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THE SALATA INSTITUTE
FOR CLIMATE AND SUSTAINABILITY
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Advancing Cumulative Impacts Analysis in State Permitting:

LEGAL CONSIDERATIONS FOR PROGRAM DESIGN

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This guide would not exist without Charles Lee. First, for his endless contributions to the field of cumulative impacts analysis, and second, for his consistent encouragement and advice in creating this document.

Many people graciously provided their expertise and feedback on drafts, including community-based experts and advocates, current and former state regulators, and scholars who originated and continue to advance the science of cumulative impacts analysis.

This guide also incorporates the generous feedback and expertise from friends and partners at:

- Earthjustice
- The Environmental Justice Initiative and the State Energy & Environmental Impact Center at NYU Law School
- Front and Centered
- The New Jersey Environmental Justice Alliance (NJEJA)
- The Tishman Environment and Design Center at the New School

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Design

Marianne Blackburn

Foreword by Charles Lee



“

In my neighborhood of Ironbound in Newark, New Jersey, we have three power plants, the state’s largest garbage incinerator, the state’s largest sewage treatment waste facility. That waste facility takes the sewage from 12 different states. Our incinerator serves 30 municipalities. We’re surrounded by the longest Superfund site in the country, the Passaic River, where this country produced Agent Orange during the Vietnam War. The byproduct of Agent Orange was dioxin. That dioxin was spreading all across our neighborhood; colleagues and people I looked up to swam in public pools that were contaminated with dioxin. Those pools are closed now, and there’s not a lot of park space in our neighborhood because we have over 130 brownfield sites. We have over 4,000 environmental permits that occur just in our zip code. The incinerator has had over 800 violations. Thousands of trucks go through the neighborhood every hour because we are in a central location right next to the port of Newark and the airport. There are only a couple ways in and out. Most of those are through Ironbound, and so they’re going to shortcut through our neighborhood and spread that diesel pollution all over the neighborhood. The residents of this community have been fighting for decades, long before the term ‘environmental justice’ existed.

”

MARÍA LÓPEZ-NUÑEZ

adapted from [On the Frontlines of Environmental Justice](#)



The cumulative impacts issue is about, first and foremost, the lived reality of environmentally overburdened communities. You have heard of some of these places. Besides Newark's Ironbound, there is Cancer Alley in Louisiana, the Southside of Chicago, and Southwest Detroit — to name just a few. And there are many more that you have not. Indeed, a [recent article](#) in *Environmental Research Letters* by Paul Mohai and me shows a clear correlation between the number and intensity of environmental stressors and the prevalence of people of color and low-income residents. For these reasons, these communities have been discussing, studying, and advocating for solutions to address cumulative environmental impacts since the earliest days of the environmental justice movement. Indeed, solutions to address cumulative impacts are widely known as the "holy grail" of environmental justice policy because they have the potential to get at the very root of environmental injustice: the disproportionate concentration of environmental and public health harms in low-income communities and communities of color.

It has taken decades of hard work, but the contours of public policy to address cumulative environmental impacts have begun to take shape. Some of these are discussed in this guide. This guide breaks down the core components of emerging laws and policies to assess and address cumulative impacts in the permitting context, and key considerations for advocates, lawmakers, and regulators designing and implementing these new programs. These examples come from recent experiences in five states where these programs are the farthest along, and yet many are still in their early stages.

The guide is especially helpful because it looks at policy options for the multiple decision points involved in passing legislation and developing regulations. Drawing from existing state programs,

the authors examine a menu of policy options available for each decision point, review how various states have addressed those decisions in statute (laws), regulation or guidance, and break down the practical and legal implications of each approach.

I am especially appreciative of this guide. Last year, I approached Hannah Perls about the need for the Harvard Environmental and Energy Law Program (EELP) to develop a *legal* resource to help guide advocates and practitioners regarding the many emerging state laws and regulations on cumulative impacts in permitting. (Harvard EELP also produced a CleanLaw podcast episode, "[Cumulative Impacts and the 'Holy Grail' of EJ Policy](#)," in which I had the privilege of participating with Hannah's co-author, Sean Moriarty). These are but two of the many resources being developed on this topic, not the least of which is a National Academies of Sciences, Engineering, and Medicine report on the "[State-of-the-Science and the Future of Cumulative Impact Assessment](#)."

At the end of the day, this guide is a testament to the power of María and the many community-based activists and experts across the country. Their vision, creativity, hard work, and tenacity over several decades led to the groundbreaking developments in environmental law and policy that we are reading about in this guide. Dr. Nicky Sheats, Dr. Ana Baptista, Melissa Miles, and María recently wrote a case study of the New Jersey legislation on cumulative impacts in permitting (S232). Its title, "[They Said it Couldn't Be Done](#)," speaks to how overburdened and marginalized communities like the Ironbound have blazed the way to truly transformative change. This guide celebrates this transformative change and is a critical resource for anyone seeking to advance meaningful cumulative impacts protections in their own community.

CHARLES LEE

Visiting Scholar, Environmental and Climate Justice Center, Howard University School of Law

How to Use this Guide

In this guide, we provide a legal overview of state programs that authorize or require permitting agencies to integrate cumulative impacts analyses (CIAs) into their decisions to identify and address disproportionate environmental and public health harms to certain communities. We organize our discussion around specific “decision points” influencing program design (see [Integrating Cumulative Impact Analysis into State Permitting: Key Decision Points](#)). Our goal is to provide stakeholders (e.g., community members, advocates, elected officials, and regulators) with a common language and understanding when discussing CIA programs. Of course, we recognize that there is no one-size-fits-all approach, so we designed this guide to provide users with a menu of options for developing a practical, sustainable, and legally defensible CIA program that accounts for each state’s industry mix, community concerns, and legal landscape.

This guide is designed to supplement the existing and growing body of scholarship on the import and design of CIA programs by analyzing and comparing the approaches of five states — Connecticut, Massachusetts, Minnesota, New Jersey, and New York — that have, at the time of this publication, passed environmental justice (EJ) legislation. Where possible, we highlight how states have combined different decision points to build cohesive and practical CIA programs. In certain instances, we place increased emphasis on states (New Jersey and Massachusetts) with promulgated regulations to demonstrate how agencies interpret statutory language to create regulatory standards.

For each decision point, we discuss legal and practical considerations including: (1) whether to address key issues in statute (law) or leave those issues to be resolved in agency regulation; (2) practice pointers gleaned from early implementation; and (3) lessons learned from early CIA-related litigation. **These considerations are identified under the following subheadings:**

WHO DECIDES:
Statutory Specificity v. Agency Discretion: whether to resolve key design questions in statute or regulation.

IMPLEMENTATION NOTES:
practice pointers gleaned from early implementation.

LEGAL FLAGS:
legal considerations for program design, including takeaways from early litigation challenging state CIA programs.

Finally, while we highlight areas of particular importance, we do not identify the “best” program or “correct” set of policy choices. These determinations can only be made in accountable partnership with members of impacted communities and their representative organizations. We also do not address the identification, evaluation, or use of specific indicators or stressors relevant to the assessment of cumulative impacts in a given community. These determinations must be tailored to community-specific concerns and analyzed with a level of scientific rigor that is beyond our intended scope. We also do not address the myriad scientific, mathematical, and policy considerations inherent in the development of an environmental justice mapping tool.

For more information about a particular state’s CIA program, or to learn about proposed bills to address cumulative impacts, visit the Tishman Environment and Design Center’s Cumulative Impacts [Interactive Dashboard](#).

If you have questions or feedback about this guide, please email Sean Moriarty (sean.moriarty@avengerconsultingnj.com) and EELP at environment@law.harvard.edu.

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I. Cumulative Impacts Analysis in Environmental Law and Policy: An Overview

It is well-documented, through statistical analyses, scientific studies, and residents' lived experiences, that environmental and public health impacts often fall disproportionately on certain communities, including low-income communities, communities of color, Indigenous communities and Tribal Nations, and rural and unincorporated communities.¹ These impacts are exacerbated for vulnerable populations — including children, seniors, people with disabilities, and outdoor workers — living within those communities.²

Despite these layered disparities, environmental permitting programs have traditionally focused narrowly on facility impacts on specific environmental media (e.g., air or water). These programs often ignore the potential localized environmental and public health impacts of proposed activities on communities, particularly where pollution sources are concentrated, obscuring impacts on local communities.

Foundational environmental justice scholarship has long questioned the traditional facility- and pollutant-specific approach to permitting. Dr. Robert Bullard, in his seminal work “Dumping in Dixie,” empirically demonstrated that race — not class — was the most significant predictor of the siting of hazardous waste facilities in the American South.³ His analysis underscored how environmental harms are systematically concentrated in communities of color, largely through zoning, industrial policy, and weak enforcement mechanisms.

Similarly, Charles Lee, in the landmark 1987 report “Toxic Wastes and Race in the United States,” presented the first national study showing that the siting of hazardous waste facilities was more strongly correlated with race than income, providing an early data-driven foundation for environmental justice-related claims.⁴ Lee’s and Bullard’s findings highlighted that affected communities are often subject to a confluence of burdens, including poor housing, inadequate health care, and multiple environmental exposures — an observation echoed in contemporary cumulative impact assessments.⁵

Indeed, as the U.S. Environmental Protection Agency (EPA) noted in its 2024 “Interim Framework for Advancing Consideration of Cumulative Impacts,” the agency’s National Environmental Justice Advisory Council (NEJAC) recognized as early as 2005 that “disadvantaged, underserved, and overburdened communities come to the table with preexisting deficits of both a physical and social nature that make the effects of environmental pollution more, and in some cases unacceptably, burdensome.”⁶

Regulatory approaches that do not account for these layered burdens may fail to address the very real environmental and health impacts affecting communities. Furthermore, they may fall short of environmental and public health obligations under other statutory frameworks, including the National Environmental Policy Act (NEPA).⁷

A. CUMULATIVE IMPACTS AND THE “FIT-FOR-PURPOSE” FRAMEWORK

The term “cumulative impacts” has been defined as the combined and interacting effects of multiple chemical and nonchemical stressors, encompassing the totality of exposures that influence human health, well-being, and quality-of-life outcomes over time.⁸ Under this framework, cumulative impacts assessment necessarily involves the integration of both quantitative data (e.g., measurements of environmental and health indicators) and qualitative information (e.g., community conditions and firsthand experience) to inform equitable and context-sensitive decision-making.⁹ Accordingly, a full cumulative impacts assessment requires a systematic approach to characterizing the combined effects of chemical and nonchemical stressors across affected populations and communities, accounting for the accumulation of exposures from past, present, and reasonably foreseeable sources.¹⁰

Although scientists and practitioners often identify this comprehensive approach as the gold standard of cumulative impact assessment, other approaches can be “tailored to focus on exposures and effects of greatest relevance to the decision context” and do “not require identifying, measuring, and quantifying *all* exposures and effects.”¹¹ In other words, such approaches can be “fit for purpose.”¹²

Charles Lee’s framework provides a useful lens for considering different fit-for-purpose approaches:¹³

Fit-for-Purpose for Different Decision Contexts

Different decision contexts need different types of analyses.

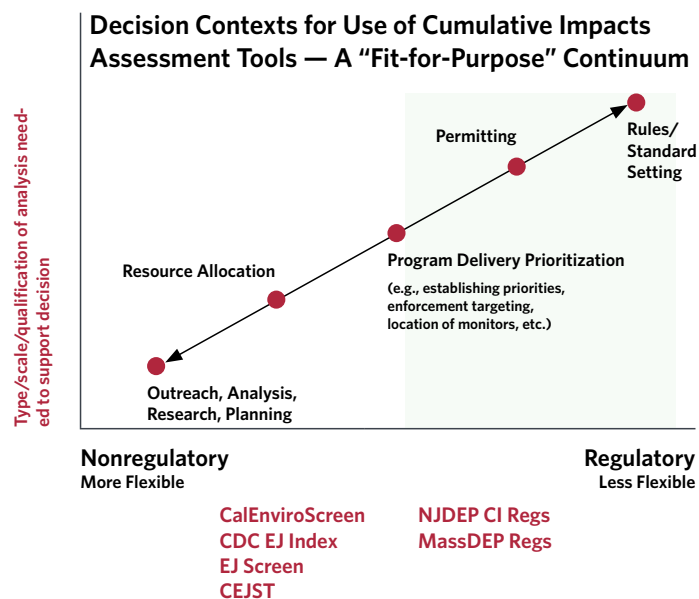
Cumulative impacts analysis already used in significant ways (e.g., resource allocation/program prioritization)

Regulatory contexts (e.g., permits, rules) require new approaches

New developments represent challenges and opportunities for cumulative impacts assessment.

Graphic Source:

Lee, “Confronting Disproportionate Impacts and Systemic Racism”



This fit-for-purpose principle is essential to understanding how and why state statutes and implementing regulations consider cumulative impacts differently. While the development of a reliable, comprehensive methodology remains ongoing, CIA-focused statutes and regulations have gravitated towards more flexible, comparative frameworks that are practical, more easily implemented, and legally defensible. These adapted approaches are important and valid tools for assessing cumulative impacts, particularly when viewed through the fit-for-purpose lens.

As researchers at the Tishman Environment and Design Center at the New School explained, CIAs are typically incorporated into environmental law or policy in three ways:

1. A **redistributive** mechanism to target investments, enforcement actions, or other public resources;
2. An **analytical** tool to promote further research, data collection, or scientific understanding; or
3. Part of a **regulatory** program to inform agency decision-making, typically through targeted public participation or permitting processes.¹⁴

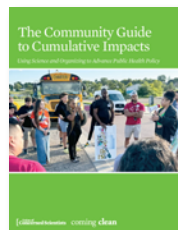
In this guide, we address the third use, focusing on how states integrate CIAs into their environmental permitting programs.

In addition to the resources cited above and throughout this guide, there is a growing body of tools and research addressing cumulative impacts analysis by community-based practitioners, academic researchers, state and federal agencies, and nonprofit organizations. **The following resources are great starting points for anyone interested in exploring these topics further:**



The [Tishman Environment and Design Center](#) at the New School tracks and analyzes the development of cumulative impacts laws and policies across the country through publicly available tools on their [website](#), including:

- An Interactive Dashboard of state cumulative impacts permitting policies (you can also view the same data as a spreadsheet)
- A forthcoming tracker of cumulative impacts policies at the city and local levels



In October 2024, the Union of Concerned Scientists and Coming Clean published "[The Community Guide to Cumulative Impacts: Using Science and Organizing to Advance Public Health Policy](#)." The guide was co-developed by grassroots community and Tribal organizations who have worked to pass various state cumulative impacts laws across the country. The guide provides overviews and exercises for different phases of the policy development process, including the development of mapping tools, identifying environmental stressors, and additional resources.



In late 2025 and early 2026, the journal *Environmental Justice* published two special issues on cumulative impacts ([Vol. 18, Issue 6](#) and [Vol. 19, Issue 1](#)), including scholarship on the evolution of state and city CIA laws, the development of related analytical and mapping tools, and evolving methodologies.

1. Terms Used in this Guide

In this document, we use the term **“overburdened communities”** to refer to communities that are currently experiencing disproportionate environmental, health, and social stressors. In doing so, we mirror terminology that has been used by many public health and scientific practitioners, EPA,¹⁵ and EPA’s National Environmental Justice Advisory Council (NEJAC)¹⁶ to capture the layered public health and environmental impacts disproportionately affecting certain communities.

CIA practitioners, including community advocates and state regulators, often use other terms to refer to target communities, including “marginalized communities,” “disadvantaged communities,” “environmental justice communities,” or “communities with environmental justice concerns.” These terms remain salient and important to identify communities requiring more stringent or effective environmental and public health protections.

The terms **“burdens”** or **“impacts”** can include environmental and public health impacts as well as systemic inequities, including legacies of intentional disinvestment and discrimination, that continue to disproportionately affect certain communities. In this document, we use “burdens” and “impacts” interchangeably. Burdens and impacts are distinct from **risk**, which refers to the numerical probability of a negative outcome, such as the risk of getting cancer from chronic exposure to a particular chemical.

It is also important to consider how those burdens affect **vulnerable populations**. For example, children and people with preexisting health conditions may experience more severe health outcomes than others when exposed to the same level of pollution; environmental disasters can disproportionately affect people with disabilities who may be more dependent on electricity or be less able to evacuate quickly. CIAs ideally account for both the disproportionate distribution of impacts, as well as the effects of those impacts on people with the highest vulnerabilities.

The term **“stressors”** describes the burdens, impacts, or vulnerabilities a state program considers when analyzing environmental and public health conditions in each community. For example, while a community may be experiencing myriad impacts — food insecurity, inadequate municipal services, air and water pollution, lack of access to health services or green space, etc. — state programs must select a finite number of stressors to measure those layered impacts. The primary stressors considered by a CIA program will vary from state to state, informed by the experiences of community members and consistent with a fit-for-purpose approach.

II. Legal Authority to Analyze and Address Cumulative Impacts in Permitting

Any regulatory approach to cumulative impacts begins with the agency identifying its legal authority to design or implement a CIA program. While each of the surveyed states has enacted EJ-specific statutes, agencies do not necessarily require a new statutory scheme to consider cumulative impacts in permitting.

Legal authority to address disproportionate environmental burdens can often be found under existing state or federal laws. As the EPA Office of General Counsel's 2022 report, "EPA Legal Tools to Advance Environmental Justice," notes, several federal environmental and civil rights statutes — including the Clean Air Act, Clean Water Act, National Environmental Policy Act (NEPA),ⁱ and Title VI of the Civil Rights Act of 1964 — may provide authority to consider or address pollution burdens disproportionately affecting communities of color, Indigenous peoples, low-income populations, and other underserved groups.¹⁷ State-level authority may emanate from federal program delegation (e.g., state assumption of primary implementation responsibility under the Clean Air or Clean Water Act) or through similar provisions in state analogues. Some states may have additional, state-specific authorities, including constitutional amendments,ⁱⁱ that require or otherwise authorize consideration of cumulative or disproportionate environmental or public health burdens.

