ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

OFFICE OF ENVIRONMENTAL JUSTICE

Environmental Justice Rules

Adopted New Rules: N.J.A.C. 7:1C

Proposed: June 6, 2022, at 54 N.J.R. 971(a).

Adopted: March 9, 2023, by Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

Filed: March 9, 2023, as R.2023 d.047, with non-substantial changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).


DEP Docket Number: 04-22-04.

Effective Date: April 17, 2023.

Expiration Date: April 17, 2030.

The Department of Environmental Protection (“Department,” “NJDEP,” or “DEP”) is adopting new N.J.A.C. 7:1C, which implements N.J.S.A. 13:1D-157 (“Act” or “EJ Act”). The chapter will require certain facilities seeking certain permits in overburdened communities
(OBCs) to prepare an environmental justice impact statement (EJIS) and conduct a public hearing to ensure meaningful public participation in the permitting process. Additionally, the Department will apply permit conditions, where necessary, to avoid increases to environmental and public health stressors.

The notice of adoption can be viewed or downloaded from the Department’s website at [https://www.nj.gov/dep/rules/](https://www.nj.gov/dep/rules/).

Summary of Hearing Officer’s Recommendations and Agency Responses:

The Department held public hearings on July 11, 13, 27, and 28, 2022. Two hearing sessions were held on July 11 in-person in Trenton, the July 13 hearing was held in-person in Camden, and the July 27 hearing was held in-person in Newark. The hearing held on July 28 was held virtually on Zoom. Sean D. Moriarty, Deputy Commissioner, served as the hearing officer for all hearings. One hundred and eleven people provided oral comments at the public hearings. After reviewing the written comments received during the public comment period, the hearing officer recommended that the Department adopt the proposed new rules with the modifications described below in the Responses to Comments and in the Summary of Agency-Initiated Changes section. The Department accepts the hearing officer’s recommendations.

A record of the public hearing is available for inspection in accordance with applicable law by contacting:

Department of Environmental Protection

Office of Legal Affairs
Summary of Public Comments and Agency Responses:

The Department accepted comments on the notice of proposal through September 4, 2022. The following 497 persons or groups of persons submitted timely written and/or oral comments on the notice of proposal:

1. Ibn-Umar Abbasparker
2. Carolina Acevedo
3. Zadie Adams
4. Bharat Adarkar
5. Mary Aktay
6. Raghav Akula
7. Sue Altman
8. Donna Ambriano
9. Alex Ambrose, New Jersey Policy Perspective
10. Martin Andersen
11. Martha Arencibia
12. Gail Arnold
13. Elise Aronov
14. Richard Askins
15. Bella August
16. Yasmin Ayan
17. Pat Balko
18. Terrance Bankston
19. Joanne Barber
20. Lee Barile
21. Pamela Barroway
22. Kaniska Basnet
23. Joseph Basralian
24. Frank Battaglia
25. Frank Battersby
26. Dan Battey
27. Marilynn Benim
28. Elizabeth Bennett
29. Eric Benson
30. Hailey Benson
31. Nick Berezansky
32. Steven Bernhaut
33. Pranita Bijlani
34. Eileen Bird  
35. Linda Blatnik  
36. Diana Bohn  
37. Ruth Boice  
38. Barbara Bosich  
39. George Bourlotos  
40. Lorraine Brabham  
41. Marinus Broekman  
42. David Brook  
43. Maggie Broughton, Eastern Environmental Law Center  
44. Rick Brown  
45. Anne Brown  
46. Damon Brown  
47. Teresa Brown  
48. Linda Brown  
49. Melissa Brown Blaeuer  
50. Michael Buckley  
51. Sara Buckley  
52. Ronda Bugg  
53. Annette Caamano  
54. Raymond Cantor, New Jersey Business & Industry Association
55. Gabrielly Cardoso

56. Tracy Carluccio, Delaware Riverkeeper Network

57. Robert Carnevale

58. Maureen Carson

59. David Case, Environmental Technology Council

60. Anna Caswell

61. Elizabeth Cerceo

62. Lela Charney

63. Grace Chen

64. Susan Clark

65. Gregory Clewell

66. Michael Cloud

67. Arnold Cohen, Housing and Community Dev Network NJ

68. Leslie Cohen

69. William Connors, Clean Harbors Environmental Services, Inc.

70. Annette Coomber

71. Jake Cooper

72. Janice Cooper

73. Elowyn Corby, Vote Solar

74. Ruth Correia

75. Holly Cox
76. Barbara Coy

77. Jim Coyle, Gateway Regional Chamber of Commerce

78. Julia Cranmer

79. Drew Curtis

80. Barbara Cuthbert

81. Catia DaLuz

82. Monkonjai Bryant David P. Brook, Private Citizens

83. Ron De Stefano

84. Scott DeFife, Glass Packaging Institute (GPI)

85. Armstead Derek, City of Linden

86. Laura Dickey

87. Amanda Dickinson

88. Karen Diehl

89. Louis Discepola

90. Jo Ann Doran

91. Rosalind Doremus

92. Asma Dost-Sayany

93. Jennifer Downing

94. Enid Doyle

95. Susan Druckenbr’d,

96. Gary Dunn
97. Diego Duran
98. Cheryl Dzubak
99. Susan Eckstein
100. Joann Eckstut
101. Mike Egenton, New Jersey Chamber of Commerce
102. James Estabrook, Linden Industrial Association
103. Kent Fairfield
104. Fred Fall
105. Mike Fesen, New Jersey State Railroad Association
106. Robert Fischer, Association of Environmental Authorities
107. Madeline Fleisher, Owens Corning Roofing and Asphalt
108. Robert Focht
109. Melvin Ford
110. Cameron Foster
111. Gayle Furbert
112. Sally G
113. Mary Gallagher
114. Sandra Garcia
115. Maria Giffen-Castro
116. Noemi Giszpenc
117. Matthew Glassman
118. Ted Glick
119. Irene Gnarra
120. Ellen Goldberg
121. Jeanne Golden
122. Janet Goldstein
123. Alice Golin
124. Robyn Gorman
125. Stacy Goto
126. Brian Greenberg
127. Nancy Griffeth
128. Alex Grimes
129. Lorrie Grinkewitz
130. Maria Gross
131. Kenneth Hammond
132. Charles Hansen
133. Cheryl Harding
134. Ronald Harkov
135. Kathy Hart
136. Marilyn Hartford
137. Lauran Hartley
138. Lori Hartley
139. Alison Hayes
140. Charity Haygood
141. Chris Hazynski
142. Kerry Heck
143. Scott Henderson, Covanta
144. Lorna Henkel
145. LaVonne Heydel
146. Diane Heyer
147. Robert Heyer
148. Heather Heyer
149. Sean Hickey
150. Kisha Hicks, Independent Energy Producers of New Jersey (IEPNJ)
151. Ellen Hill
152. Stephen Hirsch
153. Dana Hiscock
154. Kathryn Hiscock
155. Nicholas Homyak, Volunteer in Parks/ NJ Highlands Advocates
156. Martin Horwitz
157. Rebecca Hughes
158. Jessica Hunsdon
159. Anthonyette Hunter

161. George Hurst

162. Nicholas Huss

163. Kathryn Hyelle

164. Virginia Hyzer

165. Charles Inghilterra

166. Kim Irby, New Jersey Future

167. Duron Jackson, Newark Resident

168. Solomos James

169. Carolyn Johnson

170. Kenneth Johnson

171. Tiffany Jones

172. Juliet Jones

173. Samantha Jones, Chemistry Council of New Jersey

174. Nancy Jones

175. Jeanne Jordan

176. Richard Kalish

177. Pamela Kane

178. Tracey Katsouros

179. Angela Kavalesky

180. Catherine Keim
181. Stu Kennedy

182. Dan Kennedy, Utility & Transportation Contractors Association of NJ

183. B Ker

184. ZaSah Khademi

185. Kevin Kimmel

186. Jack Kocsis, Associated Construction Contractors NJ

187. Eddie Konczal

188. Laurel Kornfeld

189. Patricia Kortjohn

190. Marie Kruzan, Association of New Jersey Recyclers

191. Carol Kuehn

192. Judy Kushner

193. David Lavender

194. Zoe Leach

195. Gwenn Levine

196. Carol Levine

197. Shawn Liddick

198. Doris Lin

199. Eleana Little

200. Katie Little

201. Jamal Littles
202. Charles Loflin, UU FaithAction NJ

203. Mark Longo, Engineers Labor-Employer Cooperative (ELEC) 825

204. Colleen Loughran

205. Mark Lowenthal

206. Lindsay Lowry

207. Laurie Ludmer

208. Amelia Lufrano

209. Lala Luz

210. Matt Lydon, TigerGenCo, LLC

211. Laura Lynch

212. Denise Lytle

213. Joan Maccari

214. Miriam MacGillis

215. Norah MacKendrick, Rutgers University

216. Michael Madden

217. Bambi Magie

218. Kathleen Maher

219. Eileen Mahood-Jose

220. Michael Maloney, New Jersey State Association of Pipe Trades

221. Ann Malyon

222. Assatta Mann, League of Women Voters of New Jersey
223. Jane Manning
224. Joseph Marchica
225. Louise Marinucci
226. Melissa Marks
227. Demetria Marshall
228. Alicia Marshall
229. Celeste Martin
230. Brendan Mascarenhas, American Chemistry Council
231. John Massaro
232. Edward Maxedon
233. Bonnie McCay Merritt
234. Bill McClelland
235. Jean McClelland
236. Melanie McDermott
237. Michael McGuinness
238. Jenna McGuire
239. Keely McLeod
240. Tiffany Medley, Tetra Tech
241. Nicholas Mesiano, Pittsgrove Township Envir. Board Alt Mem
242. Lynn Mignola
243. Susan Mikaitis
244. David Miller
245. Dabra Miller
246. Steven Miller
247. Barbara Miller
248. JJ Mistretta
249. Steven Mitchell
250. George Moffatt
251. Sriram Mohanakanthan
252. Isabel Molina, New Jersey LCV
253. NJBIA coalition
254. Robert Moore
255. Mon Mor
256. Leslie Moran
257. Robert Mountford
258. Susan Mullins
259. Andrew Mumford
260. Jeffrey Murphy
261. Jeany Myers
262. Nikki Nafziger
263. Dipali Nafziger
264. Elizabeth Ndoye, MoveOn.org Hoboken
265. Blair Nelson, Waterspirit
266. Susan Nierenberg
267. Gina Norton
268. Charles Nunzio
269. Monica O
270. Kelly Oates
271. Michele Ochsner
272. Carl Oerke
273. Natalia Ojeda
274. Daniella Olan
275. Max Oliveira
276. Doug O'Malley
277. Patricia Palermo
278. Marco Palladino
279. Maria Santiago
280. Sharon Paltin
281. Emilio S. Panasci
282. Kim Parker
283. Bindi Patel
284. Dana Patton
285. Michael Paul
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286. Marie Peak
287. David Pedersen
288. Joseph Pepe
289. Diana Perez
290. Sam Pesin
291. Melissa Pflugh
292. George Pieczenik, Rutgers University
293. Even Piscitelli, NUCA of New Jersey
294. Dionne Polk
295. Daurie Pollitto
296. Amy Hansen, New Jersey Conservation Foundation
297. Joseph Ponisciak
298. Jean Publicee
299. Margaret Ragazzo
300. Joann Ramos
301. Michaela Redden
302. Reggie Regrunt, 390 Heckman Street
303. Edward Reichman
304. Gerald Reiner, Bergen County Utilities Authority
305. Greg Remaud, NY/NJ Baykeeper
306. Christina Renna, Chamber of Commerce Southern New Jersey
307. Charles Rinear
308. Barbara Rippert
309. Armani Rivera
310. Victor Rivera
311. Richard Lawton, New Jersey Sustainable Business Council
312. Jerry Rivers
313. Rita Roedig
314. Pat Rolston
315. Ryan Rosenfeld
316. Linda Rossin
317. James Rowley
318. Patricia Ruggles
319. Anthony Russo, Commerce and Industry Association of New Jersey (CIANJ)
320. Brian Russo
321. Ken Dolsky
322. M Rute Correia
323. Randy Ruth, Stone to Sand
324. Pauline Saade
325. AJ Sabath, New Jersey State Building and Construction Trades Council (NJBCTC)
326. Nancy Sadlon, Phillips 66
327. Jonathan Salazar
328. Elizabeth Salerno
329. David Sanders
330. Anne Sandritter
331. Matt Santaiti
332. Laura Sariego
333. Lise Sayer
334. Brian Scanlan
335. Kathryn Scarbrough
336. Corey Schade
337. Melissa Schaffer
338. Douglas Schneller
339. Jodi Schreiber
340. John Schreiber
341. Maureen Schulze
342. Kather Scott
343. Elizabeth Seaton-Frankfort
344. Louise Sellon
345. Annette Shandolow-Hassell
346. Dein Shapiro
347. Nicky Sheats, 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

348. Ivy Sheibar
349. Michele Shell
350. Chuan Shen
351. Anne Shirinian-Orlando, same as commentor 80 & 189
352. Marcus Sibley, National Wildlife Federation
353. Vikram Sikand
354. Cara Simaga, Stericycle
355. Jo Sippie-Gora
356. Jaszmene Smith
357. Susan Smith
358. Deborah Smith Gregory, NAACP Newark
359. Shereyl Snider
360. David Snope
361. Morgan Spicer
362. Elyse Sternberg
363. Hazel Applewhite, Ironbound Community Corporation
364. Anne Stires
365. Mary Sullivan
366. Peter Svhofield
367. Katharine Sween
368. Victor Sytzko
369. Ann T
370. Nancy Taiani
371. Julie Takatsch
372. Herb Tarbous
373. Janet Tauro
374. Britnee Timberlake, Assemblywoman, Legislative District 34
375. Janis Todd
376. Rosemary Topar
377. Fay Trisker
378. Michele Turansick
379. Esteban Veloz
380. Gigi Ventola
381. Robert Veralli
382. Bryan Vickers, Glass Packaging Institute (GPI)
383. Jennifer Vickers
384. Wynnie-Fred Victor Hinds
385. Rachael Violett
386. Don Vonderschmidt
387. Keith Voos
388. Christopher Vota
389. Emily Wallace
390. Hallie Wannamaker
391. Sheila Ward
392. Michael Watson, Camden County Municipal Utilities Authority
393. Rey Watson
394. Carmen Weir
395. Tina Weishaus
396. John Wheeler
397. Brandon Wheelock
398. Jay Wiesenfeld
399. David Williams
400. Julie Winokur
401. Anne Wolf
402. Bill Wolfe, Citizen
403. Margaret Wood
404. G Y
405. Mar Yelenik
406. Margaret Yelenik
407. Elizabeth Yerkes
408. Tracy Young
409. Tracy Youngster
410. Dawn Zelinski
411. Ralph Zelman
412. Hailey Benson
413. Patrizia Zita, Independent Energy Producers of New Jersey (IEPNJ)
414. No Name Provided
415. Rachel Davis, Waterspirit
416. Fred Stine, Delaware Riverkeeper
417. Kartik Raj, Earth Justices Community Partnership Program
418. Greg Tyson, Independent Energy Producers of New Jersey
419. Jasmine Crenshaw, Earth Justice
420. Jonathan Smith, Earth Justice
421. Nathan Fishman, New Jersey Poor People's Campaign
422. Paula Rogovin
423. Chris Tandazo, NJ Environmental Justice Alliance
424. Aubrey Mollinedo, Clean Water Action
425. Maria Lopez-Nunez
426. Melissa Miles, NJ Environmental Justice Alliance
427. David Pringle, Clean Water Action
428. Paul Schorr
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429. Felix Zamora
430. Richard Issac, Sierra Club New Jersey Chapter
431. Ana Baptista
432. Hera Mir
433. Cynthia Mellon
434. Anjuli Ramos
435. Jeffrey Rapaport, Northern New Jersey Sierra Club
436. Patricia Cortado
437. Carly Sanchez
438. Guillermo Nino, IUOE Local 825
439. Donald DeAugustine, Millwright Local 715
440. John Alvarado, IUOE Local 825
441. Aymann Ismail
442. Chloe Desir, Ironbound Community Corporation
443. Irma Hernandez
444. JV Valladolid
446. Christian Rodriguez, Ironbound Community Corporation
447. Thomas Ikeda, The New School
448. Ihsan Al-Zouabi
449. Janetza Miranda
450. Raquel Romans-Henry, Salvation and Social Justice

451. Manijeh Saba, Food and Water Watch

452. Lino Santiago, IUOE Local 825 and Essex County Building Trades

453. Robert Davis, IUOE Local 825

454. Jack Kocsis, ACCNJ

455. Matthew Smith, Food and Water Watch

456. Robert Laumbach

457. Matthew Polski

458. Hajrah Hussain

459. Peter Chen, New Jersey Policy Perspective

460. Sam DiFalco, Food and Water Watch

461. Tolani Taylor

462. Brett Robertson, North New Jersey Democratic Socialists of America

463. Kim Gaddy, Clean Water Action, South Ward Environmental Alliance

464. Casandia Bellevue, Earth Justice

465. Sophie Hernandez

466. Stu Kennedy

467. Asada Rashidi, South Ward Environmental Alliance

468. Kate Roche, North New Jersey Democratic Socialists of America

469. Yanett Ramierz, Ironbound Community Corporation

470. Elizabeth Ndoye, Don't Gas the Meadowlands
471. Nathaly Agosto Filion, City of Newark
472. Ahmed Ishmael, East Ward Coalition
473. Brian Zambrano, Party for Socialism and Liberation
474. Angie Pogo
475. Jaymarr Lazo
476. Daniel Ortega, Operating Engineers Local 825
477. Aditi Varshneya, Global Alliance for Incinerator Alternatives
478. Haneef Cambell, South Ward Environmental Alliance
479. Virginia Hammer, Midlantic Theatre Company, Newark
480. Oscar Lopez
481. Amy Goldsmith, Clean Water Action
482. Victoria Marples
483. Chris Nowell, Ironbound Community Corporation
484. Chris Reynolds, The Party for Socialism and Liberation
485. Daniela River Solano
486. Terri Suess, Ironbound Community Corporation
487. Lillian Ribero
488. Greg Hodges, Atlantic Health System
489. Shari Brown, Ironbound Community Corporation
490. Jeremy Sincaglia
491. Viriyah Hodges
A summary of the timely submitted comments and the Department’s responses follows. The number(s) in parentheses after each comment identifies the commenter(s) listed above.

**Compelling Public Interest and Economic Considerations**

1. COMMENT: Economic considerations should not be part of the compelling public interest language. Applicants should not be allowed to trade fewer pollution reductions for more jobs and tax rateables. (1, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 45, 46, 47, 48, 49, 50, 51, 53, 55, 56, 57, 58, 60, 61, 68, 70, 71, 72, 73, 74, 75, 76, 78, 79, 80, 83, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 98, 99, 100, 103, 104, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 131, 132, 133, 134, 135, 136, 137, 138, 139, 141, 142, 144, 146, 147, 148, 149, 151, 152, 153, 154, 155, 156, 157, 158, 161, 162, 163, 164, 165, 166, 168, 169, 170, 171, 172, 174, 175, 176, 177, 178, 179, 181, 184, 185, 187, 188, 189, 191, 192, 193, 194,
2. COMMENT: Dangling the carrot of trickle-down economic prosperity will not address long-term community vitality. (67)

3. COMMENT: 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. 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. N.J.A.C. 7:1C 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,
to protect communities from the false promise of jobs and other benefits that would be produced by polluting facilities at the sacrifice of public health. (56 and 347)

4. COMMENT: Put people before profit. Do not expand the definition of compelling public interest to include economics. The Legislature specifically wrote it for environmental health and safety and saying that there is an economic public interest would create a giant loophole that will kill children, adults, and our elders. Whatever the corporate interest is, it is absolutely not worth that, and I am against including economics in compelling public interest (CPI) if that is to occur. (374, 435, 455, 477, 479, 490, and 496)

5. COMMENT: It is crucial to prioritize people over profit. It is possible for industries and communities to coexist without jeopardizing people’s health and the environment. (422, 461, 474, 484, and 495)

6. COMMENT: Most of the time, the jobs these businesses bring are not held by people that live in those communities. (128)

7. COMMENT: Fears that communities will become unattractive because of the proposed rules do not acknowledge that the pollution that overburdened communities face already makes them unattractive. The public health impacts that facilities have make this proposed rulemaking necessary. (444)

8. COMMENT: If you are facing political pressure, you have to look at the multitude of people you are protecting, because that is your job as the Department of Environmental Protection. The DEP cannot weigh economic interests because that is outside its jurisdiction. The DEP’s only jurisdiction is the health and wellness of people and the environment. (425 and 468)
9. COMMENT: No other communities in this State are presented with the option of jobs they need or pollution that will kill and harm them. Why is it that only Black and Brown and poor white communities have to make this choice? It is tantamount to extortion, not just from industry, but extortion from society. (347)

10. COMMENT: Overburdened communities, such as those in Camden deserve to have the same quality of life as neighboring communities with environmental and public health protections just as stringent. The promise of jobs is not more important than protecting the health of community residents who have been negatively impacted by these facilities. (493)

11. COMMENT: Economic benefit cannot be an exception to the Environmental Justice Law (EJ Law). Over the years there have been many different tax credit programs to benefit businesses with the promise of jobs and economic development. These are almost always a mirage and fool’s gold because they have rarely, if ever, met their stated goals, and when they have, they have been largely self-reported with little auditing or oversight. These programs have a history of exaggerating and hyperbolizing their economic claims and the agencies that specialize in these agreements have a hard time evaluating whether the jobs stated have been created, let alone for how long. These failures have been particularly pronounced in economically disadvantaged and exploited communities where the promise of jobs has been dangled and no economic development has resulted. There is a failure to consider the economic harms, which are also enormous. Air pollution is a top five indicator of economic inequality in this country. When we think about the economic benefits, we need to also think about the economic harms to communities coming from lost days of school and work, and lost years of life. It is not always
possible to factor economic costs in because they take place far into the future. The entire purpose of the environmental justice law is recognizing that dirty polluting industries make the communities poorer, less healthy, and less safe. Correcting the historical injustice of concentration of these industries in environmental justice (EJ) communities means rejecting economic benefit. (459 and 486)

12. COMMENT: There is an association between race, income, and pollution that shows that as the amount of people of color or low-income people living in a neighborhood increases so does the amount of pollution. Any inclusion of economic considerations in the compelling public interest exception and the law will not function as it should. The false choice between jobs or accepting facilities that pollute and will make the the public ill and possibly kill them is a no-win situation. Communities should not be extorted through this impossible and unconscionable situation. They should not be forced to accept more pollution in exchange for an economic good. Government has to provide both a good environment for people and good jobs, but not jobs that are going to make them ill. If anything, the compelling public interest exception may be too vague and needs to be tightened up, to limit its use. Refusing to include economic considerations in the compelling public interest exception will allow overburdened communities to have the benefits that other communities have. (347)

13. COMMENT: Haven’t there been enough exceptions for these corporations and dirty businesses? The fact that the Act even exists is admitting that there is a problem with environmental justice in these communities. Those who will profit from facilities aren’t the ones living in those communities. (437 and 489)
14. COMMENT: New facilities do not guarantee local economic benefits. The DEP is not equipped to ensure compliance with an economic benefits standard that would establish a compelling public interest. A new facility should be required to assert an essential health or safety need for individuals in the overburdened community in order to show a compelling public interest. (415)

15. COMMENT: There should be no economic interest exception because that exception would be the business-as-usual approach. That approach has allowed government and corporations to exploit vulnerable populations for generations with the promise of economic development and a raise in the standard of living that never comes. EJ communities should not have to choose between a healthy environment and jobs. This is environmental racism. The promise of economic gains and jobs is a false promise. There are decades of examples of companies promising jobs and economic gains to overburdened communities that deliver nothing but pollution and 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 and water and reduce property values. Removing the economic factors exclusion in compelling public interest would create an enormous loophole that renders the EJ Law a complete failure and undermines the intent and spirit of the law. There would be no way for the Department to ensure compliance with an economic benefit standard because the promise of economic gains, such as local employment, number of jobs and tax rateables are all difficult to measure after the permit is granted. The DEP does not have any jurisdiction or mechanism to enforce these claims. (75, 279, 296, 363, 447, 455, and 468)
16. COMMENT: The interpretation of “compelling public interest” must be as narrow as possible to keep polluting facilities out of overburdened communities. (23, 281, 427, and 455)

17. COMMENT: 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, and economically disadvantaged communities is more advantageous than protecting community members’ health and the environment is completely false, racist, and unacceptable. 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 and dirty facility for minimal wages and limited opportunity will make their quality of life better. I call on all present today, and most especially our Governor, to make these environmental justice rules ironclad. (470)

18. COMMENT: To allow economic exceptions to this rulemaking would be to gut the law of its intent and its spirit. The economic benefits would be for certain groups at the expense of the communities where these projects are proposed. To further economic prosperity at the expense of health and well-being is greed. (458 and 477)

19. COMMENT: There should be no economic exception for CPI. The current permitting model already allows economic interests to weigh heavily, where poor communities are forced to take dirty industries and rich communities are able to say no. (363, 428, and 448)

20. COMMENT: If we allow any exemptions for economic interests, then polluters who have money to spend on lawyers and lobbyists will find loopholes. (460 and 492)
21. COMMENT: The “compelling public interest” provision is a blanket loophole that should be deleted from the rulemaking. If the law prevents this loophole from being closed, the law should be changed. (23)

22. COMMENT: There should be no loopholes in the proposed rulemaking. Any flexibility will allow polluting facilities to continue to significantly damage air quality and cause other environmental harm in ways that are damaging to the health of citizens in these overburdened communities. Public health is more important than industry profit, so there should be no economic exception to any provision of the rulemaking. (3, 9, 16, 18, 110, 140, 155, 159, 264, 290, 357, 373, 384, 394, 417, and 465)

23. COMMENT: If this loophole is approved, it will keep the door wide open for the most unscrupulous actors to continue to dump filth and garbage into the communities with the least political power to stop it. What kind of economic value can we place on having communities where parents don’t have to tell their children that they can’t play outside today because the air quality is so bad? What economic value is there in not putting garbage incinerators and sludge processing plants near schools and apartment buildings? What economic value is there to prioritizing human life and health over profit? I hope that New Jersey does the right thing and helps to ensure a future where we can all thrive instead of putting corporate profit-making ahead of human well-being. Please reject this harmful economic loophole. (462)

24. COMMENT: I think the EJ rules are good and a great start. Having a loophole where you put money over lives cannot happen. Communities fear the impacts of the many polluting industries, and they keep getting dumped on by industry and government, in addition to non-environmental
issues. Overburdened communities are harmed to the benefit of neighboring communities that do not have to face the same issues, and the overburdened communities deserve a voice in what happens to them. (497)

25. COMMENT: The DEP is not equipped with mechanisms and personnel that are adequate to ensure compliance with an economic benefits standard to establish a compelling public interest. (75, 265, 415, and 431)

26. COMMENT: The rulemaking must condition the compelling public interest analysis on the condition that the public good must be to the benefit of the impacted community and that public good must be the primary purpose of the facility. (73, 264, 311, and 471)

27. COMMENT: This rulemaking and law are very reasonable. The Legislature’s findings and declarations stated that “no community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State’s economic growth.” (427)

28. COMMENT: Facilities that will be impacted by this rulemaking are large, dirty, polluting entities rather than union jobs. You cannot continue to extort overburdened communities by making them choose between jobs and health when both are required for human flourishing. Many industries and businesses that are good actors and employ many union workers are not covered by this rulemaking. New facilities do not guarantee local economic benefits. (415)

29. COMMENT: The rules are necessary to address the legacy of environmental injustices that overburdened communities face. It is important that a compelling public interest is not considered to be an economic interest, despite what industries that oppose the law may want.
Facilities must evaluate their cumulative impact because that standard means that facilities are held to account for pollution that's occurring from all sources in a community for the benefit of public health. We are one hundred percent in support of the EJ Law and want the DEP to ensure that the compelling public interest looks at the public needs and not at the business community. (276)

30. COMMENT: Economic benefits and job creation within an otherwise harmful industry are explicitly not considered when evaluating an exemption for a public good. (73)

31. COMMENT: We support the DEP’s decision to expressly exclude economic benefits from the compelling public interest exception analysis, however additional language from the notice of proposal statement should be included in the actual rule text to maximize clarity because although the DEP recognizes that it should not and will not take economic benefits into consideration in this analysis, once the rules are officially adopted, the DEP will not be legally required to comply with this statement. (43 and 352)

RESPONSE TO COMMENTS 1 THROUGH 31: For the reasons set forth in the notice of proposal, 54 N.J.R. 973, and further outlined in the Response to Comments 62 through 69, the Department agrees that it would be inconsistent with the act’s express language and intent to consider economic benefits as a basis for determining that a new facility will serve a compelling public interest in the overburdened community.

The Department further agrees with commenters, and the Legislature’s express findings, 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. Accordingly, the
Department proposed and is adopting a definition of “compelling public interest” at N.J.A.C. 7:1C-1.5 that, consistent with the act’s express language and intent, serves as a narrow exception to the requirement that the Department deny the issuance of a permit to a new facility that cannot avoid a disproportionate impact. To this aim, the adopted definition of “compelling public interest” expressly provides that the economic benefits of a proposed facility shall not be considered in determining whether the facility serves a compelling public interest. To ensure that, in this narrow circumstance, the benefits of the new facility inure to the members of the overburdened community that are, or will be, subject to the disproportionate impact to environmental and public health stressors, the rules require that the primary purpose of the facility serve an essential environmental, health, or safety need of the host overburdened community and that there be no reasonable alternative to siting within the overburdened community without the consideration of potential economic benefits.

32. COMMENT: This rule won’t stop construction of schools or hospitals that are vital to that community, because they would fit the definition of compelling public interest. If they aren’t vital to that community, then they shouldn’t be built here. (427)

RESPONSE: As further discussed in the Response to Comments 1 through 31, the Department agrees that the adopted definition of compelling public interest will facilitate projects that are vital to serving the essential environmental, health, and safety needs of a community, such as schools or hospitals, and will not prevent construction of crucial projects that support communities.
The Department further notes that a school or hospital will only be subject to the rules if its operations constitute a major source of air pollution.

33. COMMENT: 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. (358)

RESPONSE: The Department agrees with commenter’s interpretation of the Act and, as discussed in this notice of adoption, has crafted a definition of compelling public interest that is consistent with the act’s express requirement that the 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.” N.J.S.A. 13:1D-160.c. The Act also provides that the Department may grant a permit that imposes conditions where the Department determines that the facility will serve a compelling public interest in the community where it is to be located, and the Department has adopted a narrow compelling public interest exemption in accordance with this statutory direction.

34. COMMENT: 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 U.S. Environmental Protection Agency’s (EPA) 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). (252)

RESPONSE: The Department appreciates this comment and agrees that improved environmental and public health conditions will improve economic activity in overburdened communities and facilitate further economic growth across the State.

35. COMMENT: We are concerned for employment opportunities for union members and the building trades. It is possible to have good development and safe environments. Each group has to come together to put this together. We need employment opportunities for those who work with their hands. This is not just about who will profit, also about how people make a living and support their family. The two parts can’t be opposite, they need to come together. (439 and 452)

36. COMMENT: We are concerned about the impacts to the State’s economy and to our surrounding communities that these regulations, if implemented as written, are anticipated to create. (326)

37. COMMENT: 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. (237)
38. COMMENT: 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. 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. 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. (315)

39. COMMENT: The proposed rule should take account of the protection of the environment for future generations and the long-term economic well-being through job creation and development
that communities need. Almost two-thirds of the State is designated as being overburdened and over 90 percent of those areas will be determined to be disproportionately impacted, which will result in the type of economic advantage that the State needs, such as advanced manufacturing and supply chains, being halted entirely. University expansions, transportation centers, economic opportunities, and even health care centers are now at risk of being blocked. These regulations will do more harm than good and completely miss the mark of finding a balance between economic development opportunities and community protections. (203)

40. COMMENT: We request that the Department perform the actual analyses as prescribed in the New Jersey 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 the 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 the 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. (210)

41. COMMENT: Essential public works projects, such as treatment plants that will be required to address the combined sewer overflow problem in 21 New Jersey municipalities, recycling and solid-waste recovery centers, and the potential for energy-sector public-private partnerships (pending legislation), will be exceedingly more difficult, if not impossible. (106 and 220)

42. COMMENT: The rulemaking does not take into consideration the impacts this will have on the construction industry or construction workers. These regulations will put a stop to projects
that are vital to our communities including water, sewage, school, and low-income housing.

(453)

43. COMMENT: The way the DEP has determined the geographic point of comparison has made it so 90 percent of OBCs are considered cumulatively stressed. So, by definition if you’re an OBC, you are cumulatively stressed. Two-thirds of the population of the State lives in an OBC, and that has a significant impact to the State and to our economic vitality. (54, 77, 102, 182, 203, 253, and 326)

RESPONSE TO COMMENTS 35 THROUGH 43: The Administrative Procedure Act requires “a description of the expected socio-economic impact of the rule” to accompany a rule proposal. N.J.S.A. 52:14B-4(a)(2). The statement should describe “the expected costs, revenues, and other economic impact upon governmental bodies of the State, and particularly any segments of the public proposed to be regulated.” N.J.A.C. 1:30-5.1(c)3. The function of the socio-economic impact statement is to provide notice of anticipated impacts so that interested parties have the opportunity to participate in the rulemaking process. The socio-economic impact statement provided in the notice of proposal, 54 N.J.R. 987-990, meets this standard because the Department considered the information available to it to reasonably identify potential costs and economic impacts, as well as expected benefits.

Similarly, the Administrative Procedure Act requires “a jobs impact statement which shall include an assessment of the number of jobs to be generated or lost if the proposed rule takes effect.” N.J.S.A. 52:14B-4(a)(2); N.J.A.C. 1:30-5.1. Similar to the socio-economic impact statement, the purpose of the Jobs Impact statement is to provide notice of these anticipated job
impacts so that interested parties have the opportunity to participate in the rulemaking process. The decisions made by permit applicants will depend on factors specific to their timing, their facility, and their business. Any potential job losses would be balanced against economic growth induced by improvements to environmental and public health stressors in overburdened communities.

The Act’s express intent is to ensure that adverse environmental and health impacts of the State’s continued economic progress are not borne disproportionately by residents of overburdened communities and the Department has met its statutory duty to develop reasonable and protective rules to implement the intent and principles of the Act and provided ample opportunity for interested or affected parties to offer specific, concrete information regarding potential socio-economic costs.

The socio-economic and jobs impact statements in the rule recognize that costs will be borne by applicants for the preparation of the Environmental Justice Impact Statement (EJIS) and the imposition of necessary control measures to avoid and, where avoidance is not feasible, minimize onsite contributions to environmental and public health stressors, and, as applicable, reduce offsite impacts to environmental and public health stressors and provide a net environmental benefit. These costs will be borne in a manner proportionate to the size and scope of their existing or proposed operations. Given the breadth of the Act and the flexibility contained in the rules to develop facility-specific control measures, it is not feasible for the Department to determine potential facility costs on an individual basis and commenters have
offered little to no specific information on which to base their concerns beyond vague and speculative statements of future economic harm.

In the Department’s experience, the imposition of more protective environmental standards has not prevented development throughout New Jersey and has led to myriad environmental, ecological, public health, economic, and societal benefits, many of which are identified in the notice of proposal, 54 N.J.R. 987-990. A 2022 report by the Rocky Mountain Institute – “Growing to Its Potential” – quantified estimates of urban nature’s energy, carbon, and cost savings potential for buildings, stormwater management, and transportation in six global cities, finding the global value of urban nature’s benefits is nine times the cost. The Smart Prosperity Institute’s “Do Environmental Regulations Cost as Much as we Think They Do” analyzed other case-studies and determined that the cost of complying with environmental regulations are often overestimated by two to 10 times the amount, and the costs of rules are more than offset by a range of health, economic, greenhouse gas, and other benefits. A reduction in localized environmental and public health stressors is likely to improve economic activity in overburdened communities, and support improved employment outcomes in those communities, which could also stimulate economic activity elsewhere in the State. As stressors reduce in affected communities, those communities will become more attractive – both to potential new residents and to the type of investments that drive economic revitalization. As stated in the notice of proposal, 54 N.J.R. 989, the Department anticipates the new rules will result in stronger, healthier communities, build better businesses, demonstrate that environmental protection and
economic development are not mutually exclusive, and advance the State’s efforts to achieve a triple bottom line of social, environmental, and economic success.

In developing the adopted rules, the Department sought to meet the Act’s express intent to ensure that the environmental and health impacts of the State’s continued economic progress are no longer borne disproportionately by residents of overburdened communities and the rules set forth reasonable and protective standards consistent with the intent and principles of the Act and, as discussed in more detail herein in response to specific comments, are within the Department’s statutory authority.

Development of the rules occurred through an extensive, direct, and thorough stakeholder process with ample opportunity for interested or affected parties to offer specific, concrete information regarding potential costs and to offer their opinions and suggestions on various policy positions reflected in the notice of proposal. This process included 10 public engagement sessions across eight months specifically covering every key aspect of the rulemaking. Attendees included representatives from environmental and professional organizations, industry groups, residents of both non-overburdened communities and overburdened communities, and local government officials. The Department considered the comments and feedback received during the aforementioned public engagements, and the information shared and received has informed the rules.

Finally, the Department rejects the faulty assumption underlying certain of the comments received that the only suitable areas for development of covered facilities are overburdened
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communities. Indeed, this assumption and associated patterns of development substantially contributed to the creation of the very concerns the Act seeks to redress.

44. COMMENT: The EJ rules could only delay infrastructure projects and facilities and will unquestionably impact the construction of new and existing facilities. The proposed regulations make it difficult, if not impossible, for any new facility to be approved. (85)

45. COMMENT: We can have economic growth and clean communities at the same time. We all want healthy, safe, clean communities and no one wants a disproportionate amount of stressors in their communities. Rather than having businesses work with communities, the rule falls back on what the DEP has done poorly in so many rules in the past and will not see new facilities coming into these facilities. Two-thirds of the State’s population is in OBCs. The proposed rule is an overly prescriptive control and command scenario. New facilities are not necessarily garbage dumps, they can be a supermarket, college, apartment, that just happens to have a Title V permit, and these will not locate in overburdened communities. We will see jobs move out of the State because the rule does not allow for a cooperative relationship to happen between businesses and communities. (54)

46. COMMENT: The proposed regulations are hurried and miss the point. Updates and/or the construction of new schools, clean water, sewage systems, supermarkets, medical facilities, and transportation centers that have been neglected in these communities are now at risk. Facilities with good jobs are dealing with the potential of closures and layoffs because they won’t be able to complete future upgrades or expansions. Of course, we must find ways to
safeguard the environment and make sure that the voices of minority communities are heard, but we also must maintain the long-term economic stability of communities that these rules are set to protect. This process needs to be much more inclusive and truly integrate all aspects and points of view of our communities. (52)

47. COMMENT: As the current Act and proposed rulemaking are 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 the State, out-of-State, or offshore. Facilities moving within the 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. The Department needs to perform an Economic Impact statement of the proposed rulemaking. 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 OBCs 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 affected 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. (210)
48. COMMENT: The implementation of this regulation feels rushed and without sense. For a long time, our basic infrastructure in our communities has not been cared for. These rules will be a step back in terms of improvements needed and/or the construction of new schools, drinking water, sewage systems, supermarkets, hospitals, and transportation centers. People need good jobs in order to maintain their families. Many places that have brought residents of this area have brought them good job opportunities, are worried that they will have to close down or fire people because they cannot meet improvement requirements or expansion needs in the future. Of course, we need to find ways to save and protect our environment. We must also maintain the economic stability of the communities that these rules want to protect. This process needs to be more inclusive of truly integrating all aspects and points of view of our communities. (438 and 440)

49. COMMENT: The Department’s efforts to address environmental and health challenges are fully supported, however, the proposed rule goes beyond the legislative language and intent. As a result, the proposed rule will have a negative and disparate impact on the low-income and minority communities that the legislation seeks to protect. Further, the proposed rule will make it extremely difficult, if not impossible, for certain businesses to continue operations. Consideration of the economic benefits industrial partners should very much be considered when evaluating a projects value to the community. (102)

50. COMMENT: The EJ Law and this rulemaking will have a chilling effect on the willingness of businesses to invest in New Jersey. This will include members of the business community that are not covered pursuant to this law or rulemaking that will be wary of the future impact on the
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business community-at-large. Rather than adopting such onerous rules, New Jersey should be examining how it incentivizes the continuation of businesses and industry in urban areas to meet the needs of the local community and continue efforts to revitalize these communities. (101)

51. COMMENT: The DEP’s efforts that are addressed in these rules that reflect the need to protect all residents are commended, however the rules have gone beyond the legislative intent and verbiage of the bill that will make it extremely difficult, if not impossible, for certain businesses to exist. It would also harm the overall economic competitiveness of our State. The rules, as proposed, will drive businesses out of the State and contribute to a loss of population as people move to more tax friendly and business friendly states. (85)

52. COMMENT: We need to consider the type of development that we want for our communities. The rules are not in sync with the economic development policies of the State to create jobs and a stable economic tax base. When companies are looking to relocate, predictability is a key item in the decision-making process. This is the wrong message to send to companies that are trying to come to New Jersey. (203 and 476)

53. COMMENT: The CCSNJ is concerned that the approach taken by the Department in the proposed rulemaking 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. Yet, the Department has unreasonably assumed that no existing or future economic benefits or jobs would be lost. The
methodology for determining disproportionate impacts at 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. 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 definition 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. 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. (306)

54. COMMENT: The restrictions imposed by the proposed rules on development in overburdened communities, coupled with the existing development restrictions in areas like the Pinelands, Highlands, and coastal zones leaves less than 38 percent 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 land that is simply not
developable, there is only a small percentage of land available for scrap metal recycling facilities. Scrap metal facilities will be regulated or zoned out of business. (54, 160, and 319)

55. COMMENT: While the rule would benefit from added flexibility to fulfill community needs, as currently proposed, there will be a loss of development and good paying jobs coming, rather than the desired benefits. The proposed rulemaking has industries considering the feasibility of remaining in New Jersey, as the requirements of the EJ Law are going to make it unaffordable and unattractive to develop and expand in New Jersey. (54 and 203)

56. COMMENT: Due to the expansive nature of what determines a community to be overburdened, 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. (186)

57. COMMENT: AEA hopes the Environmental Justice Law redresses past wrongs, promotes health, and provides economic benefit to overburdened communities. 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 a new business from locating in the community. A benefit that is anticipated may or may not actually occur. (106)

58. COMMENT: The Social and Economic Impact statements should account for the potential loss of beneficial recycling, and it did not consider the scrap metal recycling industry. The Jobs Impact statement is inadequate because it does not consider the loss of scrap metal recycling jobs in the State. The regulations will prohibit scrap metal recycling in New Jersey. (54 and 160)

RESPONSE TO COMMENTS 44 THROUGH 58: As set forth more fully in the notice of proposal, 54 N.J.R. 985-986, the adopted rules do not prevent construction of new facilities or continued operation or expansion of existing facilities in overburdened communities. Rather, the procedures set forth in the rulemaking seek to fully and accurately assess facilities’ impacts to baseline environmental and public health stressors in overburdened communities and implement appropriate and feasible conditions necessary to avoid disproportionate impacts. As set forth in the notice of proposal, 54 N.J.R. 985-986, the Department does not anticipate that the adopted rules will prevent construction of new subject facilities provided the proper environmental controls are instituted to avoid disproportionate impacts upon overburdened communities. Moreover, only certain types of facilities are subject to the adopted rules at all, and existing facilities of those types are only required to comply with the rules when they seek to renew a major source permit pursuant to the Air Pollution Control Act (APC Act) or seek to expand operations. In both instances, the APC Act specifically prevents the Department from denying applications or preventing continued operation, authorizing only the implementation of
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protective permit conditions. The facilities subject to the rules are unlikely to include schools, supermarkets, medical facilities, or transportation centers, and where those types of operations are affected it will be because they will or already do constitute significant sources of air pollution or increase stressor impacts in overburdened communities.

