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## **N.J.A.C. 7:1C**

### **ENVIRONMENTAL JUSTICE**

Statutory authority: N.J.S.A. 13:1D-1 et seq., 13:1D-157 et seq., 26:2C-1 et seq., 13:1E-1 et seq., 13:1E-26 et seq., 13:1E-99.11 et seq., 58:1A-1 et seq., 58:4A-4 et seq., 58:10A-1 et seq., 58:10A-21 et seq., 12:5-1 et seq., 13:1D-29 et seq., 13:9A-1 et seq., 13:9B-1 et seq., 13:19-1 et seq., 13:20-1 et seq., 58:16A-50 et seq., 13:1F-1 et seq., 13:1E-48.1 et seq., and 13:1E-99.21a et seq.

For regulatory history and effective dates see the New Jersey Administrative Code

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## **SUBCHAPTER 1. GENERAL PROVISIONS**

**7:1C-1.1 Scope**

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This chapter shall constitute the rules of the Department to address the review and analysis of contributions to environmental and public health stressors by facilities in overburdened communities pursuant to N.J.S.A. 13:1D-157 et seq.

#### 7:1C-1.2 Construction

This chapter shall be liberally construed to effectuate the statutory function, intent, and purposes of N.J.S.A. 13:1D-157.

#### 7:1C-1.3 Purpose

(a) This chapter is promulgated for the following purposes:

1. Ensure meaningful public participation in the Department's analysis of environmental and public health stressors in overburdened communities and a facility's contributions thereto;
2. Limit the placement of new facilities that would create a disproportionate impact by causing or contributing to adverse cumulative stressors in an overburdened community; and
3. Reduce environmental and public health stressors in overburdened communities in the permitting of new, expanded, and existing major source facilities by requiring incorporation of measures to avoid, minimize, and/or reduce facility contributions thereto.

#### 7:1C-1.4 Relationship to other regulatory programs

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(a) Compliance with any subchapter of this chapter shall not relieve any person of the obligation to comply with all other applicable Federal, State, or local laws, rules, regulations, codes, or ordinances.

(b) In the event of a conflict between this chapter and another Department rule, this chapter shall supersede, except that this chapter shall not supersede any provision required to comply with Federal law.

#### 7:1C-1.5 Definitions

“Act” means N.J.S.A. 13:1D-157 et seq., and any amendments thereto.

“Adverse cumulative stressors” means that the combined stressor total of the overburdened community is higher than the 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.

“Adverse environmental and public health stressor” means 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.

“Applicant” means a person who submits to the Department an application for a permit, expansion, or renewal.

“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.

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“Combined stressor total” means the sum of adverse environmental and public health stressors in an overburdened community. If the combined stressor total in the overburdened community is greater than the value of the geographic point of comparison, the overburdened community is subject to adverse cumulative stressors.

“Compelling public interest” means a demonstration by a proposed new facility that primarily serves an essential environmental, health, or safety need of the individuals in an overburdened community, is necessary to serve the essential environmental, health, or safety need, and that there are no other means reasonably available to meet the essential environmental, health, or safety need. For purposes of this chapter, the economic benefits of the proposed new facility shall not be considered in determining whether it serves a compelling public interest in an overburdened community.

"Department" means the New Jersey Department of Environmental Protection.

“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. For purposes of this chapter, a facility located either in whole or in part in an overburdened community can have a disproportionate impact on that community. When determining whether a disproportionate impact will occur, an applicant would only be required to consider impacts to adverse environmental and public health stressors.

“Environmental and public health stressor” or “stressor” 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,

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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, as the same are more specifically listed at the chapter Appendix.

“Environmental justice impact statement” or “EJIS” means a systematic, interdisciplinary and integrated assessment of environmental and public health conditions in an overburdened community that identifies and analyzes: (1) existing environmental and public health stressors; (2) any adverse environmental and public health stressors; (3) the presence or absence of adverse cumulative stressors; (4) potential environmental and public health stressors associated with a facility; (5) whether the facility can avoid causing a disproportionate impact; (6) the measures the facility will propose to implement to avoid or address any disproportionate impact; and (7) where applicable, how the new facility serves a compelling public interest in the overburdened community.

"Existing facility" means a facility, or any portion thereof, which, as of (the effective date of this chapter), possesses a valid approved registration or permit from the Department for its operation or construction and is in operation.

“Expansion” means a modification or expansion of existing operations or footprint of development that has the potential to result in an increase of an existing facility’s contribution to any environmental and public health stressor in an overburdened community, but shall not include any such activity that decreases or does not otherwise result in an increase in stressor contributions.

“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

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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.

"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.

"Geographic point of comparison" means the comparison area and value used to determine whether an overburdened community is subject to one or more adverse environmental and public health stressors and is determined by selecting the lower value of the State or county's 50th percentile, calculated excluding the values of other overburdened communities. For the purposes of this definition, "county" shall refer to the county in which the overburdened community is located.

"Hazardous waste" has the same meaning as the term defined at N.J.A.C. 7:26G-5.1.

"Hazardous waste landfill" has the same meaning as the term defined at N.J.A.C. 7:27-8.1.

"Incinerator" has the same meaning as the terms defined at N.J.A.C. 7:26-1.4 and 7:27-11.1.

"Landfill" means a sanitary or hazardous waste landfill.

"Limited English proficiency" means that a household does not have an adult that speaks English "very well" according to the United States Census Bureau.



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“Low-income household” means a household that is at, or below, twice the poverty threshold as that threshold is determined annually by the United States Census Bureau.

“Major source” or “major facility” shall have the same meaning as the term defined at N.J.A.C. 7:27-22.1.

“Material change” means a modification of the facility or EJIS that, in the determination of the Department, requires further analysis or public comment to accurately assess the facility's contribution to environmental and public health stressors in the overburdened community, such as, but not limited to: 1. A change to the basic purpose; 2. An expansion of the facility; 3. An increase in the potential contributions to environmental or public health stressors; or 4. A change in measures proposed to address the facility's contributions to environmental and public health stressors.

“Medical waste” has the same meaning as the term “medical/infectious waste” defined at N.J.A.C. 7:27-27.1.

"Net environmental benefit" means a reduction of baseline environmental and public health stressors in an overburdened community or other action that improves environmental or public health conditions in an overburdened community, as determined by the Department.

“New facility” means: 1) any facility that has not commenced operation as of (the effective date of this chapter); or 2) a change in use of an existing facility. 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 (the effective date of this chapter) shall be considered a new facility.

“Overburdened community” means any census block group as determined by the Department in accordance with the most recent United States Census, in which: (1) at least 35 percent of the households qualify as low-income households; (2) at least 40 percent of the residents

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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. For the purposes of this chapter, State-designated tribal lands shall be considered overburdened communities. Information regarding overburdened communities can be found on the Department's internet website at <https://www.nj.gov/dep/ej/communities.html>.