A. PRINCIPLES FOR LEGISLATIVE DRAFTING: AGENCY DISCRETION AND STATUTORY INTERPRETATION

While agencies may have implicit authority to address cumulative impacts, enacting a dedicated state-level cumulative impacts law provides an explicit mandate to identify and analyze the existence of disproportionate environmental and public health burdens. These laws also give agencies the mandate or authority to take action to address those burdens through permitting or other mechanisms. A CIA-specific statute can identify the community-specific issues an agency must consider or give clear direction to agencies regarding key decision points, such as which analytical method(s) to use or when to reject a permit application, or when to impose conditions when issuing a permit.

i NEPA requires federal agencies to assess the reasonably foreseeable environmental effects of certain proposed projects or actions. In *Seven County Infrastructure Coalition v. Eagle County*, 145 S. Ct. 1497, 1512 (2025), the Supreme Court held that NEPA only requires federal agencies to review the effects of "the project at hand," rather than the upstream or downstream effects of projects that are separate in time or space (though agencies have the discretion to analyze these effects if they so choose). However, the Court's decision does not affect or otherwise limit federal or state agencies' cumulative impacts analyses as described in this report. See Erika Kranz & Hannah Perls, *The Future of NEPA and Federal Permitting After Eagle County*, HARV. ENV'T & ENERGY L. PROG. (2025), <https://eelp.law.harvard.edu/wp-content/uploads/2025/06/Kranz-Perls-Eagle-County-Analysis-final.pdf>.

ii These amendments generally establish a constitutional right to clean water, air, and other natural resources. See, e.g., N.Y. CONST. art. I, § 19, ("Each person shall have a right to clean air and water, and a healthful environment"); PA. CONST. art. I §27, ("The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment"); MONT. CONST. art. II § 3, ("All persons have the right to a clean and healthful environment"); and ILL. CONST. art. XI, § 2, ("Each person has the right to a healthful environment").

When designing a CIA-specific statute, it is important to remember that executive agencies, whether state or federal, can only exercise authority granted to them by the legislature. Agencies, relying on their scientific and technical expertise, can clarify what these statutes mean through regulations or guidance. But those regulations cannot create new legal rights or responsibilities.

Therefore, where possible, legislative language should clearly detail the authority being given to the implementing agency. This can include: (1) requiring a CIA as part of a permit application; (2) explicitly authorizing (or requiring) the agency to condition or deny a permit based on the outcomes of the CIA; (3) defining the agency's discretion to make important secondary determinations, such as the preferred methodology to analyze cumulative impacts on overburdened communities; and (4) establishing requirements for meaningful community engagement.

Another key decision in legislative drafting is whether to resolve certain decision points in statute, delegate it to the agency to resolve through rulemaking or guidance or adopt a hybrid approach where broad categories are defined in statute with agencies authorized to develop detailed criteria or procedures. While we discuss the general opportunities and challenges associated with each decision point, we recognize that these strategic decisions will be dependent on each state's context and must be considered accordingly. These decisions may be affected by political considerations, including state budget requirements, election outcomes, agency resources, and an assessment of which branch of government is most likely to be responsive to the concerns of overburdened communities.

B. DEFINING THE PROBLEM: THE IMPORTANCE OF LEGISLATIVE FINDINGS

One of the primary goals of most cumulative impacts laws is to align environmental law and policy with the on-the-ground realities communities face. For legal, policy, and political reasons, a well-crafted CIA-specific statute can help agencies better understand and approximate those realities by clearly articulating a policy to recognize and address environmental inequities.

Legislative findings are a simple but powerful tool in this regard and can meaningfully guide implementation. These findings, often located at the beginning of a statute, can include facts, policy statements, and rationales that provide important context for regulators and, in the event of a legal challenge, judges tasked with interpreting the law.

New Jersey and New York provide strong examples of this approach. Their environmental justice laws include legislative findings that discuss the state's:

1. Historic patterns of inequitable siting of pollution-generating facilities in low-income communities and communities of color;
2. Disproportionately high environmental and public health burdens resulting from these historical inequities; and
3. The need for state intervention to ensure a more equitable distribution of both the burdens and benefits of economic growth and environmental protection.¹⁸

New Jersey's law also declares that "all New Jersey residents, regardless of income, race, ethnicity, color, or national origin, have a right to live, work, and recreate in a clean and healthy environment" and that it is in the "public interest for the State, where appropriate, to limit the future placement and expansion of [pollution generating] facilities in overburdened communities."¹⁹

While these statements generally do not, on their own, create new legally enforceable rights or responsibilities, they can guide agencies during regulatory development and, potentially, empower efforts to pursue more robust protections for overburdened communities. If the agency's implementing regulations are challenged in court, strong legislative findings provide a clear expression of protective intent for the reviewing court to take into consideration. For example, in a recent case challenging the state's cumulative impact rules, the New Jersey Appellate Court consistently referred to the legislature's findings in its decision to uphold the rules, noting "the Legislature's intent to reduce environmental and public health stressor increases in [overburdened communities]."²⁰

C. KEY TERMS: CHOOSING WORDS AND DEFINITIONS CAREFULLY

In law — as in life — words can have multiple meanings depending on context and intent. Two environmental statutes may use the same word but offer different definitions, neither of which may be consistent with its use in other contexts. Therefore, when drafting or advocating for legislation, subject matter experts should choose their language carefully and not assume the implementing agency will share their understanding of key terms. A judge considering a challenge may look at how a word is ordinarily used or its dictionary definition, the statute's stated purpose, the statutory context in which the word or provision appears, or historical documents describing the legislature's decision-making process.

Terms of art — such as "significant," "disproportionate," or "de minimis" — that can affect the scope and efficacy of a cumulative impacts law should be carefully considered and, where appropriate, defined. If left undefined, the implementing agency may have more discretion to craft its own definition through regulation or guidance.

Statutory specificity can, however, create both opportunities and challenges. A law that explicitly defines all key terms provides clarity and may guide implementing regulations towards a specific outcome. This is particularly relevant where the protections sought (such as mandatory permit denial) may exceed those typically found in standard environmental regulatory schemes. Agencies are more likely to implement these types of protections if the law explicitly authorizes or requires them to do so.

For other more technical or scientific aspects of a CIA program (e.g., stressor identification and assessment methodology), regulatory flexibility may be preferable as these issues could be challenging to resolve through a legislative process.

The choice to push for specific or flexible legislative language requires consideration of each state's political and legal realities, including which branch of government, the legislature or the agency, is best equipped to respond to overburdened communities' concerns. In this guide, we discuss some of the pros and cons of these approaches as applied to each decision point.

D. ANTICIPATING LEGAL CHALLENGES TO CIA REGULATIONS

Care in statutory design can also provide legal durability if the agency's implementing regulations are challenged in court. When a company or person challenges an agency's action (e.g., a decision to deny or condition a permit), a common argument is that the agency exceeded its authority by doing something beyond what the law allows. In addition to challenging the action, they may also challenge the underlying regulation based on the same argument. While there are many ways agency CIA regulations can be challenged in court, we discuss two here: (1) arbitrary and capricious challenges under a state's administrative procedure act (APA) and (2) regulatory takings challenges.

Each state court system has a slightly different standard as to what makes an action "arbitrary and capricious" or what types of actions result in "regulatory takings." These legal frameworks develop over time as judges make decisions addressing similar questions, resulting in "judge-made law" or common law. While a state judge may look at other states' common law, that law does not control the law in another state. It is therefore important to understand the applicable state standard that courts will apply when reviewing challenged agency action.

1. "Arbitrary and Capricious"

The first, and most common, argument used to challenge agency actions or regulations is to assert that they are "arbitrary and capricious" under the state's APA, meaning the agency acted unreasonably or without proper consideration of the facts.

To anticipate these kinds of challenges, it is important that the implementing agency "show its work" by explaining how it applied its expertise to reach a particular decision — including how it designed the regulations themselves. This is typically accomplished through the development of a robust **administrative record** that clearly supports the agency's decisions, including citing or providing relevant data in appendices, responding to concerns raised during public comment processes on the proposed regulation, or discussing alternative options the agency considered but declined to use. Community members, advocates, and other parties can assist in this effort by providing additional facts, studies, and testimonials that corroborate the positions taken by the agency during formal notice-and-comment periods.

A critical factor in any challenge to a regulation or agency decision is the level of deference courts give to agencies. This will depend on several considerations, including the specific statutory or regulatory language being reviewed, the state APA and related caselaw, and the adequacy of the administrative record. However, in general, when an agency relies on its area of expertise — such as when an environmental agency determines how hazardous a chemical is, or a labor safety agency decides how many work breaks agricultural workers need — courts are less likely to second-guess the agency.²¹

In New Jersey, for example, courts tend to defer to agencies' interpretations of law if those interpretations are reasonable.²² Other states have their own standard of deference and some may look to federal court decisions, particularly from the U.S. Supreme Court, for guidance. Over the last several years, the Supreme Court has reversed or significantly amended longstanding precedent that told federal courts when they should defer to federal agency decisions.²³ As such, statutes that explicitly say how much deference agencies should get when issuing certain decisions can be helpful, including against challenges to agency regulations.²⁴

2. Regulatory Takings

After the agency finalizes its regulations and begins issuing decisions, plaintiffs may also argue that an agency decision to condition or deny a permit resulted in an illegal “regulatory taking.” A regulatory taking occurs when a law or regulation restricts the use or value of private property to the point that it violates the property owner’s constitutional property rights. These claims are typically brought under the state constitution, under the Fifth Amendment of the U.S. Constitution, or both.

State programs can be carefully crafted to comply with Supreme Court legal precedent and reduce the likelihood of takings challenges or increase the likelihood of defeating a takings challenge. For example, many state permitting programs incorporate Supreme Court precedent requiring agencies to demonstrate that permit conditions have a clear “nexus” and are “proportional” to the project’s anticipated environmental or public health harms.²⁵ In other words, permit conditions must be clearly related to the harm the project might cause, and the conditions should only be as strict as needed to prevent or mitigate those problems. Other states include specific statutory language providing an opportunity for an agency to adjust its approach or award compensation where a taking is found.²⁶ This concern may be particularly acute where a statute requires (or otherwise authorizes) permit denial after CIA review. However, this is a rapidly evolving area of law²⁷ and drafters should consult with state regulatory takings experts when drafting bills or rules related to state permitting processes.

III. Integrating CIA Into State Permitting: Policy Decision Points

While state CIA permitting programs vary in many ways, they include the same “decision points.” These are important decisions that the legislature or agency will make that determine the program’s scope, coverage, and type of protections, among other outcomes. Drawing from [existing state programs](#), we examine the menu of policy options available for each decision point, review how various states have addressed them (via statute, regulation, or guidance), and consider the practical and legal implications of each approach.

These decision points include:

1. Identifying Overburdened Communities

What criteria should agencies use to identify overburdened communities, and at what geographic scale (census tract v. block group)?

2. Stressor Identification

Which environmental, social, or public health stressors should be considered, and which data sources?

3. Identifying and Quantifying Cumulative Impacts

- a. What **comparative methodology** (disproportionality, risk threshold, or other framework) should the agency use to *identify* cumulative impacts?
- b. What **analytical method** (single-score, matrix, or other approach) should the agency use to *quantify* cumulative impacts?

4. When is a CIA Required?

When should the agency require a CIA?

5. Public Engagement and Participation Requirements

What must the agency or permit applicant do to ensure meaningful community engagement?

6. Cumulative Impacts Analysis: Form and Content

What information must the applicant provide in the CIA?

7. Authority to Deny an Application or Condition a Permit

When is the agency required or authorized to condition or deny a permit based on the CIA?

8. Exemptions

Under what circumstances should a proposed project be exempted from these requirements?

9. Agency Decision: Form and Content

How should the agency issue its final decision and what should it include?

10. Post-Permit Enforcement

Is the outcome of the CIA process enforceable?

While we address the considerations above, this list is not exhaustive. Other important decision points that we do not discuss in this guide include:

- Whether the CIA should precede or coincide with permit review;
- Consequences for failure to comply with cumulative impact-related permit conditions (e.g., suspension or civil penalties);
- Requirements for periodic updates to community identification criteria and/or stressor data;
- Availability and maintenance of public-facing data or mapping tools;
- Timelines for agency review and permit decisions;
- Effective dates of statutory requirements (e.g., immediate vs. post-rulemaking);
- Rulemaking deadlines and requirements for public engagement; and
- How new statutory requirements interact with existing permitting frameworks.

A. IDENTIFYING OVERBURDENED COMMUNITIES

The first, and perhaps most important, step in crafting a state CIA permitting program is defining the communities most in need of enhanced protections. Though each state has its own definition, we identified the following criteria that are consistent across existing state CIA permitting programs and important to think through when deciding how to identify overburdened communities:

1. Primary criteria (e.g., demographics, relevant thresholds, data sources);
2. Geographic scale of analysis (e.g., census tract vs. block group);
3. Secondary criteria (e.g., integration of environmental and public health stressor data to compare burdens and discretionary mechanisms (e.g., agency authority to add or remove communities) to more finely focus protections; and
4. Whether to adapt an existing state community designation or create a new designation for cumulative impacts regulatory purposes.

These decisions significantly influence both the scope and effectiveness of cumulative impacts laws and regulations. For example, the selected primary criteria will determine the communities where the law does and does not apply. The geographic scale of analysis may affect the availability and usability of data to map burdens and assess cumulative impacts and, in certain instances, limit the area in which exposures are assessed.

The application of secondary criteria can be used to more effectively focus protections on those areas bearing the highest cumulative burdens, and therefore, most in need of enhanced protection. Discretionary mechanisms can have a similar effect.

We discuss the pros and cons of each approach below, but it is important to remember there is no right answer. The most important part of this process is ensuring that overburdened communities can actively and meaningfully participate in these decisions.

WHO DECIDES?

Statutory Specificity v. Agency Discretion

Most states adopt a **hybrid** approach to defining target communities where the legislature identifies specific criteria to be further defined through the regulatory process. For example, the legislature may define the basis for identification (e.g., geographic unit of analysis and relevant categories of primary and secondary criteria). The implementing agency then further defines these criteria through regulation and guidance, including by setting specific thresholds for each criterion, identifying appropriate data sources, and considering the inclusion of discretionary mechanisms (agency authority to add or remove communities). Using this hybrid approach can provide regulators, facilities, and communities with clear guidance, ideally directly informed by community advocacy, as to the law's intended scope while providing the appropriate flexibility for the agency to resolve scientific and technical considerations.

1. Primary Criteria: What criteria should agencies use to identify overburdened communities?

States typically begin community identification with demographic information such as household income, English language proficiency or linguistic isolation, race or ethnicity, and the setting of specific statistical thresholds (e.g., percentage of area median income or federal poverty levels). Some states, like Minnesota and New Jersey, also include political designations such as citizens of federally or state-recognized tribes, or land designated as Indian Country. The use of these thresholds is often substantiated by demonstrating a high correlation with increased environmental burdens and negative health impacts in the state.²⁸ This initial choice determines which communities may receive additional procedural and substantive permit protections under the CIA program. It also determines the communities that will not. Accordingly, these criteria should be carefully selected and based on scientific and statistical studies as well as consideration of community members' lived experiences.



LEGAL FLAGS

The use of race, national origin, and ethnicity in policies has come under increased legal scrutiny following the Supreme Court's analysis of this question in *Students for Fair Admissions (SFFA)*.²⁹ Subsequent federal executive orders and guidance from the U.S. Department of Justice (DOJ) have expansively interpreted *SFFA* to prohibit a broad swath of efforts to advance equity and racial justice, including programs and initiatives addressing environmental justice.³⁰ In response, a multi-state coalition of fourteen state attorneys general issued guidance generally affirming the legality of environmental justice initiatives, including the analysis of cumulative impacts in state permitting programs.³¹ In their guidance, the attorneys general noted that executive orders and agency guidance do not have the power of law and cannot prohibit otherwise lawful action, nor change the meaning of federal statutes or court decisions.³² However, as of this publication, several agencies, including DOJ, have revised or are in the process of revising their regulations implementing federal civil rights statutes, and those rules may be challenged in court.

Given this shifting landscape and the fact-specific area of this legal inquiry, we do not provide guidance here on whether or how to consider race and ethnicity in states' CIA programs. We recommend consulting with civil rights attorneys in your state when designing state legislative or regulatory language defining target communities to ensure compliance with both state and federal antidiscrimination laws.

It is important to note that **membership in a federally recognized Tribe is a political, not racial, classification**, and thus use of these criteria does not raise the same legal concerns as those in *SFFA*.³³

2. Geographic Scale: How should agencies define the geographic scale that creates the parameters for the analysis?

A second critical consideration for designating target communities is selecting the geographic scale of analysis. Thus far, state approaches typically use either census tracts or block groups. A census block group usually contains between 600 and 3,000 people and is the smallest unit for which the Census Bureau publishes detailed sample data, like income, education, and housing information.³⁴ Using a block group is roughly equivalent to an assessment of neighborhood composition. By comparison, census tracts are slightly larger than census block groups, containing between 1,200 and 8,000 people, typically cover a continuous area, and are designated so that an area can be compared from one census to another.³⁵

Each unit of analysis has advantages and disadvantages. Using census tracts can provide a stable, long-term unit of analysis, but their size and internal demographic and economic variability can obscure localized burdens, potentially necessitating a more granular or case-by-case assessment. In contrast, census block groups may provide a finer scale of analysis but are more prone to change with each census cycle. Additionally, if the statute or regulations limit the CIA to the block group, its small scale may limit the consideration of potential impacts occurring outside the block group boundaries.

When deciding whether to use the census tract or the block group, it is important to consider:

- What data are available to map your selected burdens across the state? Are those data available at the census tract or block group level? How often will the data be updated?
- What scale is needed to accurately capture overburdened and vulnerable populations in your state?

