variation in the data, independently of its magnitude. This is very important for our application, because the level of pollution changes considerably over the years. Further, if the exposure across all groups in \(Y_1\) decreases by the same absolute amount, for example to \(q_3 = (0.8\%, 1\%, 1.2\%, 1.4\%, 1.6\%)\) in year \(Y_3\), the coefficient of variation increases from CoV$_3 = 0.226$ to CoV$_4 = 0.264$, indicating an increase in relative disparities relative to the new lower mean. Finally, a state of total equality or absence of disparities would exist when the exposure across all groups is identical; for example \(q_1 = (0.8\%, 0.8\%, 0.8\%, 0.8\%, 0.8\%)\) in year \(Y_3\). Because of the preexisting disparities in year \(Y_3\), targeted pollution-reduction strategies that affect the various groups differently may be required to achieve a state of total equality with no disparities such as \(q_1\) in year \(Y_3\).

The procedure outlined for quantifying disparities through CoV can be applied for any PM$_{2.5}$ threshold \((T)\), and can be repeated for all years to track the evolution of disparities in exposure to air pollution among different racial/ethnic groups. We supplemented the computation of relative disparities with the CoV by using the Atkinson and Gini indices.

Data availability

Data are available in the following GitHub repositories: https://github.com/NSAPH/National-Causal-Analysis/tree/master/Confounders/census and https://github.com/xiaodan-zhou/pm25_and_disparity.
Code availability
Code is available in the following GitHub repository: https://github.com/xiaodan-zhou/pm25_and_disparity.


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Competing interests The authors declare no competing interests.

Additional information
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Extended Data Fig. 1 | Summary PM$_{2.5}$ metrics across racial/ethnic and income groups.  

**a**, The population-weighted average of PM$_{2.5}$ decreased by 40.4% from the year 2000 to 2016.  

**b**, Population-weighted average PM$_{2.5}$ concentration across the different racial/ethnic communities for 2000 to 2016, showing that Black and Native American populations live in the most- and least-polluted areas, respectively.  

**c**, Population-weighted average PM$_{2.5}$ concentration across racial/ethnic communities as a function of ZCTA racial/ethnic population (%) for 2016. For example, when the racial/ethnic population percentage is equal to 0.2, the red curve includes every ZCTA where the Black population is 20% or more, and the blue curve includes every ZCTA where the white population is 20% or more. As a ZCTA’s Black and Hispanic or Latino populations increase, the PM$_{2.5}$ concentration levels increase. The opposite effect is seen for the white and Native American communities.  

**d**, The population-weighted average PM$_{2.5}$ concentration across the income groups reveals that the low-income group has been exposed to only slightly higher PM$_{2.5}$ levels than the high-income groups since 2004.  

**e**, Population-weighted average PM$_{2.5}$ concentrations across the different racial/ethnic communities that are in the low-income group, for 2000–2016.  

**f**, Population-weighted average PM$_{2.5}$ concentrations across the different racial/ethnic communities that are in the high-income group, for 2000–2016. Panels e, f show similar differences in average PM$_{2.5}$ concentrations across the racial/ethnic groups as seen in b.
Extended Data Fig. 2 | Average PM_{2.5} concentrations across the US.

a, Distribution of PM_{2.5} in 2000. b, Distribution of PM_{2.5} in 2016. Supplementary Video 1 shows the change in the distribution of PM_{2.5} concentration levels in the US from 2000 to 2016. Note that Hawaii and Alaska are not shown. Imagery provided courtesy of Esri, HERE, Garmin, FAO, NOAA, USGS, ©OpenStreetMap contributors, and the GIS User Community.
Extended Data Fig. 3 | Average PM$_{2.5}$ concentrations across ZCTAs in which different racial/ethnic groups are overrepresented. **a,** Distribution of PM$_{2.5}$ across five different maps for 2000, each showing the ZCTAs in which one race/ethnicity group is overrepresented. **b,** Distribution of PM$_{2.5}$, across five different maps for 2016, each showing the ZCTAs in which one race/ethnicity group is overrepresented. Supplementary Videos 2, 3 show the change in the distribution of PM$_{2.5}$, concentrations across the five maps from 2000 to 2016. Note that Hawaii and Alaska are not shown. Imagery provided courtesy of Esri, HERE, Garmin, FAO, NOAA, USGS, ©OpenStreetMap contributors, and the GIS User Community.
Extended Data Fig. 4 | Distribution of racial/ethnic populations above a PM$_{2.5}$ threshold of 8 $\mu$g m$^{-3}$ for 2000 and 2016. a, US ZCTAs for each race/ethnicity are ranked on the basis of the ratio of the race/ethnicity population to the total ZCTA population. Dark blue indicates fractions close to 1 (ZCTAs in which the corresponding race/ethnicity most lives), and light yellow indicates fractions close to 0 (ZCTAs in which the corresponding race/ethnicity least lives). b, US ZCTAs with PM$_{2.5}$ concentrations higher than 8 $\mu$g m$^{-3}$ in 2000. c, US ZCTAs with PM$_{2.5}$ concentrations higher than 8 $\mu$g m$^{-3}$ in 2016. Supplementary Videos 5–8 show the distribution of the different racial/ethnic groups across multiple ranges of PM$_{2.5}$ concentrations for 2000 and 2016. Note that Hawaii and Alaska are not shown. Imagery provided courtesy of Esri, HERE, Garmin, FAO, NOAA, USGS, ©OpenStreetMap contributors, and the GIS User Community.
Extended Data Fig. 5 | Supplementary measures of relative disparities in exposure to PM$_{2.5}$ among racial/ethnic groups for 2000–2016. a, The Atkinson index is computed to measure relative disparities among the racial/ethnic groups (Black, white, Asian, Native American and Hispanic or Latino). b, The Gini index is computed to measure relative disparities among the racial/ethnic groups (Black, white, Asian, Native American and Hispanic or Latino). The trends in both indices are similar to that measured by CoV (Fig. 4): racial/ethnic disparities in exposure to air pollution relative to pollution levels at or below the EPA standard are increasing. The Atkinson and Gini indices were computed using the inequality package ‘ineq’ in R software. The input is the proportion of the racial/ethnic (or income) groups living above the set PM$_{2.5}$ threshold. We set the Atkinson aversion parameter, $\varepsilon$, to 0.75 (ref. 7); the sensitivity of the index to different values of $\varepsilon$ is shown in Extended Data Fig. 6.
Extended Data Fig. 6 | Sensitivity of the Atkinson index to the inequality aversion parameter $\varepsilon$.

**a.** Sensitivity of the Atkinson index relative to a PM$_{2.5}$ threshold of 8 $\mu$g m$^{-3}$.

**b.** Sensitivity of the Atkinson index relative to a PM$_{2.5}$ threshold of 10 $\mu$g m$^{-3}$.

**c.** Sensitivity of the Atkinson index relative to a PM$_{2.5}$ threshold of 12 $\mu$g m$^{-3}$. A consistent trend is shown across the parameter values.
Extended Data Fig. 7 | Replication of the main findings across urban and rural areas. A ZCTA’s population density is used as a metric to control for urbanicity in our study. We classify urban and rural areas on the basis of the percentage of the urban population in each ZCTA: such percentages are available from the US Census Bureau for 2010. ZCTAs with an urban population of more than 50% are classified as urban, whereas those with an urban population of less than 50% are classified as rural. For nationwide, urban and rural US, we reproduce our main results: namely, the average PM$_{2.5}$ concentrations for the total population (a–c), for racial/ethnic groups (d–f), and for income groups (g–i), as well as disparities among racial/ethnic groups (j–l). Similarities in the results across the national, urban and rural US are apparent and findings are consistent regardless of the urbanicity of ZCTAs. Note that in the case of the rural US, we only compute disparities (l) for the years in which the proportion of the population exposed to PM$_{2.5}$ concentrations above the thresholds of interest is non-zero. For example, the proportion of the population in the rural US that is exposed to PM$_{2.5}$ concentrations above $T = 12$ μg m$^{-3}$ reaches near-zero levels in 2009, and hence disparities after this year are not computed.
Extended Data Fig. 8 | Sensitivity of our main findings to estimates of PM$_{2.5}$.

We replicated our analysis using an independent pollution data set$^{43,44}$, and we show here the sensitivity of our findings to the new PM$_{2.5}$ estimates. 

a, Replication of Extended Data Fig. 1b using the alternative data set. 
b, Replication of Extended Data Fig. 1d using the alternative data set. 
c, Replication of Fig. 4 using the alternative data set. Our main findings are robust and consistent across the two data sets. (Minor differences resulting from the different pollution estimates can be spotted, as expected.).
Attachment 7
Disparities in air pollution exposure in the United States by race-ethnicity and income, 1990 – 2010

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Abstract

Background: Few studies have investigated air pollution exposure disparities by race-ethnicity and income across criteria air pollutants, locations, or time.

Objectives: To quantify exposure disparities by race-ethnicity and income, throughout the contiguous US, for six criteria air pollutants, during 1990 to 2010.

Methods: We quantified exposure disparities among racial-ethnic groups (non-Hispanic White, non-Hispanic Black, Hispanic (any race), non-Hispanic Asian) and by income for multiple spatial units (contiguous US, states, urban vs. rural areas) and years (1990, 2000, 2010) for carbon monoxide [CO], nitrogen dioxide [NO₂], ozone [O₃], particulate matter [PM₂.₅ excluding year-1990; PM₁₀], and sulfur dioxide [SO₂]. We used census data for demographic information and a national empirical model for ambient air pollution levels.

Results: For all years and pollutants, the racial-ethnic group with the highest national average exposure was a racial-ethnic minority group. In 2010, the disparity between the racial-ethnic group with the highest versus lowest national-average exposure was largest for NO₂ (54% [4.6 ppb]), smallest for O₃ (3.6% [1.6 ppb]), and intermediate for the remaining pollutants (13%-19%). The disparities varied by US state; for example, for PM₂.₅ in 2010, exposures were at least 5% higher-than-average in 63% of states for non-Hispanic Black populations, in 33% and 26% of states for Hispanic and for non-Hispanic Asian populations, respectively, and in no states for non-Hispanic White populations. Absolute exposure disparities were larger among racial-ethnic groups than among income categories (range among pollutants: between 1.1 and 21 times larger). Over the period studied, national absolute racial-ethnic exposure disparities declined by between 35% (0.66 μg m⁻³; PM₂.₅) and 88% (0.35 ppm; CO); relative disparities declined to between 0.99× (PM₂.₅; i.e., nearly zero change) and 0.71× (CO; i.e., a ~29% reduction).

Discussion: As air pollution concentrations declined during 1990 to 2010, absolute (and to a lesser extent, relative) racial-ethnic exposure disparities also declined. However, in 2010, racial-ethnic exposure disparities remained across income levels, in urban and rural areas, and in all states, for multiple pollutants.
Introduction

Air pollution is associated with ~100,000 annual premature deaths in the United States (US) in 2017 (Stanaway et al. 2018) and has been linked to cardiovascular disease, respiratory disease, cancers, adverse birth outcomes, cognitive decline, and other health impacts (Cohen et al. 2017; Darrow et al. 2019; Lelieveld et al. 2015; Paul et al. 2019; Pope et al. 2009; Rivas et al. 2019; Stieb et al. 2012; Underwood 2017). Air pollution, and its associated health impacts, is not equitably distributed by race-ethnicity or income. Previous research has documented higher-than-average air pollution exposures for racial-ethnic minority populations and lower-income populations in the US (Brulle and Pellow 2006; Evans and Kantrowitz 2002; Mohai et al. 2009), leading to disparities in attributable health impacts (Bowe et al. 2019; Fann et al. 2019; Gee and Payne-Sturges 2004). Most investigations of disparities in air pollution exposure involve a single pollutant, location, and/or time-point (see, e.g., literature reviews by Hajat et al. (2015) and Marshall et al. (2014 – see Table S2)). Evidence from broader investigations suggests that exposure disparities by race-ethnicity and/or income can vary by pollutant (Rosofsky et al. 2018), location (e.g., by state (Bullock et al. 2018; Salazar et al. 2019), urbanicity (Mikati et al. 2018), metropolitan area (Zwickl et al. 2014; Downey et al. 2008)), and time-point (Ard 2015; Clark et al. 2017; Kravitiz-Wirtz et al. 2016; Colmer et al. 2020). However, to our knowledge, broad patterns in exposure disparities have not yet been investigated, using consistent methods, across pollutants, locations, and time-points, for the contiguous US population.

The objective of our research was to comprehensively and consistently investigate disparities in exposure to Environmental Protection Agency (EPA) criteria air pollutants for the two decades following the 1990 Clean Air Act Amendments in the US. Specifically, we investigated the following questions regarding disparities in exposure to six criteria air pollutants: (1) How do exposures vary by race-ethnicity and income? (2) How do racial-ethnic exposure disparities vary by pollutant? (3) How do racial-ethnic exposure disparities vary by location (state, urban vs. rural areas)? (4) How have racial-ethnic exposure disparities changed over time? To address these questions, we combined demographic data from the US Census (Manson et al. 2019) with predictions of outdoor average levels of six criteria air pollutants from a publicly-available national empirical model derived from satellite, measurement and other types of data (Kim et al. 2020) at the spatial scale of census block groups and census tracts spatial scales. We then analyzed the spatial scale in exposure to six criteria air pollutants (all criteria air pollutants except lead [Pb]; i.e., carbon monoxide [CO], nitrogen dioxide [NO2], ozone [O3], fine and respirable suspended particulate matter [PM2.5, PM10], and sulfur dioxide [SO2]) by race-ethnicity (four racial-ethnic groups: non-Hispanic White, non-Hispanic Black, Hispanic (any race), non-Hispanic Asian) and income (16 household income categories) across time-points (decennial census years: 1990, 2000, and 2010) and spatial units (contiguous US, state, urban vs. rural areas).

Methods

Demographic and Air Pollution Datasets

We obtained demographic data (i.e., population estimates by race-ethnicity, household income, and household income disaggregated by race-ethnicity) and map boundaries (e.g., states, census tracts, and census block groups) for the contiguous US from the 1990, 2000, and 2010 decennial census from the IPUMS National Historic Geographic Information System (NHGIS) (Manson et al. 2019).
NHGIS provides, for each census block group, and for 1990, 2000, and 2010 (standardized to 2010 spatial boundaries), population estimates for six census self-reported racial groups: (i) White alone, (ii) Black or African American alone, (iii) American Indian and Alaska Native alone, (iv) Asian and Pacific Islander alone, (v) some other race alone, and (vi) two or more races. NHGIS reports population estimates for two census self-reported ethnic groups: (i) Hispanic or Latino and (ii) not Hispanic or Latino. Thus, there are a total of 12 combined racial-ethnic groups in NHGIS (six racial groups, two ethnic groups). Our main analyses of racial-ethnic exposure disparities included the four largest racial-ethnic groups, which in total covered 307 million people (97.2% of the population) in the contiguous US in 2010: (i) not Hispanic or Latino, White alone (64% of the population; hereafter, “non-Hispanic White”), (ii) Hispanic or Latino of any race(s) (16%; hereafter, “Hispanic”), (iii) not Hispanic or Latino, Black or African American alone (12%; hereafter, “non-Hispanic Black”), and (iv) not Hispanic or Latino, Asian and Pacific Islander alone (4.6%; hereafter, “non-Hispanic Asian”).

For analyses by income in 2010, we used 2010 NHGIS household income estimates. For each block group, NHGIS reports the number of households in 16 annual household income categories (total covered in 2010: 114 million households): <10k, 10k–15k, 15k–20k, 20k–25k, 25k–30k, 30k–35k, 35k–40k, 40k–45k, 45k–50k, 50k–60k, 60k–75k, 75k–100k, 100k–125k, 125k–150k, 150k–200k, and >200k (2010 inflation-adjusted US dollars).

For analyses by income disaggregated by race-ethnicity in 2010, data from the 2010 NHGIS were available at the census tract level. For each census tract, NHGIS reports household data for eight pre-defined race and/or ethnicity categories within each of the 16 census income groups, including one category based on both race and ethnicity (non-Hispanic White), one based on ethnicity regardless of race (Hispanic or Latino), and six based on race regardless of ethnicity (Black or African American alone, American Indian and Alaska Native alone, Asian alone, Native Hawaiian or Other Pacific Islander alone, some other race alone, and two or more races). To best match demographic variables used in race-ethnicity analysis at the census block group level, we reported results for four largest race-ethnicity groups (total covered in 2010: 113 million census householders, 98.5% of householders with data on income by race-ethnicity): not Hispanic or Latino, White alone (71% of householders; hereafter, “non-Hispanic White”), Hispanic or Latino (12%; hereafter, “Hispanic”), Black or African American alone (12%; hereafter, “Black”), and Asian alone (3.8%; hereafter, “Asian”). Thus, for the data used for the household income by race-ethnicity analysis (but not for other analyses), Black and Asian categories included both Hispanic and non-Hispanic individuals; for these analyses (but not others), Hispanic Black populations (~0.40% of the population) would be included in results for Hispanic and for Black populations, and Hispanic Asian populations (~0.08%) would be included in results for Hispanic and for Asian populations. Additionally, for the data used for the household income by race-ethnicity analysis (but not for other analyses), the Asian category does not also include Pacific Islander populations.

The US Census Bureau defined census blocks as “urban” or “rural”, based on population density and other characteristics (Ratcliffe et al. 2016). We used 2010 census urban/rural block definitions to define a 2010 census block group for all three years (1990, 2000, and 2010) as rural if all blocks inside it were rural, and we defined the remaining block groups as urban (i.e. each census block groups and rural/urban designations were the same in 1990, 2000, and 2010). Average estimates of ambient air pollution levels for US EPA criteria pollutants were obtained from Center for Air, Climate, and Energy Solutions (CACES) empirical models for the contiguous US (www.caces.us/data). These models incorporate satellite-derived estimates of air...
pollution, satellite-derived land cover data, land use data, EPA monitoring station data, and universal Kriging (Kim et al. 2020); estimated pollution levels were available by census block at block centroids based on 2010 census boundaries for years from 1990 to 2010 for all pollutants except PM$_{2.5}$ (for which monitoring data and exposure models were only available starting in 1999). Estimated levels of O$_3$ from the CACES empirical model are 5-month summer averages (specifically, the average during May through September of the daily maximum 8-hour moving average level); for remaining pollutants, estimated levels are annual averages. CACES model performance during the years studied here (2000, 2010 for PM$_{2.5}$; 1990, 2000, 2010 for the other pollutants), as measured by cross-validated $R^2$, was 0.84–0.89 for NO$_2$, 0.85 for PM$_{2.5}$, 0.62–0.82 for O$_3$, 0.56–0.62 for PM$_{10}$, 0.32–0.66 for SO$_2$, and 0.34–0.57 for CO (Kim et al. 2020). Mean error (ME) across the census years studied was between -0.02 and 0 ppm for CO, -0.04 to 0 ppb for O$_3$, -0.09 to -0.06 ppb for NO$_2$, -0.17 to -0.13 ppb for SO$_2$, -0.31 to -0.26 $\mu$g m$^{-3}$ for PM$_{10}$, and -0.05 to -0.02 $\mu$g m$^{-3}$ for PM$_{2.5}$. Mean bias (MB) was 13% - 22% for SO$_2$, and <10% for the other pollutants (Table S1); further details about the models and model-performance are in Kim et al. (2020) and Liu (2021).

### Combining Demographic and Air Pollution Data

We matched the CACES empirical model results and the Census demographic data using the 2010 census spatial boundary definitions (from finest to coarsest spatial resolution: block, block group and tract boundaries) for the three census years (1990, 2000, 2010). We matched census block–level CACES model predictions for criteria air pollutants (blocks in 2010 in the contiguous US: $n \approx$ 7 million; average: ~44 residents per block) to census block group–level demographic data (block groups: $n \approx$ 220,000; ~1400 residents per block group) by calculating population-weighted mean air pollution levels for all census block centroids in that census block group using census block population data. Similarly, to match census tract-level demographic data (tracts: $n \approx$ 74,000; ~4200 residents per tract), we calculated the population-weighted mean air pollution levels for all census block groups located within that tract.

### Estimating Exposures to Pollutants

We estimated annual pollutant-specific exposures for 1990 (excluding PM$_{2.5}$), 2000, and 2010 based on population-weighted mean predicted ambient air pollution levels for each demographic group (race-ethnicity, income, and income by race-ethnicity; results for additional groups [income poverty ratio, age, language, mobility, travel time] are described in the Supplemental Material [SM]). The data for the five additional groups (income poverty ratio, age, language, mobility, travel time) were extracted from NHGIS (i.e., we are directly employing values calculated by NHGIS; the values employed do not reflect our own data or calculations) (Manson et al. 2019). For all five additional groups, the rationale for including them is to explore whether exposures vary univariately for that demographic attribute. For all five additional groups, the categories used follow NHGIS categories and/or natural breaks in the data (e.g., for a ratio, separating values at, e.g., one-half, one, 1.5, two; for age, separating young children as 4 years or below, other children [who, typically, attend K12 education] as 5-17 years, adults as 18-64 years, and older adults as 65+ [reflecting an assumed retirement age]). Income poverty ratio is defined by the U.S Census as the ratio of income to poverty level in the past 12 months (Manson et al. 2019). The poverty level varies by number of people in the family and their ages; poverty level does not vary geographically (i.e., the same threshold is used throughout the US) (US Census Bureau 2021). In results shown in the SM for income poverty ratio, we bin this ratio into five
categories: <0.5, 0.5-1, 1-1.5, 1.5-2, >2. The motivation for this analysis is to investigate income relative to the Census-defined poverty level. Age is binned into four categories: <5 years old, 5-17 years old, 18-64 years old, 65+ years old. Language refers to language(s) spoken at home. For households in which language(s) other than English are spoken, the Census subdivides household counts into (1) households in which no one 14 and over speaks English only, and (2) households in which one or more people 14 and over speaks English ‘very well’. We bin the NHGIS household language data into nine categories: English only, Spanish language and no English, English and a Spanish language, Asian language and no English, English and an Asian language, European language and no English, English and a European language, other language and no English, English and other language.Mobility refers to geographical mobility in the past year for current residence, based on metropolitan statistical areas (MSA). We bin them into six categories: (1) same house 1 year ago, (2) different house: moved from same metropolitan, (3) different house: moved from different metropolitan, (4) different house: moved from micropolitan, (5) different house: moved from not metropolitan nor micropolitan, and (5) abroad 1 year ago. Travel time refers to travel time to work for workers 16 years and over who did not work at home. We divided the data into seven categories: <10 minutes, 10-20 minutes, 20-30 minutes, 30-40 minutes, 40-60 minutes, 60-90 minutes, >90 minutes. This approach (average ambient air pollution level at residential census block group or tract) is broadly consistent with many examples in research and practice, including EPA monitors (Office of Air Quality Planning and Standards 2008), the National Ambient Air Quality Standards (e.g., Clean Air Scientific Advisory Committee 2010; Independent Particulate Matter Review Panel 2020; US EPA 2019, 2020), many influential epidemiological studies (e.g., Di et al. 2017; Laden et al. 2006; Pope et al. 2009, 2020; Shi et al 2016; Zanobetti and Schwartz 2009), and national empirical models for air pollution in the US (e.g., Bechle et al. 2015; Di et al. 2020; Goldberg et al. 2019; Kim et al. 2020; Novotny et al. 2011; US EPA 2016; Van Donkelaar et al. 2019; Young et al. 2016). We used the finest publicly available census spatial boundary data to estimate exposures for each analysis (income by race-ethnicity: tracts; all other analyses: block groups) based on availability of census demographic data.

The national annual (for O₃, 5-month average; for remaining pollutants, annual-average) exposure ($e_i$) for demographic group $i$ was calculated for a given pollutant and year as:

$$e_i = \frac{\sum_{j=1}^{n} c_j p_{ij}}{\sum_{j=1}^{n} p_{ij}},$$

where $c_j$ is the predicted average ambient pollution level for census block group or census tract $j$ (here and after, we use $c$ to represent ambient pollution level [observed or predicted] and $e$ to represent population-weighted value for $c$), $p_{ij}$ is the population of demographic group $i$ in census block group or census tract $j$, and $n$ is the number of census block groups or census tracts in the analyzed spatial level (the contiguous US, each of the 49 “states” [including the District of Columbia plus the 48 contiguous states], and urban vs. rural areas).

**National Exposure Disparities Analyses**

Our primary exposure disparity metrics are based on absolute and relative differences in population-weighted mean air pollution exposures. We selected metrics based on mean pollution levels for consistency with our focus on broad national average patterns in exposure disparities among multiple pollutants. Absolute disparity metrics are often connect to pollutant-specific health impacts (Harper et al. 2013) (this article focuses on pollution level disparities rather than health outcomes). Relative disparity metrics (e.g., ratios, relative percent differences) are
relevant for quantifying disproportionality in exposure burdens, in a way that can be compared or summarized among different pollutants. An important limitation of these metrics (based on differences in mean exposures) is that they do not include information about disparities across the full exposure distributions (Harper et al. 2013). To address this limitation, we conducted supplemental analyses using inequality metrics accounting for full exposure distributions (Gini Coefficient and between-group Atkinson Index), as described in the SM, as well as sensitivity analyses comparing metrics based on other specific points of the exposure distribution (i.e., comparing specific exposure percentiles) as described below.

We calculated the absolute and relative exposure disparity metrics using two different approaches nationally: (1) by race-ethnicity group and/or income category (i.e., the unit of analysis is a national subpopulation defined by race-ethnicity and/or income), and (2) by local demographic characteristics (i.e., the unit of analysis is a set of census block groups defined based on proportion of racial-ethnic minority residents).

**National Exposure Disparity Metrics Based on Racial-Ethnic Group and/or Income Category**

Our primary absolute disparity metric for quantifying national racial-ethnic exposure disparities is the pollutant-specific absolute difference in population-weighted average pollution level, as calculated using Equation (1) with block group level data, between the racial-ethnic group with the highest national mean exposure (“most-exposed group”) and the racial-ethnic group with the lowest national mean exposure (“least-exposed group”) among the four racial-ethnic groups (non-Hispanic White, non-Hispanic Black, non-Hispanic Asian, Hispanic); here, the unit of analysis is a racial-ethnic group. In addition, we derived the percent difference relative to the model-predicted national mean exposure level for that pollutant \( \frac{\text{population-weighted mean in most exposed} - \text{population-weighted mean in least exposed}}{\text{national mean exposure}} \times 100 \). We also included relative exposure disparity metric as the pollutant-specific exposure ratio (i.e., population-weighted mean in most exposed / population-weighted mean in least exposed). Both the absolute and relative exposure disparity metrics are constructed based on differences between most and least exposed racial-ethnic groups, to provide a measure of overall racial-ethnic disparities that avoids pre-selecting two specific groups for comparison and accounts for exposure disparities across multiple groups, in a consistent way for each pollutant (accounting for potential differences in the most- and least-exposed racial-ethnic groups by pollutant). We also report averages in relative disparities across pollutants as a representation of overall average inequalities in exposure to multiple pollutants; not as a representation of inequalities in health risks, which are pollutant-specific and depend on absolute levels of pollution exposure. Lastly, as a supplemental comparison among pollutants, we also calculated inequality metrics that account for the full exposure distributions: Gini coefficients by race-ethnicity and between-group Atkinson Indices.

To quantify national income-based exposure disparities we calculated the pollutant-specific absolute difference in population-weighted average pollution level, using Equation (1) with block group level data, between the lowest (<$10,000) and the highest (> $200,000) household income categories (of the 16 census categories). Additionally, as a relative disparity metric, we calculated the relative percent difference in mean exposures between the lowest and highest income categories. As a supplementary analysis, we calculated similar absolute and relative exposure disparity metrics between the income category containing the 25th percentile ($20,000-25,000) and the 75th percentile ($75,000-100,000) of the income distribution.
To quantify national exposure disparities by race-ethnicity and income, we first calculated the absolute difference in population-weighted average pollution level between the most- and least-exposed racial-ethnic group (among the four racial-ethnic groups, not mutually exclusive with four racial-ethnic groups in racial-ethnic disparity, as described in Demographic and Air Pollution Datasets (Methods section)) within each of the 16 census income categories, and then averaged that income category-specific racial-ethnic exposure disparity across all 16 income categories, for each pollutant. In the analyses for both race-ethnicity and income, we used census data for householders to calculate exposures for the four racial-ethnic groups using Equation (1) with tract level data. Reflecting publicly available census data for racial-ethnic groups by income category, for this section only, the Black and Asian groups include Hispanic and non-Hispanic individuals, and the Asian group does not include Pacific Islander individuals. As a relative disparity metric, we divided the absolute exposure disparity metric by the national mean pollution level, for each of the pollutants.

National Exposure Disparity Metrics Based on Local Demographic Characteristics (i.e., Block Group Bins by Proportion of Racial-Ethnic Minority Residents)

We also investigated exposure disparities based on racial-ethnic minority resident percentages; here, the unit of analysis is bin of census block groups. Each block group bin was defined as single percentile (i.e., 1%) of all block groups stratified by the proportion of racial-ethnic minority residents. There were approximately 215,000 block groups in 2010, so each block group bin contained approximately 2,150 block groups. To investigate racial-ethnic disparities among block group bins, we rank ordered all census block group bins based on percent of a racial-ethnic minority residents (i.e., people self-reporting any race-ethnicity other than non-Hispanic White alone). For example, the first block group bin was the first percentile, and consisted of all block groups with between 0% and 0.67% racial-ethnic minority residents; the second block group bin was the second percentile, consisting of all block groups with 0.67% – 0.97% racial-ethnic minority residents; the third block group bin consisted of all block groups with 0.97% – 1.2% racial-ethnic minority residents, and so on through all 100 block group bins. The last block group bin consisted of all block groups with 99% – 100% racial-ethnic minority residents. The annual exposure ($e_{ig}$) for demographic group $i$ for the $g^{th}$ percentile census block group bin (i.e., the average exposure across all block groups in the $g^{th}$ percentile for proportion of residents that belong to a racial-ethnic minority group) was calculated for a given pollutant and year as:

$$e_{ig} = \frac{\sum_{j=1}^{n_g} c_j p_{ij}}{\sum_{j=1}^{n_g} p_{ij}},$$

where $c_j$ is the predicted average ambient pollution level for census block group $j$, $p_{ij}$ is the population of demographic group $i$ in census block group $j$, and $n_g$ is the number of census block groups in the $g^{th}$ percentile block group bin. The absolute disparity is calculated as the exposure difference between block groups with the highest- versus lowest- deciles of proportion racial-ethnic minority residents, and, similarly, the relative disparity is calculated as the exposure ratio between block groups with the highest- versus lowest- deciles of proportion racial-ethnic minority residents.

Sensitivity Analysis on Robustness of National Exposure Disparity Estimates

We conducted three sensitivity tests to investigate the robustness of conclusions based on estimated exposure disparities. First, as a sensitivity test for conclusions based on comparisons of
mean values’ rank order for exposures between groups, we calculated disparities using different
metrics of the exposure distribution (10th, 25th, 50th, 75th, 90th percentiles).

The remaining two sensitivity tests investigated whether conclusions here are robust to
uncertainty in exposure model predictions. Specifically, in the second sensitivity test, we
repeated the analysis of national mean exposures by racial-ethnic group, but for only the
population living in a census block group with an EPA monitor in 2010. In this sensitivity test,
we used the monitor observations directly as the exposure level, rather than modeling exposures.
We then calculated Spearman rank-order correlation of relative disparities by pollutant (between
the most- and least-exposed group) between base case and sensitivity test.

In the third sensitivity test, we compared the magnitude of uncertainties in the estimated
racial-ethnic exposure disparities with the magnitude of the estimated racial-ethnic exposure
disparities. To assess the potential impact of model error on racial-ethnic disparities, we first
calculated population-weighted mean error (ME) for each racial-ethnic group, i, using Equation
(3):

\[ ME_i = \frac{\sum_{j=1}^{n_j} (c_{jm} - c_{jo}) p_{ij}}{\sum_{j=1}^{n_j} p_{ij}}, \]  

where \( c_{jm} \) is the predicted average ambient pollution level for census block group \( j \), \( c_{jo} \) is the
measured average ambient pollution level across all reporting EPA monitors within census block
\( j \), \( p_{ij} \) is the population of demographic group \( i \) in block group \( j \), and \( n_j \) is the total number
of census block groups with EPA monitors. For each pollutant, the ME of disparity between two
racial-ethnic groups \( i \) and \( i' \) induced by the model was calculated as the difference between
populated-weighted ME for the most- and least-exposed racial-ethnic groups \( i \) and \( i' \). Calculated
uncertainties are based on comparison with EPA measured pollution level in 2010. We then
derived the ratio between the uncertainty due to exposure model error (i.e., the difference in
population-weighted mean errors between racial-ethnic groups) and the estimated disparity in
mean annual exposures between the most- and least-exposed racial-ethnic groups.

**National Analysis of High-End Exposure Disparities in 2010**

To quantify racial-ethnic disparities at the highest exposure levels, we analyzed the racial-ethnic
composition of census block groups above the 90th percentiles of the average pollution level
among all census block groups. This was done separately for each pollutant. First, for each of the
four largest racial-ethnic groups, we estimated the proportion of that group’s national population
that lived in a high exposure block group; here, our unit of analysis is a racial-ethnic group. This
calculation reflects the proportion of a racial-ethnic group’s total US population that lived in
heavily polluted (above the 90th percentile) block groups. We performed this calculation for each
pollutant and each racial-ethnic group, using Equation (4).

\[ a_i = \frac{\sum_{j=1}^{n_{90}} p_{ij}}{p_{\text{total, national}_i}} \times 100\%. \]  

Where \( a_i \) is the percent of racial-ethnic group \( i \) living in a block group with concentration above
the 90th percentile for that pollutant, \( p_{ij} \) is the population of group \( i \) in census block group \( j \),
\( p_{\text{total, national}_i} \) is the total population for demographic group \( i \) in the United States, and \( n_{90} \) is the
number of census block groups with mean pollutant concentration > 90th percentile.

In the second analysis, which was the converse of the first, we investigated the racial-
ethnic composition of block groups above the 90th percentile for average pollution level. Here,
our unit of analysis is all block groups above the 90th percentile. This calculation reflects the
demographics of only people that lived in heavily polluted block groups. We completed this calculation for each pollutant and each racial-ethnic group using Equation (5).

\[ b_i = \frac{\sum_{j=1}^{90} p_{ij}}{p_{total\ block\ group}} \times 100\% . \]  

Where \( b_i \) is (when considering only the people counted towards \( P_{total\ block\ group} \)) the percent of people who are in demographic group \( i \), and \( p_{total\ block\ group} \) is the total population of census block groups above the 90th percentile in the United States for that pollutant.

In addition, we explored differences in exposures to multiple pollutants by race-ethnicity by using data for 2010 and Equation (3) to estimate the proportion of each major race-ethnicity group’s total US population living in block groups with mean exposure levels above the 90th percentile for 0, 1, 2, 3, and \( \geq 4 \) pollutants, respectively.

**Counterfactual Analysis of Migration**

We investigated whether changes in racial-ethnic exposure disparities over time were mainly attributable to changes in air pollution levels (“air pollution”) or changes in where people lived (abbreviated as “migration”, but also including immigration and other shifts in demographic patterns) as a sensitivity analysis. To do so, we employed two counterfactual scenarios (Clark et al. 2017) during two decades (1990 to 2000; 2000 to 2010). For each scenario and year, we calculated exposures for the four largest racial-ethnic groups for the contiguous US population using Equation (1) based on census block group data. We then calculated the absolute racial-ethnic exposure disparity between the most- and least-exposed racial-ethnic groups (referred to in this section as “disparity”) for all pollutants with available data (i.e., all except PM\(_{2.5}\) in 1990).

To analyze 1990 to 2000, we calculated the change in disparity attributable to air pollution changed from 1990 to 2000 levels, with demographics remained constant at 1990 values (counterfactual scenario A), and used 1990 air pollution levels with demographic data changed from 1990 to 2000 values (counterfactual scenario B). To estimate the separate contribution of changes in air pollution during 1990 to 2000, we divided the disparity-changes from counterfactual scenario A by the “true” calculated disparity-change between 1990 and 2000 (i.e., using 1990 air pollution levels with 1990 demographic data, and using 2000 air pollution levels with 2000 demographic data). Similarly, to estimate the separate contribution of migration during 1990 to 2000, we divided the disparity-changes from counterfactual scenario B by the “true” calculated disparity change between 1990 and 2000. Lastly, we used an analogous approach to analyze the next decade: 2000 to 2010.

**Exposure Disparities Comparison Metrics for States**

We investigated patterns in absolute exposure disparities among the 48 states of the contiguous US plus the District of Columbia (DC) (hereafter, “states” refers to 48 states and DC, a total of 49 geographic units in state-level related calculations) using two metrics for racial-ethnic exposure disparity. First, for each state, pollutant, and race-ethnicity group, we calculated the normalized population-weighted disparity (\( d1_i \)) as the absolute difference in the annual exposure for racial-ethnic group \( i \) in the state (\( e_i \)) and the annual exposure for the state population as a whole (\( e_{state} \)) relative to the annual exposure across the contiguous US (\( e_{national} \)):

\[ d1_i = \frac{e_i - e_{state}}{e_{national}} . \]  

Second, for each state, we used Equation (7) to calculate a normalized population-weighted disparity (\( d2_m \)) between the annual exposure for all non-Hispanic Black, non-Hispanic Asian, and Hispanic people combined (\( e_m \)), and for non-Hispanic White population (\( e_{NHW} \)). This metric
has the advantage of consistently comparing, for each state, exposures between racial-ethnic minority populations and the majority racial-ethnic group population (non-Hispanic White, 64% of the population).

\[
d2_m = \frac{e_m - e_{NHW}}{e_{national}}. \tag{7}
\]

Lastly, for each state, we averaged both metrics across the six pollutants.

Results
National Exposure Disparities by Race-Ethnicity and Income in 2010

By Race-Ethnicity
To investigate national disparities in exposure to criteria air pollution by race-ethnicity, we first compared national population-weighted mean exposures by US census self-reported race-ethnicity in 2010, the most recent decennial census year with available data. We first present results for differences among subpopulations (unit of analysis: racial-ethnic group), then we present differences among locations, depending on the proportion of each racial-ethnic group residents in that location (unit of analysis: census block groups binned by proportion of racial-ethnic minority residents).

Estimated national mean air pollution exposures for 2010 were higher for all three racial-ethnic minority groups than for the non-Hispanic White group for four of the six criteria pollutants (CO, NO₂, PM₂.₅, and PM₁₀) (Table 1, Table S2-S3 and Fig. 1). For all six pollutants, the most-exposed group was a racial-ethnic minority group: for PM₂.₅ and SO₂, national mean exposures were highest for the non-Hispanic Black population; for CO, NO₂, and O₃, the non-Hispanic Asian population; and for PM₁₀, the Hispanic population. For CO, NO₂, PM₂.₅, and PM₁₀, national mean exposures were lowest for non-Hispanic White population; for O₃, Hispanic population; and for SO₂, non-Hispanic Asian population. Disparities between the most- and least-exposed racial-ethnic groups were largest (based on the relative disparity ratio) for NO₂ (absolute disparity: 4.6 ppb (54%), relative disparity [ratio]: 1.6); intermediate for SO₂ (0.29 ppb (19%), 1.2), PM₁₀ (3.0 μg m⁻³ (17%), 1.2), CO (0.044 ppm (16%), 1.1), and PM₂.₅ (1.2 μg m⁻³ (13%), 1.1); and lowest for O₃ (1.6 ppb (3.6%), 1.0) (Table S4). Across the five pollutants, normalized disparities were also largest for NO₂ and smallest for O₃ for all the additional demographic groups considered (income poverty ratio, age, language, mobility, and travel time) (Table S5). Disparities that stand out as comparatively larger are income poverty ratio (NO₂), mobility (NO₂, CO), and travel time (NO₂) (see Fig. S1, Table S5).

Sensitivity test on robustness of conclusions based on mean values showed that, for all pollutants, the rank-order (i.e., most- to least-exposed racial-ethnic group, among the four racial-ethnic groups) was consistent throughout the exposure distributions (Fig. 1). Results for the supplemental inequality metrics (Gini coefficient; between-group Atkinson Index) indicate that exposure inequality was largest for NO₂ and smallest for O₃ (Table S6 and S7). This finding is consistent with the findings based on our primary metrics. The remaining two sensitivity tests investigated whether conclusions here are robust to uncertainty in exposure model predictions. Results reveal that the conclusions are robust to exposure model uncertainty. Results for analyzing only the population living in a census block group with an EPA monitor in 2010 were essentially the same as results using exposure model predictions: the non-Hispanic White group was the least-exposed group on average for most pollutants (CO, NO₂, PM₂.₅, PM₁₀, and O₃), and the relative disparities by pollutant (between the most- and least-exposed group on average) were highly-correlated (Spearman rank-order correlation between base case and sensitivity test:
0.89) (Table S8 and S9). The ratio between the uncertainties in estimated racial-ethnic exposure disparities and the estimated racial-ethnic disparities between the most- and least-exposed racial-ethnic groups were small: on average across the six pollutants, 0.0073 (if using absolute values of the ratio, 0.083). The largest absolute ratio was -0.17 [O$_3$]. That result indicated that the uncertainty in the exposure model predictions was always small compared to the predicted racial-ethnic exposure disparities (Table S10 and S11).

We also performed an analysis to determine whether average air pollution levels varied based on the racial-ethnic composition of a given census block group. For CO, NO$_2$, PM$_{2.5}$, and PM$_{10}$, average pollution levels were higher in census block groups with higher proportions of racial-ethnic minority residents (Fig. 2). For O$_3$, estimated average levels were approximately equal across census block group bins, regardless of census block group racial-ethnic characteristics (Fig. 2). For SO$_2$, estimated average levels were generally higher in census block group bins with the highest and lowest proportions of racial-ethnic minority residents (i.e., higher in more racially segregated census block groups) (Fig. 2). This approach also reveals that the disparities were much larger for NO$_2$ than for other pollutants. The disparity in average air pollution levels between block groups with the highest- versus lowest- deciles of proportion racial-ethnic minority residents (block groups with $>88\%$ vs. $<4\%$ racial-ethnic minority residents) was larger for NO$_2$ (absolute disparity: 9.4 ppb, relative disparity [ratio]: 3.1) than for other pollutants (relative disparity [ratio] range: 0.8 – 1.4, median: 1.1) (Table S12).

Lastly, we investigated racial-ethnic disparities in exposure to the highest air pollution levels. First, for each racial-ethnic group we calculated the proportion of people nationally who lived in a block group with air pollution levels above the 90th percentile for each pollutant. Averaged across all pollutants, the proportion of people nationally who lived in those highest-exposure block groups was: 9.6% for the overall population, 17% for the Hispanic population, 15% for the non-Hispanic Asian population, 12% for the non-Hispanic Black population, and 7.2% for the non-Hispanic White population. Racial-ethnic minority populations were more likely than non-Hispanic White populations to live in a census block group with air pollution levels above the 90th percentile for all pollutants (range: 1.0x to 4.1x, median: 2.1x) except SO$_2$ (0.88x) (Fig. S2 and Table S13). Next, we calculated the racial-ethnic composition of the block groups with air pollution levels above the 90th percentile for each pollutant. Non-Hispanic White populations decomposed less proportion above the 90th percentile block groups than that of national for all pollutants besides SO$_2$ (Fig. S3 and Table S14). Racial-ethnic minority populations were also disproportionately likely to live in a census block group having multiple pollutants with levels above the 90th percentile. For example, the proportion of population living in a census block group with levels above the 90th percentile for four or more criteria pollutants was 5.2% for the Hispanic population (3.6× the national population average proportion), 2.2% for the non-Hispanic Asian population (1.5× the average), 1.9% for the non-Hispanic Black population (1.3× the average), and 0.36% for the non-Hispanic White population (0.25× the average) (for comparison: 1.4% for the overall US population) (Table S14). The ratio of the non-Hispanic White population relative to the national population average in each block group category declined monotonically as the number of pollutants above the 90th percentile increased from 0 to ≥4 (ratios from 1.1 to 0.25), while corresponding ratios increased monotonically for non-Hispanic Black (from 0.88 to 1.3) and Hispanic populations (from 0.84 to 3.6), and increased non-monotonically for non-Hispanic Asian populations (from 0.88 for 0 pollutants to 2.3 and 1.5 for 3 and ≥4 pollutants >90th percentile, respectively.) (Fig. S4 and Table S15).
By Income

To investigate national exposure disparities by income, we first compared national mean exposures to criteria air pollution by census income category in 2010. For all pollutants except O₃, national mean exposures were higher for lowest-income (<$10,000; 7.2% of the households with income data) than for highest-income (>-$200,000; 4.2%) households, with all pollutants except NO₂ (and, to a lesser extent, CO and O₃) exhibiting a monotonic trend (Fig. S5).

(Consistent with those findings, we also find that for the remaining three pollutants [SO₂, PM₂.₅, PM₁₀], but not for O₃, NO₂, and CO, the most-exposed income category is the lowest-income category and the least-exposed income category is the highest-income category; see Table S16.) Relative to the overall population-weighted mean exposure for all households in 2010, the absolute difference between mean exposures among those in the lowest versus highest-income category households were 16% (relative to national mean exposure) higher for SO₂, 6.6% higher for PM₂.₅, and 5.2% higher for PM₁₀. For NO₂, CO, and O₃, exposures for lowest- and highest-income households were similar (~±2%) (Table S17). (For comparison, for NO₂, CO, O₃, exposure differences between the most- and least-exposed income categories were 2.5% to 9.4%; see Table S16.)

Based on differences in average exposures between the approximate 25th and 75th percentiles for income ($20,000-25,000 [midpoint: $22,500] and $75,000-100,000 [midpoint: $87,500]), a $10,000 increase in income was associated with an average reduction in concentration (expressed as a percent of the national mean concentration) of 0.90% for SO₂, 0.41% for PM₂.₅, 0.36% for NO₂, and 0.22% for PM₁₀ and CO, and an increase of 0.16% for O₃. For NO₂, the change in average exposure per $10,000 increase in income was 0.59% between the 25th and 50th ($40,000-45,000 [midpoint: $42,500]) percentiles, and 0.26% between the 50th and 75th percentile (Table S18).

By Both Race-Ethnicity and Income

In this section, we present exposure disparities accounting for both race-ethnicity and income together for census households (hereafter, “households”). For all six pollutants, the absolute exposure disparity between the most- and least-exposed racial-ethnic groups was larger (on average, ~6× larger; 1.1× for SO₂, 21× for NO₂, 1.4×-6.8× for the remaining pollutants) than the absolute exposure disparity between the lowest- and highest-income categories in 2010 (relative disparity: on average, ~1.2× larger). The absolute exposure disparity between the most- and least-exposed racial-ethnic groups is 5.8× for NO₂ (1.1× for SO₂, and 1.4×-4.4× for remaining pollutants) than the absolute exposure disparity between the most- and least-exposed income categories (Table S19). For all income levels and pollutants, the most-exposed racial-ethnic group was a racial-ethnic minority group (Fig. 3 and Table S20). For five of the six pollutants (not SO₂; Fig. 3), average exposures were higher on average for Black households at the approximate 75th percentile for income (income category midpoint: $87,500) than for non-Hispanic White households at the approximate 25th percentile for income (midpoint: $22,500).

Racial-ethnic exposure disparities tended to be comparatively smaller at higher incomes than at lower incomes (except for O₃), but the size of that effect was modest. For example, the absolute exposure disparity between the most- and least-exposed racial-ethnic groups (Fig. 3) was, on average, 9.5% lower for households at the approximate 75th percentile than at the approximate 25th percentile of income.

Income distributions varied by racial-ethnic group. For example, non-Hispanic White households represented 61% of the lowest income category (<$10,000) and 85% of the highest
income category (>\$200,000), versus 23% and 3.5%, respectively, for Black households, 13% and 4.3% for Hispanic households, and 3.5% and 6.9% for Asian households (Table S21). To quantify racial-ethnic exposure disparities after accounting for racial-ethnic income distribution variation, we calculated the absolute exposure disparity between the most- and least-exposed racial-ethnic groups within each income category in 2010 and then averaged across all 16 income categories. The resulting national absolute exposure disparity between most- and least-exposed racial-ethnic groups averaged across income categories and normalized to national mean exposure (i.e., expressed as a percent of the national mean concentration) was 58% for \( \text{NO}_2 \), 4.5% for \( \text{O}_3 \), 12% to 17% for the remaining pollutants. Conversely, to quantify income exposure disparities after accounting for race-ethnicity, we calculated the absolute income disparity within each racial-ethnic group and averaged across the four racial-ethnic groups. The resulting national absolute exposure disparity between lowest and highest income categories normalized to national mean exposure was 15% for \( \text{SO}_2 \), -2.9% for \( \text{O}_3 \), and 2.7% to 6.3% for the remaining pollutants (Table S22). In conclusion, the results given here, consistent with Liu (2021), indicate that racial-ethnic exposure disparities were distinct from, and larger than, exposure disparities by income.

