

Update on New Jersey's Environmental Justice Law

Friday, October 22, 2021

Committee Co-Chairs

***Susan Coan, Atlantic City Electric | Gene Fricks, Ernest Fricks LLC
| Ken Sheppard, South Jersey Industries***



WELCOME REMARKS



Jane Asselta
Vice President, SNJDC



Special Thanks to the Environmental Justice Law Planning Committee:

Robert Baranowski, Hyland Levin Shapiro;

Sue Boyle, GEI Consultants;

David Brewster & Steve Kirschner,
Montrose Environmental Solutions



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William F. Hyland, Esq.
856.355.2911

Robert S. Baranowski, Esq.
856.355.2955

Peter A. Chacianas, Esq.
856.355.2992

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Montrose's core mission is to "protect the air we breathe, the water we drink, and the soil that feeds us." How our communities interact with our world is a critical component of this mission. As the US continues to define what Environmental Justice means at the National, State and Local levels of governance, our teams of thought leaders and subject matter experts stay abreast of all key developments to help our clients adapt to the changing business requirements



montrose-env.com



Stephen W. Kirschner, PE
skirschner@montrose-env.com
D: 610.840.9117 • M: 610.389.2471

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NJ's Environmental Justice Law Update

Introduced by Susan Coan, Region Vice President, Atlantic City Electric



Sean Moriarty
Deputy Commissioner
NJ DEP





Olivia Glenn
Deputy Commissioner
for Environmental
Justice & Equity

Furthering the Promise of Environmental Justice

Looking inward: Furthering the Promise: A Guidance Document for Advancing Environmental Justice Across State Government

Looking outward: the nation's most empowering and first-of-its-kind environmental justice law (Sept. 18, 2020)



Stakeholder Process Recap

- **10/22/20** – Initial EJ Rulemaking Public Information Session
- **01/20/21** – Geographic Points of Comparison / Facility & Permit Definitions
- **03/11/21** – Environmental & Public Health Stressors
- **04/07/21** – Compelling Public Interest / Renewal Conditions
- **05/20/21** – Environmental Justice Impact Statement
- **06/24/21** – Review Meeting

N.J.S.A. 13:1D-157 - Overview

- Environmental standards are often formulated based on the effect pollution has upon general populations spread over wide geographic areas;
- Existing environmental laws fail to fully consider localized impacts; which
- Creates pockets of high pollution and concentration of pollution-generating facilities in predominantly minority and low-income communities and disproportionate impacts to their public health and environment.

The Environmental Justice Law (1/2)

The Legislature finds and declares...

- All New Jersey residents, regardless of income, race, ethnicity, color, or national origin, have a right to live, work, and recreate in a clean and healthy environment.
- Historically, New Jersey's low-income communities and communities of color have been subject to a disproportionately high number of environmental and public health stressors, including pollution from numerous industrial, commercial, and governmental facilities located in those communities.
- The legacy of siting sources of pollution in overburdened communities continues to pose a threat to the health, well-being, and economic success of the State's most vulnerable residents and that it is past time for the State to correct this historical injustice.

The Environmental Justice Law (2/2)

The Legislature finds and declares...

- No community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State's economic growth.
- The State's overburdened communities must have a meaningful opportunity to participate in any decision to allow facilities which, by the nature of their activity, have the potential to increase environmental and public health stressors.
- It is in the public interest for the State, where appropriate, to limit the future placement and expansion of such facilities in overburdened communities.

Covered Facilities

- One of eight (8) types of facilities:
 1. Major sources of air pollution;
 2. Resource recovery facilities or incinerators;
 3. Sludge processing facilities, combustors, or incinerators;
 4. Sewage treatment plants with a capacity of more than 50 million gallons per day;
 5. Transfer stations or solid waste facilities, or recycling facilities intending to 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.

- Potential Approach: Define as set forth in underlying environmental regulations (with certain modifications) to meet statutory intent

Covered Permits

- **Adopt and incorporate regulatory definitions and thresholds**
- **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)

Potential Approach: Define as set forth in underlying environmental regulations

Overburdened Community

“Overburdened community” means any census block group, as determined in accordance with the most recent United States Census, in which: (1) at least 35 percent of the households qualify as low-income households; (2) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or (3) at least 40 percent of the households have limited English proficiency.

