

### 2025 Environmental and Energy Law Forecast

#### NEW JERSEY

##### **Anticipated Murphy Administration Response to Changing Federal Priorities**

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While the Trump administration is expected to focus its deregulatory efforts on climate policies advanced during the Biden presidency, Governor Phil Murphy has signaled an intent to remain committed to addressing the impacts of climate change in the State of New Jersey.

Historically, New Jersey has faced the direct effects of climate change, from devastating hurricanes and flooding to the state's most severe drought in 120 years this past summer. Murphy's governance has been marked by a stated commitment to enhancing the state's climate resilience, including setting a benchmark for New Jersey to reach 100 percent renewable energy by 2035. However, the [potential impact of a second Trump administration](#), particularly on infrastructure and clean energy projects that involve federal funding and approvals, is still uncertain.

In a recent press conference, Governor Murphy reaffirmed his commitment to upholding his environmental agenda in 2025 and beyond through state-led policies. The Governor stated that "now more than ever, New Jersey's commitment to combating and adapting to climate change is unwavering. Regardless of which administration is in power at the federal level, our state is not going to back down. We're going to do everything we can to reduce emissions, protect our precious environment and build a more sustainable future." Still, Governor Murphy made it clear that he intends to work with the Trump administration wherever possible, vowing to seize any opportunity to reach common ground.

##### **New Jersey Environmental Justice Initiative Reviews and Takeaways**

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It has been more than four years since the New Jersey Legislature enacted the [Environmental Justice Law](#), three years since the New Jersey Department of Environmental Protection (NJDEP) issued its administrative order establishing an interim environmental justice review process under pre-Environmental Justice Law authority, and almost two years since NJDEP finalized its environmental justice regulations, codified at N.J.A.C. 7:1C ([EJ Rules](#)). In that time, there have been more than seventy-five submissions to NJDEP under the administrative order and approximately seven under the EJ Rules. To date, NJDEP has only issued one environmental justice law decision, related to the Passaic Valley Sewerage Commission's

July 2, 2021 application to amend its Title V operating permit to authorize the construction and operation of an on-site emergency standby power generating facility.

Here are takeaways that can be gleaned from letters issued by NJDEP to date and the environmental justice law decision:

- Applicants should prepare for an extended timeline for permit issuance. It took NJDEP approximately three years from the date that the Passaic Valley Sewerage Commission submitted a complete application to render its environmental justice law decision, which now clears the way for NJDEP to continue to review and issue the permit modification.
- Applicants should begin engaging the community as early as possible to address community concerns up front. NJDEP has required applicants to restart the environmental justice review process following substantive changes made to an application in response to community input, restarting the process and adding further delay.
- NJDEP has issued at least three deficiency notices to applicants who failed to strictly comply with the EJ Rules. For example, in one deficiency notice, NJDEP found that the environmental justice impact statement was technically deficient, in part because it failed to discuss the information required by the EJ Rules in the order presented in the EJ Rules. In another, NJDEP found that the public meeting held by an applicant failed to comply with the EJ Rules because virtual participants were unable to see the applicant's presentation and had difficulty hearing the presenter and interpreter. Applicants should ensure that all EJ Rule requirements are met to avoid further delays.
- NJDEP imposed eleven special conditions in the environmental justice law decision for the Passaic Valley Sewerage Commission. These special conditions included, among others, providing advance notice to NJDEP and the Ironbound Community Corporation of certain specified events, decommissioning certain equipment, installing alternative energy sources, and submission of a semi-annual environmental justice compliance report. The decision specifies that any conditions imposed will apply not only to the immediate permit application, but to any permit or approval related to the facility. The authority for some of these conditions is not clear.

Additional environmental justice law decisions are likely to be forthcoming and may shed additional light on NJDEP's implementation of the EJ Rules.

Separately, there are two appeals of the EJ Rules pending before the Superior Court of New Jersey, Appellate Division, one of which our firm is handling, challenging many aspects of the EJ Rules as beyond the scope of NJDEP's statutory authority or as otherwise being arbitrary, capricious, and unreasonable. The appeals also challenge the EJ Rules and the Environmental Justice Mapping, Assessment and Protection Tool because they were promulgated in violation of the Administrative Procedure Act. The appeals have been fully briefed and are awaiting the scheduling of oral argument.

## **New Jersey's Site Remediation Program Changes to Expect in 2025**

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The New Jersey Department of Environmental Protection's Site Remediation Program advanced significant regulatory initiatives in late 2024 that will likely be finalized in 2025. The main initiatives are addressed below.