**Racial-ethnic Exposure Disparities by State and by Urbanicity in 2010**

**By State**

We explored how exposures varied by state, pollutant, and racial-ethnic group in 2010 (Fig. 4). The analysis separately considers the District of Columbia (DC) plus the 48 states of the contiguous US (hereafter, “states” refers to 48 states and DC, a total of 49 geographic units in state-level related calculations). There are 294 pollutant-state combinations (6 pollutants \( \times \) 49 units and 1176 pollutant-state-groups (294 pollutant-states \( \times \) 4 racial-ethnic groups). For this section, we define ±5% (all percentages used in this section were expressed as a percent of the national mean exposure in 2010) as “similar to”, and therefore report examples where exposures differ from the average by >5% (or, in a sensitivity test, >20%). For example, “>5% lower-than-average” means the exposure is lower-than-state average by an amount greater than 5% of the pollutant’s national mean.

Overall, several spatial patterns emerge across states. First, racial-ethnic exposure disparities were ubiquitous among US states. In all 48 states and DC, one or more racial-ethnic groups experienced exposures >5% of the state average exposure in 2010. Second, racial-ethnic minority populations within states were much more likely to have been more-exposed versus less-exposed than the state average; in contrast, none of the non-Hispanic White populations within states experienced exposures >5% above the state average. Third, having exposures >5% lower-than-average within a state was much more likely to happen for non-Hispanic White populations than for racial-ethnic minority (non-Hispanic Black, non-Hispanic Asian, and Hispanic populations combined) populations (Fig. 4, right column). Fourth, racial-ethnic exposure disparities were most pronounced (in magnitude and with regard to the number of states affected) for \( \text{NO}_2 \), while mean \( \text{O}_3 \) exposures were similar among all racial-ethnic groups in all states.

Those findings reflect underlying trends across states, pollutants, and racial-ethnic groups. For example, for the non-Hispanic White group, 87% of the 294 pollutant-states had exposures that were similar (±5%) to the average, 13% had exposures >5% less than average, and none were >5% greater than average. In contrast, for exposures for the three racial-ethnic minority groups, 42% (of 882 pollutant-state-groups) were >5% greater than average, 55% were
±5% of the average, and only 4% were >5% less than average. Thus, within individual states, the non-Hispanic White group was exposed to pollution levels that were similar to or cleaner than average, whereas the three racial-ethnic minority groups were more likely to be exposed to dirtier rather than cleaner pollution levels. For example, averaged across pollutants, the proportion of the states for which exposures were >5% greater than average is 73% for non-Hispanic Black populations, 57% for Hispanic populations, 35% for non-Hispanic Asian populations, and zero for non-Hispanic White populations.

The three racial-ethnic minority groups were disproportionately likely to be the most-exposed group, and disproportionately unlikely to be the least-exposed group of the four racial-ethnic groups across states. For example, the most-exposed group (for all cases, not just cases >5% greater than average) was the non-Hispanic Black group for 45% of the 294 pollutant-areas, the Hispanic group for 29%, the non-Hispanic Asian group for 18%, and non-Hispanic White group for 7.5%. In contrast, the least-exposed group was rarely a racial-ethnic minority group (~8% of all 294 pollutant-states for the non-Hispanic Black and for Hispanic group, 15% for the non-Hispanic Asian group) and was usually (70% of 294 pollutant-states) the non-Hispanic White group.

Changed the analysis threshold to exposures >20% greater than average (rather than 5%) and found that the air pollution disproportionately impacted racial-ethnic minority groups. For example, exposure disparities >20% of national mean exposure for one or more pollutant-groups occurred for 67% of states (Fig. 4, left four columns for six pollutants), further emphasizing that disparities were widespread across states in 2010.

Fig. 4 reveals differences among states. For example, the four most populous states (California, Florida, New York, Texas), all have large, racially/ethnically diverse urban areas. However, average disparities between racial-ethnic minority populations and non-Hispanic White populations (Fig. 4 bottom right) were notably larger (on average, 6x larger) for California and New York than for Florida and Texas (Excel Table S1). Some small, relatively rural states also had substantial exposure disparities. Examples include NO₂ in Nebraska (19%) and PM_{2.5} in Nebraska (8.1%).

By Urbanicity
We investigated racial-ethnic and income-based exposure disparities in 2010 separately for block groups that were defined as urban (89% of the population) versus rural (11% of the population). Overall, urban population experienced larger exposure than that of rural population for all pollutants (Table S23).

The most- and least-exposed of the four racial-ethnic groups differed between urban and rural areas for SO₂ and for O₃. For SO₂, the most-exposed racial-ethnic group was the non-Hispanic Black group in urban areas and the non-Hispanic White group in rural areas. For O₃, the most-exposed racial-ethnic group was the non-Hispanic Asian group in urban areas and non-Hispanic White group in rural areas. For the remaining four pollutants, the most-exposed group was a racial-ethnic minority group in both urban and rural areas (Table S24).

The racial-ethnic exposure disparities were generally larger for urban than for rural block groups. Specifically, the average exposure disparity between the most- and least-exposed racial-ethnic group was 5.5× larger for absolute disparity (1.2× for relative disparity [ratio between relative disparity in urban areas and relative disparity in rural areas]) for urban block groups than for rural block groups for NO₂, 3.1× (1.0×) larger for O₃, 2.4× (1.1×) larger for CO, 1.3× (1.0×) larger for SO₂, and 1.2× (1.0×) larger for PM_{10}. In contrast, for PM_{2.5}, the average racial-ethnic
exposure disparity was 1.2× (1.0×) larger for rural block groups than for urban block groups (Table S24).

Exposure disparities by income category were also larger in urban than in rural areas. Absolute exposure disparities between lowest and highest income category were 1.1× [PM$_{2.5}$] to 25× [O$_3$] (median: 3.5×) greater (for relative disparity [ratio], range: 0.98× to 1.1×, median: 1.0×) in urban than in rural areas (Table S25). Of the 12 pollutant-urbanicity categories (6 pollutants × 2 urbanicities), exposures were higher for the lowest-income category than for the highest-income category in all cases except for O$_3$ in urban areas and for NO$_2$ in rural areas (Table S25).

**Changes in National Exposures and Exposure Disparities from 1990 – 2010**

Criteria air pollution levels have declined in the US in the decades following the 1990 Clean Air Act amendments (US EPA 2020) (Table S26). To investigate if these reductions have led to reductions in racial-ethnic exposure disparities, we compared average exposures by racial-ethnic group from 1990 to 2010, for five of the pollutants. Exposure model results for PM$_{2.5}$ were only available from 2000 to 2010, so those results are presented separately.

National mean pollution levels of all six pollutants fell over the study period. For example, from 1990 to 2010, the national mean exposures decreased for all five pollutants by an average of 40% relative to national mean exposures in 1990 (range: -6% [O$_3$] to -71% [SO$_2$]; -34% to -55% for remaining three pollutants). PM$_{2.5}$ exposures decreased 29% from 2000 to 2010 (Table S27).

The average racial-ethnic exposure disparities also declined from 1990 – 2010. The amount of change depends in part on whether one considers absolute or relative disparities. In terms of absolute disparities, the disparities between the most- and least-exposed racial-ethnic groups decreased on average by 69% relative to absolute disparity in 1990 across the five pollutants. The largest change was an 88% decrease for CO disparities (0.40 ppm in 1990, 0.044 ppm in 2010, a 0.35 ppm [i.e., 88%] change) and the smallest change was a 54% decrease for NO$_2$ (9.8 ppb [1990], 4.6 ppb [2010], a 5.3 ppb [54%] change). From 2000 to 2010, PM$_{2.5}$ disparities decreased by 35% (1.9 μg m$^{-3}$ [2000], 1.2 μg m$^{-3}$ [2010], a 0.66 μg m$^{-3}$ change) (Table S28).

In terms of relative disparities, the greatest change during 1990 – 2010 was a decrease for CO (disparities: 1.63 [1990], 1.15 [2010], 0.71× [i.e., 29% reduction]) and the smallest was a decrease for O$_3$ (1.10 [1990], 1.04 [2010], 0.95× [i.e., 5% reduction]); remaining three pollutants (NO$_2$, PM$_{10}$, SO$_2$) were between 0.94× and 0.95× (i.e., 5%–6% reduction in relative disparity). PM$_{2.5}$ relative disparity remained nearly constant (0.99×) during 2000 to 2010 (Table S28).

Absolute disparities between census block group bins with the highest versus lowest deciles of proportions of racial-ethnic minority residents (90th - 100th versus 1st - 10th percentiles in Fig. 2) decreased for CO, NO$_2$, PM$_{10}$, and SO$_2$ (by 10%[SO$_2$] to 164%[CO]) and decreased by 17% from 2000 to 2010 for PM$_{2.5}$ (Table S29). For O$_3$, absolute disparities increased slightly, from -1.7 ppb in 1990 to -1.3 ppb (which is 0.74% of the national mean exposure) in 2010.

In addition to national changes, we investigated changes in absolute racial-ethnic exposure disparities from 1990 to 2010 by state and by urban versus rural areas. Most states (>75%) experienced a reduction in racial-ethnic exposure disparities for pollutants except for PM$_{10}$ (and, except for PM$_{2.5}$ during 2000-2010) (Fig. S6, Table S30). Urban areas experienced larger reductions in racial-ethnic exposure disparities than did rural areas for NO$_2$ and PM$_{10}$ (13× larger reductions in urban areas, for both pollutants), CO (2.4×), and SO$_2$ (1.2×). Conversely,
PM$_{2.5}$ (during 2000-2010) and O$_3$ (during 1990-2010) had larger reductions in absolute racial-ethnic disparities for rural than for urban (2.4× and 3.4× larger in rural areas, respectively) (Fig. S7, Table S31).

Finally, we investigated whether the changes in absolute racial-ethnic exposure disparities from 1990 to 2010 were more attributable to changes in air pollution levels or to changes in demographic patterns (migration, immigration, and other factors). Based on a counterfactual analysis, reductions in racial-ethnic exposure disparities between the most- and least-exposed racial-ethnic groups were mainly attributable to changes in air pollution levels rather than to changes in demographic patterns. On average across all pollutants, 87% of the reduction in the absolute racial-ethnic disparity metric was attributable to changes in air pollution levels from 1990 to 2000 (excluding PM$_{2.5}$ based on lack of available data), and 97% from 2000 to 2010 (Table S32 and S33).

Discussion

Our research provides the first national investigation of air pollution exposure disparities by income and race-ethnicity for all criteria pollutants (except lead). Our results reveal trends by pollutant and across time and space.

In 2010, on average nationally, racial-ethnic minority populations were exposed to higher average levels of transportation-related air pollution (CO, NO$_2$) and particulate matter (PM$_{2.5}$, PM$_{10}$) than non-Hispanic White populations. This finding, which holds even after accounting for uncertainties in the predictions from exposure models, is consistent with prior national studies of NO$_2$, PM$_{2.5}$, and PM$_{10}$ (Clark et al. 2017; Kravitz-Wirtz et al. 2016; Mikati et al. 2018; Tessum et al. 2019; Colmer et al. 2020). Disparities for the remaining pollutants (CO, O$_3$ and SO$_2$) had not been previously studied in detail for the national population, and few studies have considered how disparities for any pollutant have changed across 20 years (Kravitz-Wirtz et al. 2016; Bullard et al. 2008).

Our findings on “which group was most-exposed over time?” (on average, nationally) varied by pollutant, but in all six cases the most exposed group was a racial-ethnic minority group. That result is consistent with prior national studies, which have reported, for example, highest average NO$_2$ exposures for Hispanic Black and non-Hispanic Asian populations (Clark et al. 2017), and highest average proximities to industrial PM$_{2.5}$ emissions (Mikati et al. 2018) and highest average exposures to industrial air toxins (Ard 2015) for non-Hispanic Black populations.

We found that racial-ethnic minority populations were more than two times as likely than non-Hispanic white populations to live in a census block group with highest air pollution levels (above 90th percentile) on average. Those results are consistent with existing literature on disproportionate environmental risks for racial-ethnic minority populations (Collins 2016) and on groups or locations with higher risks for one environmental factor having higher risks for other factors too (Morello-Frosch and Lopez 2006; Su et al. 2012).

We found that air pollution exposures were generally higher for lower-income than for higher-income households (for all pollutants except O$_3$). This finding is consistent with previous national research (e.g., for industrial PM$_{2.5}$ emissions (Mikati et al. 2018), industrial air toxins (Ard 2015), and PM$_{2.5}$ and NO$_2$ (Clark et al. 2014; Kravitz-Wirtz et al. 2016)). Additionally, we found that, in 2010, absolute racial-ethnic exposure disparities were distinct from, and were larger than (on average, ~6× larger than), absolute exposure disparities by income. The findings
here are inconsistent with the idea that racial-ethnic exposure disparities can be explained by, or are “merely” a reflection of, income disparities among racial-ethnic groups (Liu, 2021).

The findings from this study can be used to compare relative exposure disparities for different criteria air pollutants in a consistent way, providing additional context for previous studies of single pollutants. We found that in 2010, relative racial-ethnic exposure disparities (i.e., ratios of average exposures between the most- and least-exposed groups) were largest for NO$_2$ and smallest for O$_3$. Relative income-based exposure disparities (i.e., ratios of average exposures between the lowest and highest income groups), although smaller than racial-ethnic exposure disparities for each pollutant, were largest for SO$_2$ and smallest (and similar) for NO$_2$, CO, and O$_3$. These results provide information on the rank-order of relative disparities in air pollution levels by pollutant; information on the rank-order of relative disparities in associated health impacts by pollutant would require further analysis, as discussed next).

Exposure disparities often connect with health disparities. Based on the magnitude of exposure disparities (e.g., 2010 national average PM$_{2.5}$ exposures for non-Hispanic Black people were 1.0 $\mu$g m$^{-3}$ higher-than-average), the resulting health disparities may be substantial (Liu 2021). Future research could usefully extend our exposure disparity results to provide rigorous, comprehensive investigation of the associated health impacts.

State-level results may be especially useful given the important role that states play in air pollution and environmental policy making (Abel et al. 2015). Exposures >5% greater than the national mean exposure within states were common for racial-ethnic minority populations, but not for non-Hispanic white populations. This finding reflects disparity in exposure as well as non-Hispanic White populations representing a large percentage of states’ populations. Exposure disparities varied substantially among states, even among states with similar characteristics (e.g., urbanicity, population, region). Our results emphasize differences among states in the level and makeup of exposure disparities, yet also demonstrate that exposure disparities were ubiquitous, including both large and small states, and states in all regions of the US, in 2010.

Our analyses by urbanicity were in part motivated by, and reflect, urban-rural differences in demographics and air pollution levels (Clark et al. 2017; Mikati et al. 2018; Rosofsky et al. 2018). Racial-ethnic disparities were larger for urban block groups for all pollutants except PM$_{2.5}$. Of the six pollutants, the largest ratio between urban and rural racial-ethnic absolute disparity (5.5x larger) was for NO$_2$ (Table S24). The NO$_2$ results are consistent with prior research (Clark et al. 2017). Over our study period, reductions in absolute racial-ethnic exposure disparity for PM$_{2.5}$ and O$_3$ were larger for rural than for urban areas. Analyzing urban and rural block groups separately, exposures were mostly higher for the lowest income category than the highest. Absolute income-based exposure disparities were also 7.5 times larger on average in urban than in rural areas.

The results by state and by urbanicity reflect that exposure disparities differ by spatial units (e.g., urban/rural, and by state); future research could explore these aspects further, for example, through a spatial decomposition of national exposure disparities.

Regulations such as the 1990 Clean Air Act Amendments have achieved substantial reductions in the concentrations of many pollutants. Our analysis reveals that, as a co-benefit, falling pollution levels have reduced absolute exposure disparities among racial-ethnic groups. These findings are consistent with previous national research for NO$_2$, PM$_{2.5}$, and industrial air toxins (Ard 2015; Clark et al. 2017; Kravitz-Wirtz et al. 2016; Colmer et al. 2020). We found that a larger share of the racial-ethnic exposure disparity reduction was attributable to air pollution level reduction rather than changes in demographic and residential patterns.
Our study described patterns in exposure disparities but did not investigate aspects such as underlying causes or ethical or legal aspects. Systemic racism and racial segregation are two major causes discussed in multiple previous studies (Jones et al. 2014; Morello-Frosch and Lopez 2006; Schell et al. 2020). Future longitudinal research could further investigate the underlying causes of exposure disparities. One important dimension not considered here is responsibility for generating pollution. Recent analysis suggests that Hispanic and Black populations have disproportionately lower consumption of goods and services whose emissions lead to PM$_{2.5}$ air pollution (Tessum et al. 2019).

Our study has several limitations. The finest spatial scale of publicly-available Census demographic data for race-ethnicity and income is at Census block group level; race-ethnicity across income data is at Census tract level with slightly different categories (see Methods); we were unable to assess disparities at finer spatial scales than what the Census provides; we only included the four main racial-ethnic groups. Our analysis of exposures by income is based on national-level income distribution data and does not account for spatial variations in income distributions (e.g., among states). Our disparity estimates do not account for (1) daily mobility for work, shopping, recreation, and other activities, (2) direct indoor exposure to indoor sources such as cigarette smoke, cooking emissions, or incense, (3) indoor-outdoor relationships in pollution levels, such as particle losses during airflow in ducts or ozone losses to indoor surfaces, or (4) occupational exposures. Our exposure disparity estimates were limited by uncertainties in the CACES exposure model predictions and in Census demographic data. Our uncertainty analysis (but not our main analysis) was limited to US EPA monitoring locations; we were not able to test potential exposure errors at locations without monitors on the national scale.

To our knowledge, our study provides the first national analysis of air pollution exposure disparities among income and racial-ethnic groups, for all criteria pollutants (except lead), including trends across time (by decade, 1990–2010) and spatial location (by state and for urban versus rural areas). On average, exposures were generally higher for racial-ethnic minority populations than for non-Hispanic White populations. Among pollutants, national racial-ethnic exposure disparities were largest for NO$_2$ and smallest for O$_3$. Exposures were also, on average, higher for the lowest-income households than for the highest-income households. However, exposure disparities by race-ethnicity were not explained by disparities in income. Racial-ethnic exposure disparities declined from 1990 to 2010 (on an absolute basis, and to a lesser extent, on a relative basis), but still existed in all states in 2010.

**Reference**


18. Evans GW, Kantrowitz E. 2002. Socioeconomic status and health: the potential role of


Table 1. Population distribution and population-weighted exposure distribution for six criteria pollutants for four main racial-ethnic groups in year 2010.

<table>
<thead>
<tr>
<th>Demographic</th>
<th>Non-Hispanic White</th>
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<th>Hispanic</th>
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Figure captions

Fig. 1. Distribution of exposure to pollutants in years 1990, 2000, and 2010, stratified by racial-ethnic group, for (A) PM2.5, (B) NO2, (C) O3, (D) SO2, (E) PM10, and (F) CO. For all panels, the highest/lowest bound represents the 90th/10th percentile value, the box shows the 25th and 75th percentiles, and the horizontal line in the box represents the median. Color circles indicate the national population-weighted mean. PM2.5 has no estimates in 1990 because of a lack of monitoring data prior to 1999. Note: CO=carbon monoxide, NO2=nitrogen dioxide, O3=ozone, PM2.5=particulate matter with diameters that are generally 2.5 micrometers and smaller, PM10=particulate matter with diameters that are 10 micrometers and smaller, and SO2=sulfur dioxide. “NH” refers to non-Hispanic. “Hispanic” refers to Hispanic people of any race(s).

Fig. 2. Relationship between the proportion of racial-ethnic minority residents in census block groups and average criteria air pollution concentrations in the years 1990, 2000, and 2010 for A) PM2.5, (B) NO2, (C) O3, (D) SO2, (E) PM10, and (F) CO. For each panel, the bold portion of the line indicates the 25th to 75th percentile of census block groups, the thin line indicates the 10th and 90th percentiles, the dashed line indicates the 1th and 99th percentiles, and the diamond icon indicates the median. Note: CO=carbon monoxide, NO2=nitrogen dioxide, O3=ozone, PM2.5=particulate matter with diameters that are generally 2.5 micrometers and smaller, PM10=particulate matter with diameters that are 10 micrometers and smaller, and SO2=sulfur dioxide. “NH” refers to non-Hispanic. “Hispanic” refers to Hispanic people of any race(s).

Fig. 3. Population-weighted criteria air pollution concentration in 2010 for 16 household income groups, stratified by race-ethnicity, for (A) PM2.5, (B) NO2, (C) O3, (D) SO2, (E) PM10, and (F) CO. For all panels, each data point represents pollution exposure for one income category and racial-ethnic group. Values plotted for household income are, for values below $200k (i.e., for the first 15 income categories), the midpoint value; for the highest income category (">$200k"), the value plotted is the low end of the range ($200k). Note: CO=carbon monoxide, NO2=nitrogen dioxide, O3=ozone, PM2.5=particulate matter with diameters that are generally 2.5 micrometers and smaller, PM10=particulate matter with diameters that are 10 micrometers and smaller, and SO2=sulfur dioxide. “NH White” refers to non-Hispanic White people, “Hispanic” refers to Hispanic people of any race(s). “Asian” refers to Hispanic and non-Hispanic Asian people. “Black” refers to Hispanic and non-Hispanic Black people.

Fig. 4. State racial-ethnic disparities in average pollution exposure in 2010, showing the difference between (1) NH White vs. state average, (2) NH Black vs. state average, (3) Hispanic vs. state average, (4) NH Asian vs. state average, and (5) Minority vs. NH White for the six pollutants (A) PM2.5, (B) NO2, (C) O3, (D) SO2, (E) PM10, and (F) CO, and (G) average across the six pollutants. Columns 1-4: exposure disparity relative to state average; calculated as mean exposure for a racial-ethnic group in that state minus the overall mean for that state, then divided by the national overall mean. Column 5: exposure disparity for racial-ethnic minorities relative to the racial-ethnic majority group; calculated as mean exposure for racial-ethnic minorities minus mean exposure for non-Hispanic White people, then divided by the national overall mean. Mean values are population-weighted. States displayed in white indicate
that the disparity is within ±5% of the national overall mean. Purple shading indicates that mean
exposures are higher-than-average by more than 5% of the national overall mean (columns 1-4)
or that mean exposures are higher for racial-ethnic minorities than for the racial-ethnic majority,
by more than 5% of the national overall mean (column 5). Orange shading indicates the reverse:
mean exposures are lower-than-average for that group (columns 1-4) or mean exposures are
lower for racial-ethnic minorities than for non-Hispanic White people (column 5), and the
disparity is greater than 5% of the national overall mean. See Excel Table S1 for corresponding
numeric data. Note: CO=carbon monoxide, NO$_2$=nitrogen dioxide, O$_3$=ozone, PM$_{2.5}$=particulate
matter with diameters that are generally 2.5 micrometers and smaller, PM$_{10}$=particulate matter
with diameters that are 10 micrometers and smaller, and SO$_2$=sulfur dioxide. “NH” refers to non-
Hispanic. “Hispanic” refers to Hispanic people of any race(s).

**Supplemental Material**

Supplementary material are available online.

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developed the methods, visualized the data, and wrote, reviewed, and edited the text. M.B. and
L.P.C. designed the research, performed the research, analyzed the data, and wrote, reviewed,
and edited the text. A.H., SY.K., A.L.R., L.S., and A.A.S. conceptualized and designed the
research, oversaw the methods and analysis, and reviewed and edited the writing. J.D.M.
conceptualized and supervised the project, designed the research, methods, and analysis, and
wrote, reviewed, and edited the text. A.L.R. and J.D.M. acquired the funding. **Competing
interests:** The authors declare no competing interests. **Data and material availability:** All data
used are publicly available. Demographic data are available via IPUMS National Historic
Geographic Information Systems [www.nhgis.org]; air pollution estimates are available via the
EPA CACES project [www.caces.us]).

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also thank the CACES science advisory committee (SAC) for feedback on earlier versions of this
research.
(A) PM$_{2.5}$ not available

(B) NO$_2$

(C) O$_3$

(D) SO$_2$

(E) PM$_{10}$

(F) CO

NH White NH Black Hispanic NH Asian

1990 2000 2010
PM$_{2.5}$ ($\mu$g m$^{-3}$)

NO$_2$ (ppb)

O$_3$ (ppb)

SO$_2$ (ppb)

PM$_{10}$ ($\mu$g m$^{-3}$)

CO (ppm)

(A) PM$_{2.5}$

(B) NO$_2$

(C) O$_3$

(D) SO$_2$

(E) PM$_{10}$

(F) CO

Household income ($\text{k}$)

Household income ($\text{k}$)
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Attachment 8
PM$_{2.5}$ polluters disproportionately and systemically affect people of color in the United States

Christopher W. Tessum$^{1, *}$, David A. Paolella$^{21}$, Sarah E. Chambliss$^{3}$, Joshua S. Apte$^{4, 5}$, Jason D. Hill$^{6}$, Julian D. Marshall$^{2}$

Racial-ethnic minorities in the United States are exposed to disproportionately high levels of ambient fine particulate air pollution (PM$_{2.5}$), the largest environmental cause of human mortality. However, it is unknown which emission sources drive this disparity and whether differences exist by emission sector, geography, or demographics. Quantifying the PM$_{2.5}$ exposure caused by each emitter type, we show that nearly all major emission categories—consistently across states, urban and rural areas, income levels, and exposure levels—contribute to the systemic PM$_{2.5}$ exposure disparity experienced by people of color. We identify the most inequitable emission source types by state and city, thereby highlighting potential opportunities for addressing this persistent environmental inequity.

INTRODUCTION

Ambient fine particulate matter air pollution (PM$_{2.5}$) is responsible for 85,000 to 200,000 excess deaths per year in the United States (1, 2), with health effects observed even at concentrations below the current national standard of 12 µg m$^{-3}$ (3–5). Racial-ethnic and socioeconomic disparities in air pollution exposure in the United States are well documented (6–10) and have persisted despite overall decreases in PM$_{2.5}$ pollution (11–13).

Most evidence of exposure disparity relies on measured or empirically modeled ambient concentrations or on assessment of proximity to industrial or roadway emission sources (6, 10, 12–20). From the existing evidence, however, it is not possible to determine the relative contributions of different source types to racial-ethnic disparity in exposure to PM$_{2.5}$. Here, we model anthropogenic sources of PM$_{2.5}$ exposure resolved by race and ethnicity and show that nearly all major emission source sectors disproportionately affect people of color (POC).

We estimate exposure impacts for each emission source type on five racial-ethnic groups based on the U.S. Census: White (62% of the population), Black (12%), Hispanic (17%), Asian (5%), and POC (38%; see Materials and Methods for details). As a proxy for exposure to PM$_{2.5}$, we calculate population-weighted average ambient PM$_{2.5}$ concentrations for each race-ethnicity based on census-designated residential location.

We examine exposure disparity—the population-weighted concentration difference between each racial-ethnic group and the population average—in relative (percent) and absolute (µg m$^{-3}$) terms. Sources with the highest relative disparity may yield the largest disparity mitigation per unit mass of emission reduction, whereas sources with the highest absolute disparity may have the greatest potential for overall disparity reduction.

RESULTS

Results indicate that emission sources that disproportionately expose POC are pervasive throughout society. Estimated year 2014 total population average PM$_{2.5}$ exposure from all domestic anthropogenic sources is 6.5 µg m$^{-3}$ in the contiguous United States; exposures are higher than average for POC, Blacks, Hispanics, and Asians (7.4, 7.9, 7.2, and 7.7 µg m$^{-3}$, respectively; Fig. 1, B to E) and lower than average for Whites (5.9 µg m$^{-3}$; Fig. 1A). Whites are exposed to lower-than-average concentrations from emission source types causing 60% of overall exposure (Fig. 1A), with an overall relative exposure disparity of −8% (−0.55 µg m$^{-3}$ absolute disparity) compared with the population average. Conversely, POC experience greater-than-average exposures from source types, causing 75% of overall exposure (Fig. 1B); their overall exposure disparity is 14% (0.90 µg m$^{-3}$). Blacks are exposed to greater-than-average concentrations from source types contributing 78% of exposure (Fig. 1C), with an overall exposure disparity of 21% (1.36 µg m$^{-3}$). Hispanics and Asians are disparately exposed to PM$_{2.5}$ from 87 and 73% of sources, respectively, and experience 11% (0.72 µg m$^{-3}$) and 18% (1.20 µg m$^{-3}$) overall exposure disparities, respectively (Fig. 1, D and E).

Grouping the source types (Fig. 1, A to E) into 14 source sectors (Fig. 1, F to J) reveals that source types that disproportionately expose POC, Blacks, Hispanics, and Asians to higher-than-average concentrations are dominant in most sectors. Whites are exposed to lower-than-average concentrations from most emission sectors (Fig. 1F). Blacks are exposed to higher-than-average concentrations from all sectors (Fig. 1H).

Of the emission source sectors that cause the largest absolute disparities, four out of the top six source sectors are the same for POC, Blacks, Hispanics, and Asians: industry, light-duty gasoline vehicles, construction, and heavy-duty diesel vehicles (Fig. 1, G to J). Residential gas combustion and commercial cooking are among the largest sources of relative disparities for all four groups (e.g., 41 and 35%, respectively for POC; Fig. 1, G to J). The only sectors that affect Whites substantially more than average are coal electric generation and agriculture (8 and 4% relative disparity, respectively; Fig. 1F). Consistent with previous findings (11, 21), we find that POC, Hispanics, and Asians are exposed to less PM$_{2.5}$ from coal electric generators than average (−13%, −38%, and −18%, respectively), and Blacks are exposed to 18% more than average (Fig. 1H).
Nationally, racial-ethnic exposure disparities are not caused by a small number of emission sources; instead, most source types and sectors result in higher-than-average exposures for POC and lower-than-average exposures for Whites (Fig. 1). By examining the percent of exposures caused by these disproportionately exposing emission source types for each group [for example, 40% for Whites (Fig. 1A) and 75% for POC (Fig. 1B) nationally], we find that this is also largely true within individual U.S. states, within individual urban and rural areas, across incomes, and across exposure levels (Figs. 2 and 3).

In 45 of the 48 states studied, disproportionately exposing sources cause the majority of POC exposure (Fig. 2A). In the (population-weighted) average state, 78% of exposure is caused by sources that disproportionately expose POC (White: 29%; Black: 77%; Hispanic: 71%; and Asian: 56%; Figs. 2B and 3, H to J). There is a notable exception: Asians are less exposed than average in many urban areas in California with large Asian populations (data file S1; for example, Los Angeles, San Francisco, and San Jose). In the (population-weighted) average urban area outside California, 67% of Asian exposure is caused by source types that disproportionately expose Asians, compared with 56% when including California. Disparities also consistently occur in rural areas (defined here as the complement of urban areas), where a large proportion of exposure is caused by sources that disproportionately expose POC (White: 31%; Black: 71%; Hispanic: 71%; and Asian: 56%; Figs. 2C and M to O). However, disparities in rural areas are not as pronounced as in urban areas (Fig. 2, B and C).

Last, systemic disparity exists at all income levels. Consistent with a large body of evidence (12, 22), we find that racial disparities are not simply a proxy for economic-based disparities. POC at every income level are disproportionately exposed by the majority of sources, with a population-weighted average across income bins of 76% of exposure caused by source types that disproportionately

![Fig. 1. Source contributions to racial-ethnic disparity in PM$_{2.5}$ exposure. (A to E) Individual source type ($n = 5434$ source types) contributions to exposure ($y$ axis) and % exposure disparity ($x$ axis, truncated at 200%, positive values are shaded red, negative values are shaded blue), with dashed lines denoting percent exposure caused by sources with positive exposure disparity. (F to J) Sources in (A) to (E) grouped into source sectors ($n = 14$ groups) and ranked vertically according to absolute exposure disparity, proportional to the area of each rectangle. As shown in (B), POC experience greater-than-average exposures from source types causing 75% of overall exposure. Source: data file S1, which also includes results for individual states and urban areas.](https://www.science.org)
expose POC (Fig. 2D and fig. S1). Exposures vary more by race-ethnicity than by income: The difference in average exposure between POC and Whites is 2.4 times larger than the range in average POC exposure among income levels (data files S1 and S2).

DISCUSSION

Our results come with caveats. First, we use emission amounts and locations, reduced complexity air quality modeling, and population counts that all contain previously quantified uncertainty (11, 23; Supplementary Text). However, our core findings are consistent across states, urban and rural areas, and concentration levels, rendering it improbable that they are attributable to model or measurement bias. Second, because aggregate results are more robust than results for any single location, we recommend additional analysis incorporating local data and expertise before local actions are taken. Third, our results for states and for urban and rural areas reflect exposure to ambient PM$_{2.5}$, including contributions from emission sources located outside the state, urban area, or rural area. This has implications for local authorities, who may not have jurisdiction over all sources of their exposure. Last, this analysis focuses on outdoor concentrations at locations of residence. Disparities in associated health impacts would also reflect racial-ethnic variability in mobility, microenvironment, outdoor-to-indoor concentration relationships, dose-response, access to health care, and baseline mortality and morbidity rates.

We have shown here that most emission source types—representing ~75% of exposure to PM$_{2.5}$ in the United States—disproportionately affect racial-ethnic minorities. This phenomenon is systemic, holding for nearly all major sectors, as well as across states and urban and rural areas, income levels, and exposure levels. Industry, light-duty gasoline vehicles, construction, and heavy-duty diesel vehicles are often among the largest sources of disparity, but this can vary widely by source type and location. Because of a legacy of racist housing policy (fig. S2; supporting results) and other factors, racial-ethnic exposure disparities have persisted even as overall exposure has decreased (11–13). Targeting locally important sources for mitigation could be one way to counter this persistence. We hope the information provided here can help guide national, state, and local stakeholders to design policies to efficiently reduce environmental inequity.
MATERIALS AND METHODS

We use a source-receptor matrix (24) created using the InMAP (25) air quality model to independently estimate concentrations in the contiguous United States resulting from anthropogenic emissions. We consider all 5434 source types [i.e., all U.S. Environmental Protection Agency (EPA) Source Classification Codes (SCCs) with non-zero emissions; we exclude the 8378 SCCs without emissions associated with them] in the 2014 EPA National Emissions Inventory (NEI) v1. County-level emissions are allocated to individual grid cells within the county using spatial surrogates. Emissions processing is described in further detail by Tessum et al. (11). To focus on impacts from modifiable factors, we do not investigate here emissions from biogenic, wildfire, or international sources. Exposure and health impacts resulting from these additional sources are quantified by Tessum et al. (11).

We investigate both primary (i.e., directly emitted) and secondary (i.e., formed in the atmosphere from other emissions) PM$_{2.5}$. We model secondary PM$_{2.5}$ formed from volatile organic compounds, oxides of nitrogen and sulfur (NO$_x$ and SO$_x$), and ammonia (NH$_3$). We aggregate the 5434 SCCs (source “types”) into 14 source sectors (table S1), each accounting for >1% of total PM$_{2.5}$ exposure. InMAP predicts concentrations at a spatial scale ranging from 48 km in areas with low population density to as fine as 1 km in urban centers; this intraurban spatial scale is necessary to resolve differences in exposure among demographic groups (26). The population-weighted average horizontal grid cell edge length is 10.8 km nationwide and 3.4 km in urban areas. Additional grid statistics can be found in table S2.

The source-receptor matrix relates emissions in any one location in a gridded spatial domain to InMAP-computed concentrations in all other locations. These relationships are generated with independent simulations of the air quality model for each of over 50,000 grid cells covering the contiguous United States for both ground-level and elevated sources.

Population-weighted average ambient concentrations, our measure of exposure, are calculated using a conventional approach to weighted averages. Specifically, we first multiply, for each grid cell, the population and the concentration. The sum of those values across all cells in the given spatial domain is then divided by the corresponding population to yield the population-weighted average concentration: $P_{WA} = \frac{\Sigma(PC)}{\Sigma(P)}$. Here, $P_{WA}$ is the population-weighted average, $P$ is the population in a grid cell, $C$ is the concentration in a grid cell, and the summations in the numerator and denominator are across all grid cells in the geography being studied (e.g., in a state, in the contiguous United States).

Population data by race-ethnicity are from the U.S. Census 2012–2016 American Community Survey (ACS) at Census Block Group level of spatial aggregation. We focus on the four largest race-ethnicity groups as determined by self-identification in the Census: Asian, Black or African American, Latino or Hispanic, and White. We aggregate these four population subgroups such that they are mutually exclusive: “Hispanic” including people of all races who...
identify as having Hispanic or Latino origin, and the other three groups (Asian, Black, and White) referring only to non-Latino/non-Hispanic persons. POC are defined herein as everyone except non-Latino/non-Hispanic Whites (i.e., individuals identifying as Hispanic plus non-Hispanic individuals identifying as Black or African American, American Indian or Alaska Native, Asian, Native Hawaiian and other Pacific Islander, some other race, or two or more races).

The 2012–2016 ACS provides income statistics by Census Tract, with 16 household income categories (lowest: “less than $10,000”; highest: “$200,000 or more”). We use the proportion of households in each income category to estimate population counts at the finest available level of race-ethnicity information: White and POC. Table S3 details the population distribution by income category.

To calculate exposure in individual urban areas, we use year 2018 urbanized area extents as defined by the U.S. Census (www.census.gov/geographies/mapping-files/time-series/geo/carto-boundary-file.html). We define “rural” as everywhere that is not within an urbanized area extent.

To calculate exposure by 1930s-era Home Owners’ Loan Corporation (HOLC) grades, we use historical maps digitized by the Mapping Inequality project (27). HOLC maps classify urban neighborhoods into four grades: A (green; “best”), B (blue; “still desirable”), C (yellow; “definitely declining”), and D (red; “hazardous”). For results shown in fig. S2, we define “% exposure from disproportionately exposing source types” as the percent of exposure that is caused by source types that expose residents of a given race-ethnicity currently living in an area with the given historical HOLC grade in a given city more than the overall average exposure of all residents of HOLC-graded areas in that city.

SUPPLEMENTARY MATERIALS

Supplementary material for this article is available at https://advances.sciencemag.org/cgi/content/full/7/18/eabf4491/D1C

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If you should have any questions on anything in the comments, please do not hesitate to contact us.

Sincerely,

Nicky Sheats, Esq., Ph.D.
Director, Center for the Urban Environment
John S. Watson Institute for Urban Policy and Research at Kean University
Attachment 9
Which came first, people or pollution? Assessing the disparate siting and post-siting demographic change hypotheses of environmental injustice

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Which came first, people or pollution? Assessing the disparate siting and post-siting demographic change hypotheses of environmental injustice

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Supplementary material for this article is available online

Abstract

Although a large body of quantitative environmental justice research exists, only a handful of studies have examined the processes by which racial and socioeconomic disparities in the location of polluting industrial facilities can occur. These studies have had mixed results, we contend, principally because of methodological differences, that is, the use of the unit-hazard coincidence method as compared to distance-based methods. This study is the first national-level environmental justice study to conduct longitudinal analyses using distance-based methods. Our purposes are to: (1) determine whether disparate siting, post-siting demographic change, or a combination of the two created present-day disparities; (2) test related explanations; and (3) determine whether the application of distance-based methods helps resolve the inconsistent findings of previous research. We used a national database of commercial hazardous waste facilities sited from 1966 to 1995 and examined the demographic composition of host neighborhoods around the time of siting and demographic changes that occurred after siting. We found strong evidence of disparate siting for facilities sited in all time periods. Although we found some evidence of post-siting demographic changes, they were mostly a continuation of changes that occurred in the decade or two prior to siting, suggesting that neighborhood transition serves to attract noxious facilities rather than the facilities themselves attracting people of color and low income populations. Our findings help resolve inconsistencies among the longitudinal studies and builds on the evidence from other subnational studies that used distance-based methods. We conclude that racial discrimination and sociopolitical explanations (i.e., the proposition that siting decisions follow the ‘path of least resistance’) best explain present-day inequities.

Most quantitative analyses of environmental disparities by race and socioeconomic status have been cross-sectional, employing data about hazardous site locations and demographic characteristics from the US Census at only one point in time (Mohai and Saha 2015). These studies, conducted over the past several decades, have established clear patterns of racial and socioeconomic disparities in the distribution of a large variety of environmental hazards. Although a limited number of hypotheses about the causes of present-day disparities can be tested using cross-sectional data, longitudinal data are essential to identify the processes by which present-day environmental disparities have come about. As we point out in our companion review article (Mohai and Saha 2015), there are only two possible processes for explaining present-day disparities: (1) there has been a pattern, at the time of siting, of placing hazardous waste sites, polluting industrial facilities, and other locally unwanted land uses (LULUs) disproportionately in low-income and...
people of color, or (2) demographic changes after siting have led to disproportionately high concentrations of low-income and people of color around hazardous sites. These two processes have been termed respectively as ‘disparate siting’ and ‘post-siting demographic change’. Which of these two processes has occurred, or whether both have, has not been firmly established. This is because relatively few longitudinal environmental justice analyses have been conducted. Furthermore, those longitudinal studies that exist have led to confusing and even contradictory findings. The conflicting findings may be the result of the varying geographic scopes of these studies; some have been nation-wide (Oakes et al 1996, Been and Gupta 1997, Hunter et al 2003) while others have been state-wide (Saha and Mohai 2005) or metropolitan-wide (Shaikh and Loomis 1999, Pastor et al 2001, Hipp and Lakon 2010). However, the inconsistent findings may also be the result of these studies employing differing methods; some have employed the unit-hazard coincidence method while others have employed distance-based methods. The differences between the unit-hazard coincidence and distance-based methods have been described in detail by Mohai and Saha (2006, 2007) and others (see, e.g., Chakraborty et al 2011, and Mohai and Saha 2015).

Briefly, the unit-hazard coincidence method compares the demographic characteristics of host geographic units, such as counties, zip code areas, and census tracts, with the characteristics of their respective non-host units. Not taken into account are the varying sizes of the host units. As a result, for very large host units, people living at considerable distances from the hazard may not be exposed to significant risks from the hazard counted among the ‘affected population’. Also not taken into account are the precise locations of the hazardous sites within the host unit and the distance of these sites to adjacent or nearby units. Therefore, the method does not consider whether the hazard inside the host unit is near the center, off-center, or near a boundary. If near a boundary, the hazard may impact not just the host unit alone, but the adjacent and other nearby units as well. If there is a disproportionate concentration of poor people and people of color near the hazardous site, then these disproportionate concentrations may also exist in the nearby units (which are nevertheless counted as part of the comparison or ‘control population’) as well as in the host unit proper.

In their analysis and critique of the unit-hazard coincidence method, Mohai and Saha (2006, 2007) found that, in relation to commercial hazardous waste treatment, storage, and disposal facilities (TSDFs), TSDFs’ host census tracts vary greatly in size from 0.07 to 7521 square miles, and the TSDFs are indeed often located near their host unit boundaries. They found that almost three quarters (71%) of the nation’s TSDFs are within 0.50 mile of the boundaries of their respective host census tracts, while almost half (49%) are within 0.25 mile. Furthermore, they found that the demographic characteristics of non-host tracts near hazardous waste TSDFs are more similar to those of the host tracts proper than to those of non-host tracts farther away. Thus, contrasting the demographic characteristics of the host tracts proper with the characteristics of all non-host tracts, including the nearby tracts, leads to an underestimation of the extent of the disparities between the populations living near the hazard compared to those farther away, and can even result in an inability to detect such disparities.

These findings led Mohai and Saha (2006, 2007) and others (Chakraborty et al 2011) to call for replacing the unit-hazard coincidence method with distance-based methods in proximity-based environmental justice analyses. Distance-based methods control for differences in the size of geographic units employed and take into account the exact location of the hazardous sites inside the host units and their distances to nearby units. The demographic characteristics of the nearby units within specified distances of the hazard are then combined with the demographic characteristics of the host unit proper rather than combined with those of non-host units farther away (beyond the specified distance). Combining the host units proper with nearby units within the specified distances uncovers the actual extent of the demographic disparities between host neighborhoods of relatively consistent size and shape and non-host areas whereas the unit-hazard coincidence method does not.

Two frequently employed distance-based methods include the 50% areal containment method (Anderton et al 1994, Davidson and Anderton 2000, Mohai and Saha 2006) and areal apportionment method (Glickman 1994, Chakraborty and Armstrong 1997, Hamilton and Viscusi 1999). In applying the 50% areal containment method, the boundary of the host neighborhood of an environmental hazard is determined by combining all the geographic units where at least 50% of the area of the unit is captured by a radius of fixed distance from the hazard. The populations within the captured units are then combined and their demographics contrasted with those of the units not captured. In applying the areal apportionment method, the boundary of the host neighborhood is a perfect circle within a fixed distance from the hazard. The population within this circle is determined by combining the populations of all the units intersected by the circle. However, each unit’s contribution is weighted by the proportion of its area captured by the circle. For example, if 25% of the unit’s area is captured by the circle, then 25% of the unit’s population is allocated to the unit’s population inside the circle. The demographics of the combined weighted populations of units intersected by the circle are then contrasted with the demographics of the population beyond the circle. Mohai and Saha (2006, 2007) found that applying distance-based methods such as these uncovers far greater racial and socioeconomic disparities around...
hazardous waste TSDFs than when the unit-hazard coincidence method is applied.

Whether the conflicting findings of existing longitudinal environmental justice studies are the result of these studies (a) employing differing geographic scopes, (b) differing methods (unit-hazard coincidence versus distance-based), or (c) both is difficult to sort out. This is because the only three longitudinal environmental justice studies (Oakes et al 1996, Been and Gupta 1997, Hunter et al 2003) that are national-level also employed the unit-hazard coincidence method, while the only three longitudinal environmental justice studies that employ distance-based methods are also sub-national (Pastor et al 2001, Saha and Mohai 2005, Hipp and Lakon 2010). The three sub-national studies employing distance-based methods have found statistically significant evidence to support the disparate siting hypothesis and some, albeit less, support for the post-siting demographic change hypothesis. In contrast, the three national-level studies employing the unit-hazard coincidence method found little support for either disparate siting or post-siting demographic change hypotheses. Is the lack of evidence for these two hypotheses from existing national-level studies because of their different geographic scope from the sub-national studies? Or is it because of their reliance on the unit-hazard coincidence method? To sort this out, national-level studies that also employ distance-based methods are needed. However, to our knowledge, no such national-level analyses have been conducted to date.

A principal objective of our study therefore is to conduct the first national-level longitudinal environmental justice analysis employing distance-based methods in order to determine whether the application of such methods helps resolve the conflicting findings of earlier studies and provides clearer evidence of the role that the processes of disparate siting and post-siting demographic change play in accounting for present-day disparities. Given Mohai and Saha’s (2006, 2007) finding that employing the unit-hazard coincidence method in a cross-sectional study leads to significant underestimation of present-day racial and socioeconomic disparities in the distribution of hazardous waste TSDFs, we hypothesize that the contrasting findings from earlier longitudinal environmental justice studies are principally the result of their employing the unit-hazard coincidence method compared to distance-based methods. Our national-level longitudinal study allows us to determine if findings of disparities at the time of siting and disproportionate post-siting demographic change differ depending on the method employed and whether the findings using distance-based methods contrast with those of the prior national-level studies and are more similar to those of the sub-national studies employing distance-based methods. A second objective of our study is to test several important hypotheses about the economic, socioeconomic, and discriminatory factors thought to drive disparate-siting and post-siting demographic change processes. These factors are reviewed in our companion article (Mohai and Saha 2015).

Data and methods

A total of 413 TSDFs were identified as legally permitted and operating in 1999 and mapped using GIS and information from various public and private databases. The operating status, location and dates of facility siting were determined or verified by contacting facility owners and state and federal regulatory agencies (see Mohai and Saha supplement for additional details). We found information about the start dates of many of the facilities sited before 1966 to be unreliable (e.g., due to lack of legal definitions of hazardous waste and difficulties of determining start dates for facilities that changed operations or ownership). For our analysis, we thus narrowed the universe to 319 TSDFs that were sited during the 30-year period from 1966 to 1995. To assess patterns of disparate siting for these TSDFs, we used the areal apportionment method (see discussion above and Mohai and Saha 2006, 2007, 2015) to examine the demographic characteristics of the 3 km radius circular host neighborhoods at or near the time of siting for six cohorts of facilities sited in various 5-year time periods. We then compared the demographic characteristics of TSDF host neighborhoods from the decennial Census closest to the siting dates of the cohorts of facilities to demographics of non-host areas beyond 3 km of the TSDFs. Thus, to assess whether the cohort of TSDFs sited between 1966 and 1970 ($N = 26$) were sited where disproportionate numbers of people of color and low-income people live, 1970 Census data were used. The 1970 Census data similarly were used to assess TSDFs sited between 1971 and 1975 ($N = 55$), 1980 data were used to assess TSDFs sited between 1976 and 1980 ($N = 88$) and between 1981 and 1985 ($N = 68$), and 1990 data were used to assess TSDFs sited between 1986 and 1990 ($N = 58$) and between 1991 and 1995 ($N = 24$). To assess patterns of post-siting demographic change, a number of race/ethnicity and socioeconomic variables were used to examine the demographic characteristics of the neighborhoods for each of the cohorts of facilities at each subsequent Census year up to 2000. We also examined the demographic characteristics of the host neighborhood of the various cohorts of facilities in all prior Census years (beginning with the 1970 Census) to assess demographic changes before siting (see Mohai and Saha supplement for additional details). We also replicated our analyses using the unit-hazard coincidence approach to see if outcomes differed.

