

NEW JERSEY ENVIRONMENTAL JUSTICE BILL (S232)

October 19, 2021
Dr. Nicky Sheats, Dr. Ana Isabel Baptista
Northeast Diesel Collaborative Partners Meeting



OVERVIEW

- Overview of cumulative impacts + environmental justice in NJ
- Key elements of the EJ Bill
- Rulemaking Process



CUMULATIVE IMPACTS

Figure 1: Relationship Between Cumulative Impact and Percent Minority

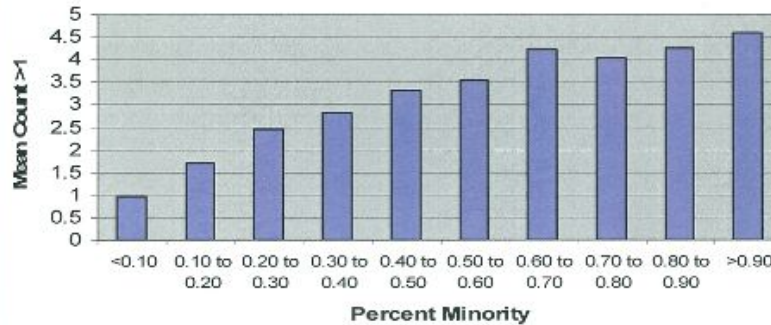
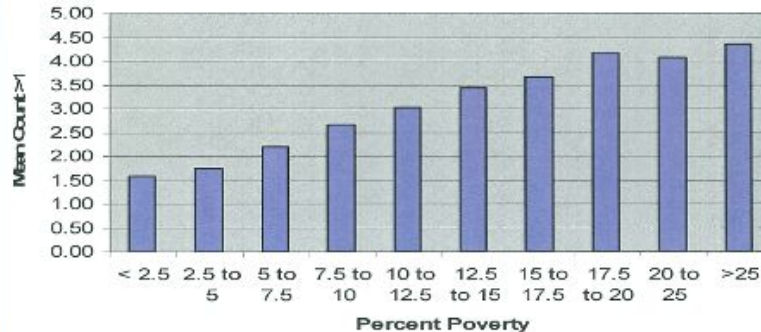


Figure 2: Relationship Between Cumulative Impact and Poverty



- Grouped all block groups based on percent minority and poverty
- Calculated average cumulative impact score for combined groups
- Cumulative impact scores increase steadily with increasing percent minority and poverty

