



May 21, 2021

Via E-mail

Shawn LaTourette, Acting Commissioner (shawn.latourette@dep.nj.gov)
Sean Moriarty, Chief Advisory for Regulatory Affairs (sean.moriarty@dep.nj.gov)
Department of Environmental Protection
401 E State St
Trenton, NJ 08625

New Jersey Environmental Justice Law Rulemaking: Compelling Public Interest Addendum Comments

Compelling Public Interest Exception

The cumulative impacts law requires several steps to be completed before an application for a new pollution permit is considered for the compelling public interest exception. First, it must be determined if the proposed facility is to be located in an overburdened community (census block group) as defined by the law. If the relevant census block group does fall into the overburdened community category then an environmental justice (EJ) analysis must be performed and incorporated into the required EJ impact statement. If the EJ analysis determines that granting the permit would contribute to adverse cumulative environmental and public health stressors that are higher in the prospective host block group than in other block groups in the state (county or other geographic unit) then the application will usually be denied. However, before denial of the permit application, the application can be considered for the compelling public interest exception. Consideration of the compelling public interest determination occurs only AFTER the completion of the EJ Impact Analysis and the determination by the state that, upon review of the analysis, the facility would in fact contribute to impacts in the host overburdened community that are higher than in communities used for comparison.

Facilities that will qualify for the compelling public interest exception should be very few since the exception should be narrowly construed. Consideration of what is deemed "compelling" should be limited to those facilities whose purpose reflects a significant contribution to the host community, despite the higher impact determination. DEP's analysis should not consider any other factors, such as a municipality's approval of a facility or economic considerations. The facilities that would satisfy such an exception should include *only* the following types of facilities:

Municipal or neighborhood scale food waste composting facilities: in combination with other efforts this type of facility should, among other benefits, help to significantly reduce the use of incineration.

Small to medium scale (i.e institutional, neighborhood, municipal) food waste anaerobic digesters: these facilities cannot be associated with sewage treatment plants, or otherwise cannot be industrial-scale operations designed to produce methane for export.

Public water infrastructure: this type of facility would include sewage treatment plants and combined sewage overflow infrastructure. Even though our society as a whole needs these types of facilities, it should be ensured that any new infrastructure which falls in this category that receives an exception under the cumulative impacts law is needed by the overburdened block group in which it would be located for a beneficial purpose, such as flood mitigation or improving climate resiliency.

Photovoltaic Arrays or On-Shore Wind generators and related infrastructure: renewable energy installations that benefit the local host community and help to displace fossil fuel energy generating units would qualify for consideration. Along with these facilities, consideration can also be given to the infrastructure related to wind or solar energy production such as renewable battery storage or microgrids, charging stations for light, medium and heavy duty electric vehicles, and electrification infrastructure needed for non-road and port related equipment.

Any facility that does not fall in the above specified categories would NOT be considered for a compelling public interest exception.

Respectfully,

Ironbound Community Corporation

New Jersey Environmental Justice Alliance

Clean Water Action

Earthjustice