The 3 km distance is within the range of distances used in prior studies and within which health, economic and other quality of life impacts have been found to exist (Mohai and Saha 2007).
Multivariate statistical analyses were used to assess the relative importance of racial and socioeconomic characteristics of nearby census tracts in predicting the siting of new hazardous waste TSDFs for each of the Census years, 1970, 1980, and 1990. Nearby tracts were identified as those tracts within 3.0 km of the TSDFs using the 50% areal containment method. The census variables used in the statistical analyses included: mean property values; percent of persons 25 years old and over with a four-year college degree; percent employed in executive, managerial or professional occupations; percent employed in precision production, transportation or labor occupations; percent African American or black; percent Asian/Pacific Islander; and percent Latino or Hispanic (see Mohai and Saha supplement for a description of the construction of these variables). These variables have been used in many prior quantitative environmental justice analyses. Although these census variables are often correlated with each other, and thus risk creating multi-collinearity problems in multivariate statistical analyses, we examined the variance inflation factors (VIF) in selecting variables to include in our regression equations such that the VIFs were within acceptable limits of less than 10 in all cases (Hair et al 1995).

**Results**

We first examined the existence and extent of racial disparities around TSDF locations at or near the time of facility siting. Figure 1 displays the results of comparing the percentages of each racial and ethnic group within and beyond the TSDF host areas at or near each period of siting. When the areal apportionment distance-based method is applied, these comparisons reveal a clear pattern of racially disparate siting at each time period. For example, using the 1970 Census, figure 1(a) reveals that at or near the time of siting the percentage of whites in neighborhoods within 3.0 km of facilities sited between 1966 and 1970 was lower than the percentage of whites in neighborhoods beyond 3.0 km. At the same time, the percentage of African Americans in neighborhoods within 3.0 km of a TSDF was greater than the percentage beyond 3.0 km. The same is true of Hispanics, and in this case the disparities appear to be even greater than they are for blacks. When we examine changes in demographic disparities around the TSDFs after siting with areal apportionment (i.e., in 1980, 1990, and 2000 in figure 1(aa)), they appear to widen for whites, Hispanics, and Asians and Pacific Islanders (although not for blacks), indicating that the present-day disparities around facilities sited between 1966 and 1970 are a function of both disparate siting at the time of siting and post-siting demographic changes.

The unit-hazard coincidence method produces very different results (figure 1(aa)). Racial and ethnic disparities at the time of siting are much reduced, and in some cases reversed. For example, at the time of siting (near 1970) a somewhat larger percentage of whites are found in the host tracts than non-host tracts, while a slightly larger percentage of blacks are found in the

![Figure 1. Comparison of White and Minority Percentages around Hazardous Waste TSDFs before, during and after facility siting, using distance-based and unit hazard coincidence methods.](image-url)
non-host tracts than host tracts. Furthermore, changes in demographic disparities over time are also much smaller (figure 1(aa)) and reveal no clear pattern. Sometimes the disparities widen slightly (Asians and Pacific Islanders), sometimes shrink (Hispanics), and sometimes reverse direction (whites and blacks).

When we examine the demographic characteristics around facilities sited between 1971 and 1975, similar
patterns are found, as shown in figures 1(b) and (bb). As before, racial disparities at the time of siting are found to be greater when applying areal apportionment (figure 1(b)), although this time the disparities are greater for blacks than they are for Hispanics. In addition, disparities after siting widen over time for whites, Hispanics, and Asian and Pacific Islanders, but not for blacks. When the unit-hazard coincidence approach is applied, the demographic disparities at the time of siting are much smaller (even reverse in
direction for blacks) and changes in demographic disparities over time are also much smaller (figure 1(bb)).

When we examine racial disparities at or near the time of facility siting using areal apportionment and the 1980 Census (figures 1(c) and (d)), we can see that the patterns of disparities are very similar to those found for facilities sited at or near 1970 (figures 1(a) and (b)). Racial disparities around TSDFs sited at or near 1980 are found for every racial and ethnic group, including for Asians and Pacific Islanders (differences appear small due to their relatively small numbers but we examine these differences again in our statistical analyses). Although disparities in the black percentages appear to decrease somewhat after siting, disparities in the white, Hispanic, and Asian and Pacific Islander percentages widen. Together these results suggest, as they did for facilities sited around 1970 (figures 1(a) and (b)), that when the areal apportionment method is applied to facilities sited around 1980 (figures 1(c) and (d)) present-day racial disparities are largely the result of both a pattern of disparate siting at the time of siting and demographic changes after siting. Such patterns are not found when the unit-hazard coincidence method is applied. Disparities at the time of siting are found to be virtually non-existent for facilities sited around 1980, as are demographic changes after siting (figures 1(cc) and (dd)).

Although it may be tempting to deduce from the above results using areal apportionment that the presence of the TSDFs in some way ‘causes’ the demographic changes that widen the racial disparities around these TSDFs after siting, closer examination of figures 1(c) and (d) suggests an alternate interpretation. We see that for whites and Hispanics, the percentages around the TSDF locations had already begun to change before the siting and these are in the same trajectory as after siting. Thus, rather than the TSDFs causing the demographic changes that amplify the disparities around the TSDFs, it appears that TSDFs may be sited in locations that are both disproportionately nonwhite at the time of siting and are already undergoing demographic changes. In other words, contrary to the post-siting demographic change hypothesis, and consistent with Pastor et al (2001) findings for the Los Angeles area (see also Mohai and Saha 2015), the demographic changes appear to ‘attract’ the facilities rather than the facilities attract minorities. An exception to this pattern is for blacks. However as noted earlier, disparities in the black percentages around TSDFs sited at or near 1980 remain relatively stable before and after siting, although they decrease slightly after siting.

We next turn our attention to the facilities sited between 1986 and 1990 and between 1991 and 1995, and examine racial disparities at or near the time of siting using the areal apportionment distance-based method and the 1990 Census. As can be seen in figures 1(e) and (f), the patterns around these facilities appear very similar to those found earlier. For every racial and ethnic group, disparities exist in the percentages within and beyond 3.0 km of these facilities at or near the time of siting. For both cohorts of TSDFs, the disparities also widen after siting. And as with the facilities sited at or near 1980, the demographic changes
appear to have begun well before the siting. In fact, they appear to have commenced at least as far back as 1970. As in the case of the facilities sited at or near 1980, these results suggest that the demographic changes appear to be attracting the facilities rather than the facilities attracting minorities or repelling whites.

Applying the unit-hazard coincidence method to the facilities sited around 1990 produces results similar to those found when the unit-hazard coincidence method was applied to the facilities sited around 1970 and 1980. Demographic disparities at the time of siting are small as are changes in the demographic disparities after siting (figures 1(ee) and (ff)). The weak evidence for both disparate siting and post-siting demographic change at each of the decades (1970, 1980, and 1990) using the unit-hazard coincidence method is consistent with the similarly weak evidence of the earlier national-level longitudinal studies using this method (Oakes et al. 1996, Been and Gupta 1997, Hunter et al. 2003). Instead, the robust evidence that we obtained using areal apportionment is similar to that of the earlier sub-national longitudinal studies using distance-based methods, such as Pastor et al. (2001), Saha and Mohai (2005), and Hipp and Lakon (2010).

Summarizing the results in figures 1(a)–(f) using distance-based methods, one sees a clear historical pattern of racially disparate siting of hazardous waste TSDFs at the time of siting. And although we also witness post-siting demographic changes that tend to widen the racial disparities around the TSDFs, a surprising finding is that the demographic changes appear to have already begun before siting. These results suggest that demographic changes in places which eventually receive a TSDF tend to ‘attract’ TSDFs rather than the other way around. We also found similar patterns when we examined changes in poverty rates, mean incomes, and property values around the TSDF locations (see Mohai and Saha supplement, figures 3–5).

However, the percentage changes alone do not tell us what groups actually move into or away from the sites. For example, if the white percentages around hazardous waste TSDFs are decreasing while minority percentages are increasing, these changes could be the result of a number of possibilities: (a) whites may be moving out while minorities are simultaneously moving in; (b) there is no net movement of the white population away from TSDF sites but their percentage is decreasing simply because minorities are moving in; (c) there is no net movement of minorities to TSDF sites but their percentage is increasing because whites are moving out; (d) both whites and minorities are moving away from TSDF locations but whites are moving out at a faster rate (possibly due to higher incomes and fewer residential mobility constraints imposed on them by discrimination in the housing market).

Thus, to better understand what accounts for the decreasing white percentages and increasing minority percentages around TSDF locations using areal apportionment, we examined actual subpopulation changes within 3.0 km of these sites for each racial and ethnic...
Figure 2c: Population Changes within 3 Kilometer Host Neighborhoods for 88 TSDFs Sited 1976-1980

Figure 2d: Population Changes within 3 Kilometer Host Neighborhoods for 58 TSDFs Sited 1986-1990

Figure 2e: Population Changes within 3 Kilometer Host Neighborhoods for 24 TSDFs Sited 1991-1995

Figure 2f: Population Changes within 3 Kilometer Host Neighborhoods for 68 TSDFs Sited 1981-1985

Figure 2. (Continued.)
group between 1970 and 2000. These results are displayed in figures 2(a)–(f). Regarding the TSDFs sited between 1966 and 1970 (figure 2(a)), it is clear that whites have moved out and minorities have moved in since 1970 (we do not include in the figure subpopulation totals for areas beyond 3.0 km because of their very large size). A similar pattern is found around facilities sited between 1971 and 1975. However, for TSDFs sited between 1966 and 1970 and between 1971 and 1975, the numbers of blacks that moved in around these sites was slight compared to the numbers of Hispanics and Asians and Pacific Islanders moving in.

We found very similar patterns in examining in- and out-migration around TSDFs sited between 1976 and 1980 and between 1981 and 1985. Whites moved out while Hispanics and Asians and Pacific Islanders moved into the areas around the sites. At the same time, there was only a very slight change in the numbers of blacks around these sites. As we saw earlier when examining the percentage changes, the in- and out-migrations appear to have occurred in advance of facility siting, suggesting once more that the facilities themselves may not be the ‘cause’ of these migrations. Although the rate of out-migration by whites appears to have increased after 1980 around TSDFs sited between 1976 and 1980, this rate slowed around the facilities sited between 1981 and 1985, and population changes around these facilities for blacks shifted from slightly increasing to slightly decreasing before and after 1980.

The above patterns are largely the same for TSDFs sited between 1986 and 1990 and between 1991 and 1995, although the numbers of people affected by TSDFs and the rates of subpopulation changes were considerably less for the facilities sited in the latter period. This could be due to the much smaller number of TSDFs sited in this period (24 facilities) than in prior periods and the much smaller span of time passing from facility siting to the 2000 Census (less than 10 years) as compared to the facilities sited earlier. Nevertheless, we see that around facilities sited between 1986 and 1990, there was a decrease in the number of whites after siting, while there was a large increase in the numbers of each of the other racial and ethnic groups, including this time also blacks. However, as we have seen before, the subpopulation changes appear to have occurred well before the facilities are sited. In sum, the above analyses demonstrate that: (a) TSDFs sited between 1966 and 1995 were placed in locations that were disproportionately nonwhite and poor (see Mohai and Saha supplement regarding socioeconomic status) at the time of siting; (b) although disparities around TSDFs widened after siting, the demographic changes were already occurring at TSDF locations before siting; (c) the widening demographic disparities were largely the result of whites moving out of TSDF neighborhoods and Hispanics and Asians/Pacific Islanders moving in (again, before and after siting); and (d) there is little evidence of net movement of blacks either into or away from such locations. These results are consistent with the ‘path of least resistance’ (sociopolitical) explanation of racially and socioeconomically disparate siting. This sociopolitical explanation posits that the siting of LULUs tends to occur in communities that, relative to other communities, may lack political clout and resources needed to effectively oppose new facility siting proposals (see Mohai and Saha 2015, for a more detailed description of this explanation). Communities that are disproportionately people of color, poor, and experience demographic change are particularly vulnerable to loss of social capital and political clout (Elliot and Frickel 2013).

Because the most argued for alternative explanations of disparate siting have been the market dynamics and racial discrimination explanations (see Mohai and Saha 2015), we wanted to see whether the racial disparities found at or near the time of facility siting (figure 1) were independent or largely the result of people of color coincidentally living in areas where land values are low. We thus used distance-based methods (this time the 50% areal containment method) and logistic regression analyses to determine (a) whether the race variables were statistically significant predictors of facility locations at the time of siting (Models 1 in table 1) and (b) whether they remained so after controlling for mean property values and other socioeconomic variables (Models 2). In the regression, the dependent variable took a value of ‘1’ if 50% or more of a census tract lay within 3.0 km of a TSDF location at the time of siting and a value ‘0’ if

---

5 Natural population changes, i.e., births and deaths, may have had some effect on the observed post-siting subpopulation changes, but we did not fully assess the size of such changes. We used tract-level demographic data from the US Census Bureau. However, National Center for Health Statistics is the primary source for births and deaths, but neither it nor the Census Bureau compiled such data at the tract level. Overall, black birth rates were about one-third greater than those of whites in 1980, 1990, and 2000, while death rates for blacks were comparable to those of whites. Hispanic birth and death rates were not reported for 1980 and 1990, but in 2000 Hispanic birth rates were nearly double of those of non-Hispanic whites and death rates were about one-quarter lower than those of whites. Hispanic birth and death rates together account for natural population growth of about 15 persons per 1000 in excess of the natural growth rate of non-Hispanic whites.

6 The market dynamics explanation argues that the disproportionate siting of hazardous facilities in people of color communities is the result of industries’ desire to minimize the costs of doing business. Since facilities such as TSDFs require land, which can incur a significant expense, industries attempt to locate in areas where land values are low. These areas tend to be where poor people and people of color also live. Racial discrimination explanations have raised questions about whether people of color communities are targeted for society’s undesirable land uses because such communities represent the path of least resistance due to a lack of political clout and whether institutionalized forms of racism involving past discriminatory decisions regarding housing, industrial zoning, provision of services, and others, continue to perpetuate disadvantages for people of color communities (see Mohai and Saha 2015, for further discussion about these explanations).
Table 1. Comparison of logistic regression results applying the 50% areal containment distance-based method and unit hazard coincidence method.

<table>
<thead>
<tr>
<th>Variables</th>
<th>50% areal containment method</th>
<th>Unit hazard coincidence method</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Model 1</td>
<td>Model 2</td>
</tr>
<tr>
<td>% Black</td>
<td>0.775b</td>
<td>−1.380b</td>
</tr>
<tr>
<td>% Hispanic</td>
<td>3.796c</td>
<td>1.098c</td>
</tr>
<tr>
<td>%Asian/Pacific islander</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mean property value ($1000 s)</td>
<td>0.025</td>
<td>0.059</td>
</tr>
<tr>
<td>% with college degree</td>
<td>−4.064</td>
<td>10.819</td>
</tr>
<tr>
<td>% in prof./mana. occupations</td>
<td>−9.976c</td>
<td>10.693</td>
</tr>
<tr>
<td>% in prec. prod./labor occupations</td>
<td>−0.835</td>
<td>9.124c</td>
</tr>
<tr>
<td>Constant</td>
<td>−5.600c</td>
<td>−3.589c</td>
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<tr>
<td>−2 log likelihood</td>
<td>2480.24</td>
<td>1235.84</td>
</tr>
<tr>
<td>Model X²</td>
<td>202.147c</td>
<td>93.71c</td>
</tr>
<tr>
<td>% Black</td>
<td>1.121c</td>
<td>−0.525c</td>
</tr>
<tr>
<td>% Hispanic</td>
<td>1.034c</td>
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<tr>
<td>%Asian/Pacific islander</td>
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<td></td>
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<td>−8.445</td>
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<td>Model X²</td>
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<td>160.32</td>
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Table 1. (Continued.)

<table>
<thead>
<tr>
<th>Variables</th>
<th>50% areal containment method</th>
<th>Unit hazard coincidence method</th>
</tr>
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<tbody>
<tr>
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<td>Model 1</td>
<td>Model 2</td>
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<tr>
<td>% Black</td>
<td>1.029&lt;sup&gt;c&lt;/sup&gt;</td>
<td>0.785&lt;sup&gt;c&lt;/sup&gt;</td>
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<td>4489.18</td>
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<td>153.14&lt;sup&gt;c&lt;/sup&gt;</td>
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<td>1.901&lt;sup&gt;c&lt;/sup&gt;</td>
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<tr>
<td>% Hispanic</td>
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<td>2.004&lt;sup&gt;c&lt;/sup&gt;</td>
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<td></td>
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<td>% in precision production/labor occupations</td>
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Table 1. (Continued.)

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<th>Unit hazard coincidence method</th>
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<tr>
<td></td>
<td>Model 1</td>
<td>Model 2</td>
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<td><strong>TSDFs sited 1986–1990 1990 census</strong></td>
<td></td>
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<tr>
<td>% Black</td>
<td>0.636&lt;sup&gt;b&lt;/sup&gt;</td>
<td>0.292</td>
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<tr>
<td>% Hispanic</td>
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<td>% Asian/Pacific islander</td>
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<td>3.554&lt;sup&gt;c&lt;/sup&gt;</td>
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<tr>
<td>Mean property value ($1000 s)</td>
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<tr>
<td>% with college degree</td>
<td>0.366</td>
<td></td>
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<tr>
<td>% in prof./mana. occupations</td>
<td>−2.924&lt;sup&gt;a&lt;/sup&gt;</td>
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<td><strong>TSDFs sited 1991–1995 1990 census</strong></td>
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<td></td>
</tr>
<tr>
<td>% Black</td>
<td>0.292</td>
<td>−0.261</td>
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<tr>
<td>% Hispanic</td>
<td>−3.991&lt;sup&gt;a&lt;/sup&gt;</td>
<td>−3.295</td>
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<td>3.721&lt;sup&gt;b&lt;/sup&gt;</td>
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<tr>
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<td>−4.278&lt;sup&gt;a&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td>% in prec. prod./labor occupations</td>
<td>−4.074&lt;sup&gt;a&lt;/sup&gt;</td>
<td></td>
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<tr>
<td>Constant</td>
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<td>9.16&lt;sup&gt;c&lt;/sup&gt;</td>
<td>29.50&lt;sup&gt;c&lt;/sup&gt;</td>
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</tbody>
</table>

Note: values in table represent logistic regression coefficients.

<sup>a</sup> p < 0.05.
<sup>b</sup> p < 0.01.
<sup>c</sup> p < 0.001.
most of the tract lay beyond that distance. We conducted the analyses for each of the TSDF siting periods discussed above.

When we examine the results for TSDFs sited between 1966 and 1970, we find that both the percent black and the percent Hispanic are statistically significant predictors of facility siting in Model 1 using the 1970 Census. When mean property values, percent with college degrees, percent in professional/managerial occupations, and percent in precision production/labor occupations are entered into the equation (Model 2), percent Hispanic remains a statistically significant predictor of facility location in the expected direction. However, the sign for percent black becomes negative indicating it now predicts facility location in the unexpected direction. When comparing these results with the graphical analysis in figure 1(a), the regression results may not be all that surprising given that the disparity in the Hispanic percentage was found to be much greater than the disparity in black percentage at the time of siting for these facilities. Note, however, that the mean property values of the census tract are not significant in Model 2, which tends to contradict the market dynamics explanation of environmental disparities. At the same time, the percent employed in professional/managerial occupations in the tracts is a statistically significant predictor of facility location and in the expected direction (i.e., tracts with a high percentage employed in such occupations are less likely to be near a TSDF), which lends support to the path of least resistance (sociopolitical) explanation.

When facilities sited between 1971 and 1975 are examined, both percent black and percent Hispanic are statistically significant predictors of facility locations in Model 1. However, this time neither percent black nor percent Hispanic are statistically significant predictors of facility locations in the expected direction, when mean property values and the other control variables are entered (Model 2). As before, mean property values are not a significant predictor of facility locations, contradicting the market dynamic explanation of environmental disparities. At the same time, both percent in professional/managerial occupations and percent in precision production/labor occupations are statistically significant predictors in the expected direction.

Similar patterns in the results were obtained when we conducted logistic regression analyses of the facilities sited between 1976 and 1980 using the 1980 Census, although this time the racial and ethnic variables tended to be much stronger predictors of facility locations. All three are statistically significant predictors of facility siting in the expected direction in Model 1. When mean property values and the socioeconomic variables are entered into the equation in Model 2, all three race/ethnicity variables remain statistically significant in the expected direction. However, as earlier, the mean property value variable is not a statistically significant predictor of facility siting, again contradicting the market dynamics explanation, while the percent employed in precision production/labor occupations is statistically significant. Similar patterns are found for facilities sited between 1981 and 1985, with a couple of exceptions. Although the percent black and percent Hispanic are statistically significant predictors of facility location in Models 1 and 2, the percent Asian and Pacific Islanders is not significant in either model. Also contrasting earlier results, the mean property value variable is a statistically significant predictor of facility location in Model 2 and in the expected direction, i.e., tracts with lower property values are more likely to receive a TSDF directly or nearby.

When TSDFs sited between 1986 and 1990 are examined using the 1990 Census, patterns very similar to those above are again found. In Model 1, all three race variables are statistically significant predictors of facility location in the expected direction. In Model 2, percent Hispanic and percent Asian and Pacific Islander remain statistically significant after applying controls. As with the facilities sited between 1981 and 1985, the mean property variable is a statistically significant predictor of facility siting between 1986 and 1990 while percent with a college degree is not. However, this time percent employed in professional/managerial occupations is a statistically significant predictor of TSDF siting, and in the expected direction (with tracts with higher percentages in those occupations less likely to have a facility sited nearby). Although percent employed in precision production/labor occupations is also statistically significant, it is no longer so in the expected direction.

Finally, when we examine the results for facilities sited between 1991 and 1995 the outcomes for the race variables appear to be more mixed than previously. Whereas percent black and percent Hispanic tended to be robust predictors of facility siting in the earlier time periods, they are no longer so for these facilities. Percent black is not statistically significant in either Models 1 or 2, and percent Hispanic predicts facility location only in the unexpected direction. However, percent Asian and Pacific Islander is a statistically significant predictor of facility siting before and after controls, suggesting increasing vulnerability of that group and decreasing vulnerability of blacks and Hispanics to TSDF siting in that time period. As with the facilities sited between 1986 and 1990, the mean property values variable and the occupation variables are statistically significant predictors of facility siting.

In sum, although mean property values are statistically significant predictors of TSDF siting for facilities sited between 1981 and 1995, they are not statistically significant predictors of TSDF siting for facilities sited between 1966 and 1980. At the same time, the race variables remain statistically significant predictors of TSDF siting throughout all the siting periods in spite of controlling for mean property values and other socioeconomic characteristics of the census tracts.
within 3 km of the TSDFs. Thus, although there is some limited evidence that property values are related to facility siting, the racial disparities observed around facility sites are independent of them and other socioeconomic characteristics for the entire 30-year period we examined.

Finally, we provide logistic regression results using the unit-hazard coincidence method (table 1) in order to compare the outcomes with those using the 50% areal containment method. Confirming what we found earlier, outcomes generally are much weaker using the unit-hazard coincidence method than when distance-based methods are applied. When all variables are entered into the models (Model 2), in only one instance does a race/ethnicity variable remain statistically significant; specifically the percent Hispanic remains a statistically significant predictor of facility siting for facilities sited between 1971 and 1975. And in only two cases is the percent employed in precision production/labor occupations a statistically significant predictor of facility siting: those sited between 1966 and 1970 and those sited between 1976 and 1980. No other variables are statistically significant predictors of facility siting when all variables are entered in the regression models using the unit-hazard coincidence method.

Conclusions

A considerable number of quantitative analyses have been conducted in the past several decades that demonstrate the existence of racial and socioeconomic disparities in the distribution of environmental hazards of a wide variety. The vast majority of these have been cross-sectional, snapshot studies employing data on the hazardous facilities and population characteristics at only one point in time. Although some limited hypotheses can be tested with cross-sectional data, fully understanding how present-day disparities come about requires longitudinal analyses that examine the demographic characteristics of sites at the time of facility siting and track demographic changes after siting. Relatively few such studies exist, mainly because of the difficulty of obtaining adequate information about start dates for facilities, shifting census tract and zip code boundaries over time, and uncertainties regarding the most appropriate methodologies to employ.

The number of longitudinal environmental justice analyses has not only been limited, but those that exist have often led to contradictory findings. We have argued in this paper and elsewhere (Mohai and Saha 2015) that much of the uncertainty of these findings has likely resulted from the application of unit-hazard coincidence methodology in earlier studies. Mohai and Saha (2006, 2007) demonstrated that its application leads to an underestimation of the degree of racial and socioeconomic disparities around hazardous sites while distance-based methods lead to more reliable results. Their findings led us to consider whether, in a longitudinal analysis, the use of the unit-hazard coincidence method would yield similar results, i.e., underestimate or fail to detect racial and socioeconomic disparities. We also sought to determine whether the application of distance-based methods would lead to clearer and more definitive results about the two processes thought to account for present-day racial and socioeconomic disparities around hazardous waste TSDFs: (1) disparate siting, and (2) post-siting demographic change. To our knowledge, our study is the first national-level longitudinal study to employ distance-based methods to test hypotheses about these two processes.

When applying the unit hazard coincidence method, we found virtually no evidence of either disparate siting or post-siting demographic change. These results are similar to prior national longitudinal analyses that have employed the unit-hazard coincidence method. In contrast, we found clear support for the disparate siting hypothesis when distance-based methods were applied. We also found racial and socioeconomic disparities around hazardous waste facility sites to widen over time. However, contrary to the expectations of the post-siting demographic change hypothesis, we found little evidence to suggest that the siting of hazardous waste TSDFs are the cause of white move-out and minority move-in. Instead, by examining both actual population changes and percentage changes before and after TSDF siting, we found the opposite to be true. Hazardous waste TSDFs were sited where white move-out and minority move-in were already occurring, and had been occurring for a decade or two prior to siting for some cohorts of TSDFs. Thus our national-level findings add support to Pastor et al. (2001) conclusions from their Los Angeles study that demographic changes in an area ‘attract’ LULUs rather than the other way around (i.e., LULUs ‘attract’ minorities and the poor).

Pre-siting demographic changes have rarely been examined in longitudinal environmental justice analyses. However, our results and those of Pastor, Sadd, and Hipp highlight the need for future studies to examine such changes in neighborhoods at least one to two decades prior to siting in order to fully understand the dynamics of facility siting. This type of approach is needed to inform understanding of the direction of causality regarding the question of ‘Which came first, the facilities or the disproportionate numbers of poor people and minorities?’ Such studies are also needed to test explanations of disparate siting and the independent role of racial, sociopolitical and economic factors. The possibility that these factors may overlap and be mutually reinforcing also needs to be explored (Mohai et al. 2009).

Nevertheless, and again similar to Pastor, Sadd, and Hipp, we found that the racial composition of geographic areas tends to be a stronger independent
predictor of which areas are destined to receive hazardous waste TSDFs than are other socioeconomic characteristics of the areas. When we employed multivariate statistical analyses we found that the race variables remained statistically significant predictors of TSDF siting in the expected direction in nearly all the siting periods in spite of controlling for mean property values and other socioeconomic characteristics. At the same time, mean property values were found to be statistically significant predictors of TSDF siting only between 1981 and 1995, but not between 1966 and 1980. Percent employed in professional/managerial occupations was statistically significant in the expected direction in four of the time periods, while percent employed in precision production/labor occupations was statistically significant in the expected direction in three. Percent with college degrees was not statistically significant in any of the time periods.

That the racial composition of areas tends to be an independent and stronger predictor than socioeconomic characteristics of which areas receive hazardous waste TSDFs provides especially strong support for racial explanations of disparate siting (see Mohai and Saha 2013). Racial disparities at the time of siting can readily occur when people of color live in highly segregated residential areas that can be targeted for new facilities siting and that may also already have other industrial land uses. Such land use patterns—created in part by past racial discrimination in zoning, property law and housing—continue to persist into the present-day (Stretesky and Hogan 1998, Morello-Frosch and Jesdale 2006). Although many blatantly discriminatory practices of the past are now illegal, less overt forms of discrimination exist today that have the effect of concentrating minorities in environmentally undesirable neighborhoods, for example, by discouraging their out-migration and encouraging in-migration (Bullard et al 1994, Taylor 2014). In addition, institutionalized forms of discrimination in environmental policy and industry practice limit access to information by and participation of people of color in siting decisions and thereby steer new facility sitings into minority neighborhoods (Stretesky and Hogan 1998, Cole and Foster 2001, Bullard and Wright 2012).

Sociopolitical explanations of disparate siting are also supported. Areas with large numbers of people of color with limited resources and political clout have limited ability to fend off new unwanted facility siting (Cole and Foster 2001). Furthermore, areas undergoing demographic changes are also areas vulnerable to declining social capital, resources, and political clout, as demographic change may represent the weakening of social ties, the loss of community leaders, and weakening of civic organizations (Elliot and Frickel 2013).

Although Saha and Mohai’s (2005) longitudinal analysis of hazardous waste facility siting in Michigan tested the disparate siting hypothesis only, their study nevertheless applied distance-based methods and found similarly strong support for it. Furthermore, they examined changes in the historical context in which facilities were sited since 1950 and found little evidence of racial and socioeconomic disparities in facility siting before 1970. However, they found such siting disparities emerged beginning with the 1970s, strengthened in the 1980s, and declined but persisted after 1990. Although our national-level analysis does not extend back in time as far as theirs, we are struck that the pattern of changes we found over time in the magnitude of disparities at the time of facility siting closely follows theirs. Nationally we found racial and socioeconomic disparities in facility siting in the period around 1970 to be significant. Furthermore, we found the disparities in siting to be even greater in the period around 1980, but smaller again in the period around 1990 (although still significant).

Saha and Mohai have argued that the historical context of siting is an important factor in understanding the patterns of disparate siting over time. Public awareness about many environmental risks had not developed before the environmental movement gained momentum in the 1960s and 1970s. They and others argue that environmental disasters, which received national attention in the late 1960s and throughout the 1970s and 1980s, particularly Love Canal in 1979, sensitized the public to concerns about hazardous wastes and resulted in increasing NIMBY-ism (‘not in my backyard’ siting opposition behaviors) around the country. NIMBYism in more affluent, white communities, however, resulted in industry taking the ‘path of least resistance,’ and targeting communities with fewer resources and political clout as the sites for new hazardous waste facilities and other LULUs. These communities are where the poor and people of color live. As Bullard and Wright (1987) have argued, NIMBY became PIBBY (place in blacks’ back yards). The narrowing of siting disparities in the 1990s raises for us the question of whether the gathering momentum of the environmental justice movement has had a tangible impact of reducing the incidence of disparate siting decisions in more recent times. We believe this will be an important line of research for scholars interested in understanding the environmental justice movement and the extent of environmental discrimination.

We have shown that findings from our national longitudinal study using distance-based methods are consistent with those from other similar subnational studies and stand in contrast to studies that have used the unit-hazard coincidence method in proximity-based environmental justice analyses. In answer to ‘Which came first?’, our findings show that rather than hazardous waste TSDFs ‘attracting’ people of color, neighborhoods with already disproportionate and growing concentrations of people of color appear to ‘attract’ new facility siting. The body of distance-based
research suggests that government policies, industry practices and community empowerment measures are needed to ensure fairness in the siting process and to address disparities in risks associated with existing facilities. In addition, more studies that use reliable methods to assess such racial and socioeconomic disparities in the location of other types of environmental hazards could also improve our understanding of the processes and factors that contribute to environmentally unjust conditions in the United States and around the world.

Acknowledgments

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Attachment 10
ARTICLES

TOXIC WASTES AND RACE AT TWENTY: WHY RACE STILL MATTERS AFTER ALL OF THESE YEARS

BY

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In 1987 the United Church of Christ’s (UCC) Commission for Racial Justice published its landmark report Toxic Wastes and Race in the United States. The report documented disproportionate environmental burdens facing people of color and low-income communities across the country. The report sparked a national grassroots environmental justice movement and significant academic and governmental attention. In 2007, the UCC commissioned leading environmental justice scholars for a new report, Toxic Wastes and Race at Twenty: Grassroots Struggles to Dismantle Environmental Racism in the United States. In addition to commemorating and updating the 1987 report, the new report takes stock of progress achieved over the last twenty years.

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Although Toxic Wastes and Race has had tremendous positive impacts, twenty years after its release people of color and low-income communities are still the dumping grounds for all kinds of toxins. Using 2000 Census data, an updated database of commercial hazardous waste facilities, and newer methods that better match where people and hazardous sites are located, we found significant racial and socioeconomic disparities persist in the distribution of the nation’s hazardous wastes facilities. We demonstrate that people of color are more concentrated around such facilities than previously shown. People of color are particularly concentrated in neighborhoods and communities with the greatest number of facilities and racial disparities continue to be widespread throughout the country. Moreover, hazardous waste host neighborhoods are composed predominantly of people of color. Race continues to be the predominant explanatory factor in facility locations and clearly still matters.

Yet getting government to respond to the needs of low-income and people of color communities has not been easy, especially in recent years when the U.S. Environmental Protection Agency has mounted an all-out attack on environmental justice principles and policies established in the 1990s. Environmental injustice results from deeply-embedded institutional discrimination and will require the support of concerned individuals, groups, and organizations from various walks of life. The Toxic Wastes and Race at Twenty report condensed in this Article provides dozens of recommendations for action at the federal, state, and local levels to help eliminate the disparities. The report also makes recommendations for nongovernmental organizations and industry. More than one hundred environmental justice, civil rights, human rights, faith based, and health allies signed a letter endorsing these steps to reverse recent backsliding, renewing the call for social, economic, and environmental justice for all. Congress has begun to listen and take action.
I. INTRODUCTION

The environmental justice movement has come a long way since its humble beginning in Warren County, North Carolina, where a PCB (polychlorinated biphenyl) landfill ignited protests and more than 500 arrests.\footnote{Eileen McGurty, Transforming Environmentalism: Warren County, PCBs, and the Origins of Environmental Justice 9 (2007); Robert D. Bullard, Dumping in Dixie: Race, Class, and Environmental Quality 29–31 (3d ed. 2000).} Although the demonstrators were unsuccessful in stopping the siting of the PCB landfill, they put “environmental racism” on the map and launched the national environmental justice movement. The Warren County protests also led the United Church of Christ Commission for Racial Justice in 1987 to produce Toxic Wastes and Race, the first national study to correlate waste facility sites and demographic characteristics.\footnote{Comm’n for Racial Justice, United Church of Christ, Toxic Wastes and Race in the United States (1987), available at http://www.ucc.org/about-us/archives/pdfs/toxwrace87.pdf [hereinafter Toxic Wastes and Race]; McGurty, supra note 1, at 116.}

The 1987 report was significant because it found race to be the most potent variable in predicting where these facilities were located—more powerful than household income, the value of homes, and the estimated amount of hazardous waste generated by industry.\footnote{Toxic Wastes and Race, supra note 2.} The Toxic Wastes and Race study was revisited in 1994 using 1990 census data.\footnote{Benjamin A. Goldman & Laura J. Fitton, Toxic Wastes and Race Revisited (1994), available at http://www.stateaction.org/publications/pdf/toxicwastes.pdf [hereinafter Toxic Wastes and Race Revisited].} The 1994 study found that people of color are 47% more likely to live near a hazardous waste facility than white Americans.\footnote{Id. at 1.}

It has now been two decades since Toxic Wastes and Race was first published. Over the past twenty years, environmental justice and environmental racism have become household words. Out of the small and seemingly isolated environmental struggles emerged a potent grassroots community-driven movement. Many of the on-the-ground environmental struggles in the 1980s, 1990s, and through the early years of the new millennium have seen the quest for environmental and economic justice become a unifying theme across race, class, gender, age, and geographic lines.

The “chicken or egg” wastes facility siting debate has nearly been put to rest since recent evidence shows that the disproportionately high percentages of minorities and low-income populations were present at the time the commercial hazardous waste facilities were sited. A 2001 study confirms this phenomenon in Los Angeles County.\footnote{Manuel Pastor Jr., Jim Sadd & John Hipp, Which Came First? Toxic Facilities, Minority Move-In, and Environmental Justice, 23 J. URB. AFF. 1, 9 (2001).} Likewise in a 2005 study our authors Robin Saha and Paul Mohai report that in Michigan during the last thirty years commercial hazardous waste facilities were sited in neighborhoods that were disproportionately poor and disproportionately non-white at the time of siting.\footnote{Robin Saha & Paul Mohai, Historical Context and Hazardous Waste Facility Siting:}
In 2007, Mohai and Saha provided compelling evidence of the demographic composition at or near the time of siting for the neighborhoods of the 413 facilities examined in the *Toxic Wastes and Race at Twenty* report. Again, their research found that nationally commercial hazardous waste facilities sited since 1965 have been sited in neighborhoods that were disproportionately minority at the time of siting.

After two decades of intense study, targeted research, public hearings, grassroots organizing, networking, and movement building, environmental justice struggles have taken center stage. Yet, all communities are still not created equal. Some neighborhoods, communities, and regions are still the dumping grounds for all kinds of toxins. Low-income and people of color populations are still left behind before and after natural and man-made disasters strike—as graphically demonstrated on August 29, 2005 when Hurricane Katrina made landfall and the levee breach flooded New Orleans, creating the “worst environmental disaster” in U.S. history.

II. ROOTS OF ENVIRONMENTAL JUSTICE SINCE 1987

While communities across the nation celebrated the twentieth anniversary of *Toxic Wastes and Race*, they knew all too well that there was still much work to be done before we achieve the goal of environmental justice for all. Much progress has been made in mainstreaming environmental protection as a civil rights and social justice issue. The key is getting government to enforce the laws and regulations equally across the board—without regard to race, color, or national origin.

The last two decades have seen some positive change in the way groups relate to each other. We now see an increasing number of community based groups, environmental justice networks, environmental and conservation groups, legal groups, faith-based groups, labor, academic institutions, and youth organizations teaming up on environmental and health issues that differentially impact poor people and people of color. Environmental racism and environmental justice panels have become “hot” topics at national conferences and forums sponsored by law schools, bar associations, public health groups, scientific societies, professional meetings, and university lecture series.

In 2007, the United Church of Christ Justice and Witness Ministries released a new report as part of the twentieth anniversary of the release of the 1987 report. The 2007 *Toxic Wastes and Race at Twenty* report uses 2000


*Paul Mohai & Robin Saha, Which Came First, People or Pollution? How Race and Socioeconomic Status Affect Environmental Justice* 634 (2007) (the authors presented this report at the Annual Meeting of the American Association for the Advancement of Science (AAAS) held in San Francisco, CA on February 17, 2007).


*Manuel Pastor et al., In the Wake of the Storm: Environment, Disaster and Race After Katrina* 1 (2006).
The report also chronicles important environmental justice milestones since 1987 and a collection of “impact” essays from environmental justice leaders on a range of topics. This new report examines the environmental justice implications in post-Katrina New Orleans and uses the Dickson County (Tennessee) Landfill case—the “poster child” for environmental racism—to illustrate the deadly mix of waste and race.12 Toxic Wastes and Race at Twenty is designed to facilitate renewed grassroots organizing and provide a catalyst for local, regional, and national environmental justice public forums, discussion groups, and policy changes in 2007 and beyond.

The research was guided by the following questions:

1. What are the core or fundamental environmental justice issues surrounding waste and race?
2. What role has government played over the past two decades to address waste facility siting and related environmental disparities?
3. What progress has been made and what challenges exist?
4. What resources exist or need to be brought to bear to address the environmental justice issues?
5. What policy and legislative changes are needed to address adverse and disproportionate impacts of environmental and health threats to low-income and people of color populations and to ensure equal environmental protection for all?13

A new movement has taken root in the United States, and spread around the world, that defines environment as “everything”—where we live, work, play, worship, and go to school, as well as the physical and natural world. This relatively new national movement is called the environmental and economic justice movement. Two decades ago, the concept of environmental justice had not registered on the radar screens of environmental, civil rights, human rights, or social justice groups. Nevertheless, one should not forget that Dr. Martin Luther King Jr. went to Memphis in 1968 on an environmental and economic justice mission for the striking black garbage workers.14 The strikers were demanding equal pay and better work conditions. Of course, Dr. King was assassinated before he could complete his mission.

In 1998, the U.S. Environmental Protection Agency (EPA) defined environmental justice as the

fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic,
or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.\textsuperscript{15}

Simply put, environmental justice demands that everyone—not just the people who can “vote with their feet” and move away from threats or individuals who can afford lawyers, experts, and lobbyists to fight on their behalf—is entitled to equal protection and equal enforcement of our environmental, health, housing, land use, transportation, energy, and civil rights laws and regulations.

Clearly, the world is much different since the \textit{Toxic Wastes and Race} report was first published in 1987. The UCC report propelled an entire generation of social science researchers investigating the interplay between race, class, and the environment. The landmark study also spawned a series of academic books, including \textit{Dumping in Dixie: Race, Class, and Environmental Quality} in 1990, the first to chronicle the convergence of two movements—the social justice movement and environmental movement—into the environmental justice movement.\textsuperscript{16} It also highlighted African Americans’ environmental activism in the South, the same region that gave birth to the modern civil rights movement. What started out as local and often isolated community-based struggles against toxics and facility siting blossomed into a multi-issue, multi-ethnic, and multi-regional movement.

Two years later, in 1992, \textit{Race and the Incidence of Environmental Hazards: A Time for Discourse} brought together papers from scholars, activists, and policy analysts who had attended an historic environmental justice conference sponsored by Professors Bunyan Bryant and Paul Mohai at the University of Michigan School of Natural Resources and Environment.\textsuperscript{17} A half-dozen presenters from this historic gathering—which later became known as the “Michigan Coalition”—pressured the EPA to begin addressing environmental justice concerns voiced by low-income and people of color communities from around the country. In July 1992, after much prodding from environmental justice advocates, the EPA published \textit{Environmental Equity: Reducing Risks for All Communities}, one of the first EPA reports to acknowledge environmental disparities by race and class.\textsuperscript{18}

It is no accident that the Commission for Racial Justice, under the leadership of Reverend Benjamin Chavis, also was the impetus behind the First National People of Color Environmental Leadership Summit. The 1991 Summit was probably the most important single event in the movement’s


\textsuperscript{16} BULLARD, supra note 1, at xiii.

\textsuperscript{17} RACE AND THE INCIDENCE OF ENVIRONMENTAL HAZARDS: A TIME FOR DISCOURSE (Bunyan Bryant & Paul Mohai eds., 1992).

history. The Summit broadened the environmental justice movement beyond its early anti-toxics focus to include issues of public health, worker safety, land use, transportation, housing, resource allocation, and community empowerment. The meeting also demonstrated that it is possible to build a multi-racial grassroots movement around environmental and economic justice.19

Held in Washington, D.C., the four-day Summit was attended by more than 650 grassroots and national leaders from around the world. Delegates came from all fifty states, Puerto Rico, Chile, Mexico, and as far away as the Marshall Islands. People attended the Summit to share their action strategies, redefine the environmental movement, and develop common plans for addressing environmental problems affecting people of color in the United States and around the world.

On October 27, 1991, Summit delegates adopted seventeen “Principles of Environmental Justice.” These principles were developed as a guide for organizing, networking, and relating to government and nongovernmental organizations (NGOs). By June 1992, Spanish and Portuguese translations of the Principles were being used and circulated by NGOs and environmental justice groups at the Earth Summit in Rio de Janeiro. And in September 2002, the UCC helped facilitate the Second People of Color Environmental Leadership Summit (EJ Summit II) in Washington, D.C. The EJ Summit II was planned for 500 delegates. However, more than 1400 individuals participated in this historic event—a clear indication that the environmental justice movement is alive and well.

III. TOXIC NEIGHBORHOODS

Despite progress in research, planning, and policy, low-income and people of color neighborhoods and their residents suffer from greater environmental risks than the larger society. For example, lead poisoning continues to be the number-one environmental health threat to children in the United States, especially poor children, children of color, and children living in older housing in inner cities.20 “Black children are five times more likely than white children to have lead poisoning”21 and “[o]ne in seven black children living in older housing has elevated blood lead levels.”22

About 22% of African American children and 13% of Mexican American children living in pre-1946 housing suffer from lead poisoning, compared with 6% of white children living in comparable types of housing.23 Recent

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20 TOXIC WASTES AND RACE AT TWENTY, supra note 11, at 3.
21 Id.
studies suggest that a young person’s lead burden is linked to lower IQ, lower high school graduation rates, and increased delinquency. Lead poisoning causes about two to three points of IQ lost for each 10 ug/dl lead level.

The nation’s environmental laws, regulations, and policies are not applied uniformly, resulting in some individuals, neighborhoods, and communities being exposed to elevated health risks. In 1992, staff writers from The National Law Journal uncovered glaring inequities in the way the federal EPA enforces its laws. The authors write:

There is a racial divide in the way the U.S. government cleans up toxic waste sites and punishes polluters. White communities see faster action, better results and stiffer penalties than communities where blacks, Hispanics and other minorities live. This unequal protection often occurs whether the community is wealthy or poor.

These findings suggest that unequal protection is placing communities of color at special risk. The National Law Journal study supplements the findings of earlier studies and reinforces what many grassroots leaders have been saying all along: namely, people of color are differentially impacted by industrial pollution and they also can expect different treatment from the government. Environmental decision making operates at the juncture of science, economics, politics, special interests, and ethics. The question of environmental justice is not anchored in a debate about whether or not decision makers should tinker with risk management. The framework seeks to prevent environmental threats before they occur.

The U.S. Government Accountability Office (formerly the U.S. General Accounting Office) estimates that there are up to 450,000 brownfields (abandoned waste sites) scattered throughout the urban landscape from New York to California—most of which are located in or near low income, working class, and people of color communities. More than 870,000 of the 1.9 million housing units for the poor, who are mostly minorities, sit “within about a mile of factories that reported toxic emissions to the Environmental Protection Agency.”

More than 600,000 students in Massachusetts, New York, New Jersey, Michigan, and California attend nearly 1200 public schools—with

25 *Id.*
27 *Id.*
populations largely made up of African Americans and other children of color—that are located within a half mile of federal Superfund or state-identified contaminated sites. An astounding “68 percent of African Americans live within 30 miles of a coal-fired power plant—the distance within which the maximum effects of the smokestack plume are expected to occur”—compared with 56% of white Americans.

In September 2005, the Associated Press (AP) released results from its analysis of an EPA research project showing African Americans are “79 percent more likely than whites to live in neighborhoods where industrial pollution is suspected of posing the greatest health danger.” Using EPA’s own data and government scientists, the AP study, More Blacks Live with Pollution, revealed that “[i]n 19 states, blacks were more than twice as likely as whites to live in neighborhoods where air pollution seems to pose the greatest health danger.” Hispanics and Asians also are more likely to breathe dirty air in some regions of the United States. The AP study found that residents of the at-risk neighborhoods were generally poorer and less educated, and unemployment rates in those districts were nearly 20% higher than the national average.

The AP study analyzed the health risk posed by industrial air pollution using toxic chemical air releases reported by factories to calculate a health risk score for each square kilometer of the United States. The scores can be used to compare risks from long-term exposure to factory pollution from one area to another. The scores are based on the amount of toxic pollution released by each factory, the path the pollution takes as it spreads through the air, the level of danger to humans posed by each different chemical released, and the number of males and females of different ages who live in the exposure paths.

IV. GOVERNMENT RESPONSE TO ENVIRONMENTAL INJUSTICE

The mission of the federal EPA was never designed to address environmental policies and practices that result in unfair, unjust, and inequitable outcomes. EPA is a regulatory agency, not a health agency. However, many of its regulations are health based. EPA and other government officials are not likely to ask the questions that go to the heart of environmental injustice: What groups are most affected? Why are they

34 Id.
35 Id.
36 Id.
37 Id.
affected? Who did it? What can be done to remedy the problem? How can communities be justly compensated and reparations paid to individuals harmed by industry and government actions? How can the problem be prevented? Vulnerable communities, populations, and individuals often fall between the regulatory cracks. They are in many ways “invisible” communities.\textsuperscript{38} The environmental justice movement served to make these disenfranchised communities visible and vocal.

Despite significant improvements in environmental protection over the past several decades, millions of Americans continue to live, work, play, and go to school in unsafe and unhealthy physical environments.\textsuperscript{39} Over the past two decades, the U.S. EPA has not always recognized that many of our government and industry practices—whether intended or unintended—have adverse impacts on poor people and people of color.\textsuperscript{40} Racial discrimination is a fact of life in America even though it is unjust, unfair, and illegal; discrimination continues to deny millions of Americans their basic civil and human rights.

