

New Jersey's Efforts on Environmental Justice

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Environmental Justice efforts

- Environmental justice (EJ) Pilot Program for NJ's Air Program (2006)
- Air Program's What's In My Community GIS Tool (2019)
- Governor Murphy's Executive Order 23 (2018)
- S232/A2212 – NJ Environmental Justice Law (2020)
- NJ DEP – Administrative Order 2021-25 (2021)
- N.J.A.C. 7:1C (Forthcoming)

Air Quality Permitting Outreach Procedures

- Initiated in 2006 for two “pilot” EJ communities (Camden Waterfront South and Newark Ironbound Community)
 - Enhanced Public Notification
 - Permit applications, including technical support documents
 - Stack test results
 - Enhanced Public Participation
 - Conference calls/meetings
 - Clarification of what is in the permit application
 - Does not include formal comments on the permit application – that would be handled separately as part of the public comment

What's In My Community GIS Tool

- Developed at the request of the EJ Communities and deployed in 2018
- Interactive mapping tool to help residents identify sources of air pollution in and around their community.
- <https://njdep.maps.arcgis.com/apps/webappviewer/index.html?id=76194937cbbe46b1ab9a9ec37c7d709b>
- Presented by Brad Bollen (brad.bollen@dep.nj.gov) at NACAA Fall Meeting 2019



What's In My Community GIS Tool



STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF STATIONARY SOURCES (BOSS)



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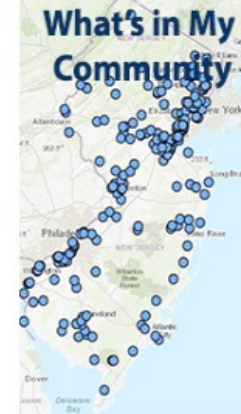
[RADIUS](#)



The Bureau of Stationary Sources is responsible for permitting stationary sources of air pollution (e.g., factories, power plants, etc.) - both old sources (those already constructed) and newer facilities - to ensure they do not adversely affect air quality in your neighborhood or anywhere in the state.

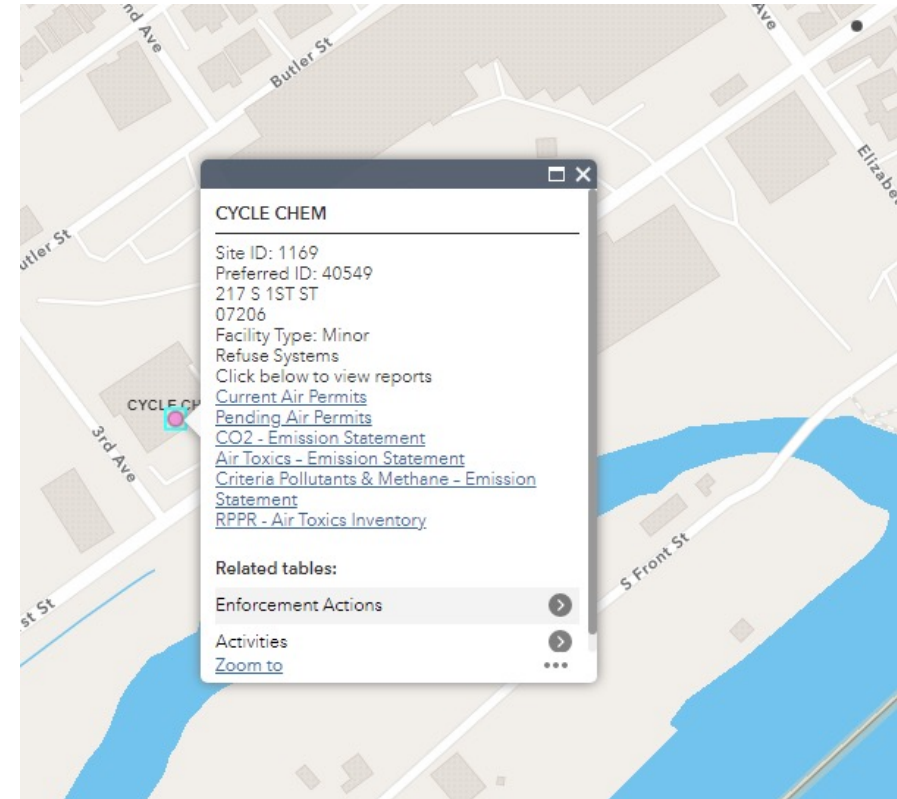
To accomplish this, the staff of BoSS reviews air pollution control permit applications, evaluates air quality impact and health risks.

