



November 30, 2023

Submitted via email: ecomment@pa.gov

Technical Guidance Coordinator
PA DEP Policy Office
Rachel Carson State Office Building
Harrisburg, PA 17105

RE: PennFuture Comments on DEP Interim-Final Environmental Justice Policy (015-0501-002) and Pennsylvania Environmental Justice Mapping and Screening Tool (PennEnviroScreen) Methodology Document (015-0501-003)

Dear Department of Environmental Protection:

Citizens for Pennsylvania's Future (PennFuture) appreciates the Department of Environmental Protection's (DEP) willingness to revisit the 2022 Draft Environmental Justice (EJ) Policy,¹ and submits these comments on the revised Interim Final EJ Policy (Policy).

We commend DEP for issuing a revised Policy for public comment. As noted herein, we appreciate the time and effort that went into not only the 2022 draft revision, but the current revised Policy. We also thank DEP for holding multiple in-person and virtual public hearings, including adding additional hearing dates and locations, so that impacted community members would have multiple avenues to access DEP to provide comment and express concern. This reflects a commitment to the enhanced public participation process that the DEP's EJ Policy is intended to solicit.

It is evident that a tremendous amount of time and energy was put into enhancing the EJ Policy. However, the currently Interim Final Environmental Justice Policy has retained many of

¹ PennFuture joined with Clean Air Council, Mountain Watershed Association, PennEnvironment, and Environmental Integrity Project in submitting detailed comments on that draft. Unfortunately, the Interim Final Policy contains no changes in response to any of our comments, concerns, or suggestions, and therefore those pitfalls from the 2022 draft are still apparent in the current policy, to the detriment of the health and safety of Pennsylvania's environmental justice communities.

the shortcomings of the 2022 draft version in that it does not go far enough to ensure meaningful environmental protection of EJ communities. The Policy's stated purpose is "to facilitate environmental justice in communities across the Commonwealth of Pennsylvania and to ensure equity and environmental justice in the administration of DEP's constitution, statutory and regulatory duties." Unfortunately, despite its revisions, the Interim Final EJ Policy still falls short of reaching this goal.

PENNENVIROSCREEN MAPPING TOOL

Perhaps the biggest change from the 2022 Draft EJ Policy is the PennEnviroScreen Mapping Tool and the accompanying methodology document. These new features have the potential to be a useful tool for EJ communities, nonprofit and agency groups, industry stakeholders, and its intended users, DEP staff. They also take into account more than just demographics, including health and other factors that provide for a more holistic account of the myriad burdens faced by Pennsylvania's EJ communities. However, in its current form, there are several issues concerning the utility of the tool. The main flaws of the PennEnviroScreen mapping tool are the accuracy of the data presented by the map, the functionality of the map, and the accessibility of the tool for EJ communities.

Accuracy

The PennEnviroScreen Mapping Tool uses over thirty environmental, health, and socioeconomic indicators when determining which areas of Pennsylvania qualify as EJ communities. While this is an impressive increase in the number of indicators used in comparison to prior versions of the EJ Policy, the concern lies in the accuracy of these figures.

First, the information currently used to generate the mapping tool is from the 2010 census block, meaning it is already over a decade old.² This data does not account for communities that may have been on the brink of qualifying as an EJ community in 2010, but as of the 2020 census (which itself is already 3 years old) fall squarely within EJ community parameters. Second, in addition to the use of older census information, the PennEnviroScreen Mapping Tool methodology

² *Id.*

document notes “not all data may be the most currently available as a variety of data sources may be updated at various points throughout the year.”³ But we don’t know which information is not current, nor why DEP cannot use the most current information. And with DEP only intending to update the map at most once a year, we are concerned that the use of outdated, and potentially incorrect data, may snowball, leaving overburdened communities unrecognized and unprotected. Finally, we note that the communities identified as EJ areas in the PennEnviroScreen do not necessarily correspond with the EJ communities as identified in EPA’s EnviroScreen. And while we acknowledge that this is due to differing methodologies and considerations by the agencies, it may be confusing to members of the public who are considered an EJ community by EPA but not by DEP.

We urge DEP to reconsider how it can appropriately use the most current population trends, environmental concerns, and socioeconomic statistics – and how it can do so holistically – to best protect our EJ communities.