New Jersey's statute, for example, identifies communities at the block group scale — the smallest unit of census data.³⁶ This decision required its implementing agency, the New Jersey Department of Environmental Protection (NJDEP), to use only data that could be extrapolated to that scale. Assessing cumulative impacts at the block group may provide a more uniform unit of analysis than a larger geographic scale (e.g., census tract). For example, each block group may represent a single neighborhood primarily occupied by individuals meeting the selected demographic criteria, whereas a census tract could include multiple population groups, some of which might not meet selected criteria for vulnerability.

Most state statutes explicitly designate what primary criteria and geographic scale the implementing agency should use to identify overburdened populations. Further, all states draw this information from U.S. Census data.

In each case, reliance on standardized data (federal or otherwise) can provide a reliable, objective basis for these determinations while avoiding concerns regarding the ability to skew or otherwise manipulate data. However, given current cuts to federal agencies' research and monitoring functions,³⁷ **it may be beneficial to supplement federal data sources where necessary to ensure accuracy, consistency, and availability.**

3. Secondary Criteria & Discretionary Mechanisms

Many state approaches to community identification also incorporate secondary criteria to better refine their analysis or provide agencies with the authority to designate or de-designate additional communities through discretionary mechanisms.

Secondary criteria often include environmental and public health data that are of particular concern to overburdened communities in the state. Secondary criteria are combined with primary demographic criteria to assess whether areas that satisfy demographic thresholds also bear comparatively higher environmental and public health burdens.

This threshold integration of environmental and public health data as part of community identification differs from the post-identification use of stressor data to compare environmental and public health burdens during the regulatory process. The use of secondary criteria to identify communities is likely to result in fewer communities being in the CIA program as only those meeting both demographic and secondary criteria would be included. (Conversely, using only demographic criteria is likely to result in more communities being subject to the CIA program.) For example, New Jersey applies secondary criteria to its primary criteria during the regulatory process to more finely target the law's protections.

However, primary and secondary criteria may only provide an approximation of community conditions, which may warrant consideration of discretionary mechanisms. These allow an agency to (1) de-designate communities that lie within the geographic unit (e.g., census tract) but do not otherwise meet the applicable identification criteria (i.e., demographic and secondary); or (2) to designate communities that meet the identification criteria but reside within a larger geographic unit that is not otherwise considered an overburdened community.

Both secondary and discretionary criteria can therefore allow agencies to better focus cumulative impact protections on the most affected areas, especially when based on objective measures of environmental and public health burdens, disparities, or other demonstrably relevant factors (e.g., Minnesota's jurisdictional limits in its CIA law). Discretionary mechanisms may be particularly useful in addressing differing conditions within census tracts or other larger geographic units that may contain non-uniform populations.

WHO DECIDES?

Statutory Specificity v. Agency Discretion

While specific statutory language addressing secondary criteria or discretionary mechanisms is not necessary, it may be helpful. An agency might benefit from guidance on whether, and to what extent, it may use environmental and public health data to differentiate among communities that otherwise meet the primary demographic criteria, particularly to ensure that such application would not overly narrow the scope of identified communities. Similarly, agencies would likely benefit from clarity as to their authority to exclude (or include) a community (or portion thereof) using a discretionary mechanism.

4. Using Existing Community Designations

If a state already has community designations for related programs, it is important to consider whether the CIA or EJ law should incorporate those designations or create new statutory criteria. For example, New York's identification approach is adapted from its Climate Leadership and Community Protection Act (CLCPA), whereas the remaining states have created new community designations under specific cumulative impacts laws and regulations.

Relying on existing state definitions can facilitate interagency coordination and create uniformity in the administration of agency programs. However, especially where not initially intended for regulatory or permitting purposes, incorporating existing designations may raise additional considerations regarding both legal defensibility (e.g., the ability to defend the use and weighting of criteria) and implementation (e.g., the ability to adapt designations — particularly single-score or aggregate methods — to assess specific facility contributions). As such, it is important to discuss these advantages and disadvantages during the bill drafting or rulemaking process.

We provide a more detailed overview of different states' community identification approaches below.

NEW JERSEY

New Jersey's Environmental Justice Law, N.J.S.A. 13:1D-157 et seq., (EJ Law) uses only primary criteria, designating an overburdened community as one where at least:



35%

of households are low-income (at or below 200% of the federal poverty level),



40%

of residents identify as minority or belong to a state-recognized Tribal community, or



40%

of households have limited English proficiency.

The EJ Law uses the census block group as its geographic scale, determined by use of the "most recent United States Census."³⁸

The legislation's broad "or" approach covers over half of the state's 9.3 million residents (more than 5.2 million people) living in overburdened communities (OBCs).³⁹ To better focus its protections, NJDEP's implementing regulations⁴⁰ include secondary criteria to compare environmental and public health burdens between overburdened and non-overburdened communities.⁴¹ OBCs with comparatively higher burdens — identified as being subject to adverse cumulative stressors (discussed in the Stressor Identification section below) — receive additional procedural and substantive permitting protections.⁴²

The EJ Law does not authorize the use of any discretionary mechanisms.

CONNECTICUT

Connecticut takes a different approach to community identification, leaning almost exclusively on economic criteria drawn from federal and state data as its primary criteria. While Connecticut's 2023 amendments incorporated CIA into its longstanding Environmental Justice statute (2023 CI Amendments), it relies on the pre-existing definition of an "environmental justice community" as either:



A census block group where **at least 30%** of the population has income **below 200%** of the federal poverty level; or



A **distressed municipality** (as defined by criteria set by the federal Department of Housing and Urban Development (HUD)).⁴³

Accordingly, Connecticut uses two geographic scales: (1) census block group; and (2) distressed municipality.

MINNESOTA

Under Minnesota’s Frontline Communities Protection Act (FCPA), Minn. Stat. § 116.065 (2023), an “environmental justice area” is a census tract that meets any of the following primary criteria:



At least 40%
nonwhite population,



At least 40% limited
English proficiency
(in the population over
five years old), **or**



At least 35% of
households are below
200% federal poverty
level,



Located within
“Indian Country.”⁴⁴

These demographic and political criteria are determined in accordance with the “most recent decennial census data” using the census tract as its geographic scale.⁴⁵

The FCPA also includes explicit secondary criteria: the law’s cumulative impacts provisions only apply to facilities located (1) within, or within 1 mile of, an environmental justice area, and (2) within specified geographic jurisdictions (seven-county Twin Cities metro region or a “city of the first class”).⁴⁶ For proposed projects on Tribal lands (i.e., within “Indian Country”), the state government must formally consult with the relevant Tribal government(s), who determine whether the cumulative impacts law will or will not apply.⁴⁷

MASSACHUSETTS

Massachusetts defines its overburdened communities through Chapter 8 of the Acts of 2021 (Climate Roadmap Act), which codified the definition of an “environmental justice population.”ⁱⁱⁱ This definition includes any census block group that meets any of the following primary criteria:



Median household income **at or below 65%** of the statewide median,



At least 25% households with limited English proficiency, **or**



At least 40% minority population,



At least 25% minority population and the municipality’s median income **≤ 150%** of the statewide median.⁴⁸

Massachusetts used this definition in building its CIA regulatory program for certain air permits. In addition to these primary criteria, the Climate Roadmap Act includes a discretionary mechanism that allows the Secretary of Energy and Environmental Affairs (Secretary) to, upon receipt of a petition signed by at least 10 residents, designate a portion of any census block group as an environmental justice population where the population satisfies the primary criteria.⁴⁹ The Secretary can similarly de-designate a portion of an environmental justice population where: (1) the annual median household income is greater than 125% of the statewide median household income; (2) a majority of people 25 years and older in that neighborhood have a college education; (3) the neighborhood does not bear an unfair burden of environmental pollution; and (4) the neighborhood has more than limited access to natural resources, including open spaces and water resources, and playgrounds and other constructed outdoor recreational facilities and venues.⁵⁰

Notably Massachusetts recently created another CIA requirement for permitting certain energy facilities. Under the 2024 Climate Law, the Energy Facilities Siting Board (EFSB) was required to issue cumulative impacts regulations for the siting of energy infrastructure. The EFSB finalized those regulations in May 2026. The EFSB’s regulations create a new community designation — “Burdened Area” — defined as block groups with a MassEnviroScreen (a new mapping tool) score of 75 or greater based on 30 indicators reflecting demographic and environmental characteristics at the block group level, or with an annual median household income of 65% or less of the statewide annual median household income. These stressors were chosen by a separate office, the Executive Office of Environmental Justice and Equity (OEJE). Notably, neither the EFSB’s rules nor MassEnviroScreen rely on the state’s 2021 statutory definition of “EJ Population.”

iii The Climate Roadmap Act directed both the Massachusetts Department of Environmental Protection (MassDEP) and the Massachusetts Environmental Policy Act (MEPA) Office to incorporate considerations of cumulative or disproportionate effects on EJ populations into their decision-making processes. An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy, 2021 Mass. Acts, <https://malegislature.gov/bills/192/S9>. For the purposes of this paper, we focus exclusively on MassDEP’s resulting regulations.

For purposes of this report, we focus on the Massachusetts Department of Environmental Protection’s (MassDEP) air permitting cumulative impact regulations rather than EFSB’s recently finalized CIA regulations. For more information on those regulations, see [EFSB’s Rulemakings](#).

NEW YORK

To define communities of concern, New York uses a “single-score method” that effectively combines primary and secondary criteria. The state implementing agency, the New York Department of Environmental Conservation (NYDEC), adopts a community identification approach developed by the Climate Justice Workgroup (Workgroup), an advisory body established under the state’s Climate Leadership and Community Protection Act (CLCPA). This approach combines demographic data with weighted environmental and public health data to identify “disadvantaged communities.”⁵¹ As of this publication, NYDEC is currently engaged in rulemaking.

TABLE 1 STATE DECISION POINTS IN COMMUNITY IDENTIFICATION

STATE	PRIMARY CRITERIA	GEOGRAPHIC SCALE	SECONDARY CRITERIA / DISCRETIONARY MECHANISMS
New Jersey	Income, minority status, Tribal membership, limited English proficiency (LEP) thresholds	Census block group	Comparative environmental and public health burden /none
Connecticut	Poverty threshold, distressed municipality designation	Census block group or distressed municipality	None / none
Minnesota	Income, minority status, LEP & Indian Country	Census tract	Geographic limitations / none
New York	Composite of demographic and environmental and health indicators	Census tract	Composite scoring / none
Massachusetts	Income, minority status	Census block group	None / Secretary discretion to add or remove

B. STRESSOR IDENTIFICATION

After community identification, the assessment of cumulative impacts then requires identifying the relevant burdens borne by those communities. State laws and regulations differ in the specificity with which these stressors are defined:



New Jersey's EJ Law provides the most detailed statutory direction, outlining a non-exclusive list of both environmental (e.g., mobile sources, contaminated sites) and public health stressors (e.g., conditions that may cause health impacts such as asthma, cancer, elevated blood lead levels).⁵²



Connecticut's 2023 CI Amendments offer a broad definition and delegate the development of specific criteria to the agency.⁵³



Minnesota's FCPA uses a hybrid approach, defining environmental stressors broadly (health impacts from exposure to past and current pollutants) while requiring inclusion of specified social factors such as poverty, food insecurity, and inadequate healthcare access.⁵⁴



Massachusetts' MassDEP identifies stressors through its CIA regulations, including indicators of air quality, nearby existing regulated facilities, health and socioeconomic indicators, and nearby sensitive populations.⁵⁵ Additionally, MassDEP requires permit applicants to assess risks associated with air toxics.⁵⁶



New York adapts the methodology used by the CLCPA's Working Group that weighs the relative impacts of environmental burdens (e.g., proximity to hazardous sites, land uses), climate risks (e.g., flooding, extreme heat), pollution exposures (e.g., PM_{2.5}, diesel emissions) and population vulnerabilities (e.g., income, housing conditions, minority status).

WHO DECIDES?

Statutory Specificity v. Agency Discretion

State laws typically use a hybrid approach by identifying categories of environmental and public health burdens to be assessed during permitting, including air pollution (stationary and mobile sources), water pollution, presence of polluting facilities, and social determinants such as poverty, income, and unemployment. After identifying broad statutory categories, the legislature then defers to the implementing agency to identify specific stressors and data sources, to inform those categories. This approach can provide agencies with flexibility to evolve over time as new or better data become available.

IMPLEMENTATION NOTES

Stressor Identification and Climate Impacts

Stressor selection is often localized and community-specific with states benefiting from direct engagement to identify those stressors that most affect the health and well-being of their communities. Careful stressor identification is especially critical, as each category must be linked to quantifiable, reliable, and scalable data sources. How stressors are identified and informed by data also shapes the analytical methods available for assessing cumulative impacts.

States diverge on whether to incorporate climate-related stressors. While many states do account for climate-related *impacts* in their stressor identification (e.g., flooding, extreme temperature events), many state programs explicitly *exclude* greenhouse gas (GHG) emissions from the CIA analysis. Whether a state CIA program addresses GHG emissions will likely depend on the statutory language. For example, in New York, the CLCPA requires agencies to prioritize reduction of GHGs.⁵⁷ NYDEC has integrated this mandate into its permitting guidance to state agencies, and the Working Group’s criteria for identifying disadvantaged communities considers the need to reduce GHG emissions.⁵⁸ By comparison, MassDEP’s CIA regulations explicitly *exclude* consideration of GHG emissions when determining whether a proposed permit at an existing facility requires a CIA.⁵⁹ Other state programs, like New Jersey, focus more on localized community impacts but do consider GHG co-pollutants such as particulate matter and ozone.

New Jersey provides an illustrative example of how a hybrid statutory approach can be implemented. The state’s EJ Law provides a non-exclusive list of environmental (concentrated areas and mobile sources of air pollution, contaminated sites, solid waste and recycling facilities, point-sources of water pollution) and public health (conditions that “may cause” asthma, cancer, elevated blood lead levels, cardiovascular disease, developmental problems) burdens to guide NJDEP’s rulemaking. For each category, NJDEP evaluated potential data sources, considering:

- Alignment with statutory categories
- Data availability and quality
- Geographic scalability (e.g., census block, county, state)
- The marginal value of each stressor in the overall analysis

With regard to marginal value, NJDEP’s stated goal in this exercise was to identify “the minimum number of stressors necessary to accurately assess the presence of environmental and public health stressors” in overburdened communities.⁶⁰ This approach recognizes that any number of stressors could be relevant to measuring community burden but, after certain critical stressors are incorporated (New Jersey selected 24), adding more stressors may not add much value, particularly where it would further complicate the analysis.

Through this process, NJDEP (informed by its stakeholder engagement) selected data from publicly available state and federal data.⁶¹ This approach may benefit the objectivity and consistency of the CIA while also ensuring it is based on the best available information.

Two specific aspects of New Jersey’s stressor definition are worth noting.

First, the EJ Law’s definition includes specific facility types as stressors.^{iv} This level of specificity *required* the agency to consider whether these facilities were concentrated in OBCs. Consequently, in an OBC where facilities are already relatively more concentrated, the addition of any new facility would be found to contribute to stressors in a manner that could trigger permit denial. For example, if an applicant proposed a new solid waste facility in an OBC that is already home to a comparatively higher number of solid waste facilities, the proposal to add another facility would contribute to an already elevated stressor and require NJDEP to deny the permit application *on that basis alone*, without having to account for other potential stressor contributions like truck traffic or additional air emissions.

Additionally, New Jersey’s EJ Law refers to public health stressors that “may cause” potential public health impacts,⁶² thus allowing NJDEP to use indicators that are strongly correlated to public health impacts (e.g., age of housing, presence of air toxics, education, unemployment) without the need to rely on sensitive health data to demonstrate causation, which is often extremely difficult and data-intensive to prove, particularly on a localized scale.⁶³ This approach can help mitigate data access challenges while preserving analytic rigor.⁶⁴



iv New Jersey’s statutory definition of stressors includes solid waste facilities, recycling facilities and scrap yards. NJDEP’s rulemaking further included facilities with air emission or water discharge permits as stressors. N.J. REV. STAT. § 13:1D-158 (2020).

C. IDENTIFYING AND QUANTIFYING CUMULATIVE IMPACTS

After priority stressors are identified, state statutes typically require the agency or applicant to identify existing conditions in those overburdened communities. This analysis reflects the cumulative burdens already borne by these communities, though states approach this analysis differently:



New Jersey, New York, and Connecticut explicitly require the assessment of existing stressors in overburdened communities.⁶⁵



Minnesota similarly requires consideration of “environmental stressors present in the environmental justice area.”⁶⁶



Massachusetts’ air permitting regulations mandate a cumulative impacts analysis for certain air quality permits to assess “existing conditions” using specified environmental, public health, and socioeconomic data.⁶⁷

These assessments identify the present conditions in overburdened communities and form the empirical foundation for evaluating whether any additional burden from a proposed project will increase or exacerbate impacts in an already overburdened community.

Most state programs provide applicants with pre-approved data, including the option to use the state’s publicly available screening tool, to identify these existing conditions. Some states, such as Massachusetts, also require applicants to do public outreach in the affected communities before submitting their project proposal, effectively giving community members an opportunity to help identify existing conditions that may not be reflected in the screening tool or other data.

After the agency or applicant determines the existing conditions, the agency must then determine how a proposed project would impact a community. State programs typically do this with a two-step process: first by selecting a **comparative methodology** to assess *how* cumulative burdens affect different communities, and second by selecting **analytical methods**, meaning the technical tools or scoring systems agencies use to *quantify* those burdens. Because these two components are closely linked — the methodology identifying what is compared and the analytical method determining how to compare — it is essential that they align. Additionally, the selected comparative methodology will influence how relative risks are considered and whether the introduction of additional pollution to already overburdened communities will be allowed.

1. Comparative Methodology: Identifying Cumulative Burdens

Most existing state CIA approaches rely on one of two comparative methodologies to identify and assess disproportionate burdens:

- a. **Disproportionate Impact Analysis:** compares burdens in overburdened communities with those in non-overburdened communities through an analysis of specific stressors.
- b. **Threshold-Based Assessment:** compares whether a facility's contribution to existing conditions exceeds a specific regulatory or quantitative risk threshold.