Community Corner



[Other Programs of Interest](#)

Confirms facility – check for actions



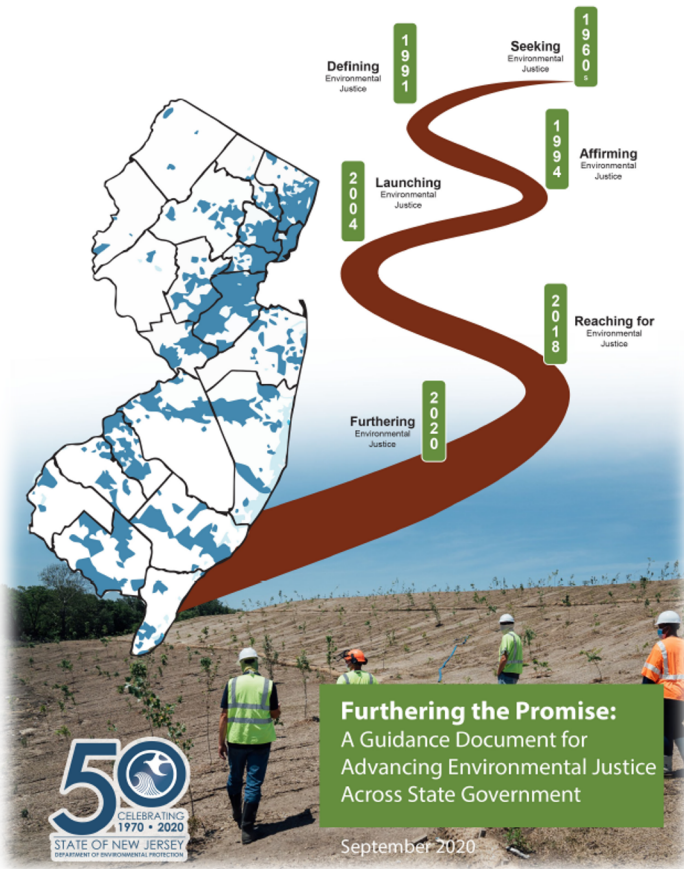
Executive Order 23

- With the passage of Executive Order 23 on April 20, 2018, Governor Murphy charged all Executive Branch Departments and Agencies with working together to build a stronger and fairer New Jersey for all by advancing environmental justice as a core principle of our policies and programs

New Jersey EJ Principals

- Cultivate awareness consistently;
- Empower communities to participate in decision making processes; and
- Plan for and embrace change.

Furthering the Promise: A Guidance Document for Advancing Environmental Justice Across State Government



- As directed under the [Governor's Executive Order 23](#), this guidance document provides a framework and tools for New Jersey's executive branch agencies to implement environmental justice in their work and decision-making processes.
- <https://www.state.nj.us/dep/ej/docs/furthering-the-promise.pdf>

New Jersey Environmental Justice Act

- Law was passed by NJ Legislature on August 27, 2020
- Signed by Governor Murphy September 18, 2020
- Calls for Department to develop regulations to implement the law (forthcoming)

- The Legislature recognized that:
 - Environmental standards are often formulated based on the effect pollution has upon general populations spread over wide geographic areas;
 - Existing environmental laws fail to fully consider localized impacts; which
 - Creates pockets of high pollution and concentration of pollution-generating facilities in predominantly minority and low-income communities and disproportionate impacts to their public health and environment

Overview of the EJ Law's Applicability: Three Step Analysis

1. Is the facility located in an overburdened community?
2. Is the facility one of the eight types of facilities covered by the EJ Law?
3. Is the facility seeking a permit type covered by the EJ Law?