A reduction in localized environmental and public health stressors is likely to improve economic activity in overburdened communities, and support improved employment outcomes in those host communities, which could also stimulate economic activity elsewhere in the State. Numerous studies link air pollution with reduced productivity and a stalling local economy, including one study conducted by the EPA on the effects of reduced air pollution in certain communities. The EPA demonstrated that those communities would lose fewer workdays (roughly 17 million fewer lost workdays nationwide) in a single year by 2020 as a result of more stringent air pollution measures. EPA, Benefits and Costs of the Clean Air Act, available at https://www.epa.gov/clean-air-act-overview/benefits-and-costs-clean-air-act-1990-2020-report-documents-and-graphics. Those communities also would also see greater worker productivity and less money spent on health care costs. As stressors are reduced in the affected communities, those communities will become more attractive—both to potential new residents and to the type of investments that drive economic revitalization. As stated in the notice of proposal, 54 N.J.R. 989, the Department anticipates that the adopted new rules will result in stronger, healthier communities, build better businesses, demonstrate that environmental protection and economic development are not mutually exclusive, and advance the State’s efforts to achieve a triple bottom line of social, environmental, and economic success.
Accordingly, the Department does not anticipate that the rules will result in a loss of economic opportunities for covered facilities as speculated by commenters. New covered facilities will not be prevented from being sited in overburdened communities where their operations can avoid a disproportionate impact or if a compelling public interest is shown, and existing facilities are ensured the right to continue or expand operations subject to appropriately protective conditions.

59. COMMENT: 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. (306)

60. COMMENT: While both the enabling legislation and subsequent rulemaking 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 communities, that could lead to larger overall social injustice outcomes. These unintended consequences include limiting industrial redevelopment opportunities, disincentivizing 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. (203)

RESPONSE TO COMMENTS 59 AND 60: The Department recognizes the value of industrial redevelopment and beneficial recycling projects, and actively encourages and facilitates
contaminated site remediation, as well as investments in clean technology and water infrastructure. The APC Act’s statutory mandate, nonetheless, directs the Department to appropriately scrutinize certain types of facilities which, by the nature of their activity, have the potential to increase environmental and public health stressors in order to avoid further disproportionate impacts upon overburdened communities. The Department must, therefore, balance community benefits with potential impacts and implementation of measures to avoid, minimize, or mitigate the localized impacts that covered facilities may have on environmental and public health stressors in overburdened communities.

The regulations implement reasonable methods to assess the presence of, and reduce disproportionate impacts in, overburdened communities through the implementation of feasible pollution controls to ensure, as required by the APC Act, that “no community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State’s economic growth.” N.J.S.A. 13:1D-157. As noted in the notice of proposal, 54 N.J.R. 973, the Department has discretion to approve proposed facilities that will serve a compelling public interest in the host overburdened community. See N.J.S.A. 13:1D-160.c; proposed N.J.A.C. 7:1C-5.3(c). The adopted rules do not stand in the way of beneficial projects in overburdened communities, but they must prioritize the health, safety, and environmental needs of the individuals in those communities.

For further discussion of compelling public interest see the Response to Comments 70 through 80.
61. COMMENT: The DEP should provide more specificity regarding what comprises a compelling public interest. This could be achieved by delineating the specific activities in the rule that would apply. Such activities could be: (1) Municipal or neighborhood scale food waste composting facilities or small to medium scale (that is, institutional, neighborhood, municipal) food waste anaerobic digesters; (2) Public water infrastructure; and (3) Photovoltaic Arrays or OnShore Wind generators and related infrastructure. This should not be a blanket exception, and facilities engaged in such activities must still undergo significant individual scrutiny. Any additional activities the DEP wanted to add that would also be eligible for a compelling public interest exception should only be considered after an extensive public stakeholder process. (56 and 347)

RESPONSE: In the notice of proposal Summary, 54 N.J.R. 973, the Department identified non-exclusive examples of the types of facilities that would be envisioned as potentially meeting the compelling public interest standard, including appropriately scaled food waste facilities, public water infrastructure, renewable energy facilities, and projects designed to reduce the effects of combined sewer overflows. As noted in the notice of proposal, 54 N.J.R. 973, consistent with the Legislature’s intent, compelling public interest is a narrow exception to the Act’s requirement that the Department deny the issuance of a permit to a new facility that cannot avoid a disproportionate impact. In an effort to both ensure the exception remains narrow, and to account for situations not presently contemplated that could potentially serve a compelling public interest, the Department does not believe an explicit list would be appropriate.
62. COMMENT: Compelling public interest is too narrow and improperly excludes consideration of economic benefits. Nothing in the law or legislative history indicates that economic benefits should be excluded. Encouraging additional jobs and increased income must be viewed as a public benefit, particularly in low-income communities and communities with high levels of unemployment. (54, 59, 77, 84, 102, 160, 173, 203, 253, 306, 319, 325, 326, 382, and 476)

63. COMMENT: In addition to economic and job benefits, the Department should consider community service and community support provided to residents living near industrial facilities, such as volunteer programs, educational and workforce training programs, and grants to improve services or quality of life. (59)

64. COMMENT: The definition of compelling public interest is too narrow because the Department does not consider economics, and this is beyond what the law requires. (203 and 476)

65. COMMENT: We are concerned that the definition of “compelling public need” is missing essential factors, such as consideration of economic variables. (325)

66. COMMENT: The definition of “compelling public interest” at 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 pursuant to the proposed definition. Similarly, the percentage of unemployed residents 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 pursuant to 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. (306)

67. COMMENT: The proposed rule ignores economic advantages associated with permitted facilities. At least two sections of the proposed rulemaking 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.R. 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 rulemaking 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. (59 and 354)

68. COMMENT: The DEP should withdraw the proposed rulemaking as inconsistent with legislative intent. The Legislature created a loophole with the compelling public interest standard that does not exclude an economic benefit analysis or require that the primary purpose of the facility must be to serve an essential environmental, health, or safety need for which there is no reasonable alternative. These requirements were created by the DEP within the notice of proposal, but the DEP cannot limit the scope of what is established by legislative text. The rule, as proposed, will either be invalidated by a judge or overturned by the Legislature. (402)

69. COMMENT: Consideration of the economic benefits of facilities should 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 addition, based on the idea that the law was created to protect OBCs, which by definition, are considered as low-income areas. (85)

RESPONSE TO COMMENTS 62 THROUGH 69: The Department recognizes that facilities subject to the Act may provide economic benefits, including, but not limited to, employment opportunities, tax ratables, and other financial incentives and encourages the continuation of mutually beneficial relationships between facilities and their host communities. However, the
Department determined that not allowing the consideration of economic benefits as a basis for the siting of new regulated facilities (a narrow subset of potential development opportunities in an overburdened community) is necessary to meet the Legislature’s statutory mandate to prioritize and improve the overall environmental, health, and economic well-being of individuals residing in overburdened communities. This is consistent with the Legislature’s findings that: (1) adverse environmental and public health stressors impede the growth, stability, and long-term well-being of individuals and families living in overburdened communities; (2) 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; (3) it is past time for the State to correct this historical injustice; (4) no community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State’s economic growth; and (5) 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. N.J.S.A. 13:1D-157.

Employment and the improvement of environmental and public health conditions are not mutually exclusive, and the adopted rules seek to further both. The Act requires the Department to ensure that new facilities sought to be sited in overburdened communities do not cause, contribute to, or create disproportionate environmental and public health stressors unless necessary for a compelling public interest specific to the members of that community.

Accordingly, and consistent with the principle that exceptions to environmental and public health statutes are to be construed narrowly, the Department has tailored the adopted
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An important part of this intentionally narrow tailoring is that a facility must primarily serve an essential environmental, health, or safety need of the individuals of an overburdened community to avoid the continued siting of facilities in overburdened communities that provide broad societal benefits on the pretext that those facilities also provide general benefits to members of the host community, which would only threaten to further historic siting inequities.

Moreover, the adopted rules require the Department to place conditions on any approval to construct a new facility that serves a compelling public interest in the overburdened community to ensure that facility operates in accordance with any demonstrations made to satisfy this narrow exception and to ensure, consistent with the express language of the Act, that any benefits are localized to the community as required by the Act. After careful deliberation and extensive stakeholder discussion, the Department reasonably determined that economic justifications, such as local hiring commitments or other promises of economic benefit, would be difficult, if not impossible, for the Department to effectively quantify, appropriately condition, and meaningfully enforce, particularly in light of the Act’s requirement that any benefits must be localized to the overburdened community. As compelling public interest serves as an exception to the Act’s requirement of mandatory denial of siting new facilities that would contribute to adverse cumulative stressors, an inability to strictly enforce economic benefit conditions would threaten to undermine the statutory intent by allowing construction of facilities without certainty that the predicate requirements will continue to be met.
Consistent with the Legislative intent to reduce the environmental and public health stressors within overburdened communities due to historic inequities in facility siting, notwithstanding the economic benefits associated with such facilities, the compelling public interest standard allows the Department to 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 and provides an appropriate pathway to allow projects that address host community needs, such as appropriately scaled food waste facilities, public water infrastructure, renewable energy facilities, and projects designed to reduce the effects of combined sewer overflows. While the adopted rules prohibit the consideration of economic benefits as the basis for the Department’s decision to grant a compelling public interest exception, they specifically allow the consideration of support for a project in the overburdened community in determining whether a compelling public interest is present to ensure its decisions meet the needs of community members.

70. COMMENT: The rules should emphasize that a new facility should serve an essential health or safety need for individuals in the host overburdened community in order to qualify for the compelling public interest exception. (311)

71. COMMENT: Consideration of a public good exemption must show that the public good accrues to the host community. (73)
72. COMMENT: The regulation should 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. (264 and 265)

73. COMMENT: The terms used to define “compelling public interest” require further clarification. It is unclear what the DEP is deeming “essential” or how high the bar is to achieve this standard. The DEP should define this term drawing upon the language used in the Freshwater Wetlands Protection Act, which includes its definition of compelling public need. (173, 230, and 326)

74. COMMENT: There is no objective measure for when a solution is “reasonably available” and the DEP could veto a new facility if any other hypothetical solution could be identified even if it is not realistic. (54, 59, 77, 84, 102, 160, 173, 203, 253, 306, 319, 325, 326, 382, and 476)

75. COMMENT: 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.” 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. (107)

76. COMMENT: Including public works projects in the definition of “compelling public interest” (N.J.A.C. 7:1C-5.3) will prevent the 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. (106 and 186)

77. COMMENT: 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? (106)

78. COMMENT: 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. (325)

79. COMMENT: The proposed rule provides the DEP with too much discretion to deny applications for new facilities and to impose unlimited conditions, in both scope and number, of existing facilities. With respect to new facilities, the consideration of a “compelling public interest” is a subjective, vaguely defined term that will be difficult to meet without further clarification. (173, 230, and 326)

80. COMMENT: A new facility should be required to assert an essential health or safety need for individuals in the overburdened community in order to show a compelling public interest. (415 and 431)
RESPONSE TO COMMENTS 70 THROUGH 80: Pursuant to the Act, the Department must deny a permit for a new facility if it will result in a disproportionate impact, except where the Department determines “that a new facility will serve a compelling public interest in the community where it is to be located.” N.J.S.A. 13:1D-160.c. In such a case, the Department “may grant a permit that imposes conditions on the construction and operation of the facility to protect public health.” *Ibid.*

Accordingly, the Department has narrowly tailored the rules to provide a limited exception to the Act’s requirement of a mandatory denial requirement. Pursuant to adopted N.J.A.C. 7:1C-5.3(b), an applicant seeking to satisfy the compelling public interest standard must demonstrate that the facility will serve a compelling public interest in the host overburdened community. The Department has defined compelling public interest to include a 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.”

Given the Legislature’s clear focus on localized impacts and the need to ensure that the facility serves a compelling public interest in the overburdened community, the Department determined it critical to ensure that the facility primarily serves an essential environmental, health, or safety need of the individuals of an overburdened community without a reasonable siting alternative. This language is necessary to avoid the continued siting of facilities in overburdened communities that provide broad societal benefits on the pretext that those facilities
also provide general benefits to members of the host community. The continuation of the status quo in this regard would only threaten to further historic siting inequities the Act seeks to redress.

In evaluating the consideration of alternatives, the term “reasonably available” is intended to require a reasonable investigation of available alternative sites, including those which could feasibly be acquired, while avoiding the need to consider all hypothetical alternative sites. The Department would not consider a solution that is not realistic as a “reasonably available” means of meeting the essential need.

For this, and each aspect of the compelling public interest standard, the Department would consider applications on a case-by-case basis. However, to provide a level of guidance, the Department expressly provided in the notice of proposal Summary, and in the adopted rules at N.J.A.C. 7:1C-5.3(c), that facilities, such as a public works project, that would directly reduce adverse environmental or public health stressors in the host overburdened community are the types of facilities that are likely to serve an essential environmental, health, or safety need of the host overburdened community. The Department also provided a non-exclusive list of illustrative examples of potential qualifying projects, such as appropriately scaled food waste facilities, public water infrastructure, renewable energy facilities, and projects designed to reduce the effects of combined sewer overflows.

Finally, to ensure meaningful input and participation by members of an overburdened
community, the Department would consider as relevant, the position(s) of members of the overburdened community in determining whether a facility satisfies the compelling public interest standard.

For further discussion of potential permit conditions for new facilities see the Response to Comments 455 through 477.

81. COMMENT: The Department’s definition of compelling public interest and the requirements to show compelling public interest at N.J.A.C. 7:1C-5.3 are not the same. There is a disconnect between the definition’s use of “reasonable alternatives” and N.J.A.C. 7:1C-5.3’s use of “feasible alternatives.” The indication at N.J.A.C. 7:1C-5.3 that feasible alternatives outside the community be considered makes this requirement even more burdensome and difficult to satisfy than the compelling public interest definition. Are greenfields the only option for new facilities? N.J.A.C. 7:1C-5.3(b)1, 2, and 3 should be deleted so that there is no confusion about what is required to show a compelling public interest. (160)

RESPONSE: The rules contain both a definition of compelling public interest and a standard for compelling public interest. The standard for compelling public interest is intentionally strict in keeping with the EJ Law’s explicit goals. The commenter is correct that there is an inconsistency in the rules between the uses of “reasonable” and “feasible” in the definition of compelling public interest and the standard at N.J.A.C. 7:1C-5.3. The Department intended these provisions to be consistent and has corrected “feasible” to “reasonable” upon adoption.
82. COMMENT: 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. (392)

RESPONSE: As explained more fully in the Response to Comments 70 through 80, the adopted compelling public interest standard, consistent with the Act’s mandate to reduce the environmental and public health stressors within overburdened communities due to historic inequities in facility siting, notwithstanding the economic benefits associated with such facilities, allows the Department to consider whether a proposed facility application, 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. This standard serves as the appropriate pathway to allow projects that address host community needs, such as projects designed to reduce the effects of combined sewer overflows.
83. COMMENT: A definition should be added to the proposed rule for the term “significant degree of public interest” to identify the metrics that the DEP will use to consider public interest significant. (84 and 382)

RESPONSE: Given the diversity of the almost 3,500 overburdened communities across the State, it would be infeasible for the Department to set a specific metric to define significant public interest. To provide the flexibility necessary to accurately assess and act upon the needs of a given community, the Department will consider significant public interest on a case-by-case basis, considering, among other relevant criteria, the relative volume of comments in relation to the overall population of the overburdened community, whether public interest is consistently in support or opposition and evidence (or lack thereof) that interest is from members of the community.

84. COMMENT: Pursuant to 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 that 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 households, and that help mitigate its public health stressors, such as unemployment. (86, 106, and 237)
85. COMMENT: The Department should consider the conflict between making unemployment a stressor while simultaneously not including the economic benefits of direct and indirect jobs and tax revenue in its review. Failure to consider economic benefits as justification for a determination of compelling public interest is arbitrary and capricious. (173, 230, and 326)

86. COMMENT: 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. (59, 306, and 354)

RESPONSE TO COMMENTS 84, 85, AND 86: The comparison between the standard for compelling public interest, which prevents consideration of economic factors, such as employment, and the inclusion of unemployment as a stressor is erroneous. As explained more fully in the Response to Comments 70 through 80, the Department reasonably determined that allowing economic considerations to serve as the basis of a decision to approve a construction of a new facility that would otherwise receive a mandatory denial for failure to avoid a disproportionate impact would be inconsistent with the spirit, intent, and legislative findings underpinning the Act.

That is not inconsistent with the use of unemployment to establish baseline stressors that “may cause” impacts to public health in overburdened communities as the Act is premised on the finding of a legacy of inequitable siting of pollution-generating facilities in low-income
communities and communities of color that have borne a disproportionate share of the adverse environmental and public health consequences that accompany the State’s economic growth. The proportion of unemployed people living in overburdened communities is a localized stressor and, as noted in the notice of proposal, 54 N.J.R. 982, unemployment has direct impacts on the health and wellbeing of individuals and their families due to decreased access to health care and parental leave, depression or anxiety, and other physical and mental health effects.

In contrast, the economic factors referenced by commenters are not directly tied to the local community and are properly excluded. For example, the construction or expansion of a facility in an overburdened community may not necessarily employ those people living in its host community. Similarly, a facility built outside of an overburdened community may still offer employment opportunities to people who live in overburdened communities—and, if so, it could in fact work to reduce that community’s unemployment rate, potentially reducing adverse cumulative stressors and, in turn, making it easier for future facilities to avoid a disproportionate impact.

For further discussion on the exclusion of economic factors from compelling public interest, please see the Response to Comments 62 through 69, and for further discussion on the basis for inclusion of unemployment, please see the Response to Comment 436.

87. COMMENT: The lack of an objective standard for “compelling public interest” allows for the loudest voices to make the decision. (54)
RESPONSE: As explained more fully in the Response to Comments 70 through 80, the adopted rules establish a reasonable method for determining whether a facility will serve a compelling public interest. As explained in the notice of proposal, 54 N.J.R. 985, and as provided at N.J.A.C. 7:1C-5.3(c), proposed facilities that directly reduce adverse environmental and public health stressors in the host overburdened community can be considered as serving an essential environmental, health, or safety need of that overburdened community. The burden is on the applicant to make this showing, and it may do so by providing objective information.

The Department’s inclusion of the positions of members of the affected overburdened community as relevant to this determination at N.J.A.C. 7:1C-5.3(d) provides important perspective and furthers the Legislature’s finding that “the State’s overburdened communities must have a meaningful opportunity to participate” in the decisions that would allow covered facilities in their communities. N.J.S.A. 13:1D-157. The standard for compelling public interest is reasonable and consistent with the Act.

Supportive of Strongest Rules Possible

88. COMMENT: I am strongly urging you to pass the strongest environmental justice rules possible. (1, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 45, 46, 47, 48, 49, 50, 51, 53, 55, 56, 57, 58, 60, 61, 62, 63, 64, 65, 66, 68, 70, 71, 72, 74, 75, 76, 78, 79, 80, 83, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 98, 99, 100, 104, 108, 109, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 129, 131, 132, 133, 134, 135, 136, 137, 138, 139, 141, 142, 144, 146, 147, 148,
89. COMMENT: There is no reason that Black and Brown lives are worth less than white privileged people. (128)

90. COMMENT: Regardless of zip code, residents deserve access to clean jobs that reduce pollutants and improve public health benefits overall. (374, 475, and 481)

91. COMMENT: Overburdened communities experience significant negative public health effects, such as cancer and respiratory illness, from polluting facilities that impair air quality, contribute to climate change, and cause other environmental harm. These health effects are frequently focused on the most vulnerable members of already overburdened communities, including children, that must be protected. Residents deserve a voice in decisions that will impact
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their health. (45, 67, 79, 80, 81, 97, 110, 128, 166, 176, 189, 209, 213, 252, 265, 295, 320, 324, 351, 352, 359, 373, 384, 441, 478, 479, 489, and 495)

92. COMMENT: To fulfill the intent of the law, the proposed rule should be as strong as possible to protect overburdened communities that have been historically disenfranchised from polluting industries to ensure the maximum protection of public health and the environment. (23, 67, 75, 130, 252, 265, 305, 357, 394, 415, and 472)

93. COMMENT: The regulations must be as strong as possible for the benefit of both residents and workers. People in overburdened communities deserve the same air quality as people in non-overburdened areas. Facilities that will be impacted by these rules are large, dirty, polluting entities, rather than union jobs. You cannot continue to extort overburdened communities by making them choose between jobs and health when both are required for human flourishing. Many industries and businesses that are good actors and employ many union workers are not covered by this rulemaking. (415 and 489)

94. COMMENT: Please be a just shepherd of the environment and all of us who live here. Environmental justice is a human right and is right for the planet. (180)

95. COMMENT: Everyone deserves a livable planet, and less pollution means more jobs in renewable energy. Only those companies that refuse to take up cleaner energy production lose. (221)

96. COMMENT: 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, the DEP heard comments from a minister in South Jersey who asked, do we not
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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 profited. The status quo is morally wrong. These communities deserve full, strong protections from this landmark law. (265)

97. COMMENT: CSO infrastructure problems plague 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 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. (305)

98. COMMENT: 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. (309)

99. COMMENT: Having participated in marches in the Ironbound section of Newark, I urge those responsible for establishing the environmental justice 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-19 prevention. (334)

100. COMMENT: Nobody buys it anymore. 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 New Jersey, 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. (343)
101. COMMENT: These overburdened communities located in the 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 pollution 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 the DEP 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. (394)

102. COMMENT: Standards for expansion and renewal permit requests should be as strict as possible to prevent facilities starting small for an easier review and expanding over time. Pollution needs to be avoided, when from a new facility, and minimized when from a renewal (23, 419, and 426)

103. COMMENT: The rulemaking needs strong enforcement because overburdened communities have suffered enough. There should be no more building, no more exemptions, or anything like that in these communities. No facilities in Camden should be given permits for new revenue streams. (496)

104. COMMENT: 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 is crucial to achieving the objectives of the EJ Law. However, multiple nationwide studies have shown that race is frequently found to be the most determinative factor for pollution exposure. Studies specific to New Jersey also show a strong association between race and
pollution burden within the State. Further, courts have held that the DEP’s permitting practices resulted in an adverse, disparate impact on the basis of race, color, or national origin. The DEP, itself, 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 using a score of stressors, such as NATA cancer risk and density of known contaminated sites. Of the 449 facilities in OBCs, 94 percent (or 421) are in cumulatively adverse OBCs, and of these 421 facilities, 350 (83 percent) are in a cumulatively adverse OBC that meets the minority criterion (whether or not the OBC also meets another criterion), with 212 (50 percent) 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. 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, such as redlining and racially restrictive covenants. Also, DEP’s permitting program historically ignored its obligations pursuant to civil rights laws, and studies found that patterns of racial disparity in enforcement actions. Since at least the 1950s, 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 the DEP did not consider racial disparity in the decision-making. 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, though this is a secondary indicator when compared to race. While 374 (or 83 percent) of all facilities are in
OBCs that meet the minority criterion, only 171 facilities (or 38 percent) 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 (six percent) fall in this category. Simply put, as numerous studies, statistics, scholarly publications, and articles have shown, factors or indicators such as income though useful, cannot entirely substitute for the inclusion of racial classifications, especially since data collection is rife with racial bias. 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 the DEP’s EJ rulemaking, is New Jersey’s opportunity to stand with EJ communities and help ensure that they no longer must suffer disproportionate environmental burdens. (56 and 347)

105. COMMENT: Newark has a history of being vulnerable as an industrial site due to redlining. This needs to be prevented. The environmental justice regulations should be stringent so that this historic injustice is ended. It will be crucial to work with the nonprofit organizations and the community, and take their feedback into account. (429)

106. COMMENT: 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. 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. (166)

107. COMMENT: 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. (215)

108. COMMENT: The League of Women Voters of New Jersey is impressed by the thoroughness of the rulemaking 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. Thank you to the Commissioner and staff of the DEP for a job well done. (222)

109. COMMENT: I fully support the rules set forth in this rulemaking. (241)

110. COMMENT: Our organization expresses gratitude to the Department of Environmental Protection for providing multiple authentic opportunities for community engagement on this pertinent ruling. 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. When we look at some of the most affected communities that this regulation would benefit, like the Ironbound district in Newark and Camden City, it is clear that the people in these vibrant, established communities deserve the protections this rulemaking would offer. Residents of overburdened communities should not have to consider moving out of their communities to improve their own and their loved one’s health, nor is it an option many of them can afford to consider. (252)
111. COMMENT: 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. (265)

112. COMMENT: “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 tells you
everything you need to know. It is unfair that we 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 inhabitants 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. (269)

113. COMMENT: I strongly support New Jersey’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. (287)

114. COMMENT: Many thanks to our EJ colleagues and the DEP for creating New Jersey’s nation leading EJ Law. (305)

115. COMMENT: 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 rulemakings like this. 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 20 years later, as citizens grapple with polluting facilities that make their neighborhoods smell bad and result in higher rates of respiratory conditions. (315)

116. COMMENT: N.J.A.C. 7:1C stands to be a groundbreaking rulemaking. We, the WPA, support the EJ rulemaking 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. (384)

117. COMMENT: This statement is being made on behalf of the Health, Education, Energy and Pollution Subcommittee of the Environmental and Climate Justice Committee of the New Jersey State Conference of the NAACP. This body stands in favor of the Environmental Justice Law, N.J.S.A. 13:1D-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 groundbreaking achievement of the EJ community’s 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 rulemaking. 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 New Jersey NAACP, as part of our nation’s oldest organization standing in defense of Black Americans, has a vital stake in the outcome of the DEPs rulemaking and will be strongly attentive to the outcome of that process. (387)

118. COMMENT: As a citizen of New Jersey and advocate for clean air and water for all communities throughout the State, I support the DEP’s proposed rulemaking, Environmental Justice Bill S232, which proposes to Strengthen the DEP environmental justice process to deny or challenge polluting facilities (that is, pipeline, natural gas companies) from obtaining permits, especially in host overburdened communities. 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. (394)

119. COMMENT: I strongly support this rulemaking, which will work towards equalizing environmental protections across all New Jersey communities. (401)

120. COMMENT: The DEP is commended for proposing regulations that address the goals of the Environmental Justice Law to affirm the inherent worth and dignity of every person, and promote justice, equity, and compassion in human relations. (202)
RESPONSE TO COMMENTS 88 THROUGH 120: The Department appreciates and acknowledges the commenters’ support for the rules. Further, the Department agrees that consistent with the Act’s intent, individuals in overburdened communities deserve the robust protections for the environment and their public health and believes the rules provide those protections. Further, consistent with the Legislature’s findings, the Department believes 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 and that the principles of environmental justice require 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. The rules recognize that this goal can only be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making processes in the places they live, learn, work, and recreate.

Further, the Department recognizes that New Jersey’s low-income communities and communities of color, historically, have been subjected to a disproportionately high number of environmental and public health stressors, including mobile sources of pollution, as well as numerous industrial, commercial, and governmental stationary sources of pollution, with this inequity further compounded by a lack of important environmental benefits, such as quality green and open spaces, sufficient tree canopy, or adequate stormwater management.

Accordingly, the rules are premised, in part, on the recognition that existing environmental standards are often formulated based on the effect that pollution has upon general
populations spread over wide geographic areas, which may fail to fully consider localized impacts and seek to meet the Legislature’s intent to address these historic inequities and the legacy of siting sources of pollution in overburdened communities that continues to pose a threat to the health, well-being, and economic success of the State’s most vulnerable residents. The rules, therefore, ensure a meaningful opportunity to participate in Departmental decisions pertaining to covered facilities which may disproportionately increase environmental and public health stressors affecting the community and, where appropriate, to limit the future siting or expansion of such facilities in overburdened communities and place reasonable conditions on the operations and construction of covered facilities.

**Additional Support**

121. COMMENT: 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. (237)

122. COMMENT: Covanta is pleased to support New Jersey’s leadership in advancing the cause of environmental justice. In fact, we take pride in 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. The new Environmental Justice Law will have 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 rulemaking 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. (143)

123. COMMENT: The method the 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. 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. (56 and 347)

124. COMMENT: 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. (293)

125. COMMENT: 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. (325)

126. COMMENT: Stericycle supports and shares the DEP’s goals of ensuring environmental justice and reducing environmental impacts to overburdened communities. (59 and 354)

127. COMMENT: We support this bill 100 percent because it creates an equal playing field for those who live in the overburdened community. Now they have to let the community know what kind of jobs are coming and talk to the residents of the community. They have to work together, bring the community in and consider how the community is living, the health needs of the community, and provide education and training for the community. This bill is more important to the community because it brings everyone to the playing field so that everyone has to work together to consider what they are building. It is a benefit to the builders and the residents. (445)

128. COMMENT: The drafted rule is a step in the right direction, though it could be stronger. When the rule comes into effect, I hope the DEP is given enough resources to fully implement this rule so that it can really make a difference for the communities it is intended to help. (430)

RESPONSE TO COMMENTS 121 THROUGH 128: The Department acknowledges commenters’ general statements of support of the overarching goals of the Act and the rules and has addressed substantive concerns outlined by some commenters elsewhere in this notice of adoption.

129. COMMENT: EMR employs Camden residents, has additional open jobs, and has invested more than 250 million dollars into its Camden facilities during the last five years. EMR strongly
supports the principles of environmental justice and the right to live, work, and play in a healthy environment, as shown through EMR’s long record of public outreach and support for local community groups. We are working to establish internships and other career path opportunities for Camden residents, as well as working on affordable housing initiatives for our employees. We are spending millions of dollars to enclose our shredder and install a system that scrubs and heats any air that moves out of the shredder as it operates, eliminating virtually all airborne particles. Metal recycling is an essential task that reduces climate change. Unfortunately, the proposed rules harm EMR’s ability to be a community partner. We are dedicated to remaining in Camden and supporting its residents. (494)

RESPONSE: The Department acknowledges the commenter’s statements about their commitment to their community. The Department anticipates the rules, including meaningful public participation, will better facilitate direct interaction to thoroughly understand local community concerns, encourage inclusion of additional operational controls to address those concerns, reduce environmental and public health stressors affecting residents within the community, and require other facilities to meet the standards the commenter has set in that community. The Department expects the rules will serve to benefit and enhance the commenter’s public engagement efforts and improve its, and other similarly situated facilities’, community partnership efforts. Consistent with the rules, the Department anticipates facilities that have invested time and resources in better, community-focused engagement and operational controls will have a clearer, more efficient path to compliance. The Department does not expect the rules
will hurt a facility’s ability to be a partner with their local community, in fact, as discussed above, it should enhance that ability.

**Public Hearing and Comment**

130. COMMENT: The requirement for applicants to respond to public comments should be limited to comments by “interested parties” and that should be defined as residents who live or work in the overburdened community, or organizations that are commenting on behalf of the identified residents or workers of the overburdened community that are related to the permit being sought and the potential impact of the facility. It is unclear how the Department will determine whether an applicant has sufficiently addressed the comments received. (54, 59, 84, 160, 173, 210, 230, 319, 326, and 382)

131. COMMENT: The people that live in the community should be the ones to determine whether it actually is beneficial for them, rather than people who do not live nor reside there or do not have loved ones in the community. (128)

132. COMMENT: How does the Department anticipate a facility responding to a comment regarding temporary impacts at a facility, such as traffic rerouting? Will these be considered relevant? (106)

133. COMMENT: The DEP should revise the proposed rule to 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 DEP to attach special conditions to the permit resulting from said comments. (173, 230, and 326)
RESPONSE TO COMMENTS 130, 131, 132, AND 133: To meet its statutory duty to ensure meaningful public participation, the Department cannot limit public comments or the requirement to respond to those public comments by members of the overburdened community as community interests may be represented and relevant information provided by individuals who do not work or reside in the host community. Additionally, applicants will be required to record and provide responses to all comments received as part of the meaningful public participation process. For comments that are not germane to the facility under review or otherwise unrelated to the standards set forth in the rule, the applicant would simply be required to indicate non-applicability and, where necessary, provide sufficient explanation for its determination.

The Department will evaluate an applicant’s response to comments to determine whether the applicant has provided information that is sufficiently responsive to each public comment and any permit conditions pleased on a facility’s construction or operation will be determined in accordance with the adopted rules and responsive only to comments relevant to contributions to environmental and public health stressors by the existing or proposed facility’s construction and operation.

134. COMMENT: The proposed rulemaking can be strengthened by ensuring that residents of host communities have meaningful input into what qualifies as a public good rather than leaving that decision with others, by increasing the number of required local hearings and providing flexibility for public comments in multiple media forms, and applicants for new facility permits...
should be required to conduct meaningful community outreach online, through automated phone calls, and in collaboration with local community centers schools and churches. (73)

135. COMMENT: Pertaining to N.J.A.C. 7:1C-4.2(a)1: Allow provisions to be held remotely online through Teams, ZOOM, etc. ... 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. You need a paragraph that the Department shall have the public hearing transcribed. These measures are to avoid any conflicts of interest. (210)

136. COMMENT: It should be required for a certain number of the required hearings to be virtual to maximize participation. (73, 252, and 265)

137. COMMENT: The DEP is commended for including a public process to hear from as many people as possible. Holding public meetings both in person and virtually gave many people the opportunity to participate. (202)

138. COMMENT: You need a paragraph that the Department shall have the public hearing transcribed. These measures are to avoid any conflicts of interest. (210)

RESPONSE TO COMMENTS 134 THROUGH 138: To promote accessibility for all members of the affected community, in accordance with the Legislature’s goal of ensuring meaningful participation, the Act requires that hearings be held “in the overburdened community,” with the “date, time, and location” provided through public notice. N.J.S.A. 13:1D-160(a)(3). Public hearings must, therefore, include an in-person component, consistent with the Act. The rules allow for permit applicants to hold a hearing in a location near to the host community if they can demonstrate that “no suitable meeting space” is available in the host overburdened community.
N.J.A.C. 7:1C-4.2. As required by the statute, the “permit applicant shall transcribe the public hearing” and submit the transcript to the Department. N.J.S.A. 13:1D-160(a)(3).

Applicants are also required to include a virtual component, in addition to the in-person hearing, to promote public participation. As stated in the adopted rules, the virtual component “shall be recorded and available online for the public to view.” N.J.A.C. 7:1C-4.2(a2).

139. COMMENT: Review of EJIS and Authorization to Proceed: We 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.” 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. (210)

RESPONSE: Pursuant to N.J.S.A. 13:1D-160(a)(3), the Act requires the permit applicant to provide “an opportunity for meaningful public participation at the public hearing.” Accordingly, the Department has mirrored the Legislature’s intent in dubbing the process to be conducted pursuant to the rules as “meaningful public participation” and has set forth standards to ensure the public hearing and comment processes are not viewed as simply “checking the box” obligations, but rather critical to ensuring that applicants engage directly with members of their host overburdened community and other interested parties in a manner that accurately communicates the scope of any intended project, fully identifies community concerns, and
feasibly addresses those concerns through appropriate permit conditions. The Department, therefore, does not believe the suggested change is warranted or necessary.

140. COMMENT: The DEP should 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 DEP 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. (59, 173, 230, and 319)

141. COMMENT: The proposed rulemaking should expressly afford well-established community advisory panels the opportunity to contribute to the public hearing process. Many facilities in the State have active 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 CAP’s public hearing comments. (326)
RESPONSE TO COMMENTS 140 AND 141: The Department recognizes that certain facilities already have robust public engagement processes, including the creation of CAPs, and fully expects that this form of regular, direct, and transparent community engagement that identifies and addresses concerns of members of the host community will provide the facility with the information necessary to proceed smoothly and efficiently through the process set forth in the rules. The Department does not, however, have the flexibility to allow these CAP engagements to stand in place of the public hearing mandated by the Act at N.J.S.A. 13:1D-160(a)(3).

Public Input – “May” vs. “Shall”

142. COMMENT: The regulation should be modified from “may consider public input” regarding the public interest exception to “shall consider public input.” (56, 75, 166, 264, 265, 311, 347, 394, 412, 415, 422, 450, and 466)

143. COMMENT: The people inside the targeted community should determine their own interests. (23, 73, and 252)

144. COMMENT: 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. (190)

145. COMMENT: To strengthen the definition of compelling public interest and more directly target the communities this rulemaking is intended to serve, we recommend stating that
compelling public interest must be demonstrated by the community in which the facility will be located in the definition at N.J.A.C. 7:1C-1.5. (252)

146. COMMENT: The language must also clearly state that groups that represent members and residents directly affected by proposals are at the bargaining table, not just government entities or others appointed to speak for them. (264)

147. COMMENT: The DEP’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 DEP 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. (173, 230, and 326)

148. COMMENT: If an agreement on a particular mitigation and associated permit language is reached between the permit applicant and community representatives, the DEP should give this deference. (173, 230, and 326)

RESPONSE TO COMMENTS 142 THROUGH 148: The adopted rulemaking reflects the Department’s deep commitment to ensuring meaningful public participation consistent with the Act’s intent and the Department has carefully crafted N.J.A.C. 7:1C-5.3(d) to allow for the consideration of public interest, against, or in favor of, a specific project, as relevant to its determination of whether a new facility will serve a compelling public interest in the overburdened community. The adopted definition of compelling public interest requires facilities to demonstrate that they are necessary to serve essential environmental, health, or safety needs of
the individuals in an overburdened community. Given the criticality of ensuring that this provision remains narrowly tailored to maintain the integrity of the adopted rules, the need to assess the relativity and credibility of public interest related to a specific application, and the infeasibility in establishing an appropriate numerical standard to gauge public interest, the Department believes the more permissive “may” rather than a mandatory “shall” is appropriate to provide the Department with the necessary flexibility to assess public interest and consider it as a determinative factor in its assessment of compelling public interest only where appropriate. This provides the appropriate balance in providing communities self-determination while maintaining the Department’s statutory decision-making authority. To maintain this balance, the Department is committed to considering all public input and will heavily weigh significant opposition or support for any given project from individuals in the host overburdened community in its decisions under the adopted rules.

149. COMMENT: 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), CAP members, and majority of OBC residents do not oppose the proposed application(s), then the Department shall issue a decision requiring no further conditions pursuant to this chapter and proceed to process and approve the permit application in accordance with applicable State and federal regulation.” (326) RESPONSE: The Department has reviewed this suggestion and, for the reasons set forth in the Response to Comments 142 through 148 and because this suggested rule language would be
contrary to the Act’s requirement that the Department assess, and include necessary conditions to address, facility contributions to environmental and public health stressors, it does not believe the change is necessary or appropriate.

Public Notice

150. COMMENT: Sixty-day notice – Public Participation, Post-Hearing, and Comment Process:
   To be incorporated to the amendments of the Act, we recommend notice be given at least 30 days prior to the hearing. The current 60 days is time-consuming. (210)

RESPONSE: The EJ Law requires that notice of public hearings be provided at least 60 days in advance, N.J.S.A. 13:1D-160(a)(2), so the Department may not allow a shorter period.

151. COMMENT: The public notice requirements go well beyond the authority provided in the EJ Law and are ambiguous, unreasonable, vague, overburdensome, and unnecessary. The notice requirements in the EJ Law are more than sufficient. (160, 203, and 476)

152. COMMENT: To protect the most impacted communities, required notice should include text messages and phone calls, in addition to newspaper notification, informing them of potential facilities being sited in their neighborhood. The DEP should continually be updating outreach to be more inclusive of technological changes and the evolving way that residents receive information, such as through Instagram, TikTok, and other social media platforms. The DEP should also allow for the submission of comments through video, voice memos, and other, newer forms of feedback. The public process must ensure that local community groups and residents
are properly notified beyond just the notification to municipal officials or the clerks, and notification to the municipality should include notification to the Environmental Commission or Green Team of the municipality, if one is established. The DEP should convey information about new applications to existing municipality text alert/reverse 911 systems so that they can send out information. 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. (56 and 347)

153. COMMENT: Public notice requirements to the community should be extended to include mandatory notification to specific community groups and organizations that represent the overburdened community, particularly those groups active in environmental justice issues. (73, 75, 252, 423, 424, and 446)

154. COMMENT: Public notice should be available in languages of the community and should also include the local government, and community partners, such as churches, schools, and different agencies. For ease, public comments should be accepted as voice memos. (444)

155. COMMENT: Public notice should also be made to not just residents but tenants. The notices should be in libraries and community centers, as well as social media and traditional media, especially local multilingual sources. (79)

156. COMMENT: The DEP should remove the expanded public notice requirements from the proposed rules, as redundant of other public participation requirements. The requirements of the statute are sufficient. Further, proposed N.J.A.C. 7:1C-4.1 should be modified to: (1) require the DEP to publish notice materials on its website; (2) require only one newspaper notice and
provide flexibility if there’s a lack of newspapers; (3) remove the requirements for 200-foot notice, on-site notice, and other methods of notice apart from newspaper and website notice as overly burdensome; (4) delete the requirement to invite specific groups to the hearing as redundant to standard notice requirement; (5) delete the requirement to include a map in the notice as difficult for newspapers to accommodate; and (6) clarify the comment process such as to say “for a time period of 30 calendar days after the hearings, written comments may be submitted to the Department.” (210)

157. COMMENT: We need community-led solutions. Environmental standards are already questionable, and we don’t need anything that will take more from us, period. Let us develop our needs before any decisions are made. Newark is already suffocated by stressors from facilities, plane traffic, car traffic, and other stressors. (436)

158. COMMENT: Types of required public notice should be expanded to include forms of digital media, including social media and automated phone calls, and be provided in multiple languages. Additionally, acceptable comments received during the public participation process should include video and voice testimony in addition to written comments. (9, 73, 79, 166, 202, 222, 252, 265, 274, 421, and 423)

159. COMMENT: All public notice materials must be provided in multiple languages tailored to the impacted community and provided 60 days in advance of any hearing, and public hearings must include American Sign Language (ASL) interpreters to increase accessibility to the public participation process, at the applicant’s expense. Notice materials should also include a help line
to the NJDEP. Church leaders should be used to get the information out, as well as the DEP’s community liaisons and watershed ambassadors. (252 and 416)

160. COMMENT: Proposed N.J.A.C. 7:1C-4.1(a)ii states: “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. (59 and 69)

161. COMMENT: Notices for the hearings should be posted online with the public comment phone line provided. Public notices should be shared widely and translated into Spanish and other languages. Community groups, churches, schools, and environmental organizations need proper notice. (296)

162. COMMENT: Public participation requirements should be enhanced to be as strict as possible with required notification to anyone who may be impacted by a facility so that residents of overburdened communities can be made aware of proposed development and meaningfully engage in the process to shape their community. (73, 211, 252, 274, 290, and 394)

163. COMMENT: Applicants should be required to publish public notice twice, at least two weeks apart, prior to the public hearing. (23)

164. COMMENT: Church leaders, DEP community liaisons, and watershed ambassadors should be used to maximize public notification. (416)
165. COMMENT: The Department should alert appropriate local agencies that have jurisdiction over facility plans who must also review them, such as planning and zoning boards, environmental commissions, and green teams. (279)

166. COMMENT: 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. (166)

167. COMMENT: Predominant languages should be identified as a language minority group that: 1) has limited English proficiency; and 2) compromises two percent 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 at N.J.A.C. 7:1C-4.1. (252)

168. COMMENT: Existing entities with experience providing notice to communities and engaging and connecting with targeted groups within communities, such as public and private utilities, should be provided with notice of projects in OBCs and should be utilized to provide notice and educate those communities about these projects. (43 and 352)

169. COMMENT: The final regulations should require the applicant to use common technologies, such as email listservs, automatic cell phone alerts similar to AMBER alerts, and social media in order to reach the maximum number of community members. Electronic notifications can include hyperlinks to all relevant information. (43 and 352)

RESPONSE TO COMMENTS 151 THROUGH 169: As expressly set forth in the Act, one of the core principles of environmental justice is the duty to ensure that members of overburdened...
communities have a meaningful opportunity to participate in decisions related to regulated
facilities whose operations affect their lives and their communities. While the Act sets minimum
notice requirements, the Department recognizes that not all methods of notice have the same
ability to reach members of the State’s diverse overburdened communities. The Department has,
therefore, designed public notice requirements in the adopted rules to provide the necessary
flexibility to ensure that residents of overburdened communities have adequate knowledge of
matters subject to the environmental justice regulations and to allow applicants to craft specific
outreach plans for their host community.

The adopted rules, at N.J.A.C. 7:1C-4.1, set general standards that are to be enhanced
through the development of community-specific outreach plans. These standards, as a baseline,
require the applicant, 60 days prior to the mandatory public hearing, to: (1) provide a copy of the
EJIS to the clerk of the municipality or municipalities in which the overburdened community is
located; (2) publish notice of the hearing in at least two newspapers circulating within the
overburdened community, including, at a minimum, one local non-English language newspaper
in language representative of the residents of the overburdened community; (3) provide written
notice of the hearing to the Department, the governing body, and the clerk of the municipality in
which the overburdened community is located; (4) provide notice to all owners/residents within
200 feet of the facility; and (5) post and maintain signage at the facility in a prominent location.
These notices provide detail on the proposed project and invite community participation.

