



# Summary of New Jersey's EJ Rule Proposal

June 6, 2022

## **The NJDEP has released the long-awaited Environmental Justice rules.**

Since the law was written in the Fall of 2020, many around the country have referred to the New Jersey model as the “gold standard”. That’s lofty praise, but no matter your perspective, most would likely agree that the current proposal is transformational. To their credit, the New Jersey Department of Environmental Protection (DEP) held extensive stakeholder meetings on this proposal over the last two years and have incorporated much from those ten meetings. For the sake of brevity, we will only be including new definitions in this summary and directing you to past [ESI writing](#) on the topic, and [current proposal](#) for more information on fundamental definitions.

***This rule proposal creates a new permitting program that will likely add considerable time and potentially considerable cost to your projects.***

A few new items stood out -

**Compelling Public Interest (CPI)** – Under the current proposal, the DEP outlines a process (7:1C-5.3) for the applicant to attest CPI to the overburdened community (OBC) but then gives the OBC say on the CPI determination. The former are objective parameters (listed below), the latter is subjective and can act unfairly as a high bar for projects.

***Will the site serve essential environmental health and safety needs in the OBC?***

***Is the site necessary?***

***Are there no feasible alternatives that can serve the OBC and be located outside of the OBC?***

**Environmental Justice Impact Statement (EJIS) review by the DEP.** The DEP reserves the right to bring on outside expertise during their EJIS review process and bill the applicant for that time. Much more clarification is needed on how that pool of experts will be assembled and what processes are in place to ensure that a fair portion of the work gets to small businesses.

**Geographic Point of Comparison (GPOC)** – The lower of the 50th percentile of state or county equivalent stressors, excluding other OBCs within the state.

**Combined Stressor Total (CST)** – The sum of all environmental and public health stressors (7:1C-1.4) in a distinct geographic area.

**Feasibility** – will include both technical and economic components, though the new LICT analysis detailed below will not have an economically feasible component.

**Localized Impact Control Technology (LICT)** – 7:1C-7 – Applicable to New Sources or Expansions at Major Source if;

- Facility has the potential to release any hazardous air pollutant (HAP) at greater than the state-of-the-art (SOTA) threshold; or
- Or any other air contaminant at greater than 5 tpy.
- LICT analysis must document a top-down approach to address control feasibility

## **DEP proposed list of (26) stressors**

*Ground-level ozone - PM2.5 - Air Toxics Cancer Risk (Including Diesel PM) - Air Toxics Cancer Risk (Excluding Diesel PM) - Air Toxics Non-Cancer Risk - Mobile Sources - Traffic (Heavy-duty trucks) - Contaminated Sites - Soil Contamination Deed Restrictions - Ground water classification exemption areas - Transfer Stations/Solid waste facilities/Recycling Facilities/Scrap metal facilities - Point-sources of water pollution - Combined sewer overflows (CSOs) - Drinking water - Lead exposure - Lack of recreational open space - Lack of tree canopy - Impervious Surface - Flooding (Land use cover) - Permitted Air Sites - NJPDES Sites - Emergency Planning Sites - Unemployment Rate in OBC - Education Rates in OBC*

**Supporting Documentation** – If an EJIS shows that disproportionate impacts (DI) cannot be avoided, or if the OBC has existing adverse cumulative stressors (ACS), there is a lengthy and expensive list of requirements for the applicant.

The following details the new EJ compliance process in the case of a New Facility, an Expansion at a facility, or a Renewal. Each starts with the assumption that the facility meets the three-part applicability test detailed below.

### ***Is the site located in an Overburdened Community (OBC)?***

<https://www.nj.gov/dep/ej/communities.html>

### ***Is the site one of eight applicable types?***

- 1. Major sources of air pollution*
- 2. Incinerators and resource recovery facilities*
- 3. Large sewage treatment plants (50mm gal./day or more)*
- 4. Transfer stations and solid waste facilities*
- 5. Recycling facilities that receive at least 100 tons of recyclable material per day*
- 6. Scrap metal facilities*
- 7. Landfills*
- 8. Medical waste incinerators (except those attendant to hospitals and universities)*

### ***Is the facility applying for an applicable permit and program type?***

Pursuant to NJAC 7:1C-1.4. This covers most environmental permitting types in NJ

## **New Facility in an OBC – 7:1C-5**

### **Step 1** - Request initial screening data from the DEP per 7:1C-2.3

- This will include: Environmental and public health stressors, the appropriate GPOC, and whether the OBC is already subject to ACS.
- If your CST is greater than the GPOC, you must do an EJIS. If not, NFA.

### **Step 2** – EJIS Requirements – 7:1C-3.2 – Proposed fee of \$3,900.00.

- If the OBC is not subject ACS and the facility will not cause DI by creating ACS, then the applicant only needs to follow subsection 3.2.
- If the applicant cannot avoid DI they would need to do subsection 3.2, 3.3, and 7.
- If the OBC has existing ACS, then the site automatically needs to do 3.2 and 3.3
- Applicant proposes actions to reduce projected impacts
- Must include proposed construction and operations schedule and plan

### **Step 3** – Authorization to Proceed - DEP reviews EJIS for administrative completeness

**Step 4 - Meaningful Public Participation – 7:1C-4**

- Public comment period of at least sixty days
- Public hearing in the OBC or as close as possible if space limitations are present in the OBC. Hearing cannot begin before 6PM.
- Multiple notification requirements
- The OBC has a say in whether there is CPI for a proposed project.
- Applicant can attest to a net environmental benefit from their project once analyzing all potential impacts and existing ACS.

**Steps 5 and 6 - EJIS Final Review and Department Decision (7:1C-9.1)**

- DEP either accepts proposed process changes or requires supplemental information and LICT analysis.
- DEP is proposing a procedure to bring in expert analysis to review select pieces of an EJIS, if necessary, and at the applicant's expense.
- DEP can elect to approve the permit with process control compliance conditions or they must deny the permit if DI cannot be avoided.

**For expansions in an OBC**, the applicant must follow 7:1C- 6 and 7, EJIS submittal and LICT analysis. Different from new facilities, the DEP can impose controls on the applicant, but not deny the permit.

**Major Source Permit Renewal in an OBC – 7:1C-8**

In addition to the EJIS steps above, the applicant must conduct a facility-wide risk assessment and an emissions reduction technical feasibility analysis accompanied by air modeling to try and avoid any DI.

**Supplemental Information (7:1C-3.3)**

Applicants will be required to submit the following supplemental information as applicable if;

- The facility is located or will be located in an OBC that is already subject to adverse cumulative stressors, or
- The facility cannot demonstrate that it will avoid disproportionate impacts and create adverse cumulative stressors in the OBC.

1. Detailed site mapping
2. Existing site contamination
3. An examination of National Ambient Air Quality Standards (NAAQS) in the OBC
4. Subsurface hydrology
5. Localized climate and flooding impacts
6. Traffic study
7. Description of sewage facilities
8. Description of stormwater management systems
9. Description of water supply system and containment capacity
10. Description of energy supply system onsite
11. (For new facilities or expansions) – A comparison of design alternatives including siting changes or process alternatives.
12. Odor and noise mitigation plans if the site has the potential to create impacts from either
13. Detailed compliance history of the site
14. Analysis of proposed control measures to address site impacts to environmental and public health stressors.

**Note: This is an extensive list. ESI has expertise in these areas and can lead you through the EJIS process.**

**Contact Chris Whitehead, QEP, CESM with any questions on this important rule proposal. Chris is the Air Practice Leader for ESI and has been closely following the progression of this rule since late 2020.**

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