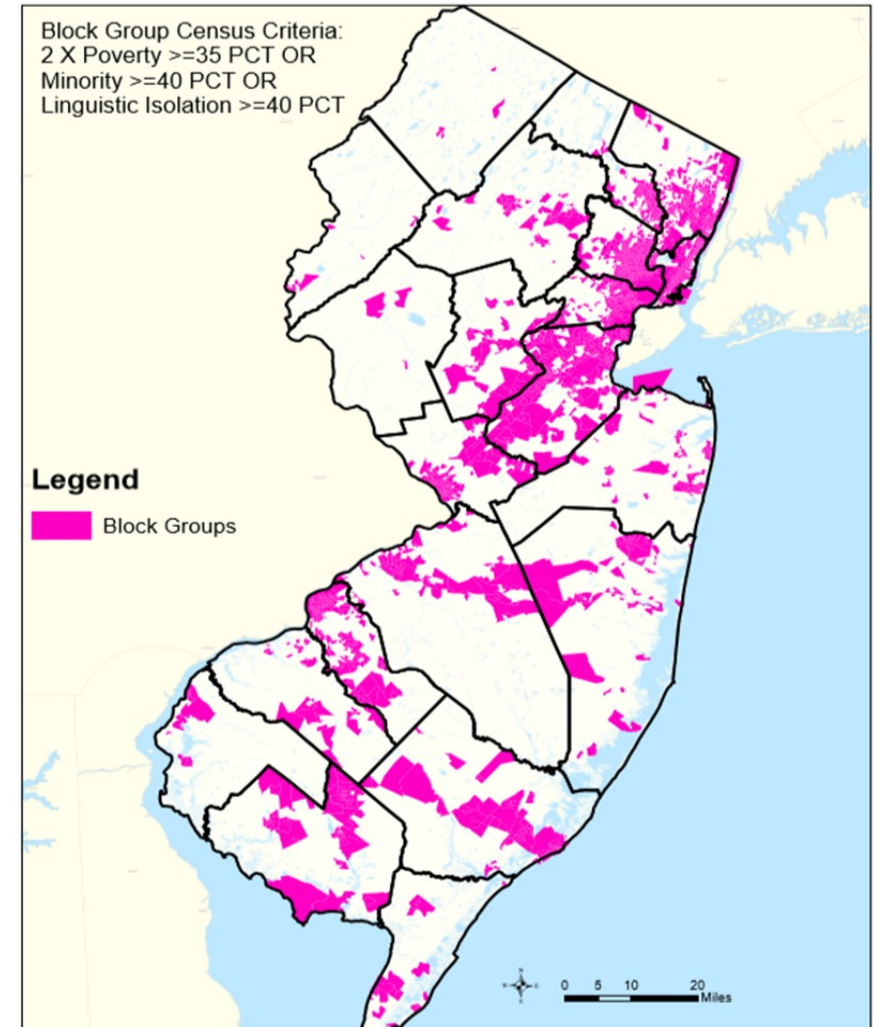
- All three must be met for EJ to apply



- Only individual permit actions trigger EJ law

Defining “Overburdened Community”

- Low-Income: At least 35% of households qualify as low-income households; or
- Minority: at least 40% of the residents identify as minority or as members of a state recognized tribal community; or
- Limited English proficiency: at least 40% of the households have limited English proficiency



Eight Facility Categories Covered

- 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.

What Individual Permits Are Covered?

- Air Quality, Energy & Sustainability Permits
 - N.J.S.A. 26:2C-1 (Air Pollution Control Act)
- Solid Waste Permits
 - N.J.S.A. 13:1E-1, 13:1E-26 (Solid Waste Management Act)
 - N.J.S.A. 13:1E-99.11 (New Jersey Statewide Mandatory Source Separation and Recycling Act)
- Water Resources Management Permits
 - N.J.S.A. 58:1A-1, 58:4A-5 (Water Supply Management Act)
 - N.J.S.A. 58:10A-1, 58:10A-21 (Water Pollution Control Act)

- Watershed & Land Management Permits
 - N.J.S.A. 12:5-1 (Waterfront Development)
 - N.J.S.A. 13:1D-29 (Construction Permits)
 - N.J.S.A. 13:9B-1 (Freshwater Wetlands Protection Act)
 - N.J.S.A. 13:19-1 (Coastal Area Facility Review Act)
 - N.J.S.A. 13:20-1 (Highlands Water Protection and Planning Act)
 - N.J.S.A. 58:16A-50 (Flood Hazard Control Act)
 - N.J.S.A. 13:9A-1 (The Wetlands Act of 1970)
- Other Permits
 - N.J.S.A. 13:1F-1 (Pesticide Control Act of 1971)
 - N.J.S.A. 13:1E-48.1, 13:1E-99.21a (Comprehensive Regulated Medical Waste Management Act)