These minimum requirements will be enhanced through the community-specific outreach
plan and are likely to include many of the suggestions offered by commenters, including
ensuring notice is provided in languages commonly spoken in the community, appropriate methods of alternative and direct engagement (social media, direct outreach, flyers, signage), and utilization of trusted messengers and community groups to generate interest and understanding of the process and the proposed project. The adopted rules, at N.J.A.C. 7:1C-4.2(a)2, also require a virtual option and posting of a recording of the hearing in addition to the statutorily required in-person hearing in the overburdened community.

Given the variation inherent in New Jersey’s approximately 3,500 overburdened communities, more proscriptive requirements would likely have fallen short of ensuring individuals have ample opportunity to review and comment on potential environmental impacts in their communities and provide input on potential permit conditions. As further discussed in the Response to Comments 177 through 184, the Department intends to develop best practices and guidance for applicants on how to craft the most effective and appropriate public notice strategies.

170. COMMENT: The NJDEP should be present at all public hearings and fact-check applicants in real-time or otherwise review and fact-check hearing presentations in advance. (73, 106, 210, 265, and 296)

RESPONSE: The Department intends to take appropriate steps, including attendance at public hearings, as necessary, to ensure consistency in understanding of the EJIS process, clarity of the information provided, and an adequate understanding of the position of the community with regard to the proposed project. Additionally, pursuant to adopted N.J.A.C. 7:1C-3.4, the
Department will conduct a pre-hearing technical review of the EJIS to ensure it addresses all regulatory requirements and will conduct a more thorough, substantive review of all relevant information in evaluating its decision at N.J.A.C. 7:1C-9. To the extent information in the EJIS or presented at the hearing is inaccurate, the Department may require additional public engagement pursuant to N.J.A.C. 7:1C-4.3(b).

171. COMMENT: The Department should require additional, at a minimum, two public hearings. (43, 73, 252, 265, 296, and 352)

RESPONSE: While the Department considers the Act’s notice provisions to represent minimum requirements, the adopted rules reflect that Act’s requirement of a single public hearing be held in the overburdened community. The Department expects that the notice provisions, timing requirements, inclusion of a mandatory virtual option, and posting of the hearing recording and extended written comment period will ensure maximum participation by members of the overburdened community.

The Department further notes that at adopted N.J.A.C. 7:1C-4.3(b), additional public engagement, including public notice, may be required where a “material change” to the proposed project has occurred, providing additional opportunity for public comment, where necessary, based on changes to a project. Additionally, the hearing pursuant to the rules is additive as adopted N.J.A.C. 7:1C-4.4 provides that the notice and hearing requirements of the rules do not supersede any other regulatory process requirements, therefore, community members may be
afforded additional opportunities for engagement on specific aspects of a proposed project after conclusion of the process set forth in the rules.

172. COMMENT: Public participation requirements should be enhanced to be as strict as possible with required notification to anyone who may be impacted by a facility so that residents of overburdened communities can be made aware of proposed development and meaningfully engage in the process to shape their community. (73, 211, 252, 274, 290, and 394)

173. COMMENT: Public notification should include census blocks that neighbor the polluting facility, 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. (222)

174. COMMENT: Public notification should be required to be sent out to the county where the facility application is taking place. (423)

175. COMMENT: Extra weight MUST be given to the census tracts that border and are closest downwind and downflow of the proposed facility. (23)

RESPONSE TO COMMENTS 172 THROUGH 175: The requirements developed by the Department in the adopted rules, including notice requirements, reflect a consistency with the Act’s focus on the host overburdened community. Accordingly, the Department does not believe it would be appropriate to expand notice requirements to individuals who are not members of the overburdened community except in circumstances in which the facility is located in more than one overburdened community (in which case notice must be provided to each community) or
where the 200-foot notice requirement at N.J.A.C. 7:1C-4.1(a)1iv extends to individuals in adjacent communities.

176. COMMENT: Public notification should be published in the New Jersey Register so that citizens can have a say in the process. (298)

RESPONSE: As described in the Response to Comments 172, 173, 174, and 175, the Department has crafted requirements that are designed to provide direct public notice to individuals in the overburdened community. The Department does not believe that inclusion of a requirement that notice be published in the New Jersey Register would materially enhance its approach.

177. COMMENT: The Department should provide guidance to facilities to help identify the appropriate OBC representatives, newspapers, and meeting venues to ensure OBCs are meaningfully engaged. (9, 106, 210, and 326)

178. COMMENT: Rather than providing applicants with the flexibility to identify other methods of notice, applicants should also be required to disseminate notices and project information to a wider audience through a specific list of local community, conservation, and EJ groups. This list should contain a minimum of three groups per county – determined by the NJDEP with input from EJ, community, and conservation groups – subject to revision and update. The NJDEP should allow groups to sign up for automatic updates free of charge. (43 and 352)
179. COMMENT: 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. (75 and 455)

180. COMMENT: Public notice in a print newspaper is no longer sufficient. The Department should use their full resources, including social media, and public television, to optimize public participation. (455, 463, and 466)

181. COMMENT: The NJDEP should include public notice and application information on its websites, newsletters, and social media and make mobile versions of their websites to make the information on those websites easily accessible by cell phone. (43, 352, and 455)

182. COMMENT: The NJDEP’s Office of Environmental Justice should include all notices of permit applications covered by the EJ Law in its biweekly email newsletter. 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 the DEP—publicly available on the internet, in addition to the proposed requirements at N.J.A.C. 7:1C-4.1(a)1 and (b). Further, technical assistance and information on how to seek such assistance should be required so that residents can have a full understanding of an application prior to any hearing. Aides in the New Jersey Governor’s Office Outreach Department should be provided notice of applications and tasked with providing notice to the specific groups that they interact with, specifically to encourage youth engagement and reach out to faith-based community groups. The NJDEP should create and maintain a 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. The DEP should also post the finalized permit if it grants the permit application. (43 and 352)

183. COMMENT: The NJDEP should include advocates in adjacent OBCs in the public participation procedures, as described at Subchapter 4 of the proposed rulemaking, and in other guidelines established by the DEP. The NJDEP should 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. The NJDEP should invest in public education that is accessible to make the whole process much more engaging. The NJDEP should maintain a list of active community groups and use that list to notify them about hearings. The NJDEP 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. The NJDEP must maintain a publicly accessible record, both online and in-person at applicable public libraries, of any findings of a “compelling public interest” pursuant to N.J.S.A. 13:1D-160(c). The NJDEP should 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. (56 and 347)
184. COMMENT: There needs to be more education in communities enabling residents to be able to understand permits so that there can be meaningful participation in the permit hearing.

(426)

RESPONSE TO COMMENTS 177 THROUGH 184: As discussed in the Response to Comments 142 through 148, the adopted rules require applicants to engage directly with members of their host overburdened communities to craft appropriate, community-specific public notice plans to ensure meaningful public participation. The Department agrees, however, that it must utilize its resources and expertise to facilitate access to information and is committed to the development of guidance and, as appropriate, methods to assist applicants in identifying representative community groups, including the maintenance of lists of community contacts, and enhanced web presence and other Department-initiated outreach methods.

The Department, through its Office of Environmental Justice, will engage with key stakeholders, in the development of appropriate community engagement guidance for prospective applicants and permit review training opportunities for members of overburdened communities and encourage community representatives to contact the Department to express interest in receiving notice of and participating in the meaningful public participation process set forth in the adopted rules. Adopted N.J.A.C. 7:1C-3.4 requires the Department to “publish the EJIS and any supplemental information on its website, in the bulletin published pursuant to N.J.S.A. 13:1D-34 and provide an electronic copy to any party that has expressed interest in the project or overburdened community” upon authorizing the applicant to proceed with the public engagement process. Additionally, the Department will require the applicant to provide notice of
the public hearing and opportunity for public comment at least 60 days prior to the hearing. The applicant will provide the EJIS to the municipal clerk, newspaper notice, and notice to the governing body, and additionally provide notice to property owners within 200 feet of the facility, place a sign at the site, and provide notice through other methods “tailored to best reach individuals in the host community that could include interfacing with community groups, additional signage or flyers or direct outreach.” N.J.A.C. 7:1C-4.1 and 4.2.

While the Department expects these efforts will help facilitate the type of meaningful public engagement envisioned pursuant to the rules, the duty to ensure robust public notice and engagement rests with the applicant, and neither applicants nor community members should consider the Department’s efforts to be exhaustive or, in all instances, sufficient to meet the applicant’s public engagement duties.

185. COMMENT: The rulemaking 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. (326)

RESPONSE: The Act requires that an applicant conduct a public hearing in the affected overburdened community and respond to public comment on their application. N.J.S.A. 13:1D-160(a). The adopted rules, therefore, require that the hearing “must be held in the overburdened community.” In circumstances where the applicant’s facility is located in more than one overburdened community, “the applicant shall, subject to the Department’s approval, propose a
central location within close proximity to all affected overburdened communities.” N.J.A.C. 7:1C-4.2(a).

Further, if an applicant “demonstrates that there is no suitable hearing space in the overburdened community … the hearing may, subject to the Department’s approval, be held in the municipality in which the facility is, or will be, located within as close proximity as possible to the overburdened community and in a manner that facilitates participation of individuals in the overburdened community.” N.J.A.C. 7:1C-4.2(a). A suitable hearing space in the affected overburdened community is, therefore, preferable pursuant to the rules.

To the commenter’s more direct inquiry, any suitable meeting space within the overburdened community will be acceptable for holding the public hearing required pursuant to the rules.

186. COMMENT: All public hearings on weekdays should be conducted no earlier than 6:00 P.M. EST. Weekend hearings should be conducted between 10:00 A.M. through 6:00 P.M. EST. This will allow residents to participate in the process with minimal conflict to work, family, and community obligations. (252 and 265)

RESPONSE: The Department is committed to requiring, pursuant to N.J.S.A. 13:1D-160, that an applicant shall provide an opportunity for meaningful public participation. This commitment is realized at adopted N.J.A.C. 7:1C-4.2, which establishes the requirements for holding the public hearing and the subsequent public comment period and requires that weekday hearings be held after 6:00 P.M., as the commenters recommend, to account for typical work hours and to support
greater access and public participation. The rules do not allow for weekend hearings. Virtual options are also provided to allow participation from any community members who cannot travel to the public hearing location, and transcripts and recordings of the hearing are required to be submitted and published for the public record. Any community member who wishes to submit further comments, including any community members who cannot attend the public hearing to offer oral comment, will be afforded an opportunity to provide written comments during the public comment period that must remain open for a minimum of 30 days after the completion of the required public hearing and must be no less than 60 days total.

200-Foot Public Notice

187. COMMENT: The 200-foot radius for public notification is inadequate and should be extended to at least 1,000 feet to maximize the opportunity for public input and account for pollution mobility, and avoid passing the cost on notifying the entire community on to the residents within the 200-foot radius. Broader notice is consistent with the impact of pollution and other policies, such as those implemented by the United Nations. (16, 23, 43, 73, 79, 211, 252, 265, 274, 325, 416, 422, 427, 428, 434, and 471)

188. COMMENT: Residents in EJ communities deserve to be notified of polluting facilities being proposed within five kilometers of their communities, since the DEP’s Technical Manual 1002 recognizes that air emissions from facilities can have impacts out to five kilometers (distance of required modeled receptors). (56 and 347)
RESPONSE TO COMMENTS 187 AND 188: The 200-foot standard draws from existing regulatory notice requirements and, at the very least, will provide notice to all those individuals in immediate proximity to the facility, which may be numerous in densely populated block groups or in the case of large facilities.

As explained more fully in the Response to Comments 151 through 169, the 200-foot notice requirement is a minimum requirement that will be enhanced by the crafting of community specific outreach plans to ensure maximum outreach and understanding of the information provided.

Applicability

189. COMMENT: 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? (106)

RESPONSE: The rules apply in circumstances where three criteria are met: (1) the proposed or existing facility is one of the eight types of covered facilities enumerated in the Act; (2) the applicant seeks a Department permit or approval subject to the rules; and (3) the facility is located or proposed to be located, in whole or in part, in an overburdened community. Only where those three criteria are met is a facility subject to the rules.
Covered facilities include, as each are defined in the rules: (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. N.J.S.A. 13:1D-158.

Additionally, as discussed in more detail below, the Act applies to Departmental permits or approvals enumerated at N.J.S.A. 13:1D-158, which arise pursuant to the Department’s authorities related to solid waste and recycling, land resource protection, water supply and pollution control, air pollution control, and pesticide regulation. Finally, the adopted rules define 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.” N.J.S.A. 13:1D-158.

While the Department cannot meaningfully respond to project- or facility-specific inquiries here, the Department would assess the location of a facility as a whole and the impacts of dispersed operations in assessing applicability. Applicants seeking clarification regarding applicability of the rules to a specific activity, expansion, or otherwise, may seek an applicability determination pursuant to adopted N.J.A.C. 7:1C-2.1(g).
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Permit Conditions

190. COMMENT: Any conditions imposed by the EJ regulations must be incorporated into the permit and enforceable. Conditions should include adequate monitoring, recordkeeping, and reporting provisions to ensure compliance and enforcement with permit suspension or revocation. (43, 56, 73, 112, 252, 274, 347, 352, 419, 420, and 496)

191. COMMENT: Acknowledging that the DEP cannot deny a permit renewal for existing facilities, with any renewal, a new condition should be added that requires the permanent installation of an automatic continuous air quality monitoring station that would monitor for all pollutants listed in the new Air Quality permit. (202)

RESPONSE TO COMMENTS 190 AND 191: As set forth at adopted N.J.A.C. 7:1C-9.2, all conditions necessary to avoid a disproportionate impact will be incorporated in the Department’s decision and as enforceable conditions in all associated permits. Accordingly, the Department will have direct authority to take any necessary enforcement actions should applicants fail to meet their obligations. The Department has also included specific enforcement provisions at adopted N.J.A.C. 7:1C-9.4 that ensure that any violations of conditions imposed pursuant to the rules will be considered non-minor, constitute aggravating circumstances or the equivalent, and constitute grounds for suspension or revocation under applicable law.

Facility compliance status as determined by the final results of inspections or other compliance evaluations conducted by the Department can be obtained online through DEP DataMiner (https://njems.nj.gov/DataMiner) or otherwise through a records request pursuant to the Open Public Records Act.
Taken together with the Department’s firm commitment to pursuing enforcement actions that address environmental justice considerations, as demonstrated through the filing of dozens of targeted lawsuits, the Department has robust authority to ensure continued compliance.

192. COMMENT: The proposed rulemaking states that 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. (56, 252, 274, 347, 419, and 420)

RESPONSE: Pursuant to adopted N.J.A.C. 7:1C-5.2(a), an applicant must “analyze and propose all control measures necessary to avoid facility contributions to all adverse environmental and public health stressors in the overburdened community.” Those control measures, as approved by the Department, will satisfy the “conditions set by the Department … to ensure a disproportionate impact is avoided,” as required at N.J.A.C. 7:1C-9.2.

As the analysis of facility contributions to environmental and public health stressors and the Department’s authority to impose conditions is broader and more robust pursuant to the EJ Act and this chapter than otherwise provided pursuant to existing laws and allow the Department to consider and propose conditions related to facility-wide impacts, such as truck traffic, that would not otherwise have been addressed through existing regulatory schemes, the Department
expects these conditions to largely be additive to those that would otherwise be required pursuant to applicable law.

193. COMMENT: 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. The Department should also 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. (210)

RESPONSE: The mandatory permit denial provisions, required by the Act, apply only to “new facilities,” including change in use for existing facilities. N.J.S.A. 13:1D-160(c); N.J.A.C. 7:1C-1.5. However, the Act, at N.J.S.A. 13:1D-150(c) and (d), authorizes the Department to apply conditions to a permit for the expansion of an existing facility or the renewal of an existing facility’s major source permit “as necessary in order to avoid or reduce the adverse environmental or public health stressors affecting the overburdened community.”

Accordingly, pursuant to the adopted regulations, “[w]here the control measures proposed by the applicant will prevent a disproportionate impact by avoiding facility contributions to all adverse environmental and public health stressors in the overburdened community, the Department may grant the subject application pursuant to N.J.A.C. 7:1C-9.2(a).” N.J.A.C. 7:1C-5.2. Pursuant to N.J.A.C. 7:1C-9.2(a), “[i]f the Department determines that the facility will avoid a disproportionate impact, the Department shall authorize the applicant to proceed with the imposition of conditions set by the Department, as necessary to ensure a
disproportionate impact is avoided.” In other words, the permit process can proceed as normal with the inclusion of conditions requiring the imposition of control measures determined necessary to avoid a disproportionate impact.

194. COMMENT: The proposed regulations stop short of explicitly authorizing the 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. The 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 of OBCs to improve, rather than merely maintaining the status quo by continuing to allow existing facilities to pollute OBCs. (43, 56, 112, and 352)

RESPONSE: The adopted rules are consistent with N.J.S.A. 13:1D-160, which establishes that the Department may not deny, but may only apply conditions to a permit for the expansion of an existing facility, or the renewal of an existing facility’s major source permit. While existing facilities are able to continue operations and expand, the rules require applicants to propose control measures that will avoid, minimize, and, as applicable, reduce offsite stressors or provide a net environmental benefit within the overburdened community. In situations in which an existing facility undertakes a “change-in-use” of its operations, as defined at N.J.A.C. 7:1C-1.5, the facility will be considered a new facility pursuant to the rules and potentially will be subject to denial.
195. COMMENT: The requirements for the EJIS at N.J.A.C. 7:1C-3.2 through 3.9 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 at N.J.A.C. 7:1C-9.4 should take effect and the permit shall be suspended or revoked. (73 and 252)

196. COMMENT: The NJDEP should maintain a publicly available list on its website of all facilities that violate the EJ Law, and such facilities should remain on the list even after coming into compliance so that communities can readily identify bad actors. 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 the DEP, not the applicant or facility itself. (43 and 352)

RESPONSE TO COMMENTS 195 AND 196: As set forth at adopted N.J.A.C. 7:1C-9.2, all conditions necessary to avoid a disproportionate impact will be incorporated in the Department’s decision and as enforceable conditions in all associated permits. Accordingly, the Department will have direct authority to take any necessary enforcement actions should applicants fail to meet their obligations. The Department has also included specific enforcement provisions at N.J.A.C. 7:1C-9.4 that ensure that any violations of conditions imposed pursuant to the rules will be considered non-minor, constitute aggravating circumstances or the equivalent, and constitute grounds for suspension or revocation under applicable law.
With regard to the request that third-party reporting be mandated, the Department does not believe such a requirement to be feasible given the breadth and scope of facilities subject to the adopted rules and/or necessary, given the robust reporting requirements set forth in the Department’s underlying permitting rules and the expected conditions that will apply to approvals pursuant to the adopted rules. Moreover, the Department independently reviews and audits monitoring submissions to ensure accuracy. In its experience, the Department has found deliberate fabrication of data to be a rare occurrence that, when discovered, is referred for the assessment of criminal enforcement action.

Additionally, facility compliance status as determined by the final results of inspections or other compliance evaluations conducted by the Department can be obtained online through DEP DataMiner (https://njems.nj.gov/DataMiner) or otherwise through a records request pursuant to the Open Public Records Act.

Taken together with the Department’s firm commitment to pursuing enforcement actions that address environmental justice considerations, as demonstrated through the filing of dozens of targeted lawsuits, the Department has robust authority to ensure continued compliance.

**Permit Definitions**

197. COMMENT: The EJ rule should specifically ensure that exemptions within various permit programs shall continue to apply. The permit exemptions include, but may not be limited to, the following: all solid waste and recycling exemption activities cited at N.J.A.C. 7:26-1.1 and 7:26A-1.1; the water supply allocation permit exemption cited at N.J.A.C. 7:19-1.4; the New
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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, NJDEP should 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. (59)

198. COMMENT: The NJDEP should confirm that all applicable permit exemptions pursuant to the various regulations continue to apply. NJDEP should clarify that Class A recycling facilities are exempt from this rule as they do not require solid waste permits. (173, 190, 230, and 326)

199. COMMENT: 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 the Class A recycling facilities. 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. (56 and 347)

RESPONSE TO COMMENTS 197, 198, AND 199: The adopted rules do not modify the existing thresholds for regulation in the underlying rules. The adopted rules do, however, maintain consistency with the Act’s trigger for assessment of a facility’s impact to environmental and public health stressors is an application for a permit, which may be broader than what might otherwise be required under a facility-specific regulatory scheme. To use the example offered by the commenter, a Class A recycling facility may be exempt from the requirement to obtain a
permit pursuant to the Department’s Recycling Rules, N.J.A.C. 7:26A, but to the extent the facility may require other permits as defined by the Act, at N.J.S.A. 13:1D-158, it would trigger any applicable provisions of the adopted rules.

200. COMMENT: 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 rulemaking. Renewal does not just include a major facility. (210)

RESPONSE: As discussed in more detail in the notice of proposal, 54 N.J.R. 973, the adopted rules utilize the definition of “permit” set forth in the Act, at N.J.S.A. 13:1D-158, which includes permits issued pursuant to the Department’s authorities related to solid waste and recycling, land resource protection, water supply and pollution control, air pollution control, and pesticide regulation.

201. COMMENT: The final EJ Rule should clarify that “container facilities” are also covered by the EJ Law. The proposed rulemaking defines “transfer stations” by applying the definition 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.” Also, DEP’s regulations require the registration and licensing of intermodal container facilities, so these facilities must obtain the “permit, registration, or license issued by
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the department” that triggers the EJ Law process. Thus, DEP’s final EJ Rule should make clear that these intermodal container facilities are also covered by the EJ Law. (56 and 347)

RESPONSE: The Department agrees that it was the intention of the EJ Law to include transfer stations, however the Department’s solid waste rules explicitly do not include intermodal containers facilities as solid waste facilities per the definition of "solid waste facility" at N.J.A.C. 7:26-1.4. According to that definition, “solid waste facility” “means 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 recycling center, a regulated medical waste collection facility authorized pursuant to N.J.A.C. 7:26-3A.39, or an intermodal container facility authorized by the Department pursuant to N.J.A.C. 7:26-3.6.”

As such, the Department does not consider intermodal container facilities to be transfer stations or other solid waste facilities.

Definitions

202. COMMENT: The definitions for incinerator and resource recovery facilities should explicitly include facilities using pyrolysis, gasification, and similar processes that break down waste and emit similar pollutants as traditional incinerators. (79, 274, 296, 417, 477, and 481)

203. COMMENT: 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. 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. Even DEP’s definitions of “incinerator,” such as those at N.J.A.C. 7:26-1.4 and 7:27-11.1 that use terms such as burning, fire, or combustion, equally apply to pyrolysis and gasification facilities, and the final EJ Rule should make that clear. The final EJ Rule should make clear that sludge pyrolysis facilities, sludge gasification facilities, and similar facilities are covered pursuant to the definition of “sludge incinerator.” (56 and 347)

RESPONSE TO COMMENTS 202 AND 203: Newer waste disposal technologies including pyrolysis are regulated by existing air, water, and solid waste regulatory requirements related to sludge processing, incineration, and solid waste processing, which the Department has largely incorporated into the adopted rules. As such, facilities that use pyrolysis and otherwise qualify as a facility type covered by the Act will be covered by the rules.

204. COMMENT: NJDEP has defined “sludge processing facilities” using components of the New Jersey Pollutant Discharge Elimination System (NJPDES) regulations to include facilities that store, process, treat, or transfer sludge, but exclude “the land to which residual is applied or will be applied.” Given DEP’s recognition of the potential harms and need for overview of land-application sites at N.J.A.C. 7:14A-20.7(a)1ii, land application sites should not be excluded from the protections of the EJ Law. (56 and 347)

RESPONSE: The Department appreciates the commenters’ concerns. However, the Act specifically applies to a “sludge processing facility, combustor, or incinerator” and defines
permits to include those issued pursuant to the NJPDES rules. The Department, therefore, determined it appropriate to limit its definition to only those activities that require an individual permit pursuant to the NJPDES rules.

205. COMMENT: The definition of “facility” includes at 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. (240)

RESPONSE: Consistent with the Department’s method of calculating daily tonnage of recyclable material, a daily tonnage amount is based on the daily tonnage received, not weekly averaging. Although there are a certain number of facilities that are authorized to exceed the daily tonnage if the weekly total divided by the number of operating days does not exceed the tonnage limit specified in the respective district solid waste management plan and facility general approval, the Department’s determination of whether a facility receives at least 100 tons or more of recyclable material per day to determine applicability of the adopted rules will be based on daily tonnage received in keeping with the Department’s method of calculating daily tonnage of recyclable material.

206. COMMENT: 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, which currently appears to include only four 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 pursuant to the environmental justice rules specifically for applicable facilities at items (4) and (5)? (240) RESPONSE: The Act, at N.J.S.A. 13:1D-158, defines covered facilities to include a “recycling facility intending to receive at least 100 tons of recyclable material per day.” The definition in the adopted rules aligns with the Act.

207. COMMENT: It is not clear if the Department intended to include closed landfills in this definition. When filtering applicable facilities in the EJMAP 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-year post closure care will be subject to these regulations, for example, when applying for landfill disruption permits for beneficial re-use projects. (240)

208. COMMENT: The proposed rule should expressly exclude surface impoundments, waste piles, and land treatment units from the definition of a landfill. (173, 230, and 326) RESPONSE TO COMMENTS 207 AND 208: The rules at N.J.A.C. 7:1C-1.5 define the Act’s term “landfill” (from which the Legislature did not exclude closed landfills) to mean those sanitary landfills otherwise meeting the underlying regulatory definition at N.J.A.C. 7:26-1.4.
Accordingly, the proposed rules may apply to both operating and closed landfills. Additionally, to the extent a surface impoundment, waste pile, or other land treatment unit would not otherwise be considered a landfill under the existing rules, it would be exempt.

The Department notes that landfills are subject to the rules to the extent they require a permit as defined at N.J.A.C. 7:1C-1.5, which notably excludes those permits, including certain landfill disruption permits, “necessary to perform a remediation,” ensuring that necessary remedial activities may continue.

209. COMMENT: N.J.A.C. 7:1C-1.5: “Definitions of ‘Sewage Treatment Plant’ and ‘Sewage Treatment Works’: 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 water pollution control facility (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 rulemaking as an “overburdened community” (that is, 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 rulemaking will be applicable to any modifications of the CCMUA’s pumping stations and satellite facilities. (392)
RESPONSE: The Legislature found that “it is in the public interest for the State, where appropriate, to limit the future placement and expansion of [applicable] facilities in overburdened communities.” N.J.S.A. 13:1D-157. As explained by the Department in the notice of proposal, 54 N.J.R. 971, the regulations “establish the requirements for applicants seeking permits for certain pollution-generating facilities located, or proposed to be located, in overburdened communities.”

At adopted N.J.A.C. 7:1C-1.5, the Department has defined “sewage treatment plant” to include facilities that have “jurisdiction to treat or convey sewage or other wastewater in the service area in which the proposed treatment works are to be located.” The definition would include associated pumping stations. Any such operations located in whole, or in part, within an overburdened community will, therefore, be required to comply with the adopted rules. Any operation located outside of an overburdened community will not fall under the new requirements.

210. COMMENT: The proposed rulemaking 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. (392) RESPONSE: The Department appreciates efforts that facilities have made in the past and will continue to make to reduce their impact on overburdened communities, especially where those
reductions went above and beyond what the law required at the time. Widespread reductions in the enumerated stressors will help lessen the burden on currently overburdened communities, further the Act’s goal of ensuring that “no community bears a disproportionate share of the adverse environmental and public health consequences that accompany the State’s economic growth” and may, over time, result in communities that are no longer subject to adverse cumulative stressors.

However, consistent with the Act, the adopted rules are designed to ensure that environmental and public health conditions in overburdened communities continue to improve and require the Department to consider feasible stressor reduction measures in its review of each subject permit application. Accordingly, to effect the goals of the Legislature and the purpose of the Act, the Department cannot create a credit system to offset a facility’s potential future contributions and must review contributions to public health and environmental stressors on a permit-specific basis.

211. COMMENT: 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].” Thus, the law broadly covers any document issued by the 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 131acility[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. (56 and 347)

212. COMMENT: NJDEP should confirm that general permits, permits-by-rule, and permits-by-certification are not covered as permits pursuant to the proposed rulemaking. (173, 230, and 326)

RESPONSE TO COMMENTS 211 AND 212: The definition of “permit” in the adopted rules matches the definition provided by the Legislature in the Act. N.J.A.C. 7:1C-1.5; N.J.S.A. 13:1D-158. The definitions both include “any individual permit, registration, or license issued by the Department to a facility establishing the regulatory and management requirements for a regulated activity pursuant to the [listed] State laws.” Accordingly, consistent with statutory direction, the rules will apply only to individual permits, which are required for projects that require deeper environmental review, and not apply to general permits and other non-individual authorizations pursuant to applicable rules. Notwithstanding, as the Department continues to evaluate its approach to environmental justice and implementation of the adopted rules, it may, to the extent consistent with the Act, adjust underlying permitting rules through future rulemakings to ensure the intent of the Act is consistently met by requiring individual permits in all appropriate circumstances.

213. COMMENT: Conditioning an exclusion from the permit definition partially on improvements that do not increase actual or potential emissions will result in undue burdens on facilities as compulsory and government-mandated projects such as new fuel standards and
Maximum Achievable Control Technology (MACT) standards often result in permit emission increases based on CAA’s New Source Review rules. (173, 230, and 326)

RESPONSE: The definition of “permit” provided in the Act excludes “any authorization or approval required for a minor modification of a facility’s major source permit for…improvements that do not increase emissions.” N.J.S.A. 13:1D-158. The rules echo that definition. N.J.A.C. 7:1C-1.5. As the definition makes clear, the exclusion is only available for: (1) major source permits; (2) undergoing minor modification; and (3) in order to implement improvements that do not increase emissions. Removing the requirement that any improvement not increase emissions in order to qualify for the exclusion would be inconsistent with the Act.

214. COMMENT: 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. 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. (220)

215. COMMENT: The types of facilities that trigger this rule should be expanded to include warehouses, logistic centers, pipelines, and the redevelopment of residential developments that contribute to impervious coverage and other newer polluting technologies that have significant
environmental impacts through their contributions to truck traffic and other stressors. (75, 145, 241, 283, 302, 323, 358, and 427)

216. COMMENT: Unfortunately, public works projects, hotels, hospitals, etc. do not trigger this rulemaking. (358)

217. COMMENT: The proposed regulation will not protect communities because it does not apply to significant sources of pollutants and stressors and risks, including extraordinarily hazardous chemicals, sites, and activities regulated pursuant to the Toxic Catastrophe Prevention Act (TCPA) or the New Jersey Worker and Community Right to Know Act. The proposed regulation will not protect communities because it does not apply to significance sources of pollutants and stressors and risks, including 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 New Jersey Air Pollution Control Act, but not the EJ authorizing statute or the proposed rules. (402)

218. COMMENT: While the goals of the Legislature and the NJDEP regarding this rulemaking and the underlying statute are laudable, both the law and the rulemaking fall short of achieving their goals because the types of facilities that this law and rulemaking apply to are defined too narrowly. By limiting review to the eight types of facilities enumerated in the law, the rulemaking essentially creates two classes of citizens within overburdened communities: those who will experience the benefits of this law, and those who will continue to be subjected to smaller polluting facilities just because they are a different type of polluter. This violates equal
protection guarantees under the 14th Amendment, and the law and rulemaking must be amended to correct this injustice. (42 and 82)

219. COMMENT: 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.” (42 and 82)

220. COMMENT: 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. (42 and 82)

221. COMMENT: 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.” (42 and 82)

RESPONSE TO COMMENTS 214 THROUGH 221: The Department does not have the discretion to modify the types of facilities subject to the rules as they are taken directly from the Legislature’s definition of “facility” in the Act. N.J.S.A. 13:1D-158. The rules must remain consistent with the Act.

222. COMMENT: “REMEDIATION/REPLACEMENT OF OLDER FACILITIES WOULD BE REQUIRED TO BE REVIEWED UNDER THIS BILL” We respectfully encourage that any
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A 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 New Jersey 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. (220)

RESPONSE: By statute, any permit application for facilities covered under the Act cannot be considered complete until an EJIS has been completed and submitted, and until public hearings have been held. N.J.S.A. 13:1D-160. Pursuant to the adopted rules, if the proposed project would not have a disproportionate impact (meaning it would not disproportionately cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community) or would satisfy the requirements to show that it will serve a compelling public interest, the applicant would not be prevented from obtaining necessary permits. However, this determination requires an assessment of the proposed operation pursuant to the rules. Additionally, N.J.A.C. 7:1C-1.5 excludes those permits “necessary to perform a remediation,” ensuring that necessary remedial activities may continue.

223. COMMENT: New Jersey State Pipe Trades whole-heartedly disagree with “MANDATORY PERMIT DENIALS,” we request changing the proposed language of “shall” back to “may.” (220)
RESPONSE: The Department is obligated, pursuant to the Act, to deny a permit that would have a disproportionate impact on its surrounding overburdened community. Pursuant to N.J.S.A. 13:1D-160.c:

[T]he [D]epartment shall, after review of the environmental justice impact statement…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.

The adopted rules are, therefore, consistent with the Act. Both the Act and the rules allow an applicant to show that the proposed facility will serve a compelling public interest, even if it cannot avoid a disproportionate impact. If such a showing is made, the Department may approve the permit, consistent with the Act and the adopted rules.

224. COMMENT: Updating stressor and census data every two years will cause uncertainty and should be extended to every seven or 10 years. (54)

RESPONSE: The Act requires that the Department “shall update the list of overburdened communities [on its website] at least once every two years.” N.J.S.A. 13:1D-159. The Act
defines an “overburdened community” as “any census block group, as determined in accordance with the most recent United States Census,” that meets certain listed criteria. N.J.S.A. 13:1D-158. The adopted rules, therefore, require that the Department update its published list of overburdened communities (available at https://www.nj.gov/dep/ej/communities.html) every two years, using the most recently published U.S. census data. An extension to every seven or 10 years would be contrary to the statute.

225. COMMENT: The proposed definition/scope of “facility” requires clarification as to its applicability to regulated medical waste (RMW) facilities. The proposed rule should exclude RMW collection and RMW treatment and collection facilities. Stericycle asks that the NJDEP clarify and harmonize the proposed rulemaking with other permitting programs pursuant to New Jersey regulations. Specifically, the fifth category of “facility” in the proposed rulemaking, “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 rulemaking 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 rulemaking’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 rulemaking; however, it is not clear from the proposed rulemaking 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 underlined text shown: (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. 7:26-3A.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 collections facilities. (59 and 354)

RESPONSE: The Department agrees that the Department’s solid waste rules specifically do not include regulated medical waste collection facilities as solid waste facilities per the definition of “solid waste facility” at N.J.A.C. 7:26-1.4. According to that definition, “solid waste facility” “means 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 recycling center, a regulated medical waste collection facility authorized pursuant to N.J.A.C. 7:26-3A.39, or an intermodal container facility authorized by the Department pursuant to N.J.A.C. 7:26-3.6.” As such, the Department does not consider regulated
medical waste collection facilities to be solid waste facilities and the commenter’s suggested amendment to the adopted rules is not necessary.

226. COMMENT: The proposed rulemaking should exclude autoclaves and medical waste incinerators not associated with hospitals or university. The eighth category in the proposed rulemaking’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.R. 971(a), 991. It is unclear from this definition whether it is intended to exclude all medical waste incinerators that process regulated medical waste (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 rulemaking 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 rulemaking’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 rulemaking undercuts its own goals of minimizing emissions and adverse impacts to overburdened communities. Stericycle recommends that the NJDEP extend the exclusion to autoclave facilities, as well as to all medical waste incinerators processing RMW, such as through the edits in the underlined text shown: (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 rulemaking. (59 and 354)

RESPONSE: The Legislature directed in the Act that “‘facility’ shall not include a facility…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.” N.J.S.A. 13:1D-158. The adopted rule, at N.J.A.C. 7:1C-1.5, uses the same language as the statute. The exemption for medical waste facilities must remain consistent with the Act.
227. COMMENT: The provision of the proposed rule that states “[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” should be removed as it 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.” (173, 230, and 326)

RESPONSE: The inclusion of the language referred to in the definition of “renewal” at adopted N.J.A.C. 7:1C-1.5 is meant to clarify that changes in operations that do not increase stressor contributions would not be considered an expansion or new facility. This is consistent with the more technical consideration of whether a facility is seeking a “minor modification” of its major source permit.

228. COMMENT: The definition of “solid waste facility” should not include industrial facilities that have treatment, storage, and disposal permits to manage facility hazardous waste that are not received from outside facilities. (173, 230, and 326)

RESPONSE: The adopted rules, at N.J.A.C. 7:1C-1.5, define solid waste facilities consistent with the underlying regulatory definition at N.J.A.C. 7:26-1.4 and do not seek to otherwise modify existing regulatory scope and applicability. To the extent the facilities in question fall within this definition, they would be potentially subject to the rules if they are seeking a permit in an overburdened community.
Definition of Expansion is Too Broad

229. COMMENT: Support the proposed 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. 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 pursuant to 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. (56 and 347)

RESPONSE: The Department appreciates the commenters’ support of the rulemaking.

230. COMMENT: The definition of “expansion” is vague and contrary to the intent of the Environmental Justice Law. Revisions to the original version of the Environmental Justice Law make clear that the Department cannot deny expansions but can only add conditions, because it would be unfair to push existing businesses out of the State that were not significantly changing their operations or their impact to the environment. The DEP agreed with this at the April 7, 2021 stakeholder meeting, indicating that as a general principle that the purpose of the Environmental Justice Law is not to make it more difficult for existing facilities to continue operations, but the proposed definition is drafted in a way that does threaten the continued
existence of New Jersey’s scrap metal recycling facilities. Including “potential” increases in emissions is vague and too broad and will result in fewer facility upgrades because of the lengthy and undefined EJ approval process. ISRI’s proposed definition: “‘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.” (77, 84, 101, 160, 319, and 382)

231. COMMENT: 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 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. (102)
232. COMMENT: 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. (210)

233. COMMENT: The proposed EJ rules should allow for the designation of a 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.” The determination of this de minimis standard should include a list of exemptions or exemption criteria that do not reach a significance threshold. This will allow for the NJDEP to determine that a facility modification is not material to environmental and public health stressors and allow community members in an overburdened community (OBC) to meaningfully focus their time and attention to projects more likely to have material effects on their health and environment. (107)

234. COMMENT: The definition of expansion includes expansion of operations or footprints. There is no de minimus requirement for that, and it should be limited to a material expansion. (54, 77, 182, 203, 253, and 326)

235. COMMENT: It is recommended that the 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 the 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). N.J.A.C. 7:1C-1.5. (106)

236. COMMENT: The definition of “expansion” is over-inclusive and does not have a *de minimis* exception. 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. (306 and 319)
237. COMMENT: The definition of “expansion” requires additional clarification so that applicants can better understand what triggers the requirements of the environmental justice review process. The proposed rules 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.R. 990. However, the proposed rules do 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. (59 and 354)

238. COMMENT: There is no consideration for facility expansion for new technology that is imperative for existing facilities to remain competitive, instead the EJ rules proposed an over-burdensome process threatening facilities’ ability to continue to operate in the future. (85)

239. COMMENT: The term “expansion” is unclear as it relates to existing operations or footprint of development. For example, if a lawfully existing facility purchases an adjacent property for an expansion of operations, is this considered an existing facility or an expansion? The term is also overly broad as it appears to encompass any activity that would result “in an increase in stressor contributions.” The NJDEP should model this definition off of the Clean Air Act definition of major modification. Additionally, “expansion” should exclude changes for which “minor modifications” to permits would be required. (173, 230, and 326)
240. COMMENT: 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) should be changed to include the following language: “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. For power plants, the definition for ‘expansion’ applies to the addition of a new generation unit or other emissions point source that has the potential to result in an increase in the existing facility’s emissions. 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.” (150)

241. COMMENT: 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. The 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 proposed rulemaking 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 percent. 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. 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. (143)

RESPONSE TO COMMENTS 230 THROUGH 241: The Department’s adopted definition of expansion is consistent with the Act’s intent to allow for the continued operation of existing facilities while, where appropriate, placing reasonable conditions on the construction and operations of the expanded facility. Accordingly, the Department has adopted definitions that will allow existing facilities to continue to operate as they currently do (subject to the adopted rules only where major source permit renewals are required) but will require further analysis where changes in operations have the potential to impact environmental and public health stressors in an overburdened community. This analysis will determine whether a facility seeking to expand is able to avoid those impacts and, if not, will determine the appropriate conditions to minimize impacts to the community. It would be inconsistent with the Act’s intent to reduce
environmental and public health stressors in overburdened communities to include a *de minimis* exception to this standard.

The commenters speculation that any change in facility operations would require Department review fails to consider whether those operations require a new permit or modification to an existing permit, which is necessary to trigger applicability of the rules. More specifically, the definition of covered permits pursuant to the adopted rules excludes “minor modification of a facility’s major source permit for activities or improvements that do not increase emissions,” while the definition of facility expansions similarly excludes “any such activity that decreases or does not otherwise result in an increase in stressor contributions.” The Department, therefore, does not anticipate these provisions will discourage facility upgrades or the incorporation of new technologies.

Applicants seeking clarification regarding applicability of the adopted rules to a specific activity, expansion, or otherwise, may seek an applicability determination pursuant to N.J.A.C. 7:1C-2.1(g). For further discussion of the hierarchy, applicants must follow in analyzing and proposing control measures, see the Response to Comments 455 through 477.

242. COMMENT: 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 water pollution control facility (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 combined sewer overflow (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 long-term control plans will decrease stressor contributions. (392)

243. COMMENT: N.J.A.C. 7:1C-1.5: Definitions of “sewage treatment plant” and “sewage treatment works”: Whether CSOs are covered under the proposed rulemaking. 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 including outfalls are considered to be “treatment works” pursuant to N.J.A.C. 7:14A-1.2 or “sewage treatment plants” pursuant to N.J.A.C. 7:14A-1.2. None of the potential satellite facilities identified in the 2020 CCMUA/Camden/Gloucester City Long Term Control Plan are currently projected to reach a design flow of 50 million gallons per day. 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 pursuant to the proposed rule. (392)
RESPONSE TO COMMENTS 242 AND 243: Due to the fact-specific nature of individual permitting decisions, the Department cannot meaningfully address comments related to such decisions in this context. However, in general, the Department does not anticipate that an increase in rainfall and/or flow alone, without an increase in permitted flow or other activity that increases facility contributions to environmental and public health stressors in the overburdened community, will be considered an expansion pursuant to the rules. As discussed in the notice of proposal, 54 N.J.R. 974, the focus of the inclusion of sewage treatment plants comes directly from the Act and has been modified in the adopted rules to be closely tied to a sewage treatment plants’ “permitted flow,” as defined at N.J.A.C. 7:14A.

The Department has adopted definitions that will allow existing facilities to continue to operate as they currently do (subject to the adopted rules only where major source permit renewals are required) but will require further analysis where changes in operations have the potential to impact environmental and public health stressors in an overburdened community. This analysis will determine whether a facility seeking to expand is able to avoid those impacts and, if not, will determine the appropriate conditions to minimize impacts to the community.

The Department anticipates that new CSO controls, such as a satellite CSO treatment facility, could potentially constitute an expansion or a new type of facility, depending on the specific circumstances. As discussed in the notice of proposal, 54 N.J.R. 973, the compelling public interest standard is designed to account for projects that address host community needs, such as public water infrastructure and projects designed to reduce the effects of CSOs.
Applicants seeking clarification regarding applicability of the adopted rules to a specific activity, expansion, or otherwise, may seek an applicability determination pursuant to N.J.A.C. 7:1C-2.1(g).

Definitions of Existing and New Facility

244. COMMENT: The proposed definitions of “existing facility” and “new facility” are contrary to the common understanding of the terms, the plain language of the Environmental Justice Law, and the intent of the New Jersey Legislature. The proposed rules require existing facilities that have operated in the State for decades, but which the NJDEP determines do not currently have all their necessary permits (even if the requirement reflects a new interpretation by the NJDEP) to be considered new facilities. The definitions of new and existing facility should be based on the date of construction of a facility, not whether the facility has received a permit. Recently, the NJDEP has targeted certain scrap metal recycling facilities under Administrative Order 2021-25 in connection with the NJDEP’s new interpretation that mobile equipment requires a preconstruction air permit pursuant to N.J.A.C. 7:27-8.2(i)19. The Department’s determination to require permits and initiate enforcement against scrap metal recycling facilities reveals the Department’s desire to selectively enforce against the industry. The NJDEP’s clear intent is to position scrap metal recycling facilities as new facilities subject to the EJ process, and subject them to potential permit denial. If adopted as drafted, whenever the 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. The proposed definition of “new facility” is
in direct opposition to the assurances given by the Governor, Legislature, and Department when the EJ Law was passed that the EJ Law would not be used to push existing businesses out of the State. (77, 101, 160, 253, and 319)

245. COMMENT: 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. (102, 173, 230, and 326)

246. COMMENT: 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 rulemaking. 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 pursuant to 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
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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. (306)

247. COMMENT: An existing facility that has operated without a valid approval or permit should not be included in the definition of “new facility,” as this will add significant burdens and uncertainty to companies who may have unintentionally operated without proper permitting or registration. (173, 230, and 326)

RESPONSE TO COMMENTS 244, 245, 246, AND 247: The Department considers facilities that have operated without the approvals required before the effective date of the rulemaking and avoided agency oversight to be out of compliance with State rules and, therefore, ineligible to receive the benefits afforded to existing facilities pursuant to the Act. Considering recalcitrant facilities to be “new facilities” is consistent with the Act’s intent to allow lawfully existing facilities to continue to operate while not rewarding facilities that have avoided regulatory review of their operations.

