



Fulfilling the Promise of the Civil Rights Movement with Environmental Justice

By Thomas Prol



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New Jersey Gov. Phil Murphy's April 20, 2018, Executive Order (EO) 23 set in motion one of the most far-reaching undertakings in his ambitious environmental agenda for the Garden State: implementing "Environmental Justice." In EO 23, Murphy stated that he was "strongly committed to leading an administration that ensures all New Jersey residents...are able to live and work in a healthy and clean environment, and have equal access to clean energy resources and other public programs..."¹

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Harking back to President Bill Clinton's Feb. 11, 1994, Executive Order 12898 entitled, "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,"² Murphy's EO 23 gave pointed instruction to the New Jersey Department of Environmental Protection (NJDEP or Department) to undertake specific tasks and "take the lead in developing guidance for all [New Jersey] Executive branch departments and agencies for the consideration of Environmental Justice in implementing their statutory and regulatory responsibilities."³ The gubernatorial directive mandated the insertion of "the issue of Environmental Justice [to] make evaluations and assessments in accordance with [NJDEP] guidance, in all Executive Branch actions."⁴

The Evolution of Environmental Justice

The interconnection of environmental degradation and poverty is not a new concept, having developed centuries ago in the industrialization era and eventually becoming so prominent in popular culture that it was the theme of the 1941 Best Picture Oscar® winner, "How Green Was My Valley."⁵ (The movie even bested "Citizen Kane" that year.) The linkage became more pronounced during the Civil Rights Movement of the 1950-60s, where activists embraced it as one of many social justice undercurrents and themes, including in Martin Luther King's 1967 "Poor People's Campaign."⁶

NJDEP has catalogued a "Timeline of Key Environmental Justice Milestones" on its website, including noting the first reported use of the term "Environmental Justice" in 1991 when the "First National People of Color Environmental Leadership Summit" convened and adopted, "The Principles of Environmental Justice."⁷ That report unified the environmental justice movement and catalyzed a plan to achieve governmental action on it.

In 1994, the United States Environmental Protection Agency (USEPA) launched the Environmental Justice Small Grants (EJSG) Program which, to date, "has awarded more than \$37 million in funding [up to \$100,000 per grant] to over 1500 community-based organizations, tribal governments, and Native American organizations working with communities facing environmental justice issues."⁸ The EJSG Program supports and empowers communities working on solutions to local environmental and public health issue.⁹

Thereafter, subsequent administrations of Governors Jim McGreevey and Jon Corzine engaged executive action while NJDEP Commissioner Bob Martin proposed administrative actions on the issue in 2004, 2009 and 2016, respectively.¹⁰ No corollary legislative action followed, however. It was not until 2017 that Sen. Cory Booker introduced the first federal Environmental Justice bill.¹¹

Defining Environmental Justice

While the definition of Environmental Justice has evolved over the past several decades, even being referred to as "environmental racism" by some activists, its underlying premise has remained constant: imposing social justice in environmental policy, permitting and decision-making. The USEPA defines

Environmental Justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."¹²

By "fair treatment," USEPA and NJDEP state that, "no group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies."¹³ Those agencies define "meaningful involvement" as where "people have an opportunity to participate in decisions about activities that may affect their environment and/or health; the public's contribution can influence the regulatory agency's decision; community concerns will be considered in the decision-making process; and decision makers will seek out and facilitate the involvement of those potentially affected."¹⁴

According to NJDEP findings, New Jersey's low-income communities and communities of color have historically "been subject to a disproportionately high number of environmental and public health stressors, including pollution from numerous industrial, commercial,

Governor Murphy's Executive Orders Related to Environmental Justice

Executive Order 23: Addresses environmental justice issues in New Jersey's urban communities, Jan. 20, 2018

Executive Order 89: Establishes statewide climate change resilience strategy, Oct. 29, 2019

Executive Order 100 (PACT): Murphy unveils Energy Master Plan and signs executive order directing sweeping regulatory reform to reduce emissions and adapt to climate change, Jan. 27, 2020

Executive Order 221: Establishes the Office of Climate Action and the Green Economy, Feb. 16, 2021

and governmental facilities located in those communities and, as a result, suffer from increased adverse health effects including, but not limited to, asthma, cancer, elevated blood lead levels, cardiovascular disease, and developmental disorders.”¹⁵

The term “Environmental Justice” has two distinct facets: a social justice movement and an interdisciplinary body of social science. The more common usage, that of a social movement, focuses on the equitable distribution of environmental benefits and burdens. The other use refers to an interdisciplinary body of literature and study that includes theories of the environment and justice; environmental laws, policies and policies and their planning and implementations; governance for development and sustainability; and political ecology.¹⁶

New Jersey As a National Leader in Environmental Justice

Even the global COVID-19 pandemic, simultaneous Public Health Emergency and State of Emergency declarations and statewide shutdown orders did not slow the momentum of Murphy’s Environmental Justice effort. On Sept. 18, 2020, Murphy signed the New Jersey Environmental Justice Law, N.J.S.A. 13:1D-157, *et seq.* (EJ Law). It became effective immediately.¹⁷