For decades, grassroots activists have been convinced that waiting for the government to act has endangered the health and welfare of their communities.\textsuperscript{41} Unlike the federal EPA, communities of color did not first discover environmental inequities in the 1990s. EPA only took action on environmental justice concerns in 1990 after extensive prodding from grassroots environmental justice activists, educators, and academics.\textsuperscript{42} In 1990, after receiving a letter from the Michigan Coalition, EPA administrator William Reilly established the Environmental Equity Work Group and set up a series of meetings on environmental justice with grassroots leaders. In 1991, the Agency for Toxic Substances and Disease Registry convened the National Minority Environmental Health Conference in Atlanta, Georgia. A host of research scientists presented facts and figures detailing elevated environmental health risks experienced by people of color. As it turned out, having the facts was not sufficient to get the government to act, especially when the problem disproportionately affects poor people and people of color.

Environmental justice advocates continue to challenge the current environmental protection apparatus and offer their own framework for addressing environmental racism, unequal protection, health disparities, and


\textsuperscript{42} William K. Reilly, Environmental Equity: EPA’s Position, 18 EPA J. supra note 39, at 18.
unsustainable development in the United States and around the world. After much prompting from environmental justice advocates, the EPA created the Office of Environmental Justice in 1992 and implemented a new organizational infrastructure to integrate environmental justice into its policies, programs, and activities.

The EPA produced its own study, *Environmental Equity: Reducing Risks for All Communities*, finally acknowledging the fact that some populations shoulder greater environmental health risks than others. The report found clear differences between racial groups in terms of disease and death rates; racial minority and low-income populations experience higher than average exposures to selected air pollutants, hazardous waste facilities, contaminated fish, and agricultural pesticides in the workplace; and great opportunities exist for EPA and other government agencies to improve communication about environmental problems with members of low-income and racial minority groups.

In September 1993, EPA established the National Environmental Justice Advisory Council (NEJAC). The NEJAC was the first time that representatives from the community, academia, industry, environmental, and indigenous groups, as well as state, local, and tribal governments, were brought together in an effort to create a dialogue that can define and “reinvent” solutions to environmental justice problems.

In response to growing public concern and mounting scientific evidence, President William Clinton issued Executive Order 12,898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, on February 11, 1994, which was the second day of a national Symposium on Health Research Needs to Ensure Environmental Justice. This Order attempts to address environmental injustice within existing federal laws and regulations.

Executive Order 12,898 reinforces the four-decade-old Civil Rights Act of 1964, Title VI, which prohibits discriminatory practices in programs receiving federal funds. The Order also focuses the spotlight back on the National Environmental Policy Act (NEPA), a law that requires examination of a project’s environmental impacts. NEPA’s goal is to ensure for all Americans a safe, healthful, productive, and aesthetically and culturally pleasing environment. NEPA requires federal agencies to prepare a detailed statement on the environmental effects of proposed federal actions that significantly affect the quality of human health.

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48 Id. at § 4332(2)(C).
49 Id.
The Executive Order called for improved methodologies for assessing and mitigating impacts, health effects from multiple and cumulative exposure, collection of data on low-income and minority populations who may be disproportionately at risk, and impacts on subsistence fishers and consumers of wild game. It also encourages participation of the impacted populations in the various phases of assessing impacts—including scoping, data gathering, alternatives, analysis, mitigation, and monitoring.

The EPA has a spotty record protecting environmental civil rights under the statutory authority of Title VI of the Civil Rights Act, which prohibits discrimination on the bases of race, color, and national origin. Federal agencies and recipients of federal assistance, including state environmental permitting programs, must ensure compliance with Title VI implementing regulations, and they must ensure prompt and fair resolution of discrimination complaints. In 1998, the EPA’s Office of Civil Rights (OCR) issued its *Interim Guidance for Investigating Title VI Civil Rights Complaints*, which provides a framework for processing environmental discrimination complaints.

The Clinton Administration continued and expanded many of the policies, programs, and initiatives that began under the first Bush Administration. However, beginning in 2000 and continuing to the present day, environmental justice stalled and has met intense resistance inside the EPA through proposed budget and program cuts. In August 2000, 125 community groups, environmental justice organizations, coalitions, networks, individuals, and an Indian nation provided testament of how their administrative complaints had languished for years in a comment on revision to the *Interim Guidance*.

By 2001 more than 100 complaints had been filed, however, few had been resolved due to the often inadequate investigation as demonstrated in the Select Steel case in Michigan. Furthermore, no rulings were in favor of the complainant, in what amounts to a “conscious policy of non-enforcement.” Although the EPA issued its final guidance in March 2006, it has yet to develop legally binding standards for what constitutes an adverse disparate impact and continues to abrogate.

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51 Id.
54 *TOXIC WASTES AND RACE AT TWENTY*, supra note 11, at 13.
its enforcement responsibility to oversee discriminatory practices of state environmental agencies in a credible manner.

In January and February 2003, the U.S. Commission on Civil Rights (USCCR) held hearings on environmental justice. Experts presented evidence of environmental inequities in communities of color, including disproportionate incidences of environmentally related disease, lead paint in homes, hazardous waste sites, toxic playgrounds, and schools located near Superfund sites and facilities that release toxic chemicals. In its 2003 report Not in My Backyard: Executive Order and Title VI as Tools for Achieving Environmental Justice, the USCCR concluded that “minority and low-income communities are most often exposed to multiple pollutants from multiple sources. . . . [T]here is no presumption of adverse health risk from multiple exposures, and no policy on cumulative risk assessment that considers the roles of social, economic and behavioral factors when assessing risk.”

The report was distributed to members of Congress and President George Bush.

A March 2004 Office of Inspector General (OIG) report, EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice, summed up the treatment of environmental justice under the Bush administration. After a decade, EPA “has not developed a clear vision or a comprehensive strategic plan, and has not established values, goals, expectations and performance measurements” for integrating environmental justice into its day-to-day operations.

A July 2005 U.S. Government Accountability Office report, Environmental Justice: EPA Should Devote More Attention to Environmental Justice When Developing Clean Air Rules, also criticized EPA for its handling of environmental justice issues when drafting clean air rules. In July 2005, the EPA was met with a firestorm of public resistance when it proposed dropping race from its draft Environmental Justice Strategic Plan as a factor in identifying and prioritizing populations that may be disadvantaged by the agency’s policies.

In the Fall of 2005, the EPA announced plans to change the Toxic Release Inventory (TRI) program. According to many environmental advocates, the changes would severely weaken the program, deny the public information, and set back EPA efforts to confront the most serious public issues related to toxic chemicals. In July 2006, EPA’s Science Advisory Board Committee opposed these changes in a harsh letter to EPA administrator Stephen L. Johnson.

62 EPA’s Science Advisory Board Opposes TRI Proposals, 7 OMB WATCH 15, July 25, 2006,
In December 2006, the EPA announced final rules that undermine this critical program by eliminating detailed reports from more than 5000 facilities that release up to 2000 pounds of chemicals every year. They also eliminated detailed reports from nearly 2000 facilities that manage up to 500 pounds of chemicals known to pose some of the worst threats to human health, including lead and mercury. Some of the extraneous changes include a two year reporting requirement (instead of the more adequate yearly reporting currently in place), raising the threshold amount required to report toxic releases, the elimination of more detailed compulsory industry reporting, and the weakening of other important programs at EPA because of the lack of relevant information previously generated with TRI data. The program was widely credited with reducing releases of program chemicals by 65%.

Similarly, an October 2007 GAO report indicates that EPA’s recent rules weakening TRI could reduce availability of toxic chemical information used to assess environmental justice and reduce the amount of information about toxic chemical releases, without providing significant savings to facilities. According to the GAO, EPA’s new rules would make significantly less information available to communities, but would save companies little—an average of less than $900 per facility.

In September 2006, the EPA’s Office of Inspector General (IG) issued another study, EPA Needs to Conduct Environmental Reviews of Its Program, Policies, and Activities, chastising the agency for falling down on the job when it comes to implementing environmental justice reviews. The IG study may be new but its findings are not. The IG recommended and EPA accepted the following recommendations:

- Require the Agency’s program and regional offices to identify which programs, policies, and activities need environmental justice reviews and require these offices to establish a plan to complete the necessary reviews.
- Ensure that environmental justice reviews determine whether the programs, policies, and activities may have a disproportionately high and adverse health or environmental impact on minority and low-income populations.
- Require each program and regional office to develop, with the assistance of the Office of Environmental Justice, specific environmental justice review guidance, which includes protocols, a framework, or directions for conducting environmental justice reviews.


64 Id. at 2.
65 Id. at 5.
66 Id. at 6.
Designate a responsible office to (a) compile the results of environmental justice reviews, and (b) recommend appropriate actions to review findings and make recommendations to the decision-making office’s senior leadership.\textsuperscript{68}

In the fall of 2006, EPA continued to dismantle long-standing environmental justice initiatives around the country. The EPA’s Northwest regional office announced the elimination of the local environmental justice office. The proposal calls for reassigning members of its environmental justice program to new divisions and eliminating its director’s position.\textsuperscript{69} According to EPA officials, the changes are part of ongoing staff cuts and reorganization at the agency, but they will not diminish the importance of environmental justice or civil rights issues.\textsuperscript{70}

V. ASSESSING DISPARITIES IN ENVIRONMENTAL BURDENS

As mentioned, the publication in 1987 of Toxic Wastes and Race led to increased public awareness about disproportionate environmental burdens in people of color communities and fueled the growing environmental justice movement. It also led to a closer examination by academic researchers of the claims in the report and social movement addressing the extent, causes, and consequences of disproportionate environmental burdens. Indeed, the number of research studies examining racial and socioeconomic disparities around environmentally hazardous sites has grown dramatically and steadily over the twenty years since publication of Toxic Wastes and Race.

In that time period, three systematic reviews of the existing research have been conducted.\textsuperscript{71} All these reviews have found a preponderance of evidence that environmental hazards of a wide variety are distributed inequitably by race and socioeconomic status. Most subsequent studies have found racial and socioeconomic disparities to be statistically significant, but the disparities often have been found to be modest.\textsuperscript{72} In 2006, Professors Paul Mohai and Robin Saha explained how much of the early environmental justice

\textsuperscript{68} Id. at 7–8.


\textsuperscript{70} James Hagengruber, EPA Cutbacks Greeted with Criticism: Groups Say Office of Civil Rights and Environmental Justice Gutted, SPOKESMAN-REV., Oct. 31, 2006, at 1B.


research employed methods that failed to adequately account for where people live in relation to hazardous sites.\textsuperscript{73} If it is true that a disproportionate number of people of color and poor people live near environmental hazards, then failure to adequately match the location of where people live and where environmentally hazardous sites are located will lead to an underestimation of these disparities.

In this section, we describe advances in environmental justice research that better determine where people live in relation to where hazardous sites are located than do earlier, more traditional methods. We show that by better matching the locations of people and hazardous sites, racial and socioeconomic disparities around the nation’s hazardous waste facilities are found to be far greater than what previous studies have shown. The differences are even greater than those reported in \textit{Toxic Wastes and Race}.

The traditional method of conducting environmental justice analyses is to use census data to look at the racial and socioeconomic characteristics of people living inside geographic units, such as zip code areas and census tracts, containing or “hosting” hazardous sites, and then compare these against the racial and socioeconomic characteristics of the geographic units not containing or hosting the sites. In making this comparison, researchers have tended to assume that people living in the host units are located closer to the hazardous sites under investigation than those living in the non-host units. However, this is not necessarily true. First, the hazardous sites may be near the boundary of the host units, and hence the area and populations of neighboring units may be as close to the sites as those of the hosts. Note the proximity of adjacent units west and south of the unit containing a commercial hazardous waste facility in Figure 1A. Hazardous waste facilities and other potential environmental hazards located near the boundaries of their host units are not rare. Mohai and Saha, for example, found that almost 50\% of commercial hazardous waste facilities are located within a quarter mile of their host tract boundaries while more than 70\% are located within a half mile.\textsuperscript{74}

Second, there is a great deal of variation in the size of the geographic units typically used in environmental justice analyses. Depending on size, not all the units do an equally good job of controlling for the proximity between hazardous sites and nearby residential populations. Again as an illustration, Mohai and Saha found that the smallest census tract containing a commercial hazardous waste facility is less than one-tenth of a square mile, while the largest is over 7500 square miles, with all sizes in between.\textsuperscript{75} When a host unit is small, such as the tract that is only one-tenth of a square mile, then anyone living in it will necessarily live close to the facility. However, if a host unit is large, such as the tract that is over 7500 square miles in area, most people in it likely live quite far from the facility, especially if the facility is located on the tract’s boundary, as it is in Figure 1B.


\textsuperscript{74} \textit{Id.} at 384.

\textsuperscript{75} \textit{Id.} at 390.
Figure 1: Comparing Methods of Matching Where People and Hazardous Waste Facilities Are Located

Figure 1A: Host tract and 1, 3, and 5 km. circles

Figure 1B: Largest host tract in U.S.

Figure 1C: 1, 3, and 5 km. host neighborhoods using 50% areal containment method

Figure 1D: 1, 3, and 5 km. host neighborhoods using areal apportionment method

Figure 1E: Overlapping host neighborhoods using 50% areal containment method

Figure 1F: Overlapping host neighborhoods using areal apportionment method
As environmental justice research efforts have progressed, newer methods have been introduced that do a better job of matching where people live with where environmental hazards are located. Mohai and Saha have referred to these methods as “distanced-based” methods. Earlier research did not determine precise geographic locations, just that the environmental hazard and geographic unit were “coincident” (thus the term “unit-hazard coincidence method” has been used to refer to this method). In applying distance-based methods, however, the precise geographic locations of the environmental hazards are determined. Once the precise geographic location of the hazard is known, all geographic units within a specified distance of the hazard—not just the host unit—are combined to form the host neighborhood around the hazard. The racial and socioeconomic characteristics of the host neighborhood are then compared against the characteristics of areas outside the neighborhood.

Figures 1C and 1D provide illustrations of neighborhoods around the hazardous waste facility that are at distances of 1.0, 3.0, and 5.0 kilometers (0.6, 1.8, and 3.1 miles, respectively) from the facility. Note in these figures that not all the neighboring units (in this case census tracts) fit neatly within the specified distances. Some neighboring units may be only partially inside the distance. Should the partially “captured” unit be considered a part of the host neighborhood? If most of the unit—say 90% of it—is within the specified distance, the decision to include it is probably a reasonable one. However, what if only 10% of the unit is captured? Figures 1C and 1D illustrate the results of applying two different rules or methods for making this decision. These have been referred to as the “50% areal containment” and “areal apportionment” methods.

In applying the 50% areal containment method, any unit with at least 50% of its area within the specified distance of the hazard is considered to be part of the host neighborhood. The result is a roughly circular neighborhood as illustrated in Figure 1C. In applying the areal apportionment method, every unit that is at least partially inside the specified distance, no matter how little is captured, is given some weight in constructing the host neighborhood. Specifically, a portion of the unit’s population is used to estimate the population characteristics within the distance. This portion is based on the proportion of the unit’s area that lies inside the distance. For example, if 20% of the area of a unit is captured, then 20% of its population is used. If 90% of the area is captured, then 90% of the unit’s population is used, and so on. The sum, or aggregate, of these populations is then used to determine the population characteristics within perfectly circular neighborhoods within the specified distances, as illustrated in Figure 1D. If the hazardous sites “cluster”—are so close to each other that their respective neighborhood boundaries overlap—the respective boundaries can be merged such as in Figures 1E and 1F.

76 Id. at 386–87.
77 Id. at 387–89.
Distance-based methods have proven robust. In other words, both 50% areal containment and areal apportionment methods lead to similar estimates about the racial and socioeconomic characteristics of the neighborhoods within specific distances of the nation’s hazardous waste facilities. The use of different building block units to construct the neighborhoods—census tracts, zip code areas, or other geographic units such as census block groups—also leads to similar estimates of the characteristics of these neighborhoods.

Commercial hazardous waste treatment, storage, and disposal facilities (TSDFs) analyzed in this section and the next were identified from information provided in 1) the U.S. Environmental Protection Agency’s Biennial Reporting System (BRS), 2) EPA’s Resource Conservation and Recovery Information System (RCRIS), 3) EPA’s Envirofacts Data Warehouse, and 4) the Environmental Services Directory (EDS). These databases were cross-checked and used to identify commercial hazardous waste TSDFs receiving waste from off-site operating in the U.S. at the time data for the 2000 Census was collected in 1999. All together, 413 facilities were identified. The status of the facilities, their addresses and precise geographic locations, determined by Geographic Information Systems’ (GIS) geocoding procedures, were verified by contacting the companies. Using census tracts as the building block units, GIS also was used to construct circular neighborhoods within 1.0, 2.0, and 3.0 kilometers of the facilities by applying the 50% areal

82 Environmental Information Limited, Environmental Services Directory, http://www.envirobiz.com/newSearch/EnvSerDir.asp (last visited Apr. 13, 2008). This is an on-line data service available to paid subscribers. The authors used data from this service for the 2001 to 2002 timeframe.
83 TOXIC WASTES AND RACE AT TWENTY, supra note 11, at 50, 68 (containing a more detailed description of the methods used to identify and map facilities). The databases pertaining to hazardous waste facilities used in this Article were created at the University of Michigan’s School of Natural Resources and Environment between 2001 and 2004 through grants from the Sociology Program and Geography and Regional Science Program of the National Science Foundation (#0099123). The opinions, findings, conclusions, and recommendations expressed in this Article, however, are those of the authors and do not necessarily reflect the views of the NSF.
84 TOXIC WASTES AND RACE AT TWENTY, supra note 11, at 41.
containment and areal apportionment methods. The demographic characteristics of these neighborhoods were determined using 1990 census data.\textsuperscript{85} The 1990 census data were used in order to better compare the results of using distance-based methods with those using the more traditional unit-hazard coincidence method since most of the earlier studies relied on the 1990 census. The percentages of people of color and those of low socioeconomic status were found to be greater at each of the distances of 1.0, 2.0, and 3.0 kilometers using either 50% areal containment or areal apportionment methods than when using the unit-hazard coincidence method.

Figure 2: Comparing Results of Past Studies Using Unit-Hazard Coincidence Method with Results Using Distance-Based Methods (1980 and 1990 Census and 1993 Estimates)

Figure 2 illustrates the outcome for people of color percentages, although similar outcomes are found for the socioeconomic variables, such as poverty rates, mean household incomes, and mean housing values. Specifically, Figure 2 compares the results of past studies that have used the unit-hazard coincidence approach (Columns A to G) with the results of using 50% areal containment and areal apportionment methods (Columns H to J). Columns A, B, and C show the results of the studies that have used zip code areas to identify the areas containing (“hosting”) or not containing hazardous waste facilities. Columns D, E, F, and G show the results of

\textsuperscript{85} U.S. CENSUS BUREAU, 1990 CENSUS OF POPULATION AND HOUSING SUMMARY FILE 1 (TAPE) TECHNICAL DOCUMENTATION (1990), \textit{available at} http://www2.census.gov/prod2/decennial/documents/D1-D00-S100-14-TECH-01.pdf.
studies that have used census tracts to identify host and non-host areas. Generally, studies using zip code areas have found bigger differences in the people of color percentages between host and non-host areas than the studies using census tracts. For example, the 1987 United Church of Christ study, using 1980 census data, found that the average people of color percentage in zip code areas containing a hazardous waste facility to be 23.7% compared to only 12.3% for zip code areas not containing a facility (Column A).86

In their 1994 update to the UCC study, Benjamin Goldman and Laura Fitton used 1990 census data and found that the average people of color percentages for host and non-host zip code areas were 30.8% and 14.4%, respectively (Column B).87 In summing (aggregating) populations in zip code areas, rather than averaging them, Goldman and Fitton found the people of color percentages in host and non-host zip code areas were 34.0% and 24.7% (Column C).88

As mentioned, estimated disparities using the unit-hazard coincidence method have been even less when census tracts are used instead of zip code areas. For example, Anderton et al. (1994), using the 1980 census data, found average people of color percentages in host and non-host tracts of 24.0% and 23.0%, respectively (Column D).89 Oakes et al., using 1990 census data, found these percentages to be 28.0% vs. 26.0%, respectively (Column F).90 Both Anderton et al. and Oakes et al. omitted rural areas and some metropolitan areas from their analyses,91 and thus did not design their studies similarly to the UCC and Goldman and Fitton studies.92 However, even when the study designs are constructed similarly to that of the UCC, the differences in the average people of color percentages between host and non-host census tracts, although somewhat bigger, are still relatively small. For example, Been, using 1990 census data, found these to be 27.2% and 24.2%,

86 TOXIC WASTES AND RACE, supra note 2, at 14.
87 TOXIC WASTES AND RACE REVISITED, supra note 4, at 1, 5.
88 Id. at 8–9.
89 Anderton et al., supra note 72, at 235.
90 Oakes et al., supra note 72, at 133. Neither Oakes et al. nor Anderton et al. presented overall people of color percentages, as the United Church of Christ, Goldman and Fitton, and Been studies did. Id.; Anderton et al., supra note 72, at 235; TOXIC WASTES AND RACE, supra note 2, at 14; TOXIC WASTES AND RACE REVISITED, supra note 4, at 5, 8–9; Vicki Been, Analyzing Evidence of Environmental Justice, 11 J. LAND USE & ENVTL. L. 1, 22 (1995). Instead, they presented percentages for African Americans and Latinos separately. In order to more easily compare the results of the two former studies with those of the latter, the African American and Hispanic percentages were summed to produce an overall people of color percentage. See also Paul Mohai, The Demographics of Dumping Revisited: Examining the Impact of Alternate Methodologies in Environmental Justice Research, 14 VA. ENVTL. L.J. 615, 621–23 (1995). Mohai points out that such summation is a reasonable approximation of the overall people of color percentages in the U.S. because the proportion of racial and ethnic groups other than African Americans and Latinos is in comparison small. Id. at 623. The overlap between the African American and Latino percentages is likewise very small. For example, in the 1980 census African Americans and Latinos made up 97.7% of all racial and ethnic minorities while the overlap between these two categories was less than 1.0%. Id. at 621–23.
91 Oakes et al., supra note 72, at 130.
92 Id. at 128.
respectively (Column E), while applying the unit-hazard coincidence method and 1990 census to the current universe of 413 hazardous waste facilities leads to similar results of 27.9% and 24.4% (Column G).

The newer, distance-based methods, which better match where people and environmentally hazardous sites are located, reveal much larger racial disparities in the distribution of hazardous waste facilities. Columns H, I, and J display the people of color percentages within and beyond three kilometers of the nation’s hazardous waste TSDFs using 50% areal containment and areal apportionment methods. Column H shows differences in the people of color percentages applying the 50% areal containment method in which percentages for census tracts have been averaged. Column I also shows differences in the people of color percentages applying the 50% areal containment method, but in which the populations of the tracts have first been aggregated (summed). Column J shows differences in the people of color percentages applying the areal apportionment method, and, here also, the percentages are for the aggregate populations within and beyond the three-kilometer distances.

As can be seen, regardless of which distance-based method is applied and regardless of whether populations are averaged or summed, the proportion of people of color estimated to be within three kilometers of a hazardous waste facility is between 46% and 48%, while the proportion of people of color estimated to be beyond this distance is between 23% and 24%. Thus, both the concentration of people of color around the nation’s hazardous waste facilities (about 46%) and disparities between host and non-host areas (over 20%) are far greater when distance-based (Columns H to J), as opposed to unit-hazard coincidence (Columns A to G) methods are applied.

In sum, newer methods that better match where people and environmental hazards are located indicate that such disparities are even greater than what the previous studies have shown. Given the attention to environmental injustice fueled by the evidence of the 1987 Toxic Wastes and Race and other prior studies, a finding that racial and socioeconomic disparities around hazardous sites are even greater than previously reported when these methods are applied underscores the urgency of finding solutions to this problem. In the next section, the newer methods are applied to the most recent data on hazardous waste facility location and the 2000 census to make a more detailed and updated assessment of the current extent of racial and socioeconomic disparities in the distribution of the nation’s hazardous waste facilities.

VI. ASSESSMENT OF CURRENT DISPARITIES

In 2001, industry in the United States generated approximately 41 million tons of hazardous wastes. Under the Resource Conservation and
Recovery Act of 1976 (RCRA), hazardous wastes must be managed by specially designed facilities referred to as treatment, storage, and disposal facilities (TSDFs). Companies operating such facilities are required to obtain permits from state and sometimes federal environmental agencies and conform to local land use regulations. However, as the November 2006 explosion of stored hazardous wastes in Danvers, Massachusetts illustrates, TSDFs can adversely impact nearby residents even when operated according to accepted specifications. The city of East Palo Alto was home to Romic Environmental Technologies, a commercial facility that had endangered workers and the surrounding community by operating with only a provisional permit and releasing large amounts of hazardous air pollutants into the environment. Indeed, hazardous waste facilities are well known as serious risks to health, property, and quality of life. As a result of these threats, public opposition to siting of TSDFs is nearly universal, especially for high-profile facilities such as incinerators and landfills, and new facility sitings have tended to follow the path of least political resistance.

96 Id. § 6922(a)(5) (2000).
100 Robert D. Bullard & Beverly Hendrix Wright, Blacks and the Environment, 14 HUMBOLDT
Although in recent decades communities of color have begun to mount their own resistance, their limited scientific, technical, and legal resources have historically made such communities vulnerable to facility sitings.\footnote{Robert D. Bullard, \textit{Solid Waste Sites and the Black Houston Community}, 53 \textit{Soc. Inquiry} 273, 285 (1983); \textit{Bullard}, supra note 1, at 1–5; Dorceta E. Taylor, \textit{Mobilizing for Environmental Justice in Communities of Color: An Emerging Profile of People of Color Environmental Groups}, in \textit{Ecosystem Management: Adaptive Strategies for Natural Resources Organizations in the 21st Century} 33, 51–55 (Jennifer Aley et al. eds., 1998).}

This section employs the same methods and database of 413 commercial hazardous waste facilities as the previous section, but utilizes 2000 census data instead of 1990 data to assess the current extent of racial and socioeconomic disparities for the nation as a whole. In addition, disparities are examined by state, which allows us to determine whether national trends are the result of contributions from particular parts of the country and to detect environmental justice “hot spots,” i.e., areas with high concentrations of TSDFs and large racial or socioeconomic disparities. In addition to providing an analysis of metropolitan areas, where most hazardous waste facilities are located, we examine whether disparities are greater for host neighborhoods where multiple facilities are clustered and where risks are therefore also likely to be concentrated.\footnote{Note that \textit{Toxic Wastes and Race Revisited}, supra note 4, the 1994 update of the original United Church of Christ report, \textit{Toxic Wastes and Race}, supra note 2, found that people of color were concentrated in the most environmentally hazardous communities as measured by the number of commercial hazardous waste facilities and amounts of hazardous wastes handled. \textit{Toxic Wastes and Race Revisited}, supra note 4, at 1–2.} Finally, following the example of many other environmental justice empirical analyses, we conclude the assessment using 2000 census data with a multivariate analysis of the importance of race as a predictor of facility locations in comparison to socioeconomic status and other non-racial factors. We thereby determine if race still matters twenty years after the publication of \textit{Toxic Wastes and Race in the United States}.

The approach used to assess racial and socioeconomic disparities employed is to compare the demographic characteristic of populations living within three kilometers (approximately 1.8 miles) of a TSDF nationally, by state and so forth to the demographic characteristics in corresponding areas without facilities, i.e., areas beyond three kilometers of a TSDF.\footnote{Racial, socioeconomic, and housing characteristics of circular host neighborhoods of 1, 3, and 5 kilometer radius around the 413 facilities were examined. However, because the results were very consistent regardless of the radius, only findings pertaining to the 3 kilometer radius are reported.} Three kilometers corresponds to the distance within which empirical studies have noted adverse health, property value, and quality of life impacts associated with hazardous waste sites, including hazardous waste facilities.\footnote{Similarly, the Superfund Hazard Ranking System defines affected populations to be those who live within 4 miles (6.4 km) of sites having groundwater contamination and/or airborne contamination within 1 mile (1.6 km) of sites having soil contamination only, and 15 miles downstream of areas where contaminants enter surface water. \textit{See U.S. Envt'l Prot. Agency, Hazard Ranking System Guidance Manual} 117, 204, 383, 412 (1992), \textit{available at} http://www.epa.gov/superfund/sites/npl/hhrsres/index.htm. Also, note Superfund sites are}
radius is also in line with those used in other environmental justice studies employing distance-based methods. The areal apportionment method and 2000 census tracts were used to estimate the demographic characteristics. Following the approach of the preceding analysis of 1990 data, areas within three kilometers of a TSDF are referred to as “host neighborhoods” and areas beyond three kilometers are referred to as “non-host areas.” People of color percentages as a whole are reported along with population percentages of individual racial and ethnic groups. Socioeconomic status indicators used include poverty rates, mean household incomes, percentage of persons twenty-five years old and over with a four-year college degree, and the percentage of persons sixteen years old and over employed in “white collar” and “blue collar” occupations. If people of color percentages are higher in host neighborhoods than in the non-host comparison areas, then a racial disparity is therefore said to exist. Likewise, socioeconomic disparities exist if poverty rates are higher, or mean household incomes and housing values are lower, in host neighborhoods than in the non-host areas. These disparities are consistent with an environmental justice claim.

Two primary approaches are used to assess the magnitude of racial and socioeconomic disparities: 1) differences in values (percentages of people of color, poverty rates, mean household income, mean housing values, etc.) between host neighborhoods and non-host areas; and 2) ratios of host neighborhood values to non-host area values. For example, if Hispanic or Latino percentages were 25% and 10%, respectively, the difference would be 15% and the ratio would be 2.5. The results of tests are also reported to establish if these disparities are statistically significant and to assess the importance of race in predicting facility locations.

Toxic Wastes and Race Revisited, the 1994 update of the original UCC report, Toxic Wastes and Race in the United States, showed that racial and socioeconomic disparities associated with the location of the nation’s associated with hazardous wastes releases into the environment. Though TSDFs may legally release small amounts into the environment, they are designed to prevent releases harmful to human health and the environment. See U.S. Envt'l Prot. Agency, Treatment, Storage and Disposal of Hazardous Waste, http://www.epa.gov/epaoswer/osw/tsds.htm (last visited Apr. 13, 2008) (discussing general requirements and regulations for TSDFs). Because of poor environmental compliance, some TSDFs may nevertheless end up on the Superfund list of contaminated sites. For a more complete discussion of proximity and risk, see Mohai & Saha, supra note 73.

105 See, e.g., TOXIC WASTES AND RACE AT TWENTY, supra note 11, at 52.

106 Specific people of color groups examined include African Americans, Hispanics or Latinos, Asians/Pacific Islanders, and American Indians/Alaskan Natives. Note that the U.S. Census Bureau defines Hispanic as an ethnic, not a racial category. See ELIZABETH M. GRIECO & RACHEL C. CASSIDY, U.S. CENSUS BUREAU, OVERVIEW OF RACE AND HISPANIC ORIGIN CENSUS 2000 BRIEF 1–2 (2001), available at http://www.census.gov/prod/2001pubs/c2kbr01-1.pdf. Hispanics can belong to any of the recognized races, including the white category. However, for convenience, disparities in percentages of Hispanics or Latinos will be referred to as racial disparities.

107 For a description of the construction of the racial/ethnic and socioeconomic variables and Census data sources, see TOXIC WASTES AND RACE AT TWENTY, supra note 11, at 69–70.
hazardous waste facilities increased from 1980 to 1993. Because the previous studies used the unit-hazard coincidence method, it is not possible to make a meaningful assessment of recent changes from the results obtained using the distance-based methods of this Article.

A. National Findings

Over nine million people are estimated to live within three kilometers (1.8 miles) of the nation’s 413 commercial hazardous waste facilities. This represents 3.3% of the U.S. population. More than 5.1 million people of color, including 2.5 million Hispanics or Latinos, 1.8 million African Americans, 616,000 Asians/Pacific Islanders, and 62,000 Native Americans, live in neighborhoods with one or more TSDF (see Table 1). Indeed, these host neighborhoods are densely populated, with over 870 persons per square kilometer (2300 per mi²), compared to 30 persons per square kilometer (77 per mi²) in non-host areas. Not surprisingly, 343 facilities (83%) are located in metropolitan areas.

For 2000, neighborhoods within three kilometers of a TSDF are 56% people of color whereas non-host areas are 30% people of color (see Table 1). Thus, percentages of people of color as a whole are 1.9 times greater in host neighborhoods than in non-host areas. Percentages of African Americans, Hispanics/Latinos, and Asians/Pacific Islanders in host neighborhoods are 1.7, 2.3, and 1.8 times greater (20% vs. 12%, 27% vs. 12%, and 6.7% vs. 3.6%), respectively.

Table 1 also reveals significant socioeconomic disparities. Poverty rates in the host neighborhoods are 1.5 times greater than those in non-host areas (18% vs. 12%) and mean annual household incomes in host neighborhoods are 15% lower ($48,234 vs. $56,912). Mean owner-occupied housing values are also disproportionately low in TSDF host neighborhoods. These data reveal depressed economic conditions in host neighborhoods of the nation’s hazardous waste facilities. Education and employment disparities also can be noted in Table 1. The percentage of persons twenty-five years and over with a four-year college degree are much lower in host neighborhoods than

108 TOXIC WASTES AND RACE REVISITED, supra note 4, at 2. The 1993 findings used estimates based on 1990 Census data.

109 However, using the same universe of 413 TSDFs and the areal apportionment method, no significant change in the magnitude of racial and socioeconomic disparities occurred between 1990 and 2000. See TOXIC WASTES AND RACE AT TWENTY, supra note 11, at 53–54.

110 Findings reported are generally aggregate values for all host neighborhoods (i.e., neighborhoods within 3 kilometers of a facility), not averages of each host neighborhood and the census tracts comprising them. Id. at 51.

111 Id. at 52.

112 Id.

113 Id. at 53. Note that 147 of the 413 host neighborhoods (36%) have a majority of people of color.

114 However, percentages of American Indians/Alaskan Natives (hereinafter referred to as Native Americans) in host neighborhoods and non-host areas are very small and roughly equal (0.7% vs. 0.9%).
in non-host areas (18% vs. 25%, respectively). Similar disparities exist for the percentage of persons employed in professional “white collar” occupations, while percentages employed in “blue collar” occupations are disproportionately high in host neighborhoods. 115 These racial and socioeconomic disparities are statistically significant (p< 0.001).

Table 1: Racial and Socioeconomic Disparities for the Nation’s 413 TSDFs (2000 Census)

<table>
<thead>
<tr>
<th>Population</th>
<th>Host Neighborhoods</th>
<th>Non-Host Areas</th>
<th>Difference</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Population</td>
<td>9,222</td>
<td>272,200</td>
<td>-262,979</td>
<td>0.03</td>
</tr>
<tr>
<td>Population Density</td>
<td>870</td>
<td>29.7</td>
<td>840</td>
<td>29.0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Race/Ethnicity</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>% People of Color</td>
<td>55.9%</td>
<td>30.0%</td>
<td>25.9%</td>
<td>1.86</td>
</tr>
<tr>
<td>% African American</td>
<td>20.0%</td>
<td>11.9%</td>
<td>8.0%</td>
<td>1.67</td>
</tr>
<tr>
<td>% Hispanic or Latino</td>
<td>27.0%</td>
<td>12.0%</td>
<td>15.0%</td>
<td>2.25</td>
</tr>
<tr>
<td>% Asian/Pacific Islander</td>
<td>6.7%</td>
<td>3.6%</td>
<td>3.0%</td>
<td>1.83</td>
</tr>
<tr>
<td>% Native American</td>
<td>0.7%</td>
<td>0.9%</td>
<td>-0.2%</td>
<td>0.77</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Socioeconomics</th>
<th>搭建 hosting Neighbourhoods</th>
<th>Non-Host Areas</th>
<th>Difference</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poverty Rate</td>
<td>18.3%</td>
<td>12.2%</td>
<td>6.1%</td>
<td>1.50</td>
</tr>
<tr>
<td>Mean Household Income</td>
<td>$48,234</td>
<td>$56,912</td>
<td>-$8,678</td>
<td>0.85</td>
</tr>
<tr>
<td>Mean Owner-Occupied Housing Value</td>
<td>$135,510</td>
<td>$159,536</td>
<td>-$24,025</td>
<td>0.85</td>
</tr>
<tr>
<td>% with 4-Year College Degree</td>
<td>18.5%</td>
<td>24.6%</td>
<td>-6.1%</td>
<td>0.75</td>
</tr>
<tr>
<td>% Professional “White Collar” Occup.</td>
<td>28.0%</td>
<td>33.8%</td>
<td>-5.8%</td>
<td>0.83</td>
</tr>
<tr>
<td>% Employed in “Blue Collar” Occup.</td>
<td>27.7%</td>
<td>24.0%</td>
<td>3.7%</td>
<td>1.15</td>
</tr>
</tbody>
</table>

NOTES: Data computed using areal apportionment method (see Figure 1D). Differences and ratios are between host neighborhood and non-host area. Differences may not precisely correspond to other values due to rounding off.

115 The definition of “white collar” and “blue collar” occupations derives from 1990 and 2000 Census data. However, due to differences between methodology and occupation definitions in the 1990 and 2000 Censuses, these figures are not directly comparable. See TOXIC WASTES AND RACE AT TWENTY, supra note 11, at 69 (discussing methods used to group occupations into “white collar” and “blue collar” designations).
Table 2 shows that neighborhoods with clustered facilities, i.e., multiple facilities, have higher percentages of people of color than those with non-clustered facilities, i.e., a single facility (69% vs. 51%). In addition, percentages of African Americans and Hispanics in the neighborhoods with clustered facilities are significantly higher than neighborhoods with non-clustered facilities (29% vs. 16% and 33% vs. 25%, respectively). Although Asians/Pacific Islanders are disproportionately located in all host neighborhoods (see Table 2), they are found in lower percentages in the neighborhoods with clustered facilities than in non-clustered facility neighborhoods (4.3% vs. 7.8%). Native American percentages are very small and nearly equal (0.7%) in clustered and non-clustered facility host neighborhoods.

Poverty rates in the neighborhoods with clustered facilities are high compared to non-clustered facility neighborhoods (22% vs. 17%), mean household incomes are 10% lower in neighborhoods with clustered facilities ($44,600 vs. $49,600), and mean housing values are 14% lower ($121,200 vs. $141,000). All of these racial and socioeconomic disparities between neighborhoods with clustered facilities and non-clustered facility host neighborhoods are statistically significant (p<0.01). These findings are similar to those of the 1987 Toxic Wastes and Race report and the 1994 Toxic Wastes and Race Revisited update, both of which found that zip codes with higher levels of hazardous waste activity were home to higher percentages of people of color and had higher poverty rates.

In 2000, people of color and the poor thus continue to be particularly vulnerable to

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116 A total of 49 clustered facility neighborhoods (42 with 2 facilities, 5 with 3 facilities, 1 with 4 facilities and 1 with 6 facilities) and 304 non-clustered facility neighborhoods were delineated. Thus, clustered facility neighborhoods and non-clustered facility neighborhoods contain 109 and 304 facilities, respectively. Most analyses reported, however, involve the combined clustered and non-clustered facility neighborhoods. See Figures 1E and 1F for an illustration of neighborhoods with clustered facilities.

117 While there may be individual sites with relatively high percentages of Native Americans, any site-specific disparities that exist for Native Americans appear to be masked in this nationwide study and a site-by-site analysis is beyond the scope of this study. Because of Native Americans’ small numbers relative to the other groups in this analysis, they are not included in subsequent tables. Environmental injustices in Indian Country, nevertheless, have been well-documented, and Native Americans have been an important group in the struggle for environmental justice. See, e.g., Winona LaDuke, All Our Relations: Native Struggles for Land and Life (1990); James M. Grijalva, Closing the Circle: Environmental Justice in Indian Country (2008); Brett Clark, The Indigenous Environmental Movement in the United States: Transcending Borders in Struggles Against Mining, Manufacturing, and the Capitalist State, 15 ORG. & ENV’T 410 (2002); Sarah Krakoff, Tribal Sovereignty and Environmental Justice, in Justice and Natural Resources: Concepts, Strategies, and Applications (Kathryn M. Mutz, Gary C. Bryner & Douglas S. Kenney eds., 2002); Gregory Hooks & Chad L. Smith, The Treadmill of Destruction: National Sacrifice Areas and Native Americans, 69 AM. SOC. REV. 558 (2004); Mansel G. Blackford, Environmental Justice, Native Rights, Tourism, and Opposition to Military Control: The Case of Kaho’olawe, 91 J. AM. HIST. 544 (2004).

118 The poverty rate is the percentage of people or families who are below the poverty line. U.S. Census Bureau, Poverty, http://www.census.gov/hhes/www/poverty/poverty.html (last visited Apr. 13, 2008).

119 Toxici Wastes and Race, supra note 2, at 13; Toxic Wastes and Race Revisited, supra note 4, at 3.
the various negative impacts of hazardous waste facilities. Moreover, the present findings show that this is the case for African Americans, Hispanics, and Asians/Pacific Islanders.

Table 2: Racial and Socioeconomic Characteristics for Clustered and Non-Clustered Facility Host Neighborhoods

<table>
<thead>
<tr>
<th></th>
<th>Clustered</th>
<th>Non-Clustered</th>
<th>Difference</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Race/Ethnicity</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>% People of Color</td>
<td>68.8%</td>
<td>50.6%</td>
<td>18.2%</td>
<td>1.36</td>
</tr>
<tr>
<td>% African American</td>
<td>29.1%</td>
<td>15.9%</td>
<td>13.2%</td>
<td>1.83</td>
</tr>
<tr>
<td>% Hispanic or Latino</td>
<td>33.4%</td>
<td>24.6%</td>
<td>8.8%</td>
<td>1.36</td>
</tr>
<tr>
<td>% Asian/Pacific Islander</td>
<td>4.3%</td>
<td>7.8%</td>
<td>-3.5%</td>
<td>0.55</td>
</tr>
<tr>
<td>% Native American</td>
<td>0.7%</td>
<td>0.7%</td>
<td>0.0%</td>
<td>0.94</td>
</tr>
<tr>
<td><strong>Socioeconomics</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poverty Rate</td>
<td>21.6%</td>
<td>16.8%</td>
<td>4.8%</td>
<td>1.29</td>
</tr>
<tr>
<td>Mean Household Income</td>
<td>$44,587</td>
<td>$49,614</td>
<td>-$5,027</td>
<td>0.90</td>
</tr>
<tr>
<td>Mean Housing Value</td>
<td>$121,203</td>
<td>$140,992</td>
<td>-$19,789</td>
<td>0.86</td>
</tr>
</tbody>
</table>

B. State Disparities

Under the oversight of the EPA, nearly all states now manage their own environmental programs (such as RCRA, Clean Air Act, and Clean Water Act). States also are beginning to develop environmental justice and enhanced enforcement programs of their own to reduce risks to environmentally overburdened communities. Thus, it is helpful to identify states where TSDFs are concentrated and where racial and socioeconomic disparities are the greatest. It is in these states where more stringent regulatory action may be warranted.

California has the greatest number of TSDFs (45) followed by Texas (33); Pennsylvania (23); Ohio (21); Michigan (19); New York (18); Illinois

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121 Targ, supra note 120, at 171–74. See also David Hess & Langdon Winner, Enhancing Justice and Sustainability at the Local Level: Affordable Policies for Urban Governments, 12 LOCAL ENV’T 379, 384-85 (2007).
These ten states host 220 TSDFs in total. This constitutes a majority (53%) of the nation’s commercial TSDFs.

Table 3: People of Color Percentages by State

<table>
<thead>
<tr>
<th>State Abbr.</th>
<th>Number of TSDFs</th>
<th>Rank by Number of TSDFs</th>
<th>Majority People of Color Sites</th>
<th>Host Area</th>
<th>Non-Host Areas</th>
<th>Diff.</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>AL</td>
<td>8</td>
<td>20</td>
<td>3</td>
<td>66.3%</td>
<td>29.3%</td>
<td>36.9%</td>
<td>2.26</td>
</tr>
<tr>
<td>AZ</td>
<td>7</td>
<td>22</td>
<td>4</td>
<td>64.3%</td>
<td>35.7%</td>
<td>28.6%</td>
<td>1.80</td>
</tr>
<tr>
<td>AR</td>
<td>5</td>
<td>25</td>
<td>2</td>
<td>51.6%</td>
<td>21.3%</td>
<td>30.4%</td>
<td>2.43</td>
</tr>
<tr>
<td>CA</td>
<td>45</td>
<td>1</td>
<td>38</td>
<td>81.2%</td>
<td>51.5%</td>
<td>29.7%</td>
<td>1.58</td>
</tr>
<tr>
<td>CO</td>
<td>5</td>
<td>27</td>
<td>1</td>
<td>41.0%</td>
<td>25.2%</td>
<td>15.8%</td>
<td>1.63</td>
</tr>
<tr>
<td>CT</td>
<td>4</td>
<td>28</td>
<td>1</td>
<td>49.0%</td>
<td>21.3%</td>
<td>27.7%</td>
<td>2.30</td>
</tr>
<tr>
<td>FL</td>
<td>13</td>
<td>11</td>
<td>5</td>
<td>52.7%</td>
<td>34.3%</td>
<td>18.4%</td>
<td>1.54</td>
</tr>
<tr>
<td>GA</td>
<td>12</td>
<td>13</td>
<td>7</td>
<td>55.6%</td>
<td>37.0%</td>
<td>18.6%</td>
<td>1.50</td>
</tr>
<tr>
<td>ID</td>
<td>2</td>
<td>43</td>
<td>0</td>
<td>7.9%</td>
<td>12.0%</td>
<td>-4.1%</td>
<td>0.66</td>
</tr>
<tr>
<td>IL</td>
<td>16</td>
<td>7</td>
<td>10</td>
<td>67.9%</td>
<td>30.8%</td>
<td>37.1%</td>
<td>2.21</td>
</tr>
<tr>
<td>IN</td>
<td>16</td>
<td>8</td>
<td>4</td>
<td>41.2%</td>
<td>13.1%</td>
<td>28.1%</td>
<td>3.14</td>
</tr>
<tr>
<td>IA</td>
<td>3</td>
<td>35</td>
<td>0</td>
<td>21.0%</td>
<td>7.0%</td>
<td>13.9%</td>
<td>2.98</td>
</tr>
<tr>
<td>KS</td>
<td>9</td>
<td>19</td>
<td>3</td>
<td>47.2%</td>
<td>15.9%</td>
<td>31.3%</td>
<td>2.97</td>
</tr>
<tr>
<td>KY</td>
<td>9</td>
<td>18</td>
<td>1</td>
<td>51.5%</td>
<td>10.0%</td>
<td>41.5%</td>
<td>5.14</td>
</tr>
<tr>
<td>LA</td>
<td>12</td>
<td>14</td>
<td>5</td>
<td>52.7%</td>
<td>37.3%</td>
<td>15.4%</td>
<td>1.41</td>
</tr>
<tr>
<td>ME</td>
<td>2</td>
<td>40</td>
<td>0</td>
<td>7.8%</td>
<td>3.4%</td>
<td>4.4%</td>
<td>2.31</td>
</tr>
<tr>
<td>MD</td>
<td>3</td>
<td>31</td>
<td>1</td>
<td>44.8%</td>
<td>37.8%</td>
<td>7.0%</td>
<td>1.19</td>
</tr>
<tr>
<td>MA</td>
<td>12</td>
<td>12</td>
<td>1</td>
<td>33.5%</td>
<td>17.2%</td>
<td>16.3%</td>
<td>1.95</td>
</tr>
<tr>
<td>MI</td>
<td>19</td>
<td>5</td>
<td>8</td>
<td>65.7%</td>
<td>19.2%</td>
<td>46.5%</td>
<td>3.43</td>
</tr>
<tr>
<td>MN</td>
<td>10</td>
<td>16</td>
<td>2</td>
<td>34.4%</td>
<td>10.3%</td>
<td>24.1%</td>
<td>3.33</td>
</tr>
<tr>
<td>MS</td>
<td>3</td>
<td>32</td>
<td>2</td>
<td>50.6%</td>
<td>39.1%</td>
<td>11.5%</td>
<td>1.29</td>
</tr>
<tr>
<td>MO</td>
<td>15</td>
<td>9</td>
<td>2</td>
<td>28.3%</td>
<td>15.9%</td>
<td>12.4%</td>
<td>1.78</td>
</tr>
<tr>
<td>NE</td>
<td>5</td>
<td>26</td>
<td>0</td>
<td>11.2%</td>
<td>12.7%</td>
<td>-1.4%</td>
<td>0.89</td>
</tr>
<tr>
<td>NV</td>
<td>3</td>
<td>37</td>
<td>1</td>
<td>79.4%</td>
<td>33.1%</td>
<td>46.3%</td>
<td>2.40</td>
</tr>
<tr>
<td>NJ</td>
<td>14</td>
<td>10</td>
<td>3</td>
<td>54.8%</td>
<td>33.0%</td>
<td>21.9%</td>
<td>1.66</td>
</tr>
<tr>
<td>NM</td>
<td>3</td>
<td>34</td>
<td>1</td>
<td>52.5%</td>
<td>55.4%</td>
<td>-2.9%</td>
<td>0.95</td>
</tr>
<tr>
<td>NY</td>
<td>18</td>
<td>6</td>
<td>2</td>
<td>50.3%</td>
<td>37.3%</td>
<td>13.0%</td>
<td>1.35</td>
</tr>
<tr>
<td>NC</td>
<td>10</td>
<td>15</td>
<td>4</td>
<td>55.9%</td>
<td>29.4%</td>
<td>26.5%</td>
<td>1.90</td>
</tr>
<tr>
<td>ND</td>
<td>3</td>
<td>36</td>
<td>0</td>
<td>7.5%</td>
<td>8.2%</td>
<td>-0.7%</td>
<td>0.91</td>
</tr>
<tr>
<td>OH</td>
<td>21</td>
<td>4</td>
<td>4</td>
<td>39.0%</td>
<td>15.3%</td>
<td>23.7%</td>
<td>2.55</td>
</tr>
<tr>
<td>OK</td>
<td>8</td>
<td>21</td>
<td>0</td>
<td>28.1%</td>
<td>25.9%</td>
<td>2.2%</td>
<td>1.09</td>
</tr>
<tr>
<td>OR</td>
<td>3</td>
<td>38</td>
<td>0</td>
<td>25.7%</td>
<td>16.3%</td>
<td>9.4%</td>
<td>1.57</td>
</tr>
<tr>
<td>PA</td>
<td>23</td>
<td>3</td>
<td>0</td>
<td>16.5%</td>
<td>15.9%</td>
<td>0.6%</td>
<td>1.04</td>
</tr>
</tbody>
</table>

122 TOXIC WASTES AND RACE AT TWENTY, supra note 11, at 74.
123 Id.
Of the forty-four states with commercial TSDFs, forty of them (90%) have disproportionately high percentages of people of color in host neighborhoods—on average about two times greater than the average percentage of non-host areas for those states (44% vs. 23%).\textsuperscript{124} As shown in Table 3, host neighborhoods in nineteen states are majority people of color. Figure 3 shows states with the ten largest differences in people of color percentages between host neighborhoods and non-host areas. These states are shown in order (left-to-right) by the largest percentages of people of color living in the host neighborhoods. For both California and Nevada, these percentages are about 80%. For three additional states, people of color make up a two-thirds or more majority in these neighborhoods. In descending order by the size of the differences between host and non-host areas, these states are: Michigan (66% vs. 19%), Nevada (79% vs. 33%), Kentucky (51% vs. 10%), Illinois (68% vs. 31%), Alabama (66% vs. 31%), Tennessee (54% vs. 20%), Washington (53% vs. 20%), Kansas (47% vs. 16%), Arkansas (52% vs. 21%), and California (81% vs. 51%). Differences in these percentages range from a high of 47% for Michigan to 30% for California.