The determination of whether or not a facility is lawfully existing, pursuant to the definition, is based on the NJDEP permit and registration requirements that are in place as of the effective date of the adopted rules, preventing facilities from being unduly impacted by future regulatory changes and affording notice and compliance opportunities to avoid the consequences suggested by commenters. These definitions apply equally to all of the facility types included in
the Environmental Justice Law and do not specifically target any facility type, scrap metal, or otherwise.

Lastly, the Department has a duty to align its underlying regulatory authorities with the intent of the Act, which specifically identifies scrap metal facilities as a concern in overburdened communities. This requires an ongoing assessment of the Department’s regulatory approach to ensure continued protection of public health and the environment both within and outside of overburdened communities.

248. COMMENT: Facility, regarding air pollution, should be clarified to mean a Major Source of Hazardous Air Pollutants. 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. (210)

249. COMMENT: The proposed rules 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. (237)

RESPONSE TO COMMENTS 248 AND 249: The Department has incorporated the statutory definition of facility in the rules. The Environmental Justice Law defines “facility” as including any “major source of air pollution.” The law defines “major source” as a major source of air...
pollution as defined by the Federal Clean Air Act, 42 U.S.C. §§ 7401 et seq., or in rules and regulations adopted by the Department pursuant to the Air Pollution Control Act, ... or which directly emits, or has the potential to emit, 100 tons per year or more of any air pollutant, or other applicable criteria set forth in the Federal Clean Air Act. Accordingly, the rules incorporate the Department’s definition of "major facility” at N.J.A.C. 7:1C-22.1, which was promulgated pursuant to the Air Pollution Control Act. The commenter is correct that the Act’s definition of environmental or public health stressor includes mobile sources of air pollution. N.J.A.C. 7:1C-1.5.

New Facilities – Change-in-Use

250. COMMENT: The definition of new facility includes a change in use, which could be a change in the type of operation. A new facility should be a new facility, not one that merely changes its use or processing. Changes for “minor modifications” to permits should be excluded (54, 77, 106, 173, 182, 203, 253, 306, and 326)

251. COMMENT: “New” facilities should not include those existing facilities that undergo a “change in use” because “change in use” is vague and will cause uncertainty. (319)

252. COMMENT: 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? (84 and 382)

253. COMMENT: We support that the proposed rulemaking includes a change in use at an existing facility in the 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. (56 and 347)

RESPONSE TO COMMENTS 250, 251, 252, AND 253: The adopted rules define “change in use” as a change in the type of operations 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.

To meet the intent of the Act to allow existing facilities to continue to operate while limiting the placement of new facilities in overburdened communities under appropriate circumstances, the Department determined it is reasonable to define new facilities to include existing facilities that seek permits to undertake a fundamental change in their type of operation that increases stressor contributions in order to ensure that facilities that exist in overburdened communities cannot transform their operations in a manner that increases environmental and public health burdens simply because they existed before adoption of the rules. Given the Act’s focus of reducing environmental and public health stressor increases in overburdened communities, the Department does not believe a de minimis threshold is appropriate or warranted.

Existing facilities will otherwise be able to continue their operations, subject to the adopted rules only where a major source renewal is sought, and may expand their existing operations in accordance with the standards set forth therein.
The Department also notes that the Act and the adopted rules expressly exclude minor modification of a facility’s major source permit for activities or improvements that do not increase actual or potential emissions from the definition of permit. N.J.A.C. 7:1C-1.5.

To address the commenter’s example, to the extent a change to “more environmentally friendly raw materials” would not result in increases in stressor contributions it would not alone trigger review pursuant to the rules.

**Change-in-Use v. Expansion**

254. COMMENT: 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. 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 the 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. (59 and 354)
255. COMMENT: “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.” (240)

256. COMMENT: The definition for “new facility” includes “a change of use of an existing facility,” which creates confusion between what is new versus an expansion of an existing facility, exceeds statutory authority, and requires additional clarification. (102, 173, 230, and 326)

RESPONSE TO COMMENTS 254, 255, AND 256: As set forth in the Response to Comments 250, 251, 252, and 253, the Department has defined change in use to include those scenarios in which a facility undertakes a fundamental change in its type of operation. Conversely, expansions include those situations in which a facility expands its operations without a fundamental change in type or expands its footprint of development, with the potential to result
in an increase of an existing facility’s contribution to any environmental and public health stressors in an overburdened community. Expansions expressly exclude any activity that decreases or does not result in an increase in stressor contributions. The Department believes these definitions provide an appropriate level of clarity while providing necessary flexibility to account for the broad range of potential scenarios that may be encountered pursuant to the rules.

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

257. COMMENT: N.J.A.C. 7:1C-1.5, Definition of “change in use”: As the owner of hundreds of miles of sewer infrastructure, 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 long-term control plan would not constitute a “change in use” per the definition, since existing CSOs are not among the eight listed types of facilities. (392) RESPONSE: The Department would not consider a CSO, which as the commenter states is an inherent part of the operation of a sewer utility, to constitute a change in use if the activities are consistent with the facility’s existing operations.
Renewals

258. COMMENT: 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.” (210)

RESPONSE: The renewal provisions of the Act apply only to “the renewal of an existing facility’s major source permit.” See for example, N.J.S.A. 13:1D-160.

259. COMMENT: The proposed rules must require renewing facilities to review equipment emissions of all pollutants, not merely particulate matter, NOx, and VOCs, so that control technology specifically designed for these other pollutants doesn’t fall through the cracks, like activated carbon to control mercury and dioxins. (56 and 347)

RESPONSE: The Department requires that major source facilities seeking to renew their permits submit a technical feasibility analysis if certain conditions are met. N.J.A.C. 7:1C-8.5. If a facility has equipment subject to the permit that is over 20 years old and was not subject to this review within the 15 years prior to the expiration date of its current operating permit, and at least 20 percent of the facility’s overall potential to emit NOx, particulate matter, or VOCs is the result of that equipment, the applicant must submit a technical feasibility analysis. These three pollutants have been shown to have the most severe localized health impacts, as explained in the notice of proposal, 54 N.J.R. 975. The requirement to review equipment emissions is not restricted to those three pollutants, however, an applicant will be required to show that their...
facility will not have a disproportionate impact on the host overburdened community as required by the Act.

260. COMMENT: The proposed rulemaking 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.R. 997. The proposed rulemaking 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.R. 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 the 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, the NJDEP should focus its efforts on new facilities, not routine permit renewals. (59 and 354)

261. COMMENT: The renewal provisions of the proposed rule require the review of older equipment separate and apart from the stringent requirements of the air rules. As proposed, this rulemaking would require facility-wide risk assessments and, for certain older equipment, an analysis that could require yet undefined controls that go well beyond state-of-the-art (SOTA)
and other requirements of the air rules. This would require facilities with a Title V Operating Permit located in an overburdened community to consider yet-to-be-defined technologies or operating measures that could go well beyond what would be required to obtain a renewal, resulting in additional costs and additional financing requirements that may cause a facility to shut down prematurely. Any focus on renewal should focus on existing standards such as SOTA and other standards applicable pursuant to the air rules. (101)

262. COMMENT: Technology reviews already conducted pursuant to 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 rulemaking 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 (for example, RACT) should also be reflected in the implementation of any required controls. The Department should allow for these other similar existing processes to be considered in lieu of a separate technical feasibility analysis pursuant to the EJ regulation. (143)
RESPONSE TO COMMENTS 260, 261, AND 262: The Act requires the Department to undertake the EJIS process for “renewal of an existing facility’s major source permit.” Permit renewals, therefore, must be included in the Department’s rules.

Consistent with the Act’s express direction to the Department to fully assess the contributions of covered facilities to environmental and public health stressors in overburdened communities throughout the State, and the Legislature’s recognition of the existing burdens already experienced by these communities, the Department determined that the inclusion of a de minimis threshold would risk creating a loophole that would undermine the efficacy of the Act’s requirements.

For further discussion of the standards specific to major sources, please see the Response to Comments 488 and 489. For further discussion of the hierarchy applicants must follow in analyzing and proposing control measures, see the Response to Comments 455 through 477.

263. COMMENT: The 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, that could reuse portions of the prior analysis for technology and processes that have not seen technological advancements in the interim. (56 and 347)

RESPONSE: The technical feasibility analysis at N.J.A.C. 7:1C-8.5 applies to renewal applications for major source facilities, which are existing facilities in operation. As part of the renewal application review, the Department ensures that the operating permit includes all
applicable State and Federal requirements, including those that may have become effective after the effective date of the source’s permit under which it is operating. However, if equipment or control apparatus at the source have not been modified and new rules do not impact that equipment/control apparatus, that equipment/control apparatus might not have been reviewed for advances in control technology that if applied, would reduce emissions. Therefore, the Department included the technical feasibility analysis to focus review on older (based on installation date) equipment/control apparatus that comprise at least 20 percent of the facility’s overall potential to emit the pollutant and has not been reviewed in the last 15 years.

264. COMMENT: The EJ process for future Title V renewals should initiate from the first EJIS public process and engagement, and not start over every five 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. (54 and 160)  
265. COMMENT: Given the scope and cost of compliance with the proposed rulemaking, 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. (173, 230, and 326)  
RESPONSE TO COMMENTS 264 AND 265: The Act requires the Department to undertake an assessment of facility stressor contributions at renewal of each major source/Title V permit.
Consistent with the commentor’s suggestion, the Department expects that renewals subsequent to the initial renewal subject to the adopted rulemaking will be more narrowly focused and less likely to require additional control measures if operations continue unchanged.

**Modifications**

266. **COMMENT:** The proposed rulemaking should include a definition for the term “modification” as it is used in both the definitions of expansion and material change. This definition should be consistent with the types of modifications identified at N.J.A.C. 7:27-22 and should clearly state which types of modifications are exempt from the EJ proposed rule and which are applicable. (84 and 382)

**RESPONSE:** The term “modification” will be interpreted in relation to the language of the existing Departmental regulatory definitions in which it is found. For expansions, modifications are considered in the context of whether those modifications have the potential to result in increases on existing facility’s contributions to environmental and public health stressors in an overburdened community, but shall not include any such activity that decreases or does not otherwise result in an increase in stressor contributions. N.J.A.C. 7:1C-1.5. Similarly, in the context of material changes to the EJIS, modifications would relate to changes in the purpose of the proposed facility, expansions, or changes to stressor contributions, or control technologies proposed.
267. COMMENT: 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) 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. To this: 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. For power plants, the definition for “expansion” applies to the addition of a new generation unit or other emissions point source that has the potential to result in an increase in the existing facility’s emissions. 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. (413)

RESPONSE: The Department has reviewed the commenter’s suggestion and determined that modification to the existing definition of expansion is not necessary and, as written, provides the necessary clarity to all covered facilities, including power plants, that expansions have the potential to result in increased environmental and public health stressors.
Environmental Justice Impact Statement – Generally

268. COMMENT: 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, including whether the applicant will seek a “compelling public interest” determination. (56 and 347)

RESPONSE: The Department agrees with the commenters and believes the requirements of adopted N.J.A.C. 7:1C-3.2, which require the applicant to provide a clear and complete explanation of the project, its purpose and operations, impacts to environmental and public health stressors, proposed control measures, whether the facility is seeking to satisfy the compelling public interest standard, and other relevant environmental and public health information meet the standard of specificity and clarity suggested.

269. COMMENT: Developing and issuing an Environmental Justice Impact Statement (EJIS) to the public without prior NJDEP approval 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 (for example, equipment failure) on the environment and surrounding OBC. It will also impede improvements that would benefit the process and/or the environment and OBCs. It may even make such improvements infeasible. (84 and 382)
270. COMMENT: NJDEP 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. (56 and 347)

271. COMMENT: Is it possible for a full technical review to be completed for the EJIS prior to the public participation process, to prevent a facility from repeating the public participation process again? (106)

RESPONSE TO COMMENTS 269, 270, AND 271: Pursuant to adopted N.J.A.C. 7:1C-3.4, to ensure that the information in the EJIS and presented to the members of the overburdened community comports with the requirements of the rules, the Department will conduct an administrative review of the EJIS before an applicant begins the process of meaningful public participation pursuant to N.J.A.C. 7:1C-4. The Department’s review at this point is intended to ensure that the EJIS includes all information required by the rules, but will not include a detailed, substantive analysis of the information at this early step. Given the Act’s intent to ensure meaningful, pre-decisional public engagement, it would be inappropriate for the Department to provide a technical or substantive approval of the proposed project before the public has had an opportunity to provide comment.

After review, the Department will either request revisions or authorize the applicant to proceed with the public engagement process. Once an applicant receives authorization from the Department, it will publish the EJIS and any supplemental information on its website, in the bulletin published pursuant to N.J.S.A. 13:1D-34, and provide an electronic copy to any party that has expressed interest in the project or overburdened community. The Department
recognizes that its review at this stage may involve some level of substantive review of the proposed project to address, for example, obvious permitting hurdles that the application may face. In all instances, the Department’s goal is to ensure that complete and accurate information is provided to members of the overburdened community and the Department will calibrate its EJIS review to meet this duty. An applicant would only be required to conduct additional public engagement where there is a material change to the information set forth in the EJIS. These steps are designed to ensure that applicants do not move forward with public engagement in a manner that would delay progress through the regulatory process.

Additionally, the Department does not expect that routine repairs or upgrades to operations that would benefit the environment, or the overburdened community, will be made infeasible by operation of the rules. The rules apply only to major source permit renewals and new or expanded facilities. In relevant part, the rules define expansion to include changes in operations that have the potential to result in an increase in the existing facility’s contribution to environmental and public health stressors. Similarly, major source permit renewals do not include minor permit modifications made to major source permits that do not increase emissions. The Department does not anticipate that repairs or beneficial upgrades would fall under either definition.

272. COMMENT: The EJIS requires applicants to assess 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. (160)

273. COMMENT: Assessments of environmental and public health impacts should be performed based on what is likely to occur and not on best-case scenarios. (488)

RESPONSE TO COMMENTS 272 AND 273: To accurately assess a facility’s potential impacts to environmental and public health stressors, the Department must consider the maximum allowable emissions. If a facility operates, or intends to operate, below permit limits, it should adjust those limits accordingly to be a more accurate reflection of its operations.

274. COMMENT: Incorporate the “supplemental information” into the EJIS requirements. Separating the EJIS and supplemental information creates confusion. Many of the requirements are overly burdensome, redundant, and do not provide value in an analysis of EJ concerns. (210)

275. COMMENT: 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. Rather, the supplemental information that is required should be agreed to on a case-by-case basis between the applicant and the NJDEP and be based on the type of facility and the facility’s current or potential contribution to adverse stressors. (173, 230, and 326)

276. COMMENT: Proposed N.J.A.C. 7:1C-3.3 appears to arbitrarily require the submission of information across all environmental media that is unrelated to the permit being sought. This is
arbitrary and burdensome. For example, if a facility is seeking an air permit, information about drainage patterns and wetlands, subsurface hydrology, localized climate and flooding impacts, sewage facility data, stormwater management, and water supply information is not relevant. An applicant may not have such data available, and certain types of data will require monitoring. The cost and time of collecting all the supplemental information is likely to be significant. ISRI requests that the Department revise this section to make clear that only information related to the type of permit being sought will be deemed necessary. (54, 107, 160, 306, and 360)

277. COMMENT: The stressor analysis for the 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. (84 and 382)

278. COMMENT: Application requirements should require these polluting facilities to demonstrate and outline with a clear analysis the environmental and health stressors their project would entail. (394)

RESPONSE TO COMMENTS 274, 275, 276, 277, AND 278: The requirements for completion of an EJIS at N.J.A.C. 7:1C-3.3 are intended to provide the Department with a full and complete assessment of a facility’s potential impacts to environmental and public health stressors in an overburdened community in a manner consistent with the Act’s intent to assess facility-wide impacts, not simply those directly associated with a certain permit type. When there will be no impact from a facility for a particular requirement at N.J.A.C. 7:1C-3.3, the Department will allow an applicant to utilize a notation of non-applicability.
Consistent with the Act, the Department lacks discretion to waive the EJIS requirement, even where, as urged by commenters, an overburdened community is not subject to adverse cumulative stressors. However, the Department will require only the information set forth at N.J.A.C. 7:1C-3.2 when an overburdened community is not subject to adverse cumulative stressors and an applicant demonstrates, through appropriate modeling of the facility’s contribution to affected stressors, as identified and calculated at the chapter Appendix, that the facility will avoid a disproportionate impact that would occur by creating adverse cumulative stressors as a result of the facility’s contribution. The information that will be required in such cases includes: (1) an executive summary; (2) appropriate information related to the proposed or existing facility’s physical location, including mapping; (3) a detailed operational description and purpose; (4) a listing of all other Federal, State, and local permits possessed or required for the facility; (5) evidence of satisfaction of any local environmental justice or cumulative impact analysis with which the applicant is required to comply; (6) the initial screening information required pursuant to N.J.A.C. 7:1C-2.3; (7) assessment of facility impacts to environmental and public health stressors; (8) a public participation plan that satisfies the requirements pursuant to N.J.A.C. 7:1C-4; (9) a demonstration, including any necessary operational conditions and control measures, that the facility would avoid a disproportionate impact; and (10) where applicable, how the proposed new facility would serve a compelling public interest in the overburdened community.

In recognition of the fact that certain overburdened communities may not be subject to adverse cumulative environmental and public health stressors, the adopted rules require facilities
in non-adverse communities to ensure that they do not create adverse cumulative stressors, while requiring a more robust analysis of operations in adversely stressed overburdened communities. The supplemental information required for either a facility in an adversely stressed community or a facility that cannot avoid creating adverse cumulative stressors provides this more robust analysis. The supplemental information includes: (1) detailed mapping including identification of all regulated areas, endangered, or threatened species, water classifications, and recreational attributes; (2) assessment of site contamination; (3) localized air quality data; (4) ground water data; (5) assessment of climate and flooding impacts; (6) traffic studies; (7) description of sewage treatment and collection systems; (8) description of stormwater treatment and collection systems; (9) water supply information; (10) assessment of energy demands, including renewable options; (11) an alternative analysis for proposed new or expanded facilities; (12) odor, dust, and noise mitigation or management plans; (13) all control measures proposed; and (14) a detailed compliance history for the facility, including any existing Department permits, including copies of any enforcement actions issued to the facility, for the five years preceding the date of the permit application.

In both scenarios, the information required is critical to ensuring the Department can fully evaluate and the public better understands the environmental and public health stressors in overburdened communities that are likely to be disproportionately impacted. When there will be no impact from a facility for a particular requirement, the Department will allow an applicant to utilize a notation of non-applicability. Lastly, the Department will allow an applicant to submit
both its EJIS and supplemental information without waiting for a determination from the
Department that the supplemental information is required.

279. COMMENT: N.J.A.C. 7:1C-3.3 should include, on the supplemental information for
submission, a description and the location of any sensitive receptors where particularly
vulnerable populations may be concentrated. (56 and 347)
RESPONSE: The supplemental information required at N.J.A.C. 7:1C-3.3 is “in addition to, and
do[es] not supersede, the EJIS requirements in accordance with N.J.A.C. 7:1C-3.2.” N.J.A.C.
7:1C-3.3(b). The EJIS requirements at N.J.A.C. 7:1C-3.2 require a detailed description of the
surrounding community in addition to a public participation plan. The commenter’s concern
regarding vulnerable populations in the surrounding community will be captured in the
information submitted as part of a proper EJIS.

280. COMMENT: The proposed rulemaking lacks specific submission criteria. The proposed
rulemaking asserts that applicants are required to submit numerous documents and materials for
review by the NJDEP, such as a plan to modify operations depending on the outcome of a risk
assessment based on “a protocol approved in advance” by the NJDEP. 54 N.J.R. 997. As an
example, rather than subjectively state that a protocol must be “approved in advance,” the
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 rulemaking 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. (59 and 354)

RESPONSE: The requirement for the Department to pre-approve the protocol for a facility-wide risk assessment submitted as part of an EJIS for a facility permit renewal in accordance with N.J.A.C. 7:1C-8.4 is necessary to ensure that protocol is individually suited to account for all relevant site-specific, as well as more general, factors as described at N.J.A.C. 7:1C-8.4(b).

281. COMMENT: The NJDEP should clarify the proposed rulemaking's applicability to the situation in which a facility is located in both an OBC and a populated non-OBC, particularly if the majority of the operations and impacts are in the non-OBC. (173, 230, and 326)

RESPONSE: Pursuant to the Act, if part of a facility is “proposed to be located, in whole or in part, in an overburdened community,” the applicant must go through the EJIS process. N.J.S.A. 13:1D-160. In the circumstances described by the commenter, where a facility will have minimal impact on the overburdened community, the applicant can demonstrate in its EJIS submission that there will be no disproportionate impact. Under those circumstances, the facility may need only limited control measures in place in order to comply with the adopted rules.
282. COMMENT: We agree with our environmental justice allies that the EJIS requirements should provide additional language on how a facility will demonstrate and avoid disproportionate impact. (73)

RESPONSE: The Department appreciates the commenter’s suggestions and these issues are addressed sufficiently at N.J.A.C. 7:1C-3.2, which outlines the requirements of an EJIS. Specifically, N.J.A.C. 7:1C-3.2 requires applicants to make an assessment of the facility’s positive and negative impacts on each environmental and public health stressor in the overburdened community identified as affected in the chapter’s Appendix under conditions of maximum usage or output. This assessment includes “the amounts, concentrations, and pathways of any contaminants or pollution that will be associated with the facility.” N.J.A.C. 7:1C-3.2(a7). An applicant must also show that the facility will avoid a disproportionate impact that would occur by creating adverse cumulative stressors in the overburdened community as a result of the facility’s contribution, including any necessary operational conditions and control measures. If an applicant cannot make such a demonstration, it is presumed that a disproportionate impact is present, and the applicant is required to submit supplemental information pursuant to N.J.A.C. 7:1C-3.3.

283. COMMENT: We are supportive of any overall EJ analysis contained in the proposed regulations. (274)

RESPONSE: The Department appreciates the commenter’s support of the rulemaking.
284. COMMENT: N.J.A.C. 7:1C-3.4(b): Within 10 business days of receipt of the EJIS, the Department shall make a determination of completeness of the EJIS. If the Department finds the EJIS complete, meeting the requirements at N.J.A.C. 7:1C-3.2, then the applicant may proceed with the public participation process. 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 at N.J.A.C. 7:1C-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. Pertaining to N.J.A.C. 7:1C-3.4(c): Delete publication in the bulletin. Posting on the Department’s website is enough. Pertaining to N.J.A.C. 7:1C-3.4(d): This subsection has been misplaced in this section. It should be part of the process at Subchapter 4. (210)

285. COMMENT: 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.” (240)

286. COMMENT: The process contemplated by the proposed rule will result in significant delay and cost burdens in the overall permitting process, as the EJIS requirement will delay NJDEP’s administrative completeness determination. Specifically, the proposed rulemaking contains no
defined timeline for when an EJIS must be submitted in the application process, and when the NJDEP must issue its decision. (173, 230, and 326)

287. COMMENT: 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. (306)

RESPONSE TO COMMENTS 284, 285, 286, AND 287: The rules at N.J.A.C. 7:1C-3.4 provide a process whereby the Department undertakes an administrative review of the draft EJIS and proposed public notice to ensure their compliance with the requirements of the rules and is required to provide comments on necessary revisions within 10 business days of receipt. An applicant would only be required to conduct additional public engagement where there is a material change to the information set forth in the EJIS. These steps are designed to ensure that applicants do not move forward with public engagement in a manner that would delay progress through the regulatory process. Given the Act’s intent to ensure meaningful, pre-decisional public engagement, it would be inappropriate for the Department to remove the publication in the bulletin and to provide a technical or substantive approval of the proposed project before the public has had an opportunity to provide comment.

For further discussion of the Department’s initial screening of the EJIS, see the Response to Comments 269, 270, and 271.
288. COMMENT: Regarding N.J.A.C. 7:1C-3.3(a)1ii, will the New Jersey Landscape Program data be considered an approved source of known rare, threatened, and/or endangered species data? (173, 230, and 326)

RESPONSE: The New Jersey Landscape Project was designed to provide users with peer-reviewed, scientifically sound information that transparently documents threatened and endangered species habitat. This data may be used as a source for threatened and endangered species habitat.

289. COMMENT: Regarding N.J.A.C. 7:1C-3.3(a)3, from what location should localized air quality data be provided (for example, 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 (for example, wind direction, wind speed, etc.) should also be measured to assist in determining the source of any detected constituents. (173, 230, and 326)

RESPONSE: The purpose of the supplemental information requirement at N.J.A.C. 7:1C-3.3(a)3 is twofold: 1) Inform the public of the current air quality for all criteria pollutants to establish which criteria pollutants are not meeting the National Ambient Air Quality Standards (NAAQS) (that is, the area is classified as “nonattainment”) and which are meeting the NAAQS (the area is classified as “attainment/nonclassifiable”); and 2) Based on the characterization of air quality provided in the first step to describe how the facility will comply with the Air Pollution Control Regulations at N.J.A.C. 7:27 to ensure the emissions from the facility will not make the nonattainment worse or, for areas in attainment, will ensure the addition of the facility’s
emissions in an attainment area will not significantly degrade local air quality and impact public health (that is, exceed the NAAQS specifically designed to protect public health).

The data associated with the current air quality of each NAAQS should be obtained from nearby ambient air quality monitors operated by the NJDEP’s Bureau of Air Monitoring. The information may be a compilation from several monitors since some monitors are limited in the pollutants measured. Information regarding wind speed and wind direction are also measured at the sites and the facility should consider these factors to best identify the representative monitor located downwind of and along the most common wind trajectory path of the emissions plume.

290. COMMENT: Regarding N.J.A.C. 7:1C-3.3(a)4, what source and/or method is to be used to determine “future supply capabilities” of ground water? (173, 230, and 326)

RESPONSE: First, the State’s Water Supply Plan (see https://www.nj.gov/dep/watersupply/pdf/wsp.pdf) evaluates water availability by watershed type (that is, confined ground waters, unconfined ground waters, and surface waters). The plan also provides strategies (Policy Items) for managing current water availability, such as the initiation of supply studies, the development of recommendations for managing water supply deficits, and policies to prevent to excessive use. The Department is currently updating the plan (last updated for 2017-2022) and anticipates releasing it later this year.

Second, the Water Allocation Permits rules at N.J.A.C. 7:19 establish procedures for assessing and managing water diversions, including site specific requirements based on the type
of diversion at N.J.A.C. 7:19-1.6. Any proposed diversion that falls under N.J.A.C. 7:19 must also be conducted in accordance with the Water Supply Plan.

Applicants will be asked to provide an analysis of the subsurface hydrology, presenting ground water quantity and quality data for the aquifers located beneath the site. The Department requires this analysis for certain projects that impact ground water to ensure the requested withdrawal volumes will not adversely affect other groundwater users or the environment. It is the Department’s intent to remain consistent with those analyses. "Future supply capability" refers to the ability of the aquifers to continue to provide the groundwater necessary to sustainably support the operations at the site and/or any surrounding community groundwater needs.

291. COMMENT: 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. (252)

RESPONSE: Applicants, as part of their EJIS requirements at N.J.A.C. 7:1C-3.2(a) are required to provide a description of the facility’s current and proposed operations, which shall include traffic routes and other information relevant to the potential for the facility to contribute to environmental and public health stressors in an overburdened community. In addition, pursuant to N.J.A.C. 7:1C-3.2(a)7, applicants are required to submit an assessment of the impacts, both positive and negative, of the facility on each environmental and public health stressor in the overburdened community as affected at the chapter Appendix, which include “Traffic – Cars,
Light-and Medium-Duty Trucks” and “Traffic – Heavy-Duty Trucks” under conditions of maximum usage or output, and a correlation of such impacts with various stages of the site preparation, facility construction, and operation, including the amounts, concentrations, and pathways of any contaminants or pollution that will be associated with the facility.

In addition, applicants that are subject to the supplemental information requirements will be required to provide a traffic study, as applicable, pursuant to N.J.A.C. 7:1C-3.3(a)6 (a traffic study that describes the transportation routes that will service the facility, site access capability, and existing traffic flow patterns expressed in terms of daily peak hour volumes, off peak hour volumes, levels of service, and average daily round trips, and the facility’s current and proposed contributions thereto for all vehicles associated with the facility’s operations). The information required by the EJIS and any supplemental information will provide the Department with the information necessary to assess the impacts of truck traffic on environmental and public health stressors with disproportionate impacts being addressed through the imposition of appropriate permit conditions. These conditions, which may include, as applicable, avoidance, mitigation, offsite reduction, or net environmental benefit requirements, to satisfy the requirements of the rulemaking and provide the Department with a basis to monitor and, as necessary, enforce those conditions to ensure impacts are addressed during operation.

The Department believes the commenter’s concerns are satisfied by the rules as adopted.

Environmental Justice Impact Statement – Complete for Review
292. COMMENT: If the initial screening information for the OBC collected pursuant to N.J.A.C. 7:1C-2.3 indicates that 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. This is necessary because there are certain stressors that cannot be easily modeled to determine the facility’s impact on the OBC because models used by the EPA and State agencies are beyond the reach of most manufacturing site environmental professionals. (173, 210, 230, and 326)

293. COMMENT: The proposed rulemaking requires the submittal of information even when an overburdened community is not subject to adverse cumulative stressors. The EJIS requirements 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. (160)

294. COMMENT: The NJDEP should 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, the 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. (106, 173, 210, 230, 306, and 326)

295. COMMENT: Facilities seeking to renew permits should be able to just update their prior EJIS/public process/engagement instead of starting over, and subsequent evaluations should only consider increased impacts since the previous evaluation. (319)
296. COMMENT: Does this imply that a permit application will not go to the applicable Department Bureau for review until after the EJIS process is complete? (106)

297. COMMENT: The Department should find permit applications complete for review in accordance with the prescribed media specific regulatory requirements. (210)

298. COMMENT: It is the hope that the currently required municipal zoning and permitting ordinances including public comment and hearing processes along with 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 rules proposed by the NJDEP. Facilities that have already undergone and met the stringent siting and permitting requirements including the local, State, and Federal public comment and hearing requirements will be exempt from conditions being applied in a retro-active fashion. (210)

299. COMMENT: There seems to be considerable confusion within the various divisions of the DEP, the rules need to make clear if public comment periods may be concurrent versus 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. (304)

RESPONSE TO COMMENTS 292 THROUGH 299: N.J.S.A. 13:1D-160(a) expressly provides 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 permit applicant first: (1) Prepares an environmental justice impact statement.” Accordingly, the Department lacks discretion to waive the EJIS requirement, even where, as urged by commenters, an overburdened community is not subject to adverse cumulative stressors.

However, in recognition of the fact that certain overburdened communities may not be subject to adverse cumulative environmental and public health stressors, the adopted rules require facilities in non-adverse communities to ensure that they do not create adverse cumulative stressors, while requiring more robust analysis of operations in adversely stressed overburdened communities.

Based on the statutory requirements, facilities that have previously completed the EJIS process are still required to proceed through each of the outlined steps, however, much of the information previously provided is likely to remain relevant and may, in instances where operations remain static, require minimal updating for each renewal.

Except as otherwise provided for at adopted N.J.A.C. 7:1C-4.4, Solid Waste Management Plan hearings, a hearing pursuant to this chapter would not be held concurrently with any other hearing required in accordance with Department rules.

300. COMMENT: For projects under FERC, the NJDEP should review and consider the EPA’s Promising Practices for EJ Methodologies in National Environmental Policy Act (NEPA)
Reviews and should also consider an exemption for projects held to FERC/NEPA standards, or at least deem Federal documents submitted as part of a FERC EJIS as acceptable. (173, 230, and 326)

RESPONSE: N.J.S.A. 13:1D-160(a) expressly provides 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 permit applicant first: (1) Prepares an environmental justice impact statement.” Accordingly, the Department lacks discretion to waive the EJIS requirement, even where, as urged by the commenters, a parallel environmental justice process may exist. As part of its implementation of the adopted rules, the Department will assess how to best align the process identified by commenters with the State process.

301. COMMENT: The requirements of this chapter apply well before the applicant submits a permit application and not just a “major source permit.” At N.J.A.C. 7:1C-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? N.J.A.C. 7:1C-2.1(d). (210)

302. COMMENT: It is requested that the NJDEP replace the term “complete for review” with “administratively complete” at proposed N.J.A.C. 7:1C-2.1(c) to avoid undue burdens on applicants who have already submitted permitting applications. The NJDEP should clarify the
applicability of the proposed rulemaking to those applicants who have completed the AO 2021-25 EJ process and received a letter from the NJDEP Office of Permit and Project Navigation, but have not been issued a permit yet. (173, 230, and 326)

RESPONSE TO COMMENTS 301 AND 302: N.J.A.C. 7:1C-2.1(b) utilizes the term “complete for review,” which is applicable across multiple permitting rules and addresses situations in which an applicant has a permit pending at the time of adoption of the rules. Pursuant to N.J.A.C. 7:1C-2.1(c), any application completed for review prior to the effective date of the adopted rules is not subject thereto. The Department will evaluate applications that have completed the AO-2021-25 process without having submitted a complete permit to the Department on a case-by-case basis to determine whether the public engagement conducted by the applicant satisfies the requirements of the regulations.

303. COMMENT: The proposed rulemaking requires applicants to submit “evidence of satisfaction of any local environmental justice or cumulative impacts 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 this should be removed from the EJIS requirements. (160)

RESPONSE: The requirement to submit “evidence of satisfaction of any local environmental justice or cumulative impacts analysis with which the applicant is required to comply” refers to providing a copy to the Department of satisfaction of any mandatory environmental justice or cumulative impacts analysis that may be required by duly adopted ordinance at the local
government level. This provision is intended to ensure that an applicant, where feasible, addresses environmental justice concerns at the local level before submitting an application to the Department to avoid unnecessary delays or conflicts. To avoid confusion, the Department is clarifying N.J.A.C. 7:1C-3.2(a)5 upon adoption to provide that applicants are only required to address local environmental justice or cumulative impact “ordinance” requirements.

304. COMMENT: The 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. (56 and 347)

RESPONSE: The rules require an applicant to demonstrate “satisfaction of any local environmental justice or cumulative impact analysis with which the applicant is required to comply” as part of the EJIS submission. N.J.A.C. 7:1C-3.2(a)5. If a governing body or oversight group has determinations relevant to the proposed facility that are not submitted as part of the applicant’s demonstration of compliance, the applicant will present those determinations as part of the public hearing phase.

305. COMMENT: While there are some limited exemptions, such as a minor modification, or a permit that reduces emissions, the rules, 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 Bergen County Utilities Authority’s opinion that the regulations should provide a process that public utilities that 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 on a consistent and regular basis. 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. (304)

RESPONSE: As set forth in this notice of adoption and in the notice of proposal, 54 N.J.R. 982, the Act prevents the Department from considering an application “complete for review” unless and until the applicant completes the EJIS and meaningful public participation processes. Therefore, the Department does not have discretion to exempt public entities from the meaningful public participation requirements of the rules, including the requirement to hold a dedicated public hearing. Except as otherwise provided for at adopted N.J.A.C. 7:1C-4.4, Solid Waste Management Plan hearings, this dedicated hearing would not be held concurrently with any other hearing required under the Department’s rules.
While the Department recognizes that public entities operate with a degree of transparency beyond what is seen in industry, the intent of the Act, as furthered through the regulations, is to guarantee public participation to members of the host overburdened community which cannot be assumed to occur as part of normal operational processes. Accordingly, the Department has sought to propose rules that require specific and direct outreach plans crafted to meet the members of the community where they are. Notwithstanding, the Department agrees with commenter’s position that “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.” The Department encourages regular community engagement, which is expected to provide a more efficient path through the regulations.

306. COMMENT: 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. (143)

RESPONSE: As discussed more fully in this notice of adoption, the Department is committed to creating an efficient, reliable, and predictable process under the rules and will conduct an ongoing evaluation as implementation of the rule progresses. The Department also notes that
projects that reduce stressor contributions are unlikely to trigger applicability of the rules as the
definition of covered permits excludes “minor modification of a facility’s major source permit
for activities or improvements that do not increase emissions,” while facility expansions
similarly exclude “any such activity that decreases or does not otherwise result in an increase in
stressor contributions.”

307. COMMENT: 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” should 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. (210)
RESPONSE: The procedural overview provided at N.J.A.C. 7:1C-2.2 applies only to changes to
existing permitting procedure as a result of the rules. The overview lists “Step 1” as the “initial
screening” of the proposed host overburdened community, meaning that the Department
provides information to the applicant including identification of the environmental and public
health stressors in that community, the appropriate geographic point of comparison, any adverse
environmental or public health stressors, and whether the proposed host overburdened
community is subject to adverse cumulative stressors. The applicant may submit their permit as
usual in advance of receiving this information, but it will not be considered “complete” until the
EJIS process is completed.
As noted in the notice of proposal, 54 N.J.R. 985, an applicant can submit their EJIS concurrently with their permit application by obtaining the information that would be provided during “Step 1” directly, using the Department’s Environmental Justice Mapping, Assessment and Protection Tool (EJMAP). Either avenue is acceptable for beginning the EJIS process.

**Expert Retention**

308. COMMENT: N.J.A.C. 7:1C-9.1 allows the Department to impose unreasonable and uncapped fees on the regulated community, including the hiring of experts, which the Legislature did not expressly authorize. The Department should cover the cost of expert reviews. (59, 84, 160, 354, and 382)

309. COMMENT: If the Department believes an independent expert is needed, the applicant should be allowed to identify and engage an expert acceptable to the NJDEP. (59 and 354)

310. COMMENT: “Expert analysis” should 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 a notice of proposal. (210)

311. COMMENT: 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) 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 at N.J.A.C. 7:1C-3.4(b). The regulation 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 an 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 New York City agencies are competent to review the submitted documents. For example, New York City has determined that it has experts in noise through the NYC Department of Environmental Protection, in open spaces through the NYC Department of City Planning, etc. CEQR does not require evaluation in a technical area that New York City agencies are unqualified to review. Further, if the State cannot arrive at a reasonable cap for such expenses, 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. (240)

312. COMMENT: The NJDEP should clarify how it will assemble a pool of experts if it
determines outside expertise is needed during the EJIS review process. It is unreasonable that the
NJDEP can engage outside experts without limitation at the applicant’s expense. (173, 230, and
326)

313. COMMENT: The NJDEP should 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. (173, 230, and 326)

314. COMMENT: The applicant should have an opportunity to offer comments on contemplated
experts. (173, 230, and 326)

RESPONSE TO COMMENTS 308 THROUGH 314: As described in the EJ Law, the
Department is authorized to “assess each permit applicant a reasonable fee in order to cover the
Department’s costs associated with the implementation ...” N.J.S.A. 13:1D-160. N.J.A.C. 7:1C-
10 details the Department’s process for assessing fees for review of an applicant’s EJIS,
including the method of updating fees as the program is implemented. The EJIS review budget
will be determined by establishing the dollar amount needed to accomplish all tasks associated
with the EJIS review. This fee will be evaluated each fiscal year through the preparation of an
EJIS Program Fee Calculation Report, to be published in the New Jersey Register each March, beginning with March 2024. The initial fee shall be $3,900 per EJIS reviewed.

Regarding expert review, N.J.A.C. 7:1C-9.1(c) provides that if the Department determines that it is necessary to engage one or more experts to evaluate any information submitted by the applicant, the applicant would be given notice along with a cost estimate to be paid in full within 90 days to obtain further review of its application. As applications that require expert analysis will create Departmental expenses beyond what is typical for an EJIS review, these costs should be paid in association with the specific application for which it is necessary, rather than be shared across all applicants through higher overall fees. If the Department absorbed the cost of expert review, as the commenter recommends, this additional expense would limit the Department’s ability to cover the costs of implementation without increasing fees for all applicants. If this were the case, applicants not requiring expert review would effectively subsidize the applications of those who do.

The Department further notes that the placement of this provision is critical to understanding its limited applicability. The provision at N.J.A.C. 7:1C-7.9(c) is situated within the “Department Review” section, meaning it would only be triggered during the Department’s review and assessment of the EJIS in the rare and limited circumstances where the Department’s expert staff may lack a level of nuanced understanding of a specific issue that would benefit from a third-party evaluation. The Department has sufficient and deep expertise in the areas of review that will be required pursuant to the rules. Given the novelty of the issues that are likely to require this level of review, it would not be feasible to set a specific review timeframe.
In these limited circumstances in which third-party expertise may be required, the Department does not foresee the unending reviews and unlimited fees being a concern during implementation. Rather, the goal is to increase efficiency and reliability of decision-making by providing independent review and assessment in particularly challenging circumstances.

To ensure independence, objectivity, and reliability, the Department reasonably determined that it would be more appropriate to have retention occur by the Department as opposed to the applicant, with the selection process being collaborative.

**Material Change**

315. **COMMENT:** 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, and exclude changes in the measures proposed to address the facility’s contributions to environmental and public health stressors. If material changes are made in response to community comments, the EJ process would need to be restarted, and there is no definite end point to the process. (54, 84, 160, 182, 306, and 382)

316. **COMMENT:** Under the current proposed definition of “material change” 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. To prevent unreasonable delays in the permitting process, the NJDEP should modify the definition of “material change” 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 purpose; 2. An expansion of the facility; 3. An increase in the potential contribution 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. (173, 230, and 326)

317. COMMENT: The NJDEP should provide additional detail for potential situations that would and would not trigger an EJIS requirement. For example, would a new EJIS be required if technical design changes are required during a permit review process? (173, 230, and 326)

318. COMMENT: We recommend that the Department include a provision in the roadmap that minor changes to the EJ Impact Statement or related submittals (that is, 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. (143)

319. COMMENT: 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. (293 and 325)

320. COMMENT: Applicants should be required to make changes to proposed projects in response to public comments. (75, 166, 264, 265, 311, 394, 415, and 422)
RESPONSE TO COMMENTS 315 THROUGH 320: The adopted rules at N.J.A.C. 7:1C-4.3(b) require additional public engagement, including public notice, where a “material change” to the proposed project has occurred. The definition of material change provides the Department with discretion to determine whether any change “requires further analysis or public comment to accurately assess the facility’s contribution to environmental and public health stressors in the overburdened community” and includes non-exclusive examples focused largely on potential to increase stressor contributions. Departmental discretion in this area is important so that the Department can request additional information to determine when a change is material, based on the facts of the matter. While the definition references changes to proposed control measures, the Department does not intend this language to require additional formal public engagement where an applicant has proposed measures in a manner that is responsive to concerns expressed by the members of the overburdened community to reduce its contributions to environmental and public health stressors.

Impact Statements

321. COMMENT: Environmental Impact Statement: As mentioned in prior statements, stating that there will be a “benefit” without a competent analysis does not meet the requirements of the Administrative Procedures Act (APA) nor provide adequate basis to implement a regulation focusing on such an important social issue. (210)

RESPONSE: The Environmental Impact Statement is not required by the APA, see N.J.S.A. 52:14B-4(a), but provides additional information outlining the anticipated environmental effects...
of the proposed rules. The EJ Act, which is being implemented by the adopted rules, is expressly intended to ensure that environmental and health impacts of the State’s continued economic progress are no longer borne disproportionately by residents of overburdened communities. The environmental benefits explained in the notice of proposal, 54 N.J.R. 989, relate directly to that legislative purpose.

The Environmental Impact Statement properly indicates that the proposed rules will have a positive impact and provide direct and long-term environmental benefits to the State’s overburdened communities. The stressors identified in both the EJ Act and the adopted rules have significant environmental and health effects (the notice of proposal, 54 N.J.R. 974-982, sets forth a detailed description of the negative impacts of each of the 26 identified stressors) and the adopted procedures are designed to directly reduce these stressors in adversely stressed overburdened communities, thus providing positive effects on the environment and public health.