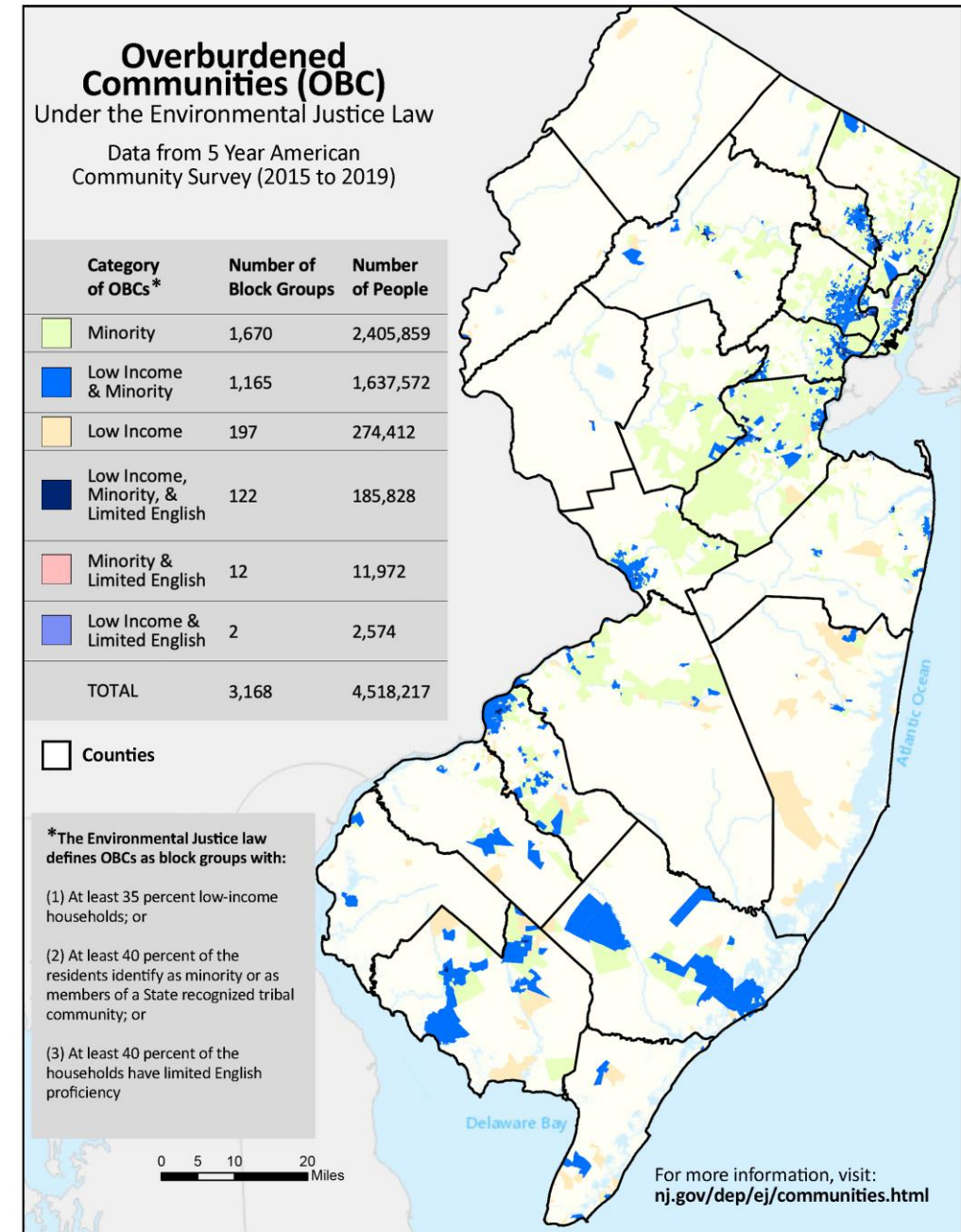
Potential Approach: Define as in statute.

Definition of Overburdened Community for 2019

5-year American Community Survey Data, 2015-2019

- This is “new” analysis, based on data made available 12/10/2020
- Updated from that used in the in EJ Guidance Document (which was 2018 ACS data for 2014 to 2018)
- Information can be found on the NJDEP Environmental Justice [website](#)
 - Excel Spreadsheet listing Overburdened Communities (OBCs) block groups with town names
 - PDF maps
 - GIS file and simple GIS Tool

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



Environmental & Public Health Stressors

- “Environmental or public health stressors” means sources of environmental pollution, including, but not limited to,
 1. concentrated areas of air pollution,
 2. mobile sources of air pollution,
 3. contaminated sites,
 4. transfer stations or other solid waste facilities, recycling facilities, scrap yards, and
 5. point-sources of water pollution including, but not limited to, water pollution from facilities or combined sewer overflows;
- or conditions that may cause potential public health impacts, including, but not limited to
 1. asthma,
 2. cancer,
 3. elevated blood lead levels,
 4. cardiovascular disease, and
 5. developmental problems in the overburdened community.

Environmental & Public Health Stressors

- After considering data availability, data quality, appropriate geographic scale, quantifiability, and marginal value, we are now considering 31 stressors.



Concentrated Areas of Air Pollution (potential direction)

	Stressor	Description	Data Source & Scale	EJScreen	CalEnviroScreen
1	Ozone	Days above National Ambient Air Quality Standard (NAAQS)	<ul style="list-style-type: none"> NJ monitoring data Points (monitors) 	✓	✓
2	PM 2.5	Days above National Ambient Air Quality Standard (NAAQS)	<ul style="list-style-type: none"> NJ monitoring data Points (monitors) 	✓	✓
3	Cancer Risk from Diesel	Estimated cancer risk	<ul style="list-style-type: none"> NATA data Census Tract 	✓	✓
4	Cancer Risk Excluding Diesel	Estimated cancer risk	<ul style="list-style-type: none"> NATA data Census Tract 	✓	✓
5	NATA Non-Cancer Risk	Estimated noncancer risk	<ul style="list-style-type: none"> NATA Census Tract 	✓	
6	Permitted Air Sites	Number of sites per square mile	<ul style="list-style-type: none"> NJ Air Permitting data Points (facility locations) 		

Mobile Sources of Air Pollution (potential direction)

	Stressor	Description	Data Source & Scale	EJScreen	CalEnviroScreen
7	Traffic, Major Roadways	Vehicle density for all vehicles near road	<ul style="list-style-type: none"> • USDOT FHA • Highway Performance Monitoring System (HPMS) 	✓	✓
8	Truck Traffic	Vehicle density for single and combined trucks only near road	<ul style="list-style-type: none"> • USDOT FHA • Highway Performance Monitoring System (HPMS) 		
9	Railways	Rail miles near railroad	<ul style="list-style-type: none"> • ArcGIS Railroad Layer • Line segments 		
10	Warehouses, Goods Movement/ Storage	Number of sites per square mile	<ul style="list-style-type: none"> • NJ Labor and Workforce Development Employer Database • Points (facility locations) 		