\textsuperscript{124} Alaska, Delaware, Hawaii, New Hampshire, Montana, Wyoming, and the District of Columbia did not have licensed and operating TSDFs in 1999. \textit{TOXIC WASTES AND RACE AT TWENTY}, supra note 11, at 58. States without racial disparities include North Dakota, Nebraska, New Mexico, and Idaho. \textit{Id.} at 74.
Numerous other states have large disparities in people of color percentages. Many of these states, including Arizona, Florida, Georgia, Louisiana, New Jersey, New York, North Carolina, and Texas, have majority people of color host neighborhoods (see Table 3). People of color disparities are statistically significant (p<0.05) for thirty-two states, including all the aforementioned states. Host neighborhoods in an overwhelming majority of the forty-four states with commercial hazardous waste facilities have disproportionately high percentages of Hispanics (35 states), African Americans (38 states), and Asians/Pacific Islanders (27 states). Among these states, the average disparity between host neighborhoods and non-host areas is 17% vs. 9.0% for Hispanics, 24% vs. 11% for African Americans, and 4.5% vs. 2.2% for Asians/Pacific Islanders.125

Thirty-five states have socioeconomic disparities as indicated by poverty rates. For these states, the average poverty rate in host neighborhoods is 18% compared to 12% in non-host areas. States with very large poverty rate disparities include Arizona, Connecticut, Michigan, Minnesota, Nevada, and Ohio. In these states, poverty rates in host neighborhoods are more than two times greater than those in non-host areas.

125 Disparities in Hispanic percentages are statistically significant (p<0.05) for 21 states. Disparities in African American and Asian/Pacific Islander percentages are statistically significant for 25 and 11 states, respectively. For statewide descriptive statistics by racial/ethnic group, see TOXIC WASTES AND RACE AT TWENTY, supra note 11, at 75–77.
Poverty rate disparities are statistically significant (p<0.05) for a majority of states with commercial hazardous waste facilities (23 out of 44). This analysis shows that statistically significant racial and socioeconomic disparities in TSDF locations are very prevalent among the states with TSDFs throughout the country. This analysis of the states also shows that racial disparities are more prevalent and extensive than socioeconomic disparities. Although this suggests that race has more to do with the current distribution of the nation’s hazardous waste facilities than poverty, relative importance of race and socioeconomic status is more intensively analyzed below.

C. Metropolitan Area Disparities

The state-wide disparities may in part reflect the fact that most commercial hazardous waste facilities are located in large cities where people of color are generally found in relatively high percentages. Various scholars have suggested examining host neighborhoods in metropolitan areas by themselves to avoid possible confounding effects of counting rural areas, which have relatively low percentages of people of color, among the non-host areas. Such a comparison is more conservative since the likelihood of finding disparities is reduced.

In 2000, 149 of the nation’s 331 metropolitan areas (45%) contained 343 of the nation’s 413 commercial hazardous waste facilities (87%). More than nine million people reside in host neighborhoods of facilities located in metropolitan areas. This represents 98% of the total population living in host neighborhoods of all 413 facilities.

Table 4 compares the racial and socioeconomic characteristics of the metropolitan host neighborhoods to the characteristics of non-host areas. In this comparison, non-host areas include areas in all 331 U.S. metropolitan areas (MAs) that lie beyond the three-kilometer circular host neighborhoods. In metropolitan areas, people of color percentages in host neighborhoods are significantly greater than those in non-host areas (57% vs. 33%). Likewise, the nation’s metropolitan areas show disparities in percentages of African Americans, Hispanics and Asians/Pacific Islanders, 20% vs. 13%, 27%

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126 For descriptive statistics of poverty rates for the states, see TOXIC WASTES AND RACE AT TWENTY, supra note 11, at 78.
127 See generally Anderton et al., supra note 72 (using census track data to investigate environmental equity in the demographics of dumping); Mohai, supra note 90, at 648 (examining two studies that used different units for investigating possible disparities).
128 TOXIC WASTES AND RACE AT TWENTY, supra note 11, at 60.
129 Id.
vs. 14%, and 6.8% vs. 4.4%, respectively. Table 4 also shows socioeconomic disparities between host neighborhoods and non-host areas, for example, in poverty rates (18% vs. 12%). Mean household incomes and housing values in host neighborhoods are about 20% lower than those in non-host areas ($48,400 vs. $60,000 and $136,900 vs. $173,700, respectively). These racial and socioeconomic disparities are statistically significant (p<0.001).

Table 4: Racial and Socioeconomic Disparities between Host Neighborhoods and Non-Host Areas of Commercial Hazardous Waste Facilities in Metropolitan Areas

<table>
<thead>
<tr>
<th></th>
<th>Host Neighborhoods</th>
<th>Non-Host Areas</th>
<th>Difference</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Population</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Population (1000s)</td>
<td>9,035</td>
<td>216,920</td>
<td>-207,885</td>
<td>0.04</td>
</tr>
<tr>
<td>Population Density</td>
<td>1,040</td>
<td>120</td>
<td>920</td>
<td>8.67</td>
</tr>
<tr>
<td><strong>Race/Ethnicity</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>% People of Color</td>
<td>56.6%</td>
<td>33.1%</td>
<td>23.5%</td>
<td>1.71</td>
</tr>
<tr>
<td>% African American</td>
<td>20.1%</td>
<td>12.8%</td>
<td>7.3%</td>
<td>1.57</td>
</tr>
<tr>
<td>% Hispanic or Latino</td>
<td>27.4%</td>
<td>13.7%</td>
<td>13.8%</td>
<td>2.01</td>
</tr>
<tr>
<td>% Asian/Pacific Islander</td>
<td>6.8%</td>
<td>4.4%</td>
<td>2.4%</td>
<td>1.56</td>
</tr>
<tr>
<td><strong>Socioeconomics</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poverty Rate</td>
<td>18.3%</td>
<td>11.6%</td>
<td>6.8%</td>
<td>1.59</td>
</tr>
<tr>
<td>Mean Household Income</td>
<td>$48,391</td>
<td>$60,438</td>
<td>-$12,048</td>
<td>0.80</td>
</tr>
<tr>
<td>Mean Housing Value</td>
<td>$136,880</td>
<td>$173,738</td>
<td>-$36,858</td>
<td>0.79</td>
</tr>
</tbody>
</table>

**NOTES:** Differences and ratios are between host neighborhood and non-host area percentages. Differences may not precisely match other values due to rounding off. Population density is persons per square kilometer (rounded off). Mean housing values pertain to owner-occupied housing units.

One hundred and five of the 149 MAs with facilities (70%) have host neighborhoods with disproportionately high percentages of people of color, and forty-six of these MAs (31%) have majority people of color host neighborhoods. These MAs are widely distributed across the country. MAs with large disparities in Hispanic or Latino percentages are also located in all regions, whereas MAs with large disparities in African American percentages are located primarily in the South and Midwest.130

Host neighborhoods in the ten MAs with the largest number of people of color living in the host areas have a total of 3.12 million people of color, which is 60% of the total population of people of color in all hazardous waste

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130 For descriptive and multivariate statistics for selected metropolitan areas, see TOXIC WASTES AND RACE AT TWENTY, *supra* note 11, at 79–83.
host neighborhoods in the country (5.16 million). Six metropolitan areas account for half of all people of color living in close proximity to all of the nation’s commercial hazardous waste facilities: Los Angeles, New York, Detroit, Chicago, Oakland, and Orange County, CA. Los Angeles alone accounts for 21% of the people of color in host neighborhoods nationally.

In sum, there is no doubt that significant racial disparities exist within the nation’s MAs, which contain four out of every five commercial hazardous waste facilities. Racial disparities exist in a large majority of MAs that have facilities (105 out of 141) and these MAs are widely distributed throughout the country. The magnitude of these disparities is often quite substantial. Moreover, these disparities are not confined to a single racial group but can be found among African Americans, Hispanics, and Asians/Pacific Islanders. The significant disparities found when separately examining the nation’s MAs as a whole, as well as individual MAs, demonstrate the robustness of the findings and underscore those of the national and state analyses.

D. The Matter of Race

Toxic Wastes and Race in the United States found race to be more important than socioeconomic status in predicting the location of the nation’s commercial hazardous waste facilities. Thus, it is appropriate to ask whether the racial disparities reported above in the current distribution of hazardous wastes are a function of neighborhood socioeconomic characteristics. Because race is often highly correlated with socioeconomic status, it is difficult to tell if race plays an independent role in accounting for facility locations without conducting statistical tests (i.e., multivariate analyses) to isolate the effect of race alone.

To determine the independent effect of race, socioeconomic factors believed to be associated with race must be statistically controlled. Table 5 shows the results of the multivariate analysis with the race and socioeconomic variables separately grouped. All race variables (percentages of Hispanics, African Americans, and Asians/Pacific Islanders) are highly significant independent predictors of the facility locations (p<0.001). The positive coefficient (B) indicates that the higher the people of color percentages, the more likely a census tract is to be within three kilometers of a commercial hazardous waste facility. Among the indicators of socioeconomic status, mean income and percent employed in blue collar occupations are significant predictors (p<0.001). These variables are therefore independently associated with hazardous waste facility locations. Mean housing value is statistically significant (p<0.002), but in an unexpected direction (i.e., it has a positive coefficient).

131 Toxic Wastes and Race, supra note 2, at 13.
Table 5: Multivariate Analysis Comparing Independent Effect of Race on Facility Location (Logistic Regression)

<table>
<thead>
<tr>
<th>Race/Ethnicity</th>
<th>Coefficient (B)</th>
<th>Est. Odds Ratio (Exp(B))</th>
<th>Significance Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>% Hispanic or Latino</td>
<td>2.222</td>
<td>9.226</td>
<td>0.000</td>
</tr>
<tr>
<td>% African American</td>
<td>1.752</td>
<td>5.768</td>
<td>0.000</td>
</tr>
<tr>
<td>% Asian/Pacific Islander</td>
<td>3.583</td>
<td>35.964</td>
<td>0.000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Socioeconomic Status Indicators</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Mean Household Income ($1000s)</td>
<td>-0.011</td>
<td>0.989</td>
<td>0.000</td>
</tr>
<tr>
<td>Mean Housing Value ($1000s)</td>
<td>0.001</td>
<td>1.001</td>
<td>0.002</td>
</tr>
<tr>
<td>% with 4-Year College Degree</td>
<td>0.769</td>
<td>2.158</td>
<td>0.058</td>
</tr>
<tr>
<td>% Employed in Professional “White Collar” Occupations</td>
<td>-0.695</td>
<td>0.499</td>
<td>0.167</td>
</tr>
<tr>
<td>% Employed in “Blue Collar” Occupations</td>
<td>2.427</td>
<td>11.321</td>
<td>0.000</td>
</tr>
<tr>
<td>Constant</td>
<td>-4.453</td>
<td>0.012</td>
<td>0.000</td>
</tr>
<tr>
<td>-2 Log Likelihood</td>
<td>16977.135</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Model $\chi^2$ (df=8)</td>
<td>1683.086</td>
<td></td>
<td>0.000</td>
</tr>
</tbody>
</table>

NOTES: Analysis uses 2000 Census tract data and 50% areal containment method (see Figure 1C).

Some socioeconomic variables are not statistically significant. For example, the percentage employed in management and professional (i.e., white collar) occupations is not a significant predictor. Likewise, the percentage of persons with a college degree does not quite achieve the threshold (p<0.05) necessary to be considered statistically significant, though it is trending that way. It also has a positive coefficient, which is in the unexpected direction. The results show that race continues to be a significant and robust predictor of commercial hazardous waste facility locations when socioeconomic and other non-racial factors are taken into account.

VII. CONCLUSIONS AND POLICY RECOMMENDATIONS

Twenty years after the release of *Toxic Wastes and Race*, significant racial and socioeconomic disparities persist in the distribution of the nation’s commercial hazardous waste facilities. Although the current assessment uses newer methods that better match where people and
hazardous waste facilities are located, the conclusions are very much the same as they were in 1987. In fact, people of color are found to be more concentrated around hazardous waste facilities than previously shown. People of color are particularly concentrated in neighborhoods and communities with the greatest number of hazardous waste facilities. Furthermore, racial disparities are widespread throughout the country, whether one examines states or metropolitan areas. Race clearly still matters.

Significant racial and socioeconomic disparities exist today despite the considerable societal attention to the problem noted previously. These findings raise serious questions about the ability of current policies and institutions to adequately protect people of color and the poor from toxic threats.

Getting government to respond to the needs of low-income and people of color communities has not been easy, especially in recent years when the EPA, the governmental agency millions of Americans look to for protection, has mounted an all-out attack on the environmental justice and environmental justice principles established in the early 1990s. It has not been easy fend off attacks and proposals from the EPA that would dismantle or weaken the hard-fought gains made by individuals and groups that put their lives on the front line. Moreover, the agency has failed to implement Environmental Justice Executive Order 12,898 signed by President Bill Clinton in 1994 or apply Title VI of the Civil Rights Act.

Many of the environmental injustice problems that disproportionately and adversely affect low-income and people of color communities could be eliminated if current environmental, health, housing, land use and civil rights laws were vigorously enforced in a nondiscriminatory way. Many of the environmental problems facing low-income persons and people of color are systemic and will require institutional change, including new legislation. However, government alone cannot solve these problems and the support and assistance of concerned individuals, groups, and organizations from various walks of life are needed.

The Toxic Wastes and Race at Twenty report gives over twenty recommendations for action at the federal, state, and local levels to help eliminate the disparities. The report also makes recommendations for nongovernmental agencies and the commercial hazardous waste industry. More than 100 environmental justice, civil rights, human rights, faith-based, and health allies signed a letter calling for steps to reverse the downward spiral. The sign-on letter and the organizations

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132 TOXIC WASTES AND RACE AT TWENTY, supra note 11, at 156–50.
133 Id. at 159–60.
endorsed the following ten policy recommendations from the *Toxic Wastes and Race at Twenty* report:135

1. **Hold Congressional Hearings on EPA Responses to Contamination in EJ Communities.** We urge the U.S. Congress to hold hearings on the EPA's response to toxic contamination in EJ communities, including post-Katrina New Orleans, the Dickson County (Tennessee) Landfill water contamination problem, and similar problems throughout the United States.

2. **Pass a National Environmental Justice Act Codifying the Environmental Justice Executive Order 12,898.** Executive Order 12,898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations136 provides significant impetus to advance environmental justice at the federal level and in the states. Congress should codify Executive Order 12,898 into law. Congress will thereby establish an unequivocal legal mandate and impose federal responsibility in ways that advance equal protection under law in communities of color and low-income communities.

3. **Provide a Legislative “Fix” for Title VI of the Civil Rights Act of 1964.** Work toward a legislative “fix” of Title VI of the Civil Rights Act of 1964137 that was gutted by the 2001 *Alexander v. Sandoval*138 U.S. Supreme Court decision that requires intent, rather than disparate impact, to prove discrimination. Congress should act to re-establish that there is a private right of action for disparate impact discrimination under Title VI.

4. **Require Assessments of Cumulative Pollution Burdens in Facility Permitting.** EPA should require assessments of multiple, cumulative, and synergistic exposures, unique exposure pathways, and impacts to sensitive populations in issuing environmental permits and regulations.

5. **Require Safety Buffers in Facility Permitting.** The EPA, states, and local governments too, should adopt site location standards requiring a safe distance between a residential population and an industrial facility. It should also require locally administered Fenceline Community Performance Bonds to provide for the recovery of residents impacted by chemical accidents.

6. **Protect and Enhance Community and Worker Right-to-Know.** Reinstate the reporting of emissions and lower reporting thresholds to the Toxic Release Inventory (TRI) database on an annual basis to protect communities’ right to know.

7. **Enact Legislation Promoting Clean Production and Waste Reduction.** State and local governments can show leadership in reducing the demand for products produced using unsustainable technologies that harm human health and the environment. Government must use its

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135 *Toxic Wastes and Race at Twenty*, supra note 11, at 156–60.
buying power and tax dollars ethically by supporting clean production systems.139

8. **Adopt Green Procurement Policies and Clean Production Tax Policies.** Require industry to use clean production technologies and support necessary R&D for toxic use reduction and closed loop production systems. Create incentives and buy-back programs to achieve full recovery, reuse, and recycling of waste and product design that enhances waste material recovery and reduction.140

9. **Reinstate the Superfund Tax.** Congress should act immediately to reinstate the Superfund Tax, re-examine the National Priorities List (NPL) hazardous site ranking system, and reinvigorate Federal Relocation Policy in communities of color to move those communities that are directly in harms way.

10. **Establish Tax Increment Finance (TIF) Funds to Promote Environmental Justice-Driven Community Development.** Environmental justice organizations should become involved in redevelopment processes in their neighborhoods to integrate brownfields priorities into long-range neighborhood redevelopment plans. This will allow for the use of Tax Increment Finance funds for cleanup and redevelopment of brownfields sites expressly for community-determined uses.

The Executive Summary of the *Toxic Wastes and Race at Twenty* report was released in February 2007 at the annual meeting of the American Association for the Advancement of Science (AAAS) in San Francisco. The full report was released a month later in March at the National Press Club in Washington, D.C. Since the 2007 UCC report’s release, two environmental justice hearings were held before the 110th Congress.

In July, the U.S. Senate Subcommittee on Superfund and Environmental Health held a hearing on the “Oversight of the EPA’s Environmental Justice Programs,” the first ever Senate hearing on environmental justice.141 And in October, the House Committee on Energy and Commerce’s Subcommittee on Environmental and Hazardous Materials convened a hearing on

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“Environmental Justice and the Toxics Release Inventory Reporting Program: Communities Have a Right to Know.”142 In September, Representative James E. Clyburn (D-SC) hosted the Congressional Black Caucus Environmental Justice Forum, which addressed “Environmental Justice: Federal Efforts to Strengthen Environmental Justice Through Enforcement of Civil Rights.”143

Also, more than a half dozen bills have been introduced into Congress. Many of these bills cite the report findings and conclusions. The bills include:

- **H.R. 1055 and S. 595 - Toxic Right-To-Know Protection Act.**144 To legislatively restore the stronger reporting thresholds that were in place for almost twenty years. The bill would remove EPA’s authority to alter the program’s reporting requirements without the approval of Congress.

- **H.R. 1103 and S. 642 - Environmental Justice Act of 2007.**145 To codify Executive Order 12,898, to require the Administrator of the Environmental Protection Agency to fully implement the recommendations of the Inspector General of the Agency and the Comptroller General of the United States, and for other purposes.

- **H.R. 1602 - Hurricanes Katrina and Rita Environmental Justice Act of 2007.**146 To ensure environmental justice in the areas affected by Hurricanes Katrina and Rita.

- **H.R. 1972 - Community Environmental Equity Act.**147 To amend the Public Health Service Act to prohibit discrimination regarding exposure to hazardous substances, and for other purposes.

- **H.R. 4652 - Environmental Justice Access and Implementation Act of 2007.**148 To direct each Federal agency to establish an Environmental Justice Office, and for other purposes.

- **H.R. 5132 and S. 2549 - Environmental Justice Renewal Act.**149 To require the Administrator of the Environmental Protection Agency to establish an Interagency Working Group on Environmental Justice to provide guidance to Federal agencies on the development of criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations, and for other purposes.


Getting government to respond to the environmental and health concerns of low-income and people of color communities has been an uphill struggle. Achieving environmental justice for all makes us a much healthier, stronger, and more secure nation as a whole. More important, it’s the just and right thing to do.

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150 H.R. 398, 110th Cong. § 3(b) (2007); S. 1068, 110th Cong. (2007).
151 Id.
Attachment 11
EPA Updates Superfund National Priorities List to Clean Up Pollution, Address Public Health Risks, and Build a Better America

EPA Proposes to Add Lower Hackensack River in Bergen and Hudson Counties, New Jersey to Superfund List

March 17, 2022

Contact Information
Stephen McBay (mcbay.stephen@epa.gov)
(212)-637-3672

NEW YORK - Today, the U.S. Environmental Protection Agency (EPA) announced that it is adding 12 sites and proposing to add another five, including the Lower Hackensack River, to the Superfund National Priorities List (NPL). The federal NPL includes sites where releases of contamination pose significant human health and environmental risks.
“No community deserves to have contaminated sites near where they live, work, play, and go to school. Nearly 2 out of 3 of the sites being proposed or added to the priorities list are in overburdened or underserved communities,” said EPA Administrator Michael S. Regan. “EPA is building a better America by taking action to clean up some of the nation’s most contaminated sites, protect communities’ health, and return contaminated land to safe and productive reuse for future generations.”

"The industrial activities of New Jersey's past have helped build America, but it has also left behind a legacy of contamination that unfairly burdens communities of color," said EPA Regional Administrator Lisa F. Garcia. "By proposing to add the Lower Hackensack River to the National Priorities List, EPA is showing its commitment to overburdened and underserved communities - no project is too big, and America’s natural resources are for everyone to enjoy."

“I am glad to see that the EPA is including additional sites on its Superfund National Priorities List and is proposing another New Jersey site as the agency puts funding from the bipartisan infrastructure bill to use and embarks on a massive cleanup of dozens of toxic sites across the country including several in New Jersey,” said Senator Bob Menendez. “New Jersey has more Superfund sites than any other state in the nation, which is why I fought hard to ensure that the bipartisan Infrastructure Investment and Jobs Act included not only $3.5 billion in additional appropriations for the program, but also reinstated the Superfund Tax on polluting industries to provide the program with a steady revenue stream. Adding these additional sites, including the proposed listing of the Lower Hackensack River in Hudson and Bergen Counties, is essential in transforming all communities impacted by toxic contamination.”

“Today’s announcement that the Lower Hackensack River will be added to the National Priorities List means that EPA will now have additional tools and resources at its disposal to clean and restore one of New Jersey's treasured waterways,” said Senator Cory Booker. “I am grateful for the steadfast advocacy of local organizations, the State of New Jersey, and the EPA for their work to recognize the importance of remediating the Lower Hackensack through the Superfund program. As the state with the most Superfund sites in the nation, New Jersey has been especially harmed by legacy pollution. I am optimistic that with renewed funding from the Infrastructure Investment
and Jobs Act, EPA is on the right track to remediating more toxic sites in America – particularly in Black, Brown, and low-income communities that disproportionately bear the brunt of toxic air, soil, and water.”

“The EPA accepting our request and prioritizing the cleanup of our Lower Hackensack River here in North Jersey is terrific news. I have for years led federal efforts to restore the river from its current contaminated state because our communities, our children, and our environment deserve better,” said Congressman Bill Pascrell, Jr. (NJ-09). “In July of last year, I wrote to my friends at the EPA requesting they include the Lower Hackensack on their National Priorities list so we could swiftly begin the Superfund cleanup process. I have also strongly supported the State of New Jersey’s efforts to hold up their end of the bargain in this endeavor. The Infrastructure Investment and Jobs Act passed by our Democratic Congress delivers once again. I commend EPA Administrator Regan, Regional Administrator Garcia, and the entire Biden Administration for their focus on environmental issues and their accessibility on local issues like this. Together we will restore the Lower Hackensack River to its former glory.”

"The cleanup of the Lower Hackensack River is vital to the communities, stakeholders, and ecosystems within the watershed," said Congressman Albio Sires (NJ-8). "I urge swift consideration of the Lower Hackensack River, and advocate for its inclusion on the National Priorities List of Superfund sites, so that remediation can begin."

"We know that protecting our environment should be something that everyone, Democrats and Republicans, can come together around. That's why I'm working across North Jersey to protect and clean up our local water," said Congressman Josh Gottheimer (NJ-5). "By proposing the Lower Hackensack River be added to the Superfund National Priorities List, this means we'll be able to bring critical resources to boost this cleanup effort. The historic Bipartisan Infrastructure Bill, which I helped shape and pass, includes critical investment in cleaning up Superfund sites and pollution. Now it's time to claw those resources back to help North Jersey. With this cooperation between the State of New Jersey and the federal government, we're working to stop further damage and contamination of North Jersey's waters and wildlife."

“Governor Murphy and I are thrilled that the EPA is taking this next important step toward adding the Lower Hackensack River to the National Priorities List,” said New Jersey Commissioner of Environmental Protection Shawn M. LaTourette.
“Designating the Lower Hackensack as a federal Superfund site will provide the tools we need to remove decades of contamination that have polluted river sediments and restore the natural resources that have been impaired for far too long. Cleanup of the river presents a remarkable opportunity to help the river reach its full potential as an ecological gem and economic asset in the heart of the state’s most densely populated region.”

The Lower Hackensack River site, identified as the 18.75-mile stretch of the river between the Oradell Dam and near the mouth of the river in Newark Bay, its associated wetlands, and the surrounding area, has been a center of industrial activities for more than 200 years. As a result, decades of sewage and industrial discharges into the river and its tributaries have contaminated river sediments. Prior studies and investigations show that the river contains sediments contaminated with arsenic, lead, chromium, mercury, polycyclic aromatic hydrocarbon compounds (PAHs), and polychlorinated biphenyls (PCBs).

The Hackensack River is part of the New York-New Jersey Harbor Estuary and is a habitat to over 30 designated endangered or threatened species and home to over 8,400 acres of wetlands. The area of the river being proposed runs through residential, commercial, industrial and public land. Due to the elevated contamination levels in fish throughout the Newark Bay Complex, including the tidal Hackensack River, NJDEP has placed multiple advisories on the river’s recreational and fishing activities.

Thousands of contaminated sites, from landfills, processing plants, to manufacturing facilities exist nationally due to hazardous waste being dumped, left out in the open, or otherwise improperly managed. President Biden’s Bipartisan Infrastructure Law will accelerate EPA’s work to help communities clean up these contaminated sites with a $3.5 billion investment in the Superfund Remedial Program and reinstates the Superfund chemical excise taxes, making it one of the largest investments in American history to address legacy pollution. This historic investment strengthens EPA’s ability to tackle threats to human health and the environment, and EPA has already set action in motion to clear the backlog of the 49 contaminated sites which had been awaiting funding to start remedial action.

Superfund cleanups provide health and economic benefits to communities. The program is credited for significant reductions in both birth defects and blood-lead levels among children living near sites, and research has shown residential property
values increase up to 24 percent within three miles of sites after cleanup.

Further, thanks to Superfund cleanups, communities are now using previously blighted properties for a wide range of purposes, including retail businesses, office space, public parks, residences, warehouses, and solar power generation. As of 2021, EPA has collected economic data on 650 Superfund sites. At these sites, there are 10,230 businesses operating on these sites, 246,000 people employed, an estimated $18.6 billion in income earned by employees, and $65.8 billion in sales generated by businesses.

With this Superfund NPL update, the Biden-Harris Administration is following through on its commitment to update the NPL twice a year, as opposed to once per year. The Superfund Program is also part of President Biden’s Justice40 initiative, which aims to ensure that federal agencies deliver at least 40 percent of benefits from certain investments to underserved communities.

**Background**

The NPL includes the nation’s most serious uncontrolled or abandoned releases of contamination. The list serves as the basis for prioritizing EPA Superfund cleanup funding and enforcement actions. Only releases at sites included on the NPL are eligible to receive federal funding for long-term, permanent cleanup.

EPA proposes sites to the NPL based on a scientific determination of risks to people and the environment, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act and the National Oil and Hazardous Substances Pollution Contingency Plan. Before EPA adds a site to the NPL, a site must meet EPA’s requirements and be proposed for addition to the list in the Federal Register, subject to a 60-day public comment period. EPA will add the site to the NPL if it continues to meet the listing requirements after the public comment period closes and the agency has responded to any comments.

For information about Superfund and the NPL, please visit [https://www.epa.gov/superfund](https://www.epa.gov/superfund).


22-021

Contact Us to ask a question, provide feedback, or report a problem.

LAST UPDATED ON MARCH 17, 2022
Attachment 12
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE
HONORABLE ____________

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Attorneys for Plaintiffs

SOUTH CAMDEN CITIZENS IN ACTION,  :  Case No. ____________
   et. al.
Plaintiffs,
vs.

THE NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
ROBERT C. SHINN, JR., Commissioner of the NJ Dept. of Environmental Protection,
in his official capacity,
Defendants

ST. LAWRENCE CEMENT CO. L.L.C.,
Intervenor
MICHEL GELOBTER, of full age, hereby certifies as follows:

1. In the course of my discussion on March 19, 2001 with counsel for the intervenor, they pointed out to me one potential error in the data set they had received. As a result of this conversation, I returned to the original data sets and confirmed that, as they had suggested, I had mistakenly used a different variable to identify Camden County facilities in my analysis. Instead of using the unique facility identifier as I had for every other county, my overall analysis counted each individual regulatory program within Camden County separately. Although these program identifiers represent discrete permits, programs and/or siting decisions within that county, this method was inconsistent with my choice statewide to only count each facility once. Although these program identifiers represent discrete permits, programs and/or siting decisions within that county, this method was inconsistent with my choice statewide to only count each facility once. The result was an overcount of 746 facilities, representing approximately 2.5% of the entire universe of facilities. I therefore submit the following amendments to my original declaration. As a result I submit the following amendments to my original declaration. In some cases the changes offer slightly stronger evidence for an association between facilities and non-white populations, in some cases the changes slightly weaken the evidence. In my opinion, and based on statistical comparisons of the two different results, there is no substantive or statistical difference between the results reported here and those contained in my original declaration.

15. As a baseline, according to the U.S. Census Bureau as of July 1, 1990, the most recent data for which Zip Code comparisons are available, the statewide percentage of whites
is 79.4%, with 20.6% non-whites. The state average number of AIRS/AFS facilities per Zip Code is 7.8.

16. Using the AIRS/AFS database and Census data, I determined that in New Jersey Zip Codes with less than the state average population of non-whites (20.6%), there are an average of 6.7 facilities, compared to those above the state average population of non-whites with 13.7 facilities. Put another way, Zip Code areas with higher than average population of non-whites have almost twice as many AIRS/AFS facilities -- 105% more to be precise -- per Zip Code than those with below average non-whites. Zip Code 08104, which includes the Waterfront South community of Camden, NJ, and several adjoining Census Tracts, has 18 AIRS/AFS facilities. This number of facilities is 268% of the average in Zip Codes where the population of non-whites is proportionally at or below the state average percentage of non-whites. Since the average Zip Code area in the state has 7.8 of AIRS/AFS facilities, Zip Code 08104’s count represents 230% of the statewide average calculated independent of racial composition.

17. Looking at New Jersey Zip Codes in predominately white communities (which I defined as 70% or more white) and predominately non-white communities (which I defined as 70% or more non-white), the pattern holds true. Zip codes that are 70% and greater non-white have an average of 14 AIRS/AFS facilities. Zip codes that are 70% and greater white have an average of 7.1 AIRS/AFS facilities. There are therefore 97% more AIRS/AFS facilities in Zip Codes of 70% or more non-white population.

18. Using the U.S. EPA Envirofacts database as a whole, I found that there were an average of 37.8 EPA-regulated facilities per Zip Code in New Jersey. Zip Codes that have a
higher percentage of white residents than the state average have an average of 32.3 EPA-regulated facilities. Zip Codes that have a higher than average percentage of non-white residents have a mean of 78 EPA-regulated facilities. In Zip Code 08104, which includes the Waterfront South community in Camden, there are 70 EPA-regulated facilities, or 185% of the statewide average of 37.8 facilities. This disparity places the Zip Code area in the 75th percentile for such facilities, meaning that 75% of all Zip Codes have fewer facilities. I can place a statistical significance on this result by recognizing that, despite its comprehensiveness, the Envirofacts database still only contains a sample of all the regulated facilities in New Jersey. A t-test of statistical significance can thus be performed on the following hypothesis: “Waterfront South (a.k.a. Zip code 08104) has no more than average number of EPA regulated facilities.” A formal t-test rejects this hypothesis, indicating odds of less than 7 in 1,000 that this is a normal amount of facilities for a Zip Code area.

19. Besides these raw comparisons, an additional measure of association between two variables is the correlation coefficient. The correlation coefficient is a numerical equivalent of the scatter plot: it indicates quantitatively how much the values of two variables go up or down together. If the two variables go up in perfect lockstep, the scatter plot would look like a straight line, and the correlation coefficient would be 1 (or -1, if an increase in one variable makes the other go down). If, on the other hand, there is no relationship between the two variables at hand, the scatter plot looks like a random scattering of points and the correlation coefficient would be 0. Correlation coefficients thus range from -1 to 1, with numbers between 0 and 1 indicating the same strength of relationships but opposite directions from those between -1 and 0.
20. A correlation analysis of relationship between the number of all EPA-regulated facilities (in the Envirofacts database) in a Zip Code area and the percentage of non-white residents in that Zip Code uncovered a correlation coefficient of 0.40. This number indicates that there is a strong linear relationship between these two variables. In addition, this correlation coefficient is highly statistically significant, with the odds of its occurring through random error being much less than 1 in 10,000. I found the correlation for all EPA-regulated facilities and Hispanics at the Zip Code level to be even higher, 0.42, and even more statistically significant.

21. Taking the U.S. EPA Envirofacts data and running a correlation analysis between the number of EPA-regulated facilities in New Jersey Counties and their percentage non-white population, I found a correlation of 0.49, again indicating a strong linear relationship. This is also a very statistically significant coefficient, with odds of less than 2.3% that this relationship is due to random error. I found the correlation for all EPA-regulated facilities and Hispanics at the County level to be even higher, 0.63, with a high level of significance (about 2 in 1,000). Looking only at the AIRS/AFS database, the correlation between non-whites and AIRS/AFS facilities at the County level is 0.69, and between Hispanics and AIRS/AFS facilities at the County level 0.73. The odds of random error producing these coefficients are well below 5 in 10,000, again indicating a very high level of statistical significance.

22. Based on these very high correlation coefficients, I undertook a regression analysis of the relationship between EPA-regulated facilities and the percentage of non-whites in a Zip Code area. A regression analysis permits a direct test of the hypothesis that higher levels of non-white residents cause a higher number of emitting facilities to be located in such
communities. It also provides an estimate of the magnitude of this causation. The regression analysis confirmed the hypothesis to a very high level of statistical significance – the odds that there is no relationship between the percentage of non-white residents and the number of facilities in a Zip Code area are less than 3 in 10 million. The magnitude of the causal relationship indicated that for every 10% increase in the percentage of non-white residents, a Zip Code area would experience an approximately 16% increase in number of facilities over the statewide average for EPA-regulated facilities (or 6 facilities per 10% of non-white residents in the Zip Code area). The relationship between facilities and the percentage Hispanic population was, as indicated above, even stronger. For every 10% increase in the percentage Hispanic population, the number of facilities in a Zip Code area could be expected to increase of approximately 37%, or 14 facilities.

23. Through regression, I also tested the contribution of income in the Zip Code areas to the number of facilities. I found that for every $1,000 increase in a Zip Code area’s median income, the number of facilities dropped by approximately 1.5% (0.55 facilities) from the state average for Zip Code areas. This result was also highly statistically significant. When income was hypothesized as a causal factor with percent non-white or percent Hispanic for EPA-regulated facilities in a Zip code area, it proved to be less important than the latter two factors. This was demonstrated in two ways. First, the median income of a Zip Code area contributed significantly less to the statistical strength of the overall regression than did either percent non-whites or percent Hispanics. Second, the statistical significance of median income as a causal variable dropped below a rigorous threshold. That is to say that the odds that a Zip Code area’s median income was not a causal factor rose to close to 5%, while the causal influence of both
percent non-white and percent Hispanic retained odds of being a random error of considerably less than 1 in 10,000 and 7 in 100 million, respectively.

24. As a result of the aforementioned analyses, I conclude that the state of New Jersey, at both the Zip Code and County level, shows a strong, highly statistically significant, and disturbing pattern of association between the racial and ethnic composition of communities, the number of EPA-regulated facilities, and the number of facilities with Air Permits.

I declare until penalty of perjury that the foregoing is true and correct. Executed this ___ day of February, 2001, at Newark, New Jersey.

MICHEL GELOBTER, Ph.D
Attachment 13
The Distribution and Enforcement of Air Polluting Facilities in New Jersey

Jeremy L. Mennis
Temple University

This study examines the spatial distribution and enforcement of air polluting facilities in the state of New Jersey, as listed in the U.S. Environmental Protection Agency's Aerometric Information Retrieval System. Results show that air-polluting facilities tend to concentrate near minority neighborhoods, although this relationship is partially explained by factors of population density, manufacturing employment, and land use. Other results suggest that facilities in areas with a relatively high percentage of minority population tend to have a weaker record of environmental enforcement as compared to other facilities. Of the socioeconomic variables considered, employment in manufacturing appears to be the most strongly related to environmental enforcement.

Key Words: environmental justice, air pollution, race.

Introduction

The principle of environmental justice plays a key role in guiding environmental policy in the United States through Executive Order 12898 (Clinton 1994), which instructs federal agencies to adopt environmental policies that do not discriminate against groups of people based on race and applies to both the distribution of environmental risk and the ability to participate in environmental decision making. Environmental justice has also emerged as an activist movement, combining elements of both the environmental and civil rights movements, in which minority communities have sought to block hazardous facility development through litigation against hazardous facility developers and environmental regulatory agencies (Fisher 1995). Many of these environmental justice lawsuits have been based on evidence of environmental inequity, defined as where poor and/or minority communities bear a disproportionate burden of environmental risk as compared to other communities (Hill 2002).

Many studies have found evidence for environmental inequity at the national level (UCC 1987; Goldman and Fitton 1994; Ringuist 1997). Other studies, however, have noted that the question of environmental justice hinges not on environmental inequity but on the role and motivations of developers, regulators, or policy makers in creating patterns of environmental inequity (for discussion, see Bullard 1996; Szasz and Meuser 1997; Helfand and Peyton 1999). This latter viewpoint is particularly relevant given that a number of studies have shown that factors of income, employment, and land use may explain patterns of hazardous facility location better than race (Anderton et al. 1994; Been 1994). In addition, a handful of longitudinal studies have found no evidence of racial inequity in the initial siting of hazardous facilities (Oakes, Anderton, and Anderson 1996; Yandle and Burton 1996; Mitchell, Thomas, and Cutter 1999), casting doubt on whether evidence of environmental inequity indicates a causal relationship between the presence of minorities and hazardous facility location.

Most environmental justice analyses have been limited to the comparison of socioeconomic character among areas that host or do not host hazardous facilities or among areas that differ in their degree of environmental risk. I argue here that these “conventional” studies of environmental equity can be enriched by a complementary analysis of racial equity in environmental regulation and enforcement. Analyses of environmental enforcement can potentially provide information that ties environmental inequity directly to decision making by environmental enforcement agencies. The present research demonstrates an environmental justice analysis that combines environmental equity...
and environmental enforcement studies. This analysis focuses on the spatial distribution and environmental enforcement of air polluting facilities in the state of New Jersey. The study of environmental equity investigates the relationship among variables indicating socioeconomic character and land use with the density for air polluting facilities, as maintained by the U.S. Environmental Protection Agency (EPA). The study of environmental enforcement investigates socioeconomic inequity in the New Jersey Department of Environmental Protection’s (NJDEP) record of violation, compliance, penalties, and enforcement actions for air polluting facilities.

I focus on New Jersey for this case study because of its sizable minority population (34 percent), relatively large number of air polluting facilities, and mix of urban and rural land uses. In addition, the state is the subject of an ongoing environmental justice case (South Camden Citizens in Action v. New Jersey Department of Environmental Protection) in which the NJDEP is accused of violating Title VI of the Civil Rights Act. The research presented here is associated with an analysis originally undertaken for the plaintiff in this case.

Explanations of Environmental Inequity

There is broad statistical evidence for racial and other socioeconomic inequity in the spatial distribution of a variety of types of hazardous facilities, including treatment, storage, and disposal facilities (TSDFs), facilities listed in the EPA’s Toxic Release Inventory (TRI), and superfund sites (UCC 1987; Mohai and Bryant 1992; Hird 1993; Ringquist 1997; Daniels and Friedman 1999; Sadd et al. 1999). Szasz and Meuser (1997) provide a helpful typology of explanations for environmental inequity. The typology distinguishes between a situation in which a hazardous facility location is chosen because of demographics and a situation in which a facility location is chosen for reasons other than demographics. In the former case, a location for a facility may be chosen because of the economic benefits associated with facility development, because of political disempowerment of the targeted community, or because of outright racial prejudice on the part of facility developers or policy makers. In the case where a facility is sited for reasons other than demographics, the choice of facility location may be based on the availability of inexpensive, industrial land that (coincidentally or not) coincides with socioeconomic disadvantage. Additionally, a facility may be initially located in a community that is not socioeconomically disadvantaged or in a relatively uninhabited area, and socioeconomic disadvantage proximate to the facility increases subsequent to the facility being built.

Most studies that have explicitly addressed the causes of environmental inequity have undertaken significant archival research into the social, political, and economic history of industrial development and settlement patterns. Boone and Modarres (1999), for example, investigate the historical causes of the concentration of hazardous facilities in the Hispanic-dominated city of Commerce, California, in Los Angeles County. These authors find that although there is considerable evidence for environmental inequity in Commerce, the direct causes of this inequity concern zoning decisions made prior to World War II that were not racially motivated. In another analysis of hazardous facility location in Los Angeles, Pulido, Sidawi, and Vos (1996) examine the historical development of residential and hazardous facility location patterns in two neighborhoods where concentrations of minorities coincide with industrial pollution. These authors find that currently observed patterns of environmental inequity are the result of intentional discrimination on the part of city planners (in one case) and racial divisions of labor associated with certain industries.

Other studies have looked at the issue of the causes of environmental inequity in the context of political empowerment. Lake (1996) argues that environmental justice encompasses equity not only in environmental risk but also in the ability to participate in the environmental decision-making process. In a nationwide analysis of the expansion of commercial hazardous waste facilities, Hamilton (1995) tests three causal theories of race-related distributions of environmental hazards: (1) intentional discrimination by companies or regulators, (2) differences among communities in their willingness to pay for environmental amenities, and (3) differences among communities in political empowerment.
and propensity for opposition to facility siting. Hamilton (1995) finds that political empowerment is the most important factor in predicting which areas are targeted for increases in waste treatment capacity.

A number of authors have also asserted that because observed patterns of environmental risk are intimately tied to the history of the economic and political impacts of racism and discrimination, one cannot neatly separate issues of environmental equity and intent to discriminate. For instance, although Boone and Modarres (1999, 182–83), state that they found historical zoning laws to be the primary determinant of hazardous facility location in Commerce, California, they also note that “considering the prevailing racist notions regarding Mexicans in the 1920s, it is difficult to believe the planning commission would treat the wishes of [a white community] the same as those of Latinos.” In a review of urban environmental justice issues, Gelobter (1994) also emphasizes the interaction of race, class, and land-use change in creating environmental inequity, pointing out that politicians and hazardous facility developers often share goals of land development even when those goals may be in opposition to those of the community in which the development is targeted. Pulido (2000) demonstrates how white privilege has played a role in creating environmental inequity in Los Angeles through the interrelated historical processes of industrial development in the urban core and the migration of whites to the suburbs. She argues that white privilege, operating through the process of suburbanization, has allowed whites to obtain residences in areas of less environmental risk as compared to minorities.

While the issue of environmental enforcement is to some extent implied in these studies due to the permitting process required to build and operate facilities that release toxins into the environment, particularly for commercial TSDFs, such studies do not directly address the issue of equity in the enforcement of environmental regulations. There have, in fact, been only a handful of environmental equity studies focusing on enforcement. Hird (1993), for example, analyzed the pace of cleanup for EPA Superfund sites and found that although there is environmental inequity in Superfund location, the pace of cleanup depended on the degree of hazard and not on socioeconomic factors or political representation.

Combining equity analyses of hazardous facility location and environmental enforcement can play an important role in the interpretation of the causes of environmental inequity. While it can be argued that poverty, land use, and other nonracial factors may lead to racial inequity in hazardous facility location, environmental enforcement is wholly dependent upon the actions of enforcement agencies. Findings of inequity in environmental enforcement may be particularly noteworthy in the context of environmental justice litigation, which often revolves around charges that environmental regulation agencies are not equitably enforcing environmental law with regard to race. These cases have typically been based on federal discrimination laws, such as the Equal Protection Clause of the Fourteenth Amendment or Title VI of the Civil Rights Act of 1964 (Fisher 1995; Liu 2001). Generally, however, U.S. courts have been reluctant to find violations of federal discrimination laws in the absence of evidence of intentional discrimination, even when there is ample evidence of racial inequity in environmental risk (Hill 2002). It has been suggested, however, that environmental equity studies may be used as part of a much more convincing legal strategy for environmental justice advocates when combined with other evidence of racial discrimination related to environmental risk (Cole 1994), such as racial inequity in environmental enforcement (Hill 2002).

Data

Data concerning air polluting facilities in New Jersey were acquired from the AIRS Facility Subsystem (AFS; EPA 1999), a component of the EPA’s Protection Agency’s (EPA) Aerometric Information Retrieval System (AIRS). Hereafter, the air polluting facilities addressed in this article are referred to as AFS facilities. The present study included only those AFS facilities that are currently in operation and that are classified as “major” or “synthetic minor,” classes of facilities for which the NJDEP maintains data. There are a total of 1,467 major or synthetic minor AFS facilities in operation in New Jersey. However, 251 of these facilities were geocoded by the EPA outside the boundary of New Jersey, or not geocoded at all,
and were therefore excluded from this study. Figure 1 shows the locations of the 1,216 AFS facilities considered in this study.

Data describing a number of socioeconomic and land-use factors that have been shown to be significant predictors of hazardous facility location in previous research were used in the present study. U.S. Bureau of the Census tract-level data from the 2000 Census provided information on race, educational attainment, and employment. There are 1,944 tracts in New Jersey, nine of which have zero population. This research therefore focuses on the 1,935 tracts with people living in them.

Note that the appropriate unit of analysis, for example, the use of tracts versus ZIP codes, has been an ongoing issue in environmental equity research because different analytical results may result using the same socioeconomic variables aggregated to different spatial units (Cutter et al. 1996; Williams 1999), a problem known as the modifiable areal unit problem (MAUP; Fotheringham and Wong 1991). While it may appear that the use of the finest resolution spatial unit available is optimal for statistical analyses of environmental equity, previous research suggests that in many cases of environmental inequity, minority communities are not directly adjacent to hazardous facilities but are rather relatively proximal to them (Mennis 2002). For example, minorities may tend to cluster within three kilometers of a hazardous facility but not within one kilometer. This may be the case, say, in cases where a hazardous facility is located within an urban industrial area or where the industrial area itself is sparsely populated but occurs at the edge of a residential minority community. Thus, even though much tract level Census data are also available at the block group level, a finer resolution than tract, the larger size of tracts may be better able to capture the spatial relationship of minorities with AFS facilities. This is particularly the case in urban areas where block groups are very small.

