



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

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SHAWN M. LATOURETTE

Commissioner

ADMINISTRATIVE ORDER NO. 2021-25

WHEREAS, pursuant to its enabling legislation at N.J.S.A. 13:1D-1, et seq., the New Jersey Department of Environmental Protection (Department) is charged with formulating and implementing comprehensive policies for the protection of the environment and public health, including, but not limited to, the conservation of the State's natural resources and prevention of pollution; and

WHEREAS, all residents of the State of New Jersey, regardless of income, race, ethnicity, color, or national origin, have a right to live, work, learn, and recreate in a clean and healthy environment; and

WHEREAS, as reflected in Governor Philip D. Murphy's Executive Order No. 23 (EO 23) and the State's Environmental Justice Law, codified at N.J.S.A. 13:1D-157, et seq., New Jersey's low-income communities and communities of color have been historically subjected to a disproportionately high number of environmental and public health stressors, including pollution from mobile sources, as well as numerous industrial, commercial, and governmental stationary sources; and

WHEREAS, EO 23, dated April 20, 2018, the facts and circumstances of which are adopted by reference herein, established that it is the policy of the State of New Jersey to further the promise of environmental justice in all Executive Branch actions; and

WHEREAS, to further the promise of environmental justice, all New Jersey communities, and especially those disproportionately affected by environmental and public health stressors, must have a meaningful opportunity to participate in decision-making that affects their environment, communities, homes, and health; and

WHEREAS, on September 18, 2020, Governor Murphy signed the Environmental Justice Law, the first in the nation to empower an environmental regulatory agency to deny or condition permits for certain pollution-generating facilities that would cause or contribute to adverse cumulative environmental and public health stressors that disproportionately impact overburdened communities; and

WHEREAS, the Department is now at work developing regulations that facilitate a transparent, objective, data-driven process to assess adverse cumulative environmental and public health stressors and determine disproportionate impacts on overburdened communities, which the Department intends to propose pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., in the fall of 2021; and

WHEREAS, upon promulgation of these regulations, in addition to applicants seeking to site new facilities, applicants seeking to renew major source permits or expand of existing facilities in overburdened communities, as each term is defined under the Environmental Justice Law, will be subject to the requirements set forth therein, and

WHEREAS, the Department cannot exercise the full extent of its authority under the Environmental Justice Law until these implementing regulations are duly promulgated; and

WHEREAS, while the Department works diligently to develop, propose and promulgate the regulations necessary to implement the Environmental Justice Law, there is an immediate need for further action 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; and

WHEREAS, in addition to empowering the Department to assess disproportionate impacts, the Environmental Justice Law, consistent with EO 23, requires permit applicants to facilitate meaningful opportunities for overburdened communities to engage in permitting decisions for pollution-generating facilities through an enhanced public participation process that includes, but is not limited to, soliciting feedback through public hearings in the subject overburdened community during which the applicant would address, environmental and public health stressors associated with the proposed facility, existing conditions affecting the overburdened community, and opportunities for the applicant to avoid or reduce adverse environmental or public health stressors in the overburdened community; and

WHEREAS, on January 19, 2021, pursuant to the Environmental Justice Law, the Department published a list of overburdened communities in the State and associated electronic mapping available at <https://www.nj.gov/dep/ej/communities.html>; and

WHEREAS, the Department routinely receives applications seeking permits for facilities, as those terms are defined under the Environmental Justice Law, and which are governed by the Department's existing regulations, including requirements for public comment periods of varying length and, at times discretionary, public hearings; and

WHEREAS, certain Department regulations specify only a minimum period that must be provided to accept public comment for consideration on applications for, or renewals of, permits,



registrations, plans or other approvals, which periods are routinely extended where substantial public interest in a particular application exists; and

WHEREAS, within its discretion pursuant to various existing authorities, the Department can require points of further analysis and applies special conditions to facility permits when it deems those conditions necessary to protect the environment and public health, including measures intended avoid or minimize adverse outcomes, and

WHEREAS, the Department has inherent authority to require and extend public comment periods, to require and set the conditions upon which public hearings may be held, to require and set the parameters for analyses necessary to enable Departmental review of a permit application, and to apply conditions to permits authorizing various activities subject to the Department's jurisdiction; and

NOW, THEREFORE, I, Shawn M. LaTourette, Commissioner of the New Jersey Department of Environmental Protection, by virtue of the authority vested in me by N.J.S.A. 13:1B-3, N.J.S.A. 13:1D-9, and under all applicable statutes and regulations, do hereby ORDER and DIRECT:

1. Where facilities seek permits in overburdened communities, to the extent consistent with applicable law, all public comment periods shall be no less than sixty (60) days, irrespective of minimum timeframes as may be established under applicable regulations, and shall be extended by an additional thirty (30) days upon the written request of member(s) of the overburdened community indicating that an extension is necessary to provide the information requested under Paragraph 2(b).
2. In the review of applications for facilities seeking permits in overburdened communities that are or would be subject to the requirements of the Environmental Justice Law, all Divisions of the Department shall, to the maximum extent allowable consistent with applicable statutes and regulations:
 - a. Require each applicant to hold a public hearing in a manner determined by the Department as consistent with the Environmental Justice Law, so as to maximize participation of individuals within the subject overburdened community;
 - b. During the extended public comment period provided for under Paragraph 1 above, encourage those providing public comment, whether verbally or in writing, to provide the Department and the applicant with information regarding existing conditions within the overburdened community and potential facility-wide environmental and public health stressors that could result in adverse impacts upon the overburdened community were the regulated activity approved;



- c. Require the applicant to respond to and address the concerns raised by individuals in the overburdened community during the public comment process, including, but not limited to, requiring additional analysis deemed necessary by the Department to enable its review of the subject application and evaluation of the concerns raised during the public comment period;
 - d. Strongly encourage each applicant to engage directly with individuals in the overburdened community in advance of and in addition to formal public comment by providing facility-wide information consistent with the Environmental Justice Law and soliciting concerns regarding environmental or public health stressors posed by the facility; and
 - e. Where permits or approvals may be issued, apply such special conditions as may be necessary to avoid or minimize environmental or public health stressors upon the overburdened community to the maximum extent allowable by law.
- 3. This Order shall take effect immediately and shall apply to all existing permit applications with open and unexpired public comment periods.
 - 4. Nothing in this Order shall in any way limit the Department's authority to reopen or further extend any public comment period on a case-by-case basis consistent with applicable statutes and regulations.
 - 5. This Order shall remain in effect until such time as the implementing regulations required by the Environmental Justice Law are duly promulgated or unless extended, revoked, or otherwise modified by me in writing.

Date: September 20, 2021



Shawn M. LaTourette
Commissioner