Point Sources of Water Pollution (potential direction)

	Stressor	Description	Data Source & Scale	EJScreen	CalEnviroScreen
11	Surface Water Quality	Non-attainment of designated uses for the Integrated Report	<ul style="list-style-type: none"> Integrated Report Block Group 		✓
12	Combined Sewer Overflows	Number of CSOs in block group	<ul style="list-style-type: none"> NJPDES Permitting Database Points (CSO locations) 		
13	All NJPDES Sites	Number of sites per square mile	<ul style="list-style-type: none"> NJPDES Permitting Database Points (facility locations) 		

Solid Waste & Scrap Yards (potential direction)

	Stressor	Description	Data Source & Scale	EJScreen	CalEnviroScreen
14	Solid Waste Facilities	Number of transfer stations, solid waste and recycling facilities, and incinerators per square mile weighted by permitted tons per day of material	<ul style="list-style-type: none"> NJDEP Division of Solid and Hazardous Waste Database Points (facility locations) 		✓
15	Scrap Yards	Number of sites per square mile	<ul style="list-style-type: none"> NJ Environmental Management System Points (facility locations) 		✓

Contaminated Sites (potential direction)

	Stressor	Description	Data Source & Scale	EJScreen	CalEnviroScreen
16	Contaminated Sites	Density of Known Contaminated Sites (KCSL)	<ul style="list-style-type: none"> NJDEP Site Remediation Database Points (facility locations) 	✓	✓
17	Soil Contamination	Percent acres of the block group with Deed Notice restrictions	<ul style="list-style-type: none"> NJDEP Site Remediation Database Polygons 		
18	Groundwater Restricted Areas	Percent acres of block group with Classification Exception Area (CEA) or Currently Known Extent (CKE) notice restrictions	<ul style="list-style-type: none"> NJDEP Site Remediation Database Polygons 		

May Cause Public Health Issues (Environmental, 1/2) (potential direction)

	Stressor	Description	Data Source & Scale	EJScreen	CalEnviroScreen
19	Total Regulated Facilities under the EJ Law	Density of facilities (e.g., major air sources, solid waste facilities, sludge incinerators)	<ul style="list-style-type: none"> NJ Environmental Management System Points (facility locations) 		
20	Drinking Water Quality	Number of Maximum Concentration Level (MCL), Treatment Technique (TT), and Action Level Exceedance (ALE) violations	<ul style="list-style-type: none"> Public Violations Reports for MCL, TT, and ALE Purveyor Areas 		✓
21	Extraordinarily Hazardous Facilities	Density of facilities	<ul style="list-style-type: none"> FACITS, NJEMS, NJDEP databases Points (facility locations) 	✓	
22	Age of Housing	Percent of pre-1950 housing	<ul style="list-style-type: none"> US Census Data Block Group 	✓	✓

May Cause Public Health Issues (Environmental, 2/2) (potential direction)

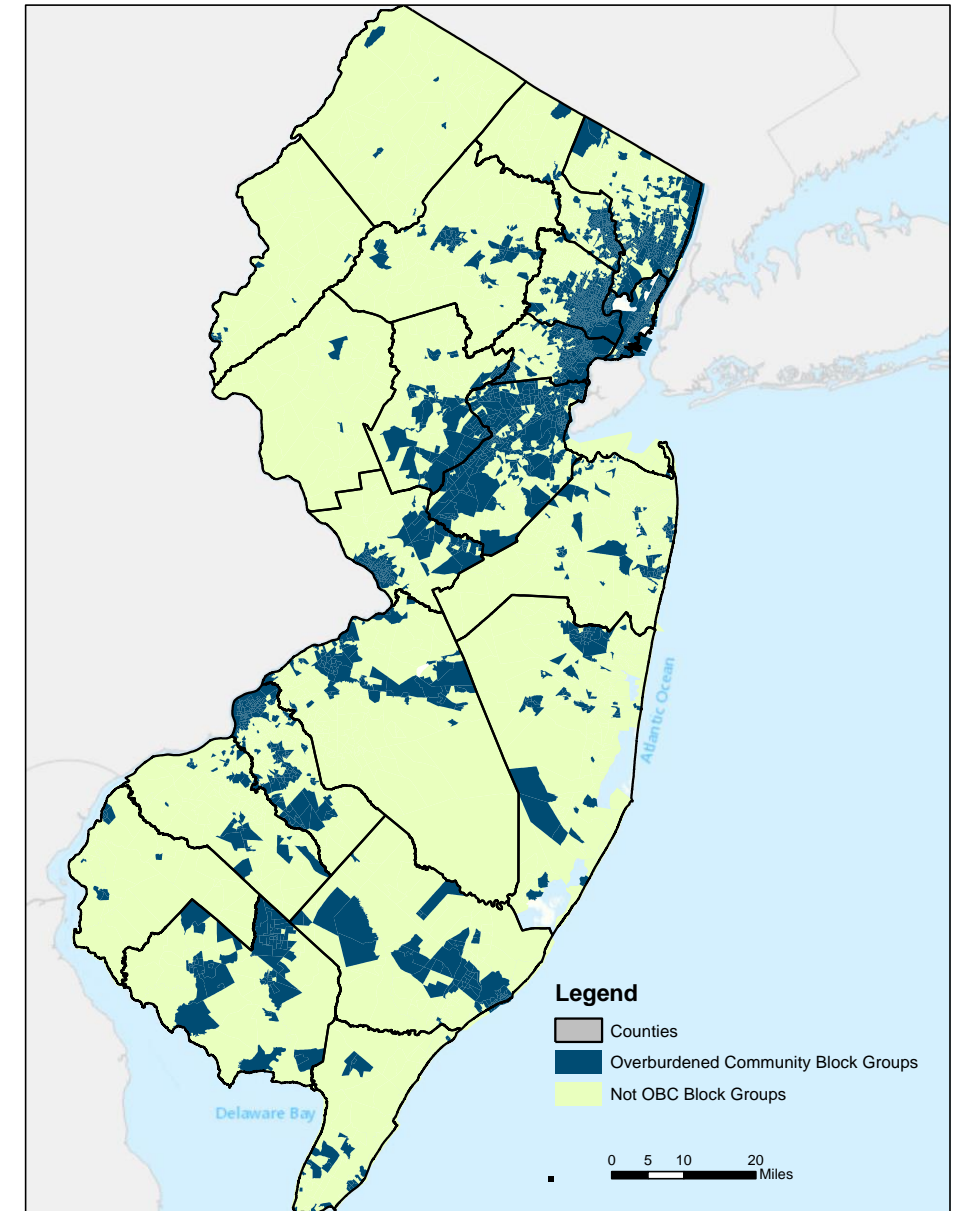
	Stressor	Description	Data Source & Scale	EJScreen	CalEnviroScreen
23	Lack of Recreational Open Space	Population living greater than a ten-minute walk (¼ mile) from Public Recreational Open Space	<ul style="list-style-type: none"> ArcGIS Dataset Polygons of open space 		
24	Lack of Tree Canopy	Spatially weighted mean tree canopy cover	<ul style="list-style-type: none"> USDA Tree Cover Data Raster, 100 ft. grids 		
25	Impervious Cover	Percent impervious surface in a block group	<ul style="list-style-type: none"> ArcGIS Data Layer Polygons 		
26	Flooding	Percent of land in the 500-year flood zone	<ul style="list-style-type: none"> FEMA Maps/NJDEP Flood Hazard Standards Polygons 		

