



# ***The New Jersey EJ Model: Expectations and Implications***

*May 16, 2023*

*Chris Whitehead, QEP, CESM - Moderator*

*ESI – Air Practice Leader*

# Chris Whitehead – ESI, Air Practice Lead

- 15+ years of environmental compliance experience
- National CAM for multiple large industrial clients
- Qualified Environmental Professional and Certified Environmental Systems Manager
- M.S. – Environmental Management and Policy – American University
- Certificate – Sustainability Program Management – M.I.T.
- Published numerous times on environmental justice, climate impacts, and offshore wind project development
- CDRA – ESG Lead and Member of the Board of Directors
- A&WMA – Editorial Advisory Committee
- NAEP – Technical advisor, Offshore wind working group, EJ lead



# ESI Consulting and Technical Services

Environmental  
Impact Statements

Phase I & II  
Environmental Site  
Assessments

Due Diligence  
Reviews

Litigation Support

Regulatory  
Negotiations

Ecological Services  
and Permitting

Soil &  
Groundwater  
investigations

Contaminant  
Delineation

Groundwater  
Monitoring &  
Modeling

Air Quality  
Permits,  
Monitoring &  
Modeling

- Certified Small Business Enterprise (SBE) in New Jersey
- Offshore wind planning and permitting
- Compliance Plans (SPCC, RCRA, other)
- Stormwater/Wastewater Permitting
- Treatment, Storage and Disposal Facility (TSDF) Audits
- Facility Audits
- Indoor Air Quality Evaluations
- Workplace/Process Hazards Assessment
- TSCA Compliance
- Environmental Risk Assessment
- Environmental Oversight

