

LAW AND PUBLIC SAFETY

(a)

OFFICE OF THE ATTORNEY GENERAL

Notice of Online Listing of Federal and State Grant Programs and Partnership Opportunities

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq., the Department of Law and Public Safety (Department) regularly publishes notices for available Federal or State grants and requests for potential partners on grant applications on its website at <http://www.njoag.gov> under "Grant Opportunities" found in the "Resources" list.

Grant notices and partnership requests are issued by the Department or any of the following divisions in the Department: Alcoholic Beverage Control, Division of Consumer Affairs, Division of Criminal Justice, Division on Civil Rights, Division of Gaming Enforcement, Highway Traffic Safety, Insurance Fraud Prosecutor, Division of Law, Juvenile Justice Commission, New Jersey Racing Commission, State Athletic Control Board, Division of State Police, and Victims of Crime Compensation Office.

For information about a specific grant program, contact the staff member identified in the published notice.

TRANSPORTATION

(b)

OFFICE OF THE COMMISSIONER

Notice of Action on Petition for Rulemaking

Petitioners: EmpowerNJ; BlueWaveNJ; Clean Water Action; Delaware Riverkeeper Network; Don't Gas the Meadowlands Coalition; Environment New Jersey; Food & Water Watch; and the New Jersey Sierra Club.

Take notice that the New Jersey Department of Transportation (Department) has denied a petition for rulemaking filed by John H. Reichman of John Reichman Law LLC, on behalf of EmpowerNJ; BlueWaveNJ; Clean Water Action; Delaware Riverkeeper Network; Don't Gas the Meadowlands Coalition; Environment New Jersey; Food & Water Watch; and the New Jersey Sierra Club. The Department received the petition on May 16, 2022, and published notice of receipt of the petition in the July 5, 2022 New Jersey Register (54 N.J.R. 1342(a)).

The Petition

The petitioners request that the Department adopt rules: (1) implementing Executive Order No. 274 (EO 274) by establishing a carbon reduction strategy to reduce greenhouse gas emissions (GHGs) in the transportation sector by 50 percent below 2006 levels by 2030 (the 50x30 Goal); (2) requiring that any highway expansion or any other project to build or expand highways in the State (collectively "road expansion" or "project") pass a climate impact test showing that the project does not conflict with the 50x30 Goal and the goal of reducing GHGs by 80 percent by 2050, as required by the Global Warming Response Act (the 80x50 Goal); (3) requiring a cost-benefit analysis for any project, which considers whether the project would increase or decrease traffic and vehicle miles traveled, potential increases in budgeted construction costs, the social and health costs of carbon and other pollution and alternatives to the project, such as public transportation, repair projects, safe street projects, bikeways and walkways; and (4) requiring Environmental Justice to be considered in all of its decision-making as required by Executive Order No. 23 (EO 23) and rejecting any project that disproportionately harms already overburdened communities, as defined at N.J.S.A. 13:1D-157 through 161. The petitioners stated that a companion petition was being submitted to the New Jersey Turnpike Authority (NJTA) requesting that the NJTA also adopt rules that comply with EO 274 and EO 23. The petitioner states that the contents of that

petition are incorporated by reference in the petition filed with the Department.

The Department's Response to the Petition

Public Outreach and Environmental Justice

With regard to Environmental Justice, Governor Philip D. Murphy's EO 23 requires that following publication of final guidance, all executive branch departments and agencies shall consider the issue of Environmental Justice and make evaluations and assessments in accordance with that guidance, to the extent not inconsistent with law. In addition, Federal-aid recipients (like the Department) are required to submit assurances of compliance with, and the U.S. Department of Transportation (USDOT) must ensure nondiscrimination under, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq. (NEPA); 23 U.S.C. § 109(h); Executive Order 12898, issued in 1994 by President Clinton; USDOT Order 5610.2; and Federal Highway Administration Order 6640.23A. Executive Order 12898 requires the Department, when implementing programs, policies, or activities, to the greatest extent practicable by law, to develop strategies that prevent "disproportionately high and adverse human health or environmental effects" on low-income and minority populations in the United States. Examples of "adverse effects" under Executive Order 12898 are as follows:

The denial of, reduction in, or significant delay in the receipt of or benefits of Department programs, policies, or activities;

Adverse impact on employment;

Air, noise and water pollution or soil contamination;

Destruction of natural resources;

Destruction of community cohesion or its economic vitality;

Destruction or disruption of public and private facilities or services;

Displacement of persons, businesses, farms or nonprofit organizations;

Increased traffic congestion, isolation, exclusion, or separation of

minority or low-income community from the broader community; and

Bodily impairment, infirmity, illness or death.