We also note that the PennEnviroScreen mapping tool fails to align with the Environmental Protection Agency’s (EPA) mapping tool which may identify different areas of Pennsylvania as qualifying for EJ community status. This is likely confuse users and may lead to disparate treatment of equally situated communities.

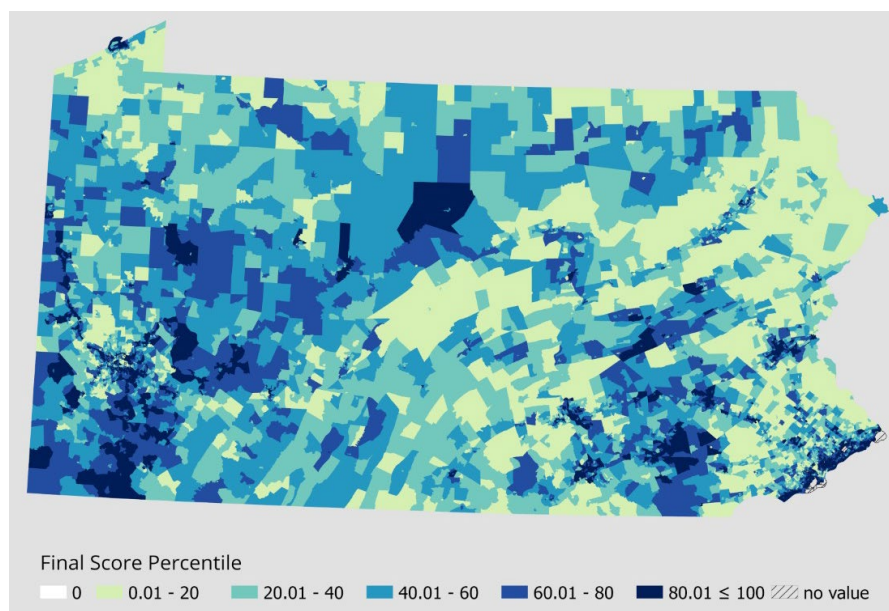
Functionality

A big issue with the functionality of the PennEnviroScreen Mapping Tool is that we were unable to highlight individual socioeconomic, health, and other EJ criteria indicators that give a clearer depiction of why that area qualifies as an EJ community. As shown below, this is something that EPA’s mapping tool allows, and something that we encourage DEP to incorporate and make easily accessible to the community members who utilize the mapping tool. This important feature is helpful not only for DEP staff who will use the tool to review permits in EJ communities but also for members of these communities in identifying whether their neighborhood qualifies for the additional oversight and engagement implicit in the EJ Policy.

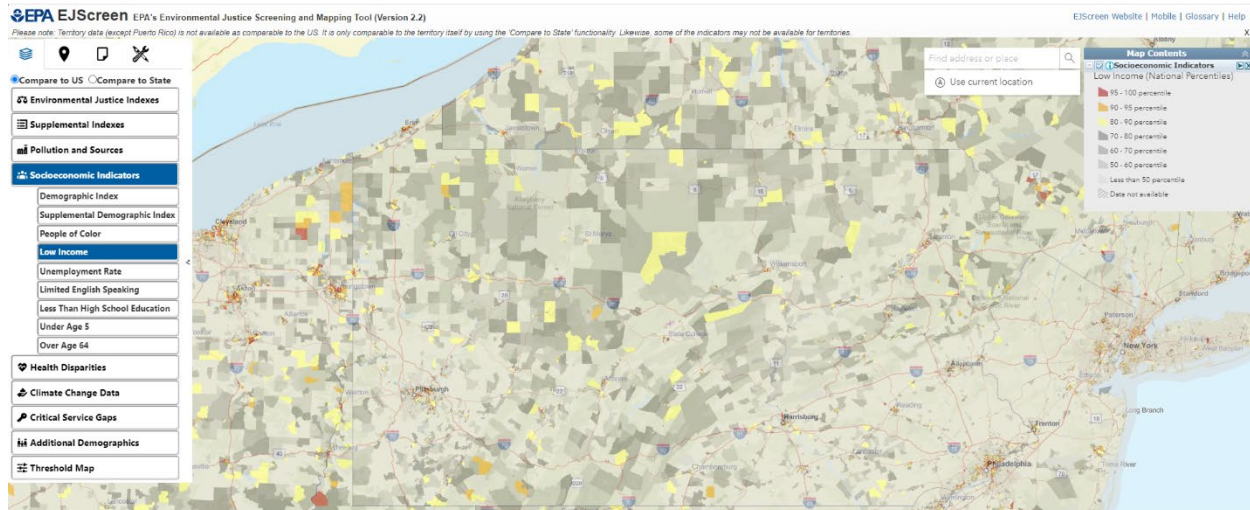
³ Dept. of Env’t Prot., Pennsylvania Environmental Justice Mapping and Screening Tool (PennEnviroScreen) Methodology Documentation 2023, page 1.

