



# New Jersey Moves Again to Include Environmental Justice in Permitting Process

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**Update:** Governor Phil Murphy signed this legislation into law on September 18, 2020, and NJDEP began stakeholder meetings to discuss the implementing regulations earlier this fall. We expect that NJDEP will conduct a robust stakeholder process given the complex issues involved in implanting the legislation. Riker Danzig attorneys will be tracking this process closely.

New Jersey continues to focus on environmental justice as the Legislature advances proposed legislation that would require the New Jersey Department of Environmental Protection (the "NJDEP") to consider impact on overburdened communities when reviewing certain permit applications. In fact, at the end of June the New Jersey Senate passed the proposed legislation, which is referred to as S232 and can be reviewed [here](#). The proposed legislation now goes to the Assembly for further consideration and voting and, if it passes the Assembly as well, could be signed into law by Governor Phil Murphy later this summer. Similar legislation has been pending in New Jersey for more than a decade, as we reported last year in our prior blog post titled "[Environmental Justice Initiatives Soon May Impact Permitting and Other Regulatory Actions](#)", but the current legislation seems slated for passage with the support of [several legislators](#) and [Governor Phil Murphy](#).

## **How would the legislation incorporate environmental justice into the permitting process?**

The key components of the proposed legislation are as follows.

- **Preparation of an Environmental Justice Impact Statement.** Applicants for certain permits would be required to prepare an "environmental justice impact statement." This statement would need to "assess[] the potential environmental and public health stressors associated with the proposed new or expanded facility, . . . including any adverse environmental or public health stressors that cannot be avoided if

the permit is granted, and the environmental or public health stressors already borne by the overburdened community as a result of existing conditions located in or affecting the overburdened community.”

- **Public Notice and Hearing.** Applicants would then be required to provide the environmental justice impact statement to the NJDEP and other governmental entities, which in turn would disseminate the statement to the public. Applicants also would need to organize and hold a public hearing in the overburdened community. A transcript of the hearing and a record of any comments received from the public would then be provided to the NJDEP.
- **Consideration of Environmental Justice Impacts by NJDEP; Requirement to Deny Permit Based on Environmental Impact.** After reviewing the environmental justice impact statement and the input from the public, the NJDEP would be required to deny a permit, or apply new conditions to the renewal of an existing permit, “upon a finding that approval of the permit . . . would, together with other environmental or public health stressors affecting the overburdened community, cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the State, county, or other geographic unit of analysis as determined by the department pursuant to rule, regulation, or guidance.” The exact meaning and implementation of this requirement is not yet clear, but it seems to place a high bar on the expansion or construction of any facility that would negatively impact the environment in an overburdened community. It is particularly important to note that the legislation requires the NJDEP to consider the cumulative impact of the facility on the community. It also remains to be seen whether facilities can offset negative environmental impacts through modifications to the design and operation of subject facilities.

### **What facilities, permits and communities would be subject to the legislation?**

The application of the proposed legislation is governed by the definitions of “facility,” “permit,” and “overburdened community.”

- **Facility.** The legislation defines “facility” as “any: (1) major source of air pollution; (2) resource recovery facility or incinerator; (3) sludge processing facility, combustor, or incinerator; (4) sewage treatment plant with a capacity of more than 50 million gallons per day; (5) transfer station or other solid waste facility, or recycling facility intending to receive 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.”
- **Permit.** It defines “permit” as “any individual permit, registration, or license” issued under numerous state laws, including . . . the Solid Waste Management Act, the New Jersey Statewide Mandatory Source Separation and Recycling Act, the Freshwater Wetlands Protection Act, P.L. 1987, the Coastal Area Facility Review Act, the Highlands Water Protection and Planning Act, the Air Pollution Control Act, the Water

Pollution Control Act, the Flood Hazard Area Control Act, and others. Notably, the definition includes only individual permits, which as the name suggests contain requirements specifically tailored to the individual facility. As a result, the definition does not include general permits or other standardized permits, which contain standard requirements and are available to facilities that meet certain pre-determined criteria. Additionally, the current definition does not reference permits issued under the Industrial Site Recovery Act, the Site Remediation Reform Act, or any other New Jersey statutes directly applicable to site remediation. This is a change from a prior version of the legislation, which included a specific reference to the Industrial Site Recovery Act, and limits the scope of “permit” significantly in a way that should be welcomed by the regulated community.

- **Overburdened Community.** Lastly, the legislation defines “overburdened community” as “any census block group . . . in which: (1) at least 35 percent of the households qualify as low-income households; (2) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or (3) at least 40 percent of the households have limited English proficiency.” According to [NJ Spotlight](#), “the bill’s definition of ‘overburdened communities,’ could apply to more than 300 municipalities and over 4 million residents.”

### **What is the status of the proposed legislation?**

As noted above, the New Jersey Senate passed the proposed legislation on June 29, 2020. The legislation now has been referred to the Assembly, and is scheduled for a hearing on July 20th before the Assembly Environment and Solid Waste Committee. Interested parties should be able to observe and testify at the hearing through virtual means. It is possible that the Assembly could pass the proposed legislation later this summer, especially given the high profile support referenced above.

Attorneys at Riker Danzig will be tracking this legislation closely. If it becomes law, the operative provisions would go into effect after a period of six months. To put it mildly, its passage would be a victory for champions of environmental justice and would have a significant and lasting change on the regulated community and the permitting process in New Jersey.

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