

NJDEP Meeting on how the public processes for air permits and the new EJ Law works together

9/15/23

- NJDEP Depts. In attendance
 - Office of Environmental Justice (OEJ)
 - CCI liaison(s)
 - Bureau of Stationary Sources
 - Air Compliance
 - Office of Permitting and Project Navigation (OPPN)
- Context: Want to get a better understanding of EJ rules around Air permitting – public processes specifically

The Gist:

- Admirative Order (AO): [Administration Order No. 2021-25](#) – Directed DEP staff to meet legislative intent of New Jersey's EJ law while implementing regulations were being developed
 - (EJ Rules effective April 17, 2023... so these notes are in regards to permitting between 9/20/23 and 4/17/23)
 - Applicants needed to have public info session in public newspaper, etc.
 - Needed to post hearing
 - 60-day open comment period unless there is a request to extend that
 - Q: Who can request and extension and how?
 - Written requests with reason through OPPN
 - Can also be sent to OEJ
 - Anyone at NJDEP should be able to forward a request for an extension to the right place
 - In addition to newspapers, applicants were encouraged to post in libraries, online, etc.
 - Request applicants to post on their websites
 - Need to record (digitally record or have a stenographer) and post recording publicly
 - Need to post location of meetings and have a contact person for public comments
 - Q: what if they are out of compliance on some level? Who can raise alarms and how? Does NJDEP monitor closely? Are there examples of these folks having missteps yet?
 - OPPN guides applicants through the process
 - No one has tried to make shortcuts yet

- NJDEP is not responsible for the truth of what they are saying; NJDEP tries to get everything in layman's terms being truthful; Expect them to be good neighbors
 - Written response to comments is required to provide clarity and insights
- [EJ Law/ rulemaking.](#)
 - Encourage community involvement on projects that may have a burden on already overburdened communities
 - There is an increase/ no net stressors on impacts assessment to determine if this facility/ permit request necessitates the activation of the EJ rule
 - More robust public notice period: 90 days notice/ comment period
 - Must be sent out to people who live close by
 - Q: Will facilities have to list all the stressors?
 - Yes, all stressors are listed that their facility impacts under the permit
 - Ex: PM 2.5... "we anticipate this change will increase 2.5 by X amount"?
 - Depending on what their permit is for, that may be the listing of a stressor for PM 2.5
 - NJDEP looks at what they were permitted for and what the increased amount would be
 - If not a [Title 5 facility](#), and it's a renewal permit, then EJ law does not apply
 - 7 other categories for EJ trigger other than air permits (see page 3 [of this FAQ](#))
 - Definition check:
 - [Air Permit Renewals](#): no change from what the facility is doing
 - [Air Permit Expansion](#) has to do with increasing stressors
 - NJDEP provides the facilities with Advice on how to engage community orgs.
 - Will be putting forward guidance on how to do effective outreach coming soon!
 - In addition: Applicant prepares an EJ Impact Statement (EJIS) when there will be increased public stressors
 - Q: what threshold is "increased public stressors"?/ is it quantitative?
 - If community is already under EJ or if the increase would get them into that category
 - Info is available on the [EJ Map](#)

Links and Contacts:

- environmentaljustice@dep.nj.gov is a good catchall place to email concerns and requests
- [NJDEP| Environmental Justice | Attend a Meeting](#)
- [ej-rule-frequently-asked-questions.pdf \(nj.gov\)](#)
- [EJ Flow chart \(nj.gov\)](#)

Questions:

- What does "administratively complete" mean?

- To be administratively complete: NJDEP has to make sure that the necessary steps are taken so that info such as who it is for, where, what equipment, etc. is all collected so that they can start a technical review
 - Can take a couple days to a couple weeks
- Does the permitting dept. determines if the industry responses to public comments are adequate / acceptable?
 - Permitting subject matter experts review industry responses, if anything is askew (inconsistencies, inadequate, etc.), NJDEP requests clarification before the responses are in final draft form
- How often will the list (stressors or chemical list) be updated because it is not all inclusive?
 - 26 stressors now: they are the appendix to the rule
 - To change them, we would need to do a change to the rule (intensive process)
- Does DEP plan to have staff members to observe testimony? Previous experience at public hearing got contentious- yelling, security concerns, etc. Stenographer may not capture this. Couldn't they record meeting?
 - Applicants had option to do it in the community or online
 - Required to host meeting in community with hybrid option
 - Must record OR transcribe meeting to be posted
 - Online NJDEP attends, in person less likely... it is their intention to attend these meetings
 - NJDEP is tasked with seeing to the law, but the EJ rule specifically applies to the applicant
- What triggers a permit application by a smaller company whose impacts to air quality may be more local?
 - Certain types of facilities and certain permits that require going through the EJ process (and if its in an EJ community)
 - If not one of those, not subject to the rule
 - Trigger does not have to do with size of facility
- In the future can DEP make applicates hold public hearing for each permit instead of allowing them to group 3 permits on one application with one public hearing?
 - In regard to how it is handled under the EJ rule: they are grouping them together to provide full context of their work
 - Wouldn't get full picture if these were separate meetings, you would lose cumulative impacts
- Are separate, additional hearings required under the program the permits are under, aside from the EJ process, or does the EJ process replace any hearings that would normally be held? By allowing facilities to combine three hearings into one, it means hundreds of extra pages for people to read and respond to, and the public has a limited number of minutes to speak to three times as much, which is not fair.
 - EJ does not replace hearings that are required under the permit application law
 - Want to have EJ process upfront as they inform the permit hearings
 - From an air perspective: EJ side is separate from air

