



## **Administrative Order 2021-25 - FAQs**

On September 22, 2021, Commissioner Shawn M. LaTourette issued [Administrative Order 2021-25](#) (AO 2021-25), which is designed to provide guidance and certainty regarding the Department's expectations for facilities located or seeking to be located in overburdened communities prior to adoption of implementation rules for the [NJ Environmental Justice Law, N.J.S.A. 13:1D-157, et seq.](#) (EJ Law). AO 2021-25 will ensure meaningful community engagement, a more thorough and complete assessment of facility impacts to environmental and public health stressors, and the implementation of appropriate measures to avoid or minimize adverse impacts.

AO 2021-25 establishes six (6) operative conditions for facilities seeking permits in overburdened communities (as each are defined under the EJ Law). To the extent consistent with applicable law:

1. Public comment periods are to be no less than sixty (60) days, extended from a standard 30 days, and shall be extended to ninety (90) days upon request by a member of the overburdened community.
2. Public hearings will be mandatory and conducted in a manner consistent with the EJ Law so as to maximize public participation. This requires in-person hearings to be in the overburdened community unless appropriate alternative arrangements are necessary due to COVID restrictions.
3. During the extended public comment period, the Department encourages interested parties providing comment to provide information regarding existing conditions within the overburdened community and potential facility-wide environmental and public health stressors that could result in adverse impacts upon the overburdened community in the event of an approval.
4. Applicants are expected to respond to and address the concerns raised by individuals in the overburdened community during the public comment process and to conduct any additional analysis related thereto that the Department deems necessary for its review.
5. The Department strongly encourages each applicant to engage directly with individuals in the overburdened community in advance of and in addition to formal public comment including providing relevant information related to facility-wide impacts.
6. Where permits or approvals may be issued, the Department will apply such special conditions as may be necessary to avoid or minimize environmental or public health stressors upon the overburdened community to the maximum extent allowable by law.

### What is the scope of AO 2021-25?

To determine whether a given permitted activity is covered by the EJ Law, there is a three-step process:

1. Is the facility located in an overburdened community?
2. Is the facility type covered by the EJ Law?
3. Is the authorization sought covered by the EJ Law?
  - a. The authorization must be an individual permit.
  - b. The statutes governing the covered permits are enumerated by the EJ Law.

If the answer to all three questions above is “yes,” then AO 2021-25 applies.

### What is an overburdened community?

As defined by the Legislature in the EJ Law at N.J.S.A. 13:1D-158, an overburdened community (OBC) is any census block group, as determined in accordance with the most recent United States Census, in which:

1. At least 35 percent of the households qualify as low-income households (at or below twice the poverty threshold as determined by the United States Census Bureau);
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 (without an adult that speaks English “very well” according to the United States Census Bureau).

The Department has published a [list](#) of OBCs on its website and provides a [EJ OBC Mapping Tool](#) to identify whether a given facility or activity is in a block group identified as an OBC.

### What facilities are subject to AO 2021-25?

Consistent with the EJ Law, AO 2021-25 impacts authorizations for eight (8) types of facilities:

1. Major sources of air pollution;
2. Resource recovery facilities or incinerators;
3. Sludge processing facilities, combustors, or incinerators;
4. Sewage treatment plants with a capacity of more than 50 million gallons per day;
5. Transfer stations or other solid waste facilities, or recycling facilities intending to receive at least 100 tons of recyclable material per day;
6. Scrap metal facilities;

7. Landfills, including, but not limited to, a landfill that accepts ash, construction or demolition debris, or solid waste; or
8. Medical waste incinerators, except those that accept regulated medical waste for disposal, or is attendant to a hospital or university and intended to process self-generated regulated medical waste.

What types of permits does AO 2021-25 apply to?

The Department will determine if an existing or proposed regulated facility is seeking an authorization covered by the EJ Law. Consistent with the EJ Law, AO 2021-25 applies to new permits, modified permits, registrations, or licenses, where the modification results in a facility expansion, or renewals of existing permits for major air facilities issued under the following statutes:

- R.S. 12:5-1 (Waterfront Development)
- N.J.S.A. 13:1D-29 (Construction Permits)
- N.J.S.A. 13:1E-1, 13:1E-26 (Solid Waste Management Act)
- N.J.S.A. 13:1E-48.1, 13:1E-99.21a (Comprehensive Regulated Medical Waste Management Act)
- N.J.S.A. 13:1E-99.11 (New Jersey Statewide Mandatory Source Separation and Recycling Act)
- N.J.S.A. 13:1F-1 (Pesticide Control Act of 1971)
- N.J.S.A. 13:9A-1 (The Wetlands Act of 1970)
- 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. 26:2C-1 (Air Pollution Control Act)
- 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)
- N.J.S.A. 58:16A-50 (Flood Hazard Control Act)

What does the Department consider a facility expansion under the AO?