“Permit” means 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 following State laws, as amended and supplemented: the Waterfront and Harbor Facilities Act, N.J.S.A. 12:5-1 et seq.; P.L. 1975, c. 232 (N.J.S.A. 13:1D-29 et seq.); the Solid Waste Management Act, P.L.1970, c. 39 (N.J.S.A. 13:1E-1 et seq.); section 17 of P.L. 1975, c. 326 (N.J.S.A. 13:1E-26); the Comprehensive Regulated Medical Waste Management Act, P.L. 1989, c. 34 (N.J.S.A. 13:1E-48.1 et seq.); P.L. 1989, c. 151 (N.J.S.A. 13:1E-99.21a et seq.); the New Jersey Statewide Mandatory Source Separation and Recycling Act, P.L. 1987, c. 102 (N.J.S.A. 13:1E-99.11 et seq.); the Pesticide Control Act of 1971, P.L. 1971, c. 176 (N.J.S.A. 13:1F-1 et seq.); The Wetlands Act of 1970, P.L. 1970, c. 272 (N.J.S.A. 13:9A-1 et seq.); the Freshwater Wetlands Protection Act, P.L. 1987, c. 156 (N.J.S.A. 13:9B-1 et seq.); the Coastal Area Facility Review Act, P.L. 1973, c. 185 (N.J.S.A. 13:19-1 et seq.); the Highlands Water Protection and Planning Act, P.L. 2004, c. 120 (N.J.S.A. 13:20-1 et seq.); the Air Pollution Control Act (1954), P.L. 1954, c. 212 (N.J.S.A. 26:2C-1 et seq.); the Water Supply Management Act, P.L. 1981, c. 262 (N.J.S.A. 58:1A-1 et seq.); P.L. 1947, c. 377 (N.J.S.A. 58:4A-5 et seq.); the Water Pollution Control Act, P.L. 1977, c. 74 (N.J.S.A. 58:10A-1 et seq.); P.L. 1986, c. 102 (N.J.S.A. 58:10A-21 et seq.); or the Flood Hazard Area Control Act, P.L. 1962, c. 19 (N.J.S.A. 58:16A-50 et seq.); except that “permit” shall not include any authorization or approval necessary to perform

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a remediation, as defined pursuant to section 23 of P.L. 1993, c. 139 (N.J.S.A. 58:10B-1), or any authorization or approval required for a minor modification of a facility's major source permit for activities or improvements that do not increase actual or potential emissions.

"Person" means an individual, corporation, corporate officer or official partnership, association, the Federal government, the State, municipality, commission or political subdivision of the State, or any interstate body.

"Reclaim" or "reclamation" has the same meaning as the term defined at N.J.A.C. 7:26-1.4.

"Recyclable materials" has the same meaning as the term defined at N.J.A.C. 7:26-1.4.

"Recycling or reclamation facility" means any place, equipment, or plant designed and/or operated for the purpose of recycling or reclamation, as defined above, to collect, store, process, or to redistribute separated waste, so as to return the material to market intending to receive at least 100 tons of recyclable material per day.

"Renewal" means the continuation of existing permitted operations at a major facility without change. For 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.

"Residual" has the same meaning as the term defined at N.J.A.C. 7:14A-1.2.

"Residual-only facility" has the same meaning as the term defined at N.J.A.C. 7:14A-1.2.

"Resource recovery facility" has the same meaning as the term defined at N.J.A.C. 7:26-1.4.

"Sanitary landfill" has the same meaning as the term defined at N.J.A.C. 7:26-1.4.

"Scrap metal" has the same meaning as the term defined at N.J.A.C. 7:26-1.4.

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“Scrap metal facility” means any facility that receives, stores, processes, shreds, or recycles scrap metal, and includes what is commonly known as a scrap or junk yard.

“Sewage sludge” has the same meaning as the term defined at N.J.A.C. 7:14A-1.2.

“Sewage treatment plant” means any facility owned or operated by any public or private sewerage authority, municipal utilities authority, joint meeting, State agency, county, municipality or other governmental agency, subdivision or instrumentality, group of commissioners, commission, or other entity, into which a treatment works, as defined at N.J.A.C. 7:14A-1.2, will discharge; or which has jurisdiction to treat or convey sewage or other wastewater in the service area in which the proposed treatment works are to be located.

“Site” means any parcel or contiguous parcels of property on which a facility is located or proposed to be located. Parcels separated by a right-of-way shall be considered contiguous.

“Sludge” has the same meaning as the term defined at N.J.A.C. 7:14A-1.2 and includes sewage sludge.

“Sludge incinerator” means any facility that incinerates or combusts sludge in an enclosed device.

“Sludge processing facility” means, for the purposes of this chapter, a facility that receives, stores, or processes sludge, the location of a sludge transfer station or the location of any other treatment works treating domestic sewage (TWTDS) or residual-only facility required to obtain a permit pursuant to N.J.A.C. 7:14A-20. However, a sludge processing facility shall not include the land to which residual is applied or will be applied.

“Solid waste” has the same meaning as the term defined at N.J.A.C. 7:26-1.6.

“Solid waste facility” has the same meaning as the term defined at N.J.A.C. 7:26-1.4.

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“Transfer station” has the same meaning as the term defined at N.J.A.C. 7:26-1.4.

#### 7:1C-1.6 Severability

A finding by a court of competent jurisdiction that any section, subsection, provision, clause, or portion of this chapter is invalid or unconstitutional shall not affect the remainder of the chapter. If any section, subsection, provision, clause, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

### SUBCHAPTER 2. APPLICABILITY AND PROCEDURES

#### 7:1C-2.1 Applicability

(a) The requirements of this chapter apply when an applicant submits a permit application to the Department for a new or expanded facility, or the renewal of an existing major source permit, for a facility located or proposed to be located, in whole or in part, in an overburdened community, or to Solid Waste Management Plan actions as provided at N.J.A.C. 7:1C-4.4.

(b) 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, before the permit applicant first obtains a decision in accordance with N.J.A.C. 7:1C-9.

(c) Any application complete for review prior to (the effective date of this chapter), shall not be subject to the requirements set forth in this chapter.

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(d) As of January 16, 2021, the Department has published on its website a list of overburdened communities utilizing data from the most recently published U.S. census. This information can be found at <https://www.nj.gov/dep/ej/communities.html>. At least every two years thereafter, the Department shall update the list utilizing the most recently published U.S. census data.

(e) Where an existing or proposed facility in a block group that has zero population is located immediately adjacent to an overburdened community, the existing or proposed facility shall be 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 directly abutting an overburdened community and includes those communities separated by a street, road, or right-of-way.

(f) Where an applicant is required to analyze the potential for a facility's contribution to create additional adverse environmental and public health stressors in an overburdened community, the applicant shall be required to address only those stressors identified as affected at the chapter Appendix.

(g) An applicant may request a determination of the applicability of this chapter to an application or potential application by providing the Department, in writing, the address of the existing or proposed facility and information necessary for the Department to determine whether the existing or proposed facility is subject to this chapter.

#### 7:1C-2.2 Procedural overview

(a) Upon request, the Department shall provide to the applicant the initial screening information for the overburdened community required pursuant to N.J.A.C. 7:1C-2.3 identifying the environmental and public health stressors, the geographic point of comparison, any adverse

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environmental and public health stressors, and whether the overburdened community is subject to adverse cumulative stressors. Alternatively, the applicant that wishes to submit its EJIS with a permit application may obtain the required information itself pursuant to N.J.A.C. 7:1C-2.3(g).

(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. Where the overburdened community is not subject to adverse cumulative stressors and the applicant demonstrates, through an analysis of the facility's contributions to the existing environmental and public health stressors in the overburdened community identified as affected at the chapter Appendix, that the facility will avoid causing a disproportionate impact that would occur by creating adverse cumulative stressors as a result of the facility's contribution, only the information pursuant to N.J.A.C. 7:1C-3.2 will be required.

2. Where the facility cannot avoid a disproportionate impact that would occur by creating adverse cumulative stressors as a result of the facility's contribution, the applicant shall include information required pursuant to both N.J.A.C. 7:1C-3.2 and 3.3, including analyzing and proposing feasible measures to, as applicable, avoid or minimize contributions to environmental and public health stressors, provide a net environmental benefit and, where appropriate, demonstrate how the facility serves a compelling public interest in the overburdened community.