### **New Jersey Site Remediation Proposed Rule**

On October 21, 2024, the New Jersey Department of Environmental Protection (NJDEP) [published proposed amendments](#) to its Site Remediation Program (SRP), consisting of revisions to the Industrial Site Remediation Act rules, the Administrative Requirements for the Remediation of Contaminated Sites, Technical Requirements for Site Remediation, and the Heating Oil Tank System rules (Proposed Rule). In large part, the Proposed Rule implements 2019 legislative amendments to the Site Remediation Reform Act (SRRRA), incorporates amendments related to the 2021 Remediation Standards, and memorializes efforts to streamline and expedite the Remedial Action Permit (RAP) program, but also includes certain key changes to the SRP paradigm that have the potential to significantly impact the regulated community. Comments on the rulemaking proposal are due on January 31, 2025 with the rulemaking anticipated to be finalized sometime in 2025.

### ***Remedial Action Permit (RAP) Changes***

NJDEP is making various changes to its RAP program in an attempt to streamline and expedite the permitting process. Of most significance, the proposed regulations would require a permit for any engineering and institutional controls required to address indoor air concerns. In addition, NJDEP is proposing to issue a combined RAP for all impacted media requiring a permit (soil, groundwater, and indoor air), where separate permits are currently required. In support of this change, NJDEP has stated its belief that one combined permit would simplify biennial protectiveness evaluations and fee schedules for the regulated community. As a corollary of the proposed one permit paradigm, NJDEP is proposing to allow for additional permits that may be required after a RAP has been issued to be obtained through a RAP modification. The proposed regulations would also implement a program of five focused RAPs for commonly issued permits that are less technically complicated, potentially allowing NJDEP to expedite application reviews and permit issuance.

### ***Reporting Requirements for Prospective Purchasers***

The Proposed Rule would require prospective purchasers who discover the discharge of hazardous substances during due diligence to report the discharge to both the record owner of the property and to the NJDEP hotline (1-877-WARNDEP). Discharges must be reported by the prospective purchaser regardless of whether an LSRP conducted due diligence on behalf of the prospective purchaser, a significant change from the current approach.

The reporting trigger would now be included in the Administrative Requirements for the Remediation of Contaminated Sites at new NJAC 7:26C-2.4, stating:

1. When a person performs remediation as defined at N.J.A.C. 7:26C-1.3, including performing all appropriate inquiry in accordance with N.J.S.A. 58:10-23.11g, and obtains knowledge that a discharge has occurred at any location on a property, that person shall immediately notify the

Department by calling the Department's telephone hotline at 1-877-WARNDEP and shall notify the record owner of the property.

2. If a person who does not own the property is conducting all appropriate inquiry and that person has not discharged a contaminant at the property or is not in any way responsible for a contaminant discharged at the property, then that person shall not be liable for cleanup and removal costs of the discharge unless and until that person acquires the property.
3. Notwithstanding (a) or (b) above, whenever a person obtains knowledge that a discharge has occurred at any location on a property, that person shall immediately notify the Department by calling the Department's telephone hotline at 1-877-WARNDEP.

NJDEP's commentary on this section states that the reporting requirement is triggered when a person "discovers a discharge" during the course of AAI or otherwise "obtains specific knowledge of a discharge" thereby significantly broadening the scope of reportable discharges in New Jersey. The Proposed Rule makes clear that the prospective purchaser that discovers the discharge during due diligence is not responsible for cleanup and removal costs connected with the discharge unless and until that person acquires the property. This proposed rule change is likely to have a significant impact on property transactions.

### ***Indoor Air***

Consistent with the 2019 legislative amendments, the Proposed Rule reflects an effort by NJDEP to increase regulatory requirements for indoor air areas of concern (AOCs). First, the Proposed Rule establishes a requirement to establish an Indoor Air Notification Area (IANA) institutional control for areas where indoor air/vapor intrusion may be an exposure pathway of concern. This rule would be similar to the current requirement to establish a Classification Exception Area (CEA) institutional control for areas of contaminated groundwater, and as with CEAs, the establishment of a IANA would require notification to municipalities and counties in which the IANA is located, as well as owners, tenants, and occupants of any occupied structures within the IANA. To secure regulatory closure of an indoor air/vapor intrusion AOC, it would be necessary for a LSRP to issue a Response Action Outcome for the AOC. Second, Immediate Environmental Concern (IEC) requirements require notification of an IEC regardless of whether the structure is occupied, where previously notification was only required for occupied structures or structures capable of being occupied. A carve-out from this proposed requirement would require the property owner to certify that the structure: (1) is not occupied; (2) will not be occupied; and (3) will be demolished.

Comments are open on the Proposed Rule until January 31, 2025.

### **Ground Water Quality Standards Expected to be Adopted**

As referenced in our [2024 Forecast](#), NJDEP published a proposed rulemaking that makes significant changes to the Ground Water Quality Standards (GWQS) promulgated at N.J.A.C. 7:9C. The proposed revised standards are applicable to Class II-A groundwater designated for potable use, which is the default designation for all groundwater in New Jersey. As such, these standards frequently dictate the allowable concentration of chemicals in groundwater at remediation sites and for NJPDES Discharge to Groundwater permits. The proposed changes include significant reductions to many of the GWQS and are expected to result in increased remediation costs as well as reevaluation and potentially additional remediation at previously closed sites for contaminants subject to a reduction in concentration by an order of magnitude or more. The rulemaking is currently pending adoption, which is anticipated sometime in 2025.