# Today's Panel



**Chris Whitehead**  
Air Practice Lead  
ESI



**Raymond Cantor**  
Deputy Chief Govt. Affairs  
NJBIA



**Diamond Spratling**  
Founder  
Girl+Environment



**Matthew Karmel**  
Environmental Law Chair  
Offit Kurman

# Quick Case Study

*Passaic Valley Sewerage Commission  
Newark, NJ*

Six other Title V facilities within ~1.5 miles

Four major highways

Newark Airport

Port of Newark

Over 100 years of industrial history

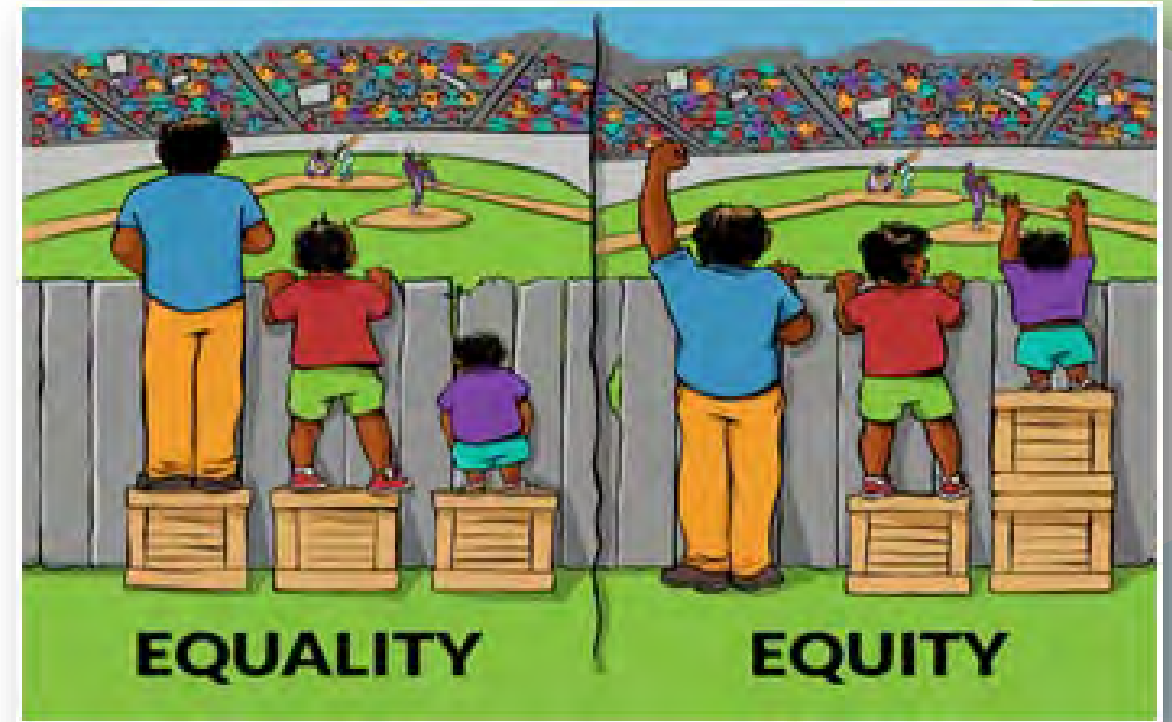


# Drivers for State Action

## Title VI of the CRA...

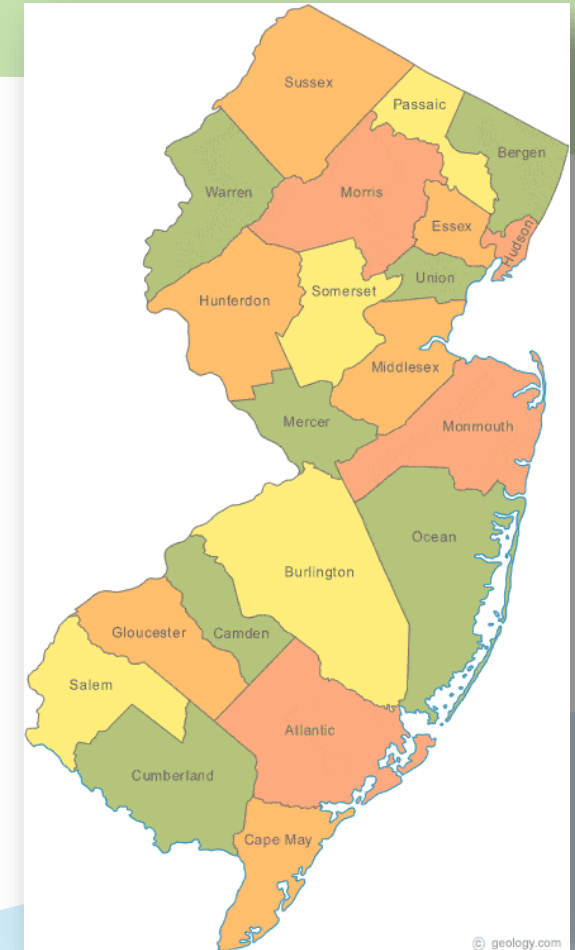
*“No person in the USA shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”*

- Many challenges to individual permitting actions in states across the country
- Also pushes individual states to act for fear of losing federal funding



# *The NJ EJ Law Model – Leading the Way*

- Three-part test for applicability
- First time an agency is mandated to deny permits for new facilities if undue impacts cannot be avoided
- Creates a LICT standard for reducing projected impacts above the CST total
- Compelling public interest will be granted sparingly.

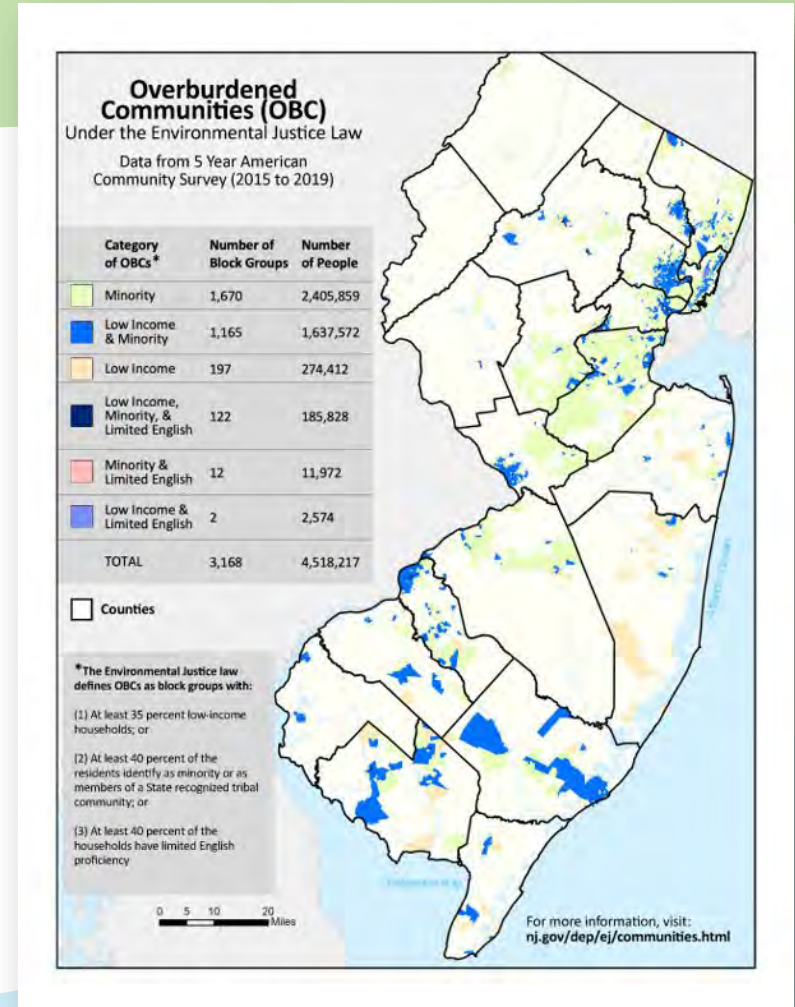


# Defining 'Overburdened Community'

Includes any census block group, as determined in accordance with the most recent U.S. Census, in which:

- a) *at least 35% of the households qualify as low-income households; **OR***
- b) *at least 40% of the residents identify as minority or as members of a state-recognized tribal community; **OR***
- c) *at least 40% of the households have limited English proficiency.*

