

Environmental Justice Rule Training



NEW JERSEY
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION



Introduction

Furthering the Promise of Environmental Justice

Environmental Justice

- Fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies.

Executive Order 23

- Path for New Jersey's executive agencies to weave the principles of environmental justice into their core functions with coordination through the Interagency Council.

DEP Actions

- Looking inward: "Furthering the Promise: A Guidance Document for Advancing Environmental Justice Across State Government" (October 1, 2020)
- Looking outward: the nation's most empowering environmental justice law (September 18, 2020)



New Jersey's Environmental Justice Law, N.J.S.A. 13:1D-157

- First of its kind and nation's most empowering environmental justice legislation
 - Signed September 18, 2020
 - Administrative Order 2021-25: Applied spirit of EJ law while rules pending
 - Implementing Regulations:
 - Proposed June 2022
 - Effective April 2023
- Recognizes that recognition that existing environmental standards are often formulated based on the effect that pollution has upon general populations spread over wide geographic areas, which may fail to fully consider localized impacts.
- New Jersey's low-income communities and communities of color historically have been subjected to a disproportionately high number of environmental and public health stressors,
 - Including mobile sources of pollution, as well as numerous stationary sources of pollution, and
 - Often lack important environmental benefits, such as quality green and open spaces, sufficient tree canopy, or adequate stormwater management.
- Comparative Analysis
 - EJ Law requires Department to consider how certain facilities seeking permits to construct and/or operate in overburdened communities will contribute to environmental or public health stressors in that community in a manner that is disproportionate compared to its neighbors
 - Facility-wide assessment



Environmental Justice Law & Regulations

N.J.S.A. 13:1D-157 | N.J.A.C. 7:1C

The Environmental Justice Law (1/2)

The Legislature finds and declares:

- All New Jersey residents, regardless of income, race, ethnicity, color, or national origin, have a right to live, work, and recreate in a clean and healthy environment.
- Historically, New Jersey's low-income communities and communities of color have been **subject to a disproportionately high number of environmental and public health stressors**, including **pollution from numerous industrial, commercial, and governmental facilities located in those communities**.
- **The legacy of siting sources of pollution in overburdened communities** continues to pose a threat to the **health, well-being, and economic success** of the State's most vulnerable residents and that it is past time for the State to **correct this historical injustice**.

The Environmental Justice Law (2/2)

The Legislature finds and declares:

- No community should bear a **disproportionate share** of the adverse environmental and public health **consequences that accompany the State's economic growth**.
- The State's overburdened communities must have a **meaningful opportunity to participate** in any decision to allow facilities which, by the nature of their activity, have the potential to increase environmental and public health stressors.
- It is in the public interest for the State, where appropriate, to **limit the future placement and expansion of such facilities in overburdened communities**.

Stakeholder Engagement & Public Hearings

- **10/22/20** – Initial EJ Rulemaking Public Information Session
- **01/20/21** – Geographic Points of Comparison / Facility & Permit Definitions
- **03/11/21** – Environmental & Public Health Stressors
- **04/07/21** – Compelling Public Interest / Renewal Conditions
- **05/20/21** – Environmental Justice Impact Statement
- **06/24/21** – Review Meeting

- **06/06/22** – Publication in the New Jersey Register with 90-day comment period
- **07/11/22** – Public Hearing – Trenton (two sessions – 3 p.m. & 6 p.m.)
- **07/13/22** – Public Hearing – Camden (6:30 p.m.)
- **07/27/22** – Public Hearing – Newark (6 p.m.)
- **07/28/22** – Public Hearing – Virtual (6 p.m.)
- **09/04/22** – Public Comment Period ends
- **04/17/23** – Rule effective

Step 1: Applicability Determination – 3 Criteria

- (1) Located in **Overburdened Community** census block group in which:
 - at least 35 percent of the households qualify as low-income households;
 - at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or
 - at least 40 percent of the households have limited English proficiency
- (2) **Facility**
 - major sources of air pollution (e.g., power plants, cogeneration facilities);
 - incinerators or resource recovery facilities;
 - large sewage treatment plants (more than 50 million gallons per day);
 - transfer stations or solid waste facilities;
 - recycling facilities that receive at least 100 tons of recyclable material per day;
 - scrap metal facilities;
 - landfills; or
 - medical waste incinerators, except those attendant to hospital and universities.
- (3) **Permit**: solid waste and recycling, land use, water supply and pollution, and air pollution.
 - Applies to individual permits (those permits for more substantial activities requiring deeper review) and excludes authorizations or approvals necessary to perform remediation and minor modification to major source air permits that do not increase emissions

Note: If the EJ rules are applicable, all permitting clocks are stopped until the completion of the EJ process.

