



November 23, 2020

VIA ELECTRONIC MAIL

ejrulemaking@dep.nj.gov

New Jersey Department of Environmental Protection

RE: CCNJ/SRIN PRE-PROPOSAL COMMENTS ON NJDEP EJ RULEMAKING EFFORT

To Whom It May Concern –

On behalf of our members, the Chemistry Council of New Jersey (CCNJ) and Site Remediation Industry Network (SRIN) appreciate the opportunity to provide the following pre-proposal comments to the New Jersey Department of Environmental Protection (NJDEP) on the environmental justice (EJ) rulemaking focus areas, as presented at the October 22, 2020 virtual initial public information session. Please note that these initial comments are limited based on what information has been shared so far. CCNJ/SRIN respectfully request that the NJDEP follow through with their statement about committing to scheduling future focus group and stakeholder meetings, and remain engaged with stakeholders on this rulemaking effort.

While CCNJ/SRIN sees the value in open dialogue and cooperation between manufacturing facilities and the communities in which we operate, we encourage the NJDEP to provide flexibility in the permitting process so that businesses can continue to operate, expand, remain competitive, and bring benefits to the residents of New Jersey.

Aligned with the EJ principles of fair treatment and meaningful involvement, we have a long-held view that community input is paramount to being a good corporate citizen. Many of our CCNJ and SRIN member companies participate in Community Advisory Panels (CAPs) where industry, community members, first responders, and elected officials come together to communicate and be transparent with one another. It is our belief that CAPs are a successful way to address community concerns and share information about nearby manufacturing facilities. For both the impact assessment and public hearing processes, the NJDEP should recognize and incentivize those companies that are already engaged with their communities in a meaningful and effective way. CCNJ/SRIN believe that a simplified and flexible process will be more productive compared to a straight command and control mandated approach.

It is important to note that many companies find it a challenge to operate in New Jersey already, and additional hurdles, costs and uncertainties will further hamper our efforts to bring investment and product lines into the state. Companies not only compete against other companies, but facilities within companies compete against each other; facilities in New Jersey are competing against facilities in Pennsylvania, Ohio, and Michigan, which do not have similar hurdles to face, when their companies are deciding to continue operations and expand a facility. Companies in New Jersey are also competing

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with imports from companies operating abroad. New Jersey needs to keep these critical companies that provide essential services operating in our state. Investment and product lines are what drive job growth, a valuable asset to any community. Investing in existing facilities should be encouraged rather than discouraged because communities benefit from modernized operations, as well as the construction and permanent jobs created by new local investment.

Below are CCNJ/SRIN's initial responses to the NJDEP's questions posed during the October 22, 2020 stakeholder meeting:

EJIS Impact Statement (EJIS)

The NJDEP should clarify the content, coverage, and applicability of this EJIS requirement. The regulated community submits many applications for permits which do not result in any environmental impact on the communities in which they operate. In many cases, these permits can actually decrease the environmental impact of an existing operation (e.g. replacement of older equipment with newer, more efficient technology). Therefore, CCNJ/SRIN recommend an exclusion for projects that result in no additional environmental impact or actually decrease environmental impacts. The NJDEP should set impact thresholds below which an EJIS is not required, and clarify that applying for a permit required to perform preventative maintenance or emergency activities does not trigger this EJIS requirement.

Focusing on air quality and Hazardous Air Pollutants (HAPs), we would like to highlight the already established requirement and process that is in place to evaluate stressors embedded in the permit renewals and modification process¹. These permitting actions include risk screening or comprehensive modeling of emission points for all HAPs or air toxics in a facility's permit. The results of modeling are compared to the NJDEP health thresholds which are developed from numerous validated sources (e.g. USEPA's Integrated Risk Information System, the California Environmental Protection Agency Toxicity Criteria Database, and the Agency for Toxic Substances and Disease Registry's "Minimal Risk Levels for Hazardous Substances"), and the ultimate impact of a project must be below these vetted health benchmarks for the permit to be approved.

