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Environment & Energy

New Jersey Debates 'Overburdened' in Environmental Justice Rule

By Zach Bright

Deep Dive

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- Industry pushes back on 'overburdened' definition
 - Equity groups advocate to keep rules strong
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A draft of landmark environmental justice rules has New Jersey manufacturers and labor groups saying too many community members would be considered overburdened by pollution.

For environmental justice advocates, that's the point.

In five public hearings in July, the New Jersey Department of Environmental Protection heard scorn and praise for its stricter permitting proposal for pollution-emitting sites. If approved as drafted, the state would have the country's strongest environmental justice rules for permitting—a model for other states, advocates said.

Under the department's proposal, facilities such as landfills and incinerators would have to complete environmental justice impact statements. They could be denied permits if built in "overburdened communities," unless those sites "serve a compelling public interest," according to the draft.

Those communities are defined as having 35% or more low-income households, 40% or more minority or tribal residents, or 40% or more limited-English households. In total, the definition covers about half the state's population—more than 4.6 million people.

"Pockets of high pollution across New Jersey have become concentrated in predominantly minority and low-income communities" and are a product of existing environmental laws' lack of justice considerations, Sean Moriarty, deputy commissioner of the state's environmental department, said in one of the July hearings.

'Compelling Public Interest'

Industry and labor representatives said the "overburdened communities" classification paints with too broad of a brush and stymies development that could deter companies from setting up shop in the state.

"In plain terms, this means the type of economy we're trying to attract, such as advanced manufacturing and supply chain logistics, will be halted entirely," said Daniel Ortega, a representative of the Engineers Labor-Employer Cooperative.

Opponents of the draft proposal expressed a desire to see the exemption—a "compelling public interest"—expanded to consider the economic gain and job opportunities that power plants, waste management sites, and other kinds of facilities could bring.

"We're only looking at one side of the ledger of potential harm and ignoring the benefits that come from a number of these facilities—the economic benefits," said Raymond Cantor, the New Jersey Business & Industry Association's vice president of government affairs.

Public comment on New Jersey's permitting rules will close on Sept. 4. If the permitting draft is adopted, employment opportunities and tax revenue from such facilities won't be considered in granting exemptions, according to the draft rules.

A 84-megawatt gas plant in the works from the Passaic Valley Sewerage Commission was criticized by community members who said it should be subject to the environmental permitting draft rules after their adoption. Gov. Phil Murphy (D) had postponed a permitting vote on the \$180 million site, ordering an environmental review under a 2021 administrative order.

The plant would be in Newark's Ironbound neighborhood, a multi-ethnic, largely working class area named for the rail, highways, and industry that border it. For community members in such places, activists said more is on the line.

"It is not about just jobs," said Kim Gaddy, national environmental justice director for Clean Water Action. "It is about health of the members of this community, and all frontline EJ communities in the state of New Jersey and in this nation."

The environmental rules to fully consider community impacts up for debate were created after Murphy signed S. 232 in September 2020. The legislation launched the rulemaking from then until June, when the draft was released to the public.

At the federal level, the Environmental Justice for All Act (H.R. 2021) would make cumulative air and water pollution impacts central to environmental permitting processes. It cleared the House Natural Resources panel in July, after being introduced by Committee Chair Raul Grijalva (D-Ariz.) in March.



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'The Nation Is Watching'

New Jersey Assemblywoman Britnee Timberlake (D), a primary sponsor of S. 232, said industry shouldn't get a possible escape hatch.

"Tying in and saying an economic public interest is a giant loophole that will kill children," Timberlake said. "It will kill adults. It will kill our elders."

Each year, more than 17,000 deaths in New Jersey are attributable to air pollution, according to an April 2021 environmental study on deaths from fossil fuel air pollution published in Environmental Research. Advocates hoping to preserve the strength of the environmental justice rules said they also would cut down on health care costs that pollution brings.

"The nation is watching," said Marcus Sibley, Environmental and Climate Justice Chair for the NAACP New Jersey State Conference. "But what they're looking to see is—is it symbolic? Are we really going to close the loopholes?"

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