Overburdened Communities (OBCs)

5-year American Community Survey Data, 2017-2021

- The final [EJMAP](#) tool includes a revised analysis based on 2021 ACS data
- OBC data will be updated at least every two years
- Information that can be found on the [Office of Environmental Justice's website](#):
 - Excel Spreadsheet listing Overburdened Communities (OBCs) block groups with town names
 - PDF maps

Overburdened Community Criteria	# Block Groups	Population
Adjacent	51	0
Limited English	2	771
Low Income	211	296,378
Low Income & Limited English	1	1,570
Low Income & Minority	1,112	1,604,345
Low Income, Minority, & Limited English	115	165,951
Minority	1,981	2,877,020
Minority & Limited English	23	30,126
Total	3,496	4,976,161

Overburdened Communities (OBC) Under the Environmental Justice Rule

Data from the 5 Year American
Community Survey (2017 to 2021)

Overburdened Community Criteria	Number of Block Groups	Population
Adjacent	51	0
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County
Boundaries

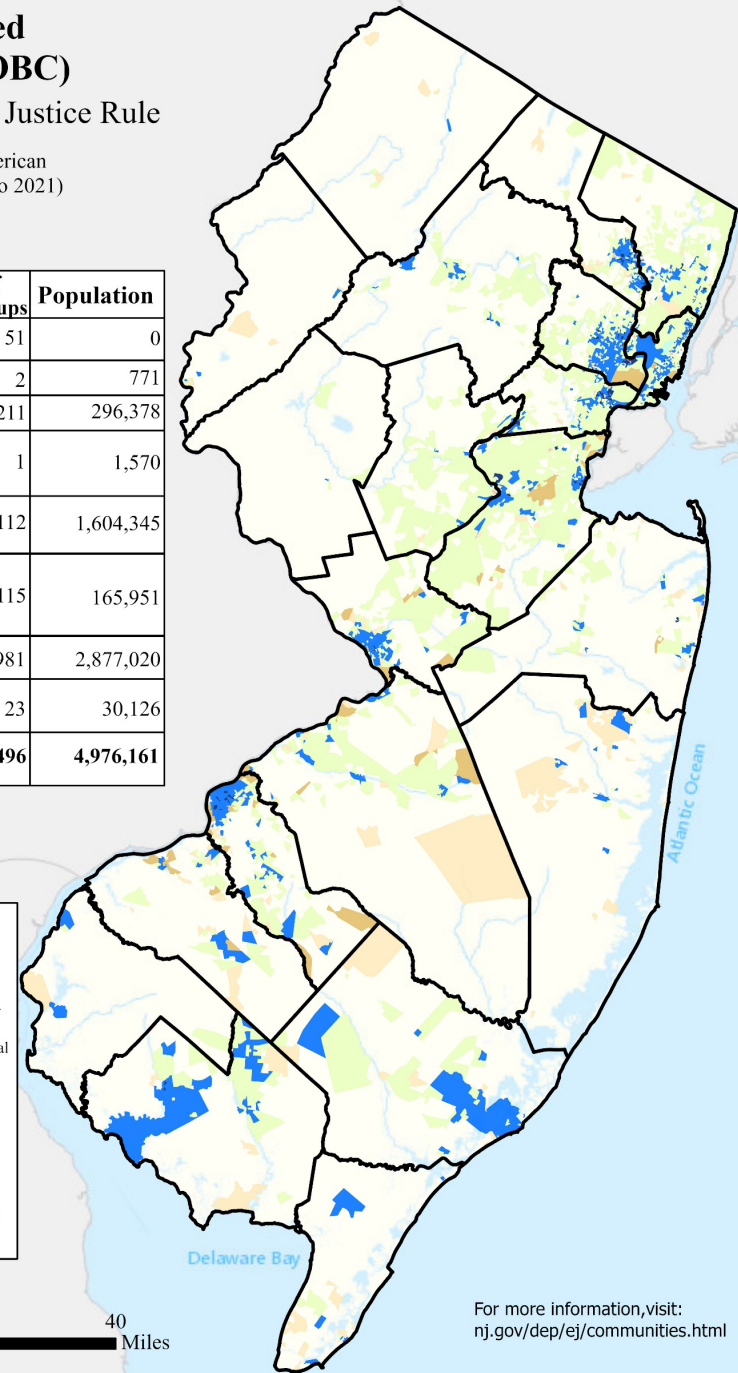
The State has updated mapping of New Jersey's OBCs, as required by the Act (see the Overburdened Communities tab above). Specifically, OBCs are block groups with:

- (1) At least 35 percent low-income households; or
- (2) At least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or
- (3) At least 40 percent of the households have limited English proficiency

Census block groups with zero population and located immediately adjacent to an OBC are labeled as "adjacent." Existing or proposed facilities located in adjacent block groups may be required to conduct further analysis in accordance with the Environmental Justice Rules



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Miles



For more information, visit:
nj.gov/dep/ej/communities.html

Environmental & Public Health Stressors

“Environmental or public health stressors” means sources of environmental pollution, including, but not limited to:

1. concentrated areas of air pollution,
2. mobile sources of air pollution,
3. contaminated sites,
4. transfer stations or other solid waste facilities, recycling facilities, scrap yards, and
5. 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:

1. asthma,
2. cancer,
3. elevated blood lead levels,
4. cardiovascular disease, and
5. developmental problems in the overburdened community.

Note: The Department provides baseline stressor information via [EJMAP](#).

Step 2: Environmental Justice Impact Statement & Meaningful Public Participation

Environmental Justice Impact Statement (EJIS) Assesses

- The potential environmental and public health stressors associated with the facility;
- The environmental or public health stressors already borne by the overburdened community;
- Any adverse environmental or public health stressors that cannot be avoided if the permit is granted; and
- Measures to avoid or minimize facility contributions to stressors in the OBC.

EJIS plus Supplemental Information

- Where communities are already subject to adverse cumulative stressors, or where a facility will create adverse cumulative stressors, the applicant must submit supplemental information.
- The supplemental information includes detailed information on site conditions and pollution control measures.

Meaningful Public Participation

- The applicant conducts a public hearing in the overburdened community to present EJIS.
- Public Notice: 60 days prior to hearing, newspaper, property owners within 200 feet, sign at facility, additional community specific methods.
- There is a minimum 60-day public comment period, and applicants must respond to all public comments in writing.
- Upon completion of the public process, the applicant provides the EJIS and any supplemental information, hearing testimony, written comments, the applicant's response to comments, and any other relevant information to the Department for review and decision.

Disproportionate Impact

“**Disproportionate impact**” occurs under two scenarios:

1. Facility creates adverse cumulative stressors in an overburdened community as a result of its contribution; or
2. Facility contributes to an adverse environmental and public health stressor in an overburdened community that is already subject to adverse cumulative stressors.

Goal: Avoid disproportionate impact

- Where cannot avoid – analyze and propose 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 a new facility serves a compelling public interest in the overburdened community.

Step 3: Department Decision

The Department considers the EJIS and any supplemental information, testimony, written comments, the applicant's response to comments, and any other information deemed relevant by the Department and determines whether the facility can avoid a disproportionate impact.

Where the facility **can avoid a disproportionate impact**, the Department would authorize the applicant to proceed with the imposition of conditions set by the Department necessary to ensure a disproportionate impact is and remains avoided.

Where the facility **cannot avoid a disproportionate impact**, the Department would:

- New Facilities: The Department will deny an application for a new facility unless it demonstrates it will serve a compelling public interest **in the overburdened community**.
- Expanded facilities/Major source renewals: authorize the applicant to proceed with Department permitting subject to appropriate conditions to address facility impacts to environmental and public health stressors.