May Cause Public Health Issues (Social) (potential direction)

	Stressor	Description	Data Source & Scale	EJScreen	CalEnviroScreen
27	Poverty	Percent of population with households falling below 2x the Federal Poverty Level	<ul style="list-style-type: none"> US Census Data Block Group 	✓	✓
28	Unemployment	Percent of an adult population that is unemployed	<ul style="list-style-type: none"> US Census Data Block Group 		✓
29	Education	Percent of an older population that has less than a high school diploma	<ul style="list-style-type: none"> US Census Data Block Group 	✓	✓
30	Minority	Percent of population classified as a minority (total population – non-Hispanic, white only)	<ul style="list-style-type: none"> US Census Data Block Group 	✓	
31	Limited English Proficiency	Percent of population that has limited English proficiency	<ul style="list-style-type: none"> US Census Data Block Group 	✓	✓

Geographic Point of Comparison

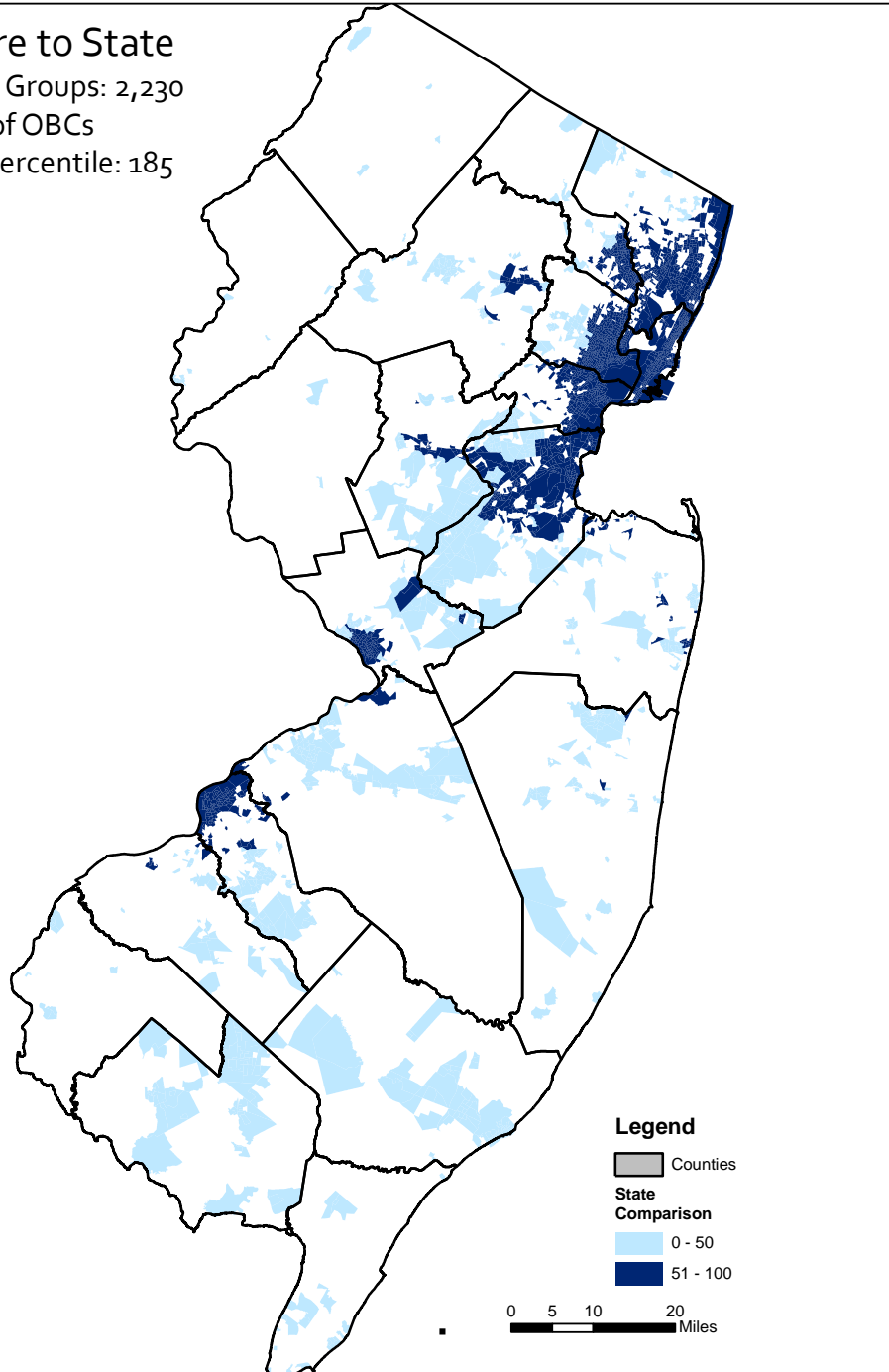
- **Statutory Context**
 - The Bill requires the Department to determine whether environmental or public health stressors are "higher than" those borne by other communities within the State, county, or other geographic unit of analysis as determined by the department.
- **Options Considered**
 - State
 - State Non-Overburdened Areas
 - County
 - County Non-Overburdened Areas
 - Hybrid of above approaches (most like USEPA, who uses multiple geographic areas)
- **Proper Comparison Percentile**
 - 50th (higher than)
 - 80th (USEPA uses as a flag for initial screening)