In addition, due to the EPA's publication of the federal National Primary Drinking Water Regulation in April 2024 establishing Maximum Contaminant Levels (MCLs) for certain PFAS in drinking water, the NJDEP automatically incorporates changes to the federal MCLs if they are lower than the standards adopted by New Jersey. N.J.A.C. 7:10-5.1. NJDEP therefore will be required to update its GWQS to mirror the new MCLs. N.J.A.C. 7:9C-1.7(c)3i. Similarly, once the GWQS are updated, they automatically become the groundwater remediation standards. N.J.A.C. 7:26D-2.2(a). Further movement on establishing PFAS GWQS is anticipated for 2025.

### **NJDEP SRP Guidance Document – PFAS Sampling Fact Sheet Implementation**

In August 2024, the NJDEP published its Per- and Polyfluoroalkyl Substances (PFAS) Sampling Fact Sheet (the "Fact Sheet"). Implementation of the Fact Sheet is anticipated to become more prominent during 2025. The Fact Sheet contains important sampling considerations for various media, selection of analytical methods, decontamination considerations and cross-contamination/bias considerations, and NJDEP has inserted a statement of interest to parties conducting PFAS related investigations. Namely, NJDEP is requesting that the full list of PFAS compounds analyzed and reported by the respective analytical methods be reported to the agency, regardless of whether there are relevant remediation standards. NJDEP further states that the Licensed Site Remediation Professional (LSRP) must ensure that the remediation is protective of public health and safety and the environment based upon all information in the possession of the LSRP and the person responsible for conducting the remediation (PRCR). The Fact Sheet then instructs the PRCR and/or LSRP that when it has information regarding the presence of PFAS, irrespective of whether that PFAS is currently listed as a hazardous substance, the PRCR is still responsible for the remediation (including investigation) of such contaminant if the PRCR has reason to believe the presence of the contaminant poses a risk to public health or safety or the environment. These conditions as articulated in the Fact Sheet will potentially have significant ramifications for LSRPs and PRCR's conducting PFAS investigations in 2025 and place additional burdens on site remediation professionals and PRCR's to iron out how to interpret detections of PFAS substances that may not have published toxicity data or relevant screening criteria.

### **New Jersey's Coastal Flood Rules**

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The New Jersey Department of Environmental Protection (NJDEP) has continued its development of more stringent coastal flood protections under the Murphy Administration's Protection Against Climate Threats (PACT) initiative. On August 5, 2024, NJDEP proposed the second of its PACT rules, the [Resilient Environments and Landscapes \(REAL\) rule](#). The REAL rule, which is more than 1,000 pages in length, amends the Coastal Zone Management rules (N.J.A.C. 7:7), Freshwater Wetlands Protection Act rules (N.J.A.C. 7:7A), Flood Hazard Area Control Act rules (N.J.A.C. 7:13), and Stormwater Management rules (N.J.A.C. 7:8), among others, in an effort to broadly integrate climate science considerations like sea level rise and chronic flooding into New Jersey's regulatory scheme.

Of note, the REAL rule establishes an Inundation Risk Zone (IRZ) to account for projected increased risk to people and property within certain tidal flood hazard areas expected to be underwater, either permanently or twice a day at high tide, by 2100. Properties within an IRZ would be subject to increased risk assessment considerations and required to demonstrate the use of all reasonable measures to avoid or mitigate risk associated with development. NJDEP also proposes to incorporate its interactive mapping tool

into the regulations, which would allow interested parties to see all land within five feet of elevation of the mean high-water line for a given site. IRZ areas may be determined by using this tool, or through site-specific survey data. Developers must be aware of these requirements if seeking to construct or make substantial improvements to residential buildings, critical buildings, or critical infrastructure as defined in the REAL rule.

Another substantive change under the REAL rule is the promulgation of a Climate-Adjusted Flood Elevation (CAFE) which adjusts the flood elevation, floodway limits and/or the flood zone designation for subject coastal and tidal areas. The CAFE is calculated by adding five (5) feet to the Federal Emergency Management Agency's 100-year flood elevation in tidal flood hazard areas. The CAFE changes will subject development within these designated flood-prone areas to more stringent building standards and regulatory requirements once the REAL rule becomes final.

Comments on the REAL rule proposal closed on November 7, 2024. NJDEP is currently reviewing and intends to respond to all comments received. It has signaled that the rule is anticipated to become effective in the summer of 2025. Developers should keep these timelines in mind as the REAL rule will apply to new development, redevelopment and substantial improvement to existing development and will have a significant impact on the ability to secure required approvals. Legacy provisions will remain consistent with current NJDEP rules and applications submitted before the effective date and declared technically complete will qualify for legacy status.

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