New Jersey and **Connecticut** use the **disproportionate impact** approach. These state statutes require the implementing agency to compare burdens between communities to determine whether those present in the overburdened community are “higher than those borne by other communities” within the appropriate geographic area of comparison.⁶⁸ **New York** uses a similar framework, requiring consideration of a proposed project’s contribution to an existing “disproportionate pollution burden.”⁶⁹



Minnesota and **Massachusetts** require a **threshold-based assessment**. Minnesota’s FCPA mandates consideration of whether an impact is “substantial.”⁷⁰ MassDEP’s air permitting regulations use a quantitative risk assessment to determine whether a proposed project will result in an exceedance of cancer and non-cancer risk thresholds. MassDEP sets these thresholds through regulation.⁷¹

IMPLEMENTATION NOTES

Choosing between these methodologies, or adopting a new one, involves trade-offs among data accessibility, analytic precision, and each state’s policy goals. For example, conducting a statewide disproportionate impact analysis across multiple stressors requires the identification and analysis of significant data that must be available (or able to be interpreted at) the required geographic scale. To ensure the analysis remains reliable, the data would ideally be publicly available, stable, and updated at regular intervals.

A disproportionate impact analysis, like New Jersey’s, is based on comparative burdens and therefore does not require the same level of precision in quantifying facility contributions as, for example, Massachusetts’ risk-based thresholds. But Massachusetts’ air permitting regulations apply only to a specific class of air pollutants from certain types of facilities, making a risk threshold-based approach feasible. So, while it requires a more precise analysis, Massachusetts’ approach does not have the statewide data requirements that are needed to support a disproportionate impact analysis.

2. Analytical Methods: Quantifying Cumulative Burdens

Implementation of the selected methodology requires developing a suitable and reliable analytical method. As of this publication, states use one of two analytical approaches:

- a. **Single-Score Method** which uses weighted demographic and environmental stressors to develop a single, composite score; and
- b. **Matrix Approach** that compares multiple, individual stressors on both a cumulative and a stressor-by-stressor basis.

In all states, legislatures have left the selection of an analytical approach to agency discretion. New Jersey's EJ Law, for example, provides only that the agency must consider whether a subject facility will "cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities."⁷²

IMPLEMENTATION NOTES

Choosing the Analytical Method — Fit for Purpose Considerations

Selecting an appropriate analytical method for regulatory purposes requires weighing legal, scientific, and strategic considerations. The **Single-Score Method** offers statistical elegance and ease of communication, but it requires strong evidentiary support for stressor selection and weighting — factors that must satisfy administrative law requirements and withstand judicial scrutiny if challenged. The **Matrix Approach** offers transparency by assessing each stressor individually. Relying on this approach also avoids the methodological complexity of establishing and justifying a weighting system. This approach may allow the agency to more easily assess individual stressor contributions from proposed projects during implementation. Ultimately, the decision to employ one approach over another should reflect the state's regulatory goal, data availability, and legal risk tolerance — hallmarks of the fit-for-purpose framework.

i. The Single-Score Method (New York)

New York’s single-score method is informed by CalEnviroScreen, first released by the California Environmental Protection Agency (CalEPA) in 2013. CalEnviroScreen is a mapping tool that evaluates cumulative pollution burdens and population vulnerabilities in California communities by integrating 21 indicators into a single composite score. Broadly, the model calculates statewide percentile rankings across two main categories:

- **Pollution burden** (environmental exposures)
- **Population characteristics** (socioeconomic and health-related factors)

These two percentiles are weighted based on relative health impacts. For example, exposure to diesel particulate matter may carry more severe health consequences (such as increased asthma rates or cardiovascular problems) than exposure to ozone, even when each pollutant is present at levels near its respective standard. These weighted percentiles are then multiplied to generate a final cumulative impacts score for each community.⁷³ CalEnviroScreen then maps these scores to guide policy decisions related to funding, enforcement, and community engagement.⁷⁴ Notably, California has not yet incorporated CalEnviroScreen for regulatory use.

New York, by contrast, appears poised to do just that. While, as of this publication, rulemaking to fully implement the requirements of New York’s EJ Siting Law is ongoing, the initial proposal to implement aspects of the law related to its State Environmental Quality Review Act (SEQRA)⁷⁵ includes a single-score methodology similar to CalEnviroScreen.

New York’s CLCPA Working Group adapted California’s model to define Disadvantaged Communities (DACs) using 45 indicators, including:

- | | | | |
|---|--|--|--|
| ■ Environmental burden
(e.g., proximity to hazardous sites, land uses) | ■ Climate risk
(e.g., flooding, extreme heat) | ■ Pollution exposure
(e.g., PM _{2.5} , wastewater discharge) | ■ Population vulnerability
(e.g., income, housing conditions, race) ⁷⁶ |
|---|--|--|--|

As with CalEnviroScreen, the New York Working Group assigned each indicator a percentile score and weighed those scores based on its relative public health impact. Specifically, the Working Group gave the greatest weight to indicators related to environmental exposures and burdens that have the strongest and most direct associations with adverse health outcomes, such as air toxics, diesel particulate matter, and proximity to hazardous waste sites. Climate risks such as extreme heat and inland flooding were also weighted heavily, given their increasing relevance and acute impacts on public health and infrastructure. Population vulnerability indicators — such as income, race, and housing conditions — were included to contextualize cumulative burdens but received relatively lower weights. The weighted scores were combined to produce a single composite score.⁷⁷ Communities that scored above their regional or statewide comparators were designated as DACs — ultimately comprising approximately 35% of the state’s census tracts.⁷⁸



In its initial SEQRA-related rule proposal, NYDEC incorporated the Working Group’s DAC scores into a second analytical tool — the Disadvantaged Communities Assessment Tool (DACAT) — to assess whether a DAC “has an increased likelihood of experiencing a moderate to large impact based on existing burdens or vulnerabilities” when compared to four reference scenarios:

- Statewide rural
- Statewide urban
- Regional rural
- Regional urban

This process yields a visual mapping interface identifying communities with: (1) comparatively lower burdens and vulnerabilities; and (2) comparatively higher burdens and vulnerabilities.⁷⁹

LEGAL FLAGS

As of this publication, one lawsuit has been filed challenging the New York Working Group’s designation of DACs. Petitioners challenged the Working Group’s process for determining “disadvantaged communities” arguing (1) the Working Group should have issued its determinations as rules and therefore did not comply with procedural requirements under the state’s APA, (2) the Working Group’s decisions were arbitrary and capricious, and (3) the Working Group’s decision to weight indicators differently discriminated against the Petitioners.⁸⁰

The state trial court rejected all three arguments. First, the court held that the structure of the Working Group and the language of the statute indicated that the legislature did not intend for the DAC designations to be rules so the Working Group had followed the proper procedure.⁸¹ Second, the trial court found that the Working Group’s reasoning was “logical and sound” and deferred to its expertise.⁸² Finally, the court found the Working Group’s decisions were not discriminatory because the process for determining how to weigh different indicators was “rational and reasonable and [] supported by the record.”⁸³ Petitioners appealed the decision, and as of this publication, briefing is still underway.⁸⁴

ii. Matrix Approach (New Jersey, Massachusetts)

New Jersey and Massachusetts use a Matrix Approach. This approach does not require the agency to weigh or aggregate stressors but instead compares burdens on a stressor-by-stressor basis.

New Jersey's EJ Law⁸⁵ requires the NJDEP to determine whether a subject facility “would . . . cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the State, county, or other geographic unit of analysis *as determined by the department*.”⁸⁶ NJDEP's regulations reflect the agency's interpretation of this language to favor a comparative approach.

NJDEP's methodology begins with a determination of the appropriate geographic point of comparison. The agency developed a hybrid approach that compares the environmental and public health stressor values of an OBC to the 50th percentile values for non-OBCs in either the state or county, whichever is lower.^v As NJDEP discussed in the initial regulatory proposal, the agency focused on non-OBCs to ensure the law does not further perpetuate historic siting inequities by merely comparing one overburdened area to another. The agency also chose to consider both state and county-wide comparisons, as opposed to relying exclusively on one, to ensure protection of both urban and rural areas. Using a county-only comparison may offer less protections to communities in more industrialized counties; a statewide-only focus may be less protective of more rural areas by including industrialized counties in the comparison.⁸⁷ To justify this approach, NJDEP pointed to the EJ Law's stated intent that “no community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State's economic growth.”⁸⁸

NJDEP's matrix approach first requires NJDEP to determine the appropriate geographic point of comparison for each stressor affecting an OBC:

1. Using publicly available data, each stressor is assigned a numerical value to represent the severity of that stressor in all OBCs and non-OBCs.
2. The 50th percentile of non-OBC stressor values is determined both statewide and at the county level.
3. The lower of these two values then becomes the geographic point of comparison for assessing disproportionality.⁸⁹

This comparison is conducted separately across each of the 26 environmental and public health stressors identified in the rule appendix.⁹⁰ Any stressor in the OBC exceeding its geographic point of comparison (the lower of the state or county 50th percentile for non-OBCs) is deemed adverse.^{vi}

v NJDEP's rules define the “geographic point of comparison” as “the comparison area and value used to determine whether an overburdened community is subject to one or more adverse environmental and public health stressors and is determined by selecting the lower value of the State or county's 50th percentile, calculated excluding the values of other overburdened communities. For the purposes of this definition, ‘county’ shall refer to the county in which the overburdened community is located.” N.J. ADMIN. CODE § 7:1C-1.5 (2023).

vi N.J. ADMIN. CODE § 7:1C-1.5 (2023). “Adverse environmental and public health stressor” means a stressor in the overburdened community that is higher than an overburdened community's geographic point of comparison or would be made higher than an overburdened community's geographic point of comparison as a result of the facility's contribution.



NJDEP then sums the number of adverse stressors in each OBC to generate a “combined stressor total.”⁹¹ This total is compared against the 50th percentile of combined stressor totals in non-OBCs (again, the 50th percentile statewide or at the county level, whichever is lower). If exceeded, the community is considered subject to adverse cumulative stressors.^{vii}

To support regulatory implementation, NJDEP developed its Environmental Justice Mapping, Assessment, and Protection Tool ([EJMAP](#)), which depicts the results of this comparative analysis and allows community members, applicants, and regulators to see:

- OBC designations
- Individual stressor values (including disproportionality)
- Cumulative stressor totals (including disproportionality)

These data inform the permit application and review process to determine whether a proposed project will result in a “disproportionate impact.”^{viii}

vii *Id.* at § 7:1C-2.3(e). “Adverse cumulative stressors” means that the combined stressor total of an overburdened community is higher than or would be made higher than the overburdened community’s geographic point of comparison.

viii Under NJDEP’s regulations, a “disproportionate impact” occurs when facility cannot avoid either: (1) creating adverse cumulative stressors in an overburdened community as a result of the facility’s contribution; or (2) contributing to an adverse environmental and public health stressor in an overburdened community that is already subject to adverse cumulative stressors. *Id.* at 7:1C-1.5 (2023).

IMPLEMENTATION NOTES

Issuing Tools as Rules or Guidance

As agencies develop their methodologies and associated mapping tools, it is important to consider how those will be released: as rules or guidance. When updating rules, agencies typically must first go through formal notice and comment, whereas guidance generally can be edited or updated immediately.

This choice will depend on each state's administrative requirements, how these methodologies and tools are used within the state CIA program, and how often these resources need to be changed or updated. For example, NJDEP issued its EJMAP as regulatory guidance separate from the formal EJ rulemaking process.^{ix} Importantly, NJDEP's implementing regulations do not *require* applicants to use EJMAP; rather, they require the NJDEP to provide applicants with individual stressor values, the relevant combined stressor total, and indications of their respective disproportionality.⁹²

In the adoption document, NJDEP clarified that EJMAP is a *voluntary tool*, created to "provide a publicly available, user-friendly, visual representation of the underlying data to allow applicants easy access to the information without the burden of having to conduct the analysis themselves."⁹³ Applicants may, however, choose to conduct the analysis independently, as long as they comply with the standards and procedures set forth in the rules.⁹⁴ NJDEP also issued a companion guidance document detailing EJMAP's analytical approach.⁹⁵

Issuing supporting mapping tools or other data resources as guidance rather than rules (provided the approach is authorized under a state's Administrative Procedure Act) can provide agencies with the flexibility to update underlying data and refine methodological calculations as necessary to ensure the information guiding permitting decisions is as accurate and current as possible. To the extent data sources are identified in a rule, referring to those tools by their "most recent iteration" (rather than those available at the time of adoption) can further help ensure newer data can be considered in a manner consistent with the state's APA.⁹⁶

ix Under New Jersey's version of the Administrative Procedure Act, agencies may issue documents that "provide technical or regulatory assistance or direction to the regulated community to facilitate compliance" without undergoing formal rulemaking. N.J. REV. STAT. § 52:14B-3(a) (2025).

LEGAL FLAGS

Part of a lawsuit challenging NJDEP’s cumulative impacts regulations broadly challenged the EJMAP tool and accompanying technical guidance. Petitioners argued the tool and guidance met the standard for an administrative rule, and therefore, NJDEP’s decision to publish the tool as guidance “bypassed public input and comments regarding the actual designation of specific ‘overburdened communities’ triggering the Rules.”⁹⁷

The state responded that the EJMAP and technical guidance qualify for a state law exception from formal rulemaking for “regulatory guidance documents.”⁹⁸ The state argued these materials fall within the exemption because they are available to the regulated community online (a requirement under the exemption), aid in compliance with the regulations, and do not add legal obligations.⁹⁹ In upholding the agency’s approach, the court held, “[f]ormal rulemaking was not required” because NJDEP had statutory authority to issue technical guidance “separate from” the rulemaking process, and further, agreed with the agency that the technical guidance and map meet this exception from formal rulemaking.¹⁰⁰

Massachusetts also uses the matrix approach as part of MassDEP’s Air Pollution Control Regulations, integrating cumulative impacts analysis into its air permitting program.¹⁰¹ To develop this approach, MassDEP relied on examples from Minnesota, New Jersey, and the Massachusetts Environmental Policy Act.¹⁰² The agency also hosted webinars over a period of nine months to solicit stakeholder input on how the program should incorporate public participation, CIA approaches, the existing permitting process, and indicators.¹⁰³

Under MassDEP’s now finalized rules, permit applicants begin by identifying:

- Nearby overburdened communities (“environmental justice populations”)
- Sensitive receptors
- Regulated facilities within a defined radius¹⁰⁴

Permit applicants must then evaluate existing community conditions using 33 indicators designated in MassDEP’s rules, including indicators of air quality, nearby existing regulated facilities, health and socioeconomic indicators, and nearby sensitive populations.¹⁰⁵ Applicants must also conduct air quality dispersion modeling along with risk characterization for air toxics.¹⁰⁶ This information is submitted as a Cumulative Impact Analysis Report to MassDEP; that report must also identify any mitigation measures the applicant plans to use to reduce or minimize cumulative impacts.¹⁰⁷ Implementation of the identified mitigation strategies is not mandatory.¹⁰⁸

As in New Jersey, Massachusetts provides detailed community-level data for each indicator and provides a visual representation of overburdened communities, regulated facilities, and sensitive receptors through its Cumulative Impacts Analysis Mapping Tool.¹⁰⁹

IMPLEMENTATION NOTES

Providing Pre-Approved Data

Despite using different methods, the approaches by Massachusetts and New Jersey are both designed to incentivize applicants to use data that the respective implementing agencies have vetted and deemed reliable. NJDEP provides the applicant with existing condition data upon request and through EJMAP.¹¹⁰ MassDEP uses a Cumulative Impacts Mapping Tool while requiring the applicant to characterize risk using either approved air dispersion models or a model provided by the applicant.¹¹¹

TABLE 2 ANALYTICAL METHODS TO QUANTIFY CUMULATIVE BURDENS

STATE (METHOD)	NEW YORK (SINGLE SCORE)	NEW JERSEY (MATRIX)	MASSACHUSETTS (MATRIX)
No. of Stressors Considered	45	26	33
Analytical Approach	Weighted percentiles, multiplied for a cumulative score	Individual stressor comparison plus cumulative stressor total	Individual stressor comparison plus dispersion modeling
Cumulative Impacts Metric	Single DAC score	Combined stressor total	Narrative project-specific CI Report (qualitative and quantitative, including modeling and air toxics risk characterization)
Visual Tools	DACAT (Disadvantaged Communities Assessment Tool)	EJMAP (Environmental Justice Mapping Tool)	Cumulative Impacts Mapping Tool
Use in Permitting	Proposed rules would require use under SEQRA	Mandatory under EJ Law for covered permits	Required for certain air permits
Weighting?	Health-based weights assigned to each stressor	None	None

WHO DECIDES?

Statutory Specificity v. Agency Discretion

Clearly identifying both the **comparative methodology** and **analytical methods** in statute can be beneficial in ensuring consistency, transparency, and accountability in agency decision-making. But overly proscriptive language may hinder the use of agency expertise in developing a fit-for-purpose approach and may not allow the incorporation of future innovations in cumulative impacts analysis. Generally, statutes that use comparative terminology like “disproportionate” and “adverse” or refer to “higher” burdens are more likely to support a disproportionate impact approach. Statutory language setting specific impact thresholds tends to use threshold-based assessment approaches. Finally, if the law references “cumulative impacts” or discussions of relative health impacts of multiple stressors or vulnerabilities, that language may favor the single-score approach.

D. WHEN IS A CIA REQUIRED?

When creating a CIA program for permitting, it is important to clearly define *when* a cumulative impacts analysis must be performed, either in statute or rulemaking. For example, legislatures may specify that CIAs apply to new or modified major air pollution sources or waste facilities, high-volume water withdrawals, or projects that generate significant traffic or noise.

WHO DECIDES?

Statutory Specificity v. Agency Discretion

Statutory identification of the types of facilities, projects, or activities that will require a CIA can focus agency efforts on the facilities of most concern to communities and limit the risk of agency capture or lobbying efforts that might otherwise narrow the scope post-enactment. Conversely, if these categories are defined too narrowly in statute, it can hamstring the agency from requiring a CIA for facilities or waste types not covered under the law. Because the trigger’s scope has a direct effect on the law’s efficacy in redressing environmental and health impacts in overburdened communities, it is essential that those communities participate in determining the CIA bill’s scope, including the types of facilities or projects that will require a CIA.

