



NJ Appellate Division Issues Decision Affirming Historic Environmental Justice Rules

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On January 5, 2026, the New Jersey Appellate Division published a lengthy 72-page decision in [In the Matter of the Adoption of N.J.A.C. 7:1C](#), affirming the state's environmental justice (EJ) rules, which the New Jersey Department of Environmental Protection (NJDEP) adopted in April 2023. The decision represents the first appellate challenge to New Jersey's Environmental Justice Law, a historic statute signed by former Governor Phil Murphy in September 2020. The EJ rules were promulgated by NJDEP to implement the provisions of the EJ Law.

Background: EJ Law

The New Jersey Legislature declared in the EJ Law "that all New Jersey residents . . . have a right to live, work, and recreate in a clean and healthy environment," and that "residents in the State's overburdened communities have suffered from increased adverse health effects including . . . children [who] are especially vulnerable to the adverse health effects caused by exposure to pollution" N.J.S.A. 13:1D-157.

The EJ Law requires certain facilities seeking approvals under existing environmental laws to submit an analysis of the facility's environmental and public health stressors or impacts on the local overburdened community, an environmental justice impact statement, and a proposal of all feasible measures to avoid direct facility contributions to those stressors.

Appellate Decision

In its decision, a three-judge panel ruled that NJDEP acted within the broad authority granted by the legislature when it adopted the EJ rules. The EJ rules had faced sweeping challenges from industry and labor groups, which argued that NJDEP exceeded its authority, misinterpreted the ordinary meanings of defined terms, violated

administrative procedural rules, and drafted the EJ rules in a manner that was arbitrary and capricious, unconstitutionally vague and overbroad. The three-judge panel rejected each challenge, as further detailed below.

The decision highlights the considerable judicial deference New Jersey courts give to agency actions, particularly with respect to an agency's interpretation of statutes within its delegated authority and the regulations it adopts to implement those statutes. Judicial deference is particularly afforded when, as was the case when NJDEP adopted the EJ rules, the agency spent two years drafting the rules, held 10 public engagement sessions seeking input from various stakeholders, established an extended 90-day public comment period, and, after publishing its proposed EJ rules, held five public hearings and responded to nearly 500 written and oral comments. NJDEP also publicly released its [Environmental Justice Mapping, Assessment, and Protection Tool](#) (EJMAP) depicting locations of overburdened communities and existing facilities subject to the EJ Law, along with a [technical guidance document](#) explaining the scientific basis for each stressor metric.

Definition of "New Facility"

Appellants challenged NJDEP's definition of "new facility," a term the EJ Law left undefined. The EJ Law requires NJDEP to deny permits for new facilities in overburdened communities unless they serve a compelling public interest. NJDEP's rules define "new" broadly, applying it not just to facilities that have not started operating but also to facilities that change their use in ways that increase environmental or public health stressors or those that operated without valid permits before the EJ rules took effect. Appellants argued "new facility" should only mean a facility that has "recently come into existence" or was "not existing before." The court sided with NJDEP, however, finding its interpretation consistent with both the ordinary dictionary definition of the term "new" and the legislative intent to prevent additional burdens on overburdened communities from facilities that generate new or different disproportionate impacts.

Zero-Population Census Blocks

Appellants argued that the NJDEP exceeded its authority by extending the EJ rules to zero-population census block groups adjacent to overburdened communities, asserting that the EJ Law applies only to facilities located within overburdened communities. A zero-population census block group is an area defined by census boundaries that contains no residents, often due to industrial or infrastructure use. The court rejected the appellants' claim, finding the EJ rules consistent with legislative intent to protect communities from disproportionate environmental and health impacts.

The three-judge panel noted that while the EJ Law regulates facilities located "in whole" in an overburdened community, it also regulates facilities located "in part" in such communities. In addition, the EJ Law requires assessment of environmental or public health stressors "located in or affecting" an overburdened community. Accordingly, the panel reasoned that NJDEP did not exceed its authority in crafting the EJ rules because the department applied the EJ Law to a facility located in a zero-census block that immediately and directly borders the overburdened community. Furthermore, NJDEP committed to updating its list of overburdened communities at least every two years to maintain accuracy.

Alleged Violations of Administrative Procedure Act

Appellants also argued that the Administrative Procedure Act (APA) requires NJDEP to issue the EJMAP and technical guidance document through formal rulemaking procedures, rather than release them as guidance documents. The three-judge panel rejected that argument, noting that both publications meet the APA exception, as they are publicly available and assist the regulated community in complying with the EJ Law, as opposed to imposing any requirements or standards that the regulated entities must follow. The panel also concluded that the EJ Law expressly authorizes NJDEP to publicly issue a technical guidance document separate from instructing the agency to engage in rulemaking.

Recommendations for Impacted Facilities

Companies with facilities subject to the EJ rules should be transparent and proactively engage with the community early and often, including before they even initiate the application process. Early engagement and collaboration help the community better understand the technical aspects of a company's proposal and allow the company to identify and understand community concerns before they are raised publicly. When completing their environmental impact statements, companies are well advised to highlight how they have historically benefitted or are expected to benefit the surrounding community. Given the technical complexities involved in preparing an application, companies would also be well advised to engage an environmental consultant, as well as a public relations or government affairs consultant, to assist in the process.

Our team of environmental and government affairs practitioners are ready to assist. For more information and guidance tailored to your specific situation, please contact the author or any attorney with FBT Gibbons' [Environmental Practice Group](#).

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