322. COMMENT: Jobs Impact: The Department can estimate the closure rate of facilities that will be affected by this proposed rulemaking and then effects on support business to the facilities. A more robust assessment is required. (210)

RESPONSE: The APA requires “a jobs impact statement which shall include an assessment of the number of jobs to be generated or lost if the proposed rule takes effect.” N.J.S.A. 52:14B-4(a)(2); N.J.A.C. 1:30-5.1. The purpose of the Jobs Impact statement is to provide notice of these anticipated jobs impacts so that interested parties have the opportunity to participate in the
rulemaking process. The Jobs Impact statement and additional information provided in the notice of proposal, 54 N.J.R. 989, satisfies the requirements pursuant to the APA.

The EJ Act is designed to ensure that environmental and health impacts of the State’s continued economic progress are no longer borne disproportionately by residents of overburdened communities and the Department has met its statutory duty to develop reasonable and protective rules to implement the intent and principles of the EJ Act.

As stated in the notice of proposal, 54 N.J.R. 989, the Department anticipates that the proposed regulations will have little to no impact on job retention in the State and in overburdened communities. While the Department acknowledged that there is a possibility some regulated facilities could offset their compliance costs by hiring fewer workers or limiting expansion, these potential losses would be balanced against economic growth induced by improvements to environmental and public health stressors in overburdened communities. The decisions made by permit applicants will depend on factors specific to their timing, their facility, and their business, making specific estimation of the “closure rate” referred to by the commenter infeasible. Significantly, the Department does not anticipate that regulated entities will choose to discontinue operations or not to construct or expand covered facilities at all, only that those facilities will be constructed either with enhanced environmental controls or outside of overburdened communities.
323. COMMENT: 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 full-time employees. (210)

RESPONSE: The APA and the Regulatory Flexibility Act, N.J.S.A. 52:14B-4(a)(2) and 52:14B-19, respectively, require that the Department provide a regulatory flexibility analysis to the extent the proposed rules would have an effect on small businesses by imposing “reporting, recordkeeping, or other compliance requirements.” N.J.S.A. 52:14B-19. As stated in the notice of proposal, 54 N.J.R. 989, the Department does not expect that the majority of the eight facility types listed in the Act would fit within the Regulatory Flexibility Act’s definition of a “small business.” N.J.S.A. 52:14B-17.

The regulatory flexibility analysis provides notice of anticipated reporting and recordkeeping impacts on small businesses so that they have the opportunity to participate in the rulemaking process. The Act’s express intent is to ensure that the environmental and health impacts of the State’s continued economic progress is no longer borne disproportionately by residents of overburdened communities and the Department has met its statutory duty to develop reasonable and protective rules to implement the intent and principles of the Act.

As set forth in the notice of proposal, 54 N.J.R. 989, the Department believes that there may be some limited number of small businesses affected by the proposed rules. However, the Department does not have sufficient information to accurately estimate the specific number of small businesses located in overburdened communities. As further noted in the notice of proposal, 54 N.J.R. 989, the proposed rules may impose compliance, recordkeeping, and
reporting requirements on small businesses because those businesses operate facilities covered by the Act and may seek permits triggering the proposed rules. The notice of proposal includes notice of applicable potential costs and requirements for covered facilities in both, 54 N.J.R. 989, the Summary and Economic Impact statements.

324. COMMENT: We request the Department perform the actual analyses as prescribed in New Jersey’s APA 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 meet the rigors as intended in the APA 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. 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.” (210)

325. COMMENT: The Department has made no attempt to quantify the costs associated with preparing an EJIS, which requires applicants to obtain a sizeable amount of information, particularly when coupled with the supplemental information requirements. (306)
RESPONSE TO COMMENTS 324 AND 325: The APA requires “a description of the expected socio-economic impact of the rule” to accompany a notice of proposal. N.J.S.A. 52:14B-4(a)(2). The statement should describe “the expected costs, revenues, and other economic impact upon governmental bodies of the State, and particularly any segments of the public proposed to be regulated.” N.J.A.C. 1:30-5.1(c)3. The function of the socio-economic impact statement is to provide notice of anticipated impacts so that interested parties have the opportunity to participate in the rulemaking process.

In this rulemaking, the EJ Act seeks to ensure that the environmental and health impacts of the State’s continued economic progress are no longer borne disproportionately by residents of overburdened communities and the Department has met its statutory duty to develop reasonable and protective rules to implement the intent and principles of the Act. The socio-economic impact statement provided recognizes that costs will be borne by applicants for the preparation of the EJIS and the imposition of necessary control measures to avoid, minimize, and reduce impacts to environmental and public health stressors, particularly in overburdened communities already subject to adverse cumulative stressors and, while it is difficult to calculate the exact costs at this time, it is expected that those costs will be borne proportionate to the size and scope of their existing or proposed operations. The statement provides sufficient notice to those applicants, and the APA does not require the Department to calculate exact costs for each applicant or of the rules as a whole.
326. COMMENT: Under New Jersey’s APA, N.J.S.A. 52:14B-1 et seq., 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 (1985). As currently proposed, however, NJDEP’s regulations implementing the Environmental Justice Law do not meet this standard. That is, the proposed rulemaking 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. (59 and 354)

RESPONSE: The Legislature enacted the EJ Act to ensure that the environmental and health impacts of the State’s continued economic progress are no longer borne disproportionately by residents of overburdened communities and the Department has met its statutory duty to develop reasonable and protective rules to implement the intent and principles of the Act.

Each of the impact statements provided in the notice of proposal, 54 N.J.R. 987-990, in addition to the detailed Summary, provide notice of the new procedures and proposed requirements implemented by the proposed rulemaking. The Department additionally provided access to the EJMAP tool and Technical Guidance to allow for further notice and opportunity for the regulated community to familiarize themselves with the proposed implementation of the Act. The Department has provided sufficient notice and guidance in compliance with the requirements of the APA.
Hearing Requests – Stay and Timing

327. COMMENT: N.J.A.C. 7:1C-9.5 penalizes facilities that exercise their right to challenge the Department’s decision by staying the decision and any associated permits during the pendency of the appeal, which would prevent construction and operation of facilities. A stay pending appeal is not necessary to protect the Department’s interests because any action taken by the Department would have already been determined to be appropriate and protective of public health. (59 and 160)

328. COMMENT: Existing facilities should not be required to cease operations until an adjudicatory hearing is resolved is unjust, especially if the renewal involves no change in facility operations. The threshold to request a hearing is very low, and this process could be abused by opponents to the facilities to force a cessation of operations. The Department should follow the Resource Conservation and Recovery Act (RCRA) permitting standard that permittees can continue operations under the terms of an existing permit while an application is being considered. (59 and 69)

329. COMMENT: The grounds for requesting an adjudicatory hearing are minimal, and 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. (59)

RESPONSE TO COMMENTS 327, 328, AND 329: Upon adoption, the Department is modifying N.J.A.C. 7:1C-9.5(h) such that only the environmental justice decision pursuant to
N.J.A.C. 7:1C-9.2 will be stayed on appeal. Staying the environmental justice determination is necessary because any conditions that might be challenged would have been determined by the Department to be necessary to address a facility’s contribution to environmental and public health stressors. The stay applies only where the applicant has challenged the environmental justice permit conditions, and not when a decision has been challenged by a third party and, therefore, does not implicate the commenter’s concerns related to abuse of process. Accordingly, the phrases “any associated permits” and “all permitted activities shall stop ...” are stricken from N.J.A.C. 7:1C-9.5(h) upon adoption.

330. COMMENT: The proposed rulemaking provides an inadequate hearing process and consultation procedure. The proposed rulemaking 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.R. 998. Such a brief appeal period provides little time for applicants to review and analyze any conditions imposed by the NJDEP—particularly any conditions the applicant did not propose itself—and very little time for any potential negotiations with the 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 the 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 the NJDEP. (59 and 354)
RESPONSE: The 30-day time to appeal set forth at N.J.A.C. 7:1C-9.5(b) is the standard time to appeal under myriad Departmental rules and, therefore, broadly consistent with Department practice and procedure. In practice, applicants routinely understand the conditions that will be placed in a specific permit in advance of issuance, whether approval or denial, so concerns regarding timing and engagement are unlikely to be present on implementation. The exercise of an applicant’s right to appeal will have no bearing on the applicant’s ability to continue discussions with the Department to resolve concerns related to permit conditions.

**Timing and Delay**

331. COMMENT: The proposed rulemaking should be updated to include affirmative timeframes for the Department to react or respond in various essential steps of the process. For example, at N.J.A.C. 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. 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. Land Use permits similar “act by” dates and the EJ regulations must as well. (59, 69, 182, 186, 190, 203, 325, and 326)

332. COMMENT: The procedures set forth at N.J.A.C. 7:1C-2.2 will create significant delays and hurdles that will prevent essential work from being done, which will be to the detriment of
the communities these 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. (186 and 325)

333. COMMENT: The NJDEP already has procedures with the air rules to process certain air permit “changes” efficiently and effectively so that positive improvements can be made quickly, which this proposed rulemaking negates. This additional lengthy process is not protective of the environment or the overburdened community. (84 and 382)

334. COMMENT: 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 proposed rulemaking 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. (143)

335. COMMENT: 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. (293)

336. COMMENT: The NJDEP should clarify 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, particularly given the unreasonable delays and costs caused by obtaining experts. (173, 230, and 326)

RESPONSE TO COMMENTS 331 THROUGH 336: Unlike the Construction Permits Law, N.J.S.A. 13:1D-29, the EJ Act provides no specific timeframes for action by the Department and, critically, does not include a clause that would provide automatic approval should the Department not act within the proscribed timeframe. While the Department believes the regulatory process will not be unduly burdensome and is committed to working through each application it receives to a final agency decision as expeditiously as possible, given its statutory mandate to fully assess facility impacts to environmental and public health stressors in overburdened communities and the novelty of the issues likely to be presented as the State embarks on this first-of-its-kind regulatory effort, the Department reasonably determined not to impose a non-statutory deadline on its decision-making pursuant to the rules.

For reference, the Department provides a brief outline of the specific statutory minimum timeline of the EJIS process as follows:

Prior to day 0: EJIS preparation and review of publicly available data on DEP’s mapping tool (EJMAP).

Day 0: Distribute EJIS (published on DEP website) and Notice of Public Hearing and Public Comment Period.

Day 60: Public Hearing.

Day 70: Publish Public Hearing transcript and written comments.

Day 105: DEP may issue decision (no less than 45 days after Public Hearing).
For further discussion on facilities operating under expired permits through permit shields, please see the Response to Comments 503, 504, and 505.

337. COMMENT: The proposed rules will exacerbate the existing permit backlogs within the air permitting program. (160 and 186)

338. COMMENT: The commenters are concerned about whether the NJDEP has the staffing necessary to implement this program, given the significant workload caused by implementation of this program. (173, 230, and 326)

RESPONSE TO COMMENTS 337 AND 338: The Department will continue to review permit applications as expeditiously as possible with all resources it has available for the purposes of implementing the rules. The Department notes that timely review of permit applications largely depends on the quality and completeness of the permit application. An applicant that fails to provide all necessary information or fails to timely respond to the Department’s requests for information only delays the Department’s review.

339. COMMENT: 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 the 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? (106)
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RESPONSE: While the Department is not making any change to the renewal application timeline through this rulemaking, the Department will continue to evaluate all existing and complementary procedures to assess any necessary modifications thereto and will provide advanced notice to the regulated community in the event of any changes.

340. COMMENT: What is the expected timeframe for the Department to provide the applicability determination? Will it be possible to obtain a determination of applicability in advance of a permit application? Does the NJDEP encourage a written applicability request as the better of the two options? (106)

RESPONSE: The Department’s initial screening process, pursuant to N.J.A.C. 7:1C-2.3, will be site-specific, and specific timing may vary. If timing is a concern, an applicant may obtain the information independently using the Department’s EJMAP tool and submit the screening information concurrently with their application. N.J.A.C. 7:1C-2.3(g). Both methods are provided for in the rules, and neither has a higher preference than the other.

341. COMMENT: Can the Department provide guidelines that offer an approximate timeline for projects being completed pursuant to the 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). (106)
RESPONSE: The Department is unable to provide meaningful responses to project-specific questions in this forum because such questions require a deeper factual explanation and understanding. However, the Department is committed to working with applicants to provide assistance in addressing process challenges that might arise in seeking to comply with the standards and procedures in the adopted rules.

For information on general timing expectations, see the Response to Comments 331 through 336.

342. COMMENT: The commenter is concerned 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 the NJDEP will monitor for this and address it with staff, as necessary. (237)

RESPONSE: Consistent with the requirements at N.J.S.A. 13:1D-158, the definition of facility in the definitions at N.J.A.C. 7:1C-1.5 clearly defines the specific facilities that will require review pursuant to this rulemaking. The Department notes, however, that the EPA has recently emphasized that all recipients of Federal financial assistance must comply with Federal civil rights laws to ensure that the recipient’s programs and activities, including permitting, do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. Title VI of the Civil Rights Act of 1964 requires a disparate impact analysis, which
includes an assessment of whether a permit will have a disproportionate impact on the basis of race, color, or national origin.

**Geographic Point of Comparison and 50th Percentile**

343. COMMENT: Pertaining to geographic point of comparison, we request to amend the point of comparison to only the county that the OBC and facility reside in. The State, as a point of comparison, is too diverse and broad in scope. (203 and 210)

344. COMMENT: The proposed definition of “geographic point of comparison” results in finding disparate impacts simply because urban communities are being compared to rural communities. The State’s 50th percentile will nearly always be the lowest as it includes all the rural and most pristine areas. 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. (54, 160, 203, 306, 319, and 325)

345. COMMENT: 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. (54, 160, and 319)

346. COMMENT: 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. 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 (306).

347. COMMENT: Use of the 50th percentile can cause over inclusion, particularly for stressors where the underlying data has some degree of uncertainty. A higher percentile basis for the analysis would yield more robust results and bring focus on those communities with more significant indicator exceedances. The 50th percentile approach will result in the vast majority of OBCs to be considered “higher than” for almost every stressor, which will stifle economic development in the State. For instance, baseline community scores in populated areas along major transportation routes will undoubtedly score as “already subject to adverse cumulative stressors.” (173, 230, and 326)

RESPONSE TO COMMENTS 343, 344, 345, 346, AND 347: The purpose of the Act is to reduce environmental and public health stressors in overburdened communities in a manner that seeks to redress historic inequities. The Department has reasonably determined the appropriate way to ensure these reductions occur is to ground this analysis in a comparison of environmental and public health stressors in overburdened communities (identified by the Legislature as requiring additional protections) to those in non-overburdened communities (which have not been subject to the same historic inequities). This analysis does not in any way rely on an erroneous distinction between urban and non-urban communities as overburdened, and non-overburdened communities are found across the State in both urban and rural areas and comport with the Act’s recognition of historic siting inequities and the Legislature’s intent that “no
community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State’s economic growth.” N.J.S.A. 13:1D-157.

As explained in notice of proposal, 54 N.J.R. 972, the Act provides the Department with discretion to determine the appropriate geographic unit of analysis upon which to base the required comparative analysis of environmental and public health stressors. N.J.S.A. 13:1D-160. After analyzing several different approaches, including considering State, county, and region alone, the Department determined that a single point of comparison or “one-size-fits-all” approach would not provide the most equitable protection to overburdened communities, as is intended by the Act. For instance, using only a county point of comparison would threaten to perpetuate the historic siting inequities the Legislature sought to remedy by providing less consistent protection in the State’s comparatively more industrialized counties. Conversely, focusing on a strict Statewide comparison would provide less protection to overburdened communities in comparatively less industrialized counties, particularly in the State’s southern regions. Similarly, analysis of more regionalized approaches lacked uniformity and a coherent basis for boundary determination. In this way, the Department’s approach attempts to better balance differences between urban and rural environments in its analysis.

The Department has, therefore, decided to use a hybrid approach that compares the environmental and public health stressor values of an overburdened community to the State or county’s 50th percentile and selects the lower value as the appropriate geographic point of comparison. The selection of the 50th percentile for comparison is consistent with the Act’s requirement that the Department determine whether environmental and public health stressors
are “higher than those borne by other communities within the State.” N.J.S.A. 13:1D-160. This straightforward assessment of the data leaves little room for interpretation over whether a community is already adversely impacted and in need of the additional protections provided pursuant to the rules.

Additionally, the Department determines the appropriate geographic point of comparison as the more protective (lower) CST value for the State or county. The Beta version of the EJMAP tool demonstrates several instances where the county’s 50th percentile is the appropriate geographic point of comparison. For example, the 50th percentile value for Combined Stressor Total (CST) for Atlantic County is 10, whereas the State value is 13. As the county value of 10, is lower and more protective than the State’s CST value, each OBC’s individual CST score is compared against the county value and not the State’s value. This methodology is applied consistently to all stressors and OBCs to determine adverse stress.

The Department has also adopted additional definitions to aid in the assessment of stressor levels in an overburdened community in relation to the geographic point of comparison. This includes defining “adverse environmental and public health stressor” as a stressor in the overburdened community that is higher than an overburdened community’s geographic point of comparison or would be made higher than an overburdened community’s geographic point of comparison as a result of the facility’s contribution.

Finally, to the extent commenters are concerned with the number of overburdened communities in the State and their associated population, the Department’s definition of
overburdened communities exactly mirrors the definition in the Act, and the Department is without discretion to adopt a less stringent definition.

348. COMMENT: The geographic area of influence surrounding the proposed project should be expanded to include at least neighboring census blocks, perhaps even further. (202)

349. COMMENT: 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 to account for the widespread impact that polluting facilities can have. The 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. (56 and 347)

350. COMMENT: In addition to considering census tracts adjoining zero-population census tracks, it would also be appropriate to see if there are overburdened communities adjoining low population census tracts. (427)

RESPONSE TO COMMENTS 348, 349, AND 350: The Department appreciates the commenters’ concern, but the Act focuses strictly on impacts and benefits to the host overburdened community. Specifically, the Act requires the applicant to assess, and the Department to impose conditions to address, impacts to environmental and public health stressors in the host overburdened community. N.J.S.A. 13:1D-160(a). Similarly, when assessing whether a facility will serve a compelling public interest, the Department is limited to considering whether that benefit will inure to the host overburdened community. N.J.S.A. 13:1D-
160(c). Accordingly, the Department has determined it appropriate to focus its analysis of impacts under the rulemaking in the same fashion.

351. COMMENT: Scrap metal facilities tend to be in urban areas where scrap metal tends to be generated to lessen the distance of transportation 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 separate stressors. It is difficult to see how any scrap metal facility will not be located in a community with adverse cumulative stressors. It is virtually certain that communities where scrap metal facilities are located will be subject to adverse cumulative stressors. This amounts to discrimination in a manner inconsistent with equal protection and due process. (160)

RESPONSE: The Legislature found that “no community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State’s economic growth,” 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.” N.J.S.A. 13:1D-157.

As shown in the Beta version EJMAP facilities tab, existing scrap metal facilities are located throughout the State, in both overburdened communities and non-overburdened communities. The Department acknowledges that, as EJMAP shows, there are higher concentrations of these facilities in the State’s more urban areas, particularly in Northeastern New Jersey and in Southern New Jersey across from Philadelphia. However, EJMAP also demonstrates the same concentration trend with other regulated facility types, such as major
sources of air pollution and transfer stations. The Department must abide by the letter and intent of the statute and will apply its analysis without bias toward any particular industry. To that end, EJMAP shows the reality of facility locations throughout the State and supports the concern that adding pollution sources to these areas could adversely impact the host communities.

**Census Data**

352. COMMENT: The Department relies on unrepresentative data in identifying overburdened communities. The American Community Survey (ACS) data is based on a smaller sample size than the decennial census, which leads to wide variations in communities that will be identified as overburdened each year, creating significant uncertainty for facilities. Facilities are already seeing this change with the Department’s most recent update. Consistent with the language of the EJ Law, the Department should rely on United States Census data to identify overburdened communities to allow facilities to plan permit applications, allocate resources, and proactively address EJ concerns. (160 and 240)

353. COMMENT: 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, there should be a procedural process that 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. (107)

354. COMMENT: Is there a mechanism to submit updates to the mapping that determines whether or not the EJ Act 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 any 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 the EJ Act 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? (190)

355. COMMENT: 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 three 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 percent 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 EJMAP 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 rulemaking were drafted with good intentions, adequate analysis was not put into how to address environmental justice concerns most effectively. (210)

356. COMMENT: 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 two 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. (210)

357. COMMENT: Being survey-based, ACS data has a level of uncertainty expressed as a tolerance, that is, sampling error. The error is proportional to the sample size. Census block groups are statistical divisions of census tracts, that are generally defined to contain between 600 and 3,000 people. (240)

358. COMMENT: The U.S. Census Bureau is implementing the Disclosure Avoidance System (DAS), designed to withstand reidentification of individuals responding to questionnaires. DAS works by introducing “noise” into the data of block groups. The noise is designed to cancel out over entire census data set. The degree of noise is a function of block group 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. 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, that is, 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. (240)

359. COMMENT: 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. (240)

360. COMMENT: 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. (43 and 352)

361. COMMENT: The NJDEP should also provide a calendar to the public identifying when future updates to EJMAP will be made. (173, 230, and 326)

362. COMMENT: Stakeholders cannot confirm that the NJDEP accurately captured the criteria to identify an “overburdened community” or what quality controls were in place to create this
RESPONSE TO COMMENTS 352 THROUGH 362: The Department has incorporated the statutory definition of overburdened community in the rules. The Legislature defined “overburdened community” in the Act as “any census block group … 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.” N.J.S.A. 13:1D-158. The Act directs the Department to determine which census block groups meet this criterion by using data from “the most recent United States Census.” N.J.S.A. 13:1D-158.

Consistent with this statutory direction, the Department utilizes the most recent census data, which is currently the 2020 (five-year American Community Survey Data 2016 to 2020). As the commenters note, every 10 years, the U.S. Census Bureau works in a nonpartisan manner with states to identify and provide the small-area population counts needed for legislative redistricting. It involves redrawing congressional and State legislative district boundaries, including new block group boundaries and identification numbers that form the basis for OBCs. The Department’s block groups align with the U.S. Census Bureau definition of statistical divisions of census tracts, are generally defined to contain between 600 and 3,000 people and are used to present data and control block numbering.

However, data collected in the Decennial census survey form is limited to nine questions for each person in a household. Responses to these questions only provide information on
minority status, leaving the poverty and linguistic isolation statistics required to be considered
under the Act to the ACS. Due to these differences in data availability, the Department
interpreted “the most recent US Census” as the information contained in the most recent ACS
release, since this survey provides consistent data for all three statutory OBC criteria (minority,
poverty, and linguistic isolation). The DAS was applied for the first time to the Decennial census
data for 2020, and there are no plans to implement DAS to the ACS data set until 2025. As such,
the DAS is not an issue for the State’s current determination of OBCs. Further, the Department
trusts that results from the Census ACS survey will be the most accurate picture of the
demographics in a respective area and can be used to determine OBC designations.

Consistent with the Act’s requirements at N.J.S.A. 13:1D-159, the Department will
update its list of overburdened communities at least every two years utilizing the most recent
ACS release. As was done previously for the 2019 and 2020 OBC designation updates, the
Department notifies all municipalities of the OBC status changes in their borders, posts the K list
and associated municipality maps on the Department’s Office of Environmental Justice website
and continues to provide the previous year OBC layer in EJMAP for non-official comparison
purposes only. To ensure transparency, predictability, and consistency, these updates will occur
every two years on January 31. The Department will publish notice of these updates in the New
Jersey Register, as well as on its website.

Additionally, while the Act does not mandate a specific schedule for updates to the
stressor data necessary to conduct the analysis required under the rules, to ensure transparency,
predictability, and consistency, the Department will review and update its stressor data, including
EJMAP, twice a year. This will ensure that data relied upon by applicants and community members is current, reliable, and accurate. These updates will occur each January 31 (consistent with the ACS updates) and July 31.

363. COMMENT: With good knowledge of the State from south to north, and the towns I worked in, the mapping, which calls out overburdened communities, seems that assumptions run contrary to my experiences. For instance, the area I live in is denoted as an OBC solely because we have less nonwhite 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 nonwhite community, is listed as an OBC apparently because the white folks are a minority. 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, ostensibly 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 are concentrations of folks who have incomes less than the recognized benchmarks. Just using a minority status in any community as a determinative benchmark is in itself, racist.

364. COMMENT: The EJ Law provides the tools to protect EJ communities from more pollution. Overburdened communities should be defined using three criteria: limited English
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proficiency, low-income areas, or being a minority. Each of these protects different vulnerable communities that don’t always overlap. (423)

365. COMMENT: 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 “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. (240)

366. COMMENT: The data relied upon by the Department results in too many overburdened communities. (186 and 454)

RESPONSE TO COMMENTS 363, 364, 365, AND 366: The Legislature used the term “overburdened community” in the Act and defined it as “any census block group … 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.” The definition provided in the adopted rules is, and must remain, consistent with that definition. Adding conflicting or overlapping terms of art would be more likely to cause confusion and uncertainty than to provide
additional clarity. The Department notes that the utilization of the statutory demographic criteria to define an overburdened community represents only the first level of analysis under the rules to define the areas in which the Department has jurisdiction. The Department’s decision-making, and the imposition of conditions, is dependent upon the assessment of the facility’s contributions to adverse environmental and public health stressors in a manner that creates a disproportionate impact to the community.

**Adjacency**

367. COMMENT: Treating zero population block groups that are adjacent to overburdened communities the same as overburdened communities is contrary to the EJ Law. A census block that has no residents does not meet the definition of an overburdened community pursuant to the EJ Law, and the specific language of the EJ Law does not allow the expansion of its requirements to a zero-population census block. (54, 77, 84, 102, 107, 150, 160, 173, 186, 190, 203, 210, 230, 253, 306, 319, 326, 382, and 413)

368. COMMENT: 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, N.J.A.C. 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. (107)

369. COMMENT: Will the EJ rule be applicable to one of the eight facility types solely because they are located adjacent to an overburdened community? (106)

370. COMMENT: We 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. (325)

371. COMMENT: The commenter requests that 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? (210)

RESPONSE TO COMMENTS 367, 368, 369, 370, AND 371: As indicated in the Act, the Legislature has directed the Department to work to address the disproportionate impacts to environmental and public health conditions historically borne by overburdened communities. It is, therefore, entirely consistent with the Act to require heightened analysis of operations of covered facilities located in zero population block groups where those facilities are immediately
adjacent to an overburdened community and, therefore, likely to present similar impacts to environmental and public health stressors as those located directly in the community. This is particularly important considering how block group boundaries can be manipulated during the census process for a myriad of purposes unrelated to the protections sought by the Act, depriving communities of protections. The Legislature could not have reasonably intended to exempt such facilities from analysis of their potential impacts to public health and the environment in those immediately adjacent areas. The Department intends to ensure the continued protection of communities even if census block data and boundaries are reconfigured to have zero population in the future.

The framework of the adopted rules is, therefore, designed to ensure that the statutory mandate is achieved by requiring facilities in zero population block groups that are located immediately adjacent to overburdened communities are reviewed and subject to standards that ensure that impacts to adjacent overburdened communities are taken into account and any necessary permit conditions imposed to protect those communities from disproportionate impacts. To the extent that facilities in zero population census blocks are located immediately adjacent to statutorily defined overburdened communities, the operations of new or existing facilities in the zero population block groups have similar potential to impact environmental and public health stressors as those located directly in the overburdened community that would not otherwise be considered. As suggested by one commenter, this inclusion of adjacent zero population block groups provides an opportunity for a facility in a zero population block group
to demonstrate that its operations will not impact environmental and public health stressors in the adjacent overburdened community.

In expressing that intent, the rulemaking, at 54 N.J.R. 983, indicated that the Department would review the facility as if the adjacent area were an overburdened community. However, the proposed language could be misinterpreted to suggest that the adjacent zero population block group itself is an overburdened community. To clarify that the Department was not intending to expand the definition of overburdened communities beyond what is set forth in the Act, the Department is clarifying N.J.A.C. 7:1C-2.1(e) upon adoption to provide that overburdened communities covered by the rules are those covered by the Act, as defined at N.J.S.A 13:1D-157, but that facilities in zero block groups immediately adjacent to overburdened communities will require review pursuant to the proposed rules.

Additionally, the Department agrees with commenters who suggest that the proposed language could potentially work at cross-purposes with zoning approaches that seek to create dedicated industrial or commercial zones or enhanced, protective buffers between those areas and residential populations. Accordingly, and consistent with its intent to ensure impacts of adjacent facilities are analyzed and considered, the Department is further clarifying N.J.A.C. 7:1C-2.1(e) upon adoption to provide that only those facilities in a zero-population block group that are sited immediately adjacent (that is, shares a border with the OBC block group) to residential areas of an overburdened community will be subject to the requirements of the chapter. The Department expects that this clarification will incentivize more protective zoning practices and the creation of protective buffers between facilities and neighboring communities.
The Department’s intent, for example, was not to require a facility located in the far corner of a zero-population block group, removed and buffered from an adjacent residential community, to be subject to the proposed rules.

372. COMMENT: In addition to considering census tracts adjoining zero-population census tracks, it would also be appropriate to see if there are overburdened communities adjoining low population census tracts. (427)

RESPONSE: The definition of an “overburdened community,” as provided by the Legislature, considers “any census block group … 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.” N.J.S.A. 13:1D-158; N.J.A.C. 7:1C-1.5. While zero-population block groups, created as a result of census reconfiguration, would be missed by this definition, low population block groups that meet the statutory OBC criteria would still be captured under the current definition.

Stressors

373. COMMENT: The stressors should be weighted according to their adverse effects, rather than considered equally (for example, cancer risk should be given more weight than percentage of impervious surfaces). (54 and 143)
374. COMMENT: The DEP’s commitment to providing the initial screening information in the procedural overview (N.J.A.C. 7:1C-2.2) is an important contribution to the consistency and efficiency of the application process. However, this process should be further enhanced by adding the relative ranking and comparative risks of the listed stressors as applicable to the local community, which would allow applicants an opportunity to avoid certain areas before the process even begins to approach an application knowing that mitigation or other conditions would be required. This will allow applicants to make informed and educated decisions on siting and permit requests. The following additional language is suggested: “Upon receipt of a permit application subject to the requirements of this chapter, the Department would provide the applicant with the initial screening information for the overburdened community, including identification of the environmental and public health stressors, the appropriate geographic point of comparison, any adverse environmental or public health stressors and whether the overburdened community is subject to adverse cumulative stressors. To assist the applicant in providing the maximum total environmental improvements for the overburdened community, the Department will include, as part of the initial screening information, the relative importance of each applicable stressor as it relates to the specific overburdened community. Further, the Department will include the applicant’s relative contribution for each applicable stressor.” (150 and 413)

RESPONSE TO COMMENTS 373 AND 374: The Department considered the possibility of weighting the various stressors, including assessing the approaches taken in CalEnviroScreen and the EPA’s EJScreen, in an attempt to prioritize impacts, while developing its methodology.
Ultimately, however, the Department determined that it was unable to develop a reliable and objective method to support a “universal” weighting mechanism to account for the variety of environmental and public health stressors impacting overburdened communities at this time. Stated more plainly, the prioritization of any one specific stressor over others would not be consistently applicable or protective across the State’s many, diverse urban and rural overburdened communities. For example, one commenter’s suggestion to prioritize cancer risk over impervious cover fails to recognize the significant increase in ambient temperature from impervious cover, and the myriad health outcomes associated with extreme heat that may be more present in one community than increased cancer risk. Accordingly, the Department determined it was more appropriate to treat stressors equally and conduct its comparative analysis by considering the combined stressor total (sum of adverse stressors) to determine the communities most in need of the additional protections afforded by the Act and the rules.

375. COMMENT: The DEP should use the Department of Health’s (DOH) database of childhood lead exposure (listed by municipality) rather than houses built before 1950 as a method for determining lead exposure. (54)  
RESPONSE: The DOH does not generally present health outcome counts or rates, such as childhood blood lead levels, below the municipal or county level for a variety of reasons, including the rarity of many health outcomes; the instability and wide variation from year to year of counts and rates within small populations; and the need to protect the confidentiality of
individuals. As OBCs are defined at a census block level, this limitation precluded the Department from including health outcomes or rates as stressors.

As the Department requires reliable and publicly available data for each block group to support the analysis required pursuant to the rules, the Department, therefore, relied on present conditions that may cause public health impacts consistent with its statutory charge. As the primary cause of elevated blood lead levels is exposure to lead-based paint, and the presence of lead-based paint is closely related to housing age, the age of housing stressor was selected to inform relative blood lead levels in overburdened communities.

376. COMMENT: 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. The rulemaking fails to establish a science-based standard that can be legally enforced. For example, individual cancer risks are legislatively established as one 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. (402)

377. COMMENT: The Department defines “environmental stressors” and “public health stressors” as provided in the Act, N.J.S.A. 13:1D-158.2, as attributed to the facilities. Currently, there is just a grouping of eight 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 pursuant to 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 intent and requirements. (210) 378. COMMENT: Additional detail and clarification of the NJDEP’s methodology for developing and comparing the CST score is needed. Through the current methodology, 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, which may result in the inclusion of communities with CST scores based on less important measures of cumulative stress. Equal weighting of highly correlated individual stressors or stressors that measure different versions of the same exposure may skew the results of the analysis. The NJDEP should consider averaging certain highly correlated indicators together and counting them as one indicator. (173, 230, and 326) RESPONSE TO COMMENTS 376, 377, AND 378: The analysis conducted pursuant to the rules is not a cumulative impacts analysis but rather a comparative analysis, for which the process is clearly outlined. The Environmental Justice Law defines environmental and public health stressors through broad categories (for example, concentrated areas of air pollution), and then defers to the Department’s expertise to refine the pollution sources to appropriately determine a community’s existing level of environmental stressor. Through a comprehensive stakeholder process and internal in-depth analysis, the Department selected a list of stressors supported by robust, high-quality, Statewide, publicly available datasets that are meaningful at a census block
group level. That data is relied on to assess whether a community is adversely stressed. The Department further engaged stakeholders in determining the threshold above which any individual stressor, as well as the CST, triggers a determination of adversely stressed, and determined the 50th percentile or median level provided the best protection for those communities. This straightforward assessment of the data offers clarity regarding whether a community is already adversely impacted. For more information on the concept of duplicative stressors, please see the Response to Comments 386, 387, 388, and 389.

The geographic point of comparison (GPC) value can equal zero when a stressor does not exist for the median of non-OBC and adjacent areas in the county or State. In practice, when the specific stressor’s values for each of the non-overburdened block group are ordered from least to greatest, and a number of those overburdened block group values are zero, it's possible that the middle value (or median) will be zero. For example, assume the Department evaluates five non-OBC block groups for stressor A. Three of the block groups have a value of zero, one has a value of one, and the final one has a value of three. The middle value of this data set (0, 0, 0, 1, 3) is zero. Zero median values can occur if a facility type, such as scrap metal facilities, is not often located in non-OBCs, or when certain use limitations, such as deed restrictions, don’t occur in non-OBC areas. Alternatively, it could mean that the number of days above the standard for non-OBCs are frequently zero. These zero values are based on real data, and the OBC values that have those types of facilities, restrictions on groundwater or soil use, or days above the standard are by definition “higher than” that median value of zero and considered adversely stressed.
Finally, even stressors that seem interrelated in some circumstances often arise for different reasons. For instance, stressors that affect different environmental media will require different restrictions or control measures. Areas where both groundwater and soil use restrictions are applied have heightened stress from those restrictions when compared to areas with only one or neither of those restrictions. That heightened stress is indicative of the historic legacy of environmental pollution in that area and relevant to the Department’s consideration of disproportionate impact. The Department’s analysis considers these impacts not in a vacuum but in comparison to non-overburdened communities to provide a clear assessment of comparative environmental and public health conditions Statewide.

379. COMMENT: Where possible, multiple applicants could be considered and evaluated in unison, adding efficiency to the process. For example, two applicants identified as having overlapping stressors could work cooperatively with the Department such that each applicant focuses on the stressors it is best able to mitigate and relying on the other to mitigate others, resulting in greater total community benefit than if each were working independently. One applicant may be able to “over comply” with some stressors to compensate for others where it may be at the limit of possible mitigation for others. Further, this process of ranking the relative importance of each stressor and the applicants’ relative contribution could evolve into a more beneficial and cooperative process and less of a command-and-control approach. (150 and 413)

RESPONSE: The Act directs the Department to deny any permit that would cause or contribute to adverse cumulative environmental or public health stressors in its host overburdened
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community. N.J.S.A. 13:1D-160(c). The Act and the implementing rules are designed to ensure that environmental and public health conditions in overburdened communities continue to improve and require the Department to consider feasible stressor reduction measures in its review of each subject permit application. To allow some permit applications to offset others would be inconsistent with the Act.

380. COMMENT: 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.R. 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 Regulated Medical Waste (RMW) entirely indoors and could not cause the pollution impacts the proposed rulemaking assumes. (59 and 354)

381. COMMENT: Measuring the environmental and public health stress associated with scrap metal facilities by the number of sites per square mile is inaccurate and biased. The preamble to the rules notes that not all scrap metal facilities cause stress, but the proposed rulemaking assumes all scrap facilities are stressors. Any potential stress from these facilities is already addressed by compliance with the substantive environmental statutes and rules. The Department should instead look for surrogates for emissions or discharges or improper management, like
number of material permits or regulatory violations. The Department chose to exclude resource recovery facilities from being considered as part of the solid waste facility stressor because they are captured under the regulated air pollution stressor. Scrap metal facilities are also captured under other stressors, and they are also proposed to be their own stressor. They should be considered as part of stressors like the number of permitted air and NJPDES sites per square mile. (160)

382. COMMENT: 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. (54, 160, and 319)

383. COMMENT: Permitted air sites should be deleted as a stressor. 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 better indicators of impacts to communities. (173, 230, and 326)

RESPONSE TO COMMENTS 380, 381, 382, AND 383: The Department’s determination to consider the density of facilities as a potential environmental stressor in an overburdened community is consistent with the Act, which defines “environmental or public health stressors” as including, among other things, “transfer stations or other solid waste facilities, recycling facilities [and] scrap yards.” N.J.S.A. 13:1D-158. The inclusion of these facilities in this definition serves as a clear recognition by the Legislature that the presence of these facilities, particularly when located in abundance due to historic siting inequities, constitutes a source of environmental stress on a community. The Department has included three additional stressors
related to facility density and proximity at N.J.A.C. 7:1C Appendix to assess the potential impact that the density of permitted air, NJPDES, and emergency planning facilities may have on an overburdened community. A community’s proximity to environmental stressors is correlated with increased adverse public health risks, and overburdened communities historically subject to disproportionate environmental stressors, including the cumulative impacts of industrial facility siting decisions, generally experience a higher degree of public health stressors, as compared to communities that are not overburdened. Even when acting in compliance with applicable requirements, these facilities can impact a community in several ways, including, but not limited to, increased mobile source emissions, dust, odor, and noise that adversely affect the environment and public health.

The Act also specifically defines environmental or public health stressors as including solid waste and recycling facilities, as well as scrap yards. New covered facilities, including scrap metal recycling facilities, will not be prevented from being sited in overburdened communities where their operations can avoid a disproportionate impact or if a compelling public interest is shown. Moreover, the Department rejects the underlying assumption of the commenters that the only suitable areas for development of covered facilities are overburdened communities, an assumption that has led to the very concerns sought to be addressed by the Act.

384. COMMENT: The stressors in the chapter Appendix do not reflect actual stress caused by facilities in overburdened communities. Some stressors, like lack of recreational open space, lack of tree canopy, and impervious surface, reflect very typical features of urban areas, rather than
negative health impacts caused by industrial facilities. The Department has proposed to include
soil contamination deed restrictions and ground water classification exemption areas as separate
stressors despite that the Department’s cleanup regulations ensure that no undue risk to human
health or the environment remains after remediation is complete. Many of the metrics the
Department proposes to identify whether a community is stressed are based on hypothetical
impacts based on the existence of certain infrastructure and facilities, as opposed to being based
on localized impacts. Stressors like soil contamination deed restrictions, ground water
classification exemption areas, railways, solid waste facilities, and scrap metal facilities bias the
scoring for a given census tract and lead to urban communities being identified as
disproportionately impacted, thereby always triggering permit applicants in these areas to engage
in the EJ process. (160)
385. COMMENT: The NJDEP should 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 involves assumptions about the other
impacts on a community from sources outside the control of the applicant, such as personal
habits and behaviors of community members, transit authorities, shipping companies, and air and
water pollution in neighboring states. (173, 230, and 326)
RESPONSE TO COMMENTS 384 AND 385: The stressors selected for inclusion by the
Department are not intended to be directly attributable to facility operations. Rather, they are
intended to inform the specific categories set forth in the Act’s definition of environmental and
public health stressors and provide a baseline of information to support the required comparative
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analysis. In this way, each stressor was selected to capture different aspects of how pollution sources impact those communities. Some stressors show the potential correlation to air or water standard violations, while others show indirect impacts of these sources on a community. Still others, like truck traffic, show impacts that are not captured directly by site specific permitting but inform the statutory “mobile source” category. While there is some overlap in considering these various stressors individually, the net effect is a complementary presentation of the burdens placed on these communities. The Department has, consistent with its stated goal, selected the appropriate and minimum number of stressors necessary to provide a complete and accurate view of the stresses placed on overburdened communities and form the basis of an analysis geared toward reducing disproportionate impacts on the environment and health of members of these communities.

386. COMMENT: 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 rulemaking and the duplicative nature of the stressors. (306)

387. COMMENT: Some stressors—like deed notices and CEAs—are duplicative and would result in remediated sites being counted twice, making them appear more negatively impactful than a polluted site that has never been remediated. Deed notices do not mean that a property must remain unused. (54 and 143)

388. COMMENT: The stressors identified and how they are measured result in the same environmental issue being double and triple counted. Scrap facilities are counted as a stressor, and they are also counted again for their NJPDES and air permits. They are likely to have truck traffic and are, thus, counted again as “Mobile Sources of Air Pollution.” A scrap metal facility could count for four separate stressors. (160)

389. COMMENT: The 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 that avoids potential “double counting” because of inter-related stressors being regarding as individual stressors with their own individual metrics. The NJDEP should
strive to include indicators that provide unique sources of information to identify disadvantaged communities. The NJDEP should provide sensitivity analyses to justify inclusion of air quality indicators (PM, cancer risk from PM, Car/Light/Medium Truck Traffic, Heavy Truck Traffic, Railways) and demonstrate sensitivity of selecting each of these indicators. Similarly, recreational space, tree canopy, and impervious surfaces are likely duplicative of one another. The NJDEP should provide sensitivity analyses to justify inclusion of these indicators and demonstrate sensitivity of selecting each indicator. The 26 stressors heavily rely on air quality stressors, which results in redundancy. Other stressors, such as impervious surface and flooding stressors, appear duplicative. The soil contamination deed restriction and ground water classification exception areas/currently known extent restrictions stressors should be deleted. The proposed rulemaking inaccurately describes sites with soil contamination deed restrictions as “cannot be used for any purpose” when in fact, while “uses” are restricted the overall remedy is protective to the environment and public health. Further, identifying soil contamination deed restrictions and ground water classification exception areas as stressors places additional burdens on responsible parties to clean up sites to an unrestricted use. Lastly, these stressors relate to remediation projects where exempt from the EJ process that creates a contradictory statement within the rulemaking. (173, 230, and 326)

RESPONSE TO COMMENTS 386, 387, 388, AND 389: The stressors selected for inclusion in the Department’s baseline assessment attempt to paint a complete picture of the environmental and public health burdens on a given community. In this way, each stressor was selected to capture different aspects of how pollution sources impact those communities. Moreover, while
the Legislature designated certain stressors, like scrap metal facilities, as both a facility type that
triggers environmental justice review and as an environmental and public health stressor, the
Legislature otherwise gave substantial deference to the Department to define specific data points
to inform the broad stressor categories identified in the Act. N.J.S.A. 13:1D-158.

In addition to considering the density of certain facility types, the Department included
other stressors as direct emission surrogates, such as air and water quality standard violations,
where available and applicable, to assess further stress on communities from these facility types.
Accordingly, it would be inaccurate to consider any overlap between facility density and other
environmental and public health stressors identified in the rulemaking as “double counting” and
more appropriate to recognize that the selected stressors complement each other and present a
more accurate and complete picture of the comparative environmental and public health
conditions in overburdened communities.