Prior to its passage, with the help of Assemblyman John McKeon, Murphy and then-NJDEP Commissioner Cath-

arine McCabe penned a joint July 17, 2020 op-ed in *The Star-Ledger*, decrying the “40-plus years of [shortcomings in] implementing our environmental laws” and demanding that “New Jersey must seize this opportunity to deliver on the promise of environmental justice for all.”¹⁸

The EJ Law codified in statute the governor’s ambitious environmental agenda as it sought to right the wrongs of New Jersey’s legacy of environmental problems. It imposed social justice in environmental permitting, policies, and regulatory decision-making. As discussed *infra*, among other concerns, it required NJDEP and permit applicants to consider the history of the burden unfairly borne by disenfranchised people and to evaluate environmental and public health stressors of certain facilities on overburdened communities.

The EJ Law recited several legislative and public policy findings at N.J.S.A. 13:1D-157, specifically targeting the “impact of pollution on overburdened communities” and seeking to “correct this historical injustice” of a disproportionate share of environmental burden being foisted in low-income and minority communities. As stated in the law’s preamble, the Legislature declared that all New Jersey residents “have a right to live, work, and recreate in a clean and healthy environment.”¹⁹ It continued, “historically, New Jersey’s low-income communities and communities of color have been subject to a disproportionately

high number of environmental and public health stressors, including pollution from numerous industrial, commercial, and governmental facilities located in those communities.”²⁰

Addressing health impacts specifically, the EJ Law seeks to undo the sins of the Garden State’s environmental past where “the State’s overburdened communities have suffered from increased adverse health effects...[and] children are especially vulnerable to the adverse health effects caused by exposure to pollution, and that such health effects may severely limit a child’s potential for future success” and “the adverse effects caused by pollution impede the growth, stability, and long-term well-being of individuals and families” in those communities.²¹

Calling out “the legacy of siting sources of pollution in overburdened communities,” the statute decries the impact the inequality of such siting has on poor communities, saying it “continues to pose a threat to the health, well-being, and economic success of the State’s most vulnerable residents; and that it is past time for the State to correct this historical injustice.”²² Accordingly, the Legislature mandated that “no community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State’s economic growth,” requiring that those “overburdened communities must have a meaningful opportunity to participate in” facility siting

NJDEP Important Publications

NJ Climate Science Report
bit.ly/NJCScience

Global Warming Response Act 80x50 Report
bit.ly/NJ80x50

NJ Climate Change Resilience Strategy
bit.ly/NJCCRS1

NJ RGGI Strategic Funding Plan
bit.ly/njRGGIplan

NJ Energy Master Plan (2019)
nj.gov/emp

where there is a “potential to increase environmental and public health stressors,” thereby empowering communities to “limit the future placement and expansion of such facilities.”²³

The statute, at *N.J.S.A.* 13:1D-158, laid out eight definitions pertinent to the EJ Law’s requirements. Key among these are “environmental or public health stressors,” defined to broadly include concentrated areas of air pollution and conditions that may cause potential public health impacts, and “overburdened community” which is a Census block that contains at least 35% low-income households, 40% minority residents, or 40% limited English proficiency households.²⁴

Portending significant disruption under New Jersey’s environmental rule-making and permit issuance schemes, the statute required that NJDEP “publish and maintain on its Internet website a list of overburdened communities in the State” within 120 days of the EJ Law’s Sept. 18, 2020 effective date.²⁵ Further, the Department is required to “update the list of overburdened communities at least once every two years...[and] notify a municipality if any part of the municipality has been designated an overburdened community.”²⁶

NJDEP’s Aggressive Roll-out of EJ Under Commissioner LaTourette

On Jan. 19, 2021, three days after Shawn LaTourette was named Acting NJDEP Commissioner by Murphy, the Department published the statutorily required overburdened communities (OBC) list. It includes an EJ OBC mapping tool to identify whether a given facility or activity is in a block group identified as an OBC.²⁷ The full Overburdened Community site and related tools are found at nj.gov/dep/ej/communities.html.²⁸

Almost immediately following his formal June 14, 2021, appointment as NJDEP Commissioner, LaTourette seized on Murphy’s Environmental Justice mandate, issuing Administrative Order

(AO) 2021-25. The AO was intended “to provide guidance and certainty regarding the Department’s expectations for facilities located or seeking to be located in overburdened communities prior to adoption of implementation rules.” Moreover, NJDEP wanted to “ensure meaningful community engagement, a more thorough and complete assessment of facility impacts to environmental and public health stressors, and the implementation of appropriate measures to avoid or minimize adverse impacts.”²⁹

Commissioner LaTourette’s AO 2021-25 established six operative conditions for facilities seeking permits in overburdened communities (as each are defined under the EJ Law).³⁰ To the extent consistent with applicable law:

1. Public comment periods are to be no less than 60 days, extended from a standard 30 days, and shall be extended to 90 days upon request by a member of the overburdened community.
2. Public hearings will be mandatory and conducted in a manner consistent with the EJ Law to maximize public participation. This requires in-person hearings to be in the overburdened community unless appropriate alternative arrangements are necessary due to COVID restrictions.
3. During the extended public comment period, the Department encourages interested parties providing comment to provide information regarding existing conditions within the overburdened community and potential facility-wide environmental and public health stressors that could result in adverse impacts upon the overburdened community in the event of an approval.
4. Applicants are expected to respond to and address the concerns raised by individuals in the overburdened community during the public comment process and to conduct any additional analysis related thereto that the

Department deems necessary for its review.

5. The Department strongly encourages each applicant to engage directly with individuals in the overburdened community in advance of and in addition to formal public comment including providing relevant information related to facility-wide impacts.
6. Where permits or approvals may be issued, the Department will apply such special conditions as may be necessary to avoid or minimize environmental or public health stressors upon the overburdened community to the maximum extent allowable by law.

Conclusion

Environmental Justice incubated and developed in the crucible of the civil and human rights battles waged over centuries. It evolved quickly and significantly during the racial and ethnic rights activism in the 1960s to become the powerful statutory and regulatory tool for environmental concerns that we know and use. Under Murphy and LaTourette, New Jersey has developed quantifiable metrics and detailed requirements to end the unfair and discriminatory practices that disproportionately imposed environmental burdens on poor and minority communities. ■

Endnotes

1. nj.gov/infobank/eo/056murphy/pdf/EO-23.pdf
2. 59 FR 7629. Clinton’s 1994 EO 12898 directed federal agencies: “(1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify

- differential patterns of consumption of natural resources among minority populations and low-income populations.” In addition, EO 12898 crafted an environmental justice strategy framework with “a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.”
3. See EO 23, [nj.gov/infobank/eo/056murphy/pdf/EO-23.pdf](https://www.nj.gov/infobank/eo/056murphy/pdf/EO-23.pdf)
 4. *Id.*
 5. See [imdb.com/title/tt0033729/](https://www.imdb.com/title/tt0033729/)
 6. See, e.g., Martin, Emily, “How Martin Luther King, Jr.’s multifaceted view on human rights still inspires today,” *National Geographic Magazine*, Jan. 14, 2022 (stating, “King’s work continues to influence and inspire activism—particularly in the realm of environmental justice, as studies indicate that climate change disproportionately harms marginalized communities.”) at nationalgeographic.com/history/article/how-mlks-multifaceted-view-on-human-rights-still-inspires
 7. [nj.gov/dep/ej/docs/furthering-the-promise.pdf](https://www.nj.gov/dep/ej/docs/furthering-the-promise.pdf)
 8. [epa.gov/environmentaljustice/environmental-justice-small-grants-program](https://www.epa.gov/environmentaljustice/environmental-justice-small-grants-program)
 9. *Id.*
 10. See <https://www.nj.gov/dep/ej/docs/furthering-the-promise.pdf>
 11. *Id.*
 12. See [epa.gov/environmentaljustice](https://www.epa.gov/environmentaljustice) and <https://www.nj.gov/dep/ej/>
 13. *Id.*
 14. *Id.*
 15. See [nj.gov/dep/ej/](https://www.nj.gov/dep/ej/)
 16. See, e.g., Scheidel, A. *et. al.*, “Ecological distribution conflicts as forces for sustainability: an overview and conceptual framework.” *Springer Sustainability Science*, Oct 2017. [ncbi.nlm.nih.gov/pmc/articles/PMC6086280/](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6086280/)
 17. P.L. 2020, c. 92, § 1, effective September 18, 2020.
 18. See [nj.com/opinion/2020/07/gov-murphy-dep-its-time-to-make-good-on-our-promise-of-environmental-justice-opinion.html](https://www.nj.com/opinion/2020/07/gov-murphy-dep-its-time-to-make-good-on-our-promise-of-environmental-justice-opinion.html)
 19. *N.J.S.A.* 13:1D-157
 20. *Id.*
 21. *Id.*
 22. *Id.*
 23. *Id.*
 24. *N.J.S.A.* 13:1D-158
 25. *N.J.S.A.* 13:1D-159
 26. *Id.*
 27. [nj.gov/dep/ej/docs/njdep-ao-2021-25-environmental-justice.pdf](https://www.nj.gov/dep/ej/docs/njdep-ao-2021-25-environmental-justice.pdf); see also, [nj.gov/dep/commissioner/](https://www.nj.gov/dep/commissioner/)
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 30. [nj.gov/dep/ej/docs/njdep-ao-2021-25-environmental-justice.pdf](https://www.nj.gov/dep/ej/docs/njdep-ao-2021-25-environmental-justice.pdf)