The NJDEP should recognize this established process and ensure that the EJIS process utilizes current resources and efforts as much as possible. Moreover, any evaluation of stressors should be based upon sound science, including validated (i.e. peer-reviewed), publicly available data, and recognized and validated analytical methodologies to ensure consistency in the EJIS process. Finally, the evaluation of stressors should include evaluation of not only possible increases, but also reductions associated with a project or permitting action.

Evaluating cumulative impacts is much more challenging without an established scientific method or existing validated community metrics. The NJDEP should ensure that any cumulative impact assessment follows a predictable and efficient process that is supported scientifically and proven in practice. Also, it should be noted that requiring a facility to evaluate cumulative impacts in an area necessitates making assumptions about the other impacts on a community from a wide variety of sources outside the control of the applicant, including personal habits and behaviors of community members, transit authorities and shipping companies, along with the impacts associated with other potentially competing facilities. Absent validated, publicly available data, and a proven cumulative impact assessment method, these assumptions and public statements about cumulative impacts are speculative at best and pose a risk of unnecessary legal and competitive claims. The EJIS process should be crafted

¹ <https://www.state.nj.us/dep/aqpp/risk.html>, "Risk Screening Tools, Estimating Risk from Air Toxics"

so as not to require disclosure of confidential business information or create a risk of legal claims or business risk. CCNJ/SRIN recommend that the NJDEP maintain a public database of identified environmental and public health stressors for each overburdened community as the Department is in a better position to collect and make available this information. In addition, this approach and sharing of information puts everyone on equal footing regarding what data to consider when preparing the EJIS.

Public Process

The NJDEP should consider and integrate existing CAPs into any new public engagement process being considered, as they already provide a means of engaging communities. As already discussed, CAPs are created for the express purpose of engaging those communities most closely connected to and impacted by industrial facilities. To encourage CAPs as a robust form of community engagement, the NJDEP should allow CAPs meeting a defined level of engagement to suffice as an acceptable public process in lieu of public hearings. In addition, CCNJ/SRIN are committed to reinvigorating CAP participation and expand their services to more EJ communities in New Jersey.

Environmental and Public Health Stressors

When considering a concentrated area of air pollution, the NJDEP should take into account background sources impacting a facility's baseline, such as ozone and particulate air pollution transport from upwind states. The NJDEP's Division of Air Quality already has a network of Air Monitoring Stations that should be used to establish this baseline.

In addition to air quality, there are also land use, waste, water, and noise stressors that will likely be considered. CCNJ/SRIN recommend that the NJDEP evaluate their own programs to identify the gaps within and determine what already exists as an established process that is effective in considering and addressing local and regional issues. For example, there is a metric in place for Total Maximum Daily Loads (TMDLs) to prevent water quality impacts; there are also area-wide Water Quality Management Plans, Solid Waste Management Plans, delineated freshwater wetlands, and threatened and endangered species areas, to name a few. It is critical that the Department make as much public information available as possible for the proper assessment of current conditions in the vicinities of existing or proposed businesses and waste management facilities. Though we support the NJDEP's efforts on this, we do not want to negatively affect or dismiss anything that is currently effective in minimizing environmental impact.

The NJDEP should utilize validated, publicly available data for any evaluation of stressors. Its analysis should be a standard model to ensure consistency across the industry and across the state, and incorporate actual fence-line monitoring data that is readily available, in lieu of relying on model assumptions. As noted above, we recommend that the NJDEP maintain and make available a public database of stressors that need to be considered.

Permit Application Evaluation

The NJDEP should define and/or provide examples of "conditions that avoid or reduce stressors" that the Department will accept to meet the requirements of the statute. A full evaluation of a permit must include stressors which are reduced or avoided.

Since multiple stressors are considered as part of the cumulative impact analysis during the evaluation

of a permit, CCNJ/SRIN believe that a reduction of any one of the multiple stressors should be considered as an option to mitigate the overall cumulative impact to the identified community.