3. Where the overburdened community is subject to adverse cumulative stressors, the applicant shall include information required pursuant to both N.J.A.C. 7:1C-3.2 and 3.3.

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

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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. Applications for permits to expand existing facilities shall satisfy the requirements at N.J.A.C. 7:1C-6 and, as applicable, N.J.A.C. 7:1C-7.
- iii. Applications for renewals of existing major source permits shall satisfy the requirements at N.J.A.C. 7:1C-8.

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

(d) Following the completion of the public participation process at N.J.A.C. 7:1C-4, the Department shall consider the EJIS, and any supplemental information, testimony, written comments, the applicant's response to comments, and any other information deemed relevant by the Department to determine whether the facility can avoid a disproportionate impact, determine whether to deny or approve the application, and evaluate whether and how to impose conditions concerning the construction and operation of the facility to address its contributions to environmental and public health stressors affecting the overburdened community and issue a decision, in accordance with N.J.A.C. 7:1C-9.

#### 7:1C-2.3 Initial screening information

(a) Upon request, the Department shall provide to the applicant the initial screening information provided in this section and a statement of applicability.



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(b) Environmental and Public Health Stressors/Geographic Point of Comparison: The Department shall provide a listing of the existing environmental and public health stressors in the overburdened community as set forth at the chapter Appendix and indicate the appropriate geographic point of comparison for each stressor by selecting the lower of the 50th percentile of the State or county's equivalent stressor, excluding other overburdened communities from the comparison.

(c) Adverse Environmental and Public Health Stressors: The Department shall indicate which environmental and public health stressors are considered adverse by comparing the value of each stressor in the overburdened community with the appropriate geographic point of comparison.

(d) Combined Stressor Total: The Department shall sum the number of adverse environmental and public health stressors in the overburdened community to determine the combined stressor total. The Department shall also indicate the appropriate geographic point of comparison for the combined stressor total by selecting the lower of the 50th percentile of the State or county's combined stressor totals excluding the combined stressor totals of other overburdened communities from the comparison.

(e) Cumulative stressors: The Department shall determine whether the overburdened community is subject to stressors by comparing the combined stressor total to the appropriate geographic point of comparison. 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 this analysis.

(f) The Department shall provide the screening information at (b) through (e) above to the applicant, in writing, for incorporation into the EJIS.

(g) An applicant that wishes to submit its EJIS concurrent with a permit application may obtain the screening information at (a) through (f) above from the Department's Environmental Justice

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Mapping, Assessment and Protection Tool

(<https://njdep.maps.arcgis.com/apps/webappviewer/index.html?id=34e507ead25b4aa5a5051dbb85e55055>).

### SUBCHAPTER 3. ENVIRONMENTAL JUSTICE IMPACT STATEMENT

#### 7:1C-3.1 Applicability

(a) All permit applicants shall prepare and submit to the Department an environmental justice impact statement (EJIS) in accordance with the requirements of this section.

(b) Where the overburdened community is not subject to adverse cumulative stressors and the applicant demonstrates, through an analysis of the facility's contributions to the current environmental and public health stressors in the overburdened community, that the facility will avoid a disproportionate impact that would occur by creating adverse cumulative stressors as a result of the facility's contribution, only the information at N.J.A.C. 7:1C-3.2 will be required.

(c) Where the facility cannot avoid a disproportionate impact that would occur by creating adverse cumulative stressors in the overburdened community as a result of the facility's contribution, the applicant shall include information required at both N.J.A.C. 7:1C-3.2 and 3.3.

(d) Where the overburdened community is subject to adverse cumulative stressors, the applicant shall include information required at both N.J.A.C. 7:1C-3.2 and 3.3.

(e) The Department may require inclusion of any additional information or point of analysis it deems necessary for the protection of public health and the environment.

(f) An EJIS, and any supplemental information submitted in accordance with N.J.A.C. 7:1C-3.3, must be prepared and submitted pursuant to this chapter, as applicable. Where the information addressing a requirement is supplied in the engineering designs or reports, reference to such

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designs or reports may be noted in the EJIS and supplemental information, provided the appropriate section and page number of the design or report is summarized, cross referenced, and indexed. If any category or requirement above presents no impact relative to the facility, a notation of non-applicability shall be entered in the EJIS and supplemental information.

#### 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. An executive summary of the information contained in the EJIS, including any supplemental information as required at N.J.A.C. 7:1C-3.3.
2. A detailed written description of the municipal and neighborhood setting of the facility, including the location of community and residential dwellings, hospitals, nursing homes, playgrounds, parks, schools, and comprehensive demographic, economic zoning, and physical descriptions. The site location shall also be identified by a site plan of the facility or equivalent map if no site plan exists.
3. A description of the facility's current and proposed operations, which shall include, but not be limited to, the following:
  - i. An explanation of the purpose of the permit application, including how the project serves the needs of the individuals in the overburdened community;
  - ii. Identification of all processes to be used, including pollution or environmental control measures and monitoring instrumentation, hours of operation, onsite equipment, traffic routes, number of employees, and all other information relevant

to the potential for the facility to contribute to environmental and public health stressors in the overburdened community; and

iii. For new or expanded facilities, a schedule for the construction and operation including anticipated completion dates for major phases of construction, any pollution or environmental control measures and monitoring instrumentation, hours of operation, onsite equipment, traffic routes, number of employees, and all other information relevant to the potential for the construction to contribute to environmental and public health stressors in the overburdened community.

4. A list of all the Federal, State, and local permits that are required, or will be required, for construction or operation of the facility including, but not limited to, those defined at N.J.A.C. 7:1C-1.5.

5. Evidence of satisfaction of any local environmental justice or cumulative impact analysis ordinances with which the applicant is required to comply.

6. The initial screening information obtained pursuant to N.J.A.C. 7:1C-2.3.

7. An assessment of the impacts, both positive and negative, of the facility on each environmental and public health stressor in the overburdened community identified as affected at the chapter Appendix 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.

8. A public participation plan that, at a minimum, satisfies the requirements at N.J.A.C. 7:1C-3.4(d) and 7:1C-4, including all proposed forms and methods of notice to the members of the overburdened community and the proposed hearing location.

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9. A demonstration, including any necessary operational conditions and control measures, 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. If the applicant cannot make such a demonstration, then it is presumed that a disproportionate impact is present and the applicant shall include the information required at N.J.A.C. 7:1C-3.3.

10. As applicable, how a proposed new facility will serve a compelling public interest in the overburdened community, in accordance with N.J.A.C. 7:1C-5.3.

#### 7:1C-3.3 Supplemental information

(a) An applicant shall supplement its EJIS with the information described below if the Department determines a facility is located, or proposed to be located, in whole or in part, in an overburdened community that is subject to adverse cumulative stressors or the facility 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.

##### 1. Site mapping showing:

- i. Topographic conditions, contour data, drainage patterns, wetlands or their associated buffers, coastal zones, or other areas regulated by the Department;
- ii. Areas of known plant or animal species on the Federal and State endangered, threatened, or rare plant or animal species list;
- iii. All existing water classifications, designated uses, and limitations of the surface water bodies that are immediately adjacent to the site, exist on the site, or drain directly onto or off the site, upstream tributaries of bodies of water which flow onto

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the site, and downstream tributaries of bodies of water which flow from the site, in accordance with N.J.A.C. 7:9B; and

iv. Any existing onsite public scenic attributes or outdoor recreation and conservation opportunities in the overburdened community, such as any Federal, State, county, or municipal parks, forests, wildlife management areas and natural areas, any areas acquired for recreation and conservation purposes with Green Acres funding, program, or a non-profit conservation organization, any lands preserved as open space by a non-profit conservation organization or other public access features; and

2. Information pertaining to the existence or absence of contamination on site, which may include the existence of known, or suspected, contaminants, historical uses of the site, and any remediation activities that have occurred on the site;
3. A description of the ambient air quality data for existing concentrations of the National Ambient Air Quality Standard pollutants as identified at 42 U.S.C. §§ 7401 et seq., and a discussion of how the facility will comply with the requirements at N.J.A.C. 7:27;
4. A description of the subsurface hydrology that presents ground water quantity and quality data for the aquifers located beneath the site, including, but not limited to, depth to ground water during seasonal high and low flow, flow direction, existing uses, and future supply capabilities. In addition, a description of the soils that identifies major soil types and their characteristics, including, but not limited to, drainage, erosion potential, and sedimentation potential;
5. A description of the localized climate and flooding impacts through the presentation of site-specific data for average annual and monthly precipitation, flooding, and temperature.

