

New Jersey Enacts First-of-Its-Kind Environmental Justice Legislation

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Since his inauguration in January 2018, New Jersey Governor Philip D. Murphy has steadily advanced an aggressive environmental justice¹ agenda. On April 20, 2018, he signed Executive Order No. 23, which directed the New Jersey Department of Environmental Protection (NJDEP), in consultation with the Department of Law and Public Safety, to develop guidance for all executive branch departments and agencies on environmental justice considerations in policymaking.² In December 2018, Attorney General Gurbir S. Grewal and the NJDEP launched a statewide environmental justice initiative, which included the filing of eight civil actions relating to contaminated sites in “minority and lower-income communities” and the establishment of a new Environmental Justice Section within the Office of the Attorney General.³ Six more environmental justice actions were filed in October 2019,⁴ and another 12 were filed in August 2020.⁵ On February 3, 2020, NJDEP Commissioner Catherine R. McCabe signed Administrative Order No. 2020-02, establishing new guidelines and responsibilities for the agency’s Environmental Justice Advisory Council.⁶

Now, the Legislature has moved the state’s environmental justice initiative to a new phase. On August 27, it passed a bill (**S232/A2212**) that requires the NJDEP to publish and maintain a list of “overburdened communities” in New Jersey

and imposes new and significant requirements on businesses operating in such communities. Governor Murphy signed the bill into law on September 18.

The bill defines “overburdened communities” as a census block group in which (1) at least 35% of the households qualify as low-income, (2) at least 40% of the residents identify as minority or as members of a “State recognized tribal community,” or (3) at least 40% of the households have limited English proficiency. For covered “facilities” situated in overburdened communities, applicants for initial permits, expansion permits, or permit renewals must submit an environmental justice impact statement evaluating any potential “environmental and public health stressors” associated with the facility, including any stressors that are unavoidable if the permit is granted. The statement must also assess any other environmental stressors that already exist in the community. The bill defines “facility” as “any: (1) major source⁷ of air pollution (2) resource recovery facility or incinerator; (3) sludge processing facility, combustor, or incinerator; (4) sewage treatment plant with a capacity of more than 50 million gallons per day; (5) transfer station or other solid waste facility, or recycling facility intending to receive at least 100 tons of recyclable material per day; (6) scrap metal facility; (7) landfill, including, but not limited to, a landfill that

¹ The U.S. Environmental Protection Agency defines “environmental justice” as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” <https://www.epa.gov/environmentaljustice>.

² <https://www.nj.gov/infobank/eo/056murphy/pdf/EO-23.pdf>.

³ <https://www.nj.gov/oag/newsreleases18/pr20181206a.html>.

⁴ <https://www.nj.gov/oag/newsreleases19/pr20191025a.html>.

⁵ <https://www.nj.gov/oag/newsreleases20/pr20200827b.html>.

⁶ <https://www.state.nj.us/dep/ej/docs/ejac-crm-ao-2020-02.pdf>.

⁷ The bill defines “major source” as “a major source of air pollution as defined by the federal ‘Clean Air Act,’ 42 U.S.C. s.7401 et seq., or in rules and regulations adopted by the [NJDEP] pursuant to the ‘Air Pollution Control Act,’ P.L. 1954, c.212 (C.26:2C-1 et seq.) or which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant, or other applicable criteria set forth in the federal ‘Clean Air Act,’ 42 U.S.C. s.7401 et seq.”

accepts ash, construction or demolition debris, or solid waste; or (8) medical waste incinerator”⁸

The bill defines “environmental and public health stressors” as “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.” Notably, however, the bill exempts from its requirements any permit that is necessary to perform remediation or implement a minor modification of a facility’s major source permit for activities or improvements that will not increase emissions.

The applicant must also host a public hearing⁹ and consider public comments, and it must submit a transcript of the hearing and a copy of the comments to the NJDEP. The NJDEP must then consider those materials, along with the required

statement, in evaluating the permit. If the facility will disproportionately impact the overburdened community, the NJDEP must deny the permit unless it will “serve a compelling public interest in the community where it is to be located.” The NJDEP also has the discretion to conditionally approve a permit subject to the implementation of measures designed to mitigate the community impact.

The requirement to file an environmental justice impact statement will go into effect immediately upon the NJDEP’s promulgation of implementing rules and regulations. The bill’s impact is expected to be far-reaching. Governor Murphy has estimated that up to 310 municipalities in New Jersey could meet the definition of “overburdened communities.” Entities that operate permitted facilities should thus be prepared to file “environmental justice statements” with future permit applications. They should also be prepared for Governor Murphy’s administration to enforce this legislation aggressively going forward.

If you have any questions about the bill or New Jersey’s environmental justice initiatives, please contact the authors of this article.

⁸ The bill exempts from this definition “a facility as defined in section 3 of P.L. 1989, c.34 (C.13:1E-48.3) that accepts regulated medical waste for disposal, including a medical waste incinerator, that is attendant to a hospital or university and intended to process self-generated regulated medical waste.”

⁹ The NJDEP may require, or the applicant may request, that this public hearing be consolidated with any other public hearings held or required by the NJDEP with regard to the permit application.

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