Key Requirements of Law

- Quantifying impacts (environmental & public health stressors) borne by host community using appropriate methodology to ensure predictability and objectivity
- Determine if host community's stressors are disproportionate to those borne by other communities within the State, county, or other geographic unit of analysis as determined by the department (Environmental Justice Impact Statement {EJIS})
- Conduct a public process before any application is reviewed engaging host community and other stakeholders on EJIS
 - 60-Day Comment Period (Minimum)
 - Mandatory public hearing
 - Respond to comments received

Key Requirements of Law

- Department must review the EJS and any supplemental information, testimony, written comments, the applicant's response to comments, and any other information deemed relevant by the Department.
- 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 avoided.
- Where the facility cannot avoid a disproportionate impact, the Department would
 - New: 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 cannot avoid disproportionate impact.
- Focus 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 (i.e., CSO projects).
- Considers the position of members of the overburdened community, supportive or otherwise, in determining whether a facility satisfies the compelling public interest standard.

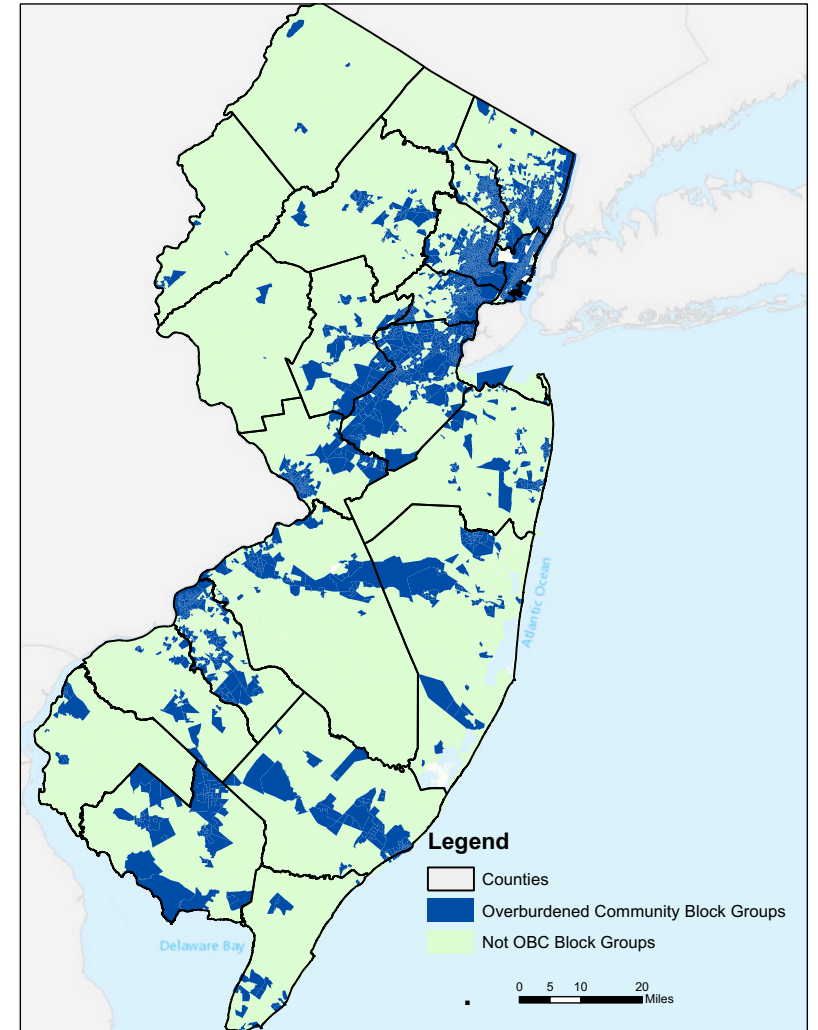
Environmental and Public Health Stressors

- Environmental stressors to include, but not be 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.

- Public health stressors are “conditions that may cause potential public health impacts in the overburdened community
- Public health impacts include, but are not limited to:
 - Asthma
 - Cancer
 - Elevated blood lead levels
 - Cardiovascular disease
 - Developmental problems

Geographic Point of Comparison

- The law requires the Department to determine whether environmental or public health stressors are disproportionate to those borne by other communities within the State, county, or other geographic unit of analysis as determined by the department.
- What is the appropriate geographic unit?
 - County?
 - State?
 - Region?