In addition, in order to be equitable, the cumulative impact analysis should include benefits as well as stressors. If the NJDEP solely focuses on a sum of all negative stressors, that impact assessment would not be balanced. The NJDEP EJ Guidance Document identifies that EJ communities suffer not only from cumulative environmental stressors but also from a lack of “environmental and public health benefits,” which include access to quality parks, healthy food, quality housing, tree canopies, and much more. The NJDEP should clearly define the universe of conditions that may be applied to permit holders and allow consideration for reduction of environmental stressors as well as improvements to environmental and public health benefits. Measures that exceed (i.e. do better than) regulatory requirements should also be considered as part of the cumulative assessment of stressors that may be present near covered facilities. Our member companies have very strong sustainability goals and environmental/health and safety policies. They also participate in the Dow Jones Sustainability Indices, Carbon Disclosure Project (CDP) Index, NJDEP Environmental Stewardship Initiative, and American Chemistry Council Responsible Care Initiative, and meet the International Organization for Standardization (ISO) 14001 (Environmental Management Systems) and ISO 18001 (Health and Safety Management Systems) standards. Strong consideration also needs to be given to the potential adverse social and economic impacts at local and state levels when potentially impacting a facility’s ability to remain competitive.

When determining whether a facility will serve a compelling public interest in the community, the NJDEP should consider overall benefits of the project, including economic benefits, at the city and county levels. Tax revenue and jobs provided to people in the community, including direct, indirect, and induced, are a significant public benefit. Community service and community support such as volunteerism and grants to improve services or quality of life in the city and/or county should also be taken into account.

Regarding the Title V permit application shield, the NJDEP should clarify that the EJ process can run concurrent with the permit renewal process. CCNJ/SRIN are concerned about the burden that the regulated community will have to take on if the EJ process is required to be completed in order for a renewal application to be considered administratively complete. To be eligible for the “application shield,” which prevents a Title V permit from expiring during review of a renewal application, the renewal application must be submitted and deemed administratively complete 12 months prior to expiration. Given the uncertainties of the EJ process, and the long timeframes expected for meaningful engagement and NJDEP review, requiring the EJ process to be completed as a prerequisite for obtaining the application shield would create unnecessary logistical complications, unpredictability, and much longer timeframes for the Title V permitting process. Also, to avoid unnecessary burden for the communities, the NJDEP, and regulated community, the EJ process for future Title V renewals should pick up from the first EJIS, public process and engagement, and not start over every 5 years. After completing the evaluations for the first Title V renewal that triggers the EJ process for a given facility, subsequent evaluations should only consider increased environmental impacts that have occurred since that first evaluation.

Outreach & Engagement

CCNJ/SRIN support the interest of meaningful engagement with overburdened and all communities. As described earlier, we request that the NJDEP considers integrating CAPs into this rulemaking stakeholder process and also utilizes validated, publicly available sources of information.

In addition to our comments in response to the NJDEP's specific questions, CCNJ/SRIN would also like to provide feedback regarding what constitutes a permit trigger. The NJDEP should clarify that only permits for projects/facilities that increase environmental impact or renewals of major source permits qualify. The NJDEP should clarify what constitutes an "expansion" with some type of significance trigger and that only permits associated with an actual increase in actual pollution levels are included; we do not support a trigger that would include a facility expansion that does not result in an emission increase. Also, there should be some relief for those sites that have elected to permit themselves as major sources but have actual emissions below the regulatory thresholds; again, historical actual emissions and increases in actual emissions to major thresholds should be the trigger.

CCNJ/SRIN and its members remain committed to being solution providers that help the state reach EJ goals that are achievable and not arbitrary, while protecting the investments made by business of chemistry companies employing more than 40,000 people in New Jersey.

We would like the record to reflect our support of any comments submitted separately by members of CCNJ and SRIN.

Thank you for your consideration of our comments on this very important rulemaking effort. We look forward to participating in the upcoming series of smaller, more focused discussions that the NJDEP had highlighted, as well as other stakeholder meetings to be scheduled prior to the publication of the final EJ rule proposal. If I can be of further assistance, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to be 'D Hart', with a long horizontal flourish extending to the right.

Dennis Hart
Executive Director