Compelling Public Interest

- Exception to requirement that new facility be denied where it cannot avoid disproportionate impact.
- “Compelling public interest” means
 - Primarily serves an essential environmental, health or safety need of the individuals in an overburdened community;
 - Necessary to serve the essential environmental, health or safety need; and
 - No other means reasonably available to meet the established health or safety need.
- Focus is on public works-type projects that are necessary to serve essential environmental, health or safety need of the individuals **in an overburdened community** such as those which directly reduce stressors (e.g., CSO projects).
- Economic benefits of the proposed new facility – employment, tax revenue, etc. - shall not be considered in determining whether it serves a compelling public interest in an overburdened community.
- Considers the position of members of the overburdened community, supportive or otherwise, in determining whether a facility satisfies the compelling public interest standard.

Permit Conditions

Permit Renewals

- Avoid impacts and where avoidance is not feasible, minimize facility contributions to individual stressors in the OBC.

Permits for New and Expanded Facilities

- Beyond avoidance and minimization, we would consider additional feasible conditions that would reduce offsite stressors or provide a net environmental benefit that improves baseline environmental and public health stressors in the overburdened community.

Localized Impact Control Technology

- Objective standards for major source components based on existing air program standards – will help address legacy sites that have lagged in technology upgrades.
- Focuses on technological feasibility rather than economic feasibility to drive pollution reduction through control technology.



Environmental & Public Health Stressors

Environmental & Public Health Stressors

After considering data availability, data quality, appropriate geographic scale, quantifiability, and marginal value, DEP selected 26 stressors.



Environmental & Public Health Stressors

Concentrated areas of air pollution

- Ground-Level Ozone
- Fine Particulate Matter (PM_{2.5})
- Air Toxics Cancer Risk Including Diesel PM
- Air Toxics Cancer Risk Excluding Diesel PM
- Air Toxics Non-Cancer Risk

Mobile sources of air pollution

- Traffic – Cars, Light- and Medium-Duty Trucks
- Traffic – Heavy-Duty Trucks
- Railways

Contaminated sites

- Known Contaminated Sites
- Soil Contamination Deed Restrictions
- Groundwater Classification Exception Areas/Current Known Extent Restrictions

Transfer stations or other solid waste, recycling & scrap metal facilities

- Solid Waste Facilities
- Scrap Metal Facilities

Point-sources of water pollution

- Surface Water
- Combined Sewer Overflows

May cause public health issues

- Drinking Water
- Potential Lead Exposure
- Lack of Recreational Open Space
- Lack of Tree Canopy
- Impervious Surface
- Flooding (Land Use Cover)

Density/proximity

- Emergency Planning Sites
- Permitted Air Sites
- NJPDES Sites

Social determinants of health

- Unemployment
- Education

DEP updates the data in EJMAP twice per year.

Initial Screening

Upon receipt of a permit application subject to the requirements of this chapter, the Department will provide the applicant with the initial screening information for the overburdened community obtained from the Department's Environmental Justice Mapping, Assessment, and Protection tool ([EJMAP](#)):

- Identification of the environmental and public health stressors;
- Appropriate geographic point of comparison;
- Any adverse environmental or public health stressors (higher than 50th percentile);
- The combined stressor total (CST) of the overburdened community; and
- Whether the overburdened community is subject to adverse cumulative stressors.

An applicant who wishes to submit the EJIS with its permit application can obtain the information directly from EJMAP.

Alternatively, the applicant may analyze stressor data independent from EJMAP. The Department will verify applicant's results with the data in EJMAP.