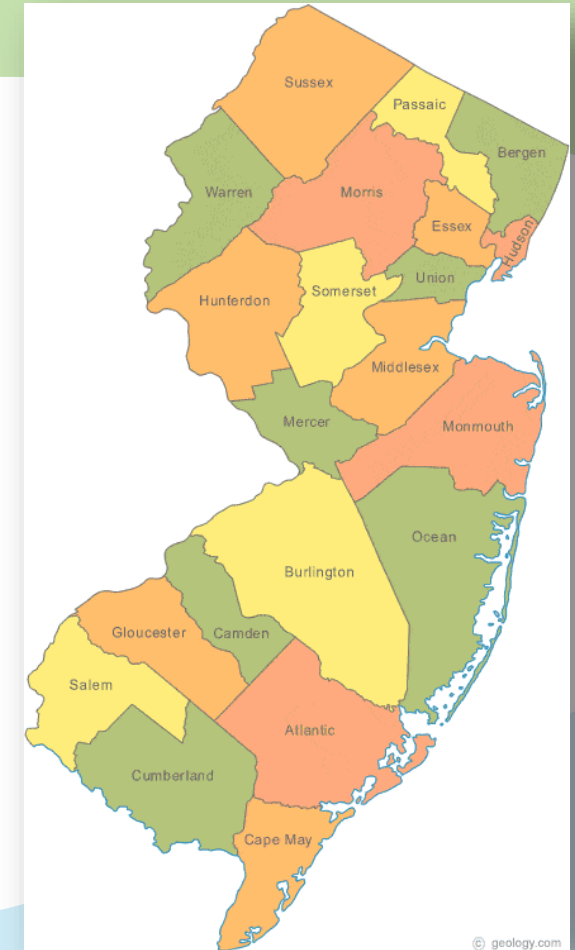
| Overburdened Community Criteria           | # Block Groups | Population |
|-------------------------------------------|----------------|------------|
| Minority                                  | 1,670          | 2,405,859  |
| Low Income and Minority                   | 1,165          | 1,637,572  |
| Low Income                                | 197            | 274,412    |
| Low Income, Minority, and Limited English | 122            | 185,828    |
| Minority and Limited English              | 12             | 11,972     |
| Low Income and Limited English            | 2              | 2,574      |
|                                           | 3,168          | 4,518,217  |



# Facilities Subject to the NJ EJ Law

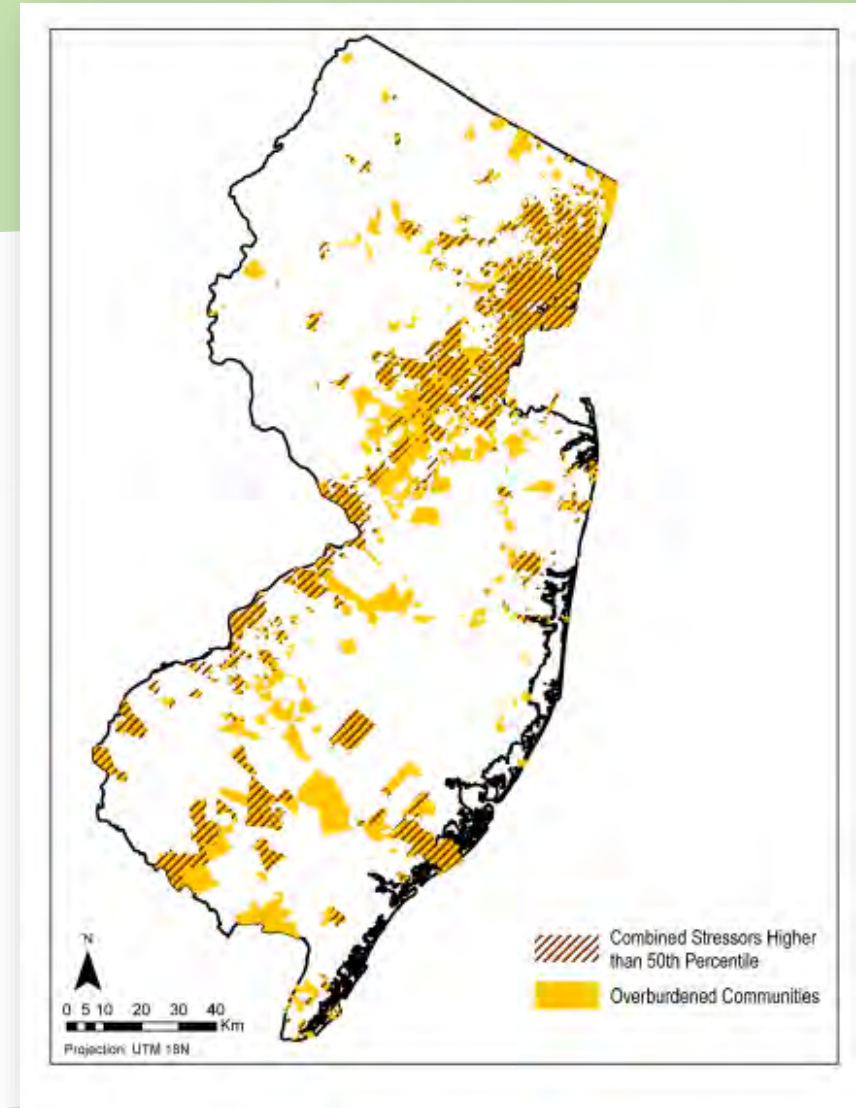
## ***One of eight (8) types of facilities:***

1. Major sources of air pollution (e.g., power plants, cogeneration facilities);
2. Incinerators or resource recovery facilities;
3. Large sewage treatment plants (more than 50 million gallons per day);
4. Transfer stations or solid waste facilities;
5. Recycling facilities that receive at least 100 tons of recyclable material per day;
6. Scrap metal facilities;
7. Landfills; or
8. Medical waste incinerators, except those attendant to hospital and universities.



