



Environmental Justice Task Force

Comments on DEP Rules for EJ Law

July 5, 2021

Introduction

Unitarian Universalist FaithAction NJ is a faith-based nonprofit that envisions a just New Jersey free from systemic oppression and greed, full of engaged people committed to each other, to our communities, and to the earth. Our comments reflect this vision along with the Unitarian Universalist principles of the inherent worth and dignity of every person; justice, equity and compassion in human relations; and respect for the interdependent web of all existence of which we are a part.

We would first like to thank the DEP for their careful attention to the issues and the needs of overburdened communities in New Jersey and the hard work they have put into drafting the rules. We support most of the proposed rules. However, we believe that additional stressors should be considered and that compelling public interest needs to be more strictly defined.

We comment on three areas below:

1. Geographic Units of Comparison
2. Stressors
3. Compelling Public Interest

Geographic Units of Comparison

The EJ Law protects designated overburdened communities from "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." The rulemaking has asked, what is the appropriate geographic unit of analysis? The state? The county? Or just the non-overburdened areas of the state or county?

While comparing to only a county might mean comparing to an area that is comparatively overburdened relative to the entire state, counties that are better off than the state as a whole also have overburdened communities. The more local comparison would provide a more accurate assessment of the situation of these communities.

We strongly support the current proposal from the DEP to use the more protective standard of the two, whether county or state. In other words, if the level of a stressor in the overburdened community is higher than that of the county, use the county, and if the level is higher than that of the state, use the state.

We also believe that the unit of comparison should be chosen independently for each stressor, because the sources of stress will vary widely by community. Thus if the unit of comparison is that state for some stressors, it could still be the county for others.

Stressors

Health Stressors

While the list of stressors includes most of the areas of concern, we are disturbed that no health indicators are included as stressors. It is important not to just use data because it is available and to ignore other data that is harder to get. This is like the drunk searching for his keys under the lamp post, not because he lost them there, but because that's where the light is.

The single most important goal of this law is to protect the health and quality of life of the local population, and measuring non-health stressors is at best an indirect indicator of health outcomes and at worst unrelated to health outcomes.¹

Instead, we believe the department should make every effort to get health data in the following areas:

- * mortality
- * hospital visits
- * emergency department visits

from

- * all causes, excluding accidents and consequences of violence (self-harm or violent crime)
- * asthma
- * cancer
- * chronic obstructive pulmonary disease
- * heart disease
- * lung cancer

These are all known to be related to ozone and PM2.5 and if the risk of these diseases is already high in a community, there can be no excuse for locating a facility there that would increase the risk.

If the numbers are so small that privacy might be violated by revealing them, it should be acceptable to use 0 when doing comparisons.

Trees

We were pleased to see that included under Health and Environmental Stressors is stressor #24, "lack of tree canopy". We would like to reinforce its inclusion with the following information. A recent analysis by American Forests produced a "tree equity score" which shows that overburdened communities nationwide have significantly less tree canopy than more wealthy and white communities, and they feel the negative impacts as a result. A New York Times article Since When Have Trees Existed Only for Rich Americans? (Sunday July 4th),

¹ The NATA Diesel Cancer Risk is the closest to a health indicator, but that's simply a model of the likely risk from known air toxics. It doesn't give the actual health outcomes.

reports on the Tree Equity Evaluation as follows: “Communities with too few trees are feeling the consequences this summer, as a heat wave has swept through much the Pacific Northwest. The average temperature can vary up to 10 degrees between places with trees and those without. And where there is more heat, there is more death: Heat Kills more people in the United States than any other kind of extreme weather. We can expect up to a tenfold increase in heat-related deaths in the Eastern United states by the latter half of the 2050s and at least a 70 percent increase in the largest cities nationwide by 2050.

Yet the trees we do have prevent approximately 1,200 heat-related deaths annually in American cities.

There is an emerging body of research from the US Forest Service and others that has found a direct relationship between tree canopy today and discriminatory policies of the past.”

Trees provide many other benefits, some particularly significant in overburdened communities. They clean the air, filter and reduce stormwater runoff, and provide wildlife habitat. But some of the most compelling evidence of community benefit is the relationship of trees to stress reduction, increase of student test scores, positive health outcomes of patients recovering in hospitals, and reduction of some types of crime.

We applaud DEP for your recognition of the critical importance of tree canopy and green space to the quality of life for people living in overburdened communities.

Cumulative Stressor Total

Finally, the technique proposed by the department for determining whether the total level of stress is too high - the Combined Stressor Total - is confusing, unnecessary, and unjustifiable. It requires adding incomparable things and weighting them all equally. Furthermore, it ignores the actual level of each stressor - one stressor may be far higher than average, while another is only barely above, and yet they are weighted equally.

The CST method is not only unreasonable and unjustifiable, in adding unlike things, and treating them all as equally stressful regardless of their individual levels, but it is nearly incomprehensible. Because of that, any DEP decision based on this method will be inappropriate, will lack credibility, and will promote confusion.

We propose instead that stressors that would be impacted by the addition of the proposed facility be considered, and if any one of them would be increased by the facility, the resulting level of the stressor should be compared to that of the geographic point of comparison. If it's higher, the permit should not be granted.

Compelling Public Interest

The DEP proposal for modeling compelling public interest after the rules for the Freshwater Wetlands Protection Act is quite good, but we believe that should be one additional condition to address the purpose of the EJ Law, which is that there is no other reasonable location for the facility.