Pursuant to the rules, the Department differentiates between stressors that “may cause
potential health impacts,” which refer to indicators of indirect environmental and public health
impacts, often referred to as “quality-of-life” impacts. The commenters list several stressors,
including lack of open space and lack of tree canopy, that would be considered “may cause”
stressors. These “quality of life” stressors are relevant to the consideration of permit applications
because they can put a strain on a community’s resources and make future environmental and
public health threats more difficult to prevent or manage. Not including these stressors would
underrepresent the stresses placed on these communities, and the goal of the Environmental
Justice Law is to ensure that these communities are not further burdened by additional pollution sources.

In analyzing the data and selecting appropriate stressors, the Department considered the level of correlation and overlap between stressors in common categories (for example, major sources of air pollution). Given the nature and geospatial scale of each stressor’s underlying data, the Department is confident that these 26 stressors are sufficiently independent of each other and capture disparate environmental and public health stressors on a community. For example, the ozone and PM$_{2.5}$ stressors represent the overall air quality in the region, while the cancer and non-cancer risks focus on specific health impacts from the air toxic components of air pollution, and the traffic-related indicators speak to non-stationary source of local air impacts in and around a community, as well as intangible additional stresses such as noise, odor, and fugitive dust. While there is some overlap in considering these various stressors individually, the net effect is a complimentary presentation of the burdens placed on overburdened communities.

It is important to note that each stressor is included for different reasons. For instance, deed notices and CEAs are put into place for different reasons and hence are not duplicative with corresponding data excluded from the known contaminated sites stressor (which includes those sites that have not yet completed remedial activities) to avoid overlap. While both apply use restrictions to areas where requisite standards are not met even after remediation is complete, they address different media (soil vs. ground water, respectively) and, therefore, apply different restrictions. Some areas might have both types of restrictions applied, but in those cases, the
heightened stress from those restrictions as compared to areas with only one or no restricted uses is warranted and indicative of the historic legacy of environmental pollution in that area.

390. COMMENT: A number of the environmental stressors identified by the Department that new recycling facility applicants must address may not be appropriate or feasible, most notably: lack of recreational and open space; lack of tree canopy; impervious surfaces; land use/land cover; unemployment; and education. (190)

391. COMMENT: Stressors used that do not relate to impacts from businesses (“social determinants of health,” such as lack of recreational open space, lack of tree canopy, flooding, and amount of impervious surface as separate stressors) relate 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. (306)

RESPONSE TO COMMENTS 390 AND 391: As noted, the Department strived to identify and assess relevant environmental and public health stressors affecting overburdened communities to serve as the baseline for its comparative analysis and did not intend to attribute specific impacts to given facilities. This baseline information then undergoes a comparative analysis to determine
which communities bear environmental and public health stress disproportionately when compared to other, non-OBCs within the State.

Accordingly, these stressors show the legacy and magnitude of New Jersey’s environmental and public health injustices, which is why it is critical that these stressors account not only for present conditions and proximity to potential contributors to environmental and public health impacts, such as roadways and railways, but also limitation on resources that reflect a legacy of inequitable facility siting, such as groundwater and soil use limitations, and density of covered facilities, as well as lack of important environmental benefits, such as green and open spaces and ongoing limitations that may impact public health. The basis for inclusion of each stressor and the specific statutory criteria which it is intended to inform, including whether the stressor is one that correlates with public health impacts, is discussed in detail in the notice of proposal, 54 N.J.R. 974-982, and in the EJMAP: Technical Guidance document. In selecting these particular stressors, the Department worked to ensure they were justifiable from an environmental justice perspective; that robust, quality, Statewide data was publicly available to quantify these stressors; and that they were consistent with National and/or California selected stressors, where practical.

Using the baseline information provided in EJMAP, the Department will be able to review an applicant’s assessment of its operations, as set forth in the EJIS, determine if and how that facility would impact stressors in a community, and evaluate the proper measures to avoid or reduce those impacts.
392. COMMENT: Certain stressors identified in the chapter 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 chapter 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. (240)

393. COMMENT: 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.R. 990. To attempt to define the stressors, the proposed rulemaking incorporates the statutory definition at N.J.S.A. 13:1D-158. However, neither the proposed rulemaking 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 rulemaking requires an applicant “to analyze, through appropriate modeling, the existing or proposed facility’s impact thereto when determining whether the facility can avoid ‘disproportionate impact’ for a stressor listed as ‘affected.’” 54 N.J.R. 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. The NJDEP does not provide the underlying rationale for how it categorizes each stressor as “baseline” or “affected,” or the parameters for these categories. Without knowing the rationale 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. The 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 rulemaking. Clear, rational definitions and analysis must be provided for defining and categorizing stressors. (59 and 354)

RESPONSE TO COMMENTS 392 AND 393: Pursuant to the rules, the Department differentiates between stressors that “may cause potential health impacts,” which refer to indicators of indirect environmental and public health impacts, often referred to as “quality-of-life” impacts and stressors that are considered “baseline” or “affected.” The commenter lists several stressors that would be considered “may cause” stressors. These “quality-of-life” stressors are relevant to the consideration of permit applications because they can put a strain on a community’s resources and make future environmental and public health threats more difficult to prevent or manage. Not including these stressors would underrepresent the stresses placed on these communities, and the goal of the Environmental Justice Law is to ensure that these communities are not further burdened by additional pollution sources.
The difference between “baseline” and “affected” stressors is based on an applicant’s ability to reasonably affect change on the given stressor. For example, permit applicants would not be expected to remove rail lines in the impacted overburdened community (that is, “baseline”), whereas applicants may be able to control the change in impervious surface cover onsite. An applicant is, therefore, required to analyze “affected” stressors for their potential to cause disproportionate impact, but not necessarily “baseline” stressors. However, as noted above, it is important for the Department to also consider the “baseline” stressor in order to have a complete picture of the stresses faced by the community.

394. COMMENT: The Department has chosen to use regional NAAQS data as indicators of stressors for ozone and PM$_{2.5}$, despite saying in the preamble that the proposed rulemaking is meant to address localized impacts. (160)

RESPONSE: Air quality is a primary issue for New Jersey’s adversely stressed overburdened communities, which often struggle with densely sited stationary sources of air pollutants and toxics, as well as increased mobile sources traveling through and around their communities. While more localized air monitoring-based indicators might provide a better perspective on the specific air pollutants and toxics in these communities, this information is not available on the Statewide scale necessary for inclusion as an informative data point. The State does, however, support a robust network of Federal Reference Monitors sited through the State and shared non-attainment areas to determine progress towards and maintenance of the NAAQS. Regional monitoring data establishes a threshold for air quality NAAQS exceedances that can be applied.
to specific block groups and reasonably and reliably inform which overburdened communities suffer from comparatively adverse air quality. Therefore, the Department reasonably determined to utilize this data as a measure of localize air impacts.

395. COMMENT: 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. (43 and 352)

RESPONSE: As stated elsewhere in this notice of adoption and expanded upon in the EJMAP: Technical Guidance document, the Department selected the 26 stressors included in New Jersey’s comparative assessment, in part, because of the availability of robust, Statewide, publicly available data that was meaningful at a block group level. In addition, the Department is committed to reviewing and updating, if available, the data supporting these stressors twice a year. The data for each stressor is unique in terms of its collection/development methodology and timetable, with some data, such as ozone and PM$_{2.5}$, gathered through a Federally approved monitoring network, while other data like traffic comes from projected Federal sampling and still other stressors (for example, potential of lead-based paint) rely on surrogate data to make an approximation. If better data becomes available, the Department will consider making changes to
its stressor methodology. However, the Department does not have the resources to do ongoing independent studies related to each stressor, and that data would likely be less accurate (that is, based on a smaller sample size) than the current data sources. In terms of the baseline set by EJMAP, the Department’s environmental justice goal is to ensure that OBCs are no worse off for any stressor than their non-OBC counterparts. The Department’s overall goal is to continue reducing the environmental threats represented by these stressors Statewide, and the various program areas throughout the Department (for example, Air Quality, Water Quality, etc.) have established standards that are continuously revisited to ensure that baseline continues to improve. As that non-OBC bar continues to lower, so too will the baseline that the OBCs must meet.

396. COMMENT: The Department has not provided adequate support for using an AQI of 100 as the threshold for determination of a stressor, and with PM$_{2.5}$, ignores the State’s attainment of the NAAQS standard. (160)

397. COMMENT: Certain stressors, such as ground-level ozone, which cannot be easily modeled to determine the facility’s impact on the OBC. The models used by the EPA and State agencies to evaluate this are beyond the reach of most manufacturing site environmental professionals. (173, 230, and 326)

398. COMMENT: 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. Specifically, the NJDEP should replace the current proposed ozone stressor with the mean eight-hour ozone concentration during the peak ozone season. The NJDEP should
determine and declare all pollutants it considers secondary PM2.5 precursors and consider any detectable emissions of any of the identified precursors as contributions from a facility to the PM$_{2.5}$ stressor. The emissions of ozone precursors, such as NO$_x$ and VOCs, should be considered contributions from a facility to the ozone stressor. The NJDEP 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. (56 and 347)

RESPONSE TO COMMENTS 396, 397, AND 398: As expanded upon in the EJMAP: Technical Guidance document, the Air Quality Index (AQI) is the EPA’s official index for reporting air quality through the country. New Jersey uses the AQI as its yardstick for issuing air quality alerts when pollution levels are elevated. An AQI value of 100 corresponds to the concentration in the air that equals the short-term NAAQS for a particular pollutant to ensure the protection of human health. An AQI value below 100 means the air is considered clean (or measuring levels below the NAAQS.) When the AQI exceeds 100, the air quality is unhealthy; first for certain sensitive groups of individuals and then for everyone as that value increases. Given this, identifying the three-year average of AQI days greater than 100 for both ozone and PM$_{2.5}$, the State’s two most pervasive NAAQS, provide measured indicators of the State’s air quality overall. Many pollutant levels are influenced by the weather. For examples, ozone levels are elevated when summers are hot and sunny but may be lower when days are cloudy, cool, and rainy. The three-year average takes this variability into account. Ground-level ozone is the only NAAQS that the two multi-State nonattainment areas inclusive of New Jersey have yet to attain.
While it is true that the State attained and continues to maintain both the current 24-hour and annual PM$_{2.5}$ NAAQS, the focus of the rules is to allow for better assessment of localized levels of PM$_{2.5}$ in overburdened communities and the data has shown that despite attainment, some overburdened communities experience higher levels of PM$_{2.5}$ at the local level. Additionally, EPA Administrator Regan announced in June of 2021 that the agency would reconsider the previous administration’s decision to retain these standards, given the available scientific evidence and technical information indicating that the current standards may not be adequate to protect public health and welfare, as required by the Clean Air Act. Specifically, Administrator Regan noted that “[t]he most vulnerable among us are most at risk from exposure to particulate matter, and that’s why it’s so important [the EPA] take a hard look at these standards that haven’t been updated in nine years” (https://www.epa.gov/newsreleases/epa-reexamine-health-standards-harmful-soot-previous-administration-left-unchanged). On January 6, 2023, the EPA completed its most recent PM$_{2.5}$ standard review, proposing to make the annual PM$_{2.5}$ standard more stringent while keeping all other standards, including the 24-hour PM$_{2.5}$ standard of 35 micrograms per cubic meter, the same. The stressor is based on the AQI of the EPA standard, so if the EPA later proposes to make the 24-hour standard more stringent, New Jersey’s stressor calculations would incorporate that more stringent standard.

While there is a ground-level ozone NAAQS and, therefore, a robust monitoring network to collect ambient air quality data on ozone, there are not applicable health-based standards for all of the ozone precursors. There is a nitrogen dioxide (NO$_2$) NAAQS, a major ozone precursor, and New Jersey is currently in attainment of that standard. As part of the EPA’s Photochemical
Assessment Monitoring Stations (PAMS) network, the Department monitors during the peak ozone season from June 1st to August 31st of each year at the Rutgers air monitoring station for 69 VOC and carbonyl compounds that were identified by the EPA as ozone precursors. Therefore, these specific precursors were not included separately as stressors in the Department’s EJ rules; but rather considered as part of the impact of ground-level ozone formation. A group of VOCs that are classified as Hazardous Air Pollutants (HAPs) are monitored as part of the State’s air toxics program, but this network is not Statewide.

399. COMMENT: The commenter applauds the DEP for the strong proposed regulations. PM$_{2.5}$ does not have a threshold below which it does not have effects on cardiovascular mortality, respiratory morbidity, and overall mortality. The standard of using the average of the last three years exceeding the 24-hour PM$_{2.5}$ standard is not going to be sensitive enough. The Department should use a standard of 25 micrograms per cubic meter instead. (456)

400. COMMENT: The proposed measurements of the fine particulate matter (PM$_{2.5}$) 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. This should be replaced with the annual mean PM$_{2.5}$ concentration for a block group. (56 and 347)

RESPONSE TO COMMENTS 399 AND 400: As outlined in the EJMAP technical guidance document, the Department only included stressors in its EJ comparative analysis that were quantifiable through publicly available, robust, Statewide data that was meaningful at the block group geographic scale. As such, both the ground-level ozone and fine particulate matter...
stressors rely on the three-year average of the Air Quality Index days greater than 100 for the current eight-hour ozone and 24-hour PM$_{2.5}$ Federal health standards, respectively. Linked to the Federal standards, the AQI data is readily available and calculated, providing a meaningful indicator of air pollution in New Jersey. It is possible that emissions below these standards may affect human health. This is why the rigorous process for periodically reviewing, and modifying, as needed, the indicator, averaging time, form, and/or level of the Federal standards based on the latest scientific knowledge is specifically designed to indicate “the kind and extent of identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in ambient air.” (42 U.S.C. § 7408(b)). On January 6, 2023, the EPA completed its most recent PM$_{2.5}$ standard review, proposing to make the annual PM$_{2.5}$ standard more stringent while keeping all other standards, including the 24-hour PM$_{2.5}$ standard of 35 micrograms per cubic meter, the same. If the EPA had proposed to make the 24-hour standard more stringent, that would then be reflected in future New Jersey stressor calculations, since the State’s stressor is based on the AQI of the current standard.

401. COMMENT: N.J.A.C. 7:1C-1.4 and the chapter Appendix - Environmental and Public Health Stressors: The Department has provided a technical guidance document for the proposed rulemaking and online Beta mapping 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 would allow 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 (that is, non-proprietary formats) for use by researchers, regulated entities, and the public. (240)

RESPONSE: The EJMAP: Technical Guidance details the State’s process to translate publicly available data from its original format to the final geospatial layer that is subsumed in the tool’s various calculations. Links are provided for the initial data sets (along with specific details on navigating data source websites to access the correct data, if necessary), as well as the ArcGIS tools used to adjust the data to calculate the correct indicator value for the stressor. All of this information is available for download and open source. The Department is confident that this information is enough to allow interested parties to validate the State’s derivations. Providing the source of the original data set is enough for interested parties to do separate specific analyses, if desired. As discussed in the Response to Comments 352 through 362, the Department will update stressor data on a set, predictable schedule (every January 31 and July 31) with formal notice.

402. COMMENT: 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. (143)
RESPONSE: The EJMAP Stressor Summary tab allows users to access a complete summary table for each block group in the State. Each block group has a pop up that provides access to the full summary PDF that provides the actual individual stressor values for that block group, as well as those for both the county and State non-OBC 50th percentiles, clearly identifying which of those is the geographic point of comparison in each case. A final summary column states if the block group is adversely stressed for each individual stressor, and a separate table shows the CST summary and geographic point of comparison that provides the final determination of adversely stressed for the block group. In addition, each block group PDF provides the identifying block group number from the U.S. Census Bureau, municipality, county, and whether or not the block group is an OBC and if so, for which demographic criteria. The methodology for calculating the CST and completing the comparative analysis is spelled out in both the rule text and the EJMAP: Technical Guidance document.

403. COMMENT: Stressors – may cause potential public health impacts (Appendix) – the Department acknowledges that this is a qualitative stressor designed to address 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.

(143)

RESPONSE: “May cause potential public health impacts” is a stressor category outlined in the Act. As noted previously, the Act defines environmental and public health stressors through
broad categories (for example, concentrated areas of air pollution), and then defers to the Department’s expertise to refine the pollution sources to appropriately determine a community’s existing level of environmental stressor. Through a comprehensive stakeholder process and internal in-depth analysis, the Department selected several specific stressors (for example, drinking water violations, potential lead exposure, etc.) that fit within this category and were supported by robust, quality, Statewide, publicly available datasets that were meaningful at a census block group level. Those specific stressors are relied on to conduct the comparative analysis necessary to determine whether an overburdened community is subject to adverse cumulative stressors.

404. COMMENT: Any increase in a stressor should trigger an automatic environmental justice review. (202)

RESPONSE: Pursuant to the Act, the EJIS process is triggered by permit applications for new facilities, expansions, or renewals of major source permits. N.J.S.A. 13:1D-160. The rules, therefore, apply the process in those circumstances, in compliance with the statute. The Department does not have authority to require facilities to perform an EJIS solely based on an increase in a stressor.

405. COMMENT: 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
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study of the relationship between the stressor score and health conditions in the community. Perhaps a local university could undertake to do that. (202 and 222)

RESPONSE: Several of the listed stressors account for the detrimental effect that odor has on overburdened communities. As noted in the notice of proposal, 54 N.J.R. 981, “[e]xposure to odors resulting from human activity is generally recognized to be a nuisance and persistent malodor exposure is considered an environmental stressor, capable of generating negative impacts for health and well-being due to stress-related symptoms and illnesses, even if the odorous air is not toxic.” The rules, therefore, require odor, dust, and/or noise mitigation or management plans for facilities that may or have caused odor to drift offsite. N.J.A.C. 7:1C-3.3(a)12. Similarly, the rules account for the risks associated with pesticide use by including stressors, such as drinking water, which are impacted by pesticide use and cause harm to the environment and public health.

406. COMMENT: 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 rulemaking, 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 rulemaking must take into account such real-word considerations. (59 and 354)
RESPONSE: The Department acknowledges that facilities not identified by the Legislature as being subject to the Act and the rules may present similar environmental and public health impacts as covered facilities. However, the Department does not have the authority to define facilities more broadly than the Act allows. The Department considered inclusion of a stressor related to warehouse operations but, at present, does not have the type of publicly available, robust, and reliable data to support inclusion.

407. COMMENT: 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 pursuant to 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 chapter Appendix or considered pursuant to the chapter. In addition, it is unclear how siting a new facility, as defined in the proposed regulations, will affect the percentage of PWTA exceedances. As such, an applicant will not be able to address this stressor in their prepared EJIS. (240)

RESPONSE: As discussed previously, the primary role of the Department’s environmental and public health stressors is to establish a baseline of relevant impacts already affecting OBCs to
compare against non-OBC median county and State values. While these stressors could be made worse by the additional or expansion of a new facility, they might not be impacted. Regardless, the inclusion of these stressors in the baseline and comparative analysis provides a clear and objective picture of environmental and public health conditions each community in the State is currently facing. Clean and safe drinking water is essential to human health, whether it is provided by a purveyor or comes from a private well. As such, including the drinking water contamination data from both these sources as a stressor on a community is valid.

408. COMMENT: Thank you for including diesel particulate matter as one of the environmental and public health stressors because it is a major cause of cancer. (434)

RESPONSE: The Department acknowledges and appreciates this supportive comment.

409. COMMENT: 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. Nowhere in the underlying Environmental Justice Act are railways referenced. The Act defines stressors as follows: “Environmental or public health stressors’ means sources 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 including, but not limited to, water pollution from facilities or combined sewer overflows; 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 overburdened community.” N.J.S.A. 13:1D-158. 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 chapter 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 percent less greenhouse gas emissions than using a truck. U.S. Railroads, on average, move one ton of freight nearly 500 miles on one gallon of fuel which makes locomotives three to four times more fuel efficient than trucks. Railroads account for about 40 percent of long-distance freight volume but only produce 1.9 percent 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 U.S. Congress has vested exclusive jurisdiction over the regulation of interstate rail transportation in a Federal regulatory agency, the Surface Transportation Board, 49 U.S.C. § 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 chapter Appendix and from the final version of the regulations adopted by the Department. (54 and 105)

RESPONSE: The Department acknowledges the value of rail transportation, both environmental and otherwise. But the Act directs the Department to account for environmental and public health stressors that may cause potential health impacts in overburdened communities, and it is undisputed that rail transport uses fossil fuels and produces air emissions. The Department
designated railways as a stressor because the presence of railways indicates increased localized air emissions, especially from burning diesel, which can lead to increased cancer risk. Both diesel and non-diesel rail lines are also linked to public health impacts—including from noise, congestion, and industrial blight.

Freight locomotives are extremely active in New Jersey, especially in areas near the State’s container ports. Freight operations often operate around-the-clock, and in addition to air and climate emissions from the locomotives and the associated traffic and equipment in their rail yards, also contribute to noise and industrial blight. The diesel burned in these operations has been linked to statistically higher rates of cancer in their surrounding communities.

As required by the Act, the adopted rules focus on the effect a certain proposed facility has on the surrounding community’s health, safety, and environmental well-being. Stressors are considered due to their impact on the overburdened community, not relative to one another. To the extent the commenter argues that other potential stressors are worse than railways, those arguments are irrelevant. Railways impact the health, safety, and environment of their surrounding communities, and are reasonably included as a stressor at the adopted rules.

**Stressor Evaluation Process**

410. COMMENT: The NJDEP should clarify whether stressors are only evaluated for the OBC where a new or expanded facility is located, or whether other affected OBCs (such as along traffic routes) need to be considered. (173, 230, and 326)
RESPONSE: Pursuant to the adopted rules, an applicant is required to evaluate the environmental and public health stressors within the overburdened community in which the facility is or is proposed to be located. As set forth at N.J.A.C. 7:1C-2.3(e), if the “facility is located, or proposed to be located, in whole or in part, in more than one overburdened community, the Department will apply the higher combined stressor total of the overburdened communities for the purposes” of the analysis required thereunder.

411. COMMENT: The NJDEP should 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. The NJDEP should implement an outlined mechanism to allow data extracted from the EJMAP to be “set- or-grandfathered” once the EJ process begins. (84, 106, and 382)

412. COMMENT: A permittee has no opportunity to challenge the DEP’s finding that a community is subject to an adverse stressor. (54)

413. COMMENT: The proposed rulemaking should include a non-retroactive effective date for when updated EJMAP outputs should be used. Currently, there is no description of 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 stressors in the OBC. It is unclear how updates to the EJMAP tool will affect nearby facilities or new facilities, and there is no process set forth as to whether the NJDEP will notify municipalities when the census data blocks are
updated or a designation of OBC is removed. As such, the NJDEP should provide clarity on the
procedures and timelines for updates to the EJMAP tool. (173, 230, and 326)

414. COMMENT: 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 rulemaking needs provisions that make clear there is not a requirement to restart the process every time new data become available. (326)

415. COMMENT: 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. The proposed rulemaking should include
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language that addresses using the current (that is, as of the permit application submittal) EJMAP data. Similarly, there should be an effective date, not retroactive, when updated EJMAP outputs should be used. (173, 230, and 326)

RESPONSE TO COMMENTS 410 THROUGH 415: Pursuant to the adopted rules at N.J.A.C. 7:1C-2.3, the Department will provide the initial screening information necessary for an applicant to conduct the required analysis. Applicants who wish to review any aspect of this screening data independently should refer to Environmental Justice Mapping, Assessment, and Protection (EJMAP): Technical Guidance for data sources and methods. Based on the standardization of data, however, the Department expects that applicants will reach the same outcomes as the data presented on EJMAP.

In each instance, the Department would expect the applicant to utilize the stressor data in place on the date of submittal of the permit application that triggers the EJIS process pursuant to the rules.

For further information on the timing and procedures for updates to stressor data and EJMAP, see the Response to Comments 325 through 362.

416. COMMENT: 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 rulemaking 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 that include a range of operational expenses, to a project. In the case of a
publicly funded entity, is it the intent of the proposed rulemaking to have the taxpayers bare the
cost of these additional EJ requirements? (84 and 382)

RESPONSE: The scope of facilities subject to the rules, whether public or private institutions,
was determined by the Legislature in the passage of the Act. The Department, in accordance with
the adopted rules, will administer the rules equally and equitably amongst those facilities.

Additionally, while the Department cannot verify the cost analysis advanced by the
commenter, the adopted rules attempt to limit the costs to be incurred by providing initial
screening information to all applicants in a manner that narrows the extent of analysis that will
be required on an individual application. Moreover, to the extent that the rules will impose
additional operating conditions on facilities, those conditions will, in accordance with the express
intent of the Act, serve to address disproportionate impacts to environmental and public health
stressors in overburdened communities based on feasibility, which necessarily considers cost
effectiveness.

417. COMMENT: At N.J.A.C. 7:1C-1.5, Definitions, pertaining to the definition of
“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. (143) 

418. COMMENT: Where a stressor is listed as affected, the applicant has to perform “appropriate modeling”; however, there are no proposed standards or definitions for what is acceptable to the Department. In order to avoid further delays and back-end questions or concerns, the NJDEP should clarify what is accepted for such modeling by providing concrete, implementable guidance. (173, 230, and 326) 

RESPONSE TO COMMENTS 417 AND 418: As implemented through the procedures set forth in the rulemaking, the Act requires the Department to assess a facility’s ability to avoid a disproportionate impact in the overburdened community. N.J.S.A. 13:1D-160.

“Disproportionate impact” means 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. 

Pursuant to N.J.A.C. 7:1C-2.3, the Department provides initial screening information to all applicants that identifies all stressors in the overburdened community, including those that are considered adverse, which will ensure a consistent and transparent basis for the analysis of a facilities contributions thereto. Alternatively, an applicant is able to obtain the same information directly from EJMAP.

The facility, therefore, is merely required to assess, through appropriate modeling or otherwise, its stressor contributions to determine whether a disproportionate impact can be
avoided. This analysis is necessarily facility and operationally specific. As the Department works to implement these first-of-their-kind regulations, it will assess the need for further technical guidance on appropriate forms of modeling.

419. COMMENT: 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 in their air permit emission limits? Also, it covers diesel emissions. N.J.A.C. 7:1C-1.5, Definitions. (106)

RESPONSE: The adopted rules require an applicant to assess the impacts of mobile sources associated with the operating facility to associated mobile source stressors, including diesel, to determine whether those contributions will result in a disproportionate impact and propose feasible control measures to avoid and, where avoidance is not possible, minimize stressor impacts. These impacts will be assessed and addressed separately from the analysis and controls implemented pursuant to the provisions specific to stationary source review at N.J.A.C. 7:1C-7 and 8. As indicated in the notice of proposal, 54 N.J.R. 989, feasibility when assessing control measures to address mobile source impacts accounts for economic and technological factors.

Interpolation
420. COMMENT: The Department’s methods for interpolating monitoring data down to a localized block group are 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 on the block group level. Dispersion of air pollution does not occur linearly with distance. (160)

421. COMMENT: 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. (173, 230, and 326)

422. COMMENT: Seventeen 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. In general, the NJDEP should provide additional technical information detailing the use of the specific geospatial tool used to calculate each indicator. The 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. The NJDEP should document a rationale within the technical guidance for assigning half 1/2/3 scores to known contaminated sites. The NJDEP should also provide an additional rationale for scores 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. (173, 230, and 326)

423. COMMENT: The Department’s proposed use of the EPA’s AirToxScreen data to determine diesel and non-diesel cancer risk is expressly contrary to the EPA’s instructions for the use of that data. The EPA makes clear that AirToxScreen data should not be used to characterize or compare risks or exposures at local levels, to control specific sources or pollutants, or as a basis for individual permitting decisions. Average exposure and risk estimates are far more uncertain at the census tract level than at the State or county level according to the EPA. (160)

RESPONSE TO COMMENTS 420, 421, 422, AND 423: The geospatial methods and tools the Department relied on to analyze each stressor are appropriate to the aims and goals of the Act’s requirement to conduct a comparative assessment of environmental and public health stressors in overburdened communities. In addition, these methods are regularly used by academic institutions and government and non-government entities to complete similar work. In creating the EJMAP: Technical Guidance, the Department’s goal was to provide information on the publicly available data and an overarching summary of the methods and tools used to analyze
that data and present it in a similar format and at the block group level for comparison. The Technical Guidance was not designed as an instructional manual and assumes users have a basic understanding of standard GIS geospatial tools that are readily available and commonly used in these types of analyses. The Technical Guidance does provide links to these standard tools for those that might need additional information on their purpose and use.

The Department supports the interpolation of its air monitoring data down to a localized block group in the absence of finer scale monitoring information. The State’s regional Federal reference monitoring stations report the probability of exposure to the presence of air pollutants that negatively impact human health, regardless of the geographic extent utilized. In addition, the Department’s Division of Air Quality (DAQ) provides a tool to assess normalized air impact values to estimate dispersion of emitted air toxics and the resulting ambient air concentrations when source specific dispersion modeling is unavailable. See https://dep.nj.gov/wp-content/uploads/boss/technical-manuals/1003.pdf. This tool considers multiple, conservative worst-case assumptions to ensure sources needing further evaluation are identified.

424. COMMENT: The Department does not have sufficient data to compare the stressors identified in the appendix to the geographic point of comparison. There are no values in EJMAP for several of the stressors identified as “NA” in the appendix. It appears that the Department does not have sufficient data for those stressors to identify a value. This is a problem because facilities will need to compare a value for which no data is available, skewing the results. It also
highlights the overbreadth of the stressors identified in the appendix. The Department should only identify stressors for which it has sufficient data across the State. (160)

RESPONSE: The Department carefully selected publicly available data that was at, or could be scaled to, all block groups in New Jersey. For the downloadable block group tables available through the Beta version of EJMAP, two stressors display “NA”: Combined Sewer Overflows (CSO) and Drinking Water. In these instances, however, “NA” does not signify a lack of data for these stressors. For the CSO stressor, “NA” represents that fact that this stressor does not undergo the geographic point of comparison. Instead, any occurrence of a CSO in a community indicates the community is adversely stressed for this stressor. The drinking water stressor is a combination of two separate data points: water purveyor violations and private well contamination. As with CSOs, water purveyor violations do not undergo the geographic point of comparison; any violation for a purveyor indicates that the community is adversely stressed for this data point. To determine if the private well contaminations trigger adversely impacted status, the data undergoes the geographic point of comparison. As there are multiple variables undergoing different analyses for one stressor, “NA” was listed for the geographic point of comparison.

425. COMMENT: The percent of 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 pursuant to 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 PWTA exceedances. As such, an applicant will not be able to address this stressor in their prepared EJIS. (240)

RESPONSE: As discussed previously, the primary role of the Department’s environmental and public health stressors is to establish a baseline of relevant impacts already affecting OBCs to compare against non-OBC median county and State values. While these stressors could be made worse by the additional or expansion of a new facility, they might not be impacted. Regardless, the inclusion of these stressors in the baseline and comparative analysis provides a clear and objective picture of environmental and public health conditions each community in the State is currently facing. Clean and safe drinking water is essential to human health, whether it is provided by a purveyor or comes from a private well. As such, including the drinking water contamination data from both these sources as a stressor on a community is valid.

426. COMMENT: Too many individual screening variables – New Jersey 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.

(186, 203, 325, and 454)

427. COMMENT: The Department has identified 26 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. Specifically, the CCSNJ believes that the stressors identified are unrelated to impacts from potential applicants’ businesses on the overburdened community and are duplicative. (306)

428. COMMENT: In the EJ rules, the 64 stressors are of concern. (85)

429. COMMENT: 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. 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. (43 and 352)

430. COMMENT: The EJ Law requires an EJIS to “assess the potential environmental and public health stressors” associated with the facility, and the DEP must make clear that “potential” stressors are not limited to those stressors that “cannot be avoided if the permit is granted.” (56 and 347)

RESPONSE TO COMMENTS 426, 427, 428, 429, AND 430: The Act is the first of its kind in granting a State regulatory agency the express authority to deny or condition permits on the basis of a comparative analysis of environmental and public health stressors. Where other entities, such as the EPA and California, have designed environmental justice efforts to influence funding
distribution and other policy decisions, the more direct regulatory impact of the Department’s process warrants the independent development of State-specific stressors and calculation methodology based on robust, reliable, publicly available, Statewide data.

Rather than put specific limits on the number of stressors that can be considered, the Act defers to the Department’s expertise in identifying the appropriate data points to inform the broad definition of “environmental and public health stressors.” To inform the statutorily enumerated categories, the Department has included a specific list of stressors, their respective unit of analysis and, where applicable, their data sources, which shall be used to determine the stressors existing in an overburdened community. The list of stressors selected by the Department is informed by the environmental and public health stressors determined by the Legislature to be of primary concern in overburdened communities, including those related to the pollution-generating facilities subject to the Act. In developing the list of stressors, the Department considered a broad range of potential stressors and data sources and input from stakeholders and Department professionals. In determining the stressors to be utilized in the analyses required by the Act, the Department considered their alignment with the Act’s statutory categories, data availability and quality, the ability to extrapolate data to the appropriate geographic scale (for example, census block group, county, State), and the marginal value of each stressor to the stressor analysis. The Department’s goal was to utilize the minimum number of stressors necessary to accurately assess the presence of environmental and public health stressors in overburdened communities, thereby excluding stressors that, while potentially relevant, would not provide sufficient value to the analysis to warrant inclusion.
In each instance, the Department determined that the selected stressor is relevant to the statutorily defined categories and can be used to understand the relative impacts to overburdened communities. The 26 stressors included in the rulemaking (and depicted on EJMAP) represent the Department’s achievement of this goal.

Regarding the question of requiring applicants to independently fill data gaps, the Department believes the feasibility and success of the rulemaking depends on setting a publicly available and objective baseline of analysis, which can only be accomplished through the utilization of publicly available, scalable data. However, the rules at N.J.A.C. 7:1C-9.1 allow the Department to consider additional community specific monitoring data to the extent relevant to its decision.

431. COMMENT: The commenter requests that 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 rulemaking need to be drafted based on actual findings, data, and incorporate both preventative and correction actions to address such. 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. 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, and life-style influences, etc. These should all be documented in the required Environmental Justice Analysis used to amend both the Act and the proposed rulemaking. (210)

432. COMMENT: 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 EPA 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. (252)

433. COMMENT: 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. (43 and 352)
RESPONSE TO COMMENTS 431, 432, AND 433: The Department considered a variety of potential stressors and data sources when developing the list of stressors. The Department sought input from stakeholders and Department professionals, and referenced stressors included in the Department’s “Furthering the Promise” (September 2020), USEPA’s EJSCREEN, and California’s CalEnviroScreen. The Department considered how potential stressors align with the Act’s statutory categories, data availability, data quality, the ability to extrapolate data to the appropriate geographic scale, and the marginal value of each stressor added to the stressor analysis in light of the Department’s goal of using the smallest number of stressors necessary to accurately assess the presence of environmental and public health stressors in overburdened communities. The Department excluded stressors that would not provide sufficient value to the analysis to warrant inclusion, despite being potentially relevant. As discussed in the Response to Comments 352 through 362, the Department will update stressor data every January 31 and July 31 and provide formal notice of such updates. The table in the chapter Appendix details the sources to be used.

In addition, the Department is committed to reviewing and updating, if available, the data supporting these stressors twice a year. The data for each stressor is unique in terms of its collection/development methodology and timetable, with some data, such as ozone and PM$_{2.5}$, gathered through a Federally approved monitoring network, while other data like traffic comes from projected Federal sampling and still other stressors (for example, potential of lead-based paint) rely on surrogate data to make an approximation. If better data becomes available, the Department will consider making changes to its stressor methodology. However, the Department
does not have the resources to do ongoing independent studies related to each stressor, and that
data would likely be less accurate (that is, based on a smaller sample size) than the current data
sources.

434. COMMENT: One of the concerns we expressed early in the process was that 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 that could be uncertain and
prohibitively expensive. The proposed rulemaking 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. (54)
RESPONSE: The Department acknowledges and appreciates the supportive comment.

435. COMMENT: EJMAP does not provide a uniform metric of presenting data across differing
geographic points of comparison. A stressor in the overburdened community may be evaluated to
two decimal places while the geographic point of comparison rounds to the nearest whole
number. It is impossible to determine whether a stressor is counted as adverse due to rounding.
(160)
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RESPONSE: In the final EJMAP tool release, the Department will ensure three decimal points consistency for all block group and associated geographic points of comparison values. While the change will display the information that informs tool uses, it does not impact the end result for determining if a block group is adversely stressed, either for a particular stressor, or overall in the CST. Additionally, while EJMAP is intended to provide a user-friendly, publicly available visual representation of the data to be used to conduct the analysis required pursuant to the rules, applicants are entitled, if they wish, to conduct the analysis independent of EJMAP in accordance with the standards and procedures set forth in the rules.

436. COMMENT: Social determinants of health and New Jersey’s definition of OBC communities are more appropriate for identifying an OBC and are less useful as an environmental or public health stressor. (173, 230, and 326)

RESPONSE: The EJ Law specifically defines the demographic criteria the Department is required to use for identifying an OBC as:

1. At least 35 percent 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.

Accordingly, the Department is without discretion to utilize alternative or additional criteria to identify overburdened communities. However, once these overburdened communities are identified, the Department then looks at the environmental and public health stressors to
determine whether the community is subject to adverse cumulative stressors. New Jersey’s OBC demographic indicators, as well as two environmental and public health stressors (unemployment and education) are key social determinants of health (SDOH). SDOHs are defined by the Federal CDC as nonmedical conditions into which people are born, grown, work, live, and age, and the wider set of forces and systems shaping the conditions of daily life. While the demographic indicators defining an OBC are primary SDOHs, unemployment and education are often referenced as key “upstream” factors directly tied to low-income/poverty, which, in turn, impact health and create disparities by shaping the distribution of money, power, and resources. These SDOHs increase social vulnerability, and reduce capacity to anticipate, confront, repair, and recovery from externalities such as natural and human-caused disasters, and disease outbreaks. As such, the Department supports the CDC’s determination that these SDOHs are equally as important for determining the overall environmental stress felt by a community and are relevant to informing the Act’s category of conditions that may cause potential public health impacts.

APA and EJMAP

437. COMMENT: The Department has taken the position that EJMAP and its 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 in the EJ process, a formal notice and comment period is critical to meet the requirements of the New Jersey Administrative Procedure Act. See Chemistry Council of New
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438. COMMENT: 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. (402)

439. COMMENT: The NJDEP did not offer a formal opportunity for public comment on the EJMAP tool and its accompanying Technical Guidance document. The regulated community and the public must have up-to-date access to the data sources and must be able to understand the interrelationships between the stressors, the facility types, and how the NJDEP built this tool. (173, 230, and 326)

RESPONSE TO COMMENTS 437, 438, AND 439: The adopted rule specifies the information necessary to determine whether a block group meets the definition of overburdened community and the process by which the Department will update those designations as the underlying census data is updated, provides a process for updating the extent of those areas as the information sources underlying the boundaries of the protected areas are updated. The EJ rule, along with the authorized technical guidance and publicly available data, provides applicants with the information they need to conduct the analysis independently. EJMAP is a natural outgrowth of
the Act’s requirement to list overburdened communities at N.J.S.A. 13:1D-159. The stressors the Department has chosen are inferable not only from the explicit list in the definition of “environmental or public health stressors” at N.J.S.A. 13:1D-158, but also the list of health impacts at the end of that definition.

The APA allows an agency to implement technical guidance documents when the guidance is “posted in a prominent place on the website for the agency,” making it readily available to the regulated community. N.J.S.A. 52:14B-3a(a). The Department created the EJMAP tool to provide a publicly available, user-friendly, visual representation of the underlying data to allow applicants easy access to the information without the burden of having to conduct the analysis themselves. It does not impose any new requirements on the regulated community that are not included in the proposed rulemaking. Instead, as noted, it is intended to “provide technical or regulatory assistance or direction to the regulated community to facilitate compliance” with the rules and the Act by providing a tool for the regulated community to conduct the initial applicability analysis independently. N.J.S.A. 52:14B-3a(d). Given this, the EJMAP tool is not part of the formal EJ rule proposal for Administrative Procedure Act purposes, but rather allows the Department to keep its underlying data current and address or clarify issues within the methodology calculations.

De Minimis Threshold
440. COMMENT: The rules are clear that contributing to a stressor means any increase no matter how small, which is appropriate when community health and well-being are at stake. (73 and 274)

441. COMMENT: The proposed rulemaking does not contain a specified methodology for evaluating creation or contribution of adverse cumulative stressors to determine “disproportionate impact” and there is no *de minimis* threshold for what would be defined as “creating adverse cumulative stressors,” which results in even a minimum amount of additional stressor(s) resulting in permit denial or imposition of conditions. (77, 173, 230, 253, and 326)

442. COMMENT: 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. (402)

443. COMMENT: Facilities with *de minimus* emissions and/or risk analysis results should be provided exemptions from this process. (143)

444. COMMENT: There should also be a *de minimis* exception to the “no contribution to a stressor” standard. (319)

445. COMMENT: 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 they would not contribute to an adverse stressor. Given the fact that many of the stressors are broad (for example, 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. (102)

446. COMMENT: It is very important to ensure that the definition of a facility’s contribution to what creates adverse cumulative stressors is much more well-defined so that any detectable absolute amount of a pollutant or density increase related to the affected stressor category would constitute a contribution to adverse environmental and public health stressors. The requirement for modeling a facility’s contribution to stressors should be changed to a simple description of the detectable increases from a facility because in many cases it is difficult to model facility contributions to a stressor. The stressor categories need to have pollutant amounts that correspond with each stressor because it is not clear which stressor category for example, VOCs, belong to. (431)

447. COMMENT: 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 pursuant to the proposed rulemaking. Examples include land use and wetland permits related to historical remediation or pipeline or unit maintenance that are very minor “very 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 Statewide) may go through many minor environmental permitting activities that have minimal or zero impact on environmental stressors over the course of a year (for example,
temporary use of gas- or diesel-powered equipment or other modification 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 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 percent 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 at N.J.A.C. 7:27-22.2). In hindsight, it would have been helpful for the NJDEP to include development of these significance thresholds in the stakeholder process. It is recommended that the 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. (326)

448. COMMENT: A facility must be considered to be making a contribution to an adverse environmental or public health stressor if it would increase that stressor in any amount, regardless of scale. (274)

449. COMMENT: 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. Adhering to the existing definition of what constitutes an increase in a stressor is common-sense, easily determined, and is appropriately stringent when community health and well-being is at stake. (73)
450. COMMENT: 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 OBC with existing adverse cumulative stressors. One of the existing adverse stressors is cancer risk from air toxics excluding diesel PM₂.₅. 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 pursuant to N.J.A.C. 7:27-16 and 19.

These existing DEP rules require RACT 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. (392)
451. COMMENT: 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), as defined in the DEP’s existing regulations. (392)

452. COMMENT: For stressors, the proposed rule requires analysis of the “potential to create additional adverse environmental or public health stressors.” 54 N.J.R. 983. A key term in that statement is “potential,” yet the proposed rulemaking 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 rulemaking 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.* The NJDEP should revise the proposed rulemaking 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 rulemaking 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 rulemaking, 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 rulemaking, it should similarly be defined with a significant, articulated metric for each stressor. Likewise, the 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 the NJDEP to develop a “transparent, objective, data-driven process” to address stressors. Stressors – analysis of increase in truck traffic. 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 rulemaking states that the 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.R. 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, the 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. (59 and 354)

453. COMMENT: The appropriate interpretation of “contributing to” based on the intent of the law 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. 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. The DEP should add a definition of “contribute” and “contribution” to the definitions 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.” (56 and 347)

RESPONSE TO COMMENTS 440 THROUGH 453: The goal of a facility’s analysis pursuant to the rulemaking is to determine whether it can avoid a disproportionate impact in the overburdened community.

“Disproportionate impact” means 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.

Accordingly, there will be a different impact threshold depending on whether the community in question is adversely stressed. Where this occurs, the Department reasonably determined that the inclusion of a de minimis threshold, or other predefined significance threshold, would risk creating a loophole that would be contrary to the Act’s mandate that the Department fully assess the contributions of covered facilities to environmental and public health stressors in overburdened communities throughout the State, the Legislature’s recognition of the existing burdens already experienced by these communities, and the Legislature’s intent to better the growth, stability, and long-term well-being of individuals and families living in overburdened communities by correcting historical siting inequities.

For overburdened communities that are not subject to adverse cumulative stressors, the determination of whether a facility will create an adverse environmental or public health stressor,
while determined on a case-by-case, fact specific basis, will depend on whether its contribution to a specific stressor will result in that stressor exceeding the relevant geographic point of comparison.

