

Environmental Client

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New Jersey Announces Major New Environmental Justice Initiative

by Brian S. Montag and Catherine A. Trinkle

On Wednesday, February 18, 2004, New Jersey's Governor McGreevey issued a sweeping new Executive Order designed to address environmental justice issues in the State through an array of initiatives, from a newly created "Environmental Justice Task Force" to a process by which communities allegedly subject to environmental injustices can petition the EJ Task Force for targeted action. Like the environmental justice regulations proposed under the previous administration and then withdrawn earlier in Governor McGreevey's term, this Executive Order will likely have a far-reaching impact on New Jersey industrial interests, large and small, as they attempt to obtain, renew, or modify permits; make decisions with respect to the remediation of contaminated sites; and operate their businesses in an atmosphere of heightened enforcement attention.

As a preliminary matter, the Executive Order restates New Jersey's commitment to providing "meaningful opportunities for involvement to all people, regardless of race, color, ethnicity, religion, income, or education level" in "decisions that may affect environmental quality and public health." In that manner, it echoes the language of previously issued state and federal policy statements on environmental justice, including a 2001 memorandum by former Governor Whitman while Administrator of the Environmental Protection Agency (EPA), a 2000 Administrative Order by former Department of Environmental Protection (DEP) Commissioner Robert Shinn, and a 1998 Executive Order by former President Clinton. The Executive Order issued by Governor McGreevey on Wednesday,

however, also incorporates multi-media and a cross-agency approach to environmental justice. A prominent feature of the Executive Order, for example, is the creation of an Environmental Justice Task Force (the EJ 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.

Effective immediately, the Executive Order directs this inter-agency EJ Task Force to take action designed to ensure fulfillment of the State's commitment to environmental justice, both by exercising existing statutory and regulatory authorities to their fullest possible extent and by recommending legislative and regulatory changes as the administration deems necessary. As part of that effort, the EJ Task Force will have the assistance of a reconstituted version of DEP's existing Environmental Justice Advisory Council, now officially composed of fifteen (15) members, predominantly from grassroots and faith-based community organizations.

Moreover, the Executive Order establishes a procedure by which any community in the State – or, more specifically, any group of fifty (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. The meaning behind this distinction between exposures and effects is unclear at present but could signify an intent to account for – and impose additional regulatory requirements based on – poor health in a particular community, regardless of whether it results from environmental exposures or personal habits, such as smoking.

The EJ Task Force is then to “identify a set of communities from the petitions filed, based on a[un]defined selection criteria” and meet with the petitioners, who can choose whether that meeting takes place privately or through a public meeting. After the meeting and based on further consultation, the EJ Task Force is to develop an Action Plan for each community at issue that addresses environmental, social and economic factors affecting health or the environment. In effect, the EJ Task Force has been directed to both reduce existing environmental burdens and avoid or reduce the imposition of additional environmental burdens. The EJ Task Force is then to monitor the implementation of its Action Plans and issue a report on the status of each within the next eighteen (18) months.

Finally, in addition to the collective inter-agency efforts of the EJ Task Force, the Executive Order directs the individual state agencies involved to work together on specific issues. For example:

- DEP and the Department of Health and Senior Services (DHSS) are to develop Spanish-language websites to communicate public health and environmental information to the State’s Hispanic population;
- DEP, DHSS, and Department of Agriculture are “to develop and issue appropriately protective fish consumption advisories” and otherwise communicate the risks of fish consumption in contaminated areas through education and public information programs;

- DEP and the Department of Transportation – in an apparent effort to address soot, arsenic, and mercury issues – are to “develop a coordinated strategy for reducing the public’s exposure to fine particulate pollution in affected communities, particularly from diesel emissions from stationary and mobile source”; and
- DEP and DHSS are to conduct “chronic health surveillance, health monitoring, [and] data gathering” in communities selected by the EJ Task Force for the development of Action Plans.

The Executive Order represents a significant and expansive change in the McGreevey administration’s policies on environmental justice, which will likely impact development, permitting and brownfield projects throughout the State.

BRIAN S. MONTAG

bmontag@kl.com
973.848.4044

CATHERINE A. TRINKLE

ctrinkle@kl.com
973.848.4052

FOR MORE INFORMATION about this Alert or Kirkpatrick & Lockhart’s environmental practice, please contact the authors or one of the K&L office contacts below. You may also visit our website at www.kl.com.

Michael DeMarco	Boston	617.951.9111	mdemarco@kl.com
Robert Everett Wolin	Dallas	214.939.4909	rwolin@kl.com
R. Timothy Weston	Harrisburg	717.231.4504	tweston@kl.com
Frederick J. Ufkes	Los Angeles	310.552.5079	fufkes@kl.com
Daniel A. Casey	Miami	305.539.3324	dcasey@kl.com
William H. Hyatt, Jr.	Newark	973.848.4045	whyatt@kl.com
Warren H. Colodner	New York	212.536.3912	wcolodner@kl.com
Richard W. Hosking	Pittsburgh	412.355.8612	rhosking@kl.com
Edward P. Sangster	San Francisco	415.249.1028	esangster@kl.com
Barry M. Hartman	Washington	202.778.9338	bhartman@kl.com



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