Existing state laws tend to scope the CIA trigger based on the following factors:

- **Location:** how close is the proposed project to overburdened communities?
- **Project type and phase:** what kind of project is being proposed and what kind of permit does the applicant seek (new, modification, or renewal)?
- **Community input:** is there demand from impacted communities for a CIA?

Defining which facilities or types of permit applications trigger the requirement to conduct a CIA is not just a technical choice — it should reflect the issues that most affect overburdened communities in each state, consistent with a fit-for-purpose approach.

1. Location and Proximity to Overburdened Communities

Some state CIA requirements, such as New Jersey’s, are only triggered if the proposed project is located *within* an overburdened community. Other states, such as Minnesota and Massachusetts, use buffer zones, where the project proponent must prepare a CIA if the proposed project is within a specified distance to an overburdened community. Buffer zones are often used for projects emitting pollution that easily migrates, such as air pollution, to more accurately capture the radius of impacts from a proposed project. The buffer zone can be the same for all projects, as in Minnesota, or the buffer zone can change depending on the type of project, as in Massachusetts.

TABLE 3 CIA TRIGGERS BASED ON PROXIMITY TO OVERBURDENED COMMUNITIES

EXAMPLE: NO BUFFER ZONE	EXAMPLE: STATIC BUFFER ZONE	EXAMPLE: ADJUSTED BUFFER ZONES
“...if the facility is located, or proposed to be located, in whole or in part, in an overburdened community...” ¹¹²	“...This section applies to an application for a permit by a facility that [] is located in or within one mile of a census tract that is part of an environmental justice area...” ¹¹³	“A [CIA] shall be required . . . for a proposed new facility or emission unit that is in an [EJ] population or within [] one mile of an [EJ] population if the facility or emission unit will not be a major source... or [] five miles of an [EJ] population if the facility or emission unit will be a major source...” ¹¹⁴

IMPLEMENTATION NOTES
When to Use Buffer Zones

The decision to incorporate a buffer zone in the CIA trigger should be informed by residents in overburdened communities. There are pros and cons to each approach. The larger the buffer zone, the more likely it is that proposed projects will trigger the CIA requirement and that pollution sources affecting a community but situated beyond the boundaries of prescribed geographic units (e.g., census block or census tract) are addressed. Conversely, focusing only on projects within overburdened communities may ease agency implementation by focusing agency resources on facilities that are most likely to directly impact overburdened communities and avoiding technical challenges associated with assessing facility-specific contributions on communities across larger distances. In deciding whether to include a buffer zone, whether that buffer should be static or adjusted by project type, drafters could consider (1) the types of projects covered and their impacts, (2) the geographic range and severity of those impacts, (3) the geographic distribution of overburdened communities, and (4) the implementing agency’s capacity to implement the CIA program.

2. Facility Applicability

State statutes are typically explicit in defining the types of facilities that are subject to their CIA requirements. Ideally, these facilities have been selected in collaboration with community members and their representatives to identify facility types that have or are most likely to impact overburdened communities.

Whether or not an applicant has to prepare a CIA typically depends on: (1) the facility type and (2) whether the facility already exists or is being newly proposed.

i. Facility Type

Some states, such as **New Jersey, New York, and Connecticut**, apply CIA requirements broadly across many facility types, with applicability in some instances dependent upon the scale:



New Jersey defines “facility” to include any: (1) major source of air pollution; (2) resource recovery facility or incinerator; (3) sludge processing facility, combustor, or incinerator; (4) sewage treatment plant with a capacity of more than 50 million gallons per day; (5) transfer station or other solid waste facility, or recycling facility intending to receive at least 100 tons of recyclable material per day; (6) scrap metal facility; (7) landfill, or (8) medical waste incinerator (unless attendant to a hospital or university).



New York’s EJ Siting Law applies to any facility seeking permits for water pollution and air pollution, liquefied natural and petroleum gas facilities, waste transporters, solid and hazardous waste management facilities, and those that require water withdrawal of over 20 million gallons per day for cooling purposes.



Connecticut’s “affecting facilities” include any: (1) electric generating facility with a capacity of more than ten megawatts; (2) sludge or solid waste incinerator or combustor; (3) sewage treatment plant with a capacity of more than 50 million gallons per day; (4) intermediate processing center, volume reduction facility or multitown recycling facility with a combined monthly volume in excess of twenty-five tons; (5) new or expanded landfill; (6) medical waste incinerator; or (7) major source of air pollution.



Other states, such as **Massachusetts** and **Minnesota**, are more targeted in their approach, with CIA programs applying only to facilities seeking certain air pollution permits.¹¹⁵ There are pros and cons to this narrower approach. Restricting the CIA requirement to projects or facilities of a certain size can maximize state resources to focus on analyzing projects with the largest environmental or health impacts. However, it can also lead the state to underestimate the cumulative burdens of smaller projects that do not trigger the CIA requirement and potentially incentivize applicants to segment their proposals to stay below the pollution impact threshold (though these concerns can be addressed separately with anti-segmentation language, discussed in Section D.2.iii below). These determinations will depend on the primary environmental and health concerns in each state and should be designed in collaboration with impacted communities.

IMPLEMENTATION NOTES

Defining “Facility”

State programs vary with respect to how they classify the unit of regulation. Most CIA programs apply to a “facility,” though state laws define “facility” differently.* For example, Massachusetts’ CIA air regulations apply to a proposed facility “or emission unit.”¹¹⁶ This additional language can lead to very different outcomes. For example, imagine an existing facility proposes to expand its operations by constructing a new generating unit that would increase air pollution in an overburdened community. In Massachusetts, that proposal would likely be qualified as “new” because it would add a new emission unit.^{xi} By comparison, in New Jersey, which defines a “facility” more broadly, the proposal would likely be considered an “expansion” of an existing facility. Because an agency’s authority to deny or condition a permit can differ depending on whether the proposed permit is for a “new” versus “existing” facility, these determinations can significantly affect the efficacy of the CIA program.

x These definitions are often determined by the state’s preexisting permitting scheme and can vary depending on the regulated pollutants or activities. See, e.g., N.Y. ENV’T CONSERV. LAW § 70-0105 (McKinney 1986) (defining “project” as “any activity” that requires one or more department permits, where “permit” is defined consistent with New York’s existing regulatory program for water quality, air pollution, mined lands, and other media).

xi MassDEP regulations define an “emission unit” as “any individual piece of equipment from which any air contaminant is emitted to the ambient air space; for example, an individual boiler, a single degreaser, etc.” 310 MASS. CODE REGS. 7.00 (2025).

ii. *Project Phase: New, Expansion/Modification, and Renewal*

State statutes are typically explicit in determining whether the CIA program should apply to the development of new facilities, the expansion or modification of existing facilities, or the renewal of an existing facility's operating permits. While all states' CIA requirements apply to proposed new facilities, state statutes differ in their applicability to existing facilities.

For existing facilities seeking to modify or expand their operations, all states except Connecticut apply their CIA requirements with slightly different terminology but likely little practical difference. Where New York's EJ Siting Law uses "modification" and MassDEP's regulations reference proposals to increase emissions, the remaining states use the term "expansion."^{xii}

Where state statutes apply to permit renewals, New York's EJ Siting Law and Minnesota's FCPA have the broadest applicability, including all covered facility types. New Jersey's EJ Law applies more narrowly, covering only renewals by Title V/major air sources. Connecticut does not extend its CIA requirements to renewals whereas project-specific air permits issued by MassDEP do not expire, negating renewal applicability.

Some programs also set pollution thresholds that a facility must exceed before a CIA is required. These thresholds may be qualitative ("significant" or "more than de minimis") or quantitative and can vary by pollutant type. For example, New York's EJ Siting Law requires an applicant to perform a CIA for a new project if that project "may cause or contribute more than a de minimis amount of pollution" to an existing disproportionate burden on a disadvantaged community.¹¹⁷ The law does not define "de minimis," leaving it to the agency to define this term via regulation.

WHO DECIDES?

Statutory Specificity v. Agency Discretion

Many state programs rely on undefined terms to set the pollution threshold for conducting a CIA. While some terms, like "significant," "de minimis," or "disproportionate" are commonly used in legislative drafting, if the law does not define these terms, the state agency must define these terms via rulemaking or guidance, which will in turn affect the law's efficacy in reducing disproportionate burdens. This flexibility can allow the agency to rely on its scientific expertise and public engagement processes to further define these thresholds but can also introduce significant uncertainty and variability in the implementation phase. Careful consideration of whether and how to include similar terms in statute is warranted. If these terms are included, engagement during the regulatory process is likely to center on how broadly or narrowly such terms should be defined. Generally, it will be important to connect these definitions to objective or risk-based factors to ensure these standards are consistently applied and result in substantive public health protections. In New York, for example, the term "de minimis" could be defined as a facility contribution that does not add to relevant risk factors, particularly where those factors are already disproportionately elevated.

^{xii} With several states engaged in program development at the time of publication it remains to be seen whether any material distinction between the two terms will ultimately be observed. For its part, NJDEP's implementing regulations include reference to "modification" within the definition of expansion, excluding those that decrease or do not otherwise increase stressor contributions.

TABLE 4 APPLICABILITY BY FACILITY TYPE (NEW, MODIFICATION/EXPANSION, OR RENEWAL)

STATE	NEW	EXISTING		STATUTORY OR REGULATORY LANGUAGE
		EXPANSION/ MODIFICATION	RENEWAL	
Massachusetts	Yes	If emissions will Increase	N/A	Regulatory: "...a proposed new facility or emission unit" or "an existing facility or emission unit ... if the applicant proposes [] to increase facility-wide potential emissions of [target pollutants], individually or in the aggregate" by 1 ton per year. ¹¹⁸
Minnesota	Yes	Yes	Yes	Statutory: "...new construction or facility expansion or the reissuance of an existing permit." ¹¹⁹
New Jersey	Yes	Yes	Major source only	Regulatory: "...a new facility or for the expansion of an existing facility, or any application for the renewal of an existing facility's major source permit..." ¹²⁰
New York	Yes	"Modification"	Yes	Statutory: "...a new project subject to an applicable permit..." or "...application for renewal or modification of an applicable permit" ¹²¹
Connecticut	Yes	N/A	N/A	Statutory: "...proposed affecting facility, other than an application for an expanded permit" ¹²²

If and how a state CIA program addresses existing facilities is especially important. While addressing pollution from new facilities can help prevent *additional* contributions in overburdened communities, the only way to address existing conditions is by reducing burdens from existing facilities. Furthermore, most agency permitting decisions will likely relate to existing facilities through renewals of their permits. Addressing those disproportionalities by authorizing or requiring agencies to scrutinize the expansion, modification, or renewal of existing permitted facilities and, where appropriate, identify avenues to reduce their stressor contributions, better serves the goal of reducing disproportionate impacts in overburdened communities.

The scope of the CIA program also depends on how the agency defines "new," "existing," "expansion," and related terms. New Jersey, for example, use the following definitions:

- **New facility:** any facility that has not commenced operation; or a change in use of an existing facility;
- **Existing facility:** a facility that possesses a valid approved registration or permit;
- **Expansion:** modification or expansion of existing operations or footprint of development with the potential to increase its contribution to any environmental and public health stressor in an overburdened community. This excludes any such activity that decreases or does not otherwise result in an increase in stressor contributions.¹²³

While these terms may seem self-explanatory, it is important to consider how these definitions will be applied to different projects, as discussed in the example below.

IMPLEMENTATION NOTES
Defining “New” vs. “Expansion”

NJDEP’s Review of Safety-Kleen’s Proposed Permit Modification In January 2025, NJDEP issued a decision on a permit request from Safety-Kleen to introduce additional waste processes at an existing waste recycling center in an overburdened community subject to adverse cumulative stressors. After determining the proposal was an “expansion” that would result in a disproportionate impact, NJDEP issued its first decision under the EJ rules with conditions intended to address these contributions, particularly air pollution. These conditions included incorporating Safety-Kleen’s proposed emissions control measures (e.g., requiring fully enclosed operations with air pollution control equipment) and additional impact reduction measures such as the development and implementation of an anti-idling program, evaluating Safety-Kleen’s vehicle fleet for emissions reductions opportunities, and developing a community engagement plan.¹²⁴

After NJDEP issued its decision, the New Jersey Environmental Justice Alliance (NJEJA) and other organizations submitted a letter to NJDEP arguing that the agency incorrectly classified the proposed project as an “expansion” rather than a “new” facility operating within the same footprint (among other concerns).¹²⁵ As NJEJA noted in the letter, New Jersey’s EJ Law defines a “new facility” to include “a change in use of an existing facility,” and “change in use” is defined as “a change in the type of operation of an existing facility that increases the facility’s contribution to any environmental and public health stressor in an [OBC], such as a change to waste processed or stored.”^{xiii} NJEJA argued that because Safety-Kleen was seeking permits to store and treat new types of waste, the project must be considered a “new” project. Despite these objections, NJDEP has not withdrawn its decision.

iii. Disincentivizing Segmentation

In some cases, an applicant or state agency may intentionally or unintentionally “segment” a project into smaller phases or stages, reducing the perceived environmental impact of a project. If a project is segmented in this way, it may not trigger the state’s requirement to conduct a CIA. To ensure the CIA accurately assesses the impacts of the project, consideration should be given to whether and how the agency is directed to assess the *total* impacts of the project as a whole, and not just the segmented proposal.

^{xiii} N.J. ADMIN. CODE § 7:1C-1.5 (2023). NJDEP’s regulations further state that “it is reasonable to define new facilities to include existing facilities that seek permits to undertake a fundamental change in their operation.” NJDEP, *Rule Adoption: Environmental Justice Rules*, 55 N.J.R. 661(b) at 689 (Apr. 17, 2023).

For example, if the owner of an existing facility wants to install ten diesel-powered generators at the facility, they could submit one application for all ten generators or segment the proposal into two: one application to install five generators the first year, and a second application the following year to install five more generators. In the latter case, if the agency assesses whether a CIA is required based on the anticipated impact of the five generators alone, then the application may not meet the thresholds necessary to trigger a CIA, even if the project as a whole would meet those thresholds.

Many state CIA programs prohibit this type of segmentation explicitly or implicitly (and underlying state regulations may also include guardrails against segmentation). For example, New Jersey's EJ Law includes a "zero contribution threshold" (discussed below), such that *any* contributions to adverse stressors in overburdened communities will trigger further action or analysis. This "zero contribution threshold" thus disincentivizes segmentation because the submission of multiple smaller projects will likely result in repeated requirements to comply with the CIA process.¹²⁶ NJDEP's rules also incentivize permit applicants to seek permits for an entire project rather than engage in multiple segmented permit processes by: (1) requiring that the applicant identify all NJDEP permits required for construction or operation of the facility; and (2) providing that its decision applies to all identified permits.¹²⁷

3. Community Petitions

As of this publication, only Minnesota's program includes a formal mechanism for community members to petition the agency to require a CIA. Under Minnesota's FCPA, residents in an overburdened community can directly petition the MPCA Commissioner to require a permit applicant or permit holder to conduct a CIA. The petition must be signed by at least 100 residents and be supported by "material evidence" of a "potential adverse cumulative impact."¹²⁸ Notably, the facility does not need to have a permit application open for this process to be available. However, the decision of whether to require a CIA remains with the Commissioner.

The MPCA proposed implementing regulations in May 2026.¹²⁹ Those regulations define how the petition process works, the content required in a petition, how it should be filed, and the responsibilities of the commission upon receiving a petition.¹³⁰ As of this publication, MPCA has not finalized its regulations.

4. Tribal Consultation and Consent

As of this publication, Minnesota is also the only surveyed state to explicitly include provisions regarding the treatment of projects on Tribal lands or impacting Tribal communities into its CIA program (though New Jersey's identification of overburdened communities considers members of state-recognized Tribal entities).

Minnesota's cumulative impacts law incorporates by reference legislative requirements outlining the state's government-to-government relationship with federally recognized Tribal Nations.¹³¹ The law then requires the MPCA Commissioner to enter into formal consultation with Tribal Nations whenever a permit application is located "in Indian Country."¹³² After consultation, the Tribal government with jurisdiction over that area "may elect" for the permit applicant to be subject to the state's cumulative impacts law. Notably, this provision explicitly grants the Tribal Nation discretion over the cumulative impacts law's application, not the implementing state agency, consistent with the Tribe's sovereign status.

E. MEANINGFUL PUBLIC ENGAGEMENT AND PARTICIPATION REQUIREMENTS

Meaningful public engagement is a cornerstone of any environmental justice policy. When crafting a CIA program, incorporating meaningful public engagement requirements is essential to ensuring that overburdened communities have a real and substantive voice in decisions that affect their health, environment, and well-being, and an opportunity to affect the outcome of related permitting decisions.

When implemented early, often, and effectively as part of a CIA program, meaningful public engagement allows agencies and applicants to identify local concerns, integrate community knowledge, and critically, build trust in the process and its outcomes. Far from being a procedural formality, it is a core element of equitable environmental governance that can help prevent further harm to overburdened communities. When done well, meaningful engagement produces more equitable outcomes, stronger and more tailored environmental protections, and decisions that reflect the firsthand experiences of impacted residents.

Recognizing the importance of meaningful engagement, most state CIA approaches include specific requirements governing the timing, content, format, and accessibility of notices, hearings, and other types of public outreach. Importantly, state statutes and regulations generally set the minimum standards for engagement, and agencies and/or permit applicants may do more to engage the public if they choose to do so. Furthermore, state statutes or regulations often require permit applicants to demonstrate compliance through the creation of a “public participation plan” or similar document.

WHO DECIDES?

Statutory Specificity v. Agency Discretion

Legislation that requires agencies to ensure meaningful and accessible public participation provides agencies with clear authority to prioritize outreach and thoughtful responses to public comments. Agency rulemakings can also provide further clarification, defining specific procedures and deadlines based on public comments received during the rulemaking process. As always, both statutory and regulatory engagement requirements should be crafted in partnership with impacted communities to address community-specific concerns, including language access needs, accessibility concerns for both online and in-person engagement, and process considerations.