We think that inclusion of cumulative effects (e.g., locations of DEP-permitted facilities, including their pollution emissions) would be helpful to EJ community members to understand the true breadth of their burdens and would improve the functionality of the PennEnviroScreen Mapping tool. DEP staff, community members, advocacy groups, and industry stakeholders should be aware of the environmental harms that currently exist in EJ communities when considering permits for new industry sites. This feature would prevent EJ communities already overwhelmed by pollution from becoming overburdened. It would also serve as a method of meaningful engagement for EJ communities by notifying them of environmental hazards that exist in their areas.

On perhaps a more practical level, the main problem with the functionality of the PennEnviroScreen Mapping Tool is that the colors used, especially those between the 60.1 to 80 and 80.1 to 100 percentiles, are so close that they are almost indistinguishable. This is especially concerning because the 80.1 to 100 percentile marks the EJ communities that the map is intended to identify and to which the EJ Policy applies. We respectfully suggest that this top percentile be marked in a contrasting – and clearly visible – color so that these EJ areas stand out from other areas of Pennsylvania on the mapping tool. Please see below for an example of the issue with the current color choice, as compared to EPA’s mapping tool, which provides contrasting color coding that makes the map easier to read.



DEP’s PennEnviroScreen utilizes shades of greens and blues with no contrasting colors to highlight EJ communities.



EPA’s EJScreen map of Pennsylvania indicating low-income areas in yellow, orange, and red based on national percentiles.

Accessibility

Finally, the PennEnviroScreen mapping tool is likely to be inaccessible to many residents of EJ communities. These community members may not live in areas with reliable internet service, and those that do, may not have the capability to access the internet from their homes. DEP has not addressed a method to share the information provided by the PennEnviroScreen Mapping Tool with these communities without reliable internet connection or access. Without an alternate means of accessing the data provided by the mapping tool, DEP may be inadvertently leaving out the very community the tool is intended to protect.

DEP EJ POLICY

The purpose of the EJ Policy is to enforce Article I, Section 27 of the Pennsylvania Constitution by recognizing that “[a]ll Pennsylvanians have the rights to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment.”⁴ With these rights in mind, the Policy’s goal is to prevent historically disenfranchised communities from being overburdened by detrimental environmental impacts. The Policy also intends to allow for meaningful engagement with these communities when decisions are made that will impact the

⁴ *Id.*

health, safety, and the environment in EJ communities. These are laudable goals that directly support environmental justice and equality in representation that the DEP's Office of Environmental Justice (OEJ) works toward every day.

DEP's Interim Final EJ Policy utilizes the following definition of environmental justice:

Environmental justice means the **just treatment and meaningful involvement** of all people, regardless of income, wealth, race, color, national origin, area of residence, Tribal affiliation, or disability, in agency decision-making and other activities that affect human health and the environment so that people: are **fully protected from disproportionate and adverse human health and environmental effects** (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grown, worship, and engage in cultural and subsistence practices. It further involves the **prevention of future environmental injustice and the redress of historic environmental injustice.**

Unfortunately, the current Interim Final EJ Policy (like the 2022 draft before it) is permissive to the point that it does not prevent environmental injustice, does not encourage just treatment or meaningful involvement of EJ communities, and does not address the disproportionate health and environmental impacts or racism felt by these communities. As is explained below, the Interim Final EJ Policy continues to fail to meet the DEP's EJ goals, and we will address each of the highlighted issues in turn.

As an initial matter: The importance of an EJ Policy that addresses the disparate treatment of marginalized communities cannot be overstated. Yet a policy is only as effective as the enforcement measures it is prepared to take. And as acknowledged by disclaimers in both the Interim