Absent a specific regulatory definition applicable to the permit application under review, for purposes of AO 2021-25 the Department will consider any modification to a facility's existing authorization that increases the facility's environmental impact, such as emission increases or an expansion of the facility's footprint, to be an expansion.

Is an environmental justice impact statement required at this time?

No.

Does a public comment period need to be restarted to include these additional requirements if it started prior to implementation of the AO?

AO 2021-25 applies to all permit applications with open or otherwise unexpired comment periods as of the effective date of the AO. Permits subject to the AO that are currently open for public comment will be extended as necessary to ensure a minimum sixty (60)-day public comment period.

If requested by a member of an OBC, the comment period will be further extended by an additional thirty (30) days. Consistent with its existing authority, the Department may also reopen any closed comment period should public interest dictate.

Who conducts the public hearing?

The Department encourages applicants to engage directly with members of the host community, including conducting a public hearing that satisfies the requirements of AO-2021-25. Notwithstanding, where necessary and consistent with applicable regulation, the Department will host a public hearing to gather comments on the proposed permit, which the applicant should attend and record all environmental justice concerns raised, the responses to which will be included in a "Response to Comments" document associated with any proposed permit.

Can the hearings be held virtually?

Generally, in-person public hearings should be held in the affected OBC. However, where appropriate and particularly where COVID-19 safety precautions are concerned, hearings may be held virtually.

Can one hearing be held to satisfy multiple applications for authorizations?

The Department may consolidate multiple public hearings, provided one public hearing meets all existing authorization requirements and the terms of AO-2021-25.

Due to the timing of multiple authorizations or considerations of public outreach and participation, one public hearing may neither be practical nor encouraged.

### What is required after the public hearing?

Applicants should provide a recording or transcript of the public hearing to the Office of Permitting and Project Navigation within ten (10) days after the hearing. Applicants are encouraged to consider, evaluate, and propose measures to address all comments received at the public hearing and public comment period. Responses should be provided within thirty (30) days of the close of the public comment period or public hearing, whichever is later, to the Office of Permitting and Project Navigation for review and distribution to the relevant Department programs. Upon review, additional analysis and information may be requested by the Department.

### How will the Department indicate a thirty (30)-day extension of the comment period?

The Department will provide notice of the request for extension in any public notice required for the various permits under consideration, make a public statement regarding the request at any public hearing, and post the request on the Office of Permitting and Project Navigation website.

### How will the Department encourage and ensure each applicant engages directly with the impacted OBC throughout the permitting process?

Applicants should work to identify organizations and community groups within their host communities to build engagement and understanding of the concerns of community members and to develop a public participation plan for its application. These plans should be submitted to the Department which will, through its Offices of Environmental Justice and Permitting and Project Navigation, provide guidance and review of proposed public participation plans.

### What is an environmental or public health stressor?

As set forth in the EJ Law at N.J.S.A. 13:1D-158, environmental or public health stressors (stressors) are 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.

Under AO 2021-25, the Department will encourage applicants to engage with overburdened communities and address concerns raised regarding those stressors to which a proposed activity could potentially contribute.

What is a “special condition”?

Under AO 2021-25 and in accordance with its underlying authorities, the Department will work with applicants and members of OBCs to develop appropriate, feasible conditions to address concerns related to environmental and public health stressors impacting the host community and, where necessary, impose such conditions to the maximum extent allowable under existing law. These conditions will be included in the relevant permit(s) as conditions of operation and/or development. For example, the Department’s Division of Air Quality may require a risk minimization plan, dust management plan, and/or odor management plan as an authorization condition under its existing regulations. Similarly, conditions may include those to alleviate concerns related to truck traffic or on-site fleet operations impacting local air quality.

How long does the AO stay in effect?

Unless otherwise withdrawn, modified, or superseded by the Commissioner, the AO will remain operative until the effective date of the rules implementing the EJ Law.

Who should I contact if I have further questions?

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