Geographic Point of Comparison

Statutory Context

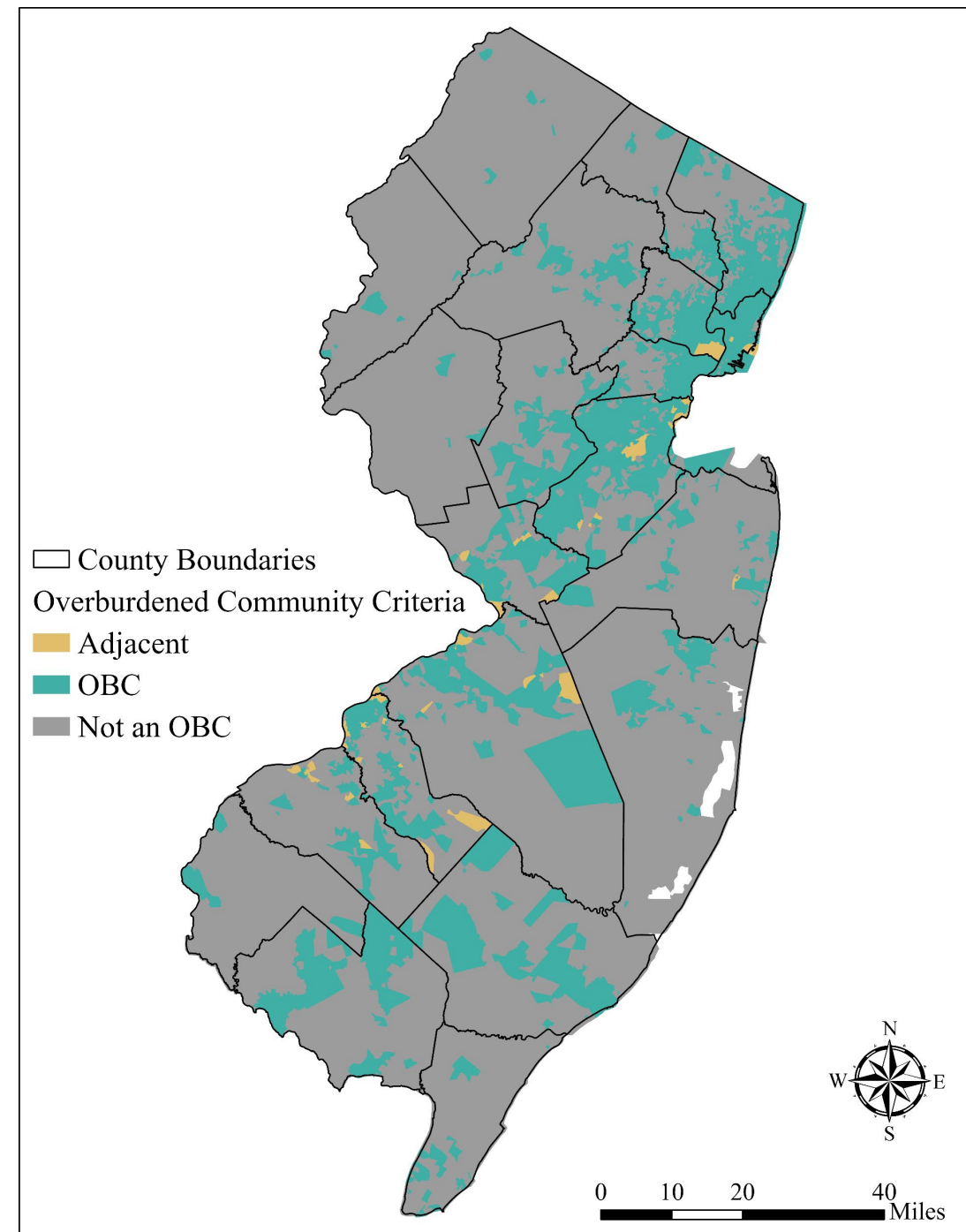
- The Department must determine whether environmental or public health stressors are “higher than” those borne by other communities within the State, county, or other geographic unit of analysis.

Point of Comparison

- Lower of State or relevant County, excluding overburdened communities but including adjacent block groups (most like USEPA, who uses multiple geographic areas).

Comparison Percentile

- 50th (higher than).



Comparative Analysis: Key Terms

Individual Adverse Stressor

- Stressor that is higher than the geographic point of comparison (State or County Non-OBC 50th percentile)

Combined Stressor Total (CST)

- Total count of adverse stressors in an OBC
 - E.g.: If 18 of the 26 stressors in an OBC are higher than the geographic comparison result, that OBC's CST is 18.