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Meteorological data may be obtained from the nearest National Oceanographic and Atmospheric Administration sanctioned station.

i. At a minimum, the description shall use data and tools from the Department's Climate Change website (<https://www.nj.gov/dep/climatechange>), which must be referenced in the prepared document, and address:

- (1) Whether the facility is located within a flood hazard area, as delineated by the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;
- (2) The expected impacts of flooding on the facility from the 100-year storm event and/or potential inundation due to sea level rise;
- (3) Proposed resilience measures; and
- (4) A list of measures to mitigate risks from flooding and inundation;

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;

7. A description of the sewage facilities that identifies the type of treatment system available, existing treatment capacity, collection system capacity, average and peak flow data, and current committed capacity for the treatment and collection system;

8. A description of the stormwater management system that identifies the type of collection and treatment system available, and current collection and treatment capacity and utilization, including the presence or absence of combined sewer overflows;

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9. A description of the water supply that identifies the water supply system, water sources, level and type of existing pre-treatment, capacity of the distribution system, current commitment of capacity, availability of additional supply, and peak and average demands;

10. A description of the energy supply system on-site or immediately available to the site by identifying existing power lines or pipelines, current commitment of capacity, the capability of supplying energy to the proposed facility and/or activity, and conveying, if applicable, any energy products generated by the proposed facility and/activity from the site. This analysis shall include an evaluation of the feasibility of the utilization of onsite or offsite renewable energy resources to meet, fully or partially, the energy demand of the facility;

11. For new or expanded facilities, a sufficiently detailed comparison of reasonable design alternatives that would permit independent and comparative evaluation, including siting changes or process alternatives that could reduce some or all of the proposed facility's contributions to environmental and public health stressors in the overburdened community, including:

- i. Identification of any significant differences in contributions to environmental and public health stressors that would reasonably result from the alternatives considered;
- ii. A discussion of the alternative of no action or no project, including the major foreseeable consequences of such a choice;
- iii. A comparison, in matrix or other appropriate format, of both the chosen alternative and the set of alternatives considered; and
- iv. A justification of selection of the preferred alternative;



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12. An odor, dust, and/or noise mitigation or management plan, if:
  - i. The facility has the potential to cause odor, dust, and/or noise off-site; or
  - ii. The facility has had a confirmed odor, dust, and/or noise complaint submitted through DEP's Hotline or the local health agency for the five years preceding the date of the permit application;
13. A detailed compliance history for the facility, including any existing Department permits and copies of any enforcement actions issued to the facility for the five years preceding the date of the permit application; and
14. An analysis and proposal of control measures to address the facility's contribution to environmental and public health stressors in accordance with N.J.A.C. 7:1C-5 (new facilities), 6 (facility expansions), or 8 (renewal of existing major source permits).

(b) The requirements of this section are in addition to, and do not supersede, the EJIS requirements in accordance with N.J.A.C. 7:1C-3.2.

(c) An applicant may elect to submit an EJIS and any supplemental information, in accordance with this subchapter, independent of whether the facility is located, or proposed to be located, in whole or in part, in an overburdened community that is subject to adverse cumulative stressors or the facility 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.

#### 7:1C-3.4 Review of Environmental Justice Impact Statement and authorization to proceed

(a) Prior to providing public notice pursuant to N.J.A.C. 7:1C-4.1, an applicant shall transmit the EJIS, and any supplemental information, to the Department for administrative review and

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authorization to proceed pursuant to N.J.A.C. 7:1C-4. The Department's review shall be limited to determining the presence of the information required to complete the EJIS and that the proposed public notice complies with the requirements of this chapter.

(b) Within 10 days of receipt of the EJIS, and any supplemental information, the Department shall either request revisions or the inclusion of additional information in the EJIS or provide the applicant with authorization to proceed with the public participation process pursuant to N.J.A.C. 7:1C-4.

(c) Upon providing authorization to proceed, the Department shall publish the EJIS and any supplemental information on its website and in the bulletin published pursuant to N.J.S.A. 13:1D-34 and shall provide an electronic copy to any party that has registered its interest in the project or representation of the overburdened community with the Department.

(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(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. Copies of and proof of mailing of the notices required pursuant to N.J.A.C. 7:1C-4.1\*[(b)]\* \*(a)\*1iii and iv; and
4. A proof of the posting and maintenance of a sign as required pursuant to N.J.A.C. 7:1C-4.1\*[(b)]\* \*(a)\*1iv.

#### SUBCHAPTER 4. PROCESS FOR MEANINGFUL PUBLIC PARTICIPATION

##### 7:1C-4.1 Public notice

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(a) After receiving authorization from the Department pursuant to N.J.A.C. 7:1C-3.4 to proceed to public process, the applicant shall provide notice of the public hearing and of the opportunity for the public to submit written comments, in accordance with the following, and shall maintain a record that documents that these notice requirements were met:

1. At least 60 days prior to the hearing, the applicant shall:

- i. Provide a copy of the EJIS to the clerk of the municipality or municipalities in which the overburdened community is located;
- ii. 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 a language representative of the residents of the overburdened community, if applicable;
- iii. 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;
- iv. Provide written notice of the hearing through certified mail (return receipt requested) to all persons who own and/or reside on land located within 200 feet of the facility and to any easement holders for that land who are listed in the tax records for the municipality or municipalities in which the land is located;
- v. Post and maintain, in a legible condition, until the public comment period is concluded, a sign on the site of the existing or proposed facility. Any such sign must advise the public of the permit application, the public hearing on the application, and the opportunity for public comment on the proposal. Such sign must be located in a prominent location(s) viewable by the public and contain sufficient detail in a language or language representative of the residents of the

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overburdened community as to inform of the application, and the method by which the public may obtain information about such proposed application;

vi. Provide notice through other methods identified by the applicant to ensure direct and adequate notice to individuals in the overburdened community including, but not limited to, providing information directly to active community groups or organizations, automated phone, voice, or electronic notice, flyers, and/or utilization of other publications utilized within the overburdened community; and

vii. Invite the Department, municipality or municipalities, and local environmental and environmental justice bodies to participate in the public hearing.

(b) The notices required pursuant to (a)1 above shall include the following information:

1. The name of the applicant and the date, time, and location of the hearing;
2. A general description of the proposed new or expanded facility or existing major source facility, as applicable, being considered;
3. A map indicating the location of the facility, including the street address, as applicable, municipality, county, tax map block and lot, and size of the property that would be the subject of the application being considered;
4. A brief summary of the EJIS and supplemental information, as applicable, and information on how an interested person may review a copy of the complete EJIS and supplemental information, as applicable;
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

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6. Any other information deemed appropriate by the Department, for that specific notice.