Any person or group who believes they have been discriminated against may file a signed, written complaint with the Department within 180 days of the violation. In addition, a complaint may also be filed within 180 days of the alleged discrimination with an appropriate Federal agency. The Department routinely submits assurances of compliance with regard to Environmental Justice to the USDOT when implementing programs, policies, or activities, as required pursuant to Executive Order 12898. The Department considers all adverse effects and provides its development strategies that prevent "disproportionately high and adverse human health or environmental effects" on low-income and minority populations in the United States.

Consistent with Executive Order 12898 and Governor Murphy's EO 23, it is the Department's practice to engage in meaningful and inclusive outreach, particularly to low-income, minority and Limited English Proficiency populations throughout the various phases of the Department's project delivery process. The Department uses various demographic data bases and GIS tools to first identify the presence or absence of any Environmental Justice Communities (EJC) in project study areas and if present, provide a means for consistent dialogue related to the project delivery process. Project alternatives are assessed to ensure no disproportionate impacts to EJC will result from proposed actions and if adverse impacts do arise, appropriate mitigation is provided. The Department actively seeks to consult, inform, and/or solicit comments from the general public; this includes public hearings, public meetings, open houses, workshops, online surveys, focus groups, and other types of public forums. This process is consistent with the Statewide Planning Public Involvement Process; the NEPA Public Involvement Process; Environmental Justice; the Department's Limited English Proficiency outreach; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; Title VI of the Civil Rights Act of 1964; and Native American Tribal Consultation. This entire effort is done to fulfill requirements of Executive Order 12898, consistent with EO 23, and to demonstrate project compliance with NEPA required for all Federal actions.

The Department meets, and may even exceed, its compliance with Environmental Justice under Title VI and Federal Executive Order 12898.

The Department identifies, and addresses, disproportionately high and adverse effects of projects and activities on minority and low-income populations to achieve an equitable distribution of benefits and burdens. The Department provides minority and low-income populations with opportunities to engage with the Department in the development of its programs, policies, and activities. The Department considers Title VI and Environmental Justice in all aspects and stages of project development, such as Planning, Environmental, Public Involvement, Design, Right of Way, Construction and Maintenance, and Operations by connecting with Environmental Justice communities. The Department annually submits a Title VI Implementation Plan to the Federal Highway Administration that provides nondiscrimination assurances and describes activities and efforts the Department employs to ensure nondiscrimination and address Environmental Justice.

Emissions Reductions

In 2007, in recognition of the growing climate crisis, the Legislature passed the Global Warming Response Act, N.J.S.A. 26:2C-37 through 44 (GWRA), the terms of which established two greenhouse gas emission reduction goals. The first stated goal of the GWRA was to reduce emissions to 1990 levels by 2020, referred to as the “20x20 Goal.” The second stated goal of the GWRA is to reduce Statewide greenhouse gas emissions to 80 percent below the 2006 level by 2050, referred to as the “80x50 Goal.” Pursuant to Executive Order No. 274 (2020), and consistent with the GWRA amendments of 2019, Governor Murphy established the State’s policy to reduce greenhouse gas emissions to 50 percent below 2006 levels by 2030, referred to as the “50x30 Goal.”

On October 15, 2020, the Department of Environmental Protection delivered to the Legislature New Jersey’s Global Warming Response Act 80x50 Report (80x50 Report), which communicated the limitations of existing State legislation, policies, and programs in reaching the 80x50 goal and provided detailed recommendations, across seven distinct emissions sectors, to assist policymakers in crafting new initiatives to bridge the resulting emissions reductions gap. See <https://www.nj.gov/dep/climatechange/docs/nj-gwra-80x50-report-2020.pdf>. For the transportation sector, strategies include electrifying light-duty vehicles; decarbonizing medium and heavy-duty vehicles; increasing NJ Transit ridership and the expansion of transit villages; incentivizing work-from-home policies, ride-sharing, home delivery, and other strategies; and supporting regional and national efforts to reduce greenhouse gas emissions of light-duty fossil-fuel powered new vehicles. The GWRA did not establish requirements for the Department to promulgate rules; however, the Department supports these pathways and intends to comply with the GWRA and the 80x50 Report.