# Covered Permits

- **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)

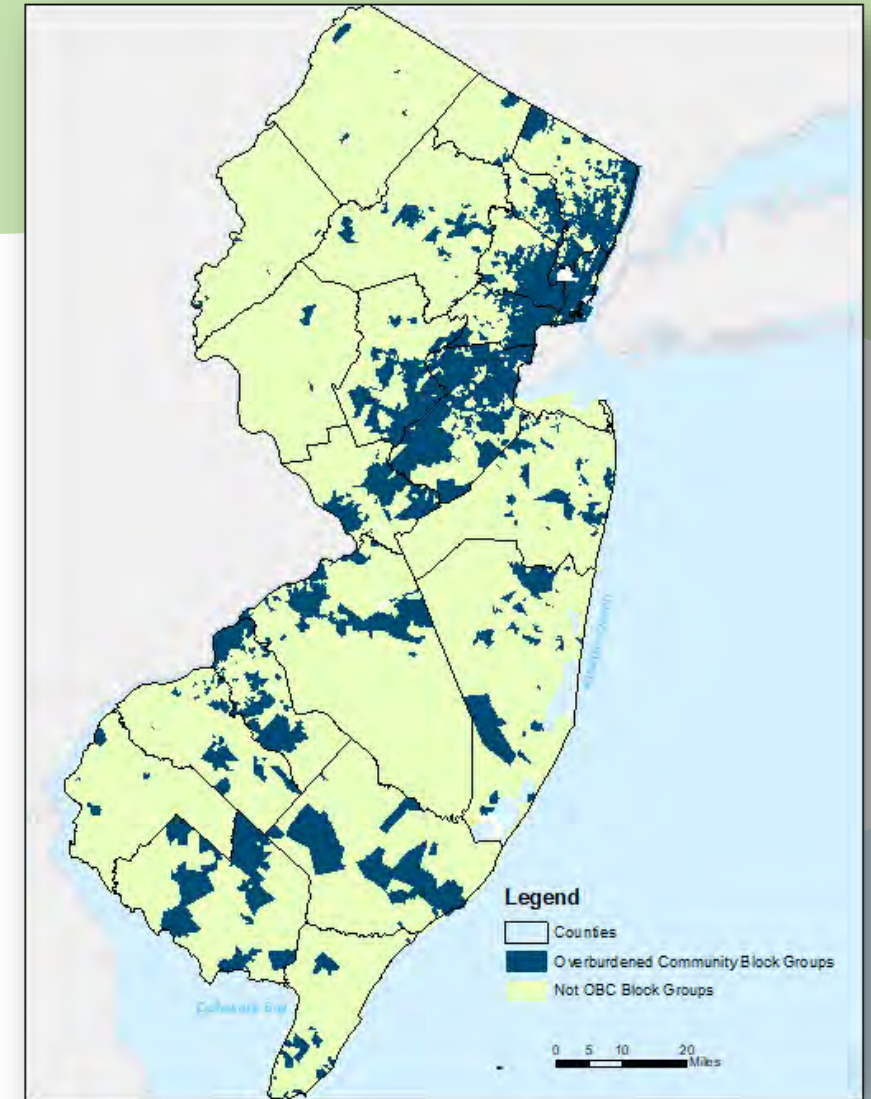


# Geographic Points of Comparison

***The EJ Law requires the DEP to determine whether environmental or public health stressors are higher than those borne by other communities within the state, county or other geographic unit of analysis as determined by the department.***

Under the EJ Rule's approach, the DEP compares the values for 26 environmental and public health stressors for the block group where the facility is located to the values of the State and county.

If a stressor is above either the State or county value it is classified as "adverse," and if the block group has more total adverse stressors than the 50th percentile of block groups in either the State or county, then the block group is said to have "adverse cumulative stressors".



# Environmental & Public Health Stressors



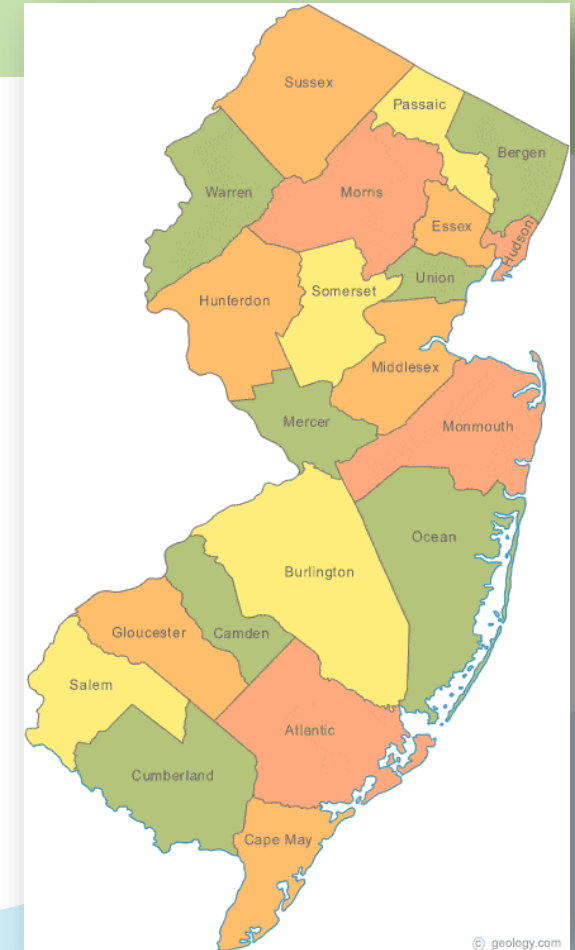
Ground-level ozone  
PM2.5  
Air Toxics Cancer Risk (Including Diesel PM)  
Air Toxics Cancer Risk (Excluding Diesel PM)  
Air Toxics Non-Cancer Risk  
Mobile Sources  
Traffic (Heavy-duty trucks)  
Contaminated Sites  
Soil Contamination