#### 7:1C-4.2 Public hearing and comment

(a) An applicant shall schedule the public hearing, as follows:

1. The hearing must be held in the overburdened community, unless the applicant demonstrates that there is no suitable hearing space in the overburdened community. Where such demonstration is made, 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. If the 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; and

2. All hearings must be conducted on a week day no earlier than 6:00 P.M. Eastern Standard Time/Eastern Daylight Time. An applicant shall include a virtual component to the in-person public hearing to increase public participation. The virtual component shall be recorded and available online for the public to view after the hearing until at least the close of the public comment period.

(b) At the public hearing, an applicant shall provide a clear, accurate, and complete presentation of the information contained in the EJIS and any supplemental information required by this chapter and accept written and oral comment from any interested party regarding the application. The applicant shall allot sufficient time to ensure that all interested individuals have a reasonable and adequate opportunity to provide oral comment at the hearing.

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(c) The public comment period may begin upon completion of the notice requirements, in accordance with N.J.A.C. 7:1C-4.1. In addition, the comment period shall remain open a minimum of 30 days after the completion of the required public hearing, in accordance with this section and be no less than 60 days total.

#### 7:1C-4.3 Post-hearing and comment process

(a) After the close of public comment, the applicant shall provide to the Department:

1. A written transcript of the public hearing; and
2. A summary of the public comments and the applicant's responses made at the public hearing, and a copy of the comments provided in writing after the public hearing, and the applicant's response to the public comments. The applicant shall indicate in its response how it will address the comments and, as necessary, amend and republish the EJIS.

(b) If the applicant makes a material change to the information set forth in the EJIS, its permit application, or an application pursuant to N.J.S.A. 13:1E-23, after it has submitted its EJIS pursuant to N.J.A.C. 7:1C-3, or after it has completed the public notice or public hearing requirements pursuant to this subchapter, the Department will require the applicant to amend its EJIS to reflect the material change and conduct additional public notice and public hearing, pursuant to this subchapter.

#### 7:1C-4.4 General requirements

The notice and hearing requirements of this subchapter are in addition to the notice and hearing requirements of any other rule, except that an applicant shall conduct the notice and public

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hearing required pursuant to N.J.A.C. 7:1C-4.2, concurrent with the Solid Waste Management Plan notice and hearing required pursuant to N.J.S.A. 13:1E-23.

## SUBCHAPTER 5. REQUIREMENTS SPECIFIC TO PERMIT APPLICATIONS FOR NEW FACILITIES

### 7:1C-5.1 Applicability

(a) This subchapter sets forth the requirements for an applicant that submits a permit application for a new facility that is proposed to be located, in whole or in part, in an overburdened community that is subject to adverse cumulative stressors or a new facility that 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.

(b) In preparing an EJIS for a new facility pursuant to N.J.A.C. 7:1C-3, an applicant shall conduct the analysis and provide the information required pursuant to this subchapter.

### 7:1C-5.2 Avoidance of disproportionate impact

(a) An applicant that submits a permit application for a new facility that is proposed to be located, in whole or in part, in an overburdened community that is subject to adverse cumulative stressors shall analyze and propose all 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).

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(b) Where the control measures proposed by the applicant cannot avoid a disproportionate impact, the Department shall deny the subject application pursuant to N.J.A.C. 7:1C-9.2(b)1, unless the applicant demonstrates that the proposed facility will serve a compelling public interest in the overburdened community, in accordance with N.J.A.C. 7:1C-5.3.

(c) An applicant seeking to demonstrate that the proposed facility will serve a compelling public interest shall conduct the analysis and provide the information required at N.J.A.C. 7:1C-5.3 and 5.4.

#### 7:1C-5.3 Compelling public interest

(a) Where a proposed new facility cannot avoid a disproportionate impact, the Department shall deny the subject application pursuant to N.J.A.C. 7:1C-9.2(b)1, unless the applicant demonstrates that the proposed facility will serve a compelling public interest in the overburdened community.

(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. The proposed new facility will primarily serve an essential environmental, health, or safety needs of the individuals in an overburdened community;
2. The proposed new facility is necessary to serve the essential environmental, health, or safety needs of the individuals in an overburdened community; and
3. There are no 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.



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(c) 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 the individuals in an overburdened community.

(d) The Department may consider, as relevant, public input as to whether a compelling public interest is demonstrated if there is a significant degree of public interest in favor of or against an application from individuals residing in the overburdened community. In addition to any other public comment provided pursuant to this chapter, the Department may seek input from the public whenever it determines such comments may clarify whether the compelling public interest standard is met.

#### 7:1C-5.4 Control measures

(a) 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.

(b) For any aspects of a new facility's operations not addressed at (a) above, the applicant shall propose control measures in the following order:

1. All feasible measures to avoid facility contributions to environmental and public health stressors;
2. For any contribution that cannot feasibly be avoided, all feasible onsite measures to minimize facility contributions to environmental and public health stressors;
3. All feasible offsite measures within the overburdened community to reduce environmental and public health stressors to which the facility will contribute;
4. All feasible offsite measures within the overburdened community to reduce adverse environmental and public health stressors to which the facility will not contribute, with

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preference for the reduction of stressors from highest to lowest percentile in relation to the geographic point of comparison; and

5. All feasible offsite measures within the overburdened community to provide a net environmental benefit in the overburdened community.

## SUBCHAPTER 6. REQUIREMENTS SPECIFIC TO PERMIT APPLICATIONS FOR FACILITY EXPANSIONS

### 7:1C-6.1 Applicability

(a) This subchapter sets forth the requirements for an applicant that submits a permit application for an expanded facility located, in whole or in part, in an overburdened community that is subject to adverse cumulative stressors or a facility expansion that 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.

(b) In preparing an EJIS for an expanded facility pursuant to N.J.A.C. 7:1C-3, an applicant shall conduct the analysis and provide the information required pursuant to this subchapter.

### 7:1C-6.2 Avoidance of disproportionate impact

(a) An applicant that submits a permit application for an expanded facility that is proposed to be located, in whole or in part, in an overburdened community that is subject to adverse cumulative stressors shall analyze and propose all 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

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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) Where the control measures proposed by the applicant cannot avoid a disproportionate impact, the Department shall impose conditions in accordance with N.J.A.C. 7:1C-9.2(b)2.

(c) An applicant seeking approval for an expanded facility where a disproportionate impact is present shall conduct the analysis and provide the information required pursuant to N.J.A.C. 7:1C-6.3.

#### 7:1C-6.3 Control measures

(a) An applicant for an expanded major source facility shall propose control measures in accordance with N.J.A.C. 7:1C-7.1.

(b) For any aspects of any other expanded facility's operations not addressed at (a) above, the applicant shall propose control measures in the following order:

1. All feasible measures to avoid facility contributions to environmental and public health stressors;
2. For any contribution that cannot feasibly be avoided, all feasible onsite measures to minimize facility contributions to environmental and public health stressors;
3. All feasible offsite measures within the overburdened community to reduce environmental and public health stressors to which the facility will contribute;
4. All feasible offsite measures within the overburdened community to reduce adverse environmental and public health stressors to which the facility will not contribute, with preference for the reduction of stressors from highest to lowest percentile in relation to the geographic point of comparison; and

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5. All feasible offsite measures within the overburdened community to provide a net environmental benefit in the overburdened community.

