

Deference to State Agencies Remains Strong Under New Jersey Law

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On Jan. 5, 2026, the New Jersey Appellate Division affirmed the New Jersey Department of Environmental Protection's (NJDEP) sweeping environmental justice regulations. *In the Matter of New Jersey Department of Environmental Protection's April 17, 2023, 55 N.J.R. 661(b) "Environmental Justice Rules," Adopted Amendments N.J.A.C. 7:1C, No. A-2936-22* (N.J. Super. Ct. App. Div. Jan. 5, 2026). The regulations were challenged by the New Jersey Chapter of the Institute of Scrap Recycling Industries and the Engineers Labor Employer Cooperative of Operating Engineers Local 825.

The issue of deference to agency action was a significant part of the appellate division's opinion. As discussed below, the opinion seems to be an indication that deference to state agency action in New Jersey remains strong in the face of recent developments under federal law.

Environmental justice has become an increasingly important topic in recent years. The New Jersey Legislature first enacted the Environmental Justice Law (the EJ Law) in 2020. The purpose of the EJ Law is to "correct [the] historical injustice" of "New Jersey's low-



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income communities and communities of color hav[ing] been subject to a disproportionately high number of environmental and public health stressors[.]” N.J.S.A. 13:1D-157. In furtherance of its stated purpose, the EJ Law declared that “the State’s overburdened communities must have a meaningful opportunity to participate in any decision to allow in such communities certain types of facilities which, by the nature of their activity, have the potential to increase environmental and public health stressors[.]”

In order to accomplish its purpose, the EJ Law supplements existing environmental permitting procedures and requires certain facilities seeking approvals under environmental laws

for building new facilities, expanding existing facilities, or renewing an existing facility's major source permit to prepare and submit an environmental justice impact statement. The environmental justice impact statement requires an applicant to identify and analyze a number of enumerated factors, hold public hearings, and propose feasible measures to avoid the facility contributing to public health stressors or impacts on overburdened communities.

The EJ Law further provides that NJDEP "shall adopt ... rules and regulations to implement the provisions of [the EJ Law]." N.J.S.A. 13:1D-161(a). The EJ Law further provides that NJDEP "may issue a technical guidance for compliance with this [A]ct, which the [DEP] shall publish on its Internet website," N.J.S.A. 13:1D-161(b), and that NJDEP "shall publish and maintain on its Internet website a list of overburdened communities in the State" and "shall update the list of overburdened communities at least once every two years," N.J.S.A. 13:1D-159.

To that end, NJDEP spent the better part of two years developing the environmental justice rules (the EJ Rules). The EJ Rules were first proposed in June 2022 with an extended public comment period and were the subject of nearly 500 written comments and five public hearings. After going through the required process, including issuance of an extensive response to public comments, the EJ Rules became effective on April 17, 2023. NJDEP also released its environmental justice mapping, assessment, and protection mapping tool, which depicted overburdened community locations and facilities subject to the EJ Law.

The New Jersey Chapter of the Institute of Scrap Recycling Industries Inc. and the Engineers Labor Employer Cooperative of

Operating Engineers Local 825 challenged NJDEP's adoption of the EJ Rules on a number of bases, including that NJDEP acted in an arbitrary and capricious or ultra vires manner and violated the New Jersey Administrative Procedure Act (N.J. APA).

In its opinion, the New Jersey Appellate Division undertook a thorough review of deference to agency action under New Jersey law. This is notable because the issue of deference to federal agencies has been a topic of significant interest since the U.S. Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

In June 2024, the U.S. Supreme Court issued its highly anticipated and consequential decision in *Loper Bright*, eliminating the decades-old *Chevron* deference standard.

The *Chevron* doctrine, which was established by the U.S. Supreme Court in the 1984 case *Chevron v. Natural Resources Defense Council*, instructed federal courts to defer to and uphold an administrative agency's reasonable interpretation of ambiguous and open-ended statutory language, even if the court would have read the statute differently. In *Loper Bright*, the court leaned in on the issue and held that the *Chevron* doctrine was improper and in conflict with the language of the Federal Administrative Procedure Act (Federal APA) insofar as it deprived the judiciary of its traditional role in deciding matters of law.

Prior to the *Loper Bright* decision, New Jersey was one of several states that, similar to *Chevron*, applies substantial deference to agency actions and interpretations of law. While the *Loper Bright* decision was facially limited to federal matters, there was a question whether it would impact New Jersey courts' deference to state agency actions. That is particularly

true with regard to the recent challenge to the EJ Rules because the challengers argued that NJDEP violated the New Jersey APA, albeit in a different context than the Federal APA that was central to the *Loper Bright* decision.

While the challengers argued that the relevant language and definitions in the EJ Law are unambiguous, the case presented the latest opportunity for the appellate division to at least touch upon *Loper Bright* and its potential impact on New Jersey courts' deference to state agency action. However, the opinion contained more than six pages on deference to state agency action under New Jersey law without a single mention of *Loper Bright*.

In the opinion, the appellate division reinforced that in New Jersey an agency's action should be afforded "great deference" with respect to its "interpretation of statutes within its scope of authority and its adoption of rules implementing" them. *N.J. Ass'n of Sch. Adm'rs v. Schundler*, 211 N.J. 535, 549 (2012). Relevant to the challenge to the EJ Rules, the court further stated that New Jersey courts "extend substantial deference to an agency's interpretation of its own regulations, reasoning that 'the agency that drafted and promulgated the rule should know the meaning of that rule.'" *In re Urban/Square Props.*, 461 N.J. Super. 57, 72 (App. Div. 2019) (quoting *In re Freshwater Wetlands Gen. Permit No. 16*, 379 N.J. Super. 331, 341-42 (App. Div. 2005)). Judicial deference is especially appropriate

"when the case involves the construction of a new statute by its implementing agency." *In re Adoption of N.J.A.C. 7:26B*, 128 N.J. 442, 451-52 (1992) (quoting *In re Freshwater Wetlands Prot. Act Rules, N.J.A.C. 7:7A-1.1 et seq.*, 238 N.J. Super. 516, 527 (App. Div. 1989)).

Applying these standards, the appellate division deferred to NJDEP's reasoning on all of the challenged issues and affirmed the EJ Rules in their entirety. The court deferred heavily to NJDEP's reasoning set out in its responses to public comments and held that the challenged aspects of the EJ Rules were not arbitrary, capricious, or ultra vires. Rather, the court found the EJ Rules consistent with the legislature's intent behind the EJ Law to correct historic injustice in overburdened communities through reducing environmental and public health stressors.

While challenges to state agency deference are likely to continue in New Jersey following the *Loper Bright* decision, the appellate division has thus far remained committed to New Jersey's long-standing practice of affording substantial deference to agency actions and interpretations of statutes and regulations. This decision is in line with other New Jersey decisions that have declined to apply to *Loper Bright* decision to agency deference within the state.

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