Adverse Cumulative Stressors

- Exist where the OBC's CST is higher than its geographic point of comparison (State or County Non-OBC 50th percentile)
 - E.g.: If an OBC's CST is 18 and its geographic point of comparison is 13, that OBC is subject to adverse cumulative stressors.

Adjacent Block Groups – Greatest Stressed OBC Neighbor

- These block groups have zero population, so their individual values for stressors that depend on population are null values. To make adverse cumulative stressor determinations, DEP relies on the stressor values of the highest CST OBC with which the zero-population block group shares a border.

Department Decision

Department Decision

- OPPN prepares a proposed Environmental Justice decision (Decision) for Commissioner review and approval.
 - Under the EJ Law, permits for new facilities are denied unless the Applicant can show a Compelling Public Interest (CPI). If there is a CPI, permits can be approved with EJ conditions. OPPN evaluates and reviews with programs to determine whether CPI has been shown.
 - Permits for facility expansions or renewals of Title V air permits cannot be denied on an EJ basis but can be approved with EJ permit conditions.
- Form and timing of decision, N.J.A.C. 7:1C-9.3(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.
- Under N.J.A.C. 7:1C-9.2(b)(4), **decision cannot be issued until at least 45 days after the public hearing**
- Permitting Clocks restart
- Violation of permit conditions, N.J.A.C. 7:1C-9.4:
 - (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.

Applicant Timeline

Determination of Applicability

Proposed or existing facility is one of eight specific facility types (major air sources, solid waste facilities).

Applicant seeks individual permit under applicable DEP regulations.

Facility is located, or proposes to be located, in whole, or in part, in an overburdened community (OBC).

Initial Screen

Once DEP receives permit application subject to EJ Rules, DEP provides initial screening information for the OBC including:

1) identification of environmental and public health stressors

2) appropriate geographic point of comparison

3) adverse environmental or public health stressors

4) whether OBC is subject to adverse cumulative stressors

Note: Applicant may obtain information directly from EJMAP or analyze stressor data independent from EJMAP. OPPN will verify applicant's results with the data in EJMAP.

Determination of Application Requirements

Where OBC is **not** subject to adverse cumulative stressors or applicant can demonstrate avoidance of disproportionate impact, applicant would **only** be required to provide the information required pursuant to N.J.A.C. 7:27C-3.2.

OR

Where OBC is **already** subject to adverse cumulative stressors or applicant cannot demonstrate disproportionate impact would be avoided, applicant would be required to include both the information required pursuant to N.J.A.C. 7:27C-3.2 and the supplemental information required pursuant to N.J.A.C. 7:27C3-3.

Preparation & Review of EJIS + Supplemental Information

Applicant submits EJIS and supplemental information, as applicable, along with public notice documents to DEP.

Upon DEP approval, applicant proceeds with meaningful participation process.

DEP posts EJIS and public notice online.

Meaningful Public Participation

Applicant holds meaningful public participation pursuant to N.J.A.C. 7:27C-4 including public hearing in host overburdened community and minimum 60-day public comment period.

Department Review

Applicant provides EJIS with response to comments to Department for review.

DEP considers EJIS, response to comments, and other relevant information to determine whether the facility can avoid a disproportionate impact.

Minimum 45-day review.

Department Decision

If facility can avoid disproportionate impact, DEP will authorize the applicant to proceed and impose conditions to ensure disproportionate impact is, and remains, avoided.

Where the facility cannot avoid disproportionate impact, DEP would:

New: deny application for new facility unless it demonstrates it will serve a compelling public interest in OBC.

Expanded facilities/Major source renewals: authorize applicant to proceed with DEP permitting subject to appropriate conditions to address facility impacts to environmental and public health stressors.

Supportive Documents

DEP developed and published a series of documents supporting the EJ process that are available on the [OPPN website](#):

- Frequently Asked Questions & Applicability Guidance
- Meeting Guidance
- Templates / Samples
 - Public Meeting Notice
 - 30-Day Comment Period Extension
 - Decision Document
- Applications
 - Applications which are flagged for EJ contain a specific task within NJEMs
 - NJEMs SOP and Training Videos

DEP Points of Contact

Office of Project & Permitting Navigation

- David Pepe, Director – david.pepe@dep.nj.gov
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Conclusion