- Air hearings driven by NJDEP Division of Air Quality, Bureau of Stationary Sources
- Q: Is there a threshold of number of requests to get a hearing? And how is the public to know when to be requesting a hearing?
 - There is not so much of a threshold but if there is significant interest
 - At least since Danny Wong had been in the Bureau of Stationary Sources, they have required the facility to require a public meeting
 - When: can reach out to NJDEP to request notifications for a certain permit
 - [My Community Corner](#)... dots on all the facilities and can get info on all existing permits, pending permits
 - Also [NJDEP| Environmental Justice | Attend a Meeting](#) lists them and you can sign up for alerts
- How can the community address truck traffic concerns? Who does the community go to with these concerns like trucks going through the neighborhood at all hours of the night/day?
 - Perfect time would be in the public info session for the EJ process
 - What if there are no upcoming meetings? What if there wasn't enough outreach to let people know about the meeting?
 - We think there is a built in solution: having the meetings be hybrid
 - Send comments to NJDEP to make sure it is included as part of a public record: environmentaljustice@dep.nj.gov
- Is Host Community/ Overburdened Community a defined term? ex: same neighborhood as the facility, municipality, etc.
 - Overburdened community is highly defined by the rule
 - **Overburdened Community:** Any census block group, as determined in accordance with the most recent United States Census, in which:
 - at least 35 percent of the households qualify as low-income households;
 - at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or
 - at least 40 percent of the households have limited English proficiency. ([EJ Law](#))
- How would you describe the most helpful type of public comments from your perspective? Can you provide examples of public comments that have resulted in permit conditions or denial?
 - When under administrative order, NJDEP does not have authority to deny permits
 - That got things started while worked out EJ rule
 - Under EJ rule: conditions can be set on a permit; can only deny when there is a *disproportionate impact that cannot be avoided* (and it is a new permit)
 - Do not have legal authority to deny a renewal permit... can only put on conditions
 - Substantive comments that get at the meat of how the facility is impacting further burdening the community ... explaining in a coherent way why the actions will raise concerns

- Targeted rationalized comment/ question around why they are getting permit
 - Suggest an alternative that applicant hasn't thought about
 - Alternative route, hours of operations to avoid impacts, etc.
- Covanta doesn't have a baghouse, after dozens of years. Want guarantees does the community have that they will comply? They tied bag house to permit to burn liquid waste.
 - Bag house can be a control device as a result of the EJ process
 - When they go through an expansion, could be a condition that is added
 - They are actually in the process of doing this now... remove ESTs and replace with baghouses
- NJEJA: these topics are still being discussed in public forums/ learning opportunities
 - How to re-permit
 - How to do public participation
 - Truck count with Morgan Village circle on October 19th- reach dyna@njeja.org to get involved with other community members about the issue of trucks
- Q: will there be a notification process to let involved community members know about conditions?
 - Look at [attend a meeting link](#)
 - Can see decision document, watch hearing, etc.
 - Will receive an email when something has been added to that page
 - [New Jersey Department of Environmental Protection - Destination \(govdelivery.com\)](#)
- Reporting of the stack house test: is there any way that this can be changed from yearly to more regularly?
 - From a permitting standpoint, a Title 5 facility must stack test every 5 years and prior to the renewal
 - Just now NJDEP is looking for them to do it every year
 - It is a matter of scheduling ; hard to get it done given everyone that needs to be in place without running into logistical issues
 - Environmental concerns can be reported to DEP help line: 1-877-927-6337 (1-877-WARN-DEP)
 - 24 hours a day, 365 days a year
- Are companies able to appeal decisions made on permit conditions?
 - Yes
- During business hours, NJDEP does routine air quality monitoring
 - Enough calls to DEP hotline might make them come at night time
 - Certain criteria that would require an after hours response
- Briefly, what does the appeal process entail and who makes final decision?
 - Just like any other permit, applicant can appeal and go through administrative appeal; Office of Legal Affairs judge makes decision
 - Apelet can make final decision

- By the next CCI meeting: should know when/where NJDEP air quality monitoring station will be moved