

# GOVERNOR MURPHY'S PLANS FOR ENHANCED ENVIRONMENTAL REGULATION AND ENFORCEMENT IN NEW JERSEY

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## **U.S. Policy and Regulatory Alert**

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Following New Jersey Governor Philip D. Murphy's re-election this November, his Administration shows all signs of entering the new term with an aggressive environmental agenda. In the past four years, Governor Murphy has promoted a forward-looking environmental enforcement plan that has lead the nation on several key environmental issues. A look at the recent developments within the administration suggests these next four years will continue that trend at an even quicker pace, particularly in the areas of environmental justice, climate change, and enforcement policy.

## **ENVIRONMENTAL JUSTICE**

During his first term in office, Governor Murphy signed Executive Order 23, which directed the New Jersey Department of Environmental Protection (NJDEP) to develop guidance for all state departments to incorporate environmental justice (EJ) considerations into their actions.

On 18 September 2020, Governor Murphy elevated the state's EJ policies to a new phase by signing the landmark Environmental Justice Law, N.J.S.A. 13:1D-157 (EJ Law). The law requires NJDEP to evaluate environmental and public health impacts of specific facilities in "overburdened communities" when reviewing certain permit applications, and authorizes NJDEP to deny or condition certain permits based on the agency's assessment. NJDEP is now in the process of developing regulations to implement the EJ Law, and expects to propose regulations in the coming months for formal public comment, with rules adopted during the second half of 2022.

In the interim, on 22 September 2021, NJDEP Commissioner Shawn LaTourette announced the issuance of Administrative Order No. 2021-25, which took immediate effect. The Administrative Order allows for NJDEP to apply some key components of the EJ Law without formal regulations, including promoting public participation by extending the public comment periods and requiring that specific facilities hold a mandatory public hearing in a manner intended to maximize participation. The Administrative Order applies to all permit applications for facilities in overburdened communities, as defined under the EJ law, that have open or unexpired comment periods.

Moreover, keeping good on Governor Murphy's promise under Executive Order 23, NJDEP also announced that it would be launching a series of new EJ initiatives to ensure community engagement in agency decisions that affect overburdened populations. This includes a year-long series of community participation sessions, the first of which was hosted by the Commissioner and Senator Troy Singleton. NJDEP will be expanding its Office of Environmental Justice, which is charged with leading the state's efforts to incorporate EJ considerations into

actions. With this expansion, NJDEP will also be revamping the Office of Environmental Justice's website, which presently hosts NJDEP's resources, projects, policies, and initiatives surrounding EJ.

## CLIMATE CHANGE

On 10 November 2021, Governor Murphy signed Executive Order No. 274, which establishes an interim greenhouse gas reduction target of 50% below 2006 levels by 2030. This Order is a step toward the Governor's ultimate goal of achieving an 80% reduction in greenhouse gas emissions by 2050, as outlined in his 2019 New Jersey Energy Master Plan.

In addition to a fast-tracked timeline, the Murphy Administration will continue to pursue its initiatives through the New Jersey Protecting Against Climate Threats (PACT) program. NJDEP launched this regulatory program in January 2020 to strengthen air pollution rules and help reduce future greenhouse gas. Since last year, NJDEP has hosted a series of stakeholder sessions to develop regulations for the program, known as Climate Pollutant Reduction (CPR) rules. NJDEP expects to adopt CPR regulations by 2022, which will govern and seek to reduce emissions of carbon dioxide and short-lived climate pollutants. Also as part of the PACT program, NJDEP is on track to adopt regulations incorporating climate change considerations, such as sea level rise, into its land resource protection rules by the end of this year.

## ENFORCEMENT

Finally, NJDEP will be appointing its first Chief Enforcement Officer. This chief officer will lead a newly-created Office of Enforcement Policy in the Office of the Commissioner, which will oversee all enforcement policy at NJDEP. Historically, the Compliance and Enforcement Section has enforced its policies based on the media at issue (i.e., air, solid waste, water and land use, etc.). The creation of this new office will allow the separate enforcement programs to operate under one unified command. We can expect enforcement to become a top priority under this new structure, as NJDEP has already begun to issue more significant penalties and violation notices, along with initiating more lawsuits under some of the most stringent laws in the nation.

New Jersey-based facilities and operations should be aware of these sweeping developments under Governor Murphy's administration, and plan for enhanced environmental review, regulation, public participation, and enforcement over the Governor's next term.

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