Example: NATA Diesel Cancer Risk

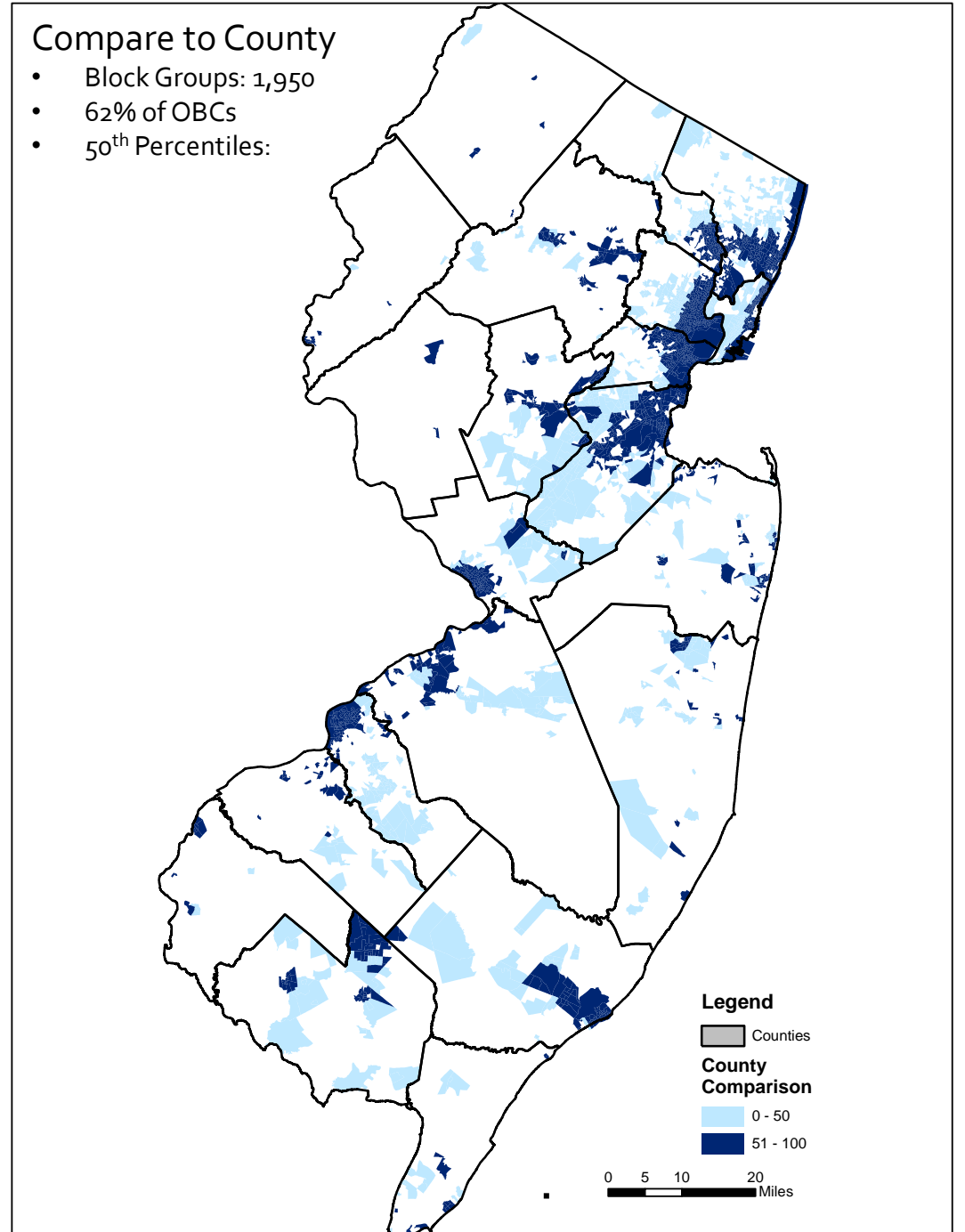
Compare to State

- Block Groups: 2,230
- 70% of OBCs
- 50th Percentile: 185



Compare to County

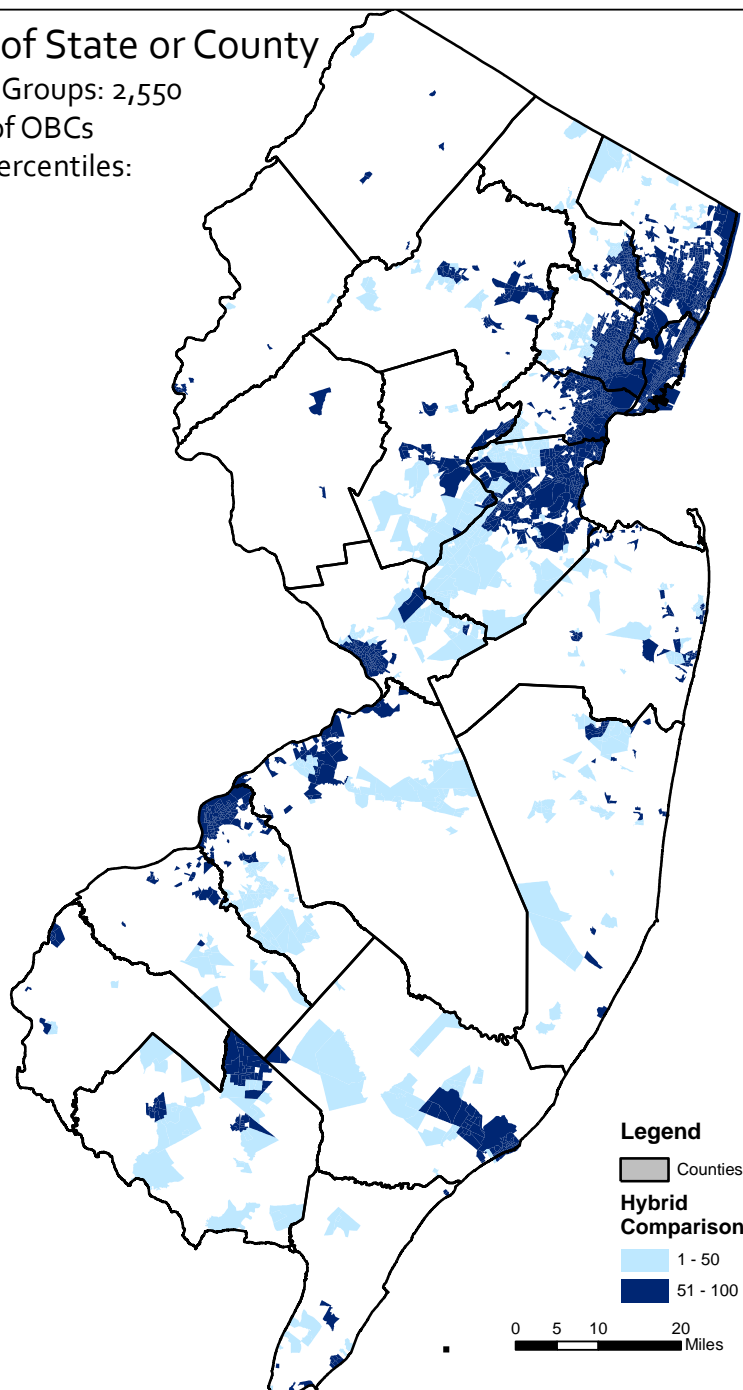