## SUBCHAPTER 7. LOCALIZED IMPACT CONTROL TECHNOLOGY FOR NEW OR EXPANDED MAJOR SOURCE FACILITIES

### 7:1C-7.1 Localized impact control technology for new or expanded major source facilities

(a) For a new major source facility that serves a compelling public interest pursuant to N.J.A.C. 7:1C-4.1, or an expansion of an existing major source facility, if an 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, meeting the following criteria, the applicant shall document Localized Impact Control Technology (LICT) for the source:

1. The facility has a potential to emit any HAP at a rate equal to or greater than the SOTA Threshold at N.J.A.C. 7:27-17.9.
2. The facility has a potential to emit carbon monoxide, nitrogen oxide, inhalable particles with diameters that are generally 10 micrometers and smaller, fine inhalable particles with diameters that are generally 2.5 micrometers and smaller, sulfur dioxide, trisodium phosphate, total volatile organic compounds, or any other air contaminant or category of air contaminant not covered at (a)1 above at a rate individually equal to or greater than the five tons per year.

(b) Documentation of LICT is required only for an air contaminant for which the facility's potential to emit that air contaminant at the amount listed at (a) above.

(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:

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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 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. Arrange the measures on the list in descending order of air pollution control effectiveness. The first-listed or "top" measure shall constitute LICT for the source unless the applicant provides one of the following:

i. A demonstration that the top measure should be eliminated from consideration because it is technically infeasible, based on physical, chemical, or engineering principles, and/or technical difficulties that would prevent the successful application of the measure;

ii. A demonstration that the top measure should be eliminated from consideration based on its environmental impacts. The justification shall show that the adverse environmental effects of the top measure, such as effects on water or land, or HAP emissions, when compared with its air contaminant emission reduction benefits, would make use of the top measure unreasonable; or

iii. A demonstration that the top measure should be eliminated from consideration based on its energy impacts. The justification shall show that the top measure uses fuels that are not reliably available; or that the energy consumed by the top measure is greater than the proposed measure(s), and that the extra energy used, when

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compared with the air contaminant emission reduction benefits resulting from the top measure, would make use of the top measure unreasonable.

3. If the top measure is eliminated from consideration under any of the provisions at (c)2i, ii, or iii above, the applicant shall evaluate each successive measure on the list, using the procedures described at (c)2 above, until a measure is reached that is not eliminated. Upon the Department's approval of the LICT demonstration, this measure shall constitute the LICT for the source.

(d) The requirements of this subchapter shall not apply to sources permitted in a general permit issued pursuant to N.J.A.C. 7:27-8.8 or in a general operating permit issued pursuant to N.J.A.C. 7:27-22.14.

(e) The requirements of this subchapter shall not relieve the applicant from the responsibility to comply with any other State, local, or Federal regulations.

## SUBCHAPTER 8. REQUIREMENTS SPECIFIC TO RENEWAL APPLICATIONS FOR MAJOR SOURCE FACILITIES

### 7:1C-8.1 Applicability

(a) This subchapter sets forth the requirements for an applicant for a permit for a major facility, as defined at N.J.A.C. 7:27-22.1, that submits an application for a renewal of its operating permit required pursuant to N.J.A.C. 7:27-22 and 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.

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(b) In preparing an EJIS for the renewal of an existing major source permit pursuant to N.J.A.C. 7:1C-3, an applicant shall conduct the analysis and provide the information required pursuant to this subchapter.

#### 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 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) Where the control measures proposed by the applicant cannot avoid a disproportionate impact, the Department shall impose conditions in accordance with N.J.A.C. 7:1C-9.2(b)2.

(c) An applicant seeking the renewal of a major source facility permit, where a disproportionate impact is present, shall conduct the analysis and provide the information required pursuant to N.J.A.C. 7:1C-8.3, 8.4, 8.5, and 8.6.

#### 7:1C-8.3 General requirements

(a) An applicant for a major facility permit renewal subject to this subchapter shall include the following in its environmental justice impact statement, as applicable:

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1. A facility-wide risk assessment, pursuant to N.J.A.C. 7:1C-8.4, unless:
  - i. The applicant or designated responsible corporate official certifies that:
    - (1) The applicant submitted a facility-wide risk assessment, as part of its application for its current effective operating permit;
    - (2) The Department approved the facility-wide risk assessment; and
    - (3) No new information or change in use or operation at the facility occurred since the Department approved the facility-wide risk assessment; and
  - ii. The Department determines that there have been no changes to the requirements for a facility-wide risk assessment pursuant to N.J.A.C. 7:1C-8.4, requiring an update to the facility-wide risk assessment; and
2. A technical feasibility analysis to reduce emissions to the maximum extent technically feasible, pursuant to N.J.A.C. 7:1C-8.5, if the facility meets the criteria set forth at N.J.A.C. 7:1C-8.5.

#### 7:1C-8.4 Facility-wide risk assessment

- (a) An applicant of a major facility permit renewal subject to this subchapter shall submit a facility-wide risk assessment that evaluates existing source operations and includes each source operation's emission rates of hazardous air pollutants (HAP) and toxic substances that exceed the reporting thresholds at N.J.A.C. 7:27-17.9(a).
- (b) The applicant shall conduct the facility-wide risk assessment in accordance with a protocol approved in advance by the Department. The Department will not approve a protocol unless it takes all relevant site-specific and general factors into account. These factors include, but are not limited to, a land use analysis, proper consideration of topography, a good engineering practice



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stack height analysis, use of the most recent version of the USEPA-approved models, identification of the most appropriate meteorological data, and consideration of all relevant averaging times. The protocol shall document how the applicant proposes to conduct the facility-wide risk assessment, and how the results will be presented to the Department. Technical guidance on the preparation of a protocol can be found in the Air Quality Permitting Program's Technical Manual 1002 (Guidance on Preparing an Air Quality Modeling Protocol) and Technical Manual 1003 (Guidance on Preparing a Risk Assessment for Air Contaminant Emissions) available on the Department's website at <http://www.nj.gov/dep/aqpp/techman.html>.

(c) If the outcome of the facility-wide risk assessment is above a negligible level pursuant to Technical Manual 1003, then the applicant shall submit a plan to lower the risk to a negligible level as part of its EJIS in accordance with N.J.A.C. 7:1C-2. The plan may include measures, such as applying better air pollution controls to lower emissions, modifying stack parameters to increase dispersion, and/or implementing applicable risk minimization strategies to reduce risk in the overburdened community.

(d) If the facility's proposed plan does not lower risk to a negligible level, the Department will include conditions in its decision that are necessary to reduce risk in the overburdened community.

#### 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. The equipment or control apparatus was installed at least 20 years prior to the expiration date of its current effective operating permit;

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2. The equipment or control apparatus was not subject to review under this subchapter in the 15 years prior to the expiration date of its current effective operating permit; and

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 (PM 2.5);
- ii. Nitrogen oxides; and
- iii. Volatile organic compounds.

(b) The applicant shall list each equipment and source operation that meets the criteria at (a) above, according to the potential to emit of each equipment and source operation, in descending order, for each applicable pollutant.

(c) The applicant shall submit as part of its EJIS pursuant to N.J.A.C. 7:1C-3, a technical feasibility analysis that addresses each equipment and source operation required to be listed at (b) above, beginning at the top of the list provided at (c)1 and 2 below. The technical feasibility analysis shall include the following, and utilize the "top-down" approach, as provided below:

1. A list of air pollution control technologies or pollution prevention options that may be applied to each equipment or control apparatus to reduce the pollutants identified at (a)3 above, which shall:

- i. Include control applied to similar types of sources, innovative control technologies, modification of the process or process equipment, other pollution prevention measures, and combination of these measures; and
- ii. List each measure in descending order of air pollution control effectiveness.

