

New Jersey's Environmental Justice Legislation: The Focus on Major Source Permit Applications Might Impact Property Values

Article By:

Maribel N. Nicholson-Choice

Last month, [I wrote about the "Environmental Justice for All Act,"](#) a bill that proposes a finding that vulnerable populations are disproportionately burdened by environmental hazards. New Jersey is following the federal environmental justice debate, passing historical environmental justice legislation in both the House and Senate, where it is currently awaiting Governor Phil Murphy's approval. This bill requires the New Jersey Department of Environmental Protection (DEP) to evaluate environmental and public health stressors of certain facilities on "overburdened communities" when reviewing major pollution source permit applications, such as, but not limited, to landfills, gas-fired power plants, large sewage treatment plants, and scrap metal facilities, and medical waste incinerators.

Within two months of the effective date of the legislation, DEP must publish and maintain a list of "overburdened communities" (as defined by a statutory formula) on the agency's Internet website. The agency must consider the potential environmental and public health impact of proposed applications located in an overburdened community. This environmental justice permit review process mirrors the traditional National Environmental Policy Act (NEPA) process in that the applicant must prepare an environmental justice impact statement that assesses the potential environmental and public health stressors associated with the proposed or expanded facility. In addition, the agency must consider the cumulative impact of the proposed permitted activity on existing conditions located in or affecting the overburdened community.

The apparent impact of this legislation on the regulated community is that an otherwise permissible activity might still be denied if there is a finding of disproportionate impact of the proposed regulated activity on an overburdened community. The bill also provides certain public notice and hearing requirements to allow the overburdened community an opportunity to be heard prior to the issuance of any permit.

2020 has brought a renewed focus on social justice issues so that we should expect to see more consensus, state-sponsored environmental justice legislation that require agencies to evaluate, not only permitting decisions, but also siting and cleanup decisions which all could impact property values.

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