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

# Requirements for DEP and Applicants

- Requires the submission of an environmental justice impact statement and public hearing for any application for a permit to expand, construct or renew the authorization to operate a covered facility.
- NJDEP reviews the environmental justice impact statement, along with other relevant information, to determine environmental and public health stressors' impact on overburdened communities that cannot be avoided through additional controls.
- If there is a disproportionate impact that cannot be avoided for a new facility, DEP shall deny applications for new facilities in overburdened communities unless there is a compelling public interest.
- For renewals and expansions, DEP may apply additional conditions to satisfy Local Impact Control Technology (LICT) standards, but cannot deny a permit
- [See ESI Summary of the NJ EJ Rule](#)



# EJIS Requirements

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
- [See ESI Summary of the NJ EJ Rule](#)



# Meaningful Public Engagement

***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,
- iii. Provide written notice of the hearing to the Department,
- 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.



# Themes to Remember



Know the Regulations



Know your project/site and its environmental impacts.

Reassess potential impacts annuals

Even if your site is SOTA making emissions and effluent reductions difficult, you may be able to reduce impacts elsewhere in related processes.



Have ongoing community outreach that is not just linked to a project

Listen more than you speak at these events

When possible, hire from within the community

# Contact Info



*If you have any questions or comments about this presentation or about Environmental Justice and Community Engagement in general, please contact Chris at:*

*732-484-1968 or  
[cwhitehead@esienv.com](mailto:cwhitehead@esienv.com)*

*Visit our [Resource Page](#)  
for more information and a downloadable library of relevant  
Environmental Justice and Community Engagement resources.*

*For an overview of our other environmental consulting and  
remediation services, visit us at  
[www.esienv.com](http://www.esienv.com)*



*ESI provides comprehensive professional consultation and field services to identify, prevent, and resolve environmental issues related to water, soil, air quality, and facilities.*

*With innovative technical skills and a clear understanding of our clients' goals, we effectively reduce or eliminate environmental impacts.*

The background of the slide is a deep blue underwater scene with several fish swimming in various directions. The fish are slightly out of focus, creating a sense of depth. The main title is centered in the upper half of the image.

# IMPLEMENTING MEANINGFUL COMMUNITY ENGAGEMENT PROCESSES

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NEW JERSEY ENVIRONMENTAL JUSTICE RULE ADOPTION

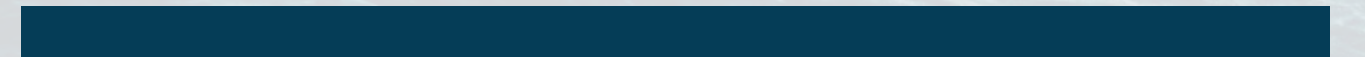
# Agenda

- WHY ENGAGE COMMUNITY?
- ENGAGEMENT PROCESSES & STRATEGIES
- CASE STUDIES



COMMUNITY ENGAGEMENT AS THE FOUNDATION

**Community engagement is a  
ceaseless and iterative process.**



# Benefits of community engagement

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- Ground-truths data
- Addresses root causes
- Builds trust
- Encourages community buy-in
- Advances stewardship
- Develops upstream solutions

# Theory of Change

FROM COMMUNITY ENGAGEMENT TO COMMUNITY OWNERSHIP

## IGNORE

Deny access to  
decision-making  
processes.

## INFORM

Provide the  
community with  
relevant information.

## CONSULT

Gather input from the  
community.

## INVOLVE

Ensure community  
needs and assets are  
integrated into  
process & inform  
planning.

## COLLABORATE

Ensure community  
capacity to play a  
leadership role in  
implementation of  
decisions.

## DEFER TO

Foster democratic  
participation and  
equity through  
community- driven  
decision- making;  
Bridge divide between  
community &  
governance.

## **Distribute Power**

Representative Leadership

## **Start with Place**

Neighborhood-level Engagement

## **Design with Community**

Meaningful Career Pathways

## **Take Interdisciplinary Approaches**

A Holistic Lens

# Representation matters.

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## **Assess the understanding of the issue**

Who has been subjected to internalize and normalize the problem?

## **Assess the power paradigms**

Who has historically been marginalized from the process and decision-making?

## **Assess the barriers**

Who is being prevented from being a part of the process?

# NEIGHBORHOOD LEVEL ENGAGEMENT

| AGENCY                                                 | MEANING                                                                       | IMPACT                        | SAFEKEEPING                                                     |
|--------------------------------------------------------|-------------------------------------------------------------------------------|-------------------------------|-----------------------------------------------------------------|
| Resources and opportunity to solve their own problems. | Career pathways that directly give back to the neighborhoods they grew up in. | Longterm, upstream solutions. | Stewards best equipped to protect and maintain local solutions. |

# Meaningful Career Pathways

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How to maintain stewardship

- Directly impacts the community you grew up in
- Develops skills that can be applied elsewhere
- Provides opportunities to move up the economic ladder

# ROADMAP

## 3 ELEMENTS IN PLANNING



Fund multi-year  
projects



Attain resources for  
skill development



Provide a pathway to  
apply skillset



# Holistic Lens

- HEALTH, HOUSING, CLIMATE, &  
CULTURAL EQUITY
  - CROSS-SECTORAL / INTER-  
DEPARTMENTAL COLLABORATION
  - STORYTELLING
- 