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2. A proposal to reduce emissions of each pollutant that meets (a)3 above by applying the first listed or "top" measure in its list for each equipment and control apparatus, unless the applicant demonstrates that:

i. The top measure is technically infeasible, based on physical, chemical, or engineering principles, and/or technical difficulties that would prevent the successful application of the measure;

ii. The top measure would be unreasonable when comparing its air contaminant emission reduction benefits with its adverse environmental effects, such as effects on water or land, or HAP emissions;

iii. The total and incremental costs of the top measure are greater than the total and incremental costs of the proposed measure(s), which costs shall be calculated using the techniques in the latest edition of the USEPA's Air Pollution Control Cost Manual and that the extra costs, compared with the air contaminant emission reduction benefits resulting from the top measure, would make use of the top measure unreasonable; or

iv. The top measure uses fuels that are not reliably available, or that the energy consumed by the top measure is greater than the proposed measure(s), and the extra energy used, when compared with the air contaminant emission reduction benefits resulting from the top measure, would make use of the top measure unreasonable.

3. If the top measure is eliminated from consideration, the applicant shall evaluate each successive measure on the list, using the procedure described at (c)2 above, until the applicant reaches its proposed measure.

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#### 7:1C-8.6 Control measures

(a) An applicant seeking renewal of an existing facility's major source permit shall propose control measures in accordance with N.J.A.C. 7:1C-8.3, 8.4, and 8.5.

(b) For any aspects of the existing major source facility's operations not addressed at (a) above, the applicant shall propose control measures in the following order:

1. All feasible measures to avoid facility contributions to environmental and public health stressors; and
2. For any contribution that cannot feasibly be avoided, all feasible onsite measures to minimize facility contributions to environmental and public health stressors.

### SUBCHAPTER 9. DEPARTMENT REVIEW AND DECISION

#### 7:1C-9.1 Department review

(a) Following the completion of the public participation process at N.J.A.C. 7:1C-4, the Department shall consider the EJIS and any supplemental information, testimony, written comments, the applicant's response to comments, and any other information deemed relevant by the Department to evaluate its decision pursuant to this chapter.

(b) In issuing its decision pursuant to N.J.A.C. 7:1C-9.2, the Department shall:

1. Determine whether the facility will avoid a disproportionate impact to an overburdened community;
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

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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 or operation of the facility.

(c) If it is necessary for the Department to engage one or more experts to evaluate any information submitted by the applicant, the Department shall notify the applicant, include an estimate of the cost to the Department to engage the expert(s), and direct the applicant to submit payment in full within 90 days of the Department's notice in order to obtain further review of its application. An application for which the Department finds it necessary to engage an expert for alternatives analysis review shall not be considered complete before the Department has received and reviewed the recommendations of the expert.

#### 7:1C-9.2 Department decision

(a) If 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.

(b) If the Department determines that the facility cannot avoid a disproportionate impact, it shall:

1. For new facilities:

i. Deny the application; or

ii. Find that the facility will serve a compelling public interest pursuant to N.J.A.C. 7:1C-5.3 in the overburdened community and authorize the applicant to proceed with the imposition of conditions set by the Department as necessary to avoid or

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minimize contributions to adverse environmental and public health stressors, reduce adverse environmental and public health stressors, and/or provide a net environmental benefit in the overburdened community;

2. For expanding facilities: authorize the applicant to proceed with the Department permitting the imposition of appropriate conditions set by the Department as necessary to avoid or minimize contributions to adverse environmental and public health stressors, reduce adverse environmental and public health stressors, or provide a net environmental benefit in the overburdened community;

3. For major source renewals: authorize the applicant to proceed with the Department permitting the imposition of appropriate conditions set by the Department as necessary to avoid or minimize contributions to adverse environmental and public health stressors in the overburdened community; and

4. The Department shall not issue a decision that would compromise the reasonable requirements of public health, safety, and welfare to the environment in the overburdened community.

#### 7:1C-9.3 Form and timing of decision

(a) The Department shall issue its decision, in writing, with a summary of facts, the Department's analysis, and identification of any conditions set by the Department that will be incorporated into any subsequently issued Departmental permits for the facility. The Department's decision shall constitute a final agency decision and shall be incorporated into any related permitting decisions.

(b) The Department may determine that its decision pursuant to this subchapter satisfies the requirements of this chapter for subsequent Department permits for the facility required to be listed

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pursuant to N.J.A.C. 7:1C-3.2(a)4 and identified in the Department-authorized 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. Any such permits shall be listed in the decision.

(c) In accordance with N.J.S.A. 13:1D-160.b, and notwithstanding the provisions at N.J.S.A. 13:1D-29 et seq., or any other law, rule, or regulation adopted pursuant thereto, to the contrary, the Department shall not issue a decision pursuant to this chapter until at least 45 days after the public hearing held pursuant to N.J.A.C. 7:1C-4.

(d) The Department shall not consider complete for review, any permit application for a facility subject to the requirements of this chapter prior to the issuance of a decision.

#### 7:1C-9.4 Violation of permit conditions

(a) Any violation of the conditions imposed pursuant to this chapter shall, as applicable, be considered non-minor violations or aggravating circumstances, or the equivalent, under any other Department rules applicable to the facility.

(b) Any violation of the conditions imposed pursuant to this chapter shall constitute grounds for suspension or revocation, in accordance with N.J.S.A. 13:1B-3, N.J.A.C. 13:1D, or the underlying permitting authorities of any Department-issued permits.

#### 7:1C-9.5 Procedure to request an adjudicatory hearing; decision on the request; effect of request

(a) This section sets forth the process by which a person may request an adjudicatory hearing to contest a Department decision pursuant to this chapter.

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(b) To contest a Department decision pursuant to this chapter, a person shall submit an adjudicatory hearing request within 30 calendar days of issuance. If a person submits the adjudicatory hearing request after this time, the Department shall deny the request.

(c) A person requesting an adjudicatory hearing shall provide the following information on an adjudicatory hearing request form, available from the Department:

1. The name, address, daytime telephone number, fax number, and email address of the person requesting the hearing, and of the person's authorized representative;
2. A copy of the Department decision on which a hearing is being requested;
3. The date that the Department decision on which a hearing is being requested was received by the person requesting the hearing;
4. A specific admission, denial, or explanation of each fact appearing in the Department decision, or a statement that the person is without knowledge thereof;
5. A concise statement of the facts or principles of law asserted to constitute any factual or legal defense; and
6. Where the person submitting the hearing request is not the person to whom the decision that is being contested was issued, evidence that a copy of the hearing request has been mailed or delivered to the person to whom the decision was issued.

(d) A person requesting an adjudicatory hearing shall:

1. Submit the original hearing request to:

New Jersey Department of Environmental Protection

Office of Administrative Hearings and Dispute Resolution

Attention: Adjudicatory Hearing Requests

Mail Code 401-07A



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PO Box 402

401 East State Street, 7th Floor

Trenton, NJ 08625-0402; and

2. Submit a copy of the hearing request to the Director of the Office of Permit and Project Navigation.

(e) Nothing in this subchapter shall be construed to provide a right to an adjudicatory hearing in contravention of the Administrative Procedure Act, at N.J.S.A. 52:14B-3.1, 3.2, and 3.3.

(f) The Department shall notify the requester that the request for hearing is granted or denied. If the hearing request is denied, the denial shall provide the reason(s) for the denial. If the hearing request is granted, the Department shall refer the matter to the Office of Administrative Law for a contested case hearing, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(g) A final decision issued by the Commissioner after the hearing in the Office of Administrative Law shall be considered a final agency action for purposes of the Administrative Procedure Act and shall be subject to judicial review in the Appellate Division of the Superior Court, as provided in the Rules of Court.

(h) When an applicant requests an adjudicatory hearing to contest a Department decision pursuant to this chapter, the decision shall be automatically stayed in its entirety.