454. COMMENT: 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. 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. Instead of modeling, the Department should stipulate that the applicant can “quantify or express,” in some reasonable manner, the impact of the facility’s operations on stressors. The applicant could account for the net emissions profile and absolute contributions to each stressor using specific annual pollutant totals and density measures. (56 and 347)

RESPONSE: The rules require an applicant to analyze and propose all control measures necessary to avoid facility contributions to all adverse environmental and public health stressors in the overburdened community and indicates in certain areas that this may include modeling. The Department agrees that in certain circumstances modeling may not be required and the determination of contribution can be made through simple calculation. The Department’s inclusion of a reference to modeling was meant only to provide an indication that deeper analysis
may be required in certain circumstances, not to imply universality or exclusivity of that method. Accordingly, the Department declines to make this change to the rule text, as the proposed and adopted language is sufficiently clear that a simple calculation may suffice as a model of a facility’s contribution to density stressors.

Hierarchy of Control Measures and Conditions


457. COMMENT: For an expanding facility located in an overburdened community, can contemporaneous reductions in air pollution stressors (for example, reductions through 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”? N.J.A.C. 7:1C-1.5. (106)

458. COMMENT: Verify that all control measures and equipment will reduce, rather than displace, pollution to another community. Solutions employed should reduce pollution, rather than move pollution, in the community to minimize its effects on human and environmental health. These reductions must be mandatory and verifiable in permit conditions, including monitoring and recordkeeping requirements. The imposed requirements should go beyond what is already required of these facilities. (252, 274, 419, and 420)

459. COMMENT: We are supportive of the EJ analyses 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. (166)
460. COMMENT: The hierarchy of how control measures are evaluated at N.J.A.C. 7:1C-5.4 and 6.3 is arbitrary and not consistent with implementing cost-effective measures with the greatest reduction in environmental and public health stressors. Applicants should be able to determine what control measures provide the greatest efficiency without artificially requiring preference for the highest percentile stressors. Applicants should be allowed to propose a combination of control measures if there would be a net benefit to the community. The proposed rulemaking provides no guidance about whether onsite control measures must relate to the environmental and public health stressors impacted by the proposed activity that requires a permit. There are no standards or guidelines provided regarding how much avoidance or minimization of contributions to adverse stressors, or reduction to any identified adverse stressors, will be viewed as sufficient by the NJDEP. The proposed rulemaking disincentivizes 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 plan future operations and by arbitrarily imposing a hierarchy of control measures. The Legislature did not give the NJDEP the power to go beyond the underlying environmental permitting statutes; it would have needed to do so in clear and explicit terms. Construing the EJ Law in this manner violates the nondelegation and major questions doctrines. There are no standards in the rulemaking for conditions, and the scope of conditions needs to be reduced. (160)

461. COMMENT: IEPNJ agrees with the DEP’s proposed rulemaking that an applicant’s proposed mitigation actions should be the basis for permit approvals and conditions. The DEP
should be permissive, flexible, and holistic in fostering an applicant’s stressor mitigation activities. If an applicant is at the feasible mitigation level for one pollutant, the applicant may be able to apply local offsets to control another pollutant to result in a net benefit to the community. Such mitigation may include 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 and more. Consideration of mitigation measures is authorized at N.J.S.A. 13:1D-160, section 4, subsection a. (150 and 418)

462. COMMENT: Major source renewals should be able to consider offsite measures, reducing other contributions to adverse stressors, and adding benefits to a community—these alternatives are already available to new facilities and expansions (pursuant to N.J.A.C. 7:1C-5.4 and 6.3), so they should be made available to renewals as well. (54)

463. COMMENT: 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 rulemaking should make clear that the 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. In its 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). 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 cannot 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. The EJ Law allows the DEP to consider mitigation in making its determination. Subsection a. of section 4 of the EJ Law (N.J.S.A. 13:1D-160) provides: 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 (that is, 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 rulemaking 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. (413)

464. COMMENT: The proposed rules do not authorize 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 (for example, ambient air quality standards). (402)

465. COMMENT: The application of new standards to existing facilities is inherently unfair, as these sites can be large and complex, with substantial existing infrastructure that is not easy to rebuild, reconfigure, or relocate. These facilities are usually located in areas that are zoned for heavy industrial activity and the gradual transition to include residential and other uses is insufficient justification to pressure lawfully existing operations to relocate or scale back. This raises substantial fairness and due process concerns that could amount to the effective “taking” of duly permitted, lawful businesses. There must, at a minimum, be a nexus between the facility’s operations and the vulnerability sought to be addressed. (59 and 69)
466. COMMENT: The NJDEP should provide additional clarification and transparency in how a determination of “net environmental benefit” will be made, including specific standards or criteria that determine how stressors and benefits will be weighted. The NJDEP should 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 example, where the EPA has proposed a Federal Implementation Plan that includes air quality improvements and has technical support (for example, model results of the projected improvements), those cumulative improvements should be considered. The NJDEP should consider and address the feasibility of any additional permit conditions they plan to impose. The NJDEP should also 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. (173, 230, and 326)

467. COMMENT: The DEP must amend the language of the provisions of the proposed rulemaking that outlines the DEP’s considerations for permit conditions so that “facility measures” and “onsite” control measures are expressly prioritized. For example, the DEP could add language at N.J.A.C. 7:1C-5.4(b), 6.3(b), and 8.6(b) indicating: “The Department shall prioritize requiring all possible requirements in the first listed category before moving onto the next category.” The concept of “net environmental benefit,” which is currently at N.J.A.C. 7:1C-5.4(b)5 is insufficiently defined and should be removed from the proposed rulemaking. It should
also be removed from the section of the proposed rulemaking that addresses facility expansions.

(56 and 347)

468. COMMENT: Proposed N.J.A.C. 7:1C-5.4 and 6.3 arbitrarily require applicants to consider a hierarchy of onsite and offsite control measures beyond what is authorized by the EJ Law. The EJ Law limits conditions that can be imposed to those that are on the construction or operation of the facility. The EJ Law does not envision the Department imposing offsite control measures or other measures that are unrelated to the construction or operation of the applicant’s facility. The proposed rulemaking should be amended to require only evaluation of control measures within the fence line of the facility and concerning the construction or operation of the facility. (84, 160, and 382)

469. COMMENT: 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 of the EJ Law. The EJ Law provides that conditions may be imposed on the construction and operation of the facility. However, N.J.A.C. 7:1C-9.1 and 9.2 are drafted broadly enough to allow conditions beyond the construction and operation of the facility, including offsite measures. The proposed rulemaking allows the Department to require any condition in a permit, no matter the nexus to the permitted activity, which may require action outside of a facility’s property boundary. The proposed rulemaking provides no specifics on the types of conditions that may be imposed and the information that the Department will consider in determining the necessary type and scope of conditions. The Department should revise 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 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. (160)

470. COMMENT: Proposed N.J.A.C. 7:1C-9.1: While the proposed rulemaking establishes 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 rulemaking is 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. (306)

471. COMMENT: The proposed rule must include reasonable limits on controls and conditions imposed. The proposed rulemaking fails to provide any explanation or limitations on the “control measures” or “conditions” that the NJDEP may require when authorizing a permit application. The proposed rulemaking requires applicants to propose and analyze the effectiveness of “control measures” as part of their environmental justice impact statement. The proposed rulemaking also gives the 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 rulemaking 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 rulemaking does not provide guardrails on the types of conditions that the NJDEP might impose—particularly as the rules are very clear that the NJDEP “shall not be limited to those conditions proposed by the applicant.” 54 N.J.R. 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. (59 and 354)

472. COMMENT: The Department’s interpretation of the types of conditions it can impose represents a fundamental change from historic permitting practices and broadly exceeds its statutory authority. (160 and 203)

473. COMMENT: Before implementing the proposed rulemaking’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 (for example, Localized Impact Control Technology (N.J.A.C. 7:1C-7.1) and Technical Feasibility Analysis (N.J.A.C. 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
rulemaking 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, and easily understood by all stakeholders and predictable. (326)

474. COMMENT: The proposed rulemaking provides 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. (306)

475. COMMENT: The CCMUA respectfully requests clarification as to the intended meaning of “all feasible measures,” as set forth above. (392)

476. COMMENT: The Legislature prohibited the Department from denying the renewal permit of existing facilities. 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. The rules require 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. These analyses and control measures far exceed what is required by existing law and which the Department 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. More facilities will shutter their doors. Jobs and tax revenues will be lost. (102)

477. COMMENT: 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, N.J.A.C. 7:1C-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.” “Feasible” is defined at 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.” The CCMUA respectfully requests additional clarification as to the meaning of “economic factors.” (392)

RESPONSE TO COMMENTS 455 THROUGH 477: N.J.S.A. 13:1D-160 provides the Department with the authority to impose conditions on the construction or operation of the facility, as necessary, to protect public health. Further, the intent of the Act is to reduce environmental and public health stressors in overburdened communities through the appropriate conditioning of construction and operating permits for covered facilities.
To do so, the Department created a hierarchy for facilities to follow in considering and proposing feasible control measures and reasonably determined that a specific focus on contributions to individual stressors is more consistent with the Act’s intent and goal to reduce environmental and public health impacts rather than considering “offset” or “net benefit,” which would be less likely to result in direct facility stressor reductions.

Pursuant to the adopted rules, a facility is charged with analyzing and proposing feasible measures to avoid and, where avoidance is not feasible, minimize contributions to environmental and public health stressors in a hierarchical method that prioritizes avoidance and minimization of direct facility contributions. Pursuant to the rulemaking, an applicant will be required to analyze and propose all feasible measures to avoid direct facility contributions to environmental and public health stressors. For contributions that cannot be avoided, the facility must propose any feasible onsite measures to minimize facility contributions. In assessing a facility’s ability to avoid a disproportionate impact in an overburdened community, an applicant would conduct any necessary modeling or other analysis of the facility’s operations to determine how those operations would impact levels of stressors identified.

This analysis will be fact-sensitive and facility-specific so it would be impossible for the Department to accurately define all potential conditions, but the Department expects facilities will consider additional control technologies, enhanced stressor control plans, electrification of operations (including associated mobile sources) immediately or over a period of time, adjustments to traffic patterns to avoid residential areas, and other innovative technological and operating solutions.
For new and expanded facilities that cannot avoid contributions to adverse stressors, the Department would require facilities to consider additional measures that may be implemented within a community to reduce offsite adverse environmental and public health stressors in the overburdened community (considering those in order from highest to lowest percentile in relation to the geographic point of comparison) and provide a net environmental benefit in the overburdened community. This requirement is appropriate and consistent with the Act’s direction to seek to avoid impacts to adverse environmental and public health stressors and the Department’s authority to impose conditions to the permit “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)(1) and (3). Accordingly, if it is determined that the facility cannot avoid adverse stressor impacts in its host community, analyses and proposal of additional offsite measures is warranted to address unavoidable impacts of new and expanded facilities.

The determination of a net environmental benefit as the last step in the hierarchy will be a case-specific analysis that considers measures that reduce stressors in a community or otherwise improve environmental or public health conditions through, for example, the development of new publicly accessible green space. Critically, applicants cannot offer to provide a net benefit in lieu of avoidance, minimization, and offsite stressor reductions, but only in addition to all feasible avoidance, minimization, and reduction measures.

Net environmental benefit, offsets, or other mitigation measures alone, without proceeding through the avoidance and minimization hierarchy for each individual stressor, are not sufficient to meet the Act’s intent to reduce stressors. Applicants will be held to a feasibility
standard, which considers cost, facilities will work through the hierarchy to find the most effective, cost-appropriate measures for proposal.

478. COMMENT: NJDEP’s definition of a net environmental benefit is unclear and should be removed altogether from consideration in new facilities, expansions, and compelling public interest considerations. The definition 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.” 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. At the very least, DEP should clarify the use of the term “baseline” in the definition here, which could be confused with the DEP’s use of the terms “baseline” stressor versus “affected” stressor in the chart in the proposed chapter Appendix. (56 and 347)

RESPONSE: For proposed new or expanded facilities, the Department requires an applicant to analyze and propose feasible measures to reduce other offsite adverse environmental and public health stressors in the overburdened community (considering those in order from highest to lowest percentile in relation to the geographic point of comparison) and provide a net environmental benefit in the overburdened community in addition to feasible avoidance, minimization, and offsite reduction measures. The determination of a net environmental benefit as the last step in the hierarchy will be a case-specific analysis that considers measures that
reduce stressors in a community or otherwise improve environmental or public health conditions through, for example, the development of new publicly accessible green space. “Baseline,” as used in the notice of proposal, 54 N.J.R. 991, refers to “baseline environmental and public health stressors” in the overburdened community. The chart in the chapter Appendix, 54 N.J.R. 1000-1001, helps clarify what those stressors would include.

479. COMMENT: 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 at N.J.A.C. 7:1C-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. (173, 230, and 326)

RESPONSE: The Department’s intent at N.J.A.C. 7:1C-8.2 is to require feasible control measures. Upon adoption, the Department is clarifying this intent by substituting “feasible control measures” for “all control measures” at N.J.A.C. 7:1C-8.2.
480. COMMENT: The NJDEP should do away with cost exceptions for control technology required of renewals, rather than allowing facilities to not adopt the most protective technology because of cost considerations. (56 and 347)

481. COMMENT: Rather than the proposed less stringent review, the EJ rulemaking must require all permit renewals to undergo the same heightened analysis of permit conditions currently required of new and expanding facilities. 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.” The DEP is not permitted to deviate from the text of the statute 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. (56 and 347)

RESPONSE TO COMMENTS 480 AND 481: The Department has allowed feasible control measures for facilities renewing their Title V air permits. The Environmental Justice Act gave the Department the authority to deny permits for new facilities only, and this evidences the Legislature’s intention to hold new facilities to a higher standard. As such, the rules do not allow considerations for feasibility for control technology for new Title V air permits.

482. COMMENT: 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 the 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? N.J.A.C. 7:1C-7. (106)

483. COMMENT: 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. Subjected facilities should instead 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 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. (107)

484. COMMENT: 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 timeframe will be allowed to implement any permit conditions with long lead times that are established as a result of this EJ review. (326)

RESPONSE TO COMMENTS 482, 483, AND 484: There is nothing in the rules that prevents a facility from proposing phased or longer-term upgrades for consideration as feasible controls as
part of the EJIS process. The Department encourages innovative and meaningful proposals that meet the needs of host overburdened communities to address environmental and public health stressors.

485. COMMENT: N.J.A.C. 7:1C-5.4(a) might be interpreted as allowing the control measures that are enumerated at proposed N.J.A.C. 7:1C-5.4(b) to be considered when the DEP is deciding if it will grant a compelling public interest exception. Such an interpretation could be based on the language at 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.” Control measures should not be one of the factors considered when the DEP is deliberating on whether or not to grant the exception, and the proposed rulemaking should be changed to clarify this point. (56 and 347)

RESPONSE: The Department agrees with commenter that control measures are not one of the Department’s considerations when making the compelling public interest determination. Accordingly, the Department will not consider control measures in consideration of whether the primary purpose of a proposed new facility serves 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 when seeking to satisfy the compelling public interest standard due to an inability to avoid a disproportionate impact. The purpose of the rule language about control measures is that a facility that is able to show a compelling public interest will have to propose control measures.
486. COMMENT: While understanding that the Department seeks an evaluation of appropriate control technologies that should be based on detailed technical analysis, the rules should not mandate that an applicant “shall propose control measures in accordance with this evaluation” as proposed at N.J.A.C. 7:1C-6.3. Otherwise, the rules 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 pursuant to 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. Rather, N.J.A.C. 7:1C-6.3 should simply require an applicant to “identify control measures in accordance with” the LICT provisions, which the Department may then consider in conducting its review at N.J.A.C. 7:1C-9.1, whether or not those measures were formally proposed by the applicant. (107)

487. COMMENT: Proposed N.J.A.C. 7:1C-2.2 states that “new” facilities must comply with N.J.A.C. 7:1C-6, but proposed N.J.A.C. 7:1C-6 refers to “expansions” rather than “new” facilities. It’s unclear whether the requirement to “consider” feasible control measures requires applicants to take all of those measures or only the top effective one; whether “feasible measures” required at proposed N.J.A.C. 7:1C-2.2(b)2 are the same as the “control measures” required at N.J.A.C. 7:1C-6.3(b); whether “avoiding” contributions to adverse stressors applies if an OBC is already subject to adverse cumulative stressors or only for disproportionate impacts; and whether the renewal control measures provisions that require that all stressors must be addressed even if not adverse. (54)
NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE APRIL 17, 2023 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE TO COMMENTS 486 AND 487: Commenter 54 correctly identifies a typographical error where N.J.A.C. 7:1C-2.2(b)4i should have cited to N.J.A.C. 7:1C-5, not 7:1C-6. The error will be corrected upon adoption.

N.J.A.C. 7:1C-6.3 is broader in scope than the Localized Impact Control Technology (LICT) provisions because the LICT provisions are solely about air pollution control, whereas N.J.A.C. 7:1C-6.3 requires applicants to propose control measures across all environmental and public health stressors. Therefore, it would be too limiting to revise N.J.A.C. 7:1C-6.3 in the way that Commenter 54 suggests. For additional information, please see the Responses to Comments 488 and 489, 490, and 491.

**Air-Specific Provisions**

488. COMMENT: The Department has not demonstrated that LICT is necessary or appropriate to address localized impacts. The 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” is erroneous. The Department’s existing air permitting regulations specifically consider localized impacts, and 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. The proposed rulemaking would impose LICT without first determining that any actual impact to the community or surrounding area has occurred from the facility. (54, 84, 101, 160, and 382)
489. COMMENT: Requiring new or expanded major source facilities to adhere to LICT and SOTA standards is unduly burdensome and costly for facilities that likely will have already implemented air control technologies that meet permitting standards. This added cost will result in facilities either moving outside of New Jersey or shutting down entirely. 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. 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 unreasonable controls. (173, 230, and 326)

RESPONSE TO COMMENTS 488 AND 489: As stated in the Act, “… 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 …” and “… no community should bear a disproportionate share of the adverse environmental and public health consequences …” In crafting the Act, the Legislature recognized that the existing way of business was not protective of overburdened communities. The Department has identified overburdened communities as directed by the Act and determined, in accordance with the intent of the Act, that any additional increase in environmental and public health stressors would exacerbate the already existing conditions in an overburdened community. Accordingly, the
Department developed the Localized Impact Control Technology (LICT) standard in the EJ rules. N.J.A.C. 7:1C-7.

As the Department explained in the notice of proposal Summary, the LICT standard applies only to new or expanded major facilities that are located in an overburdened community that is subject to adverse cumulative stressors or that cannot avoid a disproportionate impact by creating adverse cumulative stressors in the overburdened community where they are located, 54 N.J.R. 986-987. The purpose of the LICT standard is consistent with the law’s intent to address pollution in “low-income communities and communities of color [that] have been subject to a disproportionately high number of environmental and public health stressors …” N.J.S.A. 13:1D-157.

The LICT standard is based on the State of the Art (SOTA) standard at N.J.A.C. 7:27-8.12 for minor facilities and N.J.A.C. 7:27-22.25 for major facilities, but does not include consideration of economic feasibility. Additionally, under the new LICT standard, as explained in the notice of proposal Summary, 54 N.J.R. 986, the Department will “assess sources on a facility-wide level to accomplish the Act’s goal of properly addressing potential contributions to environmental and public health stressors for new and expanded facilities in overburdened communities.” Thus, consistent with the Act, a proposed new or expanded facility will trigger the LICT requirement based on the facility’s emissions, rather than emissions at a specific source at the facility.

As an example, at N.J.A.C. 7:27-8.12 for minor facilities and N.J.A.C. 7:27-22.25 for major facilities, if a facility wants to add three sources that each had an increased VOC by 4.5
tons/year (below the SOTA threshold of five tons/year) then the SOTA analysis would not be required. However, under the adopted EJ rules, the facility would trigger LICT because the three sources together would increase VOC emissions by 13.5 tons/year. The facility, if new, would, thus, need to demonstrate LICT at each of these sources. If proposed to be expanded, the facility would need to demonstrate LICT at each source that is proposed to be expanded. By requiring LICT, the Department is requiring the facility to address emissions that would add to the existing disproportionate share of the adverse environmental and public health impact in an overburdened community.

490. COMMENT: The notice of proposal Summary notes that the proposed LICT standard “would focus on technical feasibility rather than economic feasibility or cost-effectiveness in determining appropriate control technologies.” 54 N.J.R. 986. As stated in prior comments, 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. The applicable standard should take into account all relevant factors—economic and non-economic. (59 and 354)

491. COMMENT: LICT should use economic feasibility like SOTA does. The LICT requirement has the potential to subject applicants to implementing unproven technologies or fundamental changes that may only achieve the most minimal of reductions. (54, 106, and 160)
492. COMMENT: If the LICT requirements of this proposed rule do not allow for an economic feasibility analysis to be considered along with a technical feasibility, it is unclear if a facility would be allowed 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. N.J.A.C. 7:1C-3.4. (106)

RESPONSE TO COMMENTS 490, 491, AND 492: Pursuant to the new rules, an applicant shall document LICT for a source that is a new major source facility that serves a compelling public interest pursuant to N.J.A.C. 7:1C-5.3 or an expansion of an existing major source facility, if the application proposes construction, installation, reconstruction, or modification of equipment and control apparatus that is a significant source operation as defined at N.J.A.C. 7:27-8.1. N.J.A.C. 7:1C-7.1(a). As explained in the notice of proposal, 54 N.J.R. 986-987, LICT focuses on technical feasibility rather than economic feasibility or cost effectiveness in determining appropriate control technologies. The purpose of this difference with SOTA is to “reduce emissions from new and expanding facilities as much as possible to reduce environmental and public health stressors in overburdened communities.” Ibid.

Although economic feasibility is not considered as part of the LICT demonstration, the Department did not intend for the LICT requirement to result in implementation of technology that has not been proven to reduce emissions. The Department is revising N.J.A.C. 7:1C-7.1(c) upon adoption to clarify that only technology demonstrated to be reliable in practice is to be considered LICT.
Similarly, although the Department did not include cost-effectiveness as part of the LICT demonstration, N.J.A.C. 7:1C-7.1 requires an applicant to arrange the list of air pollution control technologies or measures in descending order of air pollution control effectiveness, that is, emissions reductions. In addition to control measures in accordance with N.J.A.C. 7:1C-7.1, an applicant shall propose control measures in the order specified in the rules at N.J.A.C. 7:1C-5.4 and 6.3, as applicable, which refer to feasible measures. The definition of feasible means “measures addressing contributions to environmental or public health stressors that are reasonably capable of being accomplished by taking into account economic and technological factors.” An applicant may show that the top measure in its list of control technologies or measures should not be considered because of technical infeasibility or its environmental or energy impacts. If a particular measure will require a fundamental change and result in only minimal reductions, the measure is likely not the top measure in the first place. Also, if the change would result in adverse environmental or energy impacts, or if the facility has other technical limitations, the measure may be eliminated from consideration as LICT.

493. COMMENT: The DEP must expand the scope of the LICT standard to include additional types of pollution, not just air pollution. 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. (56 and 347)
RESPONSE: Although the LICT standard focuses on pollution control technology for air sources, pursuant to N.J.A.C. 7:1C-5.4(b) (new facilities) and 6.3(b) (facility expansions), an applicant must also propose all feasible control measures that are not addressed at N.J.A.C. 7:1C-7.1 to avoid and, where avoidance is not possible, minimize contributions to environmental and public health stressors, and, as applicable, reduce offsite stressors and/or provide a net environmental benefit within the overburdened community. Depending on the specific impacts and stressor levels within the overburdened community, this may require controls that exceed otherwise applicable media-specific regulatory standards. The Department is committed to ensuring that all feasible control measures are put in place for any environmental media in order to ensure that disproportionate impacts are avoided, even without a separate LICT standard for each environmental medium.

For additional discussion on the hierarchy of control measures to be analyzed and proposed by applicants, see the Response to Comments 455 through 477.

494. COMMENT: For an expanding facility located in an overburdened community, the use of contemporaneous reductions in air pollution stressors as part of the EJIS analysis is recommended 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 of disproportionate impact to environmental and public health stressors of an OBC. Contemporaneous windows could reflect a 10 to 20 year
look back on projects that 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. (107)

RESPONSE: The rules define expansions to exclude those projects that decrease, or do not
otherwise increase, stressor contributions. N.J.A.C. 7:1C-1.5. Accordingly, the Department
would consider actual, demonstrable, and current reductions of permitting capacity of
environmental and public health stressors in assessing whether a specific project constitutes an
expansion. This analysis would be done on a stressor specific basis and not consider “net”
reductions in overall stressor contributions.

First, the Act directed the Department to adopt new rules that would reduce stressors in
overburdened communities. The environmental and public health stressors used to determine
whether an overburdened community is disproportionally impacted are based on present day
stressor levels. It would be inappropriate to offset any reductions from the past because such
offsets would not reduce stressors in the overburdened communities. Therefore, allowing the use
of past decreases in stressors to offset present day increases in stressors would be inconsistent
with the Act.

Additionally, comparing past potential emissions to future actual emissions, as requested,
is inappropriate because allowable emissions in a permit do not always reflect actual emissions.
Thus, a comparison of a prior allowable emissions limit with a future actual emissions may
incorrectly show an emissions decrease, as revealed by comparing prior actual emissions with
future actual emissions. Additionally, many older processes are left in permits to allow the facility to re-start a process, if necessary. Thus, it is more consistent for the Department to assess emissions based on permitted limits, with applicants considering whether to forgo additional permitted capacity during project design.

495. COMMENT: The air pollutants listed at N.J.A.C. 7:1C-8.5(a)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 rulemaking. The technical feasibility analysis also requires emissions to be calculated for equipment or control apparatus that: 1) was installed at least 20 years prior to the current operating permit; or 2) that 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. 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. (252)

RESPONSE: In the notice of proposal Summary, the Department identified ground-level ozone, fine particulate matter (PM2.5), and air toxics as stressors relevant to concentrated areas of air pollution. See 54 N.J.R. at 974-975. The Department addressed ozone precursors (NOx and VOCs) and fine particulate matter emissions by including these air pollutants in the technical feasibility analysis, while air toxics are addressed by the facility-wide risk assessment provisions at N.J.A.C. 7:1C-8.4. Importantly, air pollutant emissions are already evaluated as part of the air pollution control rules at N.J.A.C. 7:27. Separate from the provisions at N.J.A.C. 7:1C, the air
pollution control rules at N.J.A.C. 7:27-8.5 and 22.8 require minor and major sources to conduct a facility-wide risk analysis. The owner/operator of major source seeking renewal of its operating permit must conduct a facility-wide risk analysis if one has not been completed in the prior five years. Various other triggers, such as emission increases and change in risk factors, could also require a risk analysis to be completed. Minor source permits are re-evaluated periodically where a need for re-evaluation has been identified.

Pursuant to the air pollution control rules at N.J.A.C. 7:27-22, all sources are evaluated at major source permit renewal for rule applicability for any new State or Federal requirements. Additionally, as part of the new rules at N.J.A.C. 7:1C-8, an applicant for a major source permit renewal is required to complete a technical feasibility analysis if the facility’s current effective operating permit includes equipment or control apparatus meets the following: 1) the equipment/control apparatus was installed at least 20 years prior to the expiration date of its current effective operating permit; 2) the equipment/control apparatus was not subject to review pursuant to N.J.A.C. 7:1C-8 in the 15 years prior to the expiration date of its current effective operating permit; and 3) the total emissions of any of the listed pollutants from all equipment/control apparatus that meets the first two criteria comprise at least 20 percent of the facility’s overall potential to emit that pollutant. The Department included these three criteria for the technical feasibility analysis to focus on equipment likely to have the opportunity for upgrades and improvement and result in meaningful emissions reduction as a result of the analysis. Existing equipment is not subject to the State of the Art (SOTA) requirements unless a proposed modification triggers a SOTA analysis. An owner/operator might choose to maintain
its existing equipment without upgrades to avoid triggering SOTA requirements. Therefore, the Department focused on equipment where there would more likely be opportunities for improvement and emissions reductions.

The Department is modifying N.J.A.C. 7:1C-8.5(a)3i and ii upon adoption to clarify that the reference to fine particulate matter is to PM$_{2.5}$ and correcting the reference to nitrogen oxide as nitrogen oxides, rather than only NO$_2$.

496. COMMENT: 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? (190)
RESPONSE: The Environmental Justice Law is applicable to Title V facility permits for new facility permits, expansions, and renewals. N.J.S.A. 13:1D-157. The Department does not have flexibility to deviate from this requirement and all Title V renewals will be required to comply with the rules. However, modifications made by facilities outside of the renewal process that decrease or do not otherwise increase contributions to environmental and public health stressors may not qualify as an “expansion” triggering applicability.

497. COMMENT: The Department should clarify and limit the broad renewal language included at N.J.A.C. 7:1C-8.2 and 8.6. The Title V program is not intended to authorize the imposition of new substantive requirements on existing facilities at permit renewal. The language in these
sections could be interpreted to require sweeping changes at existing facilities to the extent
deemed feasible by the Department. The uncertainty and scope of the Department’s authority
will create risk for existing facilities and is inconsistent with the Legislature’s determination that
the EJ Law should not be used to push existing businesses out of New Jersey. (54, 77, 160, 253,
and 319)

498. COMMENT: The rules indicate that every Title V permit, no matter how small, will trigger
the extensive EJ process, the EJIS, and public hearings that can be detrimental to the survival of
all Title V facilities. This law, as written, creates a great deal of uncertainty of approval and
conditions placed by the discretion of the DEP and community input on facilities and negatively
impact economic competitiveness. (85)

RESPONSE TO COMMENTS 497 AND 498: The Legislature specifically included “any
application for the renewal of an existing facility’s major source permit” within the scope of the
Act. See, for example, N.J.S.A. 13:1D-160. The Act further requires the Department to
undertake a fulsome assessment of facility-wide impacts, not limited to the specific emissions
from a facility operating under a major source permit. The Department accordingly included
requirements for renewal applications to provide standards to be applied during the review of
these applications that create reliable, objective standards for assessment of stationary source
contributions while proposing an avoidance and minimization paradigm for assessment of
feasible control measures to address other facility contributions. The included specific standards
related to stationary source emissions are modeled off existing concepts routinely implemented
in the Title V context. The Department is committed to working with applicants and community
members to identify appropriate permit conditions to address impacts to environmental and
public health stressors in overburdened communities. Applicants who engage directly and
meaningfully with community members to understand their specific concerns and propose to
implement responsive control measures are less likely to experience uncertainty during the
process set forth in the adopted rules.

499. COMMENT: 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.

RESPONSE: N.J.A.C. 7:1C-8 establishes requirements specific to renewal applications for major
source facilities. These requirements include a facility-wide risk assessment and a technical
feasibility analysis, if certain conditions are met. There is no exemption for sources that combust
natural gas. If an applicant can show in their risk assessment that the risk from their proposed
facility is negligible, no further analysis will be required.

500. COMMENT: The Facility-Wide Risk Assessment, as proposed at 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, its role should be
more clearly articulated in the rules. 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. (143)

RESPONSE: Pursuant to N.J.A.C. 7:1C-8.4, an applicant must submit a facility-wide risk assessment that evaluates existing source operations and includes each source operations emission rates of HAPs and toxic substances that exceed the reporting thresholds at N.J.A.C. 7:27-17.9(a). If the outcome of the risk assessment is above a negligible level pursuant to Technical Manual 1003, the applicant must submit a plan to lower risk to a negligible level as part of its EJIS. It is important to note that the Department will fully evaluate statements made in the EJIS as part of the permit application review. If the plan does not lower risk as necessary as documented in the EJIS, or the EJIS statements has shortcomings as determined during the Department’s review, the Department will work further with the applicant to ensure that risk is reduced as required. While some solutions may be implemented immediately, other options may only have long-term solutions that would need to be memorialized as conditions of an approved permit. The permit action is the enforceable mechanism to ensure that all reductions are being made to address risk.

The Department also notes that the determination of combined stressor totals is intended to establish comparative background environmental and public health conditions in the overburdened community independent of the specific contributions of the facility’s proposed activity.
501. COMMENT: The selection of control measures and the technical feasibility analysis applicable for major source permit renewals at N.J.A.C. 7:1C-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. The selection of control measures should consider investments to reduce emissions (up to or as much as 90 percent), as well as their cumulative benefits achieved to date. (143)

RESPONSE: Technical feasibility analyses are required only for applicants who are unable to avoid a disproportionate impact to environmental and public health stressors at N.J.A.C. 7:1C-8. As explained in the Response to Comment 263, the technical feasibility analysis at N.J.A.C. 7:1C-8.5 applies to renewal applications for major source facilities, which are existing facilities in operation. The Department included the technical feasibility analysis to focus review on older (based on installation date) equipment/control apparatus that comprise at least 20 percent of the facility’s overall potential to emit the pollutant and has not been reviewed in the last 15 years.

With regard to past improvements already completed, the Department appreciates and acknowledges these efforts but cannot credit a facility’s past improvements to offset its potential future contributions. As discussed in the Response to Comment 210, the adopted rules are designed to ensure that environmental and public health conditions in overburdened communities continue to improve and require the Department to consider feasible stressor reduction measures in its review of each subject permit application.
502. COMMENT: 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. 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 unreasonable controls. (173, 230, and 326)

RESPONSE: LICT is intended to minimize the degradation of air quality from new sources, whether that be new facilities or expansions, improve air quality when existing sources are replaced or reconstructed, and promote enhanced pollution prevention, thereby reducing stressors in overburdened communities. Pursuant to 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. The top-down approach allows an applicant to justify why the proposed source is unable to apply the best technology available. LICT applies only to air contaminants that the facility has the potential to emit in the amounts listed at N.J.A.C. 7:1C-7.1(a)1 and 2.

503. COMMENT: The rules would add a significant and undefined amount of time to the application process by providing that a permit application cannot be considered complete for review before completing the EJ process. This is a problem for major source facilities because
they do not qualify for an application shield unless their renewal applications are determined to be administratively complete by the renewal deadline. The Department should impose reasonable timeframes on its review of the EJ materials to allow the regulated community to plan. (84, 59, 160, 186, 203, 319, and 382)

504. COMMENT: The Department should clarify the rules to ensure both compliance and continued operations during the review process. The rules entail 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 rulemaking. 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 at N.J.A.C. 7:27-22, as long as, the existing requirements at 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)1); 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. Such a potential outcome would have negative economic impacts to local communities and would exceed the intent of New Jersey’s Environmental Justice Law. (326)

505. COMMENT: The NJDEP should confirm that the 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. (173, 230, and 326)

RESPONSE TO COMMENTS 503, 504, AND 505: The provision that an application cannot be considered complete for review before the EJ process is complete is a legislative provision. As stated in the EJ Law, “... 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 permit applicant first” completes the EJ process. N.J.S.A. 13:1D-160.

Pursuant to N.J.A.C. 7:27-22.7, an application shield is in effect for a facility if the owner or operator has submitted an application for an initial operating permit or a renewal in
accordance with N.J.A.C. 7:27-22.5 or 22.30, as applicable, and the application is administratively complete by the applicable deadline for submittal of the application. To be timely, the Department must receive an application for renewal at least 12 months before the operating permit expires. N.J.A.C. 7:27-22.30(c). However, the Department’s operating permits rules encourage applicants to submit the renewal application at least 15 months prior to expiration of the operating permit, to allow for any deficiencies to be corrected and better ensure that the application is administratively complete by the renewal deadline. See, for example, N.J.A.C. 7:27-22.4(e) and 22.30(c). The Department implements and enforces the Title V operating permit program pursuant to delegation from the EPA. The Department will continue to review renewal and initial operating permit applications for administrative completeness pursuant to N.J.A.C. 7:27-22. The Department will issue an applicant a letter that its application is administratively complete for application shield purposes, if applicable, while noting that the application is undergoing review for compliance with the EJ rules and no further action will be taken on the application until the EJ review process is completed but, where applicable, the application shield will remain in place during the pendency of the process. This is consistent with the Act, at N.J.S.A. 13:1D-160(f), which provides that the Act “shall be construed to limit the right of an applicant to continue facility operations during the process of permit renewal to the extent such right is conveyed by applicable law, rule, or regulation, including the application shield provisions of the rules and regulations adopted pursuant to the ‘Air Pollution Control Act (1954),’ P.L.1954, c.212 (C.26:2C-1 et seq.).”
506. COMMENT: The Department is not authorized to regulate the emissions from, or usage of, mobile sources at, or in connection with, individual facility permitting pursuant to the Air Pollution Control Act, consistent with the authority and constraints of the Clean Air Act. The proposed rules appear to confer authority to impose conditions on sources not regulated by the underlying environmental statutes and to impose conditions in permits not authorized by these underlying statutes. (160 and 203)

RESPONSE: N.J.S.A. 13:1D-160 provides that “[n]otwithstanding the provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary,” upon the requisite finding, the Department shall deny a permit for a new facility or grant a permit that imposes conditions on the construction or operation of the facility to protect public health. The statute also authorizes the Department, again upon the requisite finding and “[n]otwithstanding the provisions of any other law, or rule or regulated adopted pursuant thereto, to the contrary,” to apply conditions to a permit for the expansion of an existing facility or renewal of a major source permit, concerning the construction and operation of the facility to protect public health. Thus, the Department is authorized pursuant to the EJ Act to impose conditions on the construction and/or operation of a facility to protect public health, if the requisite finding is made. The Department will exercise its authority under the EJ Act consistent with any limitations of the Federal Clean Air Act.

507. COMMENT: The standards being imposed on renewals will force many facilities to consider closing their operations. Although not part of the air pollution control rules, the facility-
wide health risk assessment for air toxics has become the standard requirement for Title V renewals over the past five years. The risk assessment is a complicated, case-by-case review, which though complicated is more appropriate than a checklist approach because all facilities cannot address risk in the same way. The inclusion of a risk assessment at N.J.A.C. 7:1C-8.4 as part of the EJIS review process with community involvement will create much uncertainty. N.J.A.C. 7:1C-8.4(d) suggests that only a negligible risk outcome will be acceptable for an affected facility, and that the Department will impose conditions 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 the Department’s policy to refer non-negligible, but potentially acceptable, risk levels of between 10 in one million and 100 in one million to the Department’s Risk Management Committee (RMC), which may recommend further actions based on review of factors in Technical Manual 1003. The Department should continue its existing risk assessment process, including case-by-case review and if necessary, referral to the RMC, as part of the EJ process. (54)

508. COMMENT: The NJDEP should clarify 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, the NJDEP should make it a priority to review risk assessments as efficiently as possible so they can get through the EJ process and move on to permitting. (173, 230, and 326)
RESPONSE TO COMMENTS 507 AND 508: The Department’s air pollution control rules include risk assessment provisions at N.J.A.C. 7:27-5.2(a), 8.5, and 22.8. The Department’s technical manuals further define the process to implement the risk program. The Department utilized this framework for the facility-wide risk assessment provisions at N.J.A.C. 7:1C-8.4. However, rather than the RMC overseeing what is practicable for a facility whose risk assessment outcome is above negligible, the Department will evaluate acceptable risk mitigation measures during permit evaluation review where the EJIS assumptions will be evaluated. From there, if there is elevated risk, a mitigation plan would likely be required. Like RMC decisions, the Department’s decisions for risk, as part of the EJIS process, will be documented in its decision and incorporated into the permit decision.

509. COMMENT: 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. (54) RESPONSE: Fence-line monitoring is not an appropriate surrogate for a risk analysis. While the Department may consider monitoring results in certain long-term evaluations and further in identifying short-term unusual release issues, the fence-line monitoring does not fully address all of the short-term impacts of all pollutants, especially as fence-line monitoring reflects only the
emissions data as it is at the time the sample is taken and not at the “worst case scenario” as defined in an air permit.

510. COMMENT: Rather than require an applicant for a renewal permit to conduct a risk assessment for its existing source operations that emit hazardous air pollutants (HAPs), the NJDEP should accept the air modeling results as required pursuant to 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. (173, 230, and 326)

RESPONSE: In keeping with the Act’s recognition that existing environmental standards are in many cases not protective enough of overburdened communities, the Department has proposed a risk assessment standard for sources that emit hazardous air pollutants. The risk assessment standard is set forth at N.J.A.C. 7:1C-8.4. A facility-wide risk assessment applies to an application for a renewal of an operating permit required at N.J.A.C. 7:27-22, if the facility is located in an overburdened community that is subject to adverse cumulative stressors or cannot demonstrate that it will avoid a disproportionate impact that would occur by creating adverse cumulative stressors in the overburdened community as a result of the facility’s contribution. See N.J.A.C. 7:1C-8.1. A facility-wide risk assessment is not required if the facility satisfies N.J.A.C. 7:1C-8.3. If a facility-wide risk assessment is required, the assessment must evaluate existing source operations and include each source operation’s emissions rates of HAPs and toxic
substances that exceed the reporting thresholds at N.J.A.C. 7:27-17.9(a). As provided at N.J.A.C. 7:1C-8.4(c), if the outcome of the risk assessment is above a negligible level pursuant to Technical Manual 1003, then the applicant must submit a plan to lower the risk to a negligible level.

For further discussion of stressor evaluation and the use of EJMAP, see the Response to Comment 395.

511. COMMENT: N.J.A.C. 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. Stack height should be removed as a control measure as it only displaces, rather than reduces, the pollution. (252)
RESPONSE: The Department does not mandate the way(s) in which an applicant reduces or mitigates risk. Increasing stack height is one option. Risk assessment includes modeling that takes into account meteorological data. An applicant may use the Department’s risk screening worksheet, which is a screening tool that uses conservative assumptions to consider the worst-case scenario. The refined risk assessment consists of a refined atmospheric dispersion modeling analysis for new or modified sources that estimates ambient air concentrations more accurately than the worksheet by using stack- and source-specific data, as well as representative meteorological data. Increasing stack height will be acceptable only if modeling shows that it
reduces risk. The air quality modeling is done for the “worst case scenario,” which includes worst case for emissions and any meteorological parameters.

512. COMMENT: 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. 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. (56 and 347)

RESPONSE: The EJ rules are intended to evaluate cumulative impact of sources in an overburdened community. The air risk assessment, which is part of that process, is a scientific process used to estimate the probability of adverse health effects resulting from human exposure to hazardous substances. See Technical Manual 1003, at https://dep.nj.gov/wp-content/uploads/boss/technical-manuals/1003.pdf. The Department utilizes risk assessment to evaluate potential air toxics risks remaining (residual health risk), either from individual source operations or from entire facilities, after applicable pollution controls. The Department also uses the risk assessment to make decisions regarding permitting, control, and/or regulation of air toxics. In the Department’s existing process, the Air Quality program evaluates hazardous air pollutant risk for new facilities/processes, significant modification, and for major source
renewals. While the risk assessment is not an appropriate mechanism for evaluation of criteria pollutants (NOx, VOC, particulate matter, etc.), the Department requires modeling and analysis for criteria pollutants if the thresholds at N.J.A.C. 7:27-17.9 are met as stated at N.J.A.C. 7:1C-8.4.

513. COMMENT: Demonstration of state-of-the-art (SOTA) at Subchapter 22 includes the option for the applicant to document compliance with a SOTA Manual (available from the Department at the address at 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. At N.J.A.C. 7:27-22.35(c)5ii, 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.

(240)
RESPONSE: N.J.A.C. 7:27-22.35 allows an applicant to meet the SOTA requirement by complying with an applicable published technical manual. As provided at N.J.A.C. 7:27-22.35, the technical manual is to contain “technology, methods and performance levels [that] shall have been demonstrated to be reliable for similar air contaminant discharge parameters, and shall be available at reasonable cost commensurate with the reduction in air pollution.” The LICT requirement is based on the SOTA requirement and essentially requires a case-by-case demonstration of the most effective technically feasible control technology that can be implemented. As the LICT demonstration does not include a “reasonable cost” or cost effectiveness factor, compliance with a SOTA technical manual is not appropriate. However, the
applicant may use the SOTA technical manual as guidance and reference for preparing its LICT demonstration.

514. COMMENT: 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. Facilities should at least be given the option to implement a fence line 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 fence-line 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 fence line monitoring programs in compliance with Federal fence-line monitoring requirements and below Federal prescribed action levels should be deemed to not adversely contribute to air stressors in the OBC. Additionally, 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. (173, 230, and 326)

RESPONSE: Technical feasibility analyses are required only for applicants who are unable to avoid a disproportionate impact to environmental and public health stressors pursuant to N.J.A.C. 7:1C-8. The goal of the technical feasibility analysis is to identify older emissions control equipment that may be in need of an upgrade to emit fewer pollutants. Specifically, the technical feasibility analysis is required only when the equipment was installed at least 20 years
prior to the expiration date of the facility’s current operating permit, when the equipment was not subject to review pursuant to this subchapter within 15 years prior to the expiration date of its current operating permit and when the equipment’s emissions of fine particulate matter, nitrogen oxide, or volatile organic compounds represent more than 20 percent of the facility’s emissions for that pollutant.