# COMMON MISTAKES

## CULTURAL SENSITIVITY

Equity goes beyond  
race

## DEBRIEFING THROUGHOUT

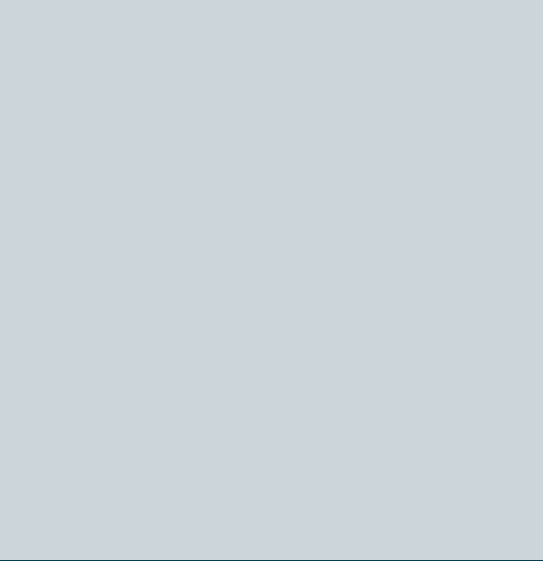
Iterative practices

## OVER PROMISING

Transparency in  
longterm outcomes

## INTEGRATING PAST EFFORTS

Don't recreate the  
wheel



# **EQUITABLE COMMUNITY ENGAGEMENT IN ACTION**

CASE STUDIES

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Community develops at the  
speed of trust.

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**City of Atlanta**

# **Activate ATL: Recreation & Parks for All**

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# Activate ATL: Recreation & Parks for All



- AWARD WINNING 10-YEAR MASTER PLAN



- CONNECTING PARKS TO HEALTH EQUITY



- COMMUNITY CENTERED AND DATA-DRIVEN

# THE ACTIVATEATL APPROACH

**1**

## Existing Conditions Analyses

- Review of existing and proposed plans
- Review of existing and projected demographics
- Review and analysis of existing recreation and parks system

**2**

## Needs + Priorities Assessment

- Public Input
- Research and data analysis
- Comparison to peer cities and national benchmarks

**3**

## Long-Range Vision

- Collaboratively develop a Long-Range Vision to respond to Atlantans' recreation and park needs and address the complex issues most important to residents

**4**

## Strategy to Implement the Vision

- Develop a Capital Improvements Plan (CIP)
- Identify CIP and operations funding sources
- Establish a phased implementation strategy

**5**

## Final Plan + Adoption

- Public review and comment
- Adoption by city
- Final plan release

# COMMUNITY ENGAGEMENT WINS IN ATLANTA

INTENTIONAL  
COMMUNITY  
OUTREACH

1

FINDING  
MUTUAL  
INTERESTS

2

DIVERSE  
ENGAGEMENT  
OPPORTUNITIES

3

TRANSPARENCY  
WITHIN THE  
COMMUNITY

4

# Transparency within The Community

- Acknowledging historical inequities in Atlanta
- Acknowledging the department's downfalls
- Being transparent about what the department can and cannot do

# Intentional Community Outreach

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Disseminating  
post card surveys  
with virtual  
meeting  
information

Integrating virtual  
input meetings  
with social media  
platforms

Identifying and  
collaborating with  
channel partners

Showing up to  
existing community  
events

Placing lawn  
signs across  
Atlanta's 376  
parks

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# Finding Mutual Interests

## **Collaboration**

Built meaningful partnerships with other departments (housing, planning, health dept.)

## **Intersectionality**

Developed an evaluation tool to help communicate the relationship between access to parks and health

# Diverse Engagement Opportunities

- Hosted virtual public engagement meetings
- Hosted meetings in Spanish and in English
- Hosted meetings after workhours and on weekends
- Hosted meetings on various platforms
- Developed the HappiFeet App
- Created physical and online surveys
- Facilitated focus group discussions

# Community Engagement Wins

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## By The Numbers

- **10,000+** Atlantans across every Atlanta ZIP code weighed in on ActivateATL
- **6,608** Public Meeting Engagements
- **1,867** online survey responses
- **1,227** physical survey responses
- **717** Virtual Public Meeting Attendees
- **250** Lawn signs in Parks
- **57** Focus Group Sessions
- **16** Virtual Public Meetings

# COMMUNITY ENGAGEMENT TO DRIVE IMPLEMENTATION

- **Funding Allocation**

For existing facilities, park land acquisition, and new development

- **Park Improvements**

Investing in parks that Atlantans identified as needed the most work

- **Prioritization**

Investing in parks and neighborhoods with the "greatest need"

- **Need-based Programs**

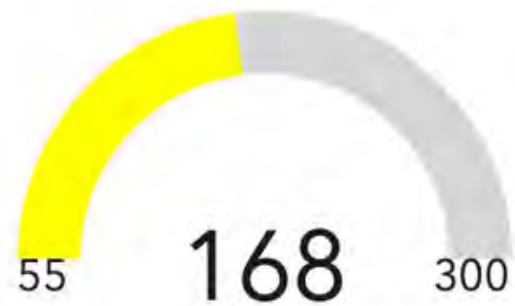
Developing programs that help to address Atlantans' community, health, and economic needs

# City of Atlanta Parks and Recreation Equity Data Tool

A Data-Driven Tool for Prioritizing Parks and Recreation Investments across the City of Atlanta