- Block Groups: 1,950
- 62% of OBCs
- 50th Percentiles:



Example: NATA Diesel Cancer Risk

Lowest of State or County

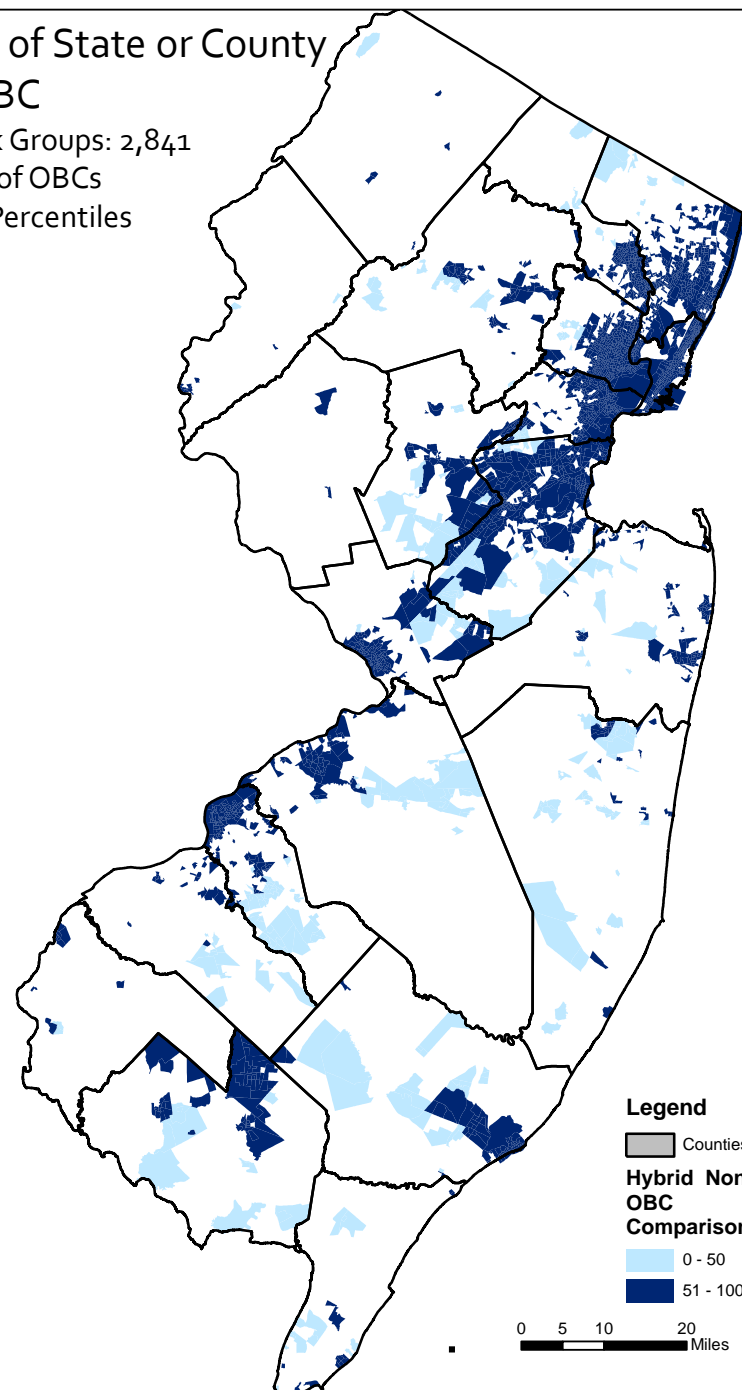
- Block Groups: 2,550
- 80% of OBCs
- 50th Percentiles:



Lowest of State or County

Non-OBC

- Block Groups: 2,841
- 90% of OBCs
- 50th Percentiles



Environmental Justice Impact Statement

The Statute provides that an applicant must prepare:

“...an environmental justice impact statement that assesses the **potential environmental and public health stressors associated with** the proposed new or expanded facility, or with the existing major source, as applicable, including **any adverse environmental or public health stressors that cannot be avoided** if the permit is granted, and **the environmental or public health stressors already borne by the overburdened community** as a result of existing conditions located in or affecting the overburdened community”

Step 1: Initial Screen (potential direction)

Determine Combined Stressor Total (CST):

- Determine if each stressor in an OBC is higher than the most protective geographic point of comparison (State or County Non-OBC).
 - “Higher than” means greater than the 50th percentile.
- Sum the number of stressors higher than geographic comparison for an OBC for the CST.
 - E.g.: If 18 of the 31 stressors in an OBC are higher than the geographic comparison result, the total for that OBC is 18. The Combined Stressor Total for that OBC is 18.

Determine if Combined Stressor Total is higher than Geographic Point of Comparison

- Determine if OBC’s CST is higher than the most protective geographic point of comparison (State or County Non-OBC) at the 50th percentile (second level of statistical analysis)
 - E.g.: If an OBC’s CST is 18 and its geographic point of comparison is 15, that OBC is subject to “adverse cumulative environmental or public health stressors that are higher than” the geographic point of comparison.

Step 2: EJIS Process (potential direction)

Where CST is lower than geographic point of comparison:

- Applicant prepares an EJIS, conducts a public comment period, and holds a public hearing in the Overburdened Community to assess whether a facility will contribute to existing environmental and public health stressors such that it creates stressor levels that are higher than the appropriate geographic point of comparison.
 - If no: Avoids a disproportionate impact, and Applicant is authorized to move forward with environmental permitting without additional conditions.
 - If yes: Applicant must complete supplemental materials.

Where CST is or will be made higher than the geographic point of comparison:

- Applicant prepares an EJIS *plus supplemental materials*, conducts a public comment period, and holds a public hearing in the Overburdened Community to assess how the facility will contribute to existing environmental and public health stressors in the Overburdened Community. Applicant assesses contributions to stressor levels that are already higher than the geographic point of comparison and ensures that the facility will not create new stressor levels that are higher than the geographic point of comparison.

Step 2: EJIS + Supplemental Materials (potential direction)

- Steps the applicant will implement at the project site to avoid causing or contributing to stressors already borne by the Overburdened Community, and
- Relevant elements/points of analysis from other existing “impact analyses” such as:
 - Executive summary (including comprehensive demographic, economic, and physical descriptions)
 - Facility description (including relevant maps)
 - Environmental Summary and Assessment
 - Health Summary and Assessment
 - Alternatives Analysis (reasonable design, siting, and operational alternatives)
 - Statement of Environmental Justice Issues (justification and conclusion)

Denial & Permit Conditions

New Facility: where a disproportionate impact exists:

“... the department shall ... deny a permit for a new facility except that where the department determines that a new facility will serve a compelling public interest in the community where it is to be located, the department may grant a permit that imposes conditions on the construction and operation of the facility to protect public health...”

Facility Expansion/Title V Renewal

“...the department may.... apply conditions to a permit for the expansion of an existing facility, or the renewal of an existing facility’s major source permit, concerning the construction and operation of the facility to protect public health...”

New v. Expansion v. Renewal (potential direction)

- **New:** Newly sited facility or change in use of existing facility
- **Expansion:** Expansion of footprint or increase in stressor contributions of existing facility but continuing ongoing operations
 - Would not include changes to operations strictly to reduce stressor contributions
- **Renewal:** Continuation of existing operations without increase
 - Statutory Exemption: Minor modifications to major source permit for activities/improvements that do not increase emissions

Step 3: Departmental Review (potential direction)

New Facilities:

- Propose measures to avoid facility contributions to individual stressors in the OBC that are higher than the geographic point of comparison
- If cannot avoid, denial unless compelling public interest.
- If compelling public interest, apply conditions.