## SUBCHAPTER 10. FEES

### 7:1C-10.1 Applicability

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(a) An applicant who submits an application for an individual permit for a new or expanded facility, or the renewal of an existing major source permit, located, or proposed to be located, in whole or in part, in an overburdened community shall remit a fee to the Department in accordance with this subchapter.

#### 7:1C-10.2 Payment of fees

(a) Fees for activities related to environmental justice review shall be paid in U.S. dollars by certified check, government purchase order or check, or money order, payable to "Treasurer, State of New Jersey," and mailed or hand-delivered to the following address, unless the Department authorizes some other means of payment:

New Jersey Department of Environmental Protection

Office of Permitting and Project Navigation

PO Box 420

401 East State Street

Trenton, NJ 08625-0420

(b) The Department may refrain from commencing work on activities related to environmental justice review until the Department receives full payment of such fee. If the Department has commenced work on the service, the Department may suspend such work until it receives full payment of such fee.

(c) The Department shall not issue a decision pursuant to N.J.A.C. 7:1C-9, unless the fee required pursuant to this subchapter is paid in full.

(d) Any fee pursuant to this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments, in accordance with N.J.A.C. 7:1L.

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### 7:1C-10.3 Fee calculation

(a) By December 1 of the first full year after (the effective date of this rulemaking), the Department shall calculate base EJIS submission fees for the upcoming fiscal year (July 1 through June 30), as follows:

1. The Department shall determine its EJIS review budget by determining the dollar amount needed to accomplish all tasks associated with administering the EJIS Review, including costs to provide technical assistance to permit applicants and overburdened communities as needed to comply with this chapter. The Department shall not include in its EJIS Review budget any costs associated with any other program areas within the Department's Environmental Justice Program that is funded by a source outside of the EJIS Review budget. The result shall be the total amount of revenue that is to be collected through EJIS submission fees.

2. The Department shall calculate the EJIS submission fee by dividing the EJIS review revenue calculated pursuant to (a) above by the number of EJIS submissions received by the Department in the prior calendar year.

(b) For each fiscal year after (the effective date of this chapter), 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.

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(c) Through (the first year after the effective date of this chapter), the initial fee shall be \$3,900 per EJIS reviewed.

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### APPENDIX

<b>Concentrated Areas of Air Pollution</b>			
<b>Stressor</b>	<b>Designation</b>	<b>Measure</b>	<b>Source</b>
Ground-Level Ozone	Affected	3-year average days above standard	Most recent USEPA <sup>1</sup> Ambient Air Quality Daily Summary data
Fine Particulate Matter (PM <sub>2.5</sub> <sup>2</sup> )	Affected	3-year average days above standard	Most recent USEPA Ambient Air Quality Daily Summary data
Air Toxics Cancer Risk Including Diesel Particulate Matter	Affected	Estimated cancer risk per million	Most recent AirToxScreen NJ state summary file
Air Toxics Cancer Risk Excluding Diesel Particulate Matter	Affected	Estimated cancer risk per million	Most recent AirToxScreen NJ state summary file
Air Toxics Non-Cancer Risk	Affected	Combined Hazard Quotient	Most recent AirToxScreen NJ state summary file

<sup>1</sup>United States Environmental Protection Agency

<sup>2</sup>Particulate matter composed of particles smaller than 2.5 microns

<b>Mobile Sources of Air Pollution</b>			
<b>Stressor</b>	<b>Designation</b>	<b>Measure</b>	<b>Source</b>
Traffic – Cars, Light- and Medium-Duty Trucks	Affected	AADT <sup>3</sup> -mile per square mile	Most recent FHWA <sup>4</sup> HPMS <sup>5</sup> data
Traffic – Heavy-Duty Trucks	Affected	AADT-mile per square mile	Most recent FHWA HPMS data
Railways	Affected	Rail miles per square mile	Most recent NJDOT <sup>6</sup> Railroads Network data

<sup>3</sup>Annual Average Daily Traffic

<sup>4</sup>U.S. Department of Transportation, Federal Highway Administration

<sup>5</sup>Highway Performance Monitoring System

<sup>6</sup>New Jersey Department of Transportation

<b>Contaminated Sites</b>			
<b>Stressor</b>	<b>Designation</b>	<b>Measure</b>	<b>Source</b>
Known Contaminated Sites	Affected	Weighted sites per square mile	Most recent NJDEP Known Contaminated Site List data
Soil Contamination Deed Restrictions	Affected	Percent area	Most recent NJDEP Deed Notice Extent in New Jersey data
Ground Water Classification Exception	Affected	Percent area	Most recent NJDEP CEA <sup>7</sup> and CKE <sup>8</sup> data

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Areas/Currently Known Extent Restrictions			
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<sup>7</sup>Classification Exception Areas-Well Restriction Areas for New Jersey

<sup>8</sup>Currently Known Extent of Groundwater Contamination for New Jersey

<b>Transfer Stations or Other Solid Waste Facilities, Recycling Facilities, and Scrap Metal Facilities</b>			
<b>Stressor</b>	<b>Designation</b>	<b>Measure</b>	<b>Source</b>
Solid Waste Facilities	Affected	Sites per square mile	Most recent NJDEP Solid & Hazardous Waste Facilities in New Jersey data
Scrap Metal Facilities	Affected	Sites per square mile	Most recent NJDEP Scrap Metal Facilities data

<b>Point-Sources of Water Pollution</b>			
<b>Stressor</b>	<b>Designation</b>	<b>Measure</b>	<b>Source</b>
Surface Water	Affected	Percent uses impaired	Most recent NJDEP Integrated List of Waters for New Jersey
Combined Sewer Overflows	Affected	Count	Most recent NJDEP Combined Sewer Overflow (CSO) for NJ

<b>May Cause Potential Public Health Impacts</b>			
<b>Stressor</b>	<b>Designation</b>	<b>Measure</b>	<b>Source</b>
Drinking Water	Baseline	Count of community drinking water violations or exceedances, or percent of PWTA <sup>8</sup> exceedances	Most recent NJDEP Private Well Testing Act Summary Results
Potential Lead Exposure	Baseline	Percent houses older than 1950	Most recent U.S. Census five-year ACS <sup>9</sup> data
Lack of Recreational Open Space	Affected	Population per acre of open space within 0.25 mile	Most recent NJDEP State, Local and Nonprofit Open Space of New Jersey data
Lack of Tree Canopy	Affected	Percent lack of tree canopy	Most recent USFS <sup>10</sup> Analytical Tree Canopy Cover data

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Impervious Surface	Affected	Percent impervious surface	Most recent NJDEP County Impervious Surface of New Jersey data
Flooding (Land Use Cover)	Affected	Percent urban land use area flooded	Most recent NJDEP Urban Flooding data

<sup>9</sup>Private Well Testing Act

<sup>10</sup>United States Forest Service

<b>Density/Proximity Stressors</b>			
<b>Stressor</b>	<b>Designation</b>	<b>Measure</b>	<b>Source</b>
Emergency Planning Sites	Affected	Sites per square mile	Most recent NJDEP Facility Density Data
Permitted Air Sites	Affected	Sites per square mile	Most recent NJDEP Facility Density Data
NJPDES <sup>11</sup> Sites	Affected	Sites per square mile	Most recent NJDEP Facility Density Data

<sup>11</sup>New Jersey Pollutant Discharge Elimination System

<b>Social Determinants of Health</b>			
<b>Stressor</b>	<b>Designation</b>	<b>Measure</b>	<b>Source</b>
Unemployment	Baseline	Percent unemployed	Most recent U.S. Census Bureau five-year ACS <sup>12</sup> data
Education	Baseline	Percent without high school diploma	Most recent U.S. Census Bureau five-year ACS data

<sup>12</sup>American Community Survey