



## Talking Points from the New Jersey Environmental Justice Community for the Proposed Regulations for the New Jersey Environmental Justice Law

### How to use this document

We have prepared the document in sections that correspond to the sections in the [rule](#). No one will be able to comment on everything; during public comment, you typically get 3 minutes so it's important to consider which area you care the most about or have ideas on. The goal of comments should be to strengthen and support the parts we like and give ideas to strengthen the parts that are less fleshed out.

### Compelling Public Interest

*Background:* The law states that new permits for covered facilities in overburdened communities that contribute to the existing or new disproportionate pollution shall be denied. There is an exception for a compelling public interest in the host community when the facility **primarily** serves an environmental, safety, or public health purpose. This exception excludes economic considerations. This means that industry cannot use economic arguments to push through permits that contribute to pollution in overburdened communities. This part of the rule is very important because industries could use economic arguments to justify any permit application and essentially create a loophole in the rule.

The rationale for keeping the scope of compelling public interest narrow and excluding economic interests from the exception:

1. EJ communities should not have to choose between a healthy environment and jobs - it's environmental racism and extortion. This is the business as usual model that has allowed economic interests to exploit vulnerable areas with the promise of economic development that does not materialize. The current permitting model already allows for economic interests to weigh heavily in facility siting. If we reinforce this economic model, it only serves to re-entrench the existing system where poor BIPOC communities are forced to take dirty industries and rich communities will always be able to say no
2. Dirty industries are not the kind of jobs we want to encourage in EJ communities. We deserve good, healthy, clean, dignified jobs, not at the expense of more pollution. We want the kinds of jobs that don't need an exemption to be allowed into our communities. If you are a legitimately clean business or can mitigate your impact, you don't need to extort the community with the promise of economic development that can never be fully accounted for after the permitting process.
3. The promise of economic gains and jobs is a false promise - it's a lie we've been told for a long time that has never produced wealth for EJ communities. We have decades upon decades of tangible examples and experiences with companies promising jobs and economic gains to EJ communities that deliver nothing but pollution and tax exemptions that they profit from. Just take a look at Covanta - where are all the hundreds of jobs from that industry? They employ 20 people, few if any

from Newark or Camden or Rahway, they're not union jobs and they dump millions of pounds of chemicals into our air and reduce our property values.

4. Dirty industries are actually bad for the economy and for our economic survival and our future prosperity. These dirty industries that cannot mitigate their impacts and contribute more pollution are not the answer to our economic future. They stigmatize our communities as dumping grounds, they concentrate all the pollution in communities that have historically borne the brunt of "economic" engines for the rest of the region to prosper. While EJ communities suffer from chronic unemployment and low-wage jobs, we host the highest concentration of dirty industries.
  5. Many industries and businesses that are good actors, and employ many union people are not covered by this rule. Warehouses, logistics centers, public works projects, hotels, hospitals, etc. none of these businesses trigger this rule. Thus the industries that will be most impacted are actually large, dirty polluting entities that profit from the divisive language of jobs vs the environment.
  6. If you remove the economic factors exclusion and make the compelling public interest clause broad in its application - you essentially create an enormous loophole that renders this landmark EJ bill a complete failure. The intention of the law was to fundamentally change the approach to business as usual that allows the constant dumping of dirty industries in overburdened communities. By allowing economic factors to trump these considerations - you essentially leave in place the system we have now - one that continues to sacrifice public health and re-entrench the patterns of environmental racism that have left EJ communities vulnerable to the cumulative impacts of pollution.
  7. There is no viable way that the NJDEP can ensure compliance with an economic benefits standard to establish a compelling public interest. The promise of economic gains based on metrics such as local employment, number of jobs, and tax ratables, are all difficult to measure post permitting by an agency like NJDEP that does not have any jurisdiction or mechanism to enforce these claims.
- This section of the rule could actually be strengthened to make it clear that only very specific, narrow cases could qualify for this exemption.
    - Emphasize that a new facility must **primarily** serve an "essential, health, or safety need for individuals" and ONLY in the host overburdened community in order to qualify for the compelling public interest exception.
  - The regulation should be changed from the Department "may" consider public input regarding the compelling public interest exception to "shall" consider public input.
  - The definition of a community should ensure independent community groups that are representative of and accountable to residents are included as opposed to only governmental entities;
  - The definition of compelling public interest should be limited so it doesn't become a giant loophole.

### **Public Participation**

The goal is to maximize a) how many people in our communities know about a facility b) the number of people who participate in support of or opposition to a facility. Communities that are aware and participate are better able to shape their neighborhoods.

- What type of "notice" would you like to see? Notice to neighbors is currently set to those living within 200 feet of the site This could be increased to those living within 1000 feet of the proposed site.

- What would help your community be the most aware of new facilities?
- Where should the “notice” of new facilities be in today's modern age? Social media? Phone calls? Specific newspapers?
- Currently, public comments happen either at the hearing or by writing comments and submitting them to the DEP. How else should public comments be received that would help more people participate? Should you be able to submit videos, voice memos, or something else?

#### **Definition of a Facility**

- Expand the definition of ‘facility’ to include newer, polluting technology such as gasification, pyrolysis, or similar conversion technologies.

#### **Permit Conditions for Renewal and Expansion of Existing Permits**

- All Permit conditions must avoid or minimize additional pollution in overburdened communities. All conditions must be incorporated into the facility’s permit and be subjected to monitoring, recordkeeping, and recording requirements to ensure compliance and enforceability;
- All permit conditions must provide additional protections, other than the requirements and conditions already required of the facility.

#### **Environmental Justice Analysis**

- We are supportive of the overall EJ analyses contained in the proposed regulations;
- A facility applying for a pollution permit would make a contribution to an adverse environmental or public health stressor if it would increase that stressor in any absolute amount, irrespective of the amount of the increase;
- Pollution “offsets” can not be used to justify approval of a pollution permit application that is subject to the Environmental Justice Law. Any pollution emissions reductions recognized by the law must come directly from the facility applying for the pollution permit.