
Environmental Justice in Cannabis Business Siting: Another New Issue in New Jersey?

NJ Cannabis insider

April 25, 2019

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This article originally ran in NJ Cannabis Insider on April 25, 2019.

It has been said that real estate is the most important aspect of a cannabis business plan.

This is true whether the facility is an Alternative Treatment Center (ATC) under New Jersey's existing medical marijuana program, plans to grow or process cannabis, or be a recreational dispensary upon legalization in the state. No matter what aspect of the business a company is engaged in, it must have an approved location at which to carry out its business.

Presently, ATCs are licensed by the Department of Health, which has adopted standards as to where they can be located and how many can exist. Under the proposed cannabis legalization bills, these responsibilities would shift to a newly created Cannabis Regulatory Commission (CRC). The CRC would both take over DOH's role in regulating existing ATCs and also be the state agency responsible for the future licensing of both medicinal and recreational facilities.

Meanwhile, municipalities would continue to have the right to enforce zoning requirements over all manner of cannabis facilities under the proposed new law – although they can only outlaw cannabis businesses if they act within 180 days after the legalization bill is enacted.

However, a new wild card in the cannabis siting process could be the state's renewed focus on environmental justice.

As a concept, the notion of environmental justice has been around for decades. Broadly stated, it is the idea that poor communities and those of color tend to be subject to the most negative environmental impacts, such as landfills, dirty industrial facilities, truck depots, etc... – and that government should take steps to reduce these burdens when it makes decisions having impact on those communities.

For a long time, this tended to be more talk than action. However, recent developments in Trenton now suggest that the Murphy administration is far more serious about implementing environmental justice policies than its predecessors – and this might have impacts on the cannabis industry as it looks for suitable locations to carry out its various businesses.

Last year – ironically on April 20, 2018 – the governor signed Executive Order 23, which directs the Department of Environmental Protection (DEP), with support from other state agencies, to develop guidance on how all departments can incorporate environmental justice considerations into their actions. After a number of stakeholder meetings, DEP issued in December a draft guidance that calls for “meaningful

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involvement” by impacted communities into agency decisions that “may affect their environment and/or health.” The DOH is specifically mentioned as an agency to which the guidance applies.

While some of the identified issues are unlikely to have effect on a cannabis business – for instance, lead exposure – others are just vague enough that it is not hard to imagine an agency like DOH (or later the CRC) using environmental justice criteria as a factor in whether to approve a proposed cannabis facility, or to impose possible conditions to such an approval.

Things like excessive air pollution — from trucks moving product from a grow facility to a dispensary, for instance; potential pesticide exposure (even when non-toxic); and failure to promote clean energy (the massive electrical needs of indoor grow facilities) are all specific issues suggested by the regulatory guidance that could apply to certain cannabis facilities.

Will environmental justice issues become a further hurdle for cannabis businesses to overcome in order to do business in New Jersey? It is too soon to tell. However, this is certainly a potential subject for all looking to site a cannabis business to be aware of and factor into their plans.

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ATTORNEYS MENTIONED

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