The Department is electrifying its light-duty vehicle fleet pursuant to P.L. 2019, c. 362, which requires 25 percent of the State-owned non-emergency light-duty vehicle fleet be plug-in electric vehicles by December 31, 2025. The Department is on track to exceed 25 percent by the targeted deadline by procuring the required vehicles and installing the necessary electric vehicle (EV) charging infrastructure. Currently, the Department has purchased 51 plug-in hybrid electric vehicles (PHEV) and has ordered 10 PHEVs. The Department plans to have 144 PHEVs by the end of fiscal year 2025.

In New Jersey’s Federal FY 2021 Congestion Mitigation and Air Quality (CMAQ) Annual Report, New Jersey authorized \$82.7 million in qualified CMAQ funds in that Federal fiscal year. Of that total, \$7.3 million was invested by the Department in smart mobility and bike/ped projects, which reduce emissions by reducing idling and improving traffic flow, and \$.4 million was invested through Local Metropolitan Planning Organization programs.

The Department and NJ Transit work together to develop Transit Villages, which has resulted in 34 designated Transit Villages. The most recent is in the City of Newark. Transit Villages have developed vibrant residential and business districts around their transit facilities, creating walk- and bike-friendly environments that reduce the need to drive, thereby reducing vehicle emissions.

The Department is working to develop an Electric Vehicle Infrastructure Deployment Plan. The Deployment Plan will meet National Electric Vehicle Infrastructure requirements for EV infrastructure spacing along designated EV corridors. When these corridors are built out with

EV infrastructure, as intended, they will function as the key spines of an EV charging network that will reduce range anxiety and facilitate the acceleration of EV registrations in New Jersey, thereby reducing greenhouse gas emissions from the transportation sector.

The Department employs several mobility-related strategies to reduce vehicle emissions. Specially trained responders work at the scene of large-scale vehicle incidents to quickly clear crashes, reopen lanes, and improve mobility. Safety Service Patrols regularly patrols 225 linear miles of interstate and State highways to quickly remove crashes from lanes of travel and support the safety of first responders, preventing secondary crashes. Two Traffic Management Centers detect crashes and quickly dispatch resources to respond and clear incidents. Adaptive traffic signals improves throughput along signalized arterial corridors, reducing traffic queues. Additionally, the website 51.nj.org/home has a suite of services that provides motorists with daily traveler information allowing them to avoid contributing to existing congestion.

The Department is entrusted with the stewardship of Federal and State funds devoted to transportation improvements. As part of the process of effectively programming and authorizing the funds, and expending them on projects and programs to improve transportation for people who live and work in New Jersey, the Department prioritizes the spending of its limited resources by considering the needs and goals of New Jersey that includes a cost benefit analysis for all projects. The Department considers ways to ensure that our transportation system minimizes impacts to the environment to the greatest extent possible by using Intelligent Transportation Systems technology, optimizing the efficiency of the existing roadway system to move the most people as possible with our existing roadway capacity; working to reduce the emissions impact of existing travel; developing and promoting alternatives to solo driving and expanding roadway capacity to improve the flow of people and goods.

Request for Rulemaking

The Department has considered the petition and decided not to adopt rules, as requested by the petitioners. Pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., rulemaking is not required to implement the provisions of EO 274 and EO 23. Rulemaking is one of the ways in which an Executive Branch department or agency implements legislation or a governmental policy. Rulemaking allows the agency to further the policy goals of the legislation by developing regulations, so that the regulated community will understand how the process works and what is expected of them.

Moreover, the New Jersey Administrative Procedure Act defines “Administrative rule” or “rule,” when not otherwise modified, as meaning each agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. N.J.S.A. 52:14B-2. The definition of “rule” includes the amendment or repeal of any rule. *Ibid*. But the definition does not include: (1) statements concerning the internal management or discipline of any agency; (2) intra-agency and inter-agency statements; and (3) agency decisions and findings in contested cases. *Ibid*.

Rulemaking is unnecessary in this case. The efforts of the Department thus far are advancing the policy set forth at EO 274. As set forth above, the Department is already taking Environmental Justice issues into consideration and has systems in place to consider these issues, so there is no need for additional action at this time. In addition, EO 274 and EO 23 do not require rulemaking, because they govern the conduct of Executive Branch departments and agencies. These executive orders are not directed toward members of the regulated public and they do not seek to impose any requirements or obligations on the regulated public. Therefore, the Department will not adopt rules as requested by the petitioners.

For the foregoing reasons, the subject petition is hereby denied.