SUBSTANCE OF S232



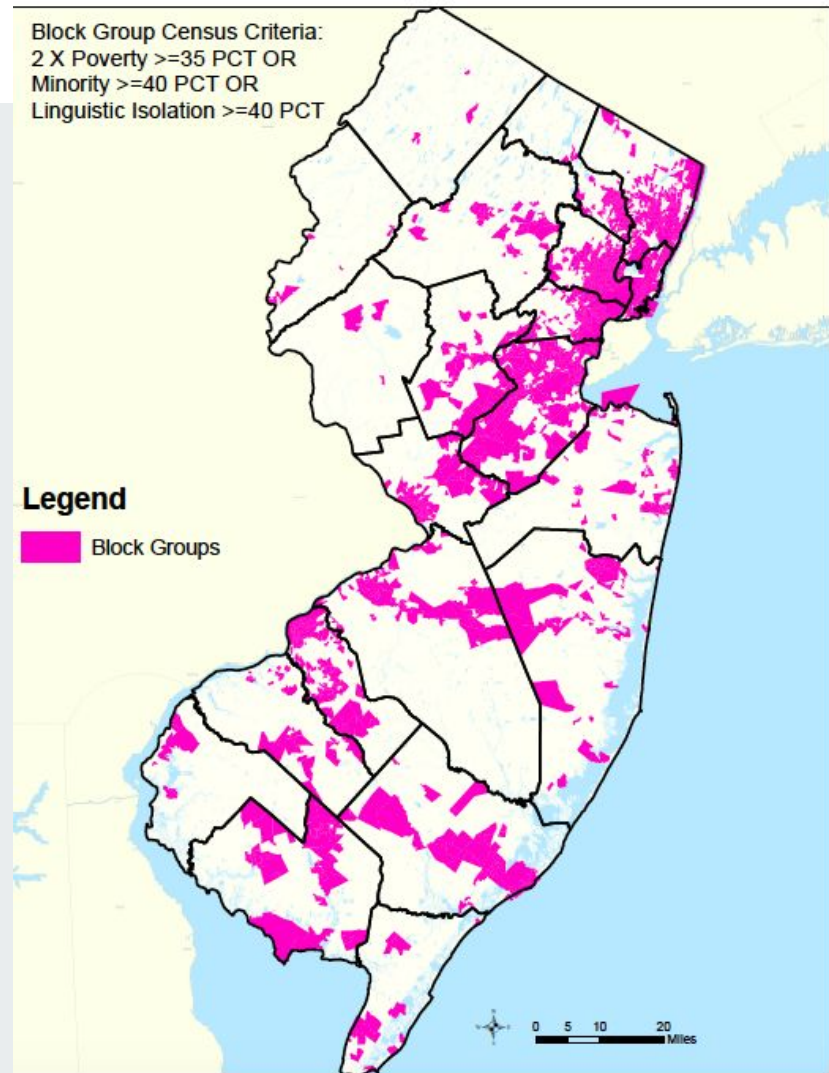
Key provisions of the bill

- ❖ Defines “**overburdened communities**” as those with significant Of Color, non-English speaking or low income populations.
- ❖ Requires major polluters seeking certain permits in overburdened communities to develop “**Environmental Justice Impact Statements**” (EJIS) with substantive detail, meaningful public input, and real DEP oversight including technical assistance to impacted communities.
- ❖ Requires and empowers DEP to **deny or condition** certain permits due to disproportionate impacts based on the EJIS.

OVERBURDENED COMMUNITIES

Definition of overburdened community: means any census block group, as determined in accordance with the most recent United States Census, in which at least:

- (1) 35 percent of the households qualify as low-income households;
- (2) 40 percent of the residents identify as minority or as members of a State recognized tribal community; or
- (3) 40 percent of the households have limited English proficiency



CRUCIAL ELEMENTS OF THE NJ BILL



Definition of facility:

“facility” to mean any: (1) major source of air pollution; (2) resource recovery facility or incinerator; (3) sludge processing facility, combustor, or incinerator; (4) sewage treatment plant with a capacity of more than 50 million gallons per day; (5) transfer station or other solid waste facility, or recycling facility intending to receive at least 100 tons of recyclable material per day; (6) scrap metal facility; (7) landfill, including, but not limited to, a landfill that accepts ash, construction or demolition debris, or solid waste; or (8) medical waste incinerator.

Threshold for CI

The DEP “shall” deny a permit for a new facility upon a finding that approval of the permit, as proposed, would, together with other environmental or public health stressors affecting the overburdened community, cause or contribute to *adverse cumulative environmental or public health stressors* in the overburdened community that are *higher than* those borne by other communities within the State, county, or other geographic unit of analysis as determined by the DEP.

Application to Renewals & Expansions

The bill provides that the DEP may apply conditions to a permit for the expansion of an existing facility, or the renewal of an existing facility’s major source permit, upon a finding that approval of a permit or permit renewal, as proposed, would, together with other environmental or public health stressors affecting the overburdened community, cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the State, county, or other geographic unit of analysis as determined by the department.

Environmental & Public Health Stressors

- After considering data availability, data quality, appropriate geographic scale, quantifiability, and marginal value, we are now considering 31 stressors.



Geographic Point of Comparison

- **Statutory Context**

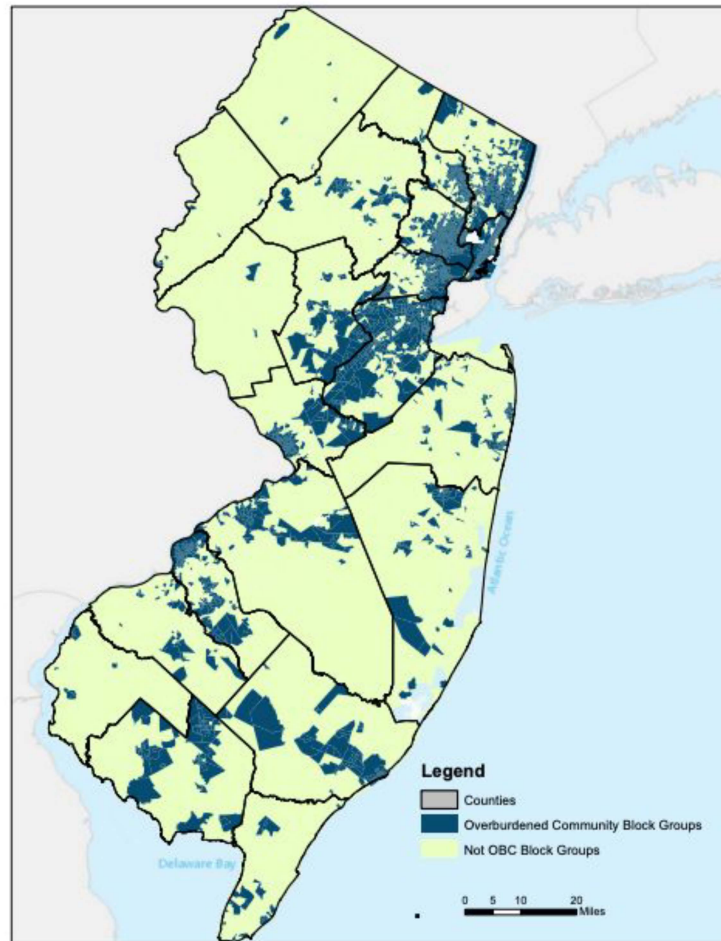
- The Bill requires the Department to determine whether environmental or public health stressors are “higher than” those borne by other communities within the State, county, or other geographic unit of analysis as determined by the department.

