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NJDEP Proposes Rules Under New Jersey's Environmental Justice Law

Client Advisories

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The New Jersey Department of Environmental Protection (NJDEP) recently proposed new rules setting out requirements which would seek to protect overburdened communities from environmental stressors by setting new standards on where and how industrial operating facilities may be built or expanded. The announcement for the proposed rules can be found here. These rules propose to block the application for construction of new facilities which could expose residents of overburdened communities to disproportionate levels of pollution unless the facility would serve a compelling public interest in the community. By providing clarification on what is an "overburdened community" or a "compelling public interest" and on environmental quality standards, these proposed new rules would give significant teeth to the State's new environmental justice reforms.

New Jersey's efforts to enact environmental reforms is widely seen as groundbreaking, with legislation aimed at reducing pollution in marginalized communities, improving public health, and embracing regulations not yet seen throughout the rest of the country. The NJDEP's newly proposed rules would establish strict requirements and procedures on how companies may expand certain industrial facilities in the future.

These proposed new rules are set out under New Jersey's recently enacted Environmental Justice Law signed by Governor Murphy in 2020. The legislation targeted future applications for construction of industrial facilities which have contributed to disproportionate levels of air, ground, and water pollution in lower-income and marginalized communities throughout the state. A copy of the Act can be found here.

The legislation and proposed rules aim to address these overburdened communities' negative health and economic outcomes caused by industrial, commercial, and governmental facilities. The Act covers facilities which are major sources of air pollution; incinerators and resource recovery facilities; large sewage treatment plants; transfer stations and solid waste facilities; large recycling facilities; scrap metal facilities; landfills; and non-hospital or university medical waste incinerators. The proposed rules would not affect existing facilities currently in operation unless there is an application to expand.

Three in-person public hearings for these proposals are scheduled for July 11th, July 13th, and July 27th. A virtual hearing will be held on July 28th with access information provided here.

All comments must be received by September 4, 2022, with the applicable N.J.A.C. citation, commenter's name and affiliation following the comment. Public comment can be made here.

For questions about the proposed new rules, or for assistance in submitting comments to the NJDEP, please contact Carlos Bollar at cbollar@archerlaw.com or 856-354-3073, or Clint Allen at callen@archerlaw.com or 856-354-3017.

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