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Recent Developments in Environmental Justice

New Jersey continues to push for community participation on environmental issues

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In May 1998, Commissioner Robert Shinn of the New Jersey Department of Environmental Protection created an Environmental Equity Task Force to address issues being raised about “environmental justice” (EJ) around the state. Since then, EJ has become a matter of great interest in New Jersey to regulators, activists and the industrial community as it continues to evolve, develop and impact communities throughout the state.

DEP’s formal EJ program first began to take shape in 1999 and 2000, when the Environmental Equity Advisory Council (EEAC), a reconstituted version of the Task Force, commenced with drafting DEP’s Environmental Equity Policy, later embodied in DEP Administrative Order 2000-01, dated Jan. 25, 2000.

Then, in 2001, New Jersey was the first state in the nation to propose regulations requiring community participa-

tion on environmental issues. Specifically, the community outreach proposed in the regulations involved the establishment of a community advisory group during a facility’s permitting process comprised of religious leaders, ethnic leaders, local elected officials and others in the community potentially affected by the facility at issue. That group was to provide a forum for communications regarding facility operations and community concerns. After an extensive public comment process and a change in state administration, however, the regulations were never adopted.

Instead, in February 2004, newly elected Governor James McGreevy signed Executive Order #96, which created a broad shift in New Jersey’s EJ program to one that incorporates multimedia and a cross-agency approach to the issue. A prominent feature of the executive order was the creation of an Environmental Justice Task Force composed of senior management personnel from the office of counsel to the governor, the attorney general’s office, DEP, and the departments of human services, community affairs, health and senior services, agriculture, transportation, and education, with the option for participation by other state agencies as the need arises. It is this EJ Task Force, and subsequently created task forces, that promise to have the most important influence on New Jersey EJ policy for years to come through petitions, enforcement initiatives and newly pro-

posed regulations.

Petitions/Enforcement Sweeps

The executive order signed by then-Gov. McGreevy establishes a procedure by which any community in the state — or, more specifically, any group of 50 or more residents and workers within a community — can file a petition with the EJ Task Force, asserting either disproportionate adverse exposure to environmental health risks or disproportionate adverse effects.

Once the EJ Task Force receives and accepts a petition, it develops an Action Plan for the community at issue, in consultation with the community and any relevant governmental agencies. The Action Plan can address a number of factors that affect the community’s health or environment and clearly outline steps to be taken to reduce existing environmental burdens and a timeframe for implementing those steps.

In June 2005, DEP released its responses to EJ petitions submitted by community residents and workers throughout the state in 2004, and announced that actions will be taken to address environmental and public health concerns raised by residents in Ringwood, Newark and Linden, with follow-up investigations to occur in Jersey City and Roselle. As reported on DEP’s Web site, in the coming months the EJ Task Force is slated to work with communities and the EEAC to develop

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Action Plans to address those concerns. For example, the Ringwood Neighborhood Action Association expressed interest in evaluating the health effects of an incomplete assessment and cleanup of contamination at the former Ringwood Mines Superfund Site. Similarly, organizations from Newark's West Ward petitioned regarding potential exposure to airborne asbestos and lead from demolition activities at the former Pabst Brewery site in the area. Finally, residents of Linden voiced concerns about such diverse topics as the protection and preservation of area wetlands, the lack of public participation on environmental issues, and rising asthma rates in the city of Linden. Other petitions by community groups in New Jersey – Roselle, Long Branch and Camden – are still pending.

One key component of the EJ Task Force's Action Plans has been, and will likely continue to be, enforcement initiatives. In fact, as part of DEP's EJ Policy, enforcement sweeps have been conducted in various communities around the state, even in the absence of a petition and/or Action Plan. Facilities in the community are typically given advance notice of these sweeps, which in turn provides them the opportunity to voluntarily bring their operations into compliance in advance of any official actions by DEP.

Such sweeps may well become a regular feature of EJ Action Plans, to secure compliance in a manner that DEP describes as "voluntary." A prominent example of these enforcement sweeps in action took place in Camden, subject of one of the first petitions submitted to the DEP and for which an Action Plan is being developed, but which has already been the focus of a number of EJ-related initiatives. That sweep found 98 facilities in violation of various environmental requirements, 63 of which were considered by DEP to be "major." DEP is also conducting an Air Toxics Pilot Project in Camden, the first study of its kind in New Jersey, to learn more about sources of air pollution. The results of, and required actions in response to this

study, have not yet been officially provided or addressed by DEP. However, regulated entities and industry associations have raised concerns about the scope of this air toxics review and the factors considered by DEP in conducting this study.

Additional Regulatory Actions

Most recently, on Sept. 15, 2005, DEP released its Proposed Strategy for Public Participation in Site Remediation & Waste Management. This Strategy was developed by the Public Participation Task Force, which was convened by the Department in May 2003 to examine current practices and possible new directions for public participation in site remediation and waste management issues.

In sum, this new Site Remediation Strategy is aimed at increasing public participation in the remediation of contaminated sites by notifying tenants, adjacent property owners, and "sensitive populations" of remedial activities and requiring the submission of continuous progress reports to those same groups if a remedial action takes longer than two years. In particular, this strategy proposes the adoption of new regulations that will require parties conducting remediations to identify and advise DEP of "sensitive populations," which shall be defined as including residences within 200 feet, school and day care centers within 200 feet, parks and surface water bodies within 200 feet, and "Environmental Justice Petition Neighborhoods."

Following the identification of these "sensitive populations," corresponding notice will be required to be provided to these individuals, and the leaders of these groups and municipalities. Moreover, the party conducting the remediation will also be required to provide public notice through "two out of three" possible notification options: (1) posting a notice in a local newspaper; (2) hosting a public information session; or (3) posting a sign on the property. Finally, while rulemaking

with a period for consideration and comment by those potentially affected by these proposed changes is required, the strategy also sets forth changes and requirements which DEP states will only require policy changes, therefore allowing immediate application. For example, these types of changes will provide enhanced public access to information through DEP's Web site, public information programs and presentations. As a result, the DEP will need to increase its communications with local health officers and the DEP's site remediation group will need to work directly with its EJ Program to conduct public and educational outreach in EJ Petition communities.

Conclusion

New Jersey was one of the first states in the country to actively address EJ with its original Task Force in 1998. Since then, the numerous community petitions and the ongoing *South Camden Citizens in Action v. DEP* litigation have increased the focus on EJ issues in New Jersey, as well as the difficulty of addressing all EJ concerns simply through existing environmental regulatory programs. Thus, as evidenced by the recently released Site Remediation Strategy, DEP's EJ Policy may have far-reaching impacts on New Jersey industrial interests, large and small, as they attempt to obtain, renew or modify permits. The EJ Policy will also challenge the regulated community to make decisions with respect to the remediation of contaminated sites, and to operate their businesses in an atmosphere of heightened scrutiny. At the same time, it is important to have public participation to address "environmental justice" concerns, and that participation should adhere to the inter-agency approach set forth in the EO. In this way, EJ can be reviewed through a careful balancing of interests with a diverse group of stakeholders, including potentially affected communities and regulated entities alike. ■