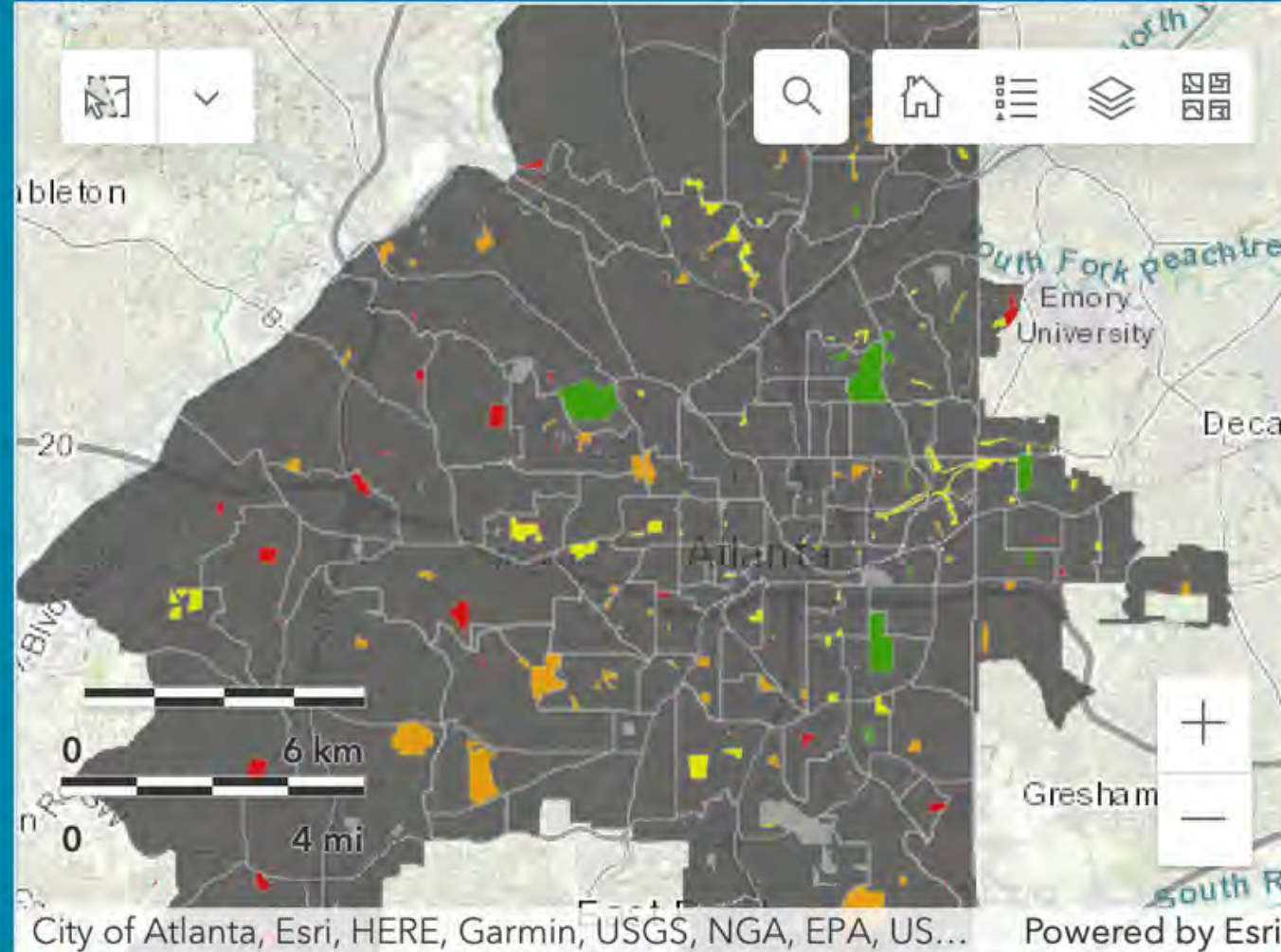
## Total Park Need Score



Total Park Need Score is the composite of all four scoring categories shown on the gear dials to the right of the screen.

Parks

Rec



City of Atlanta, Esri, HERE, Garmin, USGS, NGA, EPA, US...

Powered by Esri

ATL Parks

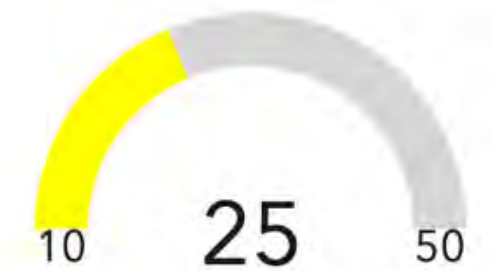
## Park Conditions & Funding



Parks

Rec

## Level of Service



## Community Perception



## Community Need



## Parks with the Greatest Need

Stone Hogan Park  
Park Score: 228

Melvin Drive Park  
Park Score: 225

## Rec Centers with the Greatest Need

Brownwood Recreation Center  
Total Need Score: 189

Pittman Park Recreation Center  
Total Need Score: 186



# Key Takeaways

- GOLDEN RULE
- COMMUNITY OWNERSHIP
- FOUR PRINCIPLES
- FOUR FUNDAMENTAL TIPS
- COMMON MISTAKES
- ENGAGEMENT ASSESSMENT

# Let's Stay Connected

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**SCAN MY DIGITAL  
BUSINESS CARD!**

✉ [diamond@girlplusenvironment.org](mailto:diamond@girlplusenvironment.org)

🌐 [girlplusenvironment.org](http://girlplusenvironment.org)