**Solid Waste Coordination**

515. COMMENT: 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. However, there may be specific occasions where an applicant would wish to undergo the environmental justice process first (or vice versa). N.J.A.C. 7:1C-4.4 should say “may conduct” rather than “shall conduct.” (190)

516. COMMENT: 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 N.J.A.C. 7:26-6.10). It is presumed that the environmental justice regulations will replace this guidance letter. Additionally, Class B, C, and D recycling facility applicants are also required to publish a public hearing notice for County Solid Waste Management plan inclusion (N.J.A.C. 7:26A-3.1C). Do the environmental justice regulations (if the facility is impacted) replace that requirement? (190)

RESPONSE TO COMMENTS 515 AND 516: As set forth at N.J.A.C. 7:1C-4.4, the notice and hearing requirements of the rules are intended to be conducted concurrently with the existing...
Solid Waste Management Plan notice and hearing requirements at N.J.S.A. 13:1E-23 to ensure that community concerns related to potential facilities are addressed as early in the solid waste facility siting process as possible and that the applicant does not receive county approval that cannot be effectuated pursuant to this chapter.

Additionally, while the meaningful public participation processes set forth in the rules are in addition to and do not replace other statutory or regulatory notice and hearing processes, the Department will adjust relevant guidance, such as the Solid Waste guidance letter referenced by the commenter, to avoid unnecessarily duplicative process where such flexibility is allowed.

Recycling

517. COMMENT: New Jersey policy’s for 50 years has been to encourage recycling, as recycling enables reduction in pollution from manufacturing. The DEP ignored environmental, economic, and social benefits from scrap metal recycling. (54 and 160)

518. COMMENT: 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 the DEP regulations at N.J.A.C. 7:26A-3.1 and 3.2. Existing recycling facilities 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. Existing facilities that are not subject to the provisions of EJ based on mapping would be afforded an unfair economic advantage by avoiding the time and expense for the preparation of an EJIS. The State must be very careful not to further discourage recycling.
facilities from locating in New Jersey, and to prevent existing recycling facilities from leaving New Jersey. (190)

RESPONSE TO COMMENTS 517 AND 518: The Department has and will continue to emphasize the numerous benefits of beneficial recycling in its regulatory, policy, and funding decisions. However, to meet its statutory duty in development of the EJ rules, the Department is required to balance these benefits, which often represent broad, general societal good, with the consideration of the potential impacts to environmental and public health in communities that have been subject to historic inequities in the siting of covered facilities, including beneficial recycling operations. As the Legislature expressly included recycling facilities in the Act, the adopted rules require an assessment, and the implementation, of measures to avoid and minimize the localized impacts these facilities may have on environmental and public health stressors in overburdened communities. In developing the adopted rules, the Department developed reasonable methods to assess the presence of adverse cumulative stressors which, consistent with the Act’s intent, recognize that even facilities that provide broad environmental, economic, and social benefits may cause localized impacts to environmental and public health stressors, particularly when sited in areas with an abundance of regulated facilities or in areas already subject to adverse stressors. In these instances, the Department reasonably determined that the imposition of feasible operational conditions to reduce impacts to stressors is appropriate to ensure that “no community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State’s economic growth.” N.J.S.A. 13:1D-157. Accordingly, it would be inconsistent with the Act’s intent and express language for the
Department to exempt recycling facilities, notwithstanding the important general public purpose that they fulfill.

519. COMMENT: The New Jersey Food Waste Recycling and Food Waste-to-Energy Production Act (Act) was signed into law in April 2020, and 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, and the other is Trenton Renewable Power in Trenton, 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 “[t]his 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. (240)

RESPONSE: The Department recognizes the concern articulated here and by other commenters regarding the applicability of the rules to facilities whose operations provide broad society-wide benefits and the Department will continue to work to support these industries — and food waste recycling in particular – through complementary policies, regulations, and incentives.

Nonetheless, the Act demands that the adopted rules prioritize consideration of impacts and benefits to environmental and public health stressors in the host overburdened community over broad societal benefits as reflected in the Legislature’s findings that overburdened communities have suffered the consequences of historically inequitable siting decisions leading to a concentration of pollution generating facilities and disproportionate environmental and
public health impacts. Accordingly, the Department has crafted the compelling public interest exception to be narrowly focused to ensure any facility approved thereunder primarily serves the needs of its host community. The inclusion of the term “appropriately scaled” in this context, with reference to food waste facilities, public water infrastructure, renewable energy facilities, and projects designed to reduce the effects of combined sewer overflows, is meant to balance the need for focus on local impacts and benefits with the overall benefits of these, and similar, facilities. Since the determination of the appropriate scale necessarily involves consideration of the needs of the host overburdened community, it would be infeasible to adopt a more specific definition and, given the above explanation, inappropriate to provide blanket indication that a food waste facility that serves a 25-mile radius would meet this standard.

For further discussion of the unsupported premise that development of these facilities can only occur in overburdened communities, see the Response to Comments 35 through 43.

**Remediation**

520. COMMENT: 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. (210)

521. COMMENT: The proposed rule excludes from the definition of a permit “any authorization or approval necessary to permit a remediation.” The proposed rule should expressly exempt any and all permits that are specifically required for remediation activities. (173, 203, 230, and 326)
522. COMMENT: The NJDEP should comment on the situation where an operating facility needs applicable permits while in the process of conducting remediation to provide a better understanding of how the remedy may contribute to the stressors and ultimately affect the NJDEP’s review of the EJ process. (173, 230, and 326)

RESPONSE TO COMMENTS 520, 521, AND 522: As set forth in the Act and incorporated into the adopted rules, the definition of “permit” excludes any authorization or approval necessary to perform a remediation, as defined pursuant to section 23 at P.L. 1993, c. 139 (N.J.S.A. 58:10B-1).

Technical Errors in Proposal

523. COMMENT: The explanation on page 74 of the notice of proposal, as well as N.J.A.C. 7:1C-2.1, refers to “N.J.A.C. 7:1C-4.4 a & b.” These sections do not exist; there is only section 7:1C-4.4 (no “a” or “b”). (190)

RESPONSE: N.J.A.C. 7:1C-4.4, General requirements, states that the hearing and notice requirements required by the adopted rules do not supersede any other regulatory process requirements, except that the hearing and notice requirements shall be conducted concurrent with the Solid Waste Management Plan notice and hearing required pursuant to N.J.S.A. 13:1E-23. This is to ensure that related issues are identified and addressed as early in the solid waste facility siting process as possible and that the applicant does not receive county approval that cannot be effectuated pursuant to this chapter. The commenter is correct that N.J.A.C. 7:1C-4.4 does not contain subsections (a) and (b). The references to N.J.A.C. 7:1C-4.4(a) and (b) in the
notice of proposal, 54 N.J.R. 985, were a technical error in the notice of proposal. The Department is correcting N.J.A.C. 7:1C-2.1 upon adoption to refer simply to N.J.A.C. 7:1C-4.4.

524. COMMENT: The Department received the following drafting suggestions for revisions to rule text:

   a. 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, for example: N.J.A.C. 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. (210)

   b. Amend the rulemaking 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. (210)

   c. N.J.A.C. 7:1C-4.3, Post-hearing and comment process: please update to reflect the Department’s applicability to manage all comments received pre-, during-, and post-hearing and the transcription of the public hearing. The 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. Regarding N.J.A.C. 7:1C-4.3: Amend the section 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. (210)

d. Pertaining to N.J.A.C. 7:1C-1.3, Purpose, at subsection (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.” At paragraph (a)3: Wording on “new, expanded, and existing major source facilities” implies only applicable to Major Source Facilities. (210)

e. Regarding N.J.A.C. 7:1C-1.5, Definitions: Update definitions regarding “stressors.” Identify the difference between "environmental stressors” and “public health stressors” as defined in the Act. Avoid the detail in the EJIS definition because it may conflict with the actual rule language at N.J.A.C. 7:1C-3.1. (210)

f. Regarding N.J.A.C. 7:1C-2.2, Procedural overview: 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 chapter. The procedural overview may be best summarized in the Summary of the notice of proposal. (210)

g. Regarding N.J.A.C. 7:1C-2.3, Initial screening information: 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? 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. Regarding N.J.A.C. 7:1C-2.3(a): “Duplicative” may reference applicability determination in the actual “applicability” section (N.J.A.C. 7:1C-2.1). Regarding N.J.A.C. 7:1C-2.3(g): must the applicant submit the EJIS prior to the permit application? This is just creating more confusion. (210)

h. Regarding N.J.A.C. 7:1C-3.1, Applicability: Delete or reconstruct this section, “applicability” is contained at N.J.A.C. 7:1C-2.1, whereas Subchapter 3 should detail the contents of the EJIS. Delete reference to N.J.A.C. 7:1C-3.3 and “supplemental information.” Rather this information is required for some applicants preparing an EJIS and not a completely standalone document. Pertaining to N.J.A.C. 7:1C-3.1(a): this section 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. (210)

i. Regarding N.J.A.C. 7:1C-3.2, EJIS requirements, at subsection (a): Replace the sentence with “An EJIS shall contain the following:” Regarding paragraph (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. Regarding paragraph (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” is too subjective. Regarding paragraph (a)4: The list of all permits not required can contain a list of applicable permits for the EJ Rule. Regarding paragraph (a)5: The Department needs to clarify what a potential “local environmental justice analysis” and “cumulative impact analysis” entails. Regarding paragraph (a)6: Please update the reference to “environmental and public health stressor analysis,” or similar language. Regarding paragraph (a)8: Chronologically, the applicant cannot satisfy the requirements at N.J.A.C. 7:1C-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 Department’s approval, as summarized at N.J.A.C. 7:1C-3.4(a). Please reword the paragraph with the intent of the applicant preparing a public participation plan to carry out those requirements. Regarding N.J.A.C. 7:1C-3.2(a)9: Please reword the paragraph and duplication at N.J.A.C. 7:1C-(a)3ii, (a)3iii, and (a)7. (210)

j. Regarding N.J.A.C. 7:1C-3.3, Supplement information: To avoid confusion, we recommend including an “if statement” at N.J.A.C. 7:1C-3.2(b) to tie “supplemental information” into N.J.A.C. 7:1C-3.2, instead of having this separate section as a part of the EJIS requirements. Currently, the rule reads at the “supplemental information” is
not part of the EJIS requirements. Regarding N.J.A.C. 7:1C-3.3(a): the trigger for the additional information is if a facility has a significant contribution to an identified adverse stressor. Regarding paragraph (a)1: in addition to the map commented on at N.J.A.C. 7:1C-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. Regarding N.J.A.C. 7:1C-3.3(a)3 through 10: The facility may not be a source or applicable to the stated “stressors.” You 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 and 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. Regarding N.J.A.C. 7:1C-3.3(a)13: We recommend that the Department provide the compliance history and not the facility. It is readily available from the Department and the facility may not have the complete history due to changes of control. Why does the Department want a copy of “existing Department permits” in the EJIS? Regarding 7:1C-3.3(a)14: This paragraph is duplicative to N.J.A.C. 7:1C-3.2(a)9 and related requirements. Regarding N.J.A.C. 7:1C-3.3(b): This subsection can be deleted because the prior requirements will be
included in the EJIS at N.J.A.C. 7:1C-3.2. Regarding N.J.A.C. 7:1C-3.3(c): Delete this subsection, it just adds confusion. (210)

k. N.J.A.C. 7:1C-4.2(a)2: This 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.” We recommend changing this paragraph to, “Hearings shall be conducted on a weekday, 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 two hours or all oral comments have been provided.” Regarding paragraph (a)2, the virtual component is overly burdensome to an applicant. (210)

l. Regarding N.J.A.C. 7:1C-4.2(c), this is a confusing subsection. The public comment period begins on the earlier of the day the Department posts the EJIS or the publication in a newspaper? (210)

m. Regarding the EJIS Publication Process: At paragraph 2, please update the paragraph 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. The commenter requests clarification on the misplaced last sentence of the paragraph. (210)

n. Subchapters 5, 6, 7, and 8: Please update subchapter headings to “EJIS Requirements Specific to New Facility, Expansions, and Renewals” or it is recommended to incorporate these subchapters into the EJIS section, N.J.A.C. 7:1C-3.2. It is confusing
to have all the assumed EJIS Requirements listed at N.J.A.C. 7:1C-3.2, then place more requirements at Subchapters 5, 6, 7, and 8 in addition to N.J.A.C. 7:1C-3.3. Incorporating these subchapters into N.J.A.C. 7:1C-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, and 8, as mentioned in other comments. (210)

o. Regarding N.J.A.C. 7:1C-9.1, Department review, at subsection (a): The Department has already considered and approved the EJIS pursuant to N.J.A.C. 7:1C-3.4 and 4.1. Regarding N.J.A.C. 7:1C-9.1(a): Is the decision pursuant to this chapter or as detailed at N.J.A.C. 7:1C-9.1(b) pursuant to N.J.A.C. 7:1C-9.2? Regarding N.J.A.C. 7:1C-9.1(b): Please update the subsection to clarify, “In performing its review of all of the Environmental Justice materials the Department shall.” Matters dealing with “issuing its decision” should be addressed at N.J.A.C. 7:1C-9.2. Regarding N.J.A.C. 7:1C-9.1(b): please include, “If necessary impose conditions ...” (210)

p. Regarding N.J.A.C. 7:1C-9.5, the procedure to request an adjudicatory hearing; decision on the request; effect of request: please replace “person” with “applicant.” At N.J.A.C. 7:1C-9.5(c)2 and 3, the decision and date received should not be required as it is already public through the Department’s website. However, the decision can be referenced. (210)

RESPONSE:
a. The Department has evaluated the proposed language change and determined it is not necessary to allow for a clear understanding of the adopted rule. Including a relevant website address in the rule text allows for maximum clarity and these website addresses can be updated in future rule amendments if there is a change. Additionally, as there is only one appendix to the adopted chapter, additional identification is not necessary for clarity in the rule.

b. The Department has evaluated the proposed language change and determined it is not necessary to allow for a clear understanding of the adopted rule. The applicability determination pursuant to N.J.A.C. 7:1C-2.1(g) is not included in the procedural overview at N.J.A.C. 7:1C-2.2 as the applicability determination is a voluntary procedure that applicants may request to evaluate if their facility/project is required to go through the mandatory process described in the procedural overview.

c. The Department has evaluated the proposed language change and determined it is not necessary to allow for a clear understanding of the adopted chapter. N.J.A.C. 7:1C-4.3(b) defines when an applicant would be required to conduct additional public notice and public hearing in response to a material change.

d. The Department has evaluated the proposed language change and determined it is not necessary to allow for a clear understanding of the section. N.J.A.C. 7:1C-1.3 clearly articulates the purposes of this chapter.
e. The Department has evaluated the proposed language change and determined it is not necessary to allow for a clear understanding of the adopted section. The adopted definitions accurately represent the meaning of the applicable terms within this chapter.

f. The Department has evaluated the proposed language change and determined it is not necessary to allow for a clear understanding of the adopted chapter. The rule details the process that applicants must follow for facilities/project subject that are subject to review, and the procedural overview reflects this.

g. The Department has evaluated the proposed language change and determined it is not necessary to allow for a clear understanding of the adopted chapter. The adopted rule makes clear that the EJIS review process, including initial screening, for applicable facilities/projects is a prerequisite for the review of the subsequent permit application, as required by law.

h. The Department has evaluated the proposed language change and determined it is not necessary to allow for a clear understanding of the adopted chapter. The construction of the adopted rule makes clear that N.J.A.C. 7:1C-2.1 is the applicability of the entire chapter, while N.J.A.C. 7:1C-3.1 is the applicability for EJIS requirements.

i. The Department has evaluated the proposed language change and determined it is not necessary to allow for a clear understanding of the adopted chapter. N.J.A.C. 7:1C-3.2 provides the basic requirements for the completion of a satisfactory environmental justice impact statement (EJIS) for a facility located, or proposed to be located, in whole or in part, in an overburdened community. The specific requirements at N.J.A.C. 7:1C-3.2(a)2, 3, and
4 are necessary to ensure a complete and thorough review of the submitted application by the Department. The specific definitions of any “local environmental justice or cumulative impact analysis” as described at N.J.A.C. 7:1C-3.2(a)5 will be determined by the local jurisdiction that is the underlying basis for that required analysis and, therefore, cannot be defined more specifically in this paragraph. The requirement at N.J.A.C. 7:1C-3.2(a)6 provides a cross-reference back to N.J.A.C. 7:1C-2.3, and is appropriate as proposed. The sequencing at N.J.A.C. 7:1C-3.2(a)8 and 3.4 makes clear that an applicant is required to include in their EJIS a public participation plan that, subsequent to the applicant receiving the authorization to proceed at N.J.A.C. 7:1C-3.4(b), would satisfy the requirements of N.J.A.C. 7:1C-3.4(d), so that the Department can affirmatively verify that the applicant has a sufficient public participation plan. N.J.A.C. 7:1C-3.2(a)9 is required for the applicant to demonstrate that the control measures described at N.J.A.C. 7:1C-3.2(a)3ii and iii are sufficient with respect to the anticipated impacts described at N.J.A.C. 7:1C-3.2(a)7 to avoid a disproportionate impact.

j. The Department has evaluated the proposed language change and determined it is not necessary to allow for a clear understanding of the adopted chapter. N.J.A.C. 7:1C-3.1 describes the standards for when the supplemental information required at N.J.A.C. 7:1C-3.3 is required as part of the EJIS pursuant to Subchapter 3. For further discussion of these requirements, refer to the Response to Comments 274 through 278.

k. The Department has evaluated the proposed language change and determined it is not necessary to allow for a clear understanding of the adopted chapter, which provides that all
hearings must be conducted on a week day, and the Department does not consider a holiday to be a weekday pursuant to N.J.A.C. 7:1C-4.2(a)2, as it would undermine the Act’s goals to ensure meaningful and robust public participation. Additionally, the virtual component to the in-person public hearing is necessary to increase opportunity for public participation and fulfill the purposes of the chapter.

l. The Department has evaluated the proposed language change and determined it is not necessary to allow for a clear understanding of the adopted chapter. N.J.A.C. 7:1C-4.2(c) states clearly the requirement that the public comment period must remain open a minimum of 30 days after the completion of the required public hearing and, in totality, must be no less than 60 days.

m. The Department has evaluated the proposed language change and determined it is not necessary to allow for a clear understanding of the adopted chapter. The publication requirements of the EJIS are detailed at N.J.A.C. 7:1C-3.4(c).

n. The Department has evaluated the proposed language change and determined it is not necessary to allow for a clear understanding of the adopted chapter. The construction of the referenced subchapters reflect standard regulatory practice where general requirements are established first, followed by specific requirements for particular circumstances.

o. The Department has evaluated the proposed language change and determined it is not necessary to allow for a clear understanding of the chapter. N.J.A.C. 7:1C-9.1, 9.2, and 9.3 make clear the process for the Department to issue its final decision pursuant to the process outlined in this chapter.
The Department has evaluated the proposed language change and determined it is not necessary to allow for a clear understanding of the adopted chapter. N.J.A.C. 7:1C-9.5 follows standard established practice for submitting a request for an adjudicatory hearing.

General

525. COMMENT: The proposed rule is a victory for all New Jerseyans, especially for communities of color and low-income communities, who have disproportionately borne the burdens and received fewer of the benefits of our energy system. (73)

RESPONSE: The Department appreciates the commenter’s support for the proposed rule.

526. COMMENT: 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. (183)

RESPONSE: The Department appreciates commenter’s engagement in the rulemaking process and acknowledges the commenter’s concern. However, the Department is confident that the rule fulfills the requirements at N.J.S.A. 13:1D-157 for the reasons set forth in this notice of adoption and in the notice of proposal, 54 N.J.R. 971-1001.

527. COMMENT: Assessment of Benefits - AEA recommends that the NJDEP assess the EJ Law’s impact 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
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comparison to one another. This type of assessment could inform amendments to the law that increase its benefits to the Economic Impact statement in the notice of proposal. (106)

RESPONSE: The Department will assess appropriate methods to track success and progress of the rules in reducing environmental and public health stressors in overburdened communities.

528. COMMENT: Please define and give examples of what the “governing body” is. (210)

RESPONSE: The governing body is the governing body of the municipality in which the overburdened community is located.

529. COMMENT: Honor the people that you claim to serve! Environmental justice for one and all. (22)

RESPONSE: The Department appreciates the commenters’ engagement and acknowledges these general comments related to the rule.

530. COMMENT: I am a 50-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 district. At the August hearing, the representative from New Jersey Business and Industry Association asserted that the law in its current form would forbid new construction in something like 80 percent 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 Kearny. I recognize that labor unions have vigorously advocated for more industrial construction. 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 benefitting 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 suckered 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 U.S. It can shine well-deserved credit on New Jersey, Gov. Murphy, and the DEP itself. (103)

RESPONSE: The Department appreciates the commenter’s engagement and acknowledges these general comments related to the rulemaking. For discussion of the exclusion of economic benefit factors in the consideration of a Compelling Public Interest, refer to the Response to Comments 62 through 69.
531. COMMENT: The proposed rulemaking fails to use the lessons learned through the Department’s success with the Community Collaborative Initiative, as shown by example in Camden, and instead the rule is more form over substance using very prescriptive requirements to get minor environmental benefits. The intent of the proposed rulemaking is supported, but it should be less prescriptive, and more results oriented. (54)

RESPONSE: As explained in the Department’s notice of proposal, 54 N.J.R. 971-1001, these rules implement the requirements of the EJ Law, which declared 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. N.J.S.A. 13:1D-157. The rules ensure meaningful public participation in the analysis of environmental and public health stressors in overburdened communities, limit placement of new facilities that would create a disproportionate impact in those communities, and reduce environmental and public health stressors by requiring control measures for certain facilities in those communities.

532. COMMENT: The proposed rulemaking misleads the public by failing to disclose numerous loopholes in the authorizing statute in terms of applicability to pollution sources and stressors that create current conditions. That failure to disclose is magnified by the misleadingly broad scope of the unenforceable guidance document. This is dishonest and unacceptable practice. (402)

RESPONSE: The Department appreciates the commenter’s engagement in the rulemaking process and is confident that the adopted rule fulfills the requirements at N.J.S.A. 13:1D-157.
Additionally, the adopted rule specifies the information that determines areas that are subject to the protections provided by the rules and provides a process for updating the extent of those areas as the information sources underlying the boundaries of the protected areas are updated. The EJ rule, along with the authorized technical guidance and publicly available data provides applicants with the information they need to conduct the analysis independently. The Department created the EJMAP tool to allow applicants easy access to the information without the burden of having to conduct the analysis themselves. Given this, the EJMAP tool is not part of the formal EJ rulemaking for Administrative Procedure Act purposes, but rather provides greater flexibility for the Department to keep its underlying data current and address or clarify issues within the methodology calculations.

533. COMMENT: Poor rural communities are environmental justice communities too and have lacked the voter numbers to stop politicians from pushing polluting pipelines and compressor stations in these communities. The political and judicial system treating rural communities as “Sacrificial Zones” has led to significant public health issues, particularly in children. The NJDEP and complacent politicians allowing fossil fuel companies to develop in these communities are contributing to this issue. (403)

RESPONSE: As explained in the notice of proposal, 54 N.J.R. 971-1001, and in response to other comments, the process established by the adopted rules will avoid and reduce impacts to environmental and public health stressors in overburdened communities that include any rural
communities that meet the statutory criteria for inclusion. As shown on EJMAP, overburdened communities are found in urban, rural, and suburban areas all across New Jersey.

534. COMMENT: The proposed rulemaking does not adequately address how an applicant should contact the NJDEP to discuss issues that may arise during the submission process. An adjudicatory hearing appeal process is provided in detail, 54 N.J.R. 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. The 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. (59 and 354)

RESPONSE: The adopted rule provides a detailed summary of the procedural overview at N.J.A.C. 7:1C-2.2. Applicants with more project-specific questions should contact the Department’s Office of Permitting and Project Navigation at:

Office of Permitting and Project Navigation

401 East State St.

Mail Code: 401-07J

PO Box 420

Trenton, NJ 08625

(609) 292-3600

(609) 292-1921 (fax)
535. COMMENT: NJDEP should explain how mobile stressors will take into account the anticipated electrification of the transportation section and whether applicants can get “credit” for increasing use of electric vehicles. (173, 230, and 326)

RESPONSE: The Department expects that the State’s ongoing transition from internal combustion to electric vehicles in furtherance of its clean energy and emissions reductions goals will improve several environmental and public health stressors in overburdened communities, specifically those related to concentrated and mobile sources of air pollution. The Department expects that, as facilities analyze and propose measures to avoid and minimize contributions to public health and environmental stressors, electrification of operations, including associated vehicles, will be a feasible and implementable compliance option.

536. COMMENT: Would a permit of public convenience and necessity supersede “compelling public interest”? (173, 230, and 326)

RESPONSE: The Department is unable to respond meaningfully to this question without further information on the specifics of the project and potential Federal approvals and would review such situations as they arise during implementation. As such, the Department is happy to communicate with facilities about site-specific issues. Applicants should contact the Department’s Office of Permitting and Project Navigation at:

   Office of Permitting and Project Navigation
   401 East State St.
   Mail Code: 401-07J
537. COMMENT: I don’t want more toxic chemicals around me. Kids can’t play, and they can’t learn because they are distracted by the trucks and planes. (475)

RESPONSE: The Department acknowledges this comment.

538. COMMENT: There are positive parts of economics, like sustainable business, regenerative economics, industrial ecology, that are very inadequately taken advantage of. It is possible to encourage zero emission manufacturers to move to New Jersey from other states. The New Jersey forestry task force is innovating a model that could be something that we use here. (457)

539. COMMENT: DEP has already referenced EJ in several legal actions before the EJ rules are properly in effect. (203)

540. COMMENT: Newark, New Jersey is undergoing a large redevelopment. Residents have the right to be a part of this development process. 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. (2)

541. COMMENT: 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 percent to the State’s gross domestic product. (237)

542. COMMENT: 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 NJDEP to keep in check those towns that seek to abuse or exceed the law to stop economic growth. (237)
543. COMMENT: Paterson’s CSO situation is affecting 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 New Jersey environmental justice proves the injustice Paterson is under. I’m seeking immediate action, as the climate is changing creating more frequent thunderstorms/heavy rainfalls causing tremendous hardship to the residents. The Paterson Long Term Control Plan has my area scheduled to be addressed in 2040, this truly is 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 a letter to the Bureau Chief of the 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 one, it’s usually Newark, and Jersey City. Nevertheless, it is time for environmental justice now for Paterson.

544. COMMENT: 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. (49)

545. COMMENT: 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. (237)
546. COMMENT: 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. (67)

547. COMMENT: Despite knowing that New Jersey’s EJ Law has been signed by Governor 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 Kearny, and CPV trying to build another gas plant in Woodbridge. These are in bad faith, and I ask you and Governor Murphy to pull the permits for these plants and subject them (and any other) proposed power plants to New Jersey’s EJ Law. (75)
548. COMMENT: I know how life-altering climate-related disasters can be firsthand. 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 firsthand 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. (110)

549. COMMENT: I am really worried. I have been concerned about the environment since the 80s, 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 New Jersey 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 cannot 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! (120)

550. COMMENT: 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. (155)
551. COMMENT: When will Science and Politics be the same? New Jersey needs to do all in its 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 forests are now under threat from private sources. (155)

552. COMMENT: A common geopolitical dynamic; Climate change that can unite US; Life or Death, Science or Political garbage. Shall we choose 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? (155)

553. COMMENT: The notice of proposal fails to address risks and impacts - current and projected by the Department and better available science - regarding climate change. These include greenhouse gas emissions, extreme weather events, urban heat island effects, increases in ambient ground level ozone, among others. This flaw is totally unacceptable given the climate emergency. (402)

554. COMMENT: Make sure that rules are not used for regulatory taking of people’s property for Penn East pipeline. Also, look into contamination of Trenton water supply with radioactive uranium by Luxfer and accepted by the NJDEP personnel as A-OK as long as the 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 New Jersey forever. (292)
555. COMMENT: Ground level ozone causes respiratory disease and premature death, and is especially harmful to children, senior citizens, and asthma sufferers. We need to increase green energy in overburdened communities to combat both pollution and climate change. This is also good economic policy since it would benefit productivity and lower healthcare costs. The Department should not approve new gas power plants or liquified natural gas processing facilities or terminals. (321)

556. COMMENT: Is there a mechanism where municipalities who have approved these industries are encouraged to remediate the air quality in homes or in the immediate area? Municipalities have purchased water purifiers in areas where lead has been found in the water. Can municipalities purchase air purifiers for people? Better and more frequent air monitoring is needed, similar to the monitoring done for water which is paid for by both industry and government. Air monitoring of these facilities and of every overburdened community can be easily done and the data should be shared online and readily available to the public, just as is done with water monitoring. (428)

557. COMMENT: 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
electric vehicle batteries become more affordable, available, and robust, and the State’s electric power grid is expanded to meet growing demand. (237)

558. COMMENT: The commenter recommends amending the rules to provide that facilities making capital expenditures comply with Department requirements derived from this EJ process should be reimbursed by the Department through the prescribed State and/or municipal funding source. (210)

559. COMMENT: Applicable facilities, specifically those noted under paragraphs (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 preparation, public participation costs or for mitigative measures, if required, in the community? (240)

560. COMMENT: Newark doesn't need any more 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 its 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. (167)

561. COMMENT: 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. (290)

562. COMMENT: This new field which has been promoted primarily by the Democratic Party, along with court and other new declaratory decisions that have zero public input are seriously flawed and need to be revoked. This is new fat cat 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. (298)

563. COMMENT: There is a street and sewer construction project going on my street. I watch as workmen use electric saws to cut cement, dig holes, sweep up, and run diesel engines. Dust and exhaust cover them head to toe, then plumes into the air landing on moms and dads, kids, pets, 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. (364)

564. COMMENT: 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 percent 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. (409)

565. COMMENT: To ensure that the 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 the DEP’s Office of Environmental Justice in order to accommodate these obligations. Added positions should include a webmaster, a social media position, and positions for oversight of facilities covered by the EJ Law. (43 and 352)

RESPONSE TO COMMENTS 538 THROUGH 565: The Department appreciates commenters’ engagement. However, these comments are beyond the scope of this rulemaking. With regard to Comment 539, the Department has used the term “environmental justice” in enforcement actions, using other statutory authority. The Department has not enforced, pursuant to the Act, and will not do so until the rules are in effect, as required by the Act.
566. COMMENT: We request the Department work with the legislators and applicable stakeholders to amend the Act, incorporating the lessons learned over the last two 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 drafter’s versus the actual unintended negative consequences of the requirements. Please redefine 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. (210)

RESPONSE: Comments regarding amendments to the Act are beyond the scope of this rulemaking. The Department has otherwise addressed specific comments regarding consistency between the rules and the Act throughout this document.

Miscellaneous

567. COMMENT: Additional requirements and/or limitations placed on the applicant (permittee) as a result of the EJ process should be considered a “taking” and compensation should be made to the facility and workers. (210)

RESPONSE: The Department does not anticipate that the requirements imposed pursuant to the adopted rules in accordance with the express provisions and intent of the Act, including the imposition of feasible conditions upon the construction and operation of a subject facility, would properly be considered a “taking.” Takings analysis focuses on whether a statutory or regulatory
scheme substantially advances a legitimate public purpose and whether it excessively interferes with property rights and interests. It has been long held that the health, safety, and general welfare may be promoted by prohibiting or restricting certain uses of land, with the prevention of damage to the environment constituting a particularly strong justification for prohibiting inimical uses. *Gardner v. N.J. Pinelands Comm.*, 125 N.J. 193 (1991).

In determining whether a regulatory scheme results in a taking, the mere potential for some impact is not sufficient to constitute a taking. Indeed, the courts have ruled that neither diminution of land value nor impairment of the marketability of land alone affect a taking. Similarly, restrictions on uses do not necessarily result in takings even though they reduce income or profits. Instead, a regulatory scheme will be upheld unless it denies all practical use of property, or substantially destroys the beneficial use of private property, or does not allow an adequate or just and reasonable return on investment. The courts have applied the standard that focuses on the beneficial or economic uses allowed to a property owner in the context of particularized restraints designed to preserve the special status of distinctive property and sensitive environmental regions. *Id.* at 210-211.

The adoption of rules that require review and approval of an activity before it can legally commence does not constitute a taking of property without just compensation. Many cases have found that a takings claim is premature before the agency finally decides how property can be used in response to a permit application. (See, for example, *OFP LLC v. State*, 395 N.J. Super. 571 (App. Div. 2007)).
While the adopted rules may result in limitation as to what may be done with lands falling within overburdened communities, with the extent of any such limitation depending upon the intended use of the land and the facility’s contribution to environmental and public health stressors, the rules do not prohibit new development in overburdened communities, but rather place controls on the emissions of environmental and public health stressors in order to be protective of human health and the environment.

568. COMMENT: 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 rulemaking. 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? (392)

RESPONSE: Delegated local agencies will not be responsible for ensuring that Water Pollution Control Act permittees are in compliance with the adopted rules.
569. COMMENT: In addition to setting forth the EJ Law implementing rules at new N.J.A.C. 7:1C, the DEP should also amend its regulations for all permitting programs covered by the EJ Law to cross-reference the rules at N.J.A.C. 7:1C. 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 EJ Law’s requirements, DEP regulations that set forth when an application for a particular permit is “complete” should cross-reference the chapter rules. Since these cross-references are not necessary for N.J.A.C. 7:1C to fully apply to all permit applications, if necessary, DEP could so amend its permitting regulations in later rulemaking proceedings so as not to delay finalization of the EJ rule. (56 and 347)

RESPONSE: The Department thanks the commenters for this comment. The Department believes the rules provide a sufficiently clear standard and has implemented internal controls to ensure applications subject thereto are not deemed complete for review prior to completion of the EJIS process set forth therein. Notwithstanding, the Department will evaluate the need for additional regulatory changes during implementation and make any necessary changes through later rulemakings.

570. COMMENT: The proposed rulemaking 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. (402)

RESPONSE: The Department thanks the commenter for this comment. The Department does not see any inconsistencies between the rules and its existing regulatory standards. Notwithstanding, the Department will continue its evaluation during implementation and make any necessary changes to its other rules through later rulemakings.

571. COMMENT: The NJDEP should not require applicable permits to go through the EJ process for a period of five years following a positive final EJ decision on a permit for the same facility. (173, 230, and 326)

572. COMMENT: “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.” Facilities that fall under this regulation commonly have several applicable environmental permits, each with a different coverage period and renewal data/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? (106)

RESPONSE TO COMMENTS 571 AND 572: As required by the Act, the EJIS process will need to be completed for “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” before the Department can consider the application complete for review. N.J.S.A. 13:1D-160; N.J.A.C. 7:1C-2.1.

Accordingly, permit applications for new or expanded facilities (“expanded,” as defined under the rules, includes 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) are required to go through the process whenever they are submitted. The process is only required at the time of renewal for major source permits.

The Department recognizes that facilities subject to the rules may require multiple permits. To address this circumstance, the Department proposed N.J.A.C. 7:1C-9.3 to allow the Department to determine that its decision pursuant to the rules satisfies its requirements for subsequent Department permits identified in the EJIS, provided the permit applications are submitted to the Department within five years of the date of the decision and there is no material change to the facility.

Summary of Agency-Initiated Changes:

1. N.J.A.C. 7:1C-3.4(d) is being corrected, such that references to N.J.A.C. 7:1C-4.1(b) are changed to N.J.A.C. 7:1C-4.1(a).

2. The requirement at proposed N.J.A.C. 7:1C-4.1(b)5 for the public to mail a copy of their written comments to the Department in addition to the applicant is being deleted upon adoption.
3. N.J.A.C. 7:1C-9.1(a)3 is being added upon adoption to clarify the Department’s intent to impose permit conditions pursuant to N.J.A.C. 7:1C-7, which authority is already stated in the rules.

**Federal Standards Statement**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), require State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Statement. The adopted new rules are not subject to any Federal standards or requirements. Accordingly, a Federal standards analysis is not required pursuant to Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq.

**Full text** of the adopted new rules follows (additions to the proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

**CHAPTER 1C**
**ENVIRONMENTAL JUSTICE**

**SUBCHAPTER 1. GENERAL PROVISIONS**

7:1C-1.5 Definitions

…

“Existing facility” means a facility, or any portion thereof, which, as of *[the effective date of this chapter)]**April 17, 2023*, possesses a valid approved registration or permit from the Department for its operation or construction and is in operation.
“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.

“New facility” means: 1) any facility that has not commenced operation as of April 17, 2023; or 2) a change in use of an existing facility.

For the purposes of this chapter, an existing facility that has operated without a valid approved registration or permit required by the Department prior to April 17, 2023 shall be considered a new facility.
(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)]*. 

(b) (No change from proposal.) 

(c) Any application complete for review prior to *[(the effective date of this chapter)]*April 17, 2023*, shall not be subject to the requirements set forth in this chapter. 

(d) (No change from proposal.) 

(e) Where an *existing or proposed facility in a block group that has zero population is located immediately adjacent to 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]* *subject to the requirements of this chapter* 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 means may include those communities separated by a street, road, or right-of-way. 

(f)-(g) (No change from proposal.) 

7:1C-2.2 Procedural overview 

(a) (No change from proposal.)
(b) After obtaining the information set forth at (a) above, the applicant shall complete the EJIS, in accordance with N.J.A.C. 7:1C-3.

1.-3. (No change from proposal.)

4. An applicant that is required to provide the information pursuant to N.J.A.C. 7:1C-3.3 shall comply with the requirements pursuant to the following sections to determine whether the facility can, as applicable, first avoid a disproportionate impact or, where a disproportionate impact will occur, address its contributions to environmental and public health stressors in the overburdened community:

i. Applications for permits for proposed new facilities shall satisfy the requirements at N.J.A.C. 7:1C-5* and, as applicable, N.J.A.C. 7:1C-7.

ii.-iii. (No change from proposal.)

(c)-(d) (No change from proposal.)

SUBCHAPTER 3. ENVIRONMENTAL JUSTICE IMPACT STATEMENT

7:1C-3.2 Environmental justice impact statement requirements

(a) In its EJIS, an applicant for a facility located, or proposed to be located, in whole or in part, in an overburdened community shall include:

1.-4. (No change from proposal.)

5. Evidence of satisfaction of any local environmental justice or cumulative impact analysis ordinances with which the applicant is required to comply.

6.-10. (No change from proposal.)
7:1C-3.4 Review of Environmental Justice Impact Statement and authorization to proceed

(a)-(c) (No change from proposal.)

(d) The applicant shall provide, to the Department:

1. A proof of publication of the notice of public hearing required pursuant to N.J.A.C. 7:1C-4.1*[b)1i]**(a)1ii*;

*[2. A dated copy of the posting required pursuant to N.J.A.C. 7:1C-4.1(b)1ii, as applicable;]*

*[3.*] **2.* Copies of and proof of mailing of the notices required pursuant to N.J.A.C. 7:1C-4.1*[b)1iii]**(a)1iii* and iv; and

*[4.*] **3.* A proof of the posting and maintenance of a sign as required pursuant to N.J.A.C. 7:1C-4.1*[b)1iv]**(a)1iv*.

SUBCHAPTER 4. PROCESS FOR MEANINGFUL PUBLIC PARTICIPATION

7:1C-4.1 Public notice

(a) (No change from proposal.)

(b) The notices required pursuant to (a)1 above shall include the following information:

1.-4. (No change from proposal.)

5. A statement inviting participation in the public hearing and notifying the public that, for a time period of no less than 30 days after the hearing and 60 days total, written comments may be submitted to the applicant. The statement shall provide an address for submittal of written
comments to the applicant *[and shall require that copies of any written comments also be sent to:]* *[; and]*

*[New Jersey Department of Environmental Protection*  
Office of Permitting and Project Navigation  
401 East State Street  
PO Box 420  
Trenton, New Jersey 08625; and]*

6. (No change from proposal.)

SUBCHAPTER 5. REQUIREMENTS SPECIFIC TO PERMIT APPLICATIONS FOR NEW FACILITIES

7:1C-5.3 Compelling public interest

(a) (No change from proposal.)

(b) An applicant that seeks approval for a proposed new facility that will serve a compelling public interest in the overburdened community where it is to be located must demonstrate that:

1.-2. (No change from proposal.)

3. There are no *[feasible]* *[reasonable]* 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.

(c)-(d) (No change from proposal.)
7:1C-7.1 Localized impact control technology for new or expanded major source facilities
(a)-(b) (No change from proposal.)

c) An applicant shall document compliance with the LICT standard determined through a top-down approach. To perform a top-down LICT demonstration, the applicant shall: 1. Identify and evaluate a list of air pollution control technologies or measures that may be applied to the source to reduce each contaminant identified at N.J.A.C. 7:27-7.1(b). This list shall not be limited to measures *demonstrated to be reliable in practice and* that have been applied to other existing sources in this same source category and shall include measures applied to sources in similar source categories, as well as innovative control technologies, modification of the process or process equipment, other pollution prevention measures, and combinations of the above measures.

2.-3. (No change from proposal.)

d)-(e) (No change from proposal.)

SUBCHAPTER 8. REQUIREMENTS SPECIFIC TO RENEWAL APPLICATIONS FOR MAJOR SOURCE FACILITIES

7:1C-8.2 Avoidance of disproportionate impact
(a) In addition to the analysis and measures required at N.J.A.C. 7:1C-8.3, 8.4, and 8.5, an applicant that submits a permit application for the renewal of an existing major source permit that is to be located, in whole or in part, in an overburdened community that is subject to adverse cumulative stressors shall analyze and propose *[all]* *feasible* control measures necessary to avoid facility
contributions to all adverse environmental and public health stressors in the overburdened community. Where the control measures proposed by the applicant will prevent a disproportionate impact by avoiding facility contributions to all adverse environmental and public health stressors in the overburdened community, the Department may grant the subject application pursuant to N.J.A.C. 7:1C-9.2(a).

(b)-(c) (No change from proposal.)

7:1C-8.5 Technical feasibility analysis

(a) An applicant for a major facility permit renewal subject to this subchapter shall submit a technical feasibility analysis if the facility’s current effective operating permit includes any equipment or control apparatus that meets the following:

1.-2. (No change from proposal.)

3. The total emissions of any of the pollutants listed below from all equipment or control apparatus that meet the criteria at (a)1 and 2 above, comprise at least 20 percent of the facility’s overall potential to emit that pollutant. All emissions shall be calculated based on potential to emit:

i. Fine particulate matter *(PM2.5)*;

ii. Nitrogen oxide*s*; and

iii. (No change from proposal.)

(b)-(c) (No change from proposal.)

SUBCHAPTER 9. DEPARTMENT REVIEW AND DECISION
7:1C-9.1 Department review

(a) (No change from proposal.)

(b) In issuing its decision pursuant to N.J.A.C. 7:1C-9.2, the Department shall:

1. (No change from proposal.)

2. Evaluate and determine the feasibility of conditions on the construction or operation of the facility in accordance with the requirements at N.J.A.C. 7:1C-5, 6, and 8 and such evaluation shall not be limited to those conditions proposed by the applicant; *[and]*

3. Evaluate conditions on the construction or operation of the facility in accordance with the requirements at N.J.A.C. 7:1C-7, which evaluation shall not be limited to those conditions proposed by the applicant; and*

4. Impose conditions selected by the Department after being evaluated pursuant to (b)2 *and 3* above, on the construction *[of]* *[or]* operation of the facility.

(c) (No change from proposal.)

7:1C-9.5 Procedure to request an adjudicatory hearing; decision on the request; effect of request

(a)-(g) (No change from proposal.)

(h) When an applicant requests an adjudicatory hearing to contest a Department decision pursuant to this chapter, 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]*.
SUBCHAPTER 10. FEES

7:1C-10.3 Fee calculation

(a) By December 1 of the first full year after *(the effective date of this rulemaking)***April 17, 2023*, the Department shall calculate base EJIS submission fees for the upcoming fiscal year (July 1 through June 30), as follows:

1 - 2. (No change from proposal.)

(b) For each fiscal year after *(the effective date of this chapter)***April 17, 2023*, the Department shall prepare an EJIS Program Fee Calculation Report based on the prior calendar year data, including the information contained in the annual budget submission to the Department of the Treasury, and the numbers of EJIS applications, and the EJIS submission fee that shall be due and payable for that calendar year. Beginning March 2024, and each March thereafter, the Department shall publish in the New Jersey Register, a notice that includes a summary of the report and its EJIS.

Review budget. The Department shall also post this report on its website.

(c) Through *(the first year after the effective date of this chapter)***April 17, 2024*, the initial fee shall be $3,900 per EJIS reviewed.