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NJDEP Adopts Environmental Justice Rules

On April 17, the New Jersey Department of Environmental Protection (NJDEP) finalized its highly anticipated environmental justice (EJ) rules in the New Jersey Register. These regulations, which implement the EJ legislation that Gov. Phil Murphy signed into law in 2020, introduce new procedural and substantive requirements to which NJDEP and applicants for certain industrial facility permits must adhere with respect to various activities in historically overburdened communities. The eight types of facilities covered by the EJ rules are:

- major sources of air pollution (g., gas-fired power plants and cogeneration facilities);
- incinerators and resource recovery (aka "waste to energy") facilities;
- sewage treatment plants that process more than 50 million gallons of sewage per day;
- transfer stations and solid waste facilities;
- recycling facilities that receive at least 100 tons of recyclable material per day;
- scrap metal facilities;
- landfills; and
- medical waste incinerators, except those attendant to hospitals and universities.

The New Jersey Legislature and Murphy enacted A2212/S232, N.J.S.A. § 13:1D-157 et seq., in September 2020 for the stated purpose of protecting marginalized communities from disproportionate exposure to pollutants and other public health stressors. Released in June 2022, the NJDEP's initial language proposed for the EJ rules attracted hundreds of comments from members of industry and the public. The final rule requires a public hearing and the preparation of an environmental justice statement (EJS) whenever a covered facility is proposed in an overburdened community (OBC). N.J.S.A. § 13:1D-157 establishes the formula for identifying OBCs in New Jersey, which emphasizes local income levels, racial demographics and English proficiency. Significantly, the public hearing and EJS requirements pertain not only to new permit applications but also to permit renewals for existing facilities. Occurring amid a flurry of legislative and regulatory activity on multiple fronts, including recycling and per- and polyfluoroalkyl substances (PFAS), also known as "forever" chemicals, the NJDEP's adoption of the EJ rules marks yet another thread in the complex tapestry of environmental laws that many businesses must consider in order to operate in New Jersey. Should you have any questions about the implications of the adopted EJ rules for your business or about environmental law matters in general, please contact the authors of this advisory or any member of the Day Pitney environmental team.

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