5th EJ Rulemaking Stakeholder Meeting

Environmental Justice Impact Statement

05/20/21
**Turn on Live Captions (Closed Captioning)**

1. At the top right of the Teams window, locate and click on the ellipsis (three dots).

2. Multiple options will appear; locate and click on “Turn on live captions”

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Agenda

- Introduction and rules for engagement
- Potential process
- Statutory minimum timeline
- Potential elements of an EJIS
- Other considerations
- Questions and answers

Next Steps

- Next stakeholder meeting: **Week of June 21, 2021**
  - Topic: Summary and Overview

- This presentation, meeting recording, and follow up survey link will be emailed to participants and posted on [DEP OEJ website](#) shortly following the meeting.
Rules of Engagement

• Please remain on mute unless speaking.
• When you want to speak during facilitated discussion, please use the "Raise Hand" function.
• Treat everyone with respect.
• Limit your comment or question to the topic being discussed.
• Limit facilitated discussion comments to two minutes. We will physically raise our hand as you approach 90 seconds.
• Please note that this meeting is being recorded and will be posted on the NJDEP website after the session concludes.
Potential Process: 3 Steps

• **Step 1 – Initial Screen:** Using the publicly-available data (including DEP’s EJ mapping tool), determine whether an Overburdened Community is subject to adverse environmental and public health stressor levels that are higher than the appropriate geographic point of comparison.

• **Step 2 – Environmental Justice Impact Statement (EJIS) Process:** Through the development of an Environmental Justice Impact Statement, including a public comment period and hearing in the Overburdened Community, an applicant assesses whether and how the proposed facility will cause or contribute to adverse stressor levels in the Overburdened Community that are higher than the appropriate geographic point of comparison (Step 1). If so, the applicant would propose measures to avoid or eliminate those impacts. If the Applicant cannot avoid causing or contributing to those “higher” stressor levels, a disproportionate impact is present.
Potential Process: 3 Steps

• **Step 3 – Departmental Review:** Where a disproportionate impact is present:

  • (a) **New Facilities: Denial, unless Demonstrated Compelling Public Interest in Overburdened Community:** The Department shall deny the permit application for a new facility unless the facility is of the type that will serve a Compelling Public Interest in the Overburdened Community where it is to be located. If so, the Department may impose binding permit conditions on the construction and operation of the facility to protect public health and improve baseline environmental and public health stressors in the Overburdened Community.

  • (b) **Permit Conditions (Facility Expansions/Title V Renewals/New Facilities):** The Department imposes binding permit conditions concerning the construction and operation of the facility.
Statutory Timeline of EJIS Process
Statutory Minimum Timeline of EJIS Process

Prior to Day 0
- EJIS preparation
- Review of publicly available data on DEP mapping tool

Day 0
- Distribute EJIS (published on DEP website)
- Notice of Public Hearing and Public Comment Period

Day 60
- Public Hearing

Day 70
- Publish Public Hearing transcript and written comments

Day 105
- DEP may issue decision (no less than 45 days after public hearing)
Potential Elements of an EJIS
The Statute provides that an applicant must prepare:

“...an environmental justice impact statement that assesses the potential environmental and public health stressors associated with the proposed new or expanded facility, or with the existing major source, as applicable, 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”
Preliminary List of Requirements of an EJIS

1. Analysis of 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;
2. Determination of environmental or public health stressors that are higher than the geographic point of comparison;
3. Analysis of the potential environmental and public health stressors associated with the proposed new or expanded facility or existing major source;
4. Analysis of how the potential environmental and public health stressors associated with the proposed facility will cause or contribute to stressors already borne by the Overburdened Community;
5. A description of the steps the applicant will implement at the project site to avoid causing or contributing to stressors already borne by the Overburdened Community;
6. If an applicant seeks to demonstrate that a new facility meets a Compelling Public Interest – how the facility is of the type that serves a Compelling Public Interest in the Overburdened Community, including additional measures the applicant would propose to protect public health and improve baseline environmental and public health stressors in the Overburdened Community;
7. Other relevant elements/points of analysis from other existing “impact analyses.”
Existing Examples of Impact Analyses

**Process #1**
- Administrative / Descriptive Information / Maps
- Environmental Summary
  - Physical / Chemical
  - Biological / Ecological
  - Cultural
  - Socioeconomic
- Proposed Facility Operations
- Federal, State, County, and Local Land-Use Connections
- District Solid Waste and Sludge Management Plans
- Licenses, Permits, and Certifications
- Environmental Assessment
- Health Impact Assessment
- Potential and Existing Adverse Impacts from Assessments
- Reasonable Design Alternatives

**Process #2**
- Administrative / Descriptive Information / Narrative
- Cumulative Impact Analysis of Air Quality
- Identifying Comparison Areas
- Comprehensive Demographic, Economic, and Physical Descriptions
- Evaluation of Significant and Adverse Disproportionate Environmental Impacts
- Statement of Environmental Justice Issues
For Discussion: Preliminary Requirements for EJIS

- Which of the two presented processes resonates most with you? What parts?

- What, if anything, should DEP require to be included in the EJIS?

- What, if anything, should NOT be included in the EJIS?

- What, if any, types of alternatives should be included in the EJIS?
  - How many types of alternatives should the applicant explore?
  - How detailed should the alternative analyses be?
Other Considerations
For Discussion: Other Considerations (1/3)

• How can DEP ensure meaningful public participation in the EJIS process?

• Are the statutory methods of notice (two newspapers – one local non-English, DEP website and Bulletin) sufficient?
  • Are newspapers the most effective way? How else can an applicant reach the community?
  • How should an applicant determine into which languages notices must be translated?

• Are the statutory methods of making the EJIS available (by governing body and the clerk of the municipality/DEP website) sufficient?

• To what extent should DEP participate in or attend the EJIS Public Hearing?
For Discussion: Other Considerations (2/3)

- Should the regulations have a preapplication phase where DEP determines if the EJIS is sufficient?
  - Should DEP be able to request revisions to the EJIS after Applicant has distributed EJIS for the Public Hearing? ...after the Public Hearing?

- Should DEP include the final EJIS with the final issued permit?

- When is it appropriate for DEP to require an applicant to hold an additional public hearing?

- Should DEP require the applicant to provide written responses to comments received during the public comment period or at the public hearing?

- Should there be an additional/extended public comment period after the public hearing? Under what conditions?
For Discussion: Other Considerations (3/3)

- What support, if any, should DEP provide to ensure the content of an EJIS is understandable?

- What support, if any, should DEP provide to facilitate a response to the content of an EJIS?
Olivia C. Glenn  
Deputy Commissioner of Environmental Justice & Equity

Sean D. Moriarty, Esq.  
Chief Advisor for Regulatory Affairs

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- Please direct questions and comments related to the EJ Rulemaking Process to: ejrulemaking@dep.nj.gov