Data on land cover for New Jersey were acquired from the U.S. Geological Survey in order to incorporate the influence of land use on the spatial distribution of hazardous facilities. These data, part of the National Land Cover Data (NLCD) program, were generated from early to middle 1990s Landsat Thematic Mapper (TM) satellite imagery and are made available as a thirty-meter resolution grid data set.

These Census and land-cover data were used to generate the following tract-level socioeconomic and land-use variables, for which descriptive statistics and maps are provided in Table 1 and Figure 1, respectively.

- **Percent minority** Percentage of persons who identify as nonwhite or Hispanic, or both
- **Population density** Persons/square kilometer
- **Educational attainment** Percentage of the population over the age of twenty-five who have graduated from high school (or obtained high school equivalency)
- **Poverty rate** Percentage of the population living below the poverty line for whom poverty level was measured
- **Manufacturing employment** Percentage of the population over the age of sixteen who are employed in the manufacturing industry
- **Percent industrial** Percentage of land area used for commercial, industrial, or transportation purposes (extracted from the NLCD data)

### Analysis of Environmental Equity

The first part of the analysis compares the percent minority of tracts that are located nearby AFS facilities with those that are not. Percent minority was calculated for tracts that host (contain) an AFS facility and for those tracts located within one kilometer, two kilometers, and three kilometers of an AFS facility. Note that percent minority was calculated by dividing the total number of minorities by the total population of all the tracts in the group; it is not an

<table>
<thead>
<tr>
<th>Table 1</th>
<th>Descriptive Statistics for Variables Used in the Analysis</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Min</td>
</tr>
<tr>
<td>Percent minority</td>
<td>0</td>
</tr>
<tr>
<td>Population density (persons/km²)</td>
<td>244,243</td>
</tr>
<tr>
<td>Educational attainment (%)</td>
<td>0</td>
</tr>
<tr>
<td>Poverty rate (%)</td>
<td>0</td>
</tr>
<tr>
<td>Manufacturing employment (%)</td>
<td>68</td>
</tr>
<tr>
<td>Percent industrial</td>
<td>0</td>
</tr>
</tbody>
</table>
Figure 1  Maps of tract-level variables used in this analysis: percent minority (A), population density (B), educational attainment (C), poverty rate (D), manufacturing employment (E), percent industrial (F), and AFS (AIRS Facility Subsystem) facility density (G).
average of the percent minority values of all the tracts in each group. A tract is considered within, say, one kilometer of an AFS facility if its centroid (geometric center) is contained within a one-kilometer buffer drawn around a facility. Previous research has demonstrated that although minorities in urban areas are often concentrated near hazardous facilities, this pattern may not be captured by looking only at the host tract (Anderton et al. 1994; Sadd et al. 1999). One reason for this is that tracts vary greatly in size, typically being much larger in rural areas and smaller in urban areas. In addition, hazardous facilities may be located on the borders of tracts (Zimmerman 1994). For these reasons, measurement of proximity to AFS facilities affords a more accurate metric of the racial character of the communities that surround AFS facilities than that derived by simply looking at the tracts that host facilities.

Table 2 shows that tracts that host AFS facilities and those that do not have approximately the same percent minority (33 percent and 35 percent, respectively). However, those tracts located within one kilometer of an AFS facility have nearly double the percent minority (50 percent) compared to those located farther away (26 percent). This difference in percent minority increases when tracts located within two kilometers of an AFS facility are compared to those tracts that are located farther away and then holds when the proximity threshold is increased to three kilometers. The percent minority of tracts that are located within three kilometers of an AFS facility is nearly three times higher than the percent minority of tracts that are not.

Kendall’s tau-b correlation was then used to assess the relationship among socioeconomic variables with the density of AFS facilities. AFS facility density was calculated using a simple density function with a one-kilometer search radius. The result of this function is a thirty-meter resolution grid in which each grid cell’s value is the facility density (facilities/km^2) at that grid cell location, calculated by dividing the number of facilities found within one kilometer of the center of that grid cell by the area of search. This approach for calculating point density across a space is a well-established point pattern analysis technique (Bailey and Gatrell 1995) and was previously demonstrated for environmental justice analysis by Mennis (2002). The tract-level facility density value was calculated by taking the mean of all the grid cell facility density values contained within the tract (Figure 1).

Note that this density-based method for representing hazardous facility location is an improvement over those methods that encode whether a tract hosts, or is within a certain distance of, a hazardous facility. The calculation of facility density incorporates the fact that hazardous facilities may cluster near, but not within, particular tracts and is also sensitive to whether a tract is near only one, versus many, facilities.

Correlation results indicate that each of the explanatory variables is significantly correlated with AFS density (Table 3). As the density of AFS facilities increases, population density, percent minority, poverty rate, manufacturing employment, and percent industrial all increase. Educational attainment, on the other hand,

Table 2  Percent Minority of Tracts Near and Far from AFS (AIRS Facility Subsystem) Facilities

<table>
<thead>
<tr>
<th># Tracts</th>
<th>Population</th>
<th>% Minority</th>
</tr>
</thead>
<tbody>
<tr>
<td>All tracts in New Jersey</td>
<td>1,944</td>
<td>8,414,350</td>
</tr>
<tr>
<td>Tracts hosting facilities</td>
<td>613</td>
<td>2,820,755</td>
</tr>
<tr>
<td>Tracts not hosting facilities</td>
<td>1,331</td>
<td>5,593,595</td>
</tr>
<tr>
<td>Tracts w/in one kilometer of facilities</td>
<td>685</td>
<td>2,825,789</td>
</tr>
<tr>
<td>Tracts w/out one kilometer of facilities</td>
<td>1,259</td>
<td>5,588,561</td>
</tr>
<tr>
<td>Tracts w/in two kilometers of facilities</td>
<td>1,292</td>
<td>6,490,918</td>
</tr>
<tr>
<td>Tracts w/out two kilometers of facilities</td>
<td>652</td>
<td>2,923,432</td>
</tr>
<tr>
<td>Tracts w/in three kilometers of facilities</td>
<td>1,565</td>
<td>6,742,457</td>
</tr>
<tr>
<td>Tracts w/out three kilometers of facilities</td>
<td>379</td>
<td>1,671,893</td>
</tr>
</tbody>
</table>

Table 3  Kendall Tau-b Correlation of AFS (AIRS Facility Subsystem) Facility Density

<table>
<thead>
<tr>
<th>Variable</th>
<th>Correlation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent minority</td>
<td>0.336*</td>
</tr>
<tr>
<td>Population density</td>
<td>0.294*</td>
</tr>
<tr>
<td>Educational attainment</td>
<td>-0.329*</td>
</tr>
<tr>
<td>Poverty rate</td>
<td>0.274*</td>
</tr>
<tr>
<td>Manufacturing employment</td>
<td>0.178*</td>
</tr>
<tr>
<td>Percent industrial</td>
<td>0.333*</td>
</tr>
</tbody>
</table>

*p < 0.0005
decreases with increasing AFS density. The strongest relationships with AFS density are maintained by percent minority, educational attainment, and percent industrial.

Multivariate regression was used to analyze the interaction of the socioeconomic variables and their relationship with AFS facility density. The natural log of the population density and the square root of the facility density were entered into the regression, in order to better approach a normal distribution of the residuals. Note also that percent minority, poverty rate, and educational attainment are all highly correlated with each other (|Spearman’s r| > 0.7 for each variable pair). All three variables are included in the analysis because understanding the relationship of race with other aspects of socioeconomic character, such as educational attainment and poverty, is an important component of environmental justice research (Downey 1998). However, the presence of multicollinearity prohibits any two of these variables from being entered into the same regression model. The postregression diagnostic variance inflation factor (VIF) test was used to ensure that multicollinearity did not unduly bias the regression results.

Table 4 reports the results of the regression of facility density. Model 1 shows that a portion of the relationship between percent minority and facility density is explained by population density, and the two variables together account for 24 percent of the variation in facility density. Model 2 shows that manufacturing employment is significant but increases the goodness of fit of the model only slightly. The further addition of percent industrial in Model 4 increases the $R^2$ to 0.40 and further reduces the influence of percent minority, although it remains significant. The replacement of percent minority with educational attainment and poverty rate in Models 4 and 5, respectively, does not significantly alter the nature of the variable relationships presented in Model 3.

### Analysis of Environmental Enforcement

The analysis of environmental enforcement investigates whether there is racial inequity in the compliance, significant violations, and penalties among AFS facilities. The AFS database provided data describing a number of indicators of environmental enforcement used in this analysis. These data included: (1) information on whether a facility has, or had in the past, a significant violation of their permit agreement or federal environmental law and which agency (EPA or the state) has lead enforcement; (2) information on whether a facility is in or out of compliance with regard to state or federal air pollution regulations or a permit application, or if the compliance status is unknown; and (3) the total civil penalty amount in U.S. dollars that a facility has been assessed by an enforcement agency.

The AFS database also yielded data concerning which, if any, of eighty-three possible enforcement actions have been taken against a facility in response to issues of noncompliance and significant violation status. Of these eighty-three, I focused on the twelve enforcement actions that were taken by the state, or jointly between the state and the EPA. However, there were zero of any of these types of actions, with the exception of those actions coded 7A (Notice of Non-Compliance), 7C (state NOV [Notice of Violation] issued), and 8C (state administrative order issued). There were only six total actions of type 7A, and a preliminary review demonstrated that these did not exhibit any clear pattern with regard to socioeconomic character. Therefore, the analysis of enforcement actions focuses solely on action types 7C and 8C.

<table>
<thead>
<tr>
<th>Model</th>
<th>Percent Minority</th>
<th>Population Density (ln)</th>
<th>Educational Attainment</th>
<th>Poverty Rate</th>
<th>Manufacturing</th>
<th>Percent Industrial</th>
<th>Adjusted $R^2$</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>0.347*</td>
<td>0.198*</td>
<td>-0.244*</td>
<td>0.153*</td>
<td>0.180*</td>
<td>0.379*</td>
<td>0.242</td>
<td>1,935</td>
</tr>
<tr>
<td>2</td>
<td>0.310*</td>
<td>0.202*</td>
<td>-0.244*</td>
<td>0.153*</td>
<td>0.139*</td>
<td>0.352*</td>
<td>0.275</td>
<td>1,933</td>
</tr>
<tr>
<td>3</td>
<td>0.189*</td>
<td>0.208*</td>
<td>-0.244*</td>
<td>0.153*</td>
<td>0.139*</td>
<td>0.352*</td>
<td>0.401</td>
<td>1,933</td>
</tr>
<tr>
<td>4</td>
<td>0.216*</td>
<td>0.216*</td>
<td>0.103*</td>
<td>0.158*</td>
<td>0.103*</td>
<td>0.376*</td>
<td>0.418</td>
<td>1,933</td>
</tr>
<tr>
<td>5</td>
<td>0.253*</td>
<td>0.253*</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0.398</td>
<td>1,933</td>
</tr>
</tbody>
</table>

*p < 0.0005
Using these AFS database data, the following enforcement variables were derived and recorded for each AFS facility:

- **Out of compliance**: A binary variable indicating if the facility is out of compliance
- **Unknown compliance**: A binary variable indicating if the facility has unknown compliance
- **Significant violation**: A binary variable indicating if the facility has a significant violation and where lead enforcement is by either the state, state/EPA combined, or is undetermined
- **Penalty amount**: Total amount of penalty assessed in U.S. dollars
- **Number of 7C actions**
- **Number of 8C actions**

The socioeconomic character associated with each AFS facility was determined by using areal weighting (Goodchild, Anselin, and Deichmann 1993) to calculate the value for each of the socioeconomic variables within a one-kilometer radius of each facility. Areal weighting assumes a homogenous distribution of population and population character within each tract. The total population of a given tract that is assigned to a facility is calculated in direct proportion to the percentage of that tract’s area falling within the facility’s one-kilometer radius. Each socioeconomic variable was calculated for each facility in this manner. Note that this areal weighting approach is a more accurate measure of the socioeconomic character surrounding a facility than the standard approach, which simply records the socioeconomic character of the facility’s host tract.

A comparison of means was used to investigate the relationships of the socioeconomic variables with the three nonbinary environmental enforcement variables. Because of the nonnormal distribution of the enforcement data, the Mann-Whitney U test was used to compare the mean rank of each of the enforcement variables between the top and bottom classes of a five-class quantile classification scheme for each socioeconomic and land use variable. In quantile classification, each class has an approximately equal number of cases (i.e., AFS facilities).

Results of the Mann-Whitney U test are shown in Table 5. For percent minority, the results indicate a significant difference in the mean rank of the penalty amount and number of 8C actions. Facilities in high-percent minority areas are associated with significantly less 8C actions and lower penalty amounts as compared to facilities in low-percent minority areas. Also of note is the result for manufacturing employment, which has significantly different mean ranks for all three enforcement variables tested. Facilities in high-percent manufacturing employment areas are associated with significantly higher penalty amounts and more 7C and 8C

<table>
<thead>
<tr>
<th>Table 5</th>
<th>Mann-Whitney U Tests of Non-Binary Environmental Enforcement Variables Comparing Top and Bottom Quantile Classes of Socioeconomic and Land Use Variables (N = 1,216)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of 7C Actions</td>
</tr>
<tr>
<td>Population</td>
<td>29,264.5</td>
</tr>
<tr>
<td>Density</td>
<td>(0.895)</td>
</tr>
<tr>
<td>Percent</td>
<td>28,617.5</td>
</tr>
<tr>
<td>Minority</td>
<td>(0.968)</td>
</tr>
<tr>
<td>Educational</td>
<td>29,403.5</td>
</tr>
<tr>
<td>Attainment</td>
<td>(0.046)*</td>
</tr>
<tr>
<td>Poverty Rate</td>
<td>27662.5</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>(0.005)**</td>
</tr>
<tr>
<td>Employment</td>
<td>(0.001)**</td>
</tr>
<tr>
<td>Percent</td>
<td>21890.5</td>
</tr>
<tr>
<td>Industrial</td>
<td>(0.065)</td>
</tr>
</tbody>
</table>

*p < 0.05, **p < 0.01, ***p < 0.005  
Note: Significance reported in parentheses.

<table>
<thead>
<tr>
<th>Table 6</th>
<th>Mann-Whitney U Tests of Socioeconomic and Land Use Variables Comparing Binary Environmental Enforcement Variables (N = 1,216)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Significant Violation</td>
<td>Out of Compliance</td>
</tr>
<tr>
<td>Population</td>
<td>136917.0</td>
</tr>
<tr>
<td>Density</td>
<td>(0.411)</td>
</tr>
<tr>
<td>Percent</td>
<td>124457.0</td>
</tr>
<tr>
<td>Minority</td>
<td>(0.002)**</td>
</tr>
<tr>
<td>Educational</td>
<td>116181.5</td>
</tr>
<tr>
<td>Attainment</td>
<td>(0.000)***</td>
</tr>
<tr>
<td>Poverty Rate</td>
<td>118759.0</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>(0.000)***</td>
</tr>
<tr>
<td>Employment</td>
<td>(0.000)***</td>
</tr>
<tr>
<td>Percent</td>
<td>115644.0</td>
</tr>
<tr>
<td>Industrial</td>
<td>(0.000)***</td>
</tr>
</tbody>
</table>

*p < 0.05, **p < 0.01, ***p < 0.005  
Note: Significance reported in parentheses.
actions as compared to facilities in low-percent manufacturing employment areas.

Three additional Mann-Whitney U tests were also used to determine if there is a significant difference in the mean ranks of all the socioeconomic and land-use variables for each of the binary enforcement variables: significant violation, out of compliance, and unknown compliance. The results are reported in Table 6. Of note is the result for significant violation. Facilities with a significant violation are associated with higher percent minority, poverty rate, and manufacturing employment, and with lower educational attainment, as compared to those facilities without a significant violation. The manufacturing employment variable again stands out for being significantly higher for facilities that are out of compliance, and for which compliance is unknown, as compared to those facilities in compliance.

Discussion

The analysis of environmental equity indicates that AFS facilities tend to locate in areas that have a particular socioeconomic and land-use character. Regarding race, AFS facilities are located disproportionately in high-percent minority areas. The results presented in Table 2 suggest something of a bull's eye pattern where minorities are not concentrated immediately surrounding hazardous facilities but at a slightly further, though still proximate, distance. Much of the variation in AFS facility location with regard to race is also reflected in other variables that capture related aspects of socioeconomic character, such as educational attainment and poverty rate. This study also agrees with Anderton et al. (1994) in finding that employment in manufacturing is associated with hazardous facility location. The variable with the greatest degree of explanation in AFS facility location is industrial land use. This study therefore agrees with studies by Boer et al. (1997) and Sadd et al. (1999) who find land use to be an important predictor of hazardous facility location.

Given the relationship of percent minority to these other variables, it is perhaps surprising that percent minority retains its significance in predicting the density of AFS facilities even after the influence of factors of population density, land use, and employment have been removed. Regardless of these geographic and employment characteristics, AFS facilities tend to concentrate nearby high-percent minority tracts. The transformation of facility density is also important, indicating that AFS facilities tend to cluster in tracts with very high values of population density, percent minority, manufacturing employment, and percent industrial. As these variables decrease in value, the density of hazardous facilities tends to decrease very rapidly.

This research also indicates that there is variation in environmental enforcement with regard to race. AFS facilities in areas with high minority concentrations are associated with higher rates of significant violation, lower rates of state administrative orders issued, and lower penalty amounts assessed as compared to those facilities in areas with lower minority concentrations. We can conclude that whereas facilities in high-percent minority areas tend to violate regulations more often, they receive relatively few notices from the state, and their fines tend to be relatively low. This is counterintuitive to what one would generally expect—more significant violations should be associated with more notices and higher fines. Among all the categories of socioeconomic and land use variables (i.e., low- and high-percent categories in the quantile classifications), the high-percent minority category is unique for having the combination of high significant violation and low penalty amount.

Manufacturing employment appears to be the socioeconomic variable with the greatest overall relationship to enforcement. Recall that the correlation of manufacturing employment with AFS facility density was found to be significant, but the relationship was weak compared with the other socioeconomic variables. It is perhaps surprising, then, that manufacturing employment is associated more strongly with measures of enforcement than any of the other socioeconomic and land-use variables. Higher rates of manufacturing employment are associated with higher rates of out-of-compliance status, unknown compliance status, state administrative orders issued, significant violation, and penalty amounts.

These results suggest socioeconomic inequity in the degree of enforcement and monetary penalties for significant violations. As with environmental inequity in hazardous facility location, however, there may be a myriad of reasons for the inequity in enforcement agency decision mak-
ing. The association between manufacturing employment and environmental enforcement perhaps reflects the fact that when many people who work at a hazardous facility also live in the immediate area of that facility, there is a greater investment (whether monetary or in simply in terms of vigilance) in the facility's adherence to environmental regulations. It is also possible that those facilities with a large number of employees, and hence a larger percentage of manufacturing employment in the immediate area, are also subject to a greater degree of attention from the NJDEP regarding enforcement.

A related explanation for the more general socioeconomic variation in environmental enforcement concerns political empowerment. Hamilton (1995) has demonstrated that environmental inequity can be linked to the probability that a particular community will engage in political action to resist hazardous facility expansion. Political empowerment is also cited as a factor by Boone and Modarres (1999) in their historical analysis of environmental inequity in Los Angeles. If politically empowered communities can influence the siting of hazardous facilities more effectively than their non-politically empowered counterparts, it follows that these same communities may also be better at influencing facilities' adherence to regulation (i.e., significant violation) and severity of enforcement actions (i.e., penalty amounts) by environmental regulatory agencies.

Another factor that may contribute to the degree of environmental enforcement for a particular AFS facility is the facility type. For instance, a certain type of AFS facility may vary with regard to enforcement measures and may be spatially distributed in a particular way, say, in the urban core or in rural areas. The spatial distribution of a certain type of facility may also be correlated with certain socioeconomic characteristics. In this case, socioeconomic differences among AFS facilities in environmental enforcement would be a byproduct of AFS facility location.

This study suggests that minorities are disproportionately exposed to environmental risk in New Jersey. This inequity in environmental risk is manifested not only in the disproportionate locations of air polluting facilities in minority neighborhoods but also in the tendency of regulation and environmental enforcement to be less rigorous in minority neighborhoods. These arguments may be of use in environmental justice litigation, where evidence of discrimination beyond the spatial distribution of hazardous facilities can play an important role. In addition, these findings may be of use to environmental enforcement agencies in ensuring compliance with federal standards of nondiscrimination.

Conclusion

This study demonstrates how a conventional environmental justice analysis that focuses solely on environmental equity may be enhanced through an analysis of environmental enforcement. Evidence of racial inequity in hazardous facility location can often be explained by non-racial factors, such as land use. Environmental enforcement, however, is a direct result of decisions made by environmental enforcement agencies. Combined evidence of racial inequity in hazardous facility location and enforcement can provide a richer portrait of environmental injustice than an analysis of facility location in isolation.

While this study cannot pinpoint the causes of the racial inequity in AFS facility location and enforcement, it provides important evidence for environmental injustice in New Jersey. First, this study shows that while factors of population density, land use, and employment are important, they do not fully explain the disproportionate siting of hazardous facilities in minority areas. Second, this study suggests that there is socioeconomic inequity not only in AFS facility location but also in environmental enforcement. High-percent minority areas tend to have a weaker record of environmental enforcement as compared to low-percent minority areas. It should be noted, however, that percent employed in manufacturing appears to be a more influential factor in environmental enforcement than race.

This research has focused on a small subset of the rich enforcement data provided by the EPA. Other relevant EPA enforcement data include historic records on compliance status and the length of time facilities have taken to address regulatory violations. These enforcement data may be combined with toxic release data to examine the relationship among socioeconomic character, violations of environmental regulations, the risk associated with those violations,
and the enforcement actions associated with those violations. Future environmental justice research in environmental enforcement should also focus on examining socioeconomic variation among facility types, for instance by classifying facilities by NAIC (North American Industrial Classification) code, in order to investigate whether certain types of facilities may be subject to different enforcement regimes. It would also be of interest to investigate how the relationship of socioeconomic status with environmental enforcement varies from state to state, or among different regions of the United States that are relatively homogeneous with regard to types of industrial activity. Such a study would allow for the comparison of environmental equity and enforcement among different enforcement and industrial regimes.

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Attachment 14
FILING FEES WAIVED R. 1:13-2
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SOUTH CAMDEN CITIZENS IN
ACTION, BARBARA PFEIFFER,
PHYLLIS HOLMES, LULA WILLIAMS
and SHARON CHRISTIE POTTER
Plaintiffs,

vs.

THE NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
BRADLEY CAMPBELL, Commissioner
of the New Jersey Department of
Environmental Protection, in his official
capacity,

Defendants,

ST. LAWRENCE CEMENT CO., L.L.C,

Intervenor-Defendant.

DISTRIBUTION OF NEW JERSEY
DOCKET NO.: 01-CV-702 (FLW)

CERTIFICATION OF JEREMY
MENNIS

South Jersey Legal Services, Inc
I, Jeremy Mennis, certify:

1. I am over 18 years of age and not a party to this action.

2. I have been retained as an expert by the plaintiffs in this action.

3. My expert report is attached to the Certification of Catherine Trinkle filed by St. Lawrence Cement ("SLC").

4. I have examined the distribution of facilities that discharge air toxics in New Jersey. Each facility that discharges significant amounts pollutants in the state -- such as the SLC plant at issue in this case -- must receive a permit from the New Jersey Department of Environmental Protection ("DEP") before it can emit any pollutant. I used the U.S. Environmental Protection Agency's Aerometric Information Retrieval System database of "AFS" air polluting facilities in New Jersey that is populated by the DEP. AFS facilities are permitted facilities in New Jersey that are classified as major or synthetic minor sources of air contaminants and for which the DEP maintains AFS data.

5. There are three methods that I used for representing hazardous facility location. The first method looked at whether a census tract hosts a facility. My study indicated that the percent minority of host tracts (33%) as compared to the percent minority of non-host tracts (35%) is relatively close. However, my previous research and that of others has demonstrated that although minorities in urban areas are often concentrated near hazardous facilities, this pattern may not be captured by looking only at the host tract. One reason for this is that tracts vary greatly in size, typically being much larger in rural areas and smaller in more densely populated urban areas. If you focus only on the tracts that host facilities versus the tracts that do not host facilities, you will get a misleading picture of the spatial relationship between race and the
presence of air polluting facilities.

6. Because of the incomplete picture gained in simply looking at the host tract statistics – as DEP and SLC do in their reading of my expert report – I also used a second method that looks at a tract’s proximity to an air polluting facility. Measurement of proximity to AFS facilities affords a more accurate metric of the racial character of the communities that surround AFS facilities than that derived by simply looking at the tracts that host facilities. Air toxic releases tend to be located nearby minority residents, but often not in the tract that actually hosts the facility. For example, the percent minority of census tracts within one kilometer of AFS facilities is nearly twice that of tracts more than one kilometer away.

7. I also employed a third method of analysis, the density-based method. The density-based method for representing air polluting facility location is an improvement over the first two methods, which encode whether a tract hosts, or is within a certain distance of a hazardous facility. The calculation of facility density incorporates the fact that hazardous facilities may cluster near, but not within, a particular tract, and is also sensitive to whether a tract is near only one, versus many, facilities. Of the variables I analyzed, the strongest relationships with AFS density are maintained by percent minority, educational attainment and percent industrial.

8. Percent minority is highly significant in estimating the density of AFS facilities even after controlling for other factors (such as population density, industrial land use and nearby access to transportation). Even after accounting for the variables “industrial land use” and “population density,” “percent minority” is still significant in estimating air polluting facility density. In plain terms, this means that race is a significant predictor of the density of polluting facilities in New Jersey. Air polluting facilities tend to concentrate near high percent minority
tracts.

9. Air polluting facilities also tend to concentrate in urban, industrial land; even when this is taken into consideration, air polluting facilities still tend to concentrate near high percent minority tracts.

10. My study shows that there is racial inequity in the spatial distribution of air toxic release locations in New Jersey. High concentrations of air toxic release locations are disproportionately associated with high percent minority tracts.

11. The evidence clearly shows that air polluting facilities tend to be located nearby high percent minority tracts; those tracts farther away from these facilities tend to be disproportionately non-minority.

12. The intention of my report was to investigate whether there is racial inequity in the distribution of air polluting facilities in New Jersey; I found that there was. My intent was not to determine the cause of this inequity. However, my regression analyses can be used to suggest causes for the inequity.

13. DEP determines whether or not a facility gets a permit at a particular location, and therefore it plays a role in determining the spatial distribution of air polluting facilities in New Jersey through the permitting process.

14. The addition of the SLC location to my database would not have affected the outcome of my results as I was looking at statewide patterns in the distribution of air polluting facilities using a data set of 1,216 facilities; that general pattern remains the same with our without the SLC facility. The absence of the SLC facility does not significantly alter the statewide pattern of air polluting facilities in New Jersey. The location of the SLC facility, near a
densely-populated area that is more than 90 percent minority, is consistent with the general pattern of air polluting facility distribution.

15. I also looked at racial disparities in enforcement at AFS facilities.

16. There is a significant difference in enforcement at the AFS facilities with regard to race.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 8th day of July, 2005 at Philadelphia, Pennsylvania.

[Signature]

JEREMY MENNIS
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

[Signature]

SOUTH JERSEY CITIZENS
IN ACTION, GENNA SANDERS,
PAULINE WOOD, BARBARA
PHELPS, JULIEA GILLARD,
CECILIA LEE, PHILLIS PETERS,
GUIDO LEON, LISA WILLIAMS,
SHARON CHRISTIE PETERS,

Plaintiffs,

v-

THE NEW JERSEY DEPARTMENT
OF ENVIRONMENTAL PROTECTION,
BRADLEY CAMPBELL, Commissioner,
Of the N.J. Dept. of
Environmental Protection,

In his official capacity

Defendants,

ROBERT E. HAZEN

ST. LAWRENCE CEMENT CO.,
L.L.C.
Intervenor-Defendant.

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CERTIFIED STENOGRAPHER
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TRANSCRIPT of the stenographic notes of the
Proceedings taken in the above-entitled matter, as
Taken by ANNE C. NEWMAN, a Certified Stenographer
Reported by Notary Public of the State of New Jersey,
At the Department of Law & Public Safety, Div. of Law,
R.J. Hughes Justice Complex, 25 Market Street, Trenton,
New Jersey, on Thursday, July 13, 2004, commencing at
1:00 p.m.

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ROBERT E. HAZEN, called as a witness, was first duly sworn and testifies as follows:

EXAMINATION

By Ms. FOMAR:

Q. Good afternoon, Mr. Hazen. I'm sure you know who I am, but let me introduce myself for the record. My name is Olga Fomar. I'm an attorney at South Jersey Legal Services, and I represent the plaintiffs in this litigation that involves the DNB and St. Lawrence Cement. I'm going to be doing the questioning at this deposition, so let me ask you, to start with, have you ever been deposed before?

A. Yes, I have.

Q. So, you're kind of familiar with the basic ground rules?

A. Yes.

Q. Well, let me just run through a couple of things. Everything you say is going to be recorded and a transcript is going to be made. So, it's very important that we have verbal answers to every question.

And when I ask you questions, please let me know if there's anything about the question you don't understand, and I will

JOHN F. TRAINER, INC., TRENTON, NEW JERSEY
1-609-890-7033

EXHIBIT W
Q. Does that mean --
A. I have looked at a combination of ethnicity and general exposure to an average of sources throughout the state. In other words, sources, particularly air sources, have a very wide range of affect. So, I have analyzed through a multiple source air affect in Camden.
Q. And that was for the entire state or focused on Camden?
A. The analysis was statewide, and Camden was a part of that.
Q. Can you give me a timeframe when you did that.
A. That was shortly before Commissioner Shim left office. So, that would have been around three years ago.
Q. And can you tell me how you came about to do this analysis.
A. Yes, this was in response to court order to compile environmental exposures in Camden.
Q. Have you ever heard of that being referred to as a "Disparate Impact Analysis"? Does that term ring a bell?
A. Yes, yes.

MS. POMAR: Could I have this marked as RH-1.

(Plaintiffs' Exhibit RH-1)

DOCUMENT/ANALYSIS, was marked for identification.)

Q. It's a long document, so it will probably take you a couple of minutes, but not to read the entire thing, just to look through it to refresh your memory.
A. Okay.

MS. CONNELLY: I'm going to object just to the extent the witness doesn't think he needs to spend any time on any portion of it.

Q. Let me know if you need more time.
A. I'm not trying to rush you. (Pause)

Q. Okay?
A. Yes.

Q. Is RH-1 the analysis or study you referred to earlier?
A. No.
Q. Is there --
A. This document, RH-17
Q. Is there any relationship between this document and the analysis that you performed that you know of?
A. Could you be a little more -- could you phrase that a little more completely.
Q. Well, maybe it will help if you just tell me a little bit more, first, about what this analysis was. You said you performed an analysis of exposures, air sources, in Camden City, and that this was related to some court order in this case.
A. Yes.
Q. Can you tell me, first of all, how it came about that you were asked to do this analysis.

MS. CONNELLY: Objection to form.
A. I didn't look at air sources in Camden. These were other sources.
Q. Let me just back you up a little. Who approached you or how did you first learn that this analysis was needed and that you were being asked to do it?
A. The parts of the department were compiling data relevant to Camden and sources of either air pollution or other pollution. At that time, I was developing a model, to be used statewide, to be used for environmental equity purposes. And in the course of developing the broader model that included a lot more sources, it was thought there might be information relevant in that work to the order to get information about Camden. So, I ran --
Q. Like how did the request get made to you, or who did you have conversations with about this?
A. There was a committee, which included the commissioner, Gary Sondheimer and --
Q. Did you say, "the commissioner," as in Commissioner Shim or assistant --
A. Commissioner Shim.
Q. Gary Sondheimer. And who else?
A. And various staff people and attorneys that were involved in the data-gathering effort.
Q. Do you remember any of the names of any of the other staff or attorneys?
A. Joann Heil, R-e-i-d. Marlen Dooley, counsel for the commissioner. Brand -- I'm not sure. There was an attorney from Division of Law. Can't remember her name.
Q. Stephanie Brand. Does that sound right?
A. Yes. So, it was with that group that
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Hazen - Pomar

Q. Do you have an opinion as to whether there was a different level of exposure based on ethnicity in New Jersey?
   MR. CONNELLO: Object to form.

Q. You don't have an opinion?
   A. Them or not?

Q. When you started.
   A. The hypothesis is -- a technical investigation is always positive, and then through information, you either prove or disprove the hypothesis. So, the hypothesis was that there was.

It wasn't necessarily my opinion, but it's in the process of investigation that information is gathered, and then that either proves or disproves that hypothesis. So, in a sense, both thinking there is and as an idea, but not as a conclusion is part of the way the analysis is conducted.

Q. Okay. And why is it that the DEP decided to test this hypothesis?
   MS. CONNELLO: Objection to form.

A. That was the implication. It was an implied activity from the intent of the Clinton

directive, which while directed toward EPA, looked at particular outcomes, which were unavoidable and possibly preventable. And it was the commissioner's desire, if at all possible, to promote equity with regard to the New Jersey DEP decisions.

Q. Can you tell me what it is that you did to test this hypothesis and to do this analysis on a statewide basis?
   MS. CONNELLO: Objection to form.

A. I reviewed the government literature pertaining to the methodologies on how to perform environmental equity analyses. I reviewed the academic literature on how to perform these analyses and tried to find a methodology, which would fit the objectives of the department.

Q. When you say, "government literature," are you talking about EPA?
   A. EPA and various states have had environmental equity data management strategies.

Q. Do you remember what states?
   A. No, and I don't know whether -- in the early stages, whether there were other states.

I know during the process, other states became involved and had methodologies. I can't be sure about which ones, but it was through the whole process. These were the kinds of data sources I consulted and then chose a particular strategy to implement.

Q. Do you remember any academic literature you reviewed in particular? Anything that stood out?
   A. I remember the one I selected, which is a paper by -- first author Susan Parlin, 1995 Environmental Science and Technology. It's a journal. Now, I believe Susan Parlin was with EPA. She wrote this not as an EPA document. The other authors -- there were three other authors associated with various universities, and I don't remember which ones.

Q. And why did you select that one?
   A. That was the only mathematical formula which handled the data in a way useful to the department.

Q. Did you use the methodology exactly the way it was described, or did you make changes?
   MS. CONNELLO: Objection to form.

A. I made some changes.
the national database?
A. I don't know the reporting
Q. Well, I'm asking because you knew,
when you say hundreds of facilities, that
doesn't sound like a very high number for
facilities emitting hazardous air pollutants all
over the state. I would think it would be more
in the tens of thousands. So, I'm wondering if
there is some cutoff that you used.

MS. CONNELLO: Objection to form.
A. Well, we did not restrict the
database. It was the national toxics inventory
database, which the the consultant had access to
and incorporated into the model, and it say well
be more than hundreds. I don't know.

Q. But it was whatever facilities were
required to report?
A. Yes.
Q. So, you incorporated that modeling and
the PM 2.5 only for those census tracts where
there was a monitor?
A. Yes.
Q. And how did you incorporate the ozone?
A. That was by the location of the
monitor.
Q. Do you have any sense of how many
monitors there are for ozone around the state?

MS. CONNELLO: Objection to form.
A. On the order of 10 to 20, something,
maybe less. I don't -- it's not nearly as
numerous as the census tracts, which are close
to 2000.
Q. And for the hazardous waste, you say
you used the DEP's Known Contaminated Site List?
A. Yes.
Q. So, you entered this data, and you
came with an average per census tract, like a
statewide average of what an average census
tract in the state would have in terms of these
exposures?

MS. CONNELLO: Objection to form.
A. Yeah, the mathematical combination is
a formula, about ten terms. So, it's not
exactly an average. It is a mathematical
expression that results in what is most closely
understood as an average, but probably not
exactly.
Q. Well, for simplicity, could I refer to
it as an average, since I'm sure my mathematical
comprehension isn't good enough to understand
the difference.
A. Yes.
Q. So, you developed an average, and then
how do you relate that to the demographic data?
A. Well, the demographic data are
incorporated in the equation that gives you the
average per person and each ethnicity. So, you
wind up with -- that is what the average is,
it's the average exposure. It already has the
demographic data in it.
Q. In other words, you have an average
exposure for European, average exposure for
African-American.
A. Yes, yes.
Q. And on a statewide level, how did
those averages compare?

MS. CONNELLO: Objection to form.
A. On the air pollution and hazardous
site parameters, the five ethnicity categories
did vary with each parameter. In other words,
for African-Americans and Hispanic Americans,
they had more than average exposure to air
toxics. European Americans tended to live
closer to hazardous waste sites.

It was a different scoring for each of
the ethnicities. In some areas, some ethnic
groups had more. And in other areas -- not
areas, but pollution parameters -- it varied by
ethnicity which pollution parameter affected a
particular ethnic group.

Q. Was this analysis that you just
described to me written up in any way? Is there
any document that would show this?
A. Yes.
Q. What would that document be?
A. There was a Basis and Background
provided with the rule proposal.

(Plaintiffs' Exhibit RN-2. Document
dated February 4, 2002, entitled "Basis and
Background", was marked for identification.)
Q. Mr. Hazen, you just looked at a
document marked RN-2. Is that the Basis and
Background document that you referred to?
A. Yes.
Q. And just to clarify the record, on
page 12 of that document, the very last page,
"Reference," number 8 is S. Perlins, R. Setzer,
etc. Is that, in fact, the journal article you
mentioned at the beginning that you used as the basis
just to refer to the bigger map?

A. In the generation of the maps, the way each census tract is identified for sensitivity to equity issues is to add one -- to add an additional amount of air pollution, hypothetically, and see how the score, the overall statewide score is changed by that addition in that census tract.

That is repeated for each of the 1,900 census tracts, so it can be anticipated throughout the entire state what the effect would be in any particular census tract. So, the answer to your question is, yes, that we added a hypothetical facility uniformly, statewide, in every census tract to anticipate future requests or permitting decisions.

Q. I'm a little confused. On adding one facility in one of 2000 census tracts change a statewide score, a statewide average?

A. Yes, yes.

MS. CONNELLO: Objection to form.

Q. How can that be?

A. Because at the core of the equity analysis, it's how much one group gets compared to another group over the geographic unit of concern. So, we looked at the average exposure statewide. So, if the exposure changes in one area of the state, that changes the average statewide. And the statewide average is the ultimate determinant of improving or not improving environmental equity.

Q. Did the generation of these maps show that there were areas in the state that had higher levels of exposure than others?

A. No.

Q. Do you remember any particular areas or communities that would be true of?

MS. CONNELLO: Objection to form.

A. There were different areas of greater or lesser extent, which varied by the degree of the changed environmental equity that was hypothetically added in the test runs. Since the testing of the model involved hypothetical additions, there was an attempt to meet the EPA guidance with regard to the degree of difference between ethnicities and exposure, which would trigger a concern from EPA's perspective.

Q. Uh-huh.

A. So, various model runs were conducted at the level of concern that EPA might have as their trigger, as well as levels much less than EPA would have a concern.

Q. How, how would you define the EPA's level of concern?

A. In the 1997 EPA Guidance, which was an early draft of the EPA Guidance, they mentioned a disparate impact as having a ratio of about three or four times. In other words, for a disparate impact to be considered a concern, the exposure would have to be three to four times as high in one ethnicity as another.

Q. Okay. And you also looked at lower levels than that. What levels did you look at?

MS. CONNELLO: Objection to form.

A. We looked at levels which were at the least practical level of what the computer could produce, the software could produce.

Q. Uh-huh. Which would be what?

A. That would be very close to a theoretical equity point of one in the mathematical formula described in Berlin.

Q. So, that would be less than two times, less than one and a half times?

MS. CONNELLO: Objection to form.

A. It would be smaller than one and a half.

Q. I realize I'm asking you to put something scientific into much cruder layperson's terms. I'm just trying to get a sense if they're looking at three to four times and you're looking at something less than that, how it would compare.

A. Well, one times more would be 100 percent. If I were to guess, I'd say less than 10 percent.

Q. So, when you tried this model at the EPA level of concern, did you identify any areas or communities which would trigger the EPA level of concern?

A. Yes.

Q. Do you remember what areas or what communities?

A. I'd have to say, at this point, that our interpretation of the level of EPA concern was not exact and would -- if this were ever to be implemented -- need much more attention, but that was the goal, and that was the first attempt.
And the map produces a footprint, which doesn't coincide with any census tract or municipality boundary because interpolation is involved in where the line travels. So, there are not communities identified. There are areas which have an irregular boundary.

Q. But do you remember any general areas in the state where you saw that?
A. Yes.

MR. WOLF: Object to form.

A. A line running northeast to southeast, roughly between Philadelphia and New York, showed -- at the EPA, what we're calling the EPA level of concern -- roughly 2 percent of the area of the state which would have fallen within a level of concern.

Q. Would that 2 percent have been spread out over that whole area between Philadelphia and New York or in patches?
A. It was in patches, along roughly that line.

Q. Would any parts of the Neshark area have fallen within that?

MS. CONNELLO: Objection to form.

A. From my memory, it could, although I never put an overlay of those areas on a map, which would have municipalities identified.

Q. How about the Rosaway or Linden area?

MS. CONNELLO: Objection to form.

A. I don't know.

Q. Paterson area?
A. I did not look at it on scale or with the boundaries of municipalities or census tracts identified.

Q. What about Camden? Do you remember Camden, whether any parts of Camden would have fallen into that area?

MS. CONNELLO: Objection to form.

A. Camden was not in that area.

Q. Is there a document that exists that shows this point at which the EPA level of concern is triggered?

MS. CONNELLO: Objection to form.

A. There is a map which we've previously referred to.

Q. And then you, also, did similar -- generated similar maps, but using lower threshold levels than the three-to-four times ratio?
A. Yes.

Q. And can you describe to me in a similar way what those maps showed.

MS. CONNELLO: Objection to form.

A. Along the same line from Philadelphia to New York, roughly one-third of the state is covered by that lower threshold.

Q. Do you know if any of the municipalities that I mentioned earlier would have fallen within that one-third?

MS. CONNELLO: Objection to form.

A. It's more likely, but, again, I didn't specifically look at those municipalities.

Q. Do you know if Camden did fall within that one-third?

MS. CONNELLO: Objection to form.

A. Camden did.

Q. Do you remember when this analysis was done and these maps generated?
A. Yes, not an absolute date, but it coincided with the commissioner's effort to propose rules. It was at the very end of that effort when these maps were generated by the contractor.

Q. So, would that have been in the summer or fall of 2000?

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Q. Would it have showed that there were areas where there were higher concentrations of air toxics then other areas?

MS. CONNELLO: Objection to form.

A. Yes. Now, the reporting, while available, was never reported in terms of concentration of air toxics. It's the way the concentrations interact with the counts present in the census data, which is the final result. The concentrations and different counts of people in each census tract is combined into one effect, and that's what's displayed. So, while that's what was reported, not the actual concentration.

Q. Did the preliminary results show any disparity among the different ethnic groups with regard to exposure to air toxics?

MS. CONNELLO: Objection to form.

A. Yes.

Q. Do you remember what they showed?

A. Not completely, but for air toxics, African-Americans, Hispanic-Americans had a score higher than 1. European-Americans, Asian-Americans had a score less than 1.

Q. At that point, the PM 2.5 score would not have been available yet?

A. Yes, it was.

Q. Do you remember?

A. I don't recall what it was.

Q. Do you remember what the final PM 2.5 scores were?

MS. CONNELLO: Objection to form.

A. Well, the final score is a result of the combination of all of those: Air toxics, hazardous sites, PM 2.5 and ozone. I don't recall individually what they were for each of the ethnic groups.

Q. Well, I do remember that you had said that the best you remember -- and I realize you're not looking at your documents, you're speaking from memory -- but the best you can recall, air toxics showed higher scores for African-American and Hispanics, hazardous waste sites showed higher scores for people of European background. Do you remember what PM 2.5 showed when it was run separately?

MS. CONNELLO: Objection to form.

A. No.

Q. And do you remember what the final combined scores showed in terms of comparing the different ethnic groups?

MS. CONNELLO: Objection to form.

A. The final combined result was expressed in terms of geographic areas where additional exposure would either increase or decrease the environmental equity overall to all groups. So, the expression was a line on the map and not a number at that point.

Q. So, there was no attempt to calculate a similar scoring for putting all the different substances together?

MS. CONNELLO: Objection to form.

A. That would not be possible because there would be subgroups that would then equal the whole population, and it would be mathematically impossible to do that.

Q. Did you factor in income at all into this analysis?

A. Yes.

Q. How is that factored in?

A. Each census tract had an income, and the same model was run for income as for toxic parameters, toxicity parameters.

Q. Did you characterize income in categories? Like with ethnicity, you put people...
changes the score a tiny amount, and the
relevant amount it changes the score and in
which direction determines the equity status.

Q. So, what kind of hypothetical facility
did you add when you looked at Camden?

MS. CONNELLO: Objection to form.

A. It was an increase in the risk from
the combined air toxics.

Q. And what was the resulting change in
the score?

MS. CONNELLO: Objection to form.

A. There was a resulting change in the
score of each of the census tracts. Some of
them, the score went up, and some of them, the
score went down. So, it was a positive effect
and a negative effect within these census
tracts, about 50-50, depending on which census
tract.

Q. I'm sorry to say I'm a little
confused. What would be the positive effect,
and what would be the negative effect?

MS. CONNELLO: Objection to form.

A. Well, a positive effect with respect
to equity would be that things would become more
equitable regarding distribution of exposure.

located, it has about 65 or a 62 percent
African-American and some 26, 29 percent
Hispanic.

A. Uh-huh.

Q. So, let's just assume that's the
demographics. How would adding a facility in
that census tract improve the equity score?

MS. CONNELLO: Objection to form.

A. You know, until you run the analysis,
you don't know. And then since it's a
comparative measure to other places in the
state, it's impossible to tell until you
actually run the analysis, and that's what was
done.

Q. But can you give me some hypothetical
scenario as to how you could have those
demographics, how adding a facility improves the
score?

MS. CONNELLO: Object to form.

Q. You've earlier told me that
African-Americans and Hispanics had a higher
than statewide average for air toxic exposure;
is that right?

A. Uh-huh. Yes.

Q. Now, we have a census tract that has a
significantly higher population than the
statewide average for African-Americans and
Hispanics.

A. Uh-huh.

Q. If we hypothetically added a facility
that increased air toxics, how would that make
the environmental equity more even?

MS. CONNELLO: Objection to form.

A. You know, if you set up the terms as
you have and that's correct and it's within --
you know, comparatively within the ranges of
what's in the other part of the state, you may
have summarized a fairly complicated equation
correctly.

Q. Thank you. So, that is why I am
puzzling over your answer where you said it was
an equal-voical data that showed half of the census
tracts increasing and half of the census tracts
decreasing. I'm trying to understand how that
could have been possible with my knowledge of
Camden demographics.

MS. CONNELLO: Objection to form.

A. Well, I mean, there are about 12, 15
census tracts here. I mean, in other census
tracts, is it an homogeneous, or are there other
response.

Q. Who did you share your data with?

A. There were meetings with the group of people who were responding to the court order.

MS. CONNELLO: I'm going to reframe my objection as stated earlier today regarding the privileged nature of those conversations, given the identity of the people in that group as stated earlier in the record.

Q. Were your meetings with the same persons you had identified earlier?

A. Yes.

Q. I think you mentioned Mr. Brent. Was it Mr. Sanderman? Joanna Held? Is that the right list of names?

A. Yes, to the best of my recollection.

Q. Was Commissioner Shim involved with this in any way?

A. Some of them he attended.

Q. So, was he aware of this data?

A. I recall making some summary statements similar to the case I've just made about the results from Camden at a meeting that probably included some executive staff, but I couldn't be certain as to whether anyone

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Q. Do you recall if Commissioner Shim was present at that time?

A. I don't recall.

Q. Was Mr. Sanderman present?

A. I don't recall. I'm not even sure that I presented it to them. I mean, we were working at this at a number of levels, from the very technical, just getting the numbers on the page to a report, and somewhere in that spectrum, this dropped away, and I don't recall how far.

Q. Who do you remember having discussions about these numbers with anyone?

MS. CONNELLO: I'm going to object again on the privilege basis.

A. The only -- well, the only person I can be sure of was the contractor because he was helping with producing the maps at the scale of resolution that I requested.

Q. There was at no time, at any of those meetings -- you had been asked to obtain this data. There is no point at any of those meetings that anyone asked you, so, that data that we asked you to obtain, what does it show?
MS. CONSELLO: By asking what the
decision already was, you're asking the
potential subject matter of our privileged
conversation. I mean, you've backed your way
into it in a way that maybe shouldn't have been
permitted thus far at all.