Renewals:

- Propose measures to avoid facility contributions to individual stressors in the OBC that are higher than the geographic point of comparison
- Where avoidance is not feasible, minimize facility contributions to individual stressors in the OBC that are higher than the geographic point of comparison
 - Will include objective measures for minimization, i.e. BACT/SOTA

Expansions:

- Propose measures to avoid facility contributions to individual stressors in the OBC that are higher than the geographic point of comparison
- Where avoidance is not feasible, minimize facility contributions to individual stressors in the OBC that are higher than the geographic point of comparison
- Propose additional feasible conditions that will (in order):
 - Reduce like stressors from offsite sources within the overburdened community
 - Reduce of other stressors from offsite sources in the overburdened community (preference for highest to lowest stressor levels)
 - Provide a net environmental benefit that improves baseline environmental and public health stressors in the overburdened community

Compelling Public Interest (potential direction)

- Focus on specific types of facilities and public works-type projects that serve a Compelling Public Interest in an overburdened community.
 - Examples: appropriately-scaled food waste facilities, public water infrastructure, renewable energy facilities,
 - Considering other facilities that meet essential health and safety needs of the overburdened community or specifically reduce stressors, i.e., CSO reductions
 - Does not allow for economic benefits as justification for Compelling Public Interest
- Considers whether there is a significant degree of public interest in the overburdened community in favor of or in opposition to the facility.

Compelling Public Interest (potential direction)

- Measures to avoid facility contributions to individual stressors in the OBC that are higher than the geographic point of comparison.
- Where avoidance is not feasible:
 - Minimize facility contributions to individual stressors in the OBC that are higher than the geographic point of comparison.
- Propose additional feasible conditions that will (in order)
 - Reduce like stressors from offsite sources within the overburdened community,
 - Reduce of other stressors from offsite sources in the overburdened community (preference for highest to lowest stressor levels), or
 - Provide a net environmental benefit that improves baseline environmental and public health stressors in the overburdened community.

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STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION



The Overburdened Community Online Tools

Introduced by Jane Asselta, Vice President, SNJDC



Julia Wong

**Office of the Deputy Commissioner
NJ DEP**



IMPLEMENTING THE ENVIRONMENTAL JUSTICE ACT PANEL DISCUSSION



Bob Baranowski
Hyland Levin Shapiro



Dennis Hart
NJ Chemistry Council



Sean Moriarty
NJ DEP

PANEL MODERATOR



Carlos Rodrigues
Design Solutions LLC/APA-NJ



Kimberly Mutcherson
Rutgers School of Law





New Jersey's Environmental Justice Law **VIRTUAL MEETING** **Friday, October 22nd | 10:00 a.m.**



Robert S. Baranowski, Jr., Esq.



Environmental Justice Legal Framework

Executive Order 23

Governor Murphy's EO 23, issued on April 20, 2018, recognized that low-income communities and communities of color are disproportionately exposed to disproportionately high levels of air, water, and soil pollution.

Made environmental justice a priority of the administration.

Environmental Justice Law, N.J.S.A. 13:1D-157, et seq.

New Jersey's Environmental Justice Law (S232) - September 2020

- ▶ Requires that NJDEP evaluate environmental and public health impacts of certain new facilities or facility expansions when it receives a permit application if the facility is to be located, in whole or in part, in an overburdened community.

Under the EJ Law, if NJDEP determines that a new facility will have a disproportionately negative impact on an overburdened community, it is to deny the permit.



EJ Law - Definition of Facility

"Facility" is defined in the Act to mean any:

- (1) major source of air pollution;
- (2) resource recovery facility or incinerator;
- (3) sludge processing facility, combustor, or incinerator;
- (4) sewage treatment plant with a capacity of more than 50 million gallons per day;
- (5) transfer station or other solid waste facility, or recycling facility intending to receive at least 100 tons of recyclable material per day;
- (6) scrap metal facility;
- (7) landfill, including, but not limited to, a landfill that accepts ash, construction or demolition debris, or solid waste; or
- (8) medical waste incinerator.



EJ Law - Permits



- ▶ Permits subject to the EJ Law include the following: Solid Waste, Medical Waste, Recycling, Pesticides, Wetlands, CAFRA, Highlands, Air Pollution, Waster Supply, Water Pollution Control Act, of Flood Hazard Area Control Act
- ▶ Shall not include any authorization or approval necessary to perform a remediation or any minor modification of a facility's major source permit for activities or improvements that do not increase emissions

EJ Law - Overburdened Community



"Overburdened community" is defined as any census block group, as determined in accordance with the most recent United States Census, in which:

- (1) at least 35 percent of the households qualify as low-income households;
- (2) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or
- (3) at least 40 percent of the households have limited English proficiency.

List on NJDEP website:

<https://www.nj.gov/dep/ej/docs/overburdenedcommunitylist.xlsx>

NJDEP Administrative Order No. 2021-25



- ▶ Issued 9/20/21, citing N.J.S.A. 13:1D-1, EO 23, EJ Law for authority
- ▶ Instructs NJDEP to “ensure, to the maximum extent allowable by law, that the spirit, intent, and direction of EO 23 and the Environmental Justice Law are realized” prior to rule adoption
- ▶ Provides comment periods shall be no less than 60 days, further extended by 30 more days on request, public hearings on permit applications, applicant to conduct community outreach, respond to and address comments
- ▶ Authorizes special permit conditions to address impacts on overburdened communities

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