Facility Responsibilities

- Requires development of an environmental justice impact statement (EJIS) by facility identifying existing public health and environmental stressors in the EJ community and compares to stressors other non-EJ communities
- Conduct public engagement for any application to expand, construct or renew the authorization to operate.
- Respond to Comments received on EJIS
- Submit the EJIS, and responses to comments identifying any changes to the EJIS made after the public engagement process to the Department.

Department Responsibilities

- Review EJA and public comments prior to any application review to determine whether there is a disproportionate impact from stressors that cannot be avoided through appropriate conditions addressing impacts to environmental and public health stressors
- Deny the application for a new source where there is a disproportionate impact that cannot be avoided unless there is a compelling public interest.
- For permits that are approved, department will include permit conditions minimize facility contributions to individual stressors in the OBC.

Permit Conditions

- Where avoidance is not feasible, minimize facility contributions to individual stressors in the OBC.
- For new and expanded facilities, consider additional feasible conditions to reduce offsite stressors or provide a net environmental benefit that improves baseline environmental and public health stressors in OBC
- Objective standards for major source components based off existing standards – primarily addresses legacy sites that have lagged in technology upgrades.

Administrative Order 2021-25

- On September 20, 2021, Commissioner LaTourette signed Administrative Order 2021-25 outlining the New Jersey Department of Environmental Protection's expectations for applications expected to be subject to the Environmental Justice Act, N.J.S.A. 13:1D-157, upon adoption of implementing regulations.
- Intended to address applications that are submitted prior to final regulations implementing EJ Law

6 Conditions of AO 2021-25

Consistent with applicable law and DEP's existing authority:

1. Public comment periods will be no less than 60 days and may be extended to 90 days upon request by a member of the overburdened community.
2. Facility will conduct public hearings consistent with the EJ law to maximize public participation.
3. DEP will encourage comment from interested parties about existing conditions within the overburdened community and potential environmental and public health stressors that could result in adverse impacts to the overburdened community in the event of an approval.
4. DEP will encourage the applicant to respond to the concerns raised by individuals in the overburdened community during the public comment process.
5. DEP will encourage each applicant to engage directly with individuals in the overburdened community in advance of the formal public comment process
6. When permits are issued, DEP may apply special conditions in accordance with its existing authority to avoid or minimize environmental or public health stressors in the overburdened community.

Next Steps

Process of the AO2021-25



**Received Information
from Program(s)
Confirm OBC and
Facility Type**



**Communicate with
Facility on Complying
with the
Law/AO2021-25**



**Approve Notice
Work with Facility on
Information Session
Attend Info Session
Complete Comment
Period**



**Review Information
Work with Program
Area(s) on “Special
Conditions”
Complete AO2021-25
Compliance**

Timeline



**OPPN Contacts
Facility**

Publish of Notice

**+30 Days Information
Session Held**

+30 Days

60 Day Comment Period

**60 Day Comment Period
Concludes**

5/6/2022 | Division of Air Quality | NJDEP | Presented by: Francis Steitz



**+14 Days Facility
Submits all
Information to OPPN**

**+14 Days OPPN
Reviews
Documentation**

**OPPN Issues
Compliance
(Approve/Deny)**

**Program Issues Draft
Authorization (Special
Conditions)**

Questions?

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Bonus Slides

Environmental Justice Analysis VS Cumulative Health Impact Analysis

- In NJ EJ Law and forthcoming regulations, facilities applying for a permit or other authorization listed in the law will be required perform an Environmental Justice Impact Analysis (EJIA)
- While EJIA will include analysis of multiple environmental stressors and health stressors, it is NOT a “Cumulative Health Impact Analysis”

Challenges to Perform a Cumulative Health Impact

- Lack of a robust methodology
 - Multiple Pathways (inhalation, ingestion, dermal contact, etc.) for multiple environmental stressors and incorporate existing health stressors for each is incredibly complex and would require significant time and resources to develop.
- Most methodologies consider multiple stressors, but not in a quantitative form
 - Multiple stressors (environmental & health) present in each community are listed (South Coast & EPA EJ Screen)
 - List of total stressors present in a community not necessarily the total risk from each stressor
 - Not a quantitative approach that evaluates “cumulative” risk.