MS. POMAR: That is not true. And,
you know, like it's up to DEP to assert the
privilege.

MR. WOLF: Well, I just did.

MS. POMAR: But asking who made the
decision, I do not believe it in any way calls
for confidential conversation. It's the
responsibility of someone at DEP to make a
decision. They may have made it in consultation
with an attorney. They may not have made it in
consultation with an attorney. But somebody at
DEP had to make the decision, and I think I'm
entitled to know.

MS. CONSELLO: The actual decision
was made you're assuming. He testified that at
some point the analysis fell away or wasn't
pursued or the data was determined to be
incomplete. I think you're mischaracterizing
it.

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the extent that you're limiting it to Stephanie
Brent. I think the DEP should be included in
that.

MR. WOLF: Can you ask a preliminary
question, whether an attorney in that group made
a decision.

MS. POMAR: Well, I don't think an
attorney who -- I don't think a person who
happens to have a law degree, who works at the
DEP, is covered by the attorney privilege. I
think counsel in this litigation is clearly
covered by the attorney privilege.

MS. CONSELLO: But do you agree that
counsel to a corporation is covered by the
attorney privilege?

MS. POMAR: I'm not sure what exact
role the attorneys at DEP had, so I'm not sure I
would characterize them as general counsel. I
know lots of people at DEP who may happen to
have law degrees and use their legal knowledge,
but whether that would qualify them as general
counsel is a different question.

BY MS. POMAR:

Q. So, I'm going to repeat my question of
who made the decision not to use the screening
model data?

MR. WOLF: I repeat that if it is of a
privileged nature, I instruct you not to answer.
However -- well, I'll just leave it at that. If
it was an attorney who made the decision, in
conjunction with litigation strategy, then I
would instruct you not to answer.

A. Okay. I won't answer that question.

MS. POMAR: Well, I reserve my right
to seek to compel an answer to that question
because I think you broadened the
attorney-client privilege beyond what it's
supposed to cover.

Q. Who communicated to you that the data
would not be used?

MS. CONSELLO: Same objection.

A. I won't answer that question.

Q. Is there any discussion or
conversation that occurred with regard to not
using the data that did not involve counsel for
DEP or that did not involve repeating
communications with counsel at DEP, just
conversations among DEP staff?

A. There were discussions about the
technical certainty of what we produced and some
concern or worries that we didn't have a level
of assurance of exactly how the model was
functioning on those particular places to be
totally comfortable with the output.

Q. I've shown you earlier RH-1, which is
the disparate impact study. Since you've now
said that your screening data model was not used
in this response, is there any part of this
response that you contributed to or was
involved in?

A. I reviewed that a while ago. At that
time, I didn't see anything. Do you want me to
check again?

Q. If you don't mind just taking a quick
look.

A. So, could you just refresh my memory
what this is exactly?

Q. This is the disparate impact analysis
that was produced by DEP in response to the
court order.

A. Okay.

MS. CORNELLO: I'm just going to
object to the extent that as I recall it, it
might have a cover page. It seemed to me it
might have had additional cover sheet, or at
least it was bound or something. It doesn't
look exactly the way I recall seeing it, but I
could be wrong.

MR. WOLF: Very well. It may have
had a cover sheet or something like that, but
since I've been making copies of it, this is the
way I kept it.

A. I had no role in acquiring the data
that's in this report or in any of the analysis
of those data.

Q. Okay. Thank you. You had said that
the model was about two-thirds -- the process of
developing the model was about two-thirds or
three-quarters complete when you ran the Camden
numbers?

MS. CORNELLO: Object to form.

Q. Three-quarters?

A. Three-quarters.

Q. Do you remember whether there are any
changes made to the model in terms of improv-
ing the methodology after the time you ran the
Camden numbers?

MS. CORNELLO: Object to form.

A. There were changes that were necessary
to do the combination of all the exposure
elements.

Q. In order to do?

A. To do the final combination.

Q. Other than what you've described in
terms of your collecting this data on Camden and
running the screening model, is there any other
research or investigation you've done that's
related to Camden City?

MS. CORNELLO: Objection to form.

A. No.

Q. Did you have any involvement with
anything related to the St. Lawrence Cement
facility other than what you've already
described?

MS. CORNELLO: Objection to form.

A. No.

Q. Were you involved in the production of
documents or answers to interrogatories in this
case?

A. No.

Q. You had said earlier, a long time ago
now, that the screening model was supposed to
test a hypothesis. Did you ever come to any
conclusion as to the results of testing that
hypothesis?

MS. CORNELLO: Objection to form.

MR. WOLF: Object to form.

A. Well, yes.

Q. And what was that?

A. You know, it shows, as would be
expected, that census tracts with different
portions in homogeneity of ethnic populations
and different pollution burdens regionally can
show differences, which can be quantified so
that the hypothesis at all exposures are the
same and not supported. I mean, that's a very
technical approach to a question, but that's how
it is structured, so that mathematically, you
then can show degrees of that.

Q. So, to put it simpler, in a simpler
way, does it show that there is a difference in
level of exposures among different ethnic and
income groups?

MS. CORNELLO: Objection to form.

A. Yes.

Q. What was your reaction to the decision
not to go ahead and implement the screening
model?

MS. CORNELLO: Objection to form.

MR. WOLF: Object to form.
ERASING NEW JERSEY’S RED LINES

REDUCING THE RACIAL WEALTH GAP THROUGH HOMEOWNERSHIP AND INVESTMENT IN COMMUNITIES OF COLOR

A REPORT BY THE NEW JERSEY INSTITUTE FOR SOCIAL JUSTICE

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The Institute’s mission is to empower New Jersey residents to realize and achieve their full potential. Established in 1999 by Alan V. and Amy Lowenstein, the Institute’s dynamic and independent advocacy is aimed at toppling load-bearing walls of structural inequality to create just, vibrant, and healthy communities. We employ a broad range of advocacy tools to advance our ambitious agenda, including research, analysis and writing, public education, grassroots organizing, the development of pilot programs, and legislative strategies.

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As this report is being released, New Jersey—along with the rest of the country and the world—is fighting a devastating public health crisis. When COVID-19 first surfaced, some believed it would be a great equalizer. But those who understand and have lived with structural racism knew better.

As we are experiencing in this pandemic, the cracks of racial injustice in society’s foundation are causing earthquakes in Black and other communities of color.

The early available data shows that the coronavirus-related deaths of Black people are about 50 percent higher than their overall percentage of New Jersey’s population. Despite comprising just 15 percent of the population, Black people make up approximately one in five coronavirus deaths in New Jersey.

That’s because Black people and other people of color have higher rates of underlying pre-existing conditions on which the virus preys, are more likely to have the front line, “essential” jobs that expose them to the virus, and are less likely to get the healthcare they need.

As this report makes clear, structural racism itself is the pre-existing condition.

As a result, Black people in New Jersey confront some of the worst racial disparities in America. Indeed, as this report details, wealth in New Jersey is designed by race, with the median net wealth for white families at $352,000—the highest in America—but just $6,100 for Black families, and $7,300 for Latina/Latino families, respectively.

Thus, while some are urging a “return to normal,” this report argues that New Jersey must create a new normal for Black and other people of color.

* A new normal in which the historical and modern-day red lines are erased.

* A new normal in which deep, reparative investments are made that build wealth in Black and other communities of color.

* A new normal that prevents future cracks that become earthquakes in communities of color.

* A new normal in which the incredible prosperity of the Garden State is shared.

This report is the beginning of the new normal.
Access to wealth in New Jersey is defined by red lines. “Redlining,” the government policy that excluded communities of color from homeownership, was part of an extensive, state-sanctioned system of racial discrimination in housing and land ownership that pervaded the state. Today it remains the foundation of New Jersey’s racial wealth gap.

Erasing New Jersey’s Red Lines: Reducing the Racial Wealth Gap through Homeownership and Investment in Communities of Color, a report by the New Jersey Institute for Social Justice, tells the story of the racialized system in New Jersey that for generations intentionally failed to provide resources to New Jersey’s Black communities, while simultaneously affording its white communities numerous incentives, subsidies, and other support to build wealth. This system has created the dramatic racial disparities in homeownership and the resulting staggering racial wealth gap that exist in New Jersey today.

WHERE ARE WE NOW? New Jersey has one of the starkest racial wealth gaps in the country. The median net worth for New Jersey’s white families is $352,000—the highest in the nation—but for New Jersey’s Black and Latina/Latino families it is just $6,100 and $7,300, respectively. The disproportionate rate of homeownership is one of the primary causes of the racial wealth gap. Today, 77 percent of New Jersey’s white households own a home; by contrast, less than half (41 percent) of Black households do. Understanding how New Jersey has historically and systematically excluded Black communities from homeownership—and, thus, wealth accumulation—will allow us to properly address the problem and begin to end the state’s racial wealth gap.

HOW DID WE GET HERE? Housing policy led to the racial wealth gap in New Jersey. Black people—through slavery, racially restrictive covenants, exclusion from the GI Bill, redlining, and predatory lending practices, among other actions—have been systematically denied the same opportunities for wealth building through homeownership afforded to white households. These barriers are not a thing of the past and must be addressed through policy change.

WHERE DO WE GO FROM HERE? New Jersey must reckon with its racialized history of exclusion, which continues to this day, to open up access to wealth and homeownership for communities too long excluded from it. To replace barriers with opportunities, this report advances the following policy proposals:

1. New Jersey should develop a lockbox fund to meaningfully and deeply invest resources into increasing homeownership in redlined communities
2. New Jersey should establish the New Jersey Reparations Task Force (S-322/A-711) to develop innovative strategies to repair its racialized history of disinvestment in Black communities
3. New Jersey should conduct an evaluation of the impact of its existing homeownership programs on redlined communities
4. New Jersey should create a statewide Land Bank Commission to effectively implement its Land Bank Law
5. New Jersey should support the expansion of Community Land Trusts in redlined communities
6. The New Jersey Office of the Attorney General should open statewide investigations into housing discrimination and predatory lending

Erasing New Jersey’s Red Lines: Reducing the Racial Wealth Gap through Homeownership and Investment in Communities of Color provides a roadmap for how New Jersey can create a new system of community investment that will help eliminate the racial wealth gap and expand homeownership and housing security in redlined neighborhoods. In doing so, we can finally begin to erase New Jersey’s red lines and create a New Jersey that allows all to prosper.
I. INTRODUCTION
The Red Lines that Define New Jersey

II. WHERE ARE WE NOW?
New Jersey’s Racial Wealth Gap and Homeownership Disparities

III. HOW DID WE GET HERE?
Slavery in New Jersey and the Racialized History of Housing Inequity and Barriers to Property Ownership

A. Slavery and Property Exclusion in Colonial New Jersey

B. Racial Discrimination and Exclusion in the 20th Century
   1. Racially Restrictive Covenants
   2. Inequality in the GI Bill
   3. Redlining

C. Ongoing Barriers: The Great Recession and Predatory Lending

IV. NEWARK CASE STUDY
Community Assets and Enduring Inequities

V. WHERE DO WE GO FROM HERE?
Policy Proposals to Reduce New Jersey’s Racial Wealth Gap Through Homeownership and Community Investment
INTRODUCTION:
The Red Lines that Define New Jersey

Here in New Jersey, homeownership breaks down along racial lines: The homeownership rate for white residents is 77%, nearly forty percentage points higher than the Black homeownership rate of 41%.

Access to wealth in New Jersey is defined by red lines.

Beginning in the 1930s and lasting through the passage of the Fair Housing Act in 1968, the federal government used a process called “redlining” to draw red lines on maps around Black urban communities across the country, designating them as too risky or “hazardous” for mortgages. Numerous cities in New Jersey, including Newark, were redlined, systematically leading to the denial of home loans and wealth-building opportunities for generations of Black people who resided within the lines, while simultaneously creating a system for white people to build futures, homes, and wealth in the suburbs outside of the red lines.

Redlining is an integral part of a broader system of racial discrimination in housing and land ownership that was conceived in slavery, took root deeply in New Jersey, and has persisted throughout the state’s history through racially restrictive covenants, the denial of homeownership opportunities for Black World War II veterans under the GI Bill, predatory lending practices tied to the Great Recession, and current policies and practices across the state. This report tells the story of the history of racial discrimination and exclusion that is the foundation for current racial disparities in homeownership and wealth in New Jersey.

This report urges that just as a system of oppression built these inequities, a system of liberation must be created to eradicate them. Individuals alone cannot remove the barriers and red lines that were designed to stifle economic opportunity in Black communities—this can only be done through structural and policy change. This report sets forth policy proposals to help finally erase New Jersey’s red lines and to design a system that meaningfully connects Black people to homeownership and wealth.

First, this report addresses “where we are now,” examining current racial disparities in homeownership in New Jersey and the staggering racial wealth gap in the state. Second, it will assess “how we got here” by tracing how slavery and its legacy of racial discrimination in housing and land ownership built a system designed to separate Black people from wealth. Third, the report will focus on Newark, New Jersey’s largest city, to provide an example of how people in New Jersey’s urban communities experience unequal housing options and how this manifests in the racial wealth gap. Finally, the report will set forth six policy proposals to answer “where we go from here”—outlining how we can erase New Jersey’s red lines by redressing harms of the past, removing current barriers, and deepening investments in the state’s redlined communities of color.

The impact of owning a home on a household’s ability to accumulate wealth is significant. The average U.S. homeowner has household wealth of $231,400, while the average renter has household wealth of only $5,200.
More than fifty years ago, Dr. Martin Luther King, Jr., said that the country consisted of “Two Americas.” In one America, “children grow up in the sunlight of opportunity.” But in the other America, people of color “find themselves perishing on a lonely island of poverty in the midst of a vast ocean of material prosperity.” Today, Dr. King’s Two Americas persist, as evidenced by the unequal distribution of wealth in our country along racial lines.

Nationally, as of 2016, white households have a median net worth (or wealth) of $171,000, while Black and Latina/Latino households have a median net worth of just $17,600 and $20,700, respectively. Following a cohort of families, research shows that the Black to white racial wealth gap increased over fourfold from 1984 to 2007 and intensified overall during the 2007-2009 Great Recession. It would take a Black family 228 years to achieve the wealth that the average white family has today, and, if current trends persist, the median wealth for Black families is projected to fall to $0 by 2053.

Even accounting for individual income gains made by Black households, the harmful impact of this racial wealth gap remains. This is so because, unlike income, which is defined generally as the flow of money that comes into a household, wealth measures a household’s assets less all its debts. Because access to inherited funds impacts wealth and Black families have fewer assets and are less likely to receive large inheritances than white families, even as earnings gains are achieved among Black families, wealth remains consistently unattainable. Indeed, studies have shown that Black households led by a college graduate have less wealth than a white family headed by someone who did not even complete high school. Thus, increasing educational attainment—and, by inference, income—in Black communities alone will not address the racial wealth gap.

Perhaps no other state embodies the reality that Black and white Americans are living in two different Americas in terms of wealth generation more than New Jersey, one of the wealthiest states in America. New Jersey’s racial diversity and racial segregation, combined with its extreme wealth and punishing poverty, have created in New Jersey’s neighborhoods some of the fiercest segregation by race, ethnicity, and income in this country. The racial wealth gap is even starker in New Jersey than at the national level. In New Jersey, the median net worth for white families is $352,000—the highest in the nation. But for New Jersey’s Black and Latina/Latino families it is just...
$6,100 and $7,300, respectively. This amounts to a typical Black family in New Jersey having less than two cents, and a typical Latina/Latino family about two cents, for every dollar of wealth held by a typical white family.

A primary driver of the racial wealth gap is homeownership. As one of a household’s most valuable assets, home equity is typically the largest component of household wealth. The impact of owning a home on a household’s ability to accumulate wealth is significant—the average U.S. homeowner has household wealth of $231,400, while the average renter has household wealth of only $5,200. Yet, by design, a path to homeownership and wealth has largely evaded Black communities, with the national homeownership gap between Black and white households greater today than it was before the passage of the Fair Housing Act over fifty years ago. And, in 2017, the Black homeownership rate in our country was at its lowest level in half a century.

Today, 77 percent of New Jersey’s white households own a home; by contrast, less than half (41 percent) of Black households do. Further, beyond homeownership rates, Black homeowners in the state confront additional obstacles to building wealth due to lower home values. While 42 percent of Camden residents are Black and six percent are white, just 39 percent of residents are homeowners and the median home value is just $82,700. By contrast, in Cherry Hill, about six miles from Camden, seven percent of the residents are Black and 70 percent are white, with 79 percent owning their primary residence and a median home value of $272,100. These racial disparities in homeownership and home values, which are present throughout the state between urban, Black communities and suburban, predominately white communities, are key contributors to the state’s racial wealth gap that must be remedied.

To address New Jersey’s racial wealth gap, we must understand, address, and repair the generations of racialized property divestment that have led to the vast discrepancy in homeownership in New Jersey’s Black and white communities.
II

HOW DID WE GET HERE?
Slavery in New Jersey and the Racialized History of Housing Inequity and Barriers to Property Ownership

“As New Jersey as a state has always reflected the experiences of a nation.”

—New Jersey Historian Marion Thompson Wright

As the Institute outlined in its report *We Are 1844 No More: Let Us Vote*, the story is often told about how racist Southern legislatures built democracies that excluded Black people. But this history of exclusion also took root very deeply in New Jersey. Indeed, New Jersey was one of the first Northern states to restrict the vote to white men, opposed the Emancipation Proclamation, and was the last Northern state to abolish slavery. Following the Civil War, New Jersey also refused to ratify the Reconstruction Amendments.

From the enslavement of Black people to early forms of sharecropping, there is a direct line to restrictive covenants, the denial of homeownership opportunities through the GI Bill for Black World War II veterans, redlining, exclusionary zoning policies, and predatory lending practices. New Jersey, by law and in practice, created a racialized system of economic advancement through homeownership for its white communities at the expense of its Black residents.
A. Slavery and Property Exclusion in Colonial New Jersey

From its founding as a colony, New Jersey designed a racially exclusive system for distributing land. After the English took control of the colony in 1664, each English settling family received 150 acres of land with an added 150 acres for each “manservant” they brought with them. Settlers coming to the colony in 1665 were also eligible to receive an additional sixty acres for “every weaker servant or slave, male or female, exceeding the age of fourteen years” that accompanied them to the colony. By 1830, over two-thirds of all enslaved people in the North were held in New Jersey. Of the northern colonies, New Jersey, along with New York, had the most severe restrictions—also known as slave codes—for enslaved people. Even after slavery ended, equal access to land ownership was denied to Black people: Out of necessity, some free Black people engaged in an early iteration of sharecropping as “cottagers”—wherein they lived on former slaveholders’ property and provided labor in exchange for shelter, food, and equipment. Thus, even in slavery’s aftermath, Black people in New Jersey continued to be denied access to opportunities to own land and build wealth.

B. Racial Discrimination and Exclusion in the 20th Century

Although the Reconstruction Amendments following the Civil War ended slavery and conferred citizenship to Black people in New Jersey, a system of discriminatory policies and practices emerged in the 20th century that continued the racial exclusion built into the state’s foundation by slavery.

1. Racially Restrictive Covenants

In the early 20th century, racially restrictive covenants—which prohibit the purchase, lease, or occupation of a property by a certain group of people—prevented Black homeownership across the nation and in New Jersey. From the 1920s through the late 1940s, racially restrictive covenants were used by local white communities to prevent Black people from living there. To ensure the persistence of these legal agreements over time, covenants were enforced by community associations. While the Supreme Court held in 1917 that racially exclusionary zoning mandated by municipalities was unconstitutional, the ruling did not apply to individuals or private agreements. As a result, due to New Jersey’s strong local control through home rule, racially restrictive covenants flourished throughout the state. Only with the Supreme Court’s 1948 Shelley v. Kraemer decision—which held that judicial enforcement of racially restrictive covenants in private agreements was unconstitutional—did enforcement of such covenants end.
Racially Restrictive Covenants in Camden County

The case study of the Borough of Mt. Ephraim provides a glimpse into the lengths to which municipalities and community members went to perpetuate the vestiges of slavery as the state gradually withdrew from overt sanction of discriminatory policies. Before 1939, following the foreclosure of several properties due to unpaid taxes, the Borough of Mt. Ephraim took over several parcels of land, later selling them for a nominal price to buyers willing to build on the land. The Federal Housing Administration agreed to offer mortgages on land sold by the Borough of Mt. Ephraim as long as certain restrictive covenants were inserted in the deeds of conveyance. In response, the following restrictive covenant was included in property deeds held by the Borough of Mt. Ephraim: “No race or nationality other than the white or Caucasian race shall use or occupy any building on any lot, except that this restriction shall not prevent occupancy by domestic servants of a different race or nationality employed by an owner or tenant.”

A Black family—Dr. John C. Jones and his wife Lillian H. Jones—subsequently purchased a lot from Mt. Ephraim and later built a home and professional offices on the property. The deed to their land, seemingly by mistake, omitted the covenant. The municipal court dismissed the complaint and held that judicial enforcement of the covenant was unconstitutional. This case reflects the lengths to which white New Jersey residents and towns went to exclude Black neighbors from the same homeownership opportunities that they enjoyed, further seeding the ground for today’s racial wealth gap.

2. Inequality in the GI Bill

About one million Black people served in World War II. Yet too few were afforded the benefit of the Servicemen’s Readjustment Act of 1944, better known as the GI Bill, which provided World War II veterans with opportunities for wealth building, including stipends for low-interest loans and mortgages, unemployment benefits, and college tuition. While the federal guidelines for participants did not include explicitly discriminatory requirements, white-owned financial institutions processed the benefits in a racially discriminatory manner, with minimal federal oversight. Thus, while approximately 25,000 Black New Jersey men served in World War II, few were afforded the state benefits that propelled white veterans into the burgeoning middle class in newly formed suburban communities. Indeed, less than 100 “non-white” veterans in New York and northern New Jersey received any of the 67,000 mortgages offered in the region under the GI Bill. Consequently, even after risking their lives overseas, returning Black servicemen were still denied access to the American Dream of homeownership.

Source: US CENSUS BUREAU

HOUSEHOLDS IN NEW JERSEY’S REDLINED EPICENTERS ARE LARGELY RENTERS

PERCENTAGE OF OWNER-OCCUPIED HOMES:

- NEWARK: 23%
- ATLANTIC CITY: 27%
- TRENTON: 37%
- CAMDEN: 39%

Source: US CENSUS BUREAU
3. Redlining

Housing discrimination was furthered by the entrenched practices of the federal government, which explicitly discriminated against communities of color, particularly Black communities. In 1935, the Federal Housing Authority first published underwriting manuals outlining appraisal guidelines for government insurance of bank mortgages that discouraged investment in Black communities. The Home Owners’ Loan Corporation (HOLC) also produced maps of major metropolitan areas across the nation where it outlined Black communities in red, signaling that these areas were risky to lending institutions issuing federally-insured mortgage loans. This process, known as “redlining,” dried up lending options in Black communities. The lack of borrowing opportunities caused by redlining precipitated a downward trend in these communities as families, rejected by traditional institutions and denied access to capital, became vulnerable to decreasing property values, predatory lending practices, and renting instead of homeownership. Redlined communities thus became self-fulfilling prophecies as investment followed federal insurance dollars to communities outside of the “red lines” and away from residents of color who, lacking the resources to relocate, remained in these urban neighborhoods that increasingly lacked financial opportunities for investment.

Redlining’s impact lingered well after the HOLC went defunct in 1954, affecting New Jersey urban centers like Atlantic City and Camden. Recent examples of redlining highlight this pattern. For example, the U.S. Department of Justice in 2015 determined that the Hudson City Savings Bank denied qualified borrowers of color access to fair mortgage loans in communities throughout New Jersey, New York, Connecticut, and Pennsylvania. The racially discriminatory redlining practices of the New Jersey-based bank were so egregious that the U.S. Department of Justice issued the largest redlining settlement in its history, requiring Hudson to pay $33 million in restitution. While redlining has “officially” ended, its substantial and lasting effects on urban communities have greatly shaped current segregation in U.S. cities today and continue to lead to lower homeownership rates and home values in communities that experienced government redlining in the past. As outlined below, despite the legal end to the redlining practice, continuing evidence of unequal lending and investment opportunities continue to pervade New Jersey cities today.
C. Ongoing Barriers: The Great Recession & Predatory Lending

The Great Recession of 2007-2009 saw a continuation of New Jersey’s system of racialized housing discrimination and exclusionary practices that began during slavery and continued through the 20th century. During this period, banks targeted Black communities with predatory lending practices. To carry out this scheme, banks offered prospective homebuyers subprime loans, which carry higher interest rates. Accordingly, many Black homeowners in urban communities, unable to pay off these exorbitant loans, defaulted on subprime loans and were beset with foreclosures. And, although New Jersey has a number of protections to guard against predatory lending practices—such as the New Jersey Homeownership Security Act of 2002 and the New Jersey Consumer Fraud Act—these improper practices were pervasive in New Jersey. For example, Wells Fargo, dating back to 2010, has entered into several state settlement agreements with New Jersey and other states—including a recent $535 million settlement of which New Jersey received $17 million—for its predatory lending practices and consumer protection violations.

These discriminatory lending practices have had lasting, wealth-stripping effects in New Jersey’s Black communities. For one, as a result of these wrongful practices, the worth of already undervalued homes in redlined Black communities in New Jersey has remained low. The average price of homes in Trenton, for example, was $108,400 in 2007, but by 2010, the average price dropped to $89,500. Home values in Trenton have yet to return to their pre-Recession heights; in 2019, the average Trenton home sold for $67,900.

In addition, these predatory practices have had a lasting impact on foreclosure rates in New Jersey’s redlined communities. Since 2015, New Jersey has had the highest foreclosure rate in the nation. In fact, Atlantic City and Trenton—two cities with sizable Black populations—continue to lead the nation with the highest number of foreclosures in the country. This property loss has devastated the homeownership rates in these communities. Currently, residents in New Jersey’s Black, redlined epicenters are largely renters: In Atlantic City, only 27 percent of households are living in owner-occupied homes; 37 percent in Trenton; and 39 percent in Camden.

Mount Laurel and the Affordable Housing Crisis

In addition to the challenge of homeownership, a lack of other affordable housing options has also exacerbated racial inequities in New Jersey. In the landmark 1975 decision, South Burlington County NAACP v. Mt. Laurel, the New Jersey Supreme Court held that developing municipalities must provide a realistic opportunity for a fair share of the area’s present and prospective housing needs to accommodate low and moderate income families. The decision prohibited New Jersey’s municipalities from using zoning ordinances to outprice or otherwise exclude low-income residents from living within the municipality. Municipalities resisted the enforcement of the decision and implementation of the doctrine was slow and protracted. Accordingly, in 1983, the New Jersey Supreme Court reinforced in a second Mt. Laurel decision that enforcement of the Mt. Laurel doctrine was best left to the legislature. As a result, the state legislature enacted the New Jersey Fair Housing Act in 1985 which established the Council on Affordable Housing (COAH) to enforce the Mt. Laurel ruling. Despite this action, however, for several reasons, including continued pushback by municipalities to the doctrine and the COAH failing to carry out its mandate and eventually becoming defunct, Mt. Laurel’s promise and power have not been fully realized. While around 277,000 affordable housing units needed to be built to meet Mt. Laurel’s guidelines, by 1988, 17 years after the initial ruling, less than 2,000 housing units were built in just 14 communities statewide.

This said, there is promise for the future of affordable housing in New Jersey. Since enforcement of the Mt. Laurel doctrine was returned to the courts in 2015, over 300 towns across the state have entered into settlement agreements to comply with their fair housing obligations. In addition, in 2017, the New Jersey Supreme Court ruled that municipalities must make up any gap in their fair housing obligations that arose during the time period that the COAH was ineffective. Moving forward, full implementation and enforcement of the Mt. Laurel doctrine is needed to achieve the goal of quality affordable housing for all New Jersey residents.
IV. Newark Case Study: Community Assets and Enduring Inequities

Newark, the state’s largest city, serves as a microcosm of both the challenges and promise inherent in New Jersey’s historically divested communities. As the Institute outlined in its report *Bridging the Two Americas: Employment & Economic Opportunity in Newark and Beyond*, Newark is, on one hand, in the midst of an economic expansion, with thriving business industries bolstered by its strategic location as one of the main transportation hubs in the United States. The city is home to major Fortune 500 companies, world-class research universities and cultural institutions, a dense network of manufacturing companies, and a large array of hospitals and community health centers.

On the other hand, Newark also embodies the persistent race and class divisions of the Two Americas on the city level, as local residents—predominantly people of color—are largely excluded from the burgeoning economic opportunity in their own city. Like that of the state of New Jersey, Newark is shaped by a history of slavery, auction notices, and human trade. During the 20th century, state-sanctioned discrimination through redlining and other racist practices led to divestment throughout the city and diminished opportunities for Black residents. And, although many white residents fled the city in the wake of the Newark Rebellion, wealth from the city’s current stream of industry and development has stayed within white communities. While almost three-quarters of Newark residents are people of color, 60 percent of the people employed in Newark are white, as of 2017. Newark residents also hold only 18 percent of all jobs in the city, as of 2017.

Low homeownership rates and property values in Newark today are a direct outcome of the history outlined in this report. Today in Newark, which is 50 percent Black and 11 percent white, 23 percent of residents are homeowners and the median home value is $231,500. By contrast, just eight miles away in neighboring Millburn, where two percent of the residents are Black and 67 percent are white, 81 percent of the residents are homeowners and the median home value is $1,096,200. According to Prosperity Now, 34 percent of Black households in Newark also currently have zero net worth, and 58 percent of homeowners in Newark are cost-burdened—in other words, they are spending more than 30 percent of their household income on mortgages and other owner costs. Newark also has the second highest renter rate in the country, with 78 percent of its residents renting.

Thus, while the current prosperity and development in downtown Newark represents the possibility of what can occur with deep, meaningful investment, the opportunity to build wealth has been elusive for too many of those living in Newark and other redlined cities throughout New Jersey. Purposeful and targeted investments are thus needed in Black communities in Newark and New Jersey.

V. Where Do We Go From Here?: Policy Proposals to Close New Jersey’s Racial Wealth Gap Through Homeownership and Community Investment

From slavery to racially restrictive covenants to racially discriminatory predatory lending practices, the Garden State’s Black communities have largely been given a “bad check,” as Dr. King called it, that has now come due.

So, where do we go from here?

A true system of liberation requires that we address racial injustice with comprehensive, policy-driven strategies that both repair harm and open opportunity unjustly denied to New Jersey’s Black communities for generations.

Through the following policy proposals, New Jersey can begin to design a system that will ultimately eliminate the racial wealth gap and expand homeownership and community-reinvestment opportunities in redlined neighborhoods.

In doing so, we can finally erase New Jersey’s red lines.
Systemic disinvestment requires systemic investment. New Jersey must now make a bold and lasting commitment to a meaningful investment in its Black communities.

To do so, the state should create a lockbox fund, either separate from or as a dedicated sub-fund within the Affordable Housing Trust Fund,\(^\text{117}\) that will increase homeownership and wealth building opportunities in New Jersey’s redlined communities. This dedicated fund will not only illustrate New Jersey’s commitment to repairing the harm of its generational divestment from its Black communities, but will also provide these communities with the needed resources to secure property and wealth—thus narrowing the racial wealth gap.

In her book, *Repair: Redeeming the Promise of Abolition*, legal scholar Katherine Franke outlines how states can begin to take responsibility for slavery and its lasting legacy of racial discrimination through the development of innovative measures to direct land and other resources into historically divested Black communities.\(^\text{118}\) To fund this meaningful investment, Franke proposes turning to pioneering financial structures that will amount to a redirection of intergenerational transfers of wealth that have, for generations, largely benefited white families in America.\(^\text{119}\) In addition, other jurisdictions have already started to consider similar reparative funding mechanisms. For example, Evanston, Illinois, has launched an innovative initiative to use recreational marijuana sales taxes to fund a local reparations program.\(^\text{120}\)

To ensure accountability, the fund’s governance structure should include residents of redlined communities and other community stakeholders, public officials, mission-minded financial experts, and community developers who will effectively direct and invest the funds into meaningful community-based projects aimed at closing New Jersey’s racial wealth gap and remedying the state’s history of housing discrimination and disinvestment. The Reparations Task Force (see Policy Proposal 2) can research and elaborate on the best design and amount for this lockbox fund that will serve to remedy the harm to New Jersey’s Black communities caused by generations of property exclusion and divestment.
To effectively develop and set an amount for the above-outlined state lockbox fund, New Jersey must conduct a deep dive into understanding the full breadth of this generational harm. While Governor Murphy’s proposed wealth disparity task force is an important step, more must be done to trace how Black New Jersey residents have been denied access to the American Dream from slavery to today. Similar to the in-depth analysis done in the New York Times’ recent 1619 Project, New Jersey can only fully reckon with its racialized legacy, and develop innovative policies and strategies to effectively remedy its harm, through looking back to how we got here.

New Jersey should adopt pending legislation, S-322/A-711, which establishes the New Jersey Reparations Task Force to address the generational harms caused by New Jersey’s legacy of slavery and systemic racial discrimination. The task force, among its other duties, should review the current tax structure and develop policy proposals making recommendations on how funds can be reinvested meaningfully into historically divested urban communities. In addition, the task force should consult both local and national experts and residents—past and present—from New Jersey’s redlined communities to develop a comprehensive and detailed analysis of the scope of New Jersey’s generational under-resourcing of Black communities. Once the task force issues its final report, the Legislature and the Governor should move expeditiously to implement its recommendations.
POLICY PROPOSAL 3

New Jersey Should Conduct an Evaluation of the Impact of its Existing Homeownership Programs on Redlined Communities

To understand the path forward for increasing and expanding homeownership opportunities for residents in New Jersey’s redlined communities, we must have a comprehensive understanding of the current landscape to assess the most effective available resources.

A number of government programs and services currently exist to expand homeownership opportunities for individuals in historically divested communities. For example, people who buy homes in a federally designated urban target area—which includes redlined communities such as Newark, Camden, and Atlantic City—are eligible for a number of New Jersey Housing and Mortgage Finance Agency program benefits, including higher income limits in qualifying for a loan and no first-time homebuyer requirement. In addition, under the Live Where You Work program, individuals can receive low-interest mortgage loans and other benefits to purchase homes in towns in which they are employed; municipalities that have participated in the program include Newark, Trenton, Atlantic City, and Camden.

While determining the eligibility of certain urban areas for these programs and services is fairly easy, it is difficult to discern how many people in New Jersey’s redlined communities have been able to buy a home and sustain homeownership through available government programs. Specifically, how have these programs been working, how can they be improved, and what collaboration or streamlining is necessary to more effectively increase homeownership opportunities in New Jersey’s urban Black communities?

To hold state agencies accountable, the state should conduct a publicly available evaluation of the impact of existing homeownership programs to better understand how well they are meeting the needs of New Jersey’s Black, redlined communities. The proposed evaluation should be targeted toward homeownership, rather than renting, in New Jersey’s redlined communities and include recommendations that ensure that policies and programs are updated and modified as needed to specifically meet the needs of communities that were excluded from state investments for generations.

Such an evaluation should also include interviews and focus groups with residents of historically divested communities who have benefited from governmental programs to better understand how programs are working or must be strengthened. Similar to previous evaluations commissioned by the state—like a 2013 evaluation to determine the impact of its affordable housing investment—to ensure that New Jersey is effectively providing New Jersey’s redlined communities with the opportunity to build wealth through homeownership, we must fully understand what is currently happening. Moving forward, New Jersey should also consider incorporating racial impact statements into all parts of housing policy development, such that housing policies are designed in ways that will meet the needs of New Jersey’s redlined communities. Such reforms have been consistently called for by advocacy groups, and racial and ethnic impact statement legislation has already been passed concerning the impact of certain proposed criminal justice bills and regulations.
POLICY PROPOSAL 4

New Jersey Should Create a Statewide Land Bank Commission to Effectively Implement Its Land Bank Law

Through the recently passed New Jersey Land Bank Law, municipalities throughout the state can establish a land bank entity—which is authorized to act on its own or as an agent of the city to restore abandoned and blighted land back to productive use. Newark has initiated the process of creating its land bank, which will be the state’s first, with the nonprofit Invest Newark acting as the city’s land bank entity. Besides Newark’s efforts, however, it is unclear which other municipalities have started the process of creating their own land bank entities, if any. And, while the law provides some support to municipalities through the Division of Local Government Services in the Department of Community Affairs, without in-depth technical assistance and comprehensive, resourced support on how to create and sustain municipal land banks, this powerfully written law will be ineffective in practice.

To better support and coordinate jurisdictions that are interested in creating land bank programs, New Jersey should create a statewide land bank commission. Such a commission would build upon national best practices in land banking support. For example, Ohio has the Ohio Land Bank Association, a statewide association that supports and advocates for county land banks across the state, and the Michigan Association of Land Banks also provides technical assistance, support, and capacity to land banks statewide. By seating this technical expertise and guidance within a state commission, New Jersey can become a national leader in land bank implementation. This commission should work closely with each municipal land bank entity and its community advisory board to inform them of national best practices in land banking, troubleshoot issues that may arise in the implementation process, and provide general technical assistance to ensure each land bank entity’s success.

This is the type of support New Jersey municipalities will need to successfully launch a municipal land bank.
As part of the effort to close New Jersey’s racial wealth gap, community land trusts (CLTs) should be expanded in the Garden State to offer households a chance to build home equity while living in an affordable housing unit.

The current CLT model first emerged during the civil rights movement as a means to increase housing opportunities for Black communities in the rural South. 139 CLTs, a type of shared equity housing model, 140 are nonprofit organizations which purchase land for affordable housing and allow families to own their home on the property and lease the land through a long-term ground lease. 141 In the event of a move, homeowners usually are required to sell their home back to the CLT or to another low-income household at an affordable rate. 142 CLTs thus offer a bridge to traditional homeownership by increasing access to affordable housing for low-income families and encouraging housing stability. While CLT homeowners generally share any increases in home equity with the trust, 143 at resale, CLT homeowners in the U.S. average an estimated $14,000 in equity after 5.4 years and studies show that, within five years, 90 percent of low-income, first time homebuyers who purchase a home in a CLT remain in the home or purchase another home. 144

A resurgence of CLTs is taking shape in states like New York, 145 Maryland, 146 and Minnesota. 147 Currently, New Jersey appears to have only one CLT, the Essex Community Land Trust, founded by Assemblywoman Britnee Timberlake. 148 To build upon the national wave and increase innovative homeownership opportunities, New Jersey should expand CLT programs statewide, with a particular focus on redlined communities. With successful implementation, CLTs can help empower Black residents living in redlined communities, who otherwise might be unable to afford property, to purchase a home and begin to build equity.

In addition to CLTs, New Jersey should also meaningfully invest in other shared equity housing models (often referred to as “third sector housing”) 149—such as limited equity housing cooperatives and deed-restricted/below-market rate programs—that offer affordable homeownership opportunities that incorporate some restrictions on resale in order to keep the homes affordable. 150 With the recent restoration of funding for the Affordable Housing Trust Fund, 151 which is already open to financing at least some shared equity housing models, 152 this is a powerful moment to propose and finance dynamic pilots and models to increase homeownership opportunities in New Jersey’s redlined communities.

POLICY PROPOSAL 5
New Jersey Should Support the Expansion of Community Land Trusts in Redlined Communities
POLICY PROPOSAL 6
The New Jersey Office of the Attorney General Should Open Statewide Investigations into Housing Discrimination and Predatory Lending

New Jersey currently has powerful laws protecting against predatory lending—such as the New Jersey Home Ownership Security Act of 2002 and the New Jersey Consumer Fraud Act. In addition, New Jersey also has a comprehensive Law Against Discrimination, which prohibits the refusal to sell property based on race, creed, or color. In order to adequately enforce and pursue violators of these laws, the Office of the Attorney General (OAG), in partnership with its Division of Consumer Affairs and the Department of Banking and Insurance, should commit to opening statewide investigations into housing discrimination and predatory lending practices. Several state attorneys general have already opened investigations into lending disparities in their jurisdictions in response to media exposés. The leadership of these attorneys general in enforcing the law is commendable, but such enforcement should be proactive by the state, rather than reactive to the research findings of outside parties or complaints. While Attorney General Grewal’s recent signing onto of a bipartisan letter from 24 state attorneys general challenging a proposed federal rule that would expand predatory lending practices is significant, along with his joining with other state attorneys general in a coalition to combat abusive lending practices of payday lenders, more can and must be done at the state level to prevent predatory lending and housing discrimination. Specifically, the OAG should expand its enforcement activity to regularly conduct statewide investigations into housing discrimination and predatory lending, particularly in redlined communities with a record of systemic race-based housing discrimination and problematic lending practices. The investigations should include assessments of home mortgage data and other information collected from financial institutions operating in New Jersey related to home lending.

With greater knowledge about housing discrimination and predatory lending violations, the OAG will be able to take more effective action against individuals and institutions found to violate state law.

CONCLUSION
New Jersey must act now to design a system that acknowledges and redresses the barriers that have led to economic disinvestment in Black communities. The policy proposals outlined in this report are a starting point and a way forward to closing the racial wealth gap through meaningful investment and homeownership in these communities. It is time for New Jersey to finally erase its red lines and to build a system that connects Black and other communities of color to the prosperity of the Garden State.
ENDNOTES


2 Univ. of Rich. Dig. Scholarship Lab et al., Mapping Inequality (2016), https://dsl.richmond.edu/panorama/redlining/#loc=5/39.1/-94.58 (illustrating redlining that occurred in several New Jersey Cities, including Atlantic City, Camden, Trenton, and East Orange).


4 See generally Rothstein, supra note 1.


6 Id.

7 Id.


9 Lisa J. Dettling et al., Recent Trends in Wealth Holding by Race and Ethnicity: Evidence From the Survey of Consumer Finances, FEDS Notes (Sept. 27, 2017), https://www.federalreserve.gov/econres/notes/feds-notes/recent-trends-in-wealth-holding-by-race-and-ethnicity-evidence-from-the-survey-of-consumer-finances-20170927.htm. All dollar figures in this report are rounded to the nearest one hundred dollars, where estimates in the original source were provided in greater detail. “Latina/Latino” is used by the Institute in this report to refer to a person who self-identifies as being of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race, as defined by the U.S. Census Bureau.


16 See generally id.


20 Id. at 6.

21 Id. at 5–9.

According to Prosperity Now Scorecard analysis, white households in New Jersey have a median net worth of $352,000, while the median net worth for Black and Latina/Latino households is a mere $6,100 and 7,300, respectively, in 2016 dollars. In other words, white households in New Jersey have more than 57 times the wealth of a Black household. A typical Black household in New Jersey owns less than two cents compared to every dollar owned by their white counterpart (6100/352000=0.0173). Latina/Latino households in the state fare only slightly better, owning about two cents for every dollar held by white households (7300/352000=0.0207).


Id.


Hodges, supra note 34, at 13-14.


Hodges, supra note 34, at 64.


See generally Rothstein, supra note 1.


Courage to Connect N.J., What is Home Rule?, http://www.couragetocconectnj.org/what_is_home_rule (“Home Rule is a political structure where each municipality is organized with a separate administration and government. The causes of home rule are rooted in history. During the 19th century religious, ethnic, economic and social differences caused towns to form separate governments. This has resulted in up to 567 independent municipalities in NJ.”).

See Lemongello, supra note 46.

Shelley v. Kraemer, 334 U.S. 1 (1948). Of note, while this case rendered racially restrictive covenants unenforceable, the Fair Housing Act prohibited the writing of racially restrictive covenants into deeds. For a number of reasons, however, such covenants still exist in deeds throughout the country. See, e.g., Nancy H. Welsh, Racially Restrictive Covenants in the United States: A Call to Action, 2018 AGORA J. OF URB. PLAN. AND DESIGN 130.


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The Murphy administration recently announced plans to spend $60 million through its Affordable Housing Trust Fund to fund affordable housing across the state. See Press Release, N.J. Dep’t of Cnty. Aff., $60 Million in Financing Available to Develop Affordable Housing, Strengthen Neighborhoods, and Stimulate Economic Development (Feb. 19, 2020), https://www.insidernj.com/press-release/murphy-administration-announces-affordable-housing-trust-fund-allocation-plan/. While a momentous step toward expanding homeownership opportunities for New Jersey residents, given the specific and targeted disinvestment in redlined Black communities in New Jersey, there must and should be a targeted fund explicitly aimed to increase homeownership in these communities.


Id.

The law provides that the Division of Local Government Services in the Department of Community Affairs will “publish and disseminate a guidebook of good practice for creating and maintaining” municipal land bank entity databases “listing all current and former land bank properties, each owner of record since each property became a land bank property, and the sales price of each land bank property that has been purchased by the land bank entity on behalf of the municipality.”


The New Jersey Land Bank Law provides for land bank entity community advisory boards, which will include “representatives of recognized community associations and non-profit organizations operating within the municipality, including those associations and organizations active in areas where the land bank entity anticipates holding properties.” See Land Bank Law P.L. 2019, Chapter 159. C.40A:12A-84.
Benjamin Schneider, CityLab University: Shared-Equity Homeownership, CityLab (Apr. 29, 2019), https://www.citylab.com/equity/2019/04/homeownership-ideas-housing-co-ops-shared-equity-land-trust/585658/ (“The shared-equity model includes community land trusts and co-ops, as well as below-market-rate programs tied to inclusionary zoning and resident-owned communities of manufactured homes. It’s an alternative form of ownership that provides benefits traditional markets cannot, such as long-term housing affordability and the ability for low and moderate-income families to build equity.”).

Zonta, supra note 139, at 4.

Id. at 6–7.


See ICYMI: Murphy Administration Announces Affordable Housing Trust Fund Allocation Plan, N.J. DEP’T OF CMTY. AFF. (Feb. 19, 2020), https://www.nj.gov/governor/news/news/562020/20200219a.shtml (according to the Governor’s press release “[a]ll housing units receiving AHTF financing must be deed restricted for a minimum of 20 years.” Deed restricted housing is a type of shared equity housing model.).

New Jersey Law Against Discrimination, N.J. STAT. ANN. §10:5-12(11)(g).


Greetings Commissioner LaTourette et al, I hope this message finds you and everyone in a good space today. I’m reaching out this afternoon in my role as the Chairman of the New Jersey Progressive Equitable Energy Coalition (NJPEEC). We recently submitted our comments for the NJ Environmental Justice Law regulations September 4, 2022 deadline. We worked with Eastern Environmental Law Center (EELC) to draft our comments, which were heavily influenced by our forthcoming “Guide to Equitable Access for Environmental Justice Communities” pamphlet/publication. A great deal of time and energy was expended to provide NJDEP with not only feedback regarding the rules, but feasible and accessible solutions. We appreciate the hard work you all have always done, and it is our hope that these comments will make your jobs a little easier.

Thank you again for your time and consideration of the attached and also previously submitted comments. Have a great rest of your week.

Marcus Sibley

Director of Conservation Partnerships
Northeast Region (NJ, NY, CT)
National Wildlife Federation

“Addressing hateful words is level one. Addressing hateful actions is level two. Time to level up.” - WC
September 3, 2022

VIA ELECTRONIC MAIL
Melissa P. Abatemarco, Esq.
Attn.: DEP Docket No. 04-22-04
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, NJ 08725-0402

New Jersey Department of Environmental Protection
rulemakingcomments@dep.nj.gov

Re: DEP Dkt. No. 04-22-04
The New Jersey Progressive Equitable Energy Coalition’s Comments on New Jersey’s Proposed Environmental Justice Regulations at N.J.A.C. 7:1C-1.1 et seq.

Dear Ms. Abatemarco and DEP Officials,

Eastern Environmental Law Center (“EELC”) submits this comment on behalf of its client, the New Jersey Progressive Equitable Energy Coalition (“NJPEEC”), a Black and Brown-led coalition that works to bridge the equity gap in energy and climate justice arenas to ensure inclusivity from the inception to implementation of policies and proposed energy reforms.1

NJPEEC largely supports the proposed implementing rules for New Jersey’s 2020 Environmental Justice Law (“EJ Law”), codified at N.J.S.A. 13:1D-157 et seq.; however, NJPEEC proposes a number of changes that would help ensure that the regulations are specific, enforceable, and the most protective of New Jersey’s overburdened communities (“OBCs”). Specifically, NJPEEC Chairman Marcus Sibley and the coalition’s steering committee of dedicated NJ climate and justice leaders including Maria Santiago-Valentin, propose changes to the public participation process, the enforcement mechanisms and violations provisions, and the process for assessing environmental and public health stressors that would ensure the EJ Law maintains its strength and enforceability through time.