LEGAL FLAGS

Ensuring Compliance with Existing Engagement Requirements

Even if a state CIA statute or regulation does not specify meaningful engagement requirements, that does not mean those requirements do not exist. For example, federal civil rights laws bar recipients of federal funding, including state agencies, from discriminating on the basis of national origin. In 1974, the Supreme Court ruled that discrimination against people with limited English proficiency (LEP) — including a failure to provide adequate language access — is a form of discrimination based on national origin in violation of Title VI of the Civil Rights Act of 1964.¹³³ While recent executive actions under the Trump administration have called this obligation into question,¹³⁴ executive orders and guidance cannot change federal law. Similarly, federal disability laws require recipients of federal funding to provide equal public engagement opportunities for people with disabilities.¹³⁵ State civil rights laws also establish similar or additional requirements to ensure people with limited English proficiency or disabilities can fully participate in state engagement processes.

Existing state CIA programs typically include meaningful engagement requirements or recommendations regarding: (1) public notice of the proposed project; (2) public hearing content and location; (3) public comment procedures; (4) language and disability access; and (5) timing of agency decision making.

1. Public Notice of Proposed Project

A fundamental predicate of meaningful public engagement is providing timely and accessible public notice to those likely to be affected by or interested in the proposed action. As such, many jurisdictions establish requirements for noticing the proposed project at the outset.

For example, Massachusetts requires the applicant to provide notice of the proposed project via mail or email to the relevant state agency office, the state Environmental Justice Director, the municipality where the project is located, and “[r]epresentatives of nearby environmental justice populations that include organizations and individuals recommended by the Department’s Environmental Justice Director and relevant Department Regional Office.”¹³⁶ This notice must include a fact sheet describing the proposed project, contact information, and must be translated into non-English languages spoken by a “significant percentage” of residents.¹³⁷

In New Jersey, the applicant must transmit the cumulative impact statement to the NJDEP and the municipality where the affected overburdened community is located.¹³⁸ NJDEP is then required to publish the statement on the department website.¹³⁹ The applicant is also required to post and maintain a notice on the site of the facility in a prominent location visible to the public during the public comment period notifying the public of the application, the public hearing, and comment opportunities.¹⁴⁰ NJDEP regulations also provide a broad mandate to notify the public, requiring “direct and adequate notice” to residents of the overburdened community, and providing a non-exhaustive list of methods such as electronic/voice communications, flyers, local publications, and collaboration with community-based organizations.¹⁴¹

In Minnesota, the statute requires the applicant to hold at least two public meetings, one before completing the CIA and one after. The commissioner of the Minnesota Pollution Control Agency is required to post the CIA on the MPCA website at least 30 days before the second public meeting.¹⁴²

Connecticut's statute requires applicants to develop a Public Participation Plan, which may specify additional outreach methods to notify and engage the public beyond what is detailed in statute including direct engagement with community groups.¹⁴³

2. Public Hearing Requirements

To avoid replicating standard agency hearing procedures that may be inaccessible or ineffective, several states have imposed CIA-specific public hearing requirements related to notice periods, location, responsible parties, and format. Generally, applicants are required to present information on the proposed project in a clear and concise manner, which often includes describing the impact assessment and providing an opportunity for the public to comment.

For example, Connecticut's EJ law¹⁴⁴ requires:

- Each "meaningful public participation plan shall contain measures to facilitate meaningful public participation" including an "informal public meeting ... convenient for the residents of the affected environmental justice community."¹⁴⁵
- Notification methods "shall" include posting:
 - A "reasonably visible sign" in both English and "all languages spoken by at least fifteen per cent of the population" that reside within a half mile radius of the facility; and
 - On "electronic media, including, but not limited to, relevant Internet web sites and social media platforms, provided such notice is readily found by searching for the name of the affecting facility on the Internet."¹⁴⁶
- Notification "may include notifying neighborhood and environmental groups, in writing, in a language appropriate for the target audience."¹⁴⁷
- The applicant "shall make a reasonable and good faith effort to provide clear, accurate and complete information" at the informal public hearing.¹⁴⁸

New Jersey's implementing regulations provide more detailed and prescriptive requirements, including that:

- Public notice be published in two newspapers, one in English and another "in a language representative of the residents of the overburdened community";¹⁴⁹
- A sign be posted at the project site "in a prominent location(s) viewable by the public" with "sufficient detail in a language(s) representative of the residents of the overburdened community as to inform of the application, and the method by which the public may obtain information about such proposed application";¹⁵⁰
- Public notice be provided through "methods identified by the applicant to ensure direct and adequate notice to individuals in the overburdened community including, but not limited to, providing information directly to active community groups or organizations, automated phone, voice, or electronic notice, flyers, and/or utilization of other publications utilized within the overburdened community";¹⁵¹ and
- At the public hearing, the applicant must provide a "clear, accurate, and complete presentation of the information contained in the" environmental justice impact statement and "allot sufficient time to ensure that all interested individuals have a reasonable and adequate opportunity to provide oral comment at the hearing."¹⁵²

TABLE 5 PUBLIC HEARING REQUIREMENTS

NOTICE	METHOD OF NOTICE OF HEARING	CONTENTS OF NOTICE OF HEARING	LOCATION AND TIME OF HEARING	TIMING
New Jersey¹⁵³				
60 days	Two newspapers, including one non-English; by mail to all property owners/residents within 200 feet; send a copy to NJDEP which will publish it on its website; send a copy to the municipality where the OBC is located	Time, date, and location of hearing; project description; location map; summary of cumulative impact statement; invitation for public comment	Within municipality near overburdened community; virtual option required ¹⁵⁴	Weekday, not before 6:00 p.m.
Connecticut¹⁵⁵				
30 days (direct), 10 days (public)	Newspaper; On-site in multiple languages; By mail to all residential households within ½ mile of proposed facility; in writing to state and local elected officials; Posted on the internet so the proposal is found using an internet search; May also notify neighborhood and environmental groups in writing	Time and place of “informal public meeting”; project description; map; access to impact assessment; invitation for public comment	Convenient for local residents	Must be convenient for residents
Minnesota¹⁵⁶				
30 days before each meeting (must hold at least 2 meetings, one before completion of the CIA and one following)	Published in newspaper and agency website; post physical signs in the community, notify the commissioner of the MSPC of the public meeting	Time, date, location; brief project description	Within the overburdened community	Not specified

MassDEP’s air permitting regulations take a different approach. The agency does not explicitly require a formal public hearing. Instead, applicants are required to conduct outreach designed to facilitate “meaningful public involvement opportunities for nearby environmental justice populations” prior to the submission of a permit application. This outreach may include one or more meetings with existing community-based organizations, creating a project webpage, and disseminating information through social media channels.¹⁵⁷ MassDEP further reserves the ability to require specific outreach methods.¹⁵⁸

3. Public Comment

Public comment opportunities, and corollary obligations for the agency or applicant to respond to those comments, are core requirements of meaningful public engagement and help ensure public feedback is considered as part of the agency’s decision-making process. Public comment opportunities are also often required under the state APA for certain agency activities.

State CIA statutes or regulations often include requirements governing when written and/or verbal public comments should be solicited, the length of the comment period, and whether the agency or applicant is required to respond to those comments.

TABLE 6 PUBLIC COMMENT REQUIREMENTS

STATE	COMMENT TYPES	COMMENT PERIOD	RESPONSE REQUIREMENT
New Jersey ¹⁵⁹	Verbal and written	Minimum 30 days post-hearing (no less than 60 days total)	Applicant must respond
Connecticut ¹⁶⁰	Verbal and written	Not specified	Applicant must respond and note changes
Massachusetts ¹⁶¹	Dictated by facility outreach plan	Begins within 3 days of 60-day notice period	MassDEP must respond
Minnesota ^{*162}	Verbal and written	Not specified	Not addressed in statute

*Note: Minnesota’s Pollution Control Agency proposed implementing regulations in May of 2026, but they are not analyzed in this document.¹⁶³

4. Language and Disability Access Requirements

In many states, people with limited English proficiency disproportionately reside in overburdened communities. It is therefore critical that states' meaningful engagement requirements include specific considerations for ensuring these populations can engage with and contribute to the agency's decision-making process.

- **New Jersey:** NJDEP's regulations require that notices and materials be in languages "representative of the residents of the" overburdened community.¹⁶⁴
- **Connecticut:** The 2023 CIA Amendments provide that materials must be translated into any language spoken by 15% or more of households within half a mile of the proposed project.¹⁶⁵
- **Massachusetts:** MassDEP's air permitting rules require translation where a "significant percentage" of nearby EJ populations speak languages other than English. "Significant percentage" is not defined.¹⁶⁶

Additionally, people with disabilities in overburdened communities may be uniquely vulnerable to environmental and other impacts.¹⁶⁷ Therefore, it is imperative that state regulators consider how to ensure materials are accessible to people with disabilities including in-person and virtual public meetings. Existing state CIA regulations, however, generally do not include explicit disability access requirements. Instead, overarching federal and state laws assuring nondiscrimination on the basis of disability necessarily apply. For example, Massachusetts' cumulative impact analysis regulations require "meaningful public involvement" which "may include . . . holding one or more community meetings."¹⁶⁸ If the applicant chooses to engage the public through a meeting, federal and state law require the meeting to be accessible to people with disabilities.¹⁶⁹ Importantly, these federal and state requirements provide a floor. Agencies implementing cumulative impact programs are typically authorized to provide additional resources and processes to ensure meaningful engagement.

When deciding what language or disability access requirements are necessary, it may be useful to consider:

- Which communities need access to the information, and do they have particular language or disability-related needs? What data does the agency need in order to make an informed decision about community needs, and how will the agency get the data?
- What materials or meetings will provide essential information about the project, opportunities for community engagement, or agency process and therefore require translation or simultaneous interpretation?
- How are materials disseminated? Are all materials accessible to everyone at the same time, including providing translated digital materials that are also available in a format that is compatible with screen readers? Do current agency staffing or project funding plans include sufficient resources to ensure access to relevant materials and meetings, including designated staff who can respond to community inquiries?
- Is there a consistent definition in statute, rules, or agency guidance for key terms like "limited English proficiency," "effective communication," "meaningful access," and "vital document"?¹⁷⁰

5. Ensuring Agencies Consider Public Comment: Timeline for Agency Decision-Making Post-Engagement

Several state EJ or CIA statutes restrict how soon an agency may issue a decision following the conclusion of the public engagement period to ensure that public input is genuinely considered:



New Jersey

No decision sooner than 45 days after engagement concludes.¹⁷¹



Connecticut

No less than 60 days after earlier public meeting or approval of final public participation report.¹⁷²



Minnesota

30-day minimum.¹⁷³

These provisions are designed to avoid both real and perceived instances of *post hoc* rationalization or rubber-stamping of proposed projects and to reinforce the integrity of the engagement process. While these requirements, on their own, do not guarantee public comments will influence agency decision making, they can create important procedural safeguards to ensure agency staff have the time needed to meaningfully consider and respond to comments.

The criteria included in existing state programs are not exhaustive and agencies may consult with residents of overburdened communities to determine which engagement mechanisms will be most effective.

F. CUMULATIVE IMPACTS ANALYSIS: FORM AND CONTENT

As discussed in Section III.G., many state CIA programs authorize agencies to grant, deny, or condition a permit based on the content of the CIA. Therefore, the form and content of that CIA is important to ensure the agency has the information necessary to make and defend its decision. Most state CIA statutes or regulations address the content and form of the CIA by requiring permit applicants to prepare a formal document or report that includes:

- an assessment of existing conditions
- an analysis of how the proposed project would change existing conditions (i.e., impacts)
- possible or proposed strategies to address project impacts, and
- an analysis of potential project benefits

States typically also require the applicant to document compliance with the meaningful public engagement requirements discussed in the previous section.

TABLE 7 REQUIREMENTS FOR APPLICANTS' CUMULATIVE IMPACT ANALYSIS

STATE	NAME	EXISTING CONDITIONS	FACILITY IMPACTS	POTENTIAL BENEFITS
New Jersey ¹⁷⁴	Environmental Justice Impact Statement	Yes	Yes	Yes
Massachusetts ¹⁷⁵	Cumulative Impact Analysis Report	Yes	Yes	No
New York ¹⁷⁶	Existing Burden Report	Yes	Yes	Yes
Connecticut ¹⁷⁷	Assessment of Environmental or Public Health Stressors & Meaningful Public Participation Plan	Yes	Yes	No

*Note: The Minnesota Pollution Control Agency will determine the required contents of a cumulative impact analysis in regulations.¹⁷⁸ The proposed rules were released in May 2026.¹⁷⁹

Each state statute includes different requirements for the CIA, but generally, implementing agencies decide how applicants will demonstrate each element, typically through rules or guidance. For example, NJDEP's regulations require different levels of specificity in the CIA depending on whether the facility is located, or proposed to be located, in an overburdened community that is already subject to adverse cumulative stressors or would be if the facility were constructed.¹⁸⁰

All applicants must provide an Environmental Justice Impact Statement (EJIS) with detailed information regarding the community surrounding the proposed facility, the operation plans for the facility, and applicable regulatory requirements including permits and local environmental justice laws.¹⁸¹ The statement must also include initial screening data provided by NJDEP including information about the existing conditions and the geographic point of comparison,¹⁸² an evaluation of the facility's impacts on each stressor (both positive and negative), a public participation plan, and an explanation of actions that the applicant proposes to undertake to avoid a disproportionate impact on the overburdened community.¹⁸³ The applicant may also include how the facility will serve a compelling public interest if applicable.¹⁸⁴

For all facilities in overburdened communities that are (or may become) subject to adverse cumulative stressors, the applicant must also provide **supplemental information**.¹⁸⁵ The supplement requires more detailed information including:

- Mapping of existing topographic, ecological, hydrological, cultural, and recreational features;
- Information regarding contamination at the project site;
- Ambient air quality data;
- Subsurface hydrology and soil data;
- Flood data (using the department's climate change mapping tools);
- A traffic study;
- Data on sewage facilities, stormwater management, and water supply;
- Odor, dust, and noise management plans;
- An analysis of energy supply;
- An analysis of alternative designs that could reduce the adverse effects in the overburdened community;
- Information about enforcement actions against the facility; and
- Information about control measures the facility plans to implement to address its contribution to environmental and health stressors.¹⁸⁶

In comparison, MassDEP's air permitting regulations require the applicant's CIA report to contain:¹⁸⁷

- A description of how the applicant has complied with public participation requirements;¹⁸⁸
- An assessment of existing community conditions for each stressor, including an analysis of public comments relevant to existing conditions;¹⁸⁹
- Air quality dispersion modeling of criteria pollutants that the proposed facility will emit, illustrating how air pollutant concentrations vary in the area;¹⁹⁰
- A characterization of risk of harm including analysis of both cancer and non-cancer risks;¹⁹¹
- An analysis of how emissions from the project could impact existing conditions in overburdened communities near the facility and any mitigation measures the applicant will undertake to lessen the effects of the project; and
- A summary of environmental impact reports the applicant may have been required to complete pursuant to the Massachusetts Environmental Policy Act (MEPA).¹⁹²

G. AGENCY AUTHORITY TO CONDITION OR DENY PERMITS BASED ON THE CIA

Each of the preceding steps leads to a logical endpoint — the agency’s consideration of cumulative impacts directly informs its decision to deny, condition, or grant an applicant’s permit.

Most state EJ or CIA statutes or regulations guide the agency’s decision-making using: (1) a **decision standard** (including any impact thresholds); (2) defining the agency’s **authority to deny or condition permits** (including any exemptions); and (3) the required form and content of the decision.

WHO DECIDES?

Statutory Specificity v. Agency Discretion

Defining the agency’s authority to condition or deny a permit based on the CIA is a critical consideration in statutory development as it defines when and to what extent the agency can act on the content of the CIA. These provisions determine whether an agency must — rather than may — deny or condition a permit based on the cumulative impacts analysis. While explicit statutory authority may not be necessary to integrate CIA into state programming, without clear statutory authority, agencies may be reluctant or legally constrained from denying or conditioning applicants’ permits based on cumulative impacts alone.

1. Decision Standard & Impact Thresholds

A state agency’s **decision standard** — the trigger for more protective permitting outcomes — typically considers the information generated through the CIA and governs permitting decisions.

Central to these decision standards is defining an **impact threshold** — the level of pollution a facility can contribute before additional permit action (e.g., denial or conditions) may be required. How these thresholds are defined is important. If the threshold is set too high, additional permit action may not be required or authorized under the law, leading to additional pollution in overburdened communities and potentially exacerbating existing environmental and public health disparities. Even if those contributions are avoided or partially mitigated through permit conditions or otherwise addressed via offsite measures or a community benefits agreement, communities may continue to experience incremental harm, undermining the effectiveness of the cumulative impacts law.

As of this publication, only New Jersey and Massachusetts have final rules implementing their CIA programs. In both cases, the implementing agency provided clarification defining their statutory decision standard and impact threshold via participatory rulemaking.



New Jersey

New Jersey presents a clear example of how CIA informs permitting outcomes. New Jersey’s CIA program compares the relative presence of environmental and public health stressors between OBCs and non-OBCs using a **“disproportionate impact standard.”** This methodology focuses on how a proposed project will contribute to both individual and cumulative stressors in the OBC.