- **Options Considered**

- State
- State Non-Overburdened Areas
- County
- County Non-Overburdened Areas
- **Hybrid of above approaches (most like USEPA, who uses multiple geographic areas)**

- **Proper Comparison Percentile**

- **50th (higher than)**
- 80th (USEPA uses as a flag for initial screening)



Potential Process: 3 Steps

- **Step 1 – Initial Screen:** Using the publicly-available data (including NJDEP’s EJ mapping tool), determine whether an Overburdened Community is subject to adverse environmental and public health stressor levels that are higher than the appropriate geographic point of comparison.
- **Step 2 – Environmental Justice Impact Statement (EJIS):** Through the development of an Environmental Justice Impact Statement, including a public comment period and hearing in the Overburdened Community, an applicant assesses whether and how the proposed facility will cause or contribute to adverse stressor levels in the Overburdened Community that are higher than the appropriate geographic point of comparison (Step 1). If so, the applicant would propose measures to avoid or eliminate those impacts. If the Applicant cannot avoid causing or contributing to those “higher” stressor levels, a disproportionate impact is present.

Step 1: Initial Screen (potential direction)

Determine Combined Stressor Total (CST):

- Determine if each stressor in an OBC is higher than the most protective geographic point of comparison (State or County Non-OBC).
 - “Higher than” means greater than the 50th percentile.
- Sum the number of stressors higher than geographic comparison for an OBC for the CST.
 - E.g.: If 18 of the 31 stressors in an OBC are higher than the geographic comparison result, the total for that OBC is 18. The Combined Stressor Total for that OBC is 18.

Determine if Combined Stressor Total is higher than Geographic Point of Comparison

- Determine if OBC’s CST is higher than the most protective geographic point of comparison (State or County Non-OBC) at the 50th percentile (second level of statistical analysis)
 - E.g.: If an OBC’s CST is 18 and its geographic point of comparison is 15, that OBC is subject to “adverse cumulative environmental or public health stressors that are higher than” the geographic point of comparison.

Step 2: EJIS Process (potential direction)

Where CST is lower than geographic point of comparison:

- Applicant prepares an EJIS, conducts a public comment period, and holds a public hearing in the Overburdened Community to assess whether a facility will contribute to existing environmental and public health stressors such that it creates stressor levels that are higher than the appropriate geographic point of comparison.
 - If no: Avoids a disproportionate impact, and Applicant is authorized to move forward with environmental permitting without additional conditions.
 - If yes: Applicant must complete supplemental materials.

Where CST is or will be made higher than the geographic point of comparison:

- Applicant prepares an EJIS *plus supplemental materials*, conducts a public comment period, and holds a public hearing in the Overburdened Community to assess how the facility will contribute to existing environmental and public health stressors in the Overburdened Community. Applicant assesses contributions to stressor levels that are already higher than the geographic point of comparison and ensures that the facility will not create new stressor levels that are higher than the geographic point of comparison.

Step 2: EJIS Requirements (potential direction)

- Analysis of the environmental or public health stressors **already borne** by the Overburdened Community as a result of existing conditions located in or affecting the Overburdened Community;
- Determination of environmental or public health stressors that are **higher than** the geographic point of comparison;
- Analysis of the potential environmental and public health stressors associated with the proposed new or expanded facility or existing major source; and an
- Analysis of individual stressors and how the potential environmental and public health stressors associated with the proposed facility will **cause or contribute to** stressors in the Overburdened Community that are **higher than** those borne by other communities within the State, county, or other geographic unit of analysis.
- If an applicant seeks to demonstrate that a new facility meets a **Compelling Public Interest** – how the facility is of the type that serves a Compelling Public Interest in the Overburdened Community, including additional measures the applicant would propose to protect public health and improve baseline environmental and public health stressors in the Overburdened Community.
- Notice through multiple channels to reach individuals in the community.

Stressor	Geo. Point of Comp.	Existing Conditions in OBC	Potential Change in OBC Percentile	Unavoidable Impact in OBC
NATA Diesel Cancer Risk	A	B	Increase	Yes
Age of Housing	Y	Z	No change	N/A

QUESTIONS



RESOURCES:

NJ Environmental Justice Alliance : <http://www.njeja.org>

NJDEP, Rulemaking Presentations,
<https://www.nj.gov/dep/ej/policy.html>

Find the full language of the bill at
https://www.njleg.state.nj.us/2020/Bills/S0500/232_11.HTM