The purpose of the EJ Law and these implementing regulations is not to facilitate the development of polluting industries in OBCs but, rather, to create a framework for sustainable and responsible development that allows OBCs to recover from the historic over-siting of polluting facilities in their neighborhoods. Accordingly, the regulations should (i) contain explicit language that widens the reach of public notice and makes all Environmental Justice Impact Statements (“EJISs”), permit applications, final permits, and relevant information publicly available; (ii) require the applicant to facilitate a minimum of two public hearings; (iii) create

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2 N.J.A.C. 7:1C-1.1 et seq.
3 See N.J.S.A. 13:1D-158(2) (defining Overburdened Communities as those with (1) at least 35% of households qualifying as low-income; (2) at least 40% of residents identifying as minorities; or (3) at least 40% of households being categorized as low-income); N.J.A.C. 7:1C-4.1–4.3, 7:1C-5.2(b), 7:1C-6.1, 7:1C-8.1, 7:1C-9.4, app.
4 N.J.S.A. 13:1D-157(1) (stating that the policy of the 2020 Environmental Justice Law is to “correct [the] historical injustice” of New Jersey’s low-income communities and communities of color having been subject to disproportionately high environmental and public health stressors).
6 N.J.A.C. 7:1C-4.2(a)(1)–(2), 7:1C-4.2(b).
new positions within the Department of Environmental Protection (“DEP”) to assist in dissemination of public notices and information, and industry oversight; (iv) explicitly state in the compelling public interest exception that specific economic factors will not be considered; (v) allow DEP to deny permits for facility expansions and to deny permit renewals; (vi) impose monitoring, reporting, and recordkeeping requirements on applicants in a manner similar to other state and federal environmental laws; (vii) create additional consequences and accountability mechanisms for noncompliance, such as monetary penalties and the establishment of a public list of violators; and (viii) mandate updating data collection methods to ensure there is adequate, complete, and meaningful data to create baselines for the analysis of environmental and public health stressors.

I. The Public Participation Process Must be Expanded to Include Modern Methods of Notice and Greater Public Access to Project Information

The proposed regulations require that the permit applicant publish notice in limited ways that do not utilize the full range of technology that applicants and DEP have at their disposal to

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7 See N.J.A.C. 7:1C-5.2(b) (“Where the control measures proposed by the applicant [for a new facility], [DEP] shall deny the subject application . . . unless the applicant demonstrates that the proposed facility will serve a compelling public interest in the [OBC].”) (emphasis added); N.J.A.C. 7:1C-6.2(b) (“Where the control measures proposed by the applicant [for an expanded facility] cannot avoid a disproportionate impact, [DEP] shall impose conditions on the permit.”) (emphasis added); N.J.A.C. 7:1C-8.2(b) (“Where the control measures proposed by the applicant [for a major-source permit renewal], [DEP] shall impose conditions on the permit.”) (emphasis added).

8 See 33 U.S.C. 1318 (stating the requirement in the Federal Clean Water Act for owners or operators of point sources of water pollution to maintain records, create reports, install monitoring equipment and methods, sample water effluents, and provide other necessary information to the Administrator of the Environmental Protection Agency); see also N.J.A.C. 7:14A-6.5 (outlining NJPDES monitoring requirements), 7:14A-6.6 (outlining NJPDES recordkeeping requirements); N.J.A.C. 7:26-2.13 (New Jersey state solid waste regulations requiring that “[e]ach solid waste facility permittee shall maintain a daily record of wastes received.”).

9 See N.J.A.C. 7:14-8.3 (providing the process by which DEP can assess civil penalties and other costs against violators of the state Water Pollution Control Act); N.J.A.C. 7:26-5.2 (outlining procedures for determining civil penalties under the state Solid Waste Management Act); A901 Debarment List, N.J. Dep’t Envtl Prot https://www.nj.gov/dep/dshw/a901/A901debarmentlist.pdf (maintaining a list of individuals associated with organized crime who may no longer participate in the solid waste industry in New Jersey because of those associations) (last visited Aug. 15, 2022).

10 See N.J.A.C. 7:1C appx.
reach community members. The final regulations should require the applicant to use common
technologies—such as email listservs, automatic cell phone alerts, and social media—in order to
reach the maximum number of community members. Applicants should also be required to
disseminate notices and project information to a wider audience through a specific list of local
community, conservation, and environmental justice (“EJ”) groups; and to property owners and
residents within at least 1,000 feet of the facility. Notice should also be provided to government
entities and public and private utilities, which already engage in outreach to OBCs and provide
residents with notices of important events and projects. Further, while it is appropriate for
notices to contain brief summaries of information related to the proposed or existing facility,
applicants should be required to make the entire completed permit application, EJIS, and any other
relevant information—as well as the final permit itself, if granted by DEP—publicly available on
the internet.

As the proposed regulations stand, applicants are only required to publish, at least 60 days
before the public hearing, “notice of the [public] hearing in at least two newspapers circulating
within the [OBC], including, at a minimum, one local non-English language newspaper in a
language representative of residents of the [OBC], if applicable.” Applicants must also provide

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11 See Id. 7:1C-4.1.
12 See e.g.s Email Updates, N.J. Dep’t Envt’l Prot. https://public.govdelivery.com/accounts/NJDEP/subscriber/new
(providing a way for interested parties to sign up for email updates from DEP on a number of topics) (last visited
Aug. 15, 2022); NJ Environmental Protection (@nj.dep), Instagram https://www.instagram.com/nj.dep/?hl=en
(showing DEP’s posts on the social media platform, Instagram) (last visited Aug. 15, 2022).
13 N.J.A.C. 7:1C-4.1(a)(1)(iv) (stating that, as proposed, the regulations only require residents within 200 feet of a
facility to be notified).
14 See e.g.s Get Updates: Customer Alerts, JCMUA,
https://www.jcmua.com/customer_service/customer_alerts.php#outer-49 (last visited Sept. 1, 2022); Route 440
15 N.J.A.C. 7:1C-4.1(b) (outlining multiple pieces of information that must be included in public notices including a
general description of the facility, a map with the location and address of the facility, and a brief summary of the
prepared Environmental Justice Impact Statement).
16 Id. 7:1C-4.1(a)(1), 7:1C-4.1(a)(1)(ii) (emphasis added).
notice to all property owners and residents within 200 feet of the proposed or existing facility, post a sign at the site, and “[p]rovide notice through other methods identified by the applicant to ensure direct and adequate notice to individuals in the [OBC].” These three notice methods, under the proposed regulations, are the only ways the applicant is required to relay information to the impacted community. The proposed regulations also require the applicant to provide notice to DEP, the relevant governing body, and the municipal clerk, and to provide the municipal clerk with a copy of the facility’s EJIS as well.

Providing adequate notice and information from DEP and the applicant according to these proposed changes would be consistent with the United Nations’ (“UN”) policy on Free, Prior, and Informed Consent (“FPIC”) that the UN recognizes and abides by when interacting with or otherwise impacting Indigenous communities. This policy outlined in the UN Declaration on the Rights of Indigenous Peoples (“UNDRIP”) states generally that when states take actions that could potentially impact Indigenous communities, that they must obtain the FPIC of those communities. FPIC is an international right retained by Indigenous peoples that allows them to “give or withhold consent to a project that may affect them or their territories,” that may be withdrawn by these communities at any point, and allows Indigenous Peoples to “negotiate the conditions under which [state] projects will be designed, implemented, monitored and evaluated.”

For example—and very relevant to the EJ regulations—, Article 19 of UNDRIP states that:

18 Id. 7:1C-4.1(a)(1)(iii).
States shall consult and cooperate in good faith with the [I]ndigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.22

Articles 10, 11(2), 28(1), 29(2), and 32(2) also use the FPIC standard to ensure that any development, land and resource use, relocation, and other state actions are only taken when states cooperate with and obtain the free, prior, and informed consent of the potentially impacted Indigenous communities.23

The public notice, hearing, and comment processes outlined in the EJ regulations need to reflect the same level of respect and participation for individuals in OBCs as UNDRIP policies do for Indigenous Communities in the international context. The EJ regulations must ensure that residents of OBCs provide DEP with their free, prior, and informed consent about projects that could increase environmental and public health stressors in their communities. In order to ensure DEP has the consent of OBCs, the public participation processes in the EJ Law must be very strong and provide full and transparent information to communities, along with multiple opportunities for DEP to consult with OBCs before imposing historically harmful polluting facilities on them and their environments. Currently, the proposed regulations do not go far enough to provide OBCs with an amount of deference, communication, or transparency that they need to be fully informed of the projects happening in their communities and the impacts those projects on their health and environment. Therefore, the final regulations should incorporate the following changes to ensure that the public participation processes mirror the UN’s FPIC standard and that OBCs are adequately informed about and part of DEP’s decision-making process.

23 See Id. arts. 10, 11(2), 19, 28(1), 29(2), 32(2) (these provisions additionally provide for redress where Indigenous Communities were not consulted and where states did not obtain Indigenous Peoples’ FPIC before taking action).
A. DEP should Provide Notice to all Residents and Property Owners within 1,000 Feet

Consistent with the recommendations of the Ironbound Community Corporation, Clean Water Action, New Jersey Environmental Justice Alliance, and the New Jersey Chapter of the Sierra Club; and as voiced by Anjuli Ramos-Busot at the Newark Public Hearing on July 27, 2022; NJPEEC supports mandatory notice to all residents and property owners within 1,000 feet—not the currently mandated 200 feet—of any facility.24 Expanding this radius would be appropriate because of the widespread impacts of pollution—especially air pollution—, and would be consistent with current DEP practices. Specifically, Ramos-Busot said the following at the Newark Public Hearing in support of a 1,000 foot notice requirement:

The public notice, as stated in the rule, it just says up to 200 feet to provide notice to the neighboring communities. In reality, it should really be way more than that, at a minimum, 1,000 feet, and the reason for that is very technical. The New Jersey DEP, when they’re evaluating an air pollution control permit [], conducts an air dispersion modeling and a risk assessment and that eventually informs the actual permits and informs the emission rates for each air contaminant that that facility is allowed to emit. And so, in that dispersion modeling, the Department goes [] up to five kilometers, which, if you convert that into feet, that’s 16,000 feet. And, in my personal experience of what I have seen, these evaluations often show health impacts up to thousands and thousands of feet from the center of the facility. So the least [] the New Jersey DEP can do is provide notice to what their actual evaluations go up to, so, thousands and thousands of feet.25


Anjuli Ramos-Busot is the Director of the New Jersey Chapter of the Sierra Club and a former climate research scientist and air quality specialist with the New Jersey DEP. https://www.sierraclub.org/new-jersey/blog/2021/12/sierra-club-new-jersey-announces-new-chapter-director.

25 Discover DEP-New Jersey Department of Environmental Protection, NJDEP Environmental Justice Rule Public Hearing (07/27/22, 6:00pm, Newark), YouTube (July 27, 2022) https://www.youtube.com/watch?v=d7DUSJnC_Q (showing Ramos-Busot speaking on the 1,000 foot buffer at approximately 26:15).
As Ramos-Busot testified to, DEP’s current Technical Manual on air pollution modeling and risk assessments includes a health risk assessment as a “special modeling consideration” that may need to be done for certain pollutants, which supports a 1,000 foot notification radius. These health risk assessments need to measure the impact of air pollutants from facilities on “sensitive receptors,” which include residences, hospitals, schools, and parks. For example, the Hess Newark Energy Center conducted air modeling and health risk assessments concerning, for instance, Newark’s Ironbound Community. In this application, the applicants used “[a]ir dispersion modeling . . . to determine which EJ communities have the potential to be significantly impacted by the project.” The permit also determined that this modeling, coupled with a cumulative impacts analysis, would have a significant impact on areas “about 1500 feet to the north, east and south of the facility.” This is just one example where a polluting facility was predicted to have significantly greater than a 200 foot impact on its surroundings, and even greater than a 1,000 foot impact. Therefore, consistent with Ramos-Busot’s comments and DEP’s current air modeling and risk assessment practices, DEP must mandate notice to all property owners and residents living within 1,000 feet of any proposed or existing facility covered by these regulations, because the significant impacts of air pollution reach communities much farther away than 200 feet.

27 Id.
29 Id.
30 Id. (emphasis added).
B. DEP and the Applicant should Provide Automatic Notices to Interested Persons through Cell Phones and Email, and Should Publish Project Information on the Internet and Social Media

Given the current state of available technology, the notice requirements in the proposed regulations are wildly insufficient. In DEP’s statement on the regulations, DEP asserts that “public notice and hearing provisions are essential to accomplish the [EJ Law’s] purpose of ensuring meaningful public participation by members of the [OBC].” 31 DEP has recognized it is imperative that this law achieves a new level of meaningful public participation; therefore, DEP and the applicant should be required to provide public notice through all reasonable means, including electronic ones.

For example, DEP maintains Instagram pages, environmental permitting bulletins, email listservs for various topics, and regularly-updated website pages. 32 The Office of Environmental Justice within DEP also recently launched a biweekly email newsletter. 33 This newsletter should include all notices of permit applications covered by the EJ Law in its “Summary of Important Dates” with hyperlinks that will bring the recipient to relevant project information. 34 Other State government entities also send out automatic cell phone alerts in emergency events, for example, AMBER Alerts disseminated by the New Jersey State Police. 35 Because of the urgency of the

33 Relevant project information includes the whole permit application, EJIS, any supplemental information required by the regulations, the conditions DEP applies to any granted permits, and the full granted permit, if applicable. Email Updates, N.J. Dep’t Envt’l Prot. https://public.govdelivery.com/accounts/NJDEP/subscriber/new (showing where individuals can sign up for automatic email notifications from DEP on various topics, including environmental justice).
34 Id.
climate crisis and the severe impact that the covered facilities have on OBCs, a similar alert structure should be utilized by DEP to notify the impacted communities when a new or existing facility is seeking a permit in their community. Automatic alerts would ensure that residents of impacted counties are sufficiently notified. These emergency notifications should also include hyperlinks to information on how to access the full notice, permit application, EJIS, and other relevant information.

Both DEP itself and the DEP Commissioner, Shawn LaTourette, maintain Instagram pages where notices and general information on projects covered by the EJ Law could be posted.36 Additionally, DEP’s Office of Environmental Justice maintains a number of helpful webpages that outline important environmental justice issues, including a list of permits covered by Administrative Order 2021-25 (“AO 2021-25”)—the interim rule that regulates facilities and permits under DEP’s current powers before the EJ Law’s rules are fully implemented—and hyperlinks to relevant information.37 DEP should make mobile versions of their websites to make the information on those websites easily accessible by cell phone. Cell phones are the most commonly owned computing device according to a 2018 report from the U.S. Census Bureau, so it is very appropriate under the EJ Law’s meaningful public participation policy to have all project information (i.e. the permit application, EJIS, etc.) easily accessible on and appropriately formatted for cellular devices.38 DEP very clearly has the technical capability and expertise to make information and resources widely available to the public through the internet and social media.

Publication of this important and highly relevant information needs to be mandated in these regulations so the public is *guaranteed* to have access to the information that impacts them and their communities. Requiring such methods of notice would also allow younger generations that may not utilize newspapers as their primary source of news and information to participate more fully in hearings and comment processes. Internet resources also have more staying power, meaning that they can be accessed time and time again in the same place, whereas physical newspapers are usually limited in quantity and contain new information with each publication. Mandating both types of notice (i.e., internet and newspapers) would greatly improve the accessibility and availability of information, which is consistent with the purpose of the EJ Law.39

C. The Applicant Should be Required to Notify a Set List of Local Environmental Justice, Community, and Conservation Groups About the Project

The burden of providing notice should not be solely on DEP’s shoulders, but on the applicant’s as well. The applicant should be required to provide notice to a predetermined, publicly-available list of local environmental justice (“EJ”), community, and conservation groups. Larger state-wide and regional groups on the list should be notified to promote awareness of projects, and, at the very least and more importantly, local county-level groups should be notified. A minimum number of three local groups should be listed per county to ensure that the local community has adequate access to information, resources, and an organizing group. Additionally, whenever a project is proposed in a specific county, the three county-level organizations should be notified automatically, along with all listed regional- and state-wide entities. For example, if a

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39 See N.J.S.A. 13:1D-157 (“[T]he State’s overburdened communities must have a *meaningful opportunity* to participate in any decision to allow in such communities certain types of facilities which, by the nature of their activity, have the potential to increase environmental and public health stressors.”) (emphasis added).
new or existing facility is seeking a permit in Hudson County, a minimum of three local Hudson County EJ, community, and conservation groups will receive automatic notice of the project, and the regional- and state-wide entities will be notified as well. This list should be initially set and determined by DEP with meaningful input from EJ, community, and conservation groups and the communities those groups serve. Meaningful input could include stakeholder meetings, surveys, or other information-gathering from these groups and communities.

Currently, the proposed regulations only vaguely require the permit applicant to:

[Provide] notice through other methods identified by the applicant to ensure direct and adequate notice to individuals in the [OBC] including, but not limited to, providing information directly to active community groups or organizations, automated phone, voice, or electronic notice, flyers, and/or utilization of other publications utilized within the [OBC].

Under this language, applicants might determine that additional notice is not necessary simply because that would make the process easier for the applicant or invite less public scrutiny of the applicant’s proposed project. In the interest of providing clear and inclusive public notice, DEP must mandate that applicants notify a minimum number of community groups through specific electronic and written means, rather than giving the applicant the power to determine what “other methods” are appropriate to ensure “direct and adequate notice” to the communities they will impact. Communities have the right to have reliable access to all information on the projects happening in their communities and DEP has the resources and authority to make that a reality. Therefore, the applicant should be required to provide notice to a predetermined, publicly-available list of local environmental justice, conservation, and community groups, in addition to

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40 N.J.A.C. 7:1C-4.1(a)(1)(vi) (emphasis added).
41 Id. 7:1C-4.1(a)(1)(vi).
notice via internet, automatic cell phone alerts, and social media, and the notice methods already identified in the proposed regulations.42

However, this list should not be set in stone after its initial publication. More environmental justice, conservation, and community groups that are interested in projects covered by the EJ Law should have the opportunity to be put on this list at any point after the regulations are implemented. In order to allow more groups to be added, DEP should create and make available an application requiring basic information about the groups and why those groups should be included. DEP currently maintains a list of documents and forms—including a variety of environmental permit applications, forms for residential water structure licenses, well-driller license applications, and many more—and DEP could easily add a section for Environmental Justice and attach the new application form for groups to receive automatic notifications under the EJ Law and regulations.43 Like the other forms on this webpage, a PDF of the application form should be listed, along with a physical address and email address that the form should be sent to.44 DEP should not impose any fines to apply so that any group that wishes to apply may do so without having to consider costs.

42 N.J.A.C. 7:1C-4.1; Email Updates, N.J. Dep’t Envt’l Prot.
43 Documents and Forms, N.J. Dep’t Envt’l Prot.,
44 Documents and Forms, N.J. Dep’t Envt’l Prot.,
D. Government and Commercial Entities that Already Provide Notices to Communities or Already Engage in Targeted Outreach to Communities Should be Notified and Provide Notice to OBCs About Relevant Projects

Existing entities with experience providing notice to communities and engaging and connecting with targeted groups within communities should be provided with notice of projects in OBCs and should be utilized to provide notice and educate those communities about these projects. For example, public and private utilities already provide timely notices to residents on important matters. These companies should partner with DEP to ensure that notifications on projects go out to customers and residents in areas where announcements are made. For instance, electric utility companies like PSE&G regularly provide notice to their customers for billing and outage notifications, and customers can enroll in an alert system, which will send them updates on power outages in their communities, among other things.45 Water and sewer utilities, public and private, should also be included, among other utilities.

Jersey City Water and Sewerage Services provides a great example of how other utilities already provide notice to communities of important projects, which should include notices of projects covered by the EJ Law once implemented. Jersey City Water and Sewerage Services, like PSE&G, allows residents to sign up for important alerts, but also posts notices of community meetings, road closures, water and sewer main replacements and shutdowns, and other important and pressing information.46 Since public and private utility services already have alert systems and post notices that are pertinent to the community, including those for community meetings,

45 MyAlerts, PSE&G, https://nj.myaccount.pseg.com/myalertsloggedout (providing instructions on how PSE&G customers can sign up for MyAlerts, which allows them to report power outages, receive updates on outages, get reminders of bill payments, and to opt-in to receive other alerts) (last visited Sept. 1, 2022).
these services should be utilized to provide yet another avenue through which residents and community members can become informed about important events and projects happening in their communities that impact their health and well-being.

Additionally, the New Jersey Governor’s Office houses an Outreach Department, with different Aides specializing in outreach to certain communities, including Aides who engage youth and faith-based institutions. These Aides should be notified and tasked with providing that notice to the specific groups they interact with. For example, the expertise and resources of the Aide specializing in outreach to youth and youth groups should be utilized to educate New Jersey’s young people on environmental justice issues and should help reach and engage youth in the public participation process under the EJ Law. Doing so would ensure that this demographic of individuals is not left out of the conversation; youth are especially susceptible to the impacts of polluting facilities in their communities and the EJ Law recognizes this fact in its policy:

[H]istorically, 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[,] [and] that, as a result, residents in the State’s [OBCs] have suffered from increased adverse health effect including . . . asthma, cancer, elevated blood lead levels, cardiovascular disease, and developmental disorders[,] [and] that children are especially vulnerable to the adverse health effects caused by exposure to pollution, and that such health effects may severely limit a child’s potential for future success.\(^{47}\)

Therefore, New Jersey’s youth should be encouraged and given the resources to participate in government decision making processes through the Outreach Department in the Governor's Office.

The EJ regulations should also include required notification to the Aide in the Outreach Department specializing in outreach to faith-based community groups. Because of faith-based and community-based organizations’ close ties to their communities, these entities would be very

effective in sharing information on projects covered by the EJ Law to the communities they serve. One example is Waterspirit, a Ministry within the Sisters of St. Joseph of Peace that works to educate and advocate their community about “the importance of the right to clean, safe water for the poor and disadvantaged.”\(^{48}\) Since the Outreach Department within the Governor’s Office already has Aides that work with faith-based groups, this Aide should be additionally responsible for educating these entities and notifying them of projects that could negatively impact their communities.

\[E. \text{ Notices Made in Advance of Public Hearings Should Provide Information on Technical Assistance Access for Community Members and Should Contain More Project Information}\]

More information should be required to be made publicly available before any public hearings on a proposed project take place. The proposed regulations state that the public notice must only contain the name of the applicant; when and where the public hearing will be held; a map of the facility including the address, municipality, county, block, lot, and size of the property; a short summary of the EJIS and any required supplemental information; how an interested party can obtain a copy of the EJIS and supplemental information; a statement inviting people to participate in a public hearing with information on how to submit a comment; and “[a]ny other information deemed appropriate by [DEP].”\(^{49}\) This is not enough information for the public to be truly informed \textit{before} any public hearings, and is yet another reason that the full permit application and EJIS should also be made available when public notice of the project is given.\(^{50}\)

Further, to be truly accessible to the community, technical assistance should be made available and information on how to seek such assistance should be included in the notice. The


\[^{49}\] N.J.A.C. 7:1C-4.1(a)(1), 7:1C-4.1(b).

\[^{50}\] Id. 7:1C-4.1 (stating that public notice is required to be given by the applicant to the required parties and using required methods 60 days in advance of the scheduled public hearing under the proposed regulations).
EJ Law itself provides that DEP may issue fees to cover the costs of implementing the EJ Law “including costs to provide technical assistance to permit applicants and [OBCs].” The fee calculation provision in the proposed regulations also incorporates this issue, stating that DEP’s EJIS review budget should include “costs to provide technical assistance to . . . [OBCs],” consistent with the EJ Law. However, what is not included is how information on technical assistance will be made available to OBCs, in spite of the costs being incorporated into DEP’s budget. To make the answer to this question clear in the final regulations, DEP should include a provision in the public participation requirements at N.J.A.C. 7:1C-4.1 that specifies exactly how community members can access technical assistance on permit applications and EJISs well in advance of public hearings. Doing so will allow community members attending hearings to have a full understanding of the project application and the EJIS when they arrive, which will lead to a truly robust and meaningful public participation process in line with the policy of the EJ Law.

All of the information currently required by the proposed regulations should be included with the notice, as well as the full permit application, EJIS, supplemental information, and information on how to access technical assistance to interpret the application and EJIS. Additionally, all of these resources should be provided by the applicant and posted on an internet database, maintained by DEP, similar to DEP’s current list of public hearing notices under AO 2021-25. The permit application, EJIS, notice of the public hearing, technical assistance access, and all other relevant information should also be posted on the applicants’ website, just as the Passaic Valley Sewerage Commission did for an AO 2021-25 hearing for its fossil-fuel backup

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51 N.J.S.A. 13:1D-160(g) (emphasis added).
52 N.J.A.C. 7:1C-10.3(a)(1).
53 Id. 7:1C-4.1(a).
power generating facility. Based on the existence of this list, which names the date, location, applicant, mode (in person or virtual), and hyperlinks to any relevant public documents, DEP has the technology and know-how to create a similar webpage for applicants for projects covered by the EJ Law. This webpage is a great start and a great example. DEP should create and maintain a similar webpage with public hearing notices and information, full permit applications, EJISs, supplemental information, and technical assistance information at least 60 days before any public hearings when the notice is initially required to be posted. Further, on this same webpage, DEP should post the finalized permit if it grants the permit application.

Explicitly including these steps in the final regulations would allow the community to go into public hearings fully informed about the purposes of the facility, its impacts on the community, and to formulate any questions they might have for the applicant. This will result in a more robust and meaningful public process than would likely happen under the proposed regulations that is consistent with the EJ Law and DEP guidance. According to the DEP guidance document, “Furthering the Promise,” “meaningful involvement” means “that people have an opportunity to participate in decisions about activities that may affect their environment and/or health; . . . community concerns will be considered in the decision-making process; and decision makers will seek out and facilitate the involvement of those potentially affected.” DEP will truly facilitate meaningful involvement if these changes are included in the final regulations, consistent


57 N.J.A.C. 7:1C-4.1(a)(1).

with its guidance and the policy of the EJ Law.\textsuperscript{59} More individuals will be able to learn about the application and the facility through electronic and physical methods of public notice; specific mandates for the applicant to notify local EJ, community, and conservation groups; and a greater quantity of accessible information will be available to the public.

\textbf{II. DEP Should Require at Least Two Public Hearings to Give the Applicant an Opportunity to Incorporate Community Feedback into the Permit Application}

Although providing all of the information listed above well in advance of any required public hearings would increase community awareness and participation, there should also be at least two total mandatory public hearings. Facilitating at least one additional public hearing would allow the community to observe and provide comments on how the applicant’s plan changes based on the information the applicant receives from the community in the first hearing. Currently, the proposed regulations require that the applicant only hold one meeting in the relevant OBC on a weekday at 6PM EST or later.\textsuperscript{60}

However, it would greatly benefit the community if there were a minimum of two required public hearings. The first public hearing would allow the applicant to state their plans to an informed audience of community members and to receive feedback on those plans. This would closely reflect the current requirements where the applicant must “provide a clear, accurate, and complete presentation of the information contained in the EJIS,” any supplemental information, and “accept written and oral comment from any interested party regarding the application” at the public hearing.\textsuperscript{61} In addition to this first hearing, there should be a second required hearing that allows the applicant to demonstrate that they took the feedback and recommendations from the

\textsuperscript{60} N.J.A.C. 7:1C-4.2(a)(1)–(2).
\textsuperscript{61} Id. 7:1C-4.2(b).
community seriously, and have incorporated this feedback into the plans for the facility to meaningfully address the community’s concerns. This would facilitate continued engagement by the applicant with the community and would mandate that the applicant treats the public hearings and overall public participation process as more than just a box to check to get a permit.

III. **DEP Must Add Positions to its Department to Increase Capacity and Ensure that Information Updates and Notices are Timely and that DEP has Adequate Oversight of Facilities**

To ensure that DEP actually has the capacity to create social media posts on public notices, maintain websites and update them with information relevant to permit applications, to handle other tasks related to the EJ law, and do so in a timely and meaningful way, new positions should be added to DEP’s Office of Environmental Justice in order to accommodate these obligations. At this moment, the only explicit position housed in DEP’s Office of Environmental Justice is Director, which is filled by Kandyce Perry.62 One person can surely not shoulder all of this work, nor should it fall to one person or a small group of people because it is an immense amount of work that needs to be done in a timely fashion. DEP should create a webmaster position so that one or multiple individuals can focus entirely on uploading information on applications to DEP’s and the applicants’ websites; looking over requests from the community for technical assistance on EJISs and permit materials; maintaining DEP’s websites and webpages with this information; looking over applications to be added to the list of notified community, conservation, and EJ groups; and other like tasks. DEP’s Division of Land Resource Protection has a webmaster that the public can submit questions to, and multiple federal government entities also have webmasters

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DEP should also create a social media position so one individual can focus on creating content for DEP’s social media pages on the EJ Law and any notices for public hearings on covered projects.

There should also be positions created at DEP within the Office of Environmental Justice—or another appropriate office—in order to facilitate oversight of facilities covered by the EJ Law. DEP needs to have capacity to ensure that proposed and existing facilities are complying with the EJ Law and to effectuate the enforcement mechanisms currently in the regulations, as well as the ones proposed in this comment. Industries should not feel like they are able to slip through the cracks or skip any steps in the processes required by the EJ Law, and one way DEP can be sure that industries attempting to do so are held accountable and are fully complying with the law is to add individuals on its staff that will exclusively focus on industry oversight.

Currently, the Office of Environmental Justice is charged with supporting EJ in New Jersey and, more specifically, to conduct “outreach and educational efforts to municipalities and community-based organizations”; to aid in the “development and/or implementation of department policy, regulations, and procedures to increase opportunities for meaningful public participation”; and to inform “community members of opportunities for public participation.” These pre-delegated duties to the Office of Environmental Justice make it a great candidate to house additional positions to help distribute information to communities, which will help bolster the public participation process and bring as many community members to the table as possible.

64 N.J.A.C. 7:1C-9.4(b) (describing consequences of noncompliance with the EJ Law and regulations, currently only limited to permit suspension or revocation).
IV. DEP Must Not Take Economic Benefits into Consideration under the Compelling Public Interest Exception for New Proposed Facilities

The proposed rules allow DEP to approve permits for new facilities, even if they cannot avoid disproportionate impacts on the OBCs, under a “compelling public interest” exception.66 This exception states that DEP cannot grant permits for new facilities that create disproportionate impacts “unless the applicant demonstrates that the proposed facility will serve a compelling public interest in the [OBC].”67 Facilities serving a compelling public interest have to meet three criteria: the facility must (1) “primarily serve an essential environmental, health, or safety need[] of the individuals in an [OBC]”; (2) be “necessary to serve the essential environmental, health, or safety needs of the individuals in the [OBC]”; and (3) there cannot be any “feasible alternatives that can be sited out of the [OBC] to serve the essential environmental, health, or safety needs of the individuals in an [OBC].”68 Alternatively, the rules also provide that proposed facilities that “directly reduce adverse environmental and public health stressors in the [OBC]” may be considered to serve a compelling public interest and meet the requirements of this exception.69

The regulations also provide that DEP may—but is not required to—consider public input as to whether or not the public interest exception is met and to take into account whether there is a “significant degree of public interest in favor or against” the facility from residents of the OBC.70 However, there is a significant omission in this section of the regulations. The definition of compelling public interest states that “the economic benefits of the proposed new facility shall not be considered in determining whether [the facility] serves a compelling public interest in an

66 See N.J.A.C. 7:1C-5.3.
67 Id. 7:1C-5.3(a) (emphasis added).
68 Id. 7:1C-5.3(b)(1)–(3).
69 Id. 7:1C-5.3(c).
70 Id. 7:1C-5.3(d).
OBC].”71 DEP elaborated on this definition in its statement on the regulations, noting that DEP “determined to expressly exclude reliance on economic factors to justify applicability of the compelling public interest exception.”72 Specific economic benefits that DEP cannot consider include “employment opportunities, increased municipal tax revenue, or increased demand for services.”73 DEP also included in the statement examples of facilities that might fit the compelling public interest exception including “appropriately scaled food waste facilities, public water infrastructure, renewable energy facilities, and projects designed to reduce the effects of combined sewer overflows.”74

NJPEEC strongly supports DEP’s decision to expressly exclude economic benefits from the compelling public interest exception analysis. This decision was well-reasoned because, historically, even when polluting facilities promise jobs and economic revitalization, they fail to deliver. Oftentimes, the jobs offered are dangerous and expose employees to harmful pollutants at close proximity.75 Additionally, the few—and often temporary—jobs that the facilities covered by the EJ Law offer to communities comes at a great price; all members of the community, whether or not they directly or indirectly benefit from the jobs or tax revenue created, are still subject to the pollution created. The practice of siting polluting facilities and offering high-risk jobs is commonplace in Newark’s Ironbound community. For example, the Covanta waste incinerator, which began its incineration program in 1990 and has significantly contributed to air pollution in

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71 N.J.A.C. 7:1C-1.5 (emphasis added).
73 Id.
74 Id. at 15.
Newark, took advantage of desperate residents by offering high-risk jobs. Thus, Newark’s Covanta incinerator is one of the many examples of the promise of jobs not outweighing the public health and environmental harms experienced by the whole community.

The health and environmental impacts of this pollution on OBCs is not outweighed by any economic benefit these industries say they provide to communities, and the regulations for the EJ Law must explicitly reflect that. Therefore, despite DEP’s recognition of the importance of excluding economic benefits from the compelling public interest exception analysis, the regulations should be revised to make it clear that specific economic benefits—e.g. job creation and municipal tax revenue—will not be considered. DEP should also include in the regulations the types of facilities that it may consider to fit this exemption—e.g. renewable energy facilities, public water infrastructure, etc.—so that this exception is more narrowly defined.

It is especially important for DEP to make these regulations as specific as possible and to incorporate the language of the statement in the actual regulations because the statement does not have the effect of law. In other words, although DEP recognizes that it should not and will not take economic benefits into consideration in this analysis, once the rules are officially adopted, DEP will not be legally required to comply with this statement. Although the statement may be used to interpret the regulations once implemented, it would be best and most efficient to avoid this step altogether by including these factors in the regulations themselves. The regulations

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76 Arqum Masood, Newark’s Ironbound Community Loses Against Incinerator, Envt’l Justice History in Am., https://ejhistory.com/newarks-ironbound/ (“Corporations such as Covanta have taken advantage of [desperate citizens] and tried to mask its environmental impact with the jobs it has provided for the community.”) (last visited Sept. 3, 2022).
77 Id. (“The [Covanta] incinerator has not only harmed the health of people living outside the Incinerator, but it has also poisoned its workers. The Incinerator was built on the promise that it would provide 500 jobs during construction and 60 jobs once constructed and operating. However, it is providing these jobs at the cost of its workers’ health.”) (last visited Sept. 3, 2022).
78 N.J.A.C. 1:30-2.5 (“The statements for a proposed rule . . . and for any change upon adoption of a rule . . . are not part of the rule, but are intrinsic parts of the proposal and adoption has published in the [New Jersey] Register. As such, these statements may be used in interpreting the rule.”).
should be as clear and explicit as possible so that there is no need for the courts or other entities to have to interpret them; this will avoid unnecessary litigation and will allow for the quick and simple interpretation, application, and enforcement of the EJ Law.

V. DEP Must be Allowed to Deny Permits for Expansions and Permit Renewals for Facilities Creating Disproportionate Impacts on OBCs in order to Fully Implement the Intent and Policy of the EJ Law

While the proposed regulations do provide DEP with the power to impose conditions on facility expansions and permit renewals, this does not go far enough toward improving conditions in OBCs and effectuating the State’s public policy of achieving environmental justice. The EJ Law itself recognizes that “... it is in the public interest for the State, where appropriate, to limit the future placement and expansion of facilities [which have the potential to increase environmental and public health stressors] in OBCs.” Similarly, DEP’s “Furthering the Promise” guidance document acknowledges that, in order to further the promise of environmental justice, DEP must “identify and reduce disproportionate environmental and public health stressors[...] and identify and increase environmental and public health benefits.”

While the proposed regulations would require DEP to deny permits for any new facilities determined to have disproportionate impacts on host OBCs, the proposed regulations stop short of explicitly authorizing DEP to deny permits for existing facilities—either for facility expansions or major-source permit renewals—that are already operating within and polluting the environment of OBCs. Allowing existing facilities, through expansion or permit renewal, to continue

79 N.J.A.C. 7:1C-6.2(b), 7:1C-8.2(b).
82 N.J.A.C. 7:1C-5.2(b) (“Where the control measures proposed by the applicant cannot avoid a disproportionate impact, [DEP] shall deny the subject application.”) (emphasis added); see N.J.A.C. 7:1C-6.1–6.3, 7:1C-8.1–
contributing to disproportionate impacts on OBCs would run contrary to the policy of the EJ Law and DEP’s own guidance. As long as facilities are allowed to create or contribute to disproportionate impacts on OBCs, those OBCs will remain overburdened. Therefore, DEP must have the authority to deny applications for permit expansions and renewals in order to fully effectuate the spirit and intent of the EJ Law. Denial of such permit applications will allow conditions on OBCs to improve, rather than merely maintaining the status quo by continuing to allow existing facilities to pollute in OBCs.

VI. DEP Should Impose Monitoring, Reporting, and Recordkeeping Requirements on Covered Facilities; and Additional Consequences for Violating the EJ Law

Regulated facilities should be subject to additional requirements that would improve DEP oversight and allow facilities to be accountable to the community. The proposed regulations offer limited avenues for holding violators of the EJ Law accountable. The only compliance mechanism currently in the proposed regulations provides that if a facility is found to have violated the EJ Law’s requirements, then the permit they applied for—and in this scenario, obtained—is subject to suspension or revocation.83 This is not sufficient to ensure adequate oversight by DEP and accountability to the OBCs facilities may be allowed to build and operate in. Once facilities get the permits they seek, they should be required to monitor data relevant to the environmental and public health stressors outlined in the regulations, to keep records of this data, and to report such information to DEP regularly.84 This will increase government oversight of operations that are

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83 N.J.A.C. 7:1C-9.4(b) (“Any violation of the conditions imposed pursuant to this chapter shall constitute grounds for suspension or revocation . . ., or the underlying permitting authorities of any [DEP]-issued permits.”).
84 See, e.g., N.J.A.C. 7:14A-6.5 (outlining monitoring requirements applicable to all issued NJPDES permits, including sampling and measurements, analytical testing, installation of monitoring equipment and use of proper monitoring methods, and so forth), 7:14A-6.6 (outlining recordkeeping requirements applicable to all issued NJPDES permits including retaining “records of all monitoring information including all calibration and
permitted in OBCs to ensure facilities are complying with all conditions placed on their permits, as well as to encourage transparency of information and accountability for violations.

These measures would ensure that DEP-imposed conditions on permits are being complied with well after the public participation period concludes. To prevent facilities from fabricating fake data and reports, the regulations should mandate that all monitoring, recordkeeping, and reporting documents are created by a third party chosen by DEP, not the applicant or facility itself. Other state and federal environmental regulations, including the Federal Clean Water Act (“CWA”), New Jersey’s Water Pollution and Control Act (“WPCA”), and New Jersey’s Solid Waste Management Act (“SWMA”), impose similar requirements on facilities. Therefore, imposing monitoring, recordkeeping, and reporting requirements is well within DEP’s expertise and experience. Additionally, these records should be made publicly available on a regularly maintained website or database, similar to or within DEP’s DataMiner, and on the same website that the EJIS, supplemental information, permit application, technical assistance access, and finalized permits as proposed in Section I.B of these comments. Requiring monitoring and reporting will allow for DEP and the community to see any violation of a facility’s permit and any permit conditions imposed by DEP under the EJ regulations.

Additionally, when applicants violate the EJ Law, not only should the permit be suspended or revoked (as the proposed regulations currently provide), but an appropriate monetary penalty

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should be imposed and all interested local community groups should be immediately notified. 88 In addition to this notification, DEP should maintain a list of all facilities that violate the EJ Law on its website and they should remain on that list even after they come into compliance with the EJ Law. 89 There should be ramifications for violations beyond what is required in the facility’s permit because the additional measures outlined above will make sure that violating facilities are held accountable both by DEP and the surrounding community. Although DEP has the enforcement authority, residents living in impacted communities have a right to know which facilities are historic bad actors. The publicity of such violations, coupled with adequate monetary penalties and the risk of permit suspension or revocation, should deter applicants from attempting to skirt any of the requirements of the EJ Laws or permit conditions.

VII. The Regulations Must Require Environmental and Public Health Stressor Baselines to be Determined Based on Accurate, Comprehensive, and Timely Data

The proposed regulations define environmental and public health stressors as:

[S]ources of environmental pollution, including but not limited to, concentrated areas of air pollution, mobile sources of air pollution, contaminated sites, transfer stations or other solid waste facilities, recycling facilities, scrap yards, and point-sources of water pollution . . . ; or conditions that may cause potential public health impacts including, but not limited to, asthma, cancer, elevated blood lead levels, cardiovascular disease, and developmental problems in the [OBC]. 90

The regulations list 26 environmental and public health stressors in the proposed Appendix and provide methods for measuring those stressors and the source of data that the measurements are

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88 N.J.A.C. 7:1C-9.4(b); see e.g. N.J.A.C. 7:14-8.3 (providing the process by which DEP can assess civil penalties and other costs against violators of the state Water Pollution Control Act); N.J.A.C. 7:26-5.2 (outlining procedures for determining civil penalties under the state Solid Waste Management Act).

89 See e.g. A901 Debarment List, N.J. Dep’t Envt’l Prot https://www.nj.gov/dep/dshw/a901/A901debarmentlist.pdf (maintaining a public list of individuals associated with organized crime who may no longer participate in the solid waste industry in New Jersey because of those associations) (last visited Aug. 15, 2022).

90 N.J.A.C. 7:1C-1.5.
based on.\textsuperscript{91} The analysis of these stressors is the backbone behind determining whether a new or existing facility has a disproportionate impact on OBCs and, therefore, determines whether or not DEP can deny a permit or impose conditions on permits.\textsuperscript{92} Therefore, it is imperative that this analysis be based on accurate and timely data. This should be done through regular studies that will be done to update the data supporting the analysis of the 26 stressors. This will ensure that there are sufficient monitoring stations in OBCs to collect data—for instance, air monitoring stations to collect data on ground-level ozone and other listed stressors—and creating lower baselines for stressors over time so that the environmental and public health conditions in OBCs and New Jersey overall improve, rather than plateauing at current levels.\textsuperscript{93}

The Chapter Appendix lists one source of data for each of the 26 listed stressors. For example, ground-level ozone is based on a 3-year average of days that are above a standard determined by the “most recent” EPA Ambient Air Quality Summary data.\textsuperscript{94} In other words, much of the baseline standards for the environmental and public health stressors in the Appendix are based on dynamic and changing data that needs to be regularly updated to ensure that standards

\textsuperscript{91} N.J.A.C. 7:1C appx. The 26 environmental and public health stressors are divided into eight broad categories: (1) Concentrated Areas of Air Pollution; (2) Mobile Sources of Air Pollution; (3) Contaminated Sites; (4) Transfer Stations or Other Solid Waste Facilities, Recycling Facilities, and Scrap Metal Facilities; (5) Point-Sources of Water Pollution; (6) Stressors that May Cause Potential Public Health Impacts; (7) Density/Proximity Stressors; and (8) Social Determinants of Health.

\textsuperscript{92} A facility is determined to have a disproportionate impact on an OBC—and, therefore, its permit would be subject to mandatory denial by DEP or conditions imposed by DEP—if, when the combined stressor total in the relevant OBC is greater than the number of stressors present in non-OBCs in the county or state. N.J.A.C. 7:1C-1.5 (defining environmental and public health stressors, adverse cumulative stressors, and disproportionate impact). This means, under the proposed regulatory scheme, that the OBC is subject to adverse cumulative stressors and when a facility cannot avoid creating adverse cumulative stressors or contributing to existing adverse cumulative stressors in an OBC that is it or is proposed to be located in, then it has a disproportionate impact on that OBC. \textit{Id.} If a new facility cannot avoid a disproportionate impact, then DEP must deny its permit. \textit{Id.} 7:1C-5.2(b). If an existing facility is applying for a permit for an expansion or is applying to renew a major source permit, then DEP must impose conditions on that permit to mitigate the impact the facility will have on the OBC. \textit{Id.} 7:1C-6.2(b), 7:1C-8.2(b).

\textsuperscript{93} See \textit{Air Quality, Energy & Sustainability: Division of Air Quality – Air Monitoring}, Official Site of the State of N.J. https://www.nj.gov/dep/airmon/ (stating that New Jersey only operates 30 air monitoring stations throughout the \textit{entire} state) (last visited Aug. 16, 2022).

\textsuperscript{94} N.J.A.C. 7:1C appx.
and analyses are accurate, thus, allowing the EJ Law to be as effective and protective of OBCs as possible.\textsuperscript{95} Therefore, the final regulations should contain a provision mandating that data are updated on a regular basis, for example, once every two years or once every five years, or basing stressor analyses on data from sources that are regularly updated, not just the “most recent” data available.\textsuperscript{96}

Similarly, if data are lacking in any one location or concerning any stressor, the burden should be on the applicant to produce data or improve data-collection methods.\textsuperscript{97} This will ensure that the data used in the stressor analysis are up-to-date and accurate by increasing the overall amount of data available—especially in OBCs, where monitoring stations and other methods of data collection may be lacking. Accurate and comprehensive data will result in more accurate analyses, leading to the best implementation and enforcement of the EJ Law.

\textbf{Conclusion}

In order to maintain consistency with the legislative intent of the EJ Law and to correct the historical inequities imposed upon New Jersey’s OBCs, NJPEEC calls upon DEP to bolster, add to, and clarify provisions in the proposed regulations regarding public participation, public access to information, adding to DEP’s capacity to effectuate adequate and timely dissemination of information, the compelling public interest exception, DEP’s enforcement authority, violations to incentivize applicants to strictly comply with their permit requirements, and data used to determine baselines for environmental and public health stressors. Doing so will allow more individuals in OBCs to participate in the permitting process and to help shape their communities for the better.

\textsuperscript{95} N.J.A.C. 7:1C appx.
\textsuperscript{96} Id.
\textsuperscript{97} See \textit{Air Quality, Energy & Sustainability: Division of Air Quality – Air Monitoring}, Official Site of the State of N.J. https://www.nj.gov/dep/airmon/ (stating that New Jersey only operates 30 air monitoring stations throughout the \textit{entire} state) (last visited Aug. 16, 2022).
This will also allow DEP and the impacted communities to hold accountable those actors that were once able to site polluting facilities in OBCs without consequences. Thank you for this opportunity to provide comments on these important regulations.

Respectfully submitted,

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DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it’s a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

+ No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax rateables.
+ No offsets (e.g. planting trees or bike lanes elsewhere).
+ Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

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+ Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

Robert Mountford Jr
314-1 Goat Hill Rd
Lambertville, New Jersey 08530
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. So I strongly urge you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

+ No economic allowances under compelling public interest language - not allowed to trade fewer pollution reductions for more jobs and tax ratables.
+ No offsets (e.g. planting trees or bike lanes elsewhere).
+ Achieve "Actual" reduction or avoidance of pollution in the community (and more specifically at the facility) where it is already located or proposed either by setting permit conditions for renewal/ expansion permits for existing facilities or denying any new pollution permits in already overburdened communities. - all pollution reductions must be on site and codified in the permit.

Nancy Taiani
926 Bloomfield Ave.
Glen Ridge, New Jersey 07028
DEP Rulemaking DEP Rulemaking,

All communities deserve good, healthy, clean, dignified jobs - not at the expense of more pollution. The promise of economic gains and jobs is a false promise - it’s a lie EJ communities have been told for a long time that has never produced wealth for EJ communities.

Therefore, I am strongly urging you to pass the strongest Environmental Justice rules possible by implementing the following criteria:

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Joanne Barber

39873 Highway 27 Suite 411
, Florida 33837
DEP Rulemaking DEP Rulemaking,

I am strongly urging you to pass strong Environmental Justice rules by implementing the criteria that achieve "Actual" reduction or avoidance of pollution in the community and in the immediate vicinity of where the facility is already located or proposed. All pollution reductions and mitigations must be on site or in the vicinity and codified in the permit.

Melanie McDermott
330 S 3rd Ave
Highland Park, New Jersey 08904
DEP Rulemaking DEP Rulemaking,

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Nancy Jones

1905 Clinton Rd
Hewitt, New Jersey 07421
DEP Rulemaking DEP Rulemaking,

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Kerry Heck
22 Fairview Avenue
Pequannock, New Jersey 07440
DEP Rulemaking DEP Rulemaking,

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+ Put all safety constraints in writing and make the project contingent on meeting all requirements at that site, with no offsets or exchanges elsewhere.

Donna Ambriano

285 AWOSTING RD
HEWITT, New Jersey 07421-3102
DEP Rulemaking DEP Rulemaking,

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Sharon Paltin

po box 18
Laytonville, California 95454
DEP Rulemaking,

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Ibn-Umar Abbasparker
386 New Brunswick Avenue, F2
Fords, NJ, New Jersey 08863
DEP Rulemaking DEP Rulemaking,

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LORRIE GRINKEWITZ
144 Sooy Place Rd
Tabernacle, New Jersey 08088
DEP Rulemaking DEP Rulemaking,

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Ruth Correia
1052 North Ave
Elizabeth, New Jersey 07201
DEP Rulemaking DEP Rulemaking,

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Kenneth W Johnson

424 Redmond Ave.
Oakhurst, New Jersey 07755