Accordingly, the state’s disproportionate impact standard identifies two scenarios that may trigger additional permit protections:

- If the proposed project would create a disproportionate cumulative burden where none currently exists (i.e., create adverse cumulative stressors); or
- If the proposed project would contribute to an existing cumulative burden (i.e., worsen an adverse stressor in an OBC already subject to adverse cumulative stressors).¹⁹³

Thus, New Jersey sets **two community-specific impact thresholds**, depending on whether the OBC is already subject to adverse cumulative stressors:

- **For OBCs already subject to adverse cumulative stressors**, the standard effectively allows **no additional contribution** to any stressor (a “zero contribution threshold”). Any contribution — regardless of magnitude — triggers further permitting action.¹⁹⁴
- **For OBCs not already subject to adverse cumulative stressors**, the threshold considers whether the project would contribute to a stressor to a degree that would lead to the OBC becoming subject to adverse cumulative stressors. Here, the threshold is relative, based on the community’s existing exposure and its disproportionality when compared to non-OBCs.¹⁹⁵

In either case, if the impact threshold is exceeded, the statute authorizes the agency to deny or condition the permit to avoid or minimize the contribution.¹⁹⁶



Massachusetts

Massachusetts takes a more quantitative and risk-based approach, evaluating whether a proposed project — a new or modified existing facility — will exceed regulatory thresholds for cumulative cancer and non-cancer health risks. These thresholds are codified in MassDEP’s rules, and do not require the broader comparative framework used by New Jersey.

Other States' Impact Thresholds

Other states, while still in the rulemaking process, are guided by specific statutory direction. Existing statutes tend to provide agencies with more flexibility to determine whether to condition or deny a permit, as compared to New Jersey's more restrictive "zero contribution" threshold:



New York

Under the EJ Siting Law, there are two impact thresholds — one for new facilities and one for existing facilities. Specifically, NYDEC will evaluate whether a proposed project:

- (1) For new facilities, "will cause or contribute more than a de minimis amount of pollution to a disproportionate pollution burden on the disadvantaged community"; or
- (2) For existing facilities, "would significantly increase the existing disproportionate pollution burden on the disadvantaged community."¹⁹⁷

Notably, these impact thresholds rely on narrative terms of art ("de minimis," "significant[] increase") which must be defined or further clarified in agency regulations. How these terms are defined and applied on a case-by-case basis will determine which facilities or proposed permits are covered by the law. This structure can give communities and other interested parties more opportunities to inform the design of the CIA program during the rulemaking process but also leaves agencies' decisions vulnerable to regulated entities' legal challenges, potentially inviting courts to weigh in on which facilities should be regulated.



Connecticut

The Department of Energy and Environmental Protection (DEEP) must assess whether a proposed project "would, together with other environmental or public health stressors affecting the applicable environmental justice community, result in adverse cumulative environmental or public health stressors in such environmental justice community that are higher than those borne by other communities."¹⁹⁸



Minnesota

Under the FCPA, the MPCA will determine whether the proposed project "in combination with the environmental stressors present in the environmental justice area and considering the socioeconomic impact of the facility to the residents of the environmental justice area, would have a substantial adverse impact on the environment or health of the environmental justice area and its residents."¹⁹⁹ As with New York, Minnesota's law does not define what constitutes a "substantial" impact, leaving it to the agency to further clarify what types of impacts will trigger this threshold in rulemaking or guidance.

As state agencies proceed through rulemaking, we expect them to interpret their specific statutory directives and craft more detailed decision standards and impact thresholds in rulemaking. These rules may reflect existing models in New Jersey and Massachusetts or offer new variations.

2. Agency Authority to Deny or Condition a Permit

Where a proposed project is found to exceed the applicable impact threshold, all state programs typically authorize agencies to **deny the permit** or impose **more protective conditions**. The scope and phrasing of that authority vary across states, particularly regarding:

- How the authority differs between facility types (new vs. existing)
- Whether the authority is mandatory or permissive
- The presence of any exemptions

a. Agency Authority to Deny Proposed Permits

State statutes carefully consider the circumstances under which an agency can or must deny a proposed permit based on the CIA. The table below summarizes when state laws authorize or even require agencies to deny a proposed permit. These apply only after the agency finds that the relevant impact threshold (discussed above) has been met based on the CIA and other information, including public comments.

TABLE 8 STATE AUTHORITY TO DENY PROPOSED PERMITS BASED ON CIA

FACILITY APPLICABILITY	MANDATORY OR PERMISSIVE	IMPACT THRESHOLD	EXEMPTIONS
New Jersey ²⁰⁰			
New	"Shall deny"	Two scenarios: (1) Where existing adverse cumulative stressors then zero additional contribution allowed; or (2) where no existing adverse cumulative stressors then the project cannot create adverse cumulative stressors	Serves a "compelling public interest in the" OBC
New York ²⁰¹			
New and Existing	"Shall not issue"	New: "de minimis" Existing: "significantly increase"	None
Connecticut ²⁰²			
New	"May deny"	Cause or contribute to higher adverse cumulative stressors	None
Massachusetts ²⁰³			
New or Modified	"Shall not propose to approve"	Cumulative cancer & non-cancer risk values	None
Minnesota ²⁰⁴			
New and Existing	"Must deny"	"Substantial Impact"	Qualifying community benefit agreement

b. Agency Authority to Condition Proposed Permits

As with denials, states can require permit conditions when the relevant impact threshold has been met. However, where a permit denial completely avoids stressor contributions, granting a permit with conditions may result in an adverse stressor contribution. Accordingly, CIA statutes tend to authorize the agency to address such contributions by imposing mitigation requirements or other permit conditions.



New Jersey

Whereas NJDEP's denial authority is limited to new facilities, the EJ Law authorizes NJDEP to condition proposed permits for **new, expanded, and** major source/**Title V renewal facilities**. Specifically, the EJ Law authorizes NJDEP to impose conditions "concerning the construction and operation of the facility to protect public health."²⁰⁵

Through regulation, NJDEP adopted a **hierarchical control analysis** to guide the incorporation of permit conditions to address facility-wide stressor contributions that may cause a disproportionate impact. This analysis follows a three-step inquiry: (a) **avoid** the impact; (b) If avoidance is not feasible, **minimize** the impact; and (c) under certain circumstances, provide **additional environmental benefits**.

Under this approach, an applicant first seeks to avoid causing a disproportionate impact in its project design. Assuming the impact threshold is met, where additional measures can be taken to avoid a disproportionate impact, NJDEP would then condition any permit as necessary to ensure those impacts are avoided.²⁰⁶

If the disproportionate impact cannot be avoided, the applicant must then consider all feasible measures to avoid stressor contributions and, where avoidance is not feasible, minimize any stressor contribution.²⁰⁷ For new or expanded facilities, which would necessarily increase stressor contributions, NJDEP may also require **feasible off-site mitigation measures** to reduce existing stressors or provide **additional environmental benefits** to the OBC.²⁰⁸ Feasibility is defined to include any measure that is "reasonably capable of being accomplished by taking into account economic and technological factors."²⁰⁹

NJDEP also developed specific regulatory standards to guide evaluation of impacts from **major stationary sources** that adapt standards commonly applied under New Jersey's Air Pollution Control Act.²¹⁰ This includes the "Localized Impact Control Technology" (LICT) standard applicable to new or expanded major sources of air pollution.²¹¹ Adapted from the "State of the Art" (SOTA) standard, LICT requires that facilities undertake a "top down" analysis and incorporate the most advanced emission control technologies considering the technical feasibility of such measures with less emphasis on cost-effectiveness than traditional SOTA.²¹² Specifically, the LICT standard requires the listing of available pollution control measures by order of effectiveness, with the applicant eliminating available options only where it is "technically infeasible, based on physical, chemical, or engineering principles, and/or technical difficulties that would prevent the successful application of the measure."²¹³ This heightened standard helps to ensure that stationary source emissions from new and expanded facilities are avoided to the maximum extent possible, irrespective of cost considerations that might otherwise limit protectiveness under SOTA.

For major source/Title V permit renewals, New Jersey’s EJ rules also require facilities to conduct:

- 1. A **facility-wide risk assessment**, and
- 2. A **technical feasibility analysis** to determine whether existing control equipment should be upgraded.²¹⁴

Any facility contributions not addressed under either of these applicable standards is evaluated using the broader hierarchical control analysis above.²¹⁵

New Jersey’s regulations require the applicant to first analyze and propose control measures it deems feasible in accordance with the hierarchical analysis. As part of its review, NJDEP assesses the proposed measures; however, its evaluation is not limited to those conditions proposed by the applicant and the agency may impose any additional feasible control measures necessary to protect public health.²¹⁶ Feasible measures identified through these analyses become viable permit conditions that can NJDEP can require.

Massachusetts

Massachusetts takes a more streamlined approach to conditioning permits. MassDEP rules provide that the agency “may impose any **reasonable conditions**” in state permits to “reduce, minimize, or mitigate cumulative impacts.”²¹⁷ Under MassDEP’s implementing regulations, this discretion is not as structured as New Jersey’s tiered approach and lends itself to case-by-case interpretation.

Other States:

<div></div> <p>New York’s EJ Siting Law requires that NYDEC “shall require actions to implement any appropriate operational changes which would reduce the pollution burden on the disadvantaged community as a condition of an applicable permit” that are “reasonable and practicable.”²¹⁸</p>	<div></div> <p>Connecticut’s 2023 CI Amendments authorize DEEP to “impose reasonable conditions on the construction and operation of the proposed [new] affecting facility that are intended to mitigate environmental and public health impacts.”²¹⁹ Additionally, if a new or expanded facility is proposed in a community with five or more subject facilities, the applicant <i>must</i> enter into a community benefits agreement (CBA) to mitigate, in whole or in part, impacts reasonably related to the facility.²²⁰</p>	<div></div> <p>Under Minnesota’s cumulative impacts law, the MPCA “may grant a permit that imposes conditions on the construction and operation of the facility to protect public health and the environment.”²²¹</p>
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TABLE 9 STATE AUTHORITY TO CONDITION PERMITS BASED ON CIA

STATE	APPLICABILITY	MANDATORY OR PERMISSIVE	CONDITION TYPES
New Jersey	New and Existing	"May impose"	Feasible conditions "concerning the construction and operation of the facility to protect public health" in accordance with hierarchical control analysis
Massachusetts	New and Modified	"May impose"	Reasonable conditions to reduce, minimize, or mitigate cumulative impacts
New York	New and Existing	"Shall require"	Reasonable and practicable operational changes which would reduce the pollution burden on the disadvantaged community
Connecticut	New and Expanded (under certain circumstances)	New: "May impose" Expanded: CBA mandatory under certain circumstances	Reasonable conditions on the construction and operation of a new facility to mitigate environmental and public health impacts CBA to mitigate impacts of new or expanded facilities in communities where 5 or more facilities are located
Minnesota	New and Existing	"May incorporate"	Conditions on the construction and operation of the facility to protect public health and the environment

H. EXEMPTIONS

Many state programs include specific exemptions authorizing the state agency to not require a CIA or avoid an otherwise mandatory denial.^{xiv} Targeted exemptions can provide flexibility and concrete benefits to communities, including ensuring that projects desired by or beneficial to the community may proceed. However, consideration should be given to the impact of any exemptions on the protections afforded to overburdened communities and determined through engagement with community members.

WHO DECIDES?

Statutory Specificity v. Agency Discretion

Statutory language can be an important tool to ensure exemptions do not become so broad as to moot the consideration of cumulative impacts altogether. For example, statutory language can clarify that exemptions should be applied only as a mechanism of last resort, including after (or in conjunction with) efforts to avoid, minimize, or mitigate for stressor contributions (through offsite measures or community benefits agreements).

1. Exemption Sequencing

Based on existing state programs, exemptions tend to be integrated at one of two stages in CIA permitting. First, an applicant may be exempted from conducting a CIA at the outset. For example, under New York's EJ Siting Law, NYDEC can waive the requirement to prepare a CIA for an applicant seeking renewal or modification of a relevant permit "if the permit would serve an essential environmental, health, or safety need of the disadvantaged community for which there is no reasonable alternative."²²² The decision to waive this requirement rests solely with NYDEC.²²³

Second, a state program may allow a project to proceed after the applicant has completed the necessary steps under the cumulative impacts law and despite a CIA indicating that the permit should otherwise be denied. For example, under New Jersey's EJ Law, the NJDEP "may" grant a permit for a proposed new facility that would otherwise be denied if the facility "will serve a compelling public interest *in the community* where it is to be located."²²⁴ However, the NJDEP can only grant the permit if the agency "imposes conditions on the construction and operation of the facility to protect public health."²²⁵ NJDEP's regulations clarify that the applicant bears the burden of demonstrating that the proposed facility will serve that compelling public interest.²²⁶

^{xiv} For the purposes of this section, "exemptions" is used broadly to refer to sections of the law or regulation that allow applicants to circumvent a part of the law or regulation that would otherwise apply.

2. Exemption Types

Under existing state programs, there are two types of exemptions an applicant may receive: exemptions for projects that meet an essential community need (**project-based**), or exemptions based on something the applicant will provide in addition to the project or to mitigate the harm caused by the project (**mitigation or benefits-based** exemptions).

Project-based exemptions typically require that the project contribute meaningfully to the overburdened community, rather than simply provide broad societal benefits. As discussed in Exemption Sequencing, under New Jersey’s EJ Law, if a new facility would cause a disproportionate impact, NJDEP can only grant the permit if it finds that the facility will “serve a compelling public interest *in the community* where it is to be located.”²²⁷ NJDEP interpreted this language narrowly to attempt to ensure that “benefits are localized to the community.”²²⁸

NJDEP’s implementing regulations further clarify that to serve a compelling public interest, NJDEP must determine that new facility:

- primarily serves “an essential environmental, health, or safety need[]” to the members of the OBC;
- “is necessary to serve” these needs; and
- has “no reasonable alternatives” to meet these needs.²²⁹

Notably, NJDEP explicitly excluded consideration of the economic benefits of the proposed new facility in evaluating whether it will serve a compelling public interest.²³⁰ NJDEP’s regulations do, however, authorize the agency to consider input from “individuals residing in the community” and whether “there is a significant degree of public interest in favor of or against an application.”²³¹ Even if the permit serves a compelling public interest, NJDEP must still impose conditions on the proposed facility’s operations in accordance with its hierarchical control analysis (avoid, minimize, mitigate).²³²

Similarly, under New York’s EJ Siting Law, if NYDEC determines that a “permit would serve an essential environmental, health, or safety need of the disadvantaged community,” the applicant may not be required to conduct a CIA.²³³ This language has yet to be implemented in regulations, so the exemption’s scope will depend on how the agency defines “essential needs” and “reasonable alternatives.”

Mitigation or Benefits-based exemptions authorize the relevant state agency to require the applicant to enter into a contractual agreement to provide benefits to the overburdened community. For example, Minnesota’s FCPA requires the MPCA commissioner to deny permits that would have “a substantial adverse impact on the environment or health of the environmental justice area and its residents.”²³⁴ However, if the facility owner or operator enters into a community benefit agreement (CBA) with the commissioner, the agency “may” grant the permit with conditions “to protect public health and the environment.”²³⁵ The law requires the CBA to be signed on or before the date the permit is issued and outlines additional requirements for MPCA to implement via regulations,²³⁶ including “active outreach to residents of the impacted” OBC “to achieve significant community participation,” prioritizing “considerations that directly impact the residents of the” OBC, and at least one public meeting in the OBC.²³⁷ MPCA has also proposed regulations governing CBAs,²³⁸ however these proposed regulations are not analyzed in this paper.

Connecticut's 2023 CI Amendments require permit applicants for certain new or expanding facilities in environmental justice communities to enter into a "community environmental benefit agreement" (CEBA) with the chief elected official or town manager of an overburdened community where five or more facilities are located.²³⁹ Qualifying CEBA's can only finance mitigation of impacts "reasonably related" to the facility, including air, water, and quality of life impacts.²⁴⁰ The agreement negotiation must include the head elected official of the municipality where the permit is sought and include a resident of the potentially affected environmental justice community selected by the head elected official.²⁴¹ The law also outlines specific steps the parties must take before entering into the agreement: the municipality must provide a "reasonable and public opportunity" for people living in the environmental justice community to provide feedback on the "need for, and terms of," the community agreement,²⁴² and the CEBA must be approved by the legislative body in the municipality.²⁴³ After the CEBA is approved, the head elected official is charged with implementing and enforcing the agreement.²⁴⁴

Connecticut's law also provides a non-exclusive list of examples for CEBA's both on and offsite, including education, research, pollution reduction or electrification efforts, increasing health care access, and investment in parks, forests, gardens, and associated recreation activities in the environmental justice community. However, the agreement must have "a nexus" and be proportional to "the impacts caused by the proposed facility."²⁴⁵



I. AGENCY CIA DECISION: FORM AND CONTENT

The CIA decision is the agency's opportunity to communicate the basis and outcome of the CIA to its constituents in the affected community. Accordingly, in addition to the substantive aspects of the CIA, the effectiveness of this communication is a key aspect of the long-term viability of a CIA program as even well-reasoned but poorly communicated decisions are unlikely to be accepted by the community. When evaluating a CIA program, influential elements of the CIA decision include: (1) whether the CIA decision is distinct from the underlying permit decision; (2) whether the agency can consider information outside of the CIA; and (3) how the agency must document its deliberations.

As these elements are rarely addressed statutorily, states with final regulations (New Jersey and Massachusetts) provide the most illustrative examples while the remaining states are engaged in their regulatory processes.



New Jersey

Under its EJ Rules, NJDEP is required to issue a distinct, written CIA decision that includes “a summary of facts, the Department’s analysis, and identification of any conditions set by the Department that will be incorporated into any subsequently issued Departmental permits for the facility.”²⁴⁶ This CIA decision is issued separately from any permit and constitutes an appealable, final agency action.²⁴⁷ Separating the CIA decision from permit issuance, and making it separately appealable, ideally ensures that the agency provides a clear record of its deliberation and provides the community with an avenue for accountability prior to final permit issuance.

