

ESI Summary of New Jersey's EJ Rule Final Law

April 21, 2023

**The final New Jersey EJ Law implementation rules are out.
There were several important tweaks or clarifying statements were included.**

Key Definitions

- **Compelling Public Interest (CPI)** – A demonstration by a proposed new facility that primarily serves an essential environmental, health, or safety need of the individuals in an overburdened community, is necessary to serve the essential environmental, health, or safety need, and that there are no other means reasonably available to meet the essential environmental, health, or safety need. 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. The DEP has made it clear that CPI will only be granted in a small number of cases.
 - ***Will the site serve essential environmental health and safety needs in the OBC?***
 - ***Is the site necessary?***
 - ***Are there no reasonable alternatives that can serve the OBC and be located outside of the OBC?***
- **Geographic Point of Comparison (GPOC)** – The lower of the 50th percentile of state or county equivalent stressors, excluding other OBCs within the state. Will be provided by the DEP in initial screening data.
- **Combined Stressor Total (CST)** – The sum of all environmental and public health stressors (7:1C-1.4) in a community. Will be provided by the DEP in initial screening data.
- **Feasibility** – includes 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 Sources if;
 - Facility has the potential to release carbon monoxide, nitrogen oxide, PM10/PM2.5 sulfur dioxide, trisodium phosphate, volatile organic compounds, and any hazardous air pollutants (HAPs) 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 list of (26) stressors¹**
- **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.

¹ 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 the OBC

The following pages detail 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)?²

Is the site one of eight applicable types?³

Is the facility applying for an applicable permit and program type?⁴

² <https://www.nj.gov/dep/ej/communities.html>

³ Major sources of air pollution, incinerators and resource recovery facilities; (3) large sewage treatment plants that process more than 50 million gallons per day; (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; and (8) medical waste incinerators, except those attendant to hospitals and universities.

⁴ Pursuant to NJAC 7:1C-1.4. This covers most environmental permitting types in the state.

New Facility in an OBC – 7:1C-5

- **Step 1 - Request initial screening data from the DEP**
 - If your CST is greater than the GPOC, you must do an EJIS. If not, no further action.
- **Step 2 – Environmental Justice Impact Statement (EJIS) – Details on Following Page**
 - If the OBC is not subject ACS and the facility will not cause DI by creating ACS, then the applicant has fewer requirements
 - If the applicant cannot avoid DI they could be subject to control conditions or denial of permit.
 - 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 – Details Follow**
 - Public comment period of at least sixty days
 - 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**
 - DEP either accepts proposed process changes or requires supplemental information and a 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. They expect to rarely need this.
 - 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 do 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**
 - 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.

Environmental Justice Impact Statement (EJIS) Requirements (7:1C-3.2)

1. An executive summary
2. A detailed written description of the municipal and neighborhood setting of the facility
3. A description of the facility's current and proposed operations,
4. A list of all the Federal, State, and local permits that are required
5. Evidence of satisfaction of any local environmental justice or cumulative impact analysis ordinances
6. DEP initial screening information
7. An assessment of project impacts, both positive and negative
8. A public participation plan
9. A plan to avoid disproportionate impacts
10. As applicable, a compelling public interest claim

Process for Meaningful Public Participation (7:1C-4.1)

At least 60 days prior to the public hearing, the applicant shall:

- i. Provide a copy of the EJIS to the municipal clerk;
- ii. Publish notice of the hearing in at least two newspapers circulating within the overburdened community, including, at a minimum, one local non-English language
- iii. Provide written notice of the hearing to the Department, the governing body, and the clerk of the municipality in which the overburdened community is located;
- iv. Provide written notice of the hearing to all persons who own and/or reside within 200 feet of the facility;
- v. Post and maintain, in a legible condition, until the public comment period is concluded, a sign on the site of the existing or proposed facility;
- vi. **Get creative with your outreach**; and
- vii. Invite the Department, municipality or municipalities, and local environmental and environmental justice bodies to participate in the public hearing.

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. He can be reached at cwhitehead@esienv.com.

Contact ESI to learn how we can leverage our skills and experience to engineer and deliver a custom environmental solution to meet your unique needs.
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