🐦 @diamondsprat @girlenvironment

📷 @girlplusenvironment

🌐 Diamond Spratling





# ESJ Panel Discussion: New Jersey EJ Adoption Expectations and Implications

PRESENTED BY RAY CANTOR, NEW JERSEY BUSINESS & INDUSTRY  
ASSOCIATION

# Recognition of Community Impacts

- ▶ Location/Urban Setting
  - ▶ New Jersey Has Significant Number of Stressors
- ▶ Low Income
- ▶ Disadvantaged Communities
- ▶ Support Community Collaborative Initiative
- ▶ But:
  - ▶ EJ Law is Not Health Based Standard
  - ▶ Overly Broad Application
  - ▶ Will Lead to Significant Impacts to Business Community

# Reasons for Business Concern

- ▶ Cost
  - ▶ Increased compliance and carrying cost
- ▶ Time
  - ▶ Minimum of 180 Day Process
- ▶ Uncertainty
  - ▶ No Clear Standards or Timeframes
  - ▶ Businesses Need to Be Able to Make Business Decisions
- ▶ No to New

# No to New

- ▶ New Facilities Will Be Denied Unless Compelling Public Interest
- ▶ New Includes "Old"
  - ▶ Lacking Permit
  - ▶ Change in Operations

# No De Minimis Standard

- ▶ Over 90% of OBC will be Disproportionately Impacted
- ▶ Nearly Impossible to Show No Impact to Cumulative Stressors
- ▶ Nearly Any Change to a Facility Needing a DEP Permit will be Considered an Expansion

# Conclusion

- ▶ Will Negatively Impact Businesses Due to Cost, Time, and Uncertainty
- ▶ Sends a Negative Signal to Business Community
- ▶ Could Have Addressed Real Issues in More Balanced Approach

# New Jersey's Environmental Justice Law Strategic Considerations

Presented by:  
Matthew Karmel  
Principal  
Chair, Environmental and  
Sustainability Law Group

# FIRM FACTS

## WHO WE ARE



### 19 Offices

*situated in 9 states and the  
District of Columbia, providing  
services nationwide*



*One of the  
fastest-growing  
full-service  
law firms in the U.S.*



**280 + attorneys  
& 550 total staff**



*Founded in 1987  
and continuing to grow  
strategically*

# FIRM FACTS

## AREAS OF PRACTICE

- Alternate Dispute Resolution
- Banking & Finance
- Bankruptcy
- Charitable Giving
- Condominium & Community Associations
- Construction
- Creditors' Rights & Restructuring
- Estate & Trusts
- Fair Housing
- Financial Institutions Regulatory
- FinTech
- Franchise
- Government Contracts
- Healthcare
- Immigration
- International
- Landlord Representation
- Mass Torts Defense
- Nonprofits
- Privacy & Data Protection
- Product Liability Defense
- Real Estate



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Principal  
Chair, Environmental & Sustainability  
Law Group

## Matthew A. Karmel

### Practice Areas

**Traditional Environmental Counseling**  
**Land Use/Environmental Permitting**  
**Waste Management & Recycling**  
**Mergers & Acquisition**  
**Sustainability & Climate**  
**Renewable Energy**

Matthew Karmel is passionate about sustainability and the environment and has been recognized by Best Lawyers in America®, Super Lawyers, and Waste360 for his experience and thought leadership in the field of environmental law.

Matthew's practice combines traditional environmental counseling and transaction support with cutting edge sustainability-focused advice. In fact, he is well-versed in the intersecting areas of law that apply to environmental justice. For instance, he advised a large energy company on environmental justice issues relating to the acquisition of a large portfolio of energy assets. Matthew also advised recycling facilities and manufacturing companies on compliance with environmental justice requirements in connection with expansions, relocations, and changes in operations.

Matthew writes and speaks regularly on topics relating to environmental justice, including through Waste Dive, Waste360, Grist, and other national publications, and is regularly sought by journalists for his insights on environmental justice. He also provides award-winning pro bono legal support to important environmental causes, including by leading the team streamlining permitting requirements applicable to community composting efforts in New Jersey, an important environmental justice initiative supporting Newark and other urban communities.

## Strategic Considerations – Evaluating Risk Factors

- Community Groups
- Sensitive Receptors
- Past Violations or Incidents
- New Facility/Expansion
- Traditional NIMBY Uses
- Local Politics
- Permit Type

## Strategic Considerations – Risk Mitigation

Listening  
Sessions

EJ Coordinator

Corporate  
Policies

## Strategic Considerations – Considering Timing



**PERMIT PROCESSING  
TIME**

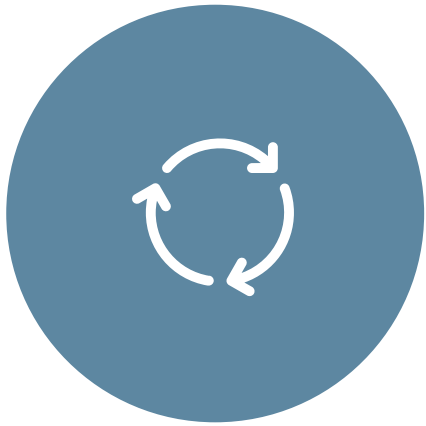


**PERMIT SHIELD  
CONSIDERATIONS**



**AVOIDING MULTIPLE  
TRIGGERS**

# Strategic Considerations – Advanced Planning



FACILITY LIFE CYCLE



MERGERS &  
ACQUISITIONS



FINANCING



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Principal  
Chair, Environmental & Sustainability  
Law Group

**Matthew A.  
Karmel**