In issuing its decision, NJDEP considers not only the EJIS (its CIA document) and the information generated during public engagement (testimony, written comments, and the applicant’s response to comments), but also “any other information” NJDEP “deems relevant.”²⁴⁸ This explicit allowance for information outside the CIA process provides flexibility to consider unique circumstances or other information critical to determining whether the proposed project will result in a disproportionate impact or be otherwise detrimental to public health.²⁴⁹ NJDEP has also reserved the right to retain third-party experts (at the applicant’s expense) where necessary to evaluate any aspect of the project beyond the agency’s expertise.²⁵⁰



Massachusetts

MassDEP's air permitting regulations incorporate the agency's CIA review directly into the permitting process. Specifically, MassDEP rules state that the agency shall review the CIA "as part of" its permit review with the outcome of its CIA assessment incorporated into its permit decision.²⁵¹

J. POST-PERMIT ENFORCEMENT

None of the state statutes reviewed for this paper contain language addressing enforcement and the implications of an applicant's failure to comply with specific permit conditions resulting from a CIA decision. With most states still early in their rulemaking processes, New Jersey provides the only example of how a state agency tackles these considerations.

NJDEP addressed violations of CIA-specific permit conditions in two ways. First, NJDEP's regulations provide that all CIA-specific permit conditions are incorporated into the applicable NJDEP permit, and therefore, enforced in accordance with NJDEP's regulatory schemes.²⁵² In its rules implementing the EJ Law, NJDEP also mandated that any such violations be "considered non-minor violations or aggravating circumstances, or the equivalent" under those applicable rules. This scheme ensures that violations of CIA-specific permit conditions are not minimized and carry more severe penalties with greater enforcement priority than other violations.²⁵³

NJDEP's rules also provide that any such violation "shall constitute grounds for [permit] suspension or revocation" under the applicable regulatory scheme and in accordance with the state APA, which generally requires an applicant to be provided with notice and an opportunity to be heard prior to any revocation.²⁵⁴

As many of these state CIA programs are in the early phases of implementation, it remains to be seen how agencies will approach enforcement of alleged permit or process violations, particularly where their respective administrative procedure acts contain similar notice and hearing requirements as New Jersey.²⁵⁵ As these programs are crafted and implemented, how CIA-related conditions will interact with each state's existing permitting and enforcement scheme, and whether additional considerations or safeguards are required, will remain an issue worth watching.

IV. Concluding Thoughts

As the federal government retreats from environmental protection and terminates environmental justice programming and enforcement,²⁵⁶ more states are pursuing new ways to protect their communities, including through incorporation of cumulative impacts analysis into their permitting programs. In this guide, we provide a common framework for community-based advocates and residents, legislators, regulated entities, and regulators to support future implementation, iteration, and innovation in this evolving policy space.

While we divide state CIA programs into distinct “decision points,” it is important to remember that each of these decisions is intertwined and must work together to create one coherent program. The suite of decision points will necessarily vary from state to state, depending on the nature of environmental and public health burdens, how those burdens are distributed across the state, and the policy goals of the CIA program, among other factors. The CIA programs discussed in this guide are likely only the starting point of many possible variations, consistent with a fit-for-purpose framework.

If you have any questions or recommendations regarding the material covered in this guide, please email Sean Moriarty at sean.moriarty@avengerconsultingnj.com and EELP at environment@law.harvard.edu.



Endnotes

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- 112 N.J. REV. STAT. § 13:1D-160.
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- 114 *Id.* Similar buffer requirements apply to applications to increase emissions of certain air pollutants at existing facilities. 310 MASS. CODE REGS. 7.02(14)(a)(4) (2024).
- 115 See generally 310 MASS. CODE REGS. 7.00 (excluding small source “limited plan approvals”); MINN. STAT. § 116.065.1(h) (2023).
- 116 310 MASS. CODE REGS. 7.02(a) (2025).
- 117 N.Y. ENV’T CONSERV. LAW § 70-0118 (2)(a) (McKinney 2024).
- 118 310 MASS. CODE REGS. 7.02(14)(a) (2024).
- 119 MINN. STAT. § 116.065.1(h) (2023).
- 120 N.J. ADMIN. CODE § 7:1C-2.1(b) (2023).
- 121 N.Y. ENV’T CONSERV. LAW § 70-0118 2(a)-(b) (McKinney 2024).
- 122 CONN. GEN. STAT. § 22a-20a(g)(1) (2023).
- 123 N.J. ADMIN. CODE § 7:1C-1.5 (2023).
- 124 EJ Decision and Imposition of Permit Conditions pursuant to N.J.A.C. 7:1C-9, *Safety-Kleen Systems, Inc.*, 9-12 (June 3, 2025), <https://dep.nj.gov/wp-content/uploads/ej/safety-kleen-ej-decision-20240528.pdf>.
- 125 Letter from New Jersey Env’t Justice Alliance et al. to Shawn LaTourette, DEP Commissioner (Aug. 14, 2025), <https://njeja.org/wp-content/uploads/2025/08/NJEJA-Letter-Safety-Kleen-EJ-Decision.pdf>.
- 126 *Infra*, n. 194 and accompanying text.
- 127 N.J. ADMIN. CODE § 7:1C-3.2(a)(4), 9.3(b) (2023).
- 128 MINN. STAT. § 116.065.3(e)(2) (2023).
- 129 Proposed Permanent Rules Relating to Cumulative Impacts Analysis in Environmental Justice Areas, MINN. R. 7007.0050-7007.6120 (2026), <https://www.pca.state.mn.us/sites/default/files/aq-rule2-25ab.pdf>.
- 130 MINN. R. 7007.6060 (2026).
- 131 MINN. STAT. § 116.065.2(b) (2023).
- 132 *Id.* The statute defines “Indian Country” consistent with the federal definition established under 18 U.S.C. § 1151.
- 133 *Lau v. Nichols*, 414 U.S. 563 (1974).
- 134 Exec. Order No. 14224, *Designating English as the Official Language of the United States*, 90 Fed. Reg. 11363 (Mar. 1, 2025); Dep’t of Justice, *Implementation of Executive Order No. 14,224: Designating English as the Official Language of the United States of America*, (July 14, 225), <https://www.justice.gov/ag/media/1407776/dl>.
- 135 Rehabilitation Act of 1973, 29 U.S.C. § 794 (1973); Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12165 (1990).
- 136 310 MASS. CODE REGS. 7.02(14)(b) (2024).
- 137 *Id.*
- 138 N.J. STAT. ANN. § 13:1D-160 (a)(2) (2020).
- 139 N.J. REV. STAT. 13:1d-160(a)(2) (2020); N.J. ADMIN. CODE § 7:1C-3.4.
- 140 N.J. ADMIN. CODE § 7:1C-4.1 (a)(1)(iv) (2023).
- 141 *Id.*
- 142 MINN. STAT. § 116.065.4(c) (2023).
- 143 CONN. GEN. STAT. § 22a-20a(b)(2) (2023).
- 144 *Id.* at § 22a-20a et seq. (2023).
- 145 *Id.*
- 146 *Id.*
- 147 *Id.*
- 148 *Id.* at § (b)(5).
- 149 N.J. ADMIN. CODE § 7:1C-4.1(a)(1)(ii) (2023).
- 150 *Id.* at § 7:1C-4.1(a)(1)(v).
- 151 *Id.* at § 7:1C-4.1(a)(1)(vi).
- 152 *Id.* at § 7:1C-4.1(b).
- 153 N.J. REV. STAT. 13:1d-160(a)(3) (2020).
- 154 N.J. ADMIN. CODE § 7:1C-4.2 (2023).
- 155 CONN. GEN. STAT. § 22a-20a(b)(2)-(4) (2023).
- 156 MINN. STAT. § 116.065.4 (2023).
- 157 310 MASS. CODE REGS. 7.02(14)(b)(4) (2024).
- 158 *Id.*
- 159 N.J. REV. STAT. 13:1d-160(a)(3) (2020); N.J. ADMIN. CODE § 7:1C-4.2(c), 4.3(a)(2) (2023).
- 160 CONN. GEN. STAT. § 22a-20a(b)(1) (2023).

- 161 310 MASS. CODE REGS. 7.02(14)(g) (2024).
- 162 MINN. STAT. § 116.065.4 (2023).
- 163 Proposed Permanent Rules Relating to Cumulative Impacts Analysis in Environmental Justice Areas, MINN. R. 7007.0050-7007.6120 (2026), <https://www.pca.state.mn.us/sites/default/files/aq-rule2-25ab.pdf>.
- 164 N.J. ADMIN. CODE § 7:1C-4.1(a)(1)(ii) (2023).
- 165 CONN. GEN. STAT. § 22a-20a(b)(2) (2023).
- 166 310 MASS. CODE REGS. 7.02(14)(b)(2) (2023).
- 167 Jayajit Chakraborty, *Unequal Proximity to Environmental Pollution: An Intersectional Analysis of People with Disabilities in Harris County, Texas*. 72(4) PRO. GEOGRAPHER 521 (2020), <https://www.tandfonline.com/doi/full/10.1080/00330124.2020.1787181>.
- 168 310 MASS. CODE REGS. 7.02(14)(b)(4) (2023).
- 169 *Tips for hosting accessible events and meetings: Guidance for in-person, virtual, and hybrid events and meetings*, Massachusetts Office on Disability, (last visited May 12, 2026) <https://www.mass.gov/info-details/tips-for-hosting-accessible-events-and-meetings> [https://perma.cc/XQR6-LL8C]; 42 U.S.C. § 12132; MASS. GEN. LAWS ch. 30A, §20 (2015); see also ATT'Y GEN. OF MASS, OPEN MEETING LAW GUIDE AND EDUCATIONAL MATERIALS 11 (2025), <https://www.mass.gov/doc/open-meeting-law-guide-2025/download>.
- 170 See e.g. U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS, LANGUAGE ACCESS PLAN (Jan. 2025), <https://www.ojp.gov/ojp-language-access-plan>.
- 171 N.J. ADMIN. CODE § 7:1C-9.3(c) (2023).
- 172 CONN. GEN. STAT. § 22a-20a(b)(6) (2023).
- 173 MINN. STAT. § 116.065.3(f) (2023).
- 174 N.J. ADMIN. CODE § 7:1C-3.2 (2023).
- 175 310 MASS. CODE REGS. 7.02(14)(g)(2) (2024).
- 176 N.Y. ENV'T CONSERV. LAW § 70-0118.5 (McKinney 2024).
- 177 CONN. GEN. STAT. § 22a-20a(b)(1) (2023).
- 178 MINN. STAT. § 116.065.6(c)(2) (2023).
- 179 Proposed Permanent Rules Relating to Cumulative Impacts Analysis in Environmental Justice Areas, MINN. R. 7007.0050-7007.6120 (2026), <https://www.pca.state.mn.us/sites/default/files/aq-rule2-25ab.pdf>.
- 180 N.J. ADMIN. CODE § 7:1C-3.1 (2023).
- 181 *Id.* at § 7:1C-3.2.
- 182 *Id.* at § 7:1C-2.3.
- 183 *Id.* at § 7:1C-2.3.
- 184 *Id.* at § 7:1C-3.2.
- 185 *Id.* at § 7:1C-3.1(c).
- 186 *Id.* at § 7:1C-3.3.
- 187 310 MASS. CODE REGS. 7.02 14(9) (2024).
- 188 *Id.* at 7.02(14)(b).
- 189 *Id.* at 7.02 14(c).
- 190 *Id.* at 7.02(14)(d).
- 191 *Id.* at 7.02(14)(e).
- 192 *Id.* at 7.02(14)(f).
- 193 *Id.* at § 7:1C-1.5.
- 194 *Id.* at § 7:1C-1.5, 2.1.
- 195 *Id.*
- 196 *Id.* at § 7:1C-5.2(b).
- 197 N.Y. ENV'T CONSERV. LAW § 70-0118(3)(b) (McKinney 2024).
- 198 CONN. GEN. STAT. § 22a-20a (2023).
- 199 MINN. STAT. § 116.064.5(b) (2023).
- 200 N.J. ADMIN. CODE § 7:1C-5.3 (2023).
- 201 N.Y. ENV'T CONSERV. LAW § 70-0118.3(b) (McKinney 2024).
- 202 CONN. GEN. STAT. § 22a-20a(g)(2) (2023).
- 203 310 MASS. CODE REGS. 7.02.14(h) (2024).
- 204 MINN. STAT. § 116.065.5(b) (2023).
- 205 N.J. REV. STAT. 13:1D-160(a)(3), (c), (d) (2020).
- 206 N.J. ADMIN. CODE § 7:1C-5.2, 6.2, 8.2, 9.2 (2023).
- 207 *Id.* at § 7:1C-5.4, 6.3.
- 208 *Id.* at § 7:1C-5.4, 6.1.
- 209 *Id.* at § 7:1C-1.5.
- 210 N.J. REV. STAT. 26:2C (2025).
- 211 *Id.* at § 7:1C-7.1.
- 212 NJDEP, *Environmental Justice Rules*, 54 N.J.R. 971(a) at 322 (proposed June 6, 2022), <https://dep.nj.gov/wp-content/uploads/rules/adoptions/adopt-20230417a.pdf>; N.J. ADMIN. CODE § 7:1C-7.1 (2023).
- 213 N.J. ADMIN. CODE § 7:1C-7.1(b)(2) (2023).
- 214 *Id.* at § 7:1C-8.3.
- 215 *Id.* at § 7:1C-5.4, 8.6.
- 216 *Id.* at § 7:1C-9.1.

- 217 310 MASS. CODE REGS. 7.02(3)(c) (2024).
- 218 N.Y. ENV'T CONSERV. LAW § 70-0118.4 (McKinney 2024).
- 219 CONN. GEN. STAT. § 22a-20a(g)(3) (2023).
- 220 *Id.* at § 22a-20a(c) (2023).
- 221 MINN. STAT. § 116.065.5(c) (2023).
- 222 N.Y. ENV'T CONSERV. LAW § 70-0118(2)(b) (McKinney 2024).
- 223 *Id.* (“the department *may elect* not to require such existing burden report if the permit would serve an essential . . . need”) (emphasis added).
- 224 N.J. REV. STAT. § 13:1D-160(4)(c) (2020) (emphasis added).
- 225 *Id.*
- 226 N.J. ADMIN. CODE § 7:1C-5.3 (2023).
- 227 N.J. REV. STAT. § 13:1D-160(4)(c) (2020) (emphasis added).
- 228 NJDEP Office of the Commissioner, *Rule Adoption: Environmental Justice Rules*, 55 N.J.R. 661(b) at 671 (Apr. 17, 2023).
- 229 N.J. ADMIN. CODE § 7:1C-5.3 (2023).
- 230 *Id.* at § 7:1C-1.5 (2023) (“the economic benefits of the proposed new facility shall not be considered in determining whether it serves a compelling public interest in an overburdened community.”).
- 231 N.J. ADMIN. CODE § 7:1C-5.3 (2023).
- 232 N.J. REV. STAT. § 13:1D-160(4)(c) (2020).
- 233 N.Y. ENV'T CONSERV. LAW § 70-0118(2)(b) (McKinney 2024).
- 234 MINN. STAT. § 116.065.5(b) (2023).
- 235 *Id.*; MINN. STAT. § 116.065.6(c)(4) (2023).
- 236 *Id.* at 116.065.5(d) (2023).
- 237 *Id.* at 116.065.6(c)(4)(i) (2023).
- 238 Proposed Permanent Rules Relating to Cumulative Impacts Analysis in Environmental Justice Areas, MINN. R. 7007.0050-7007.6120 (2026), <https://www.pca.state.mn.us/sites/default/files/aq-rule2-25ab.pdf>.
- 239 CONN. GEN. STAT. § 22a-20a(c) (2023). The Community Environmental Benefit Agreement is separate from the cumulative impacts analysis. CONN. GEN. STAT. § 22a-20a(a)(4) (2023).
- 240 CONN. GEN. STAT. § 22a-20a(a)(4) (2023).
- 241 *Id.* at § 22a-20a(d) (2023).
- 242 *Id.* at § 22a-20a(c) (2023).
- 243 *Id.* at § 22a-20a(d) (2023).
- 244 *Id.*
- 245 *Id.* at § 22a-20a(c) (2023). These requirements are consistent with Supreme Court case law interpreting the takings clause of the Fifth Amendment of the U.S. Constitution. See *Nollan v. California Coastal Commission*, 483 U.S. 825, 827 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994). In 2024, the Supreme Court affirmed that these standards apply to both agency permitting decisions and legislation imposing impact fees as part of a permitting scheme. *Sheetz v. County of El Dorado*, 601 U.S. 267, 279-80 (2024).
- 246 N.J. ADMIN. CODE § 7:1C-9.3 (2023).
- 247 *Id.*
- 248 *Id.* at § 7:1C-9.1 (drawing from similar statutory language at N.J. REV. STAT. § 13:1D-160(c),(d) (2020)).
- 249 N.J. ADMIN. CODE § 7:1C-9.1.; see also *Id.* at 7:1C-9.2 (b)(4) (2023) (prohibiting the issuance of a decision that “would compromise the reasonable requirements of public health, safety, and welfare to the environment in the overburdened community.”).
- 250 N.J. ADMIN. CODE § 7:1C-9.1(c) (2023).
- 251 310 MASS. CODE REGS. 702(14)(h) (2024).
- 252 N.J. ADMIN. CODE § 7:1C-9.3 (2023).
- 253 *Id.* at § 7:1C-9.4(a) (2023).
- 254 N.J. REV. STAT. § 52:14B-11 (1995).
- 255 See e.g., 310 MASS. CODE REGS. § 7.51 (2020); N.Y. COMP. CODES R. & REGS. TIT. 6, § 621.13 (2024); CONN. AGENCIES REGS. § 22a-3a-5 (1992); MINN. R. 7007.1700 (2007).
- 256 *Federal Environmental Justice Tracker*, ENV'T & ENERGY LA. PROG., <https://eelp.law.harvard.edu/tracker-type/environmental-justice-tracker/> (last visited May 4, 2026); ATT'YS GEN. OF N.Y., MASS., WASH., CAL., CONN., DEL., HAW., ILL., MD., MINN., OR., R.I., VT., RE: DEC. 5, 2025 MEMORANDUM, “REINFORCING A ‘COMPLIANCE FIRST’ ORIENTATION FOR COMPLIANCE ASSURANCE AND CIVIL ENFORCEMENT ACTIVITIES” (2026), <https://oag.ca.gov/system/files/attachments/press-docs/3%2018%2026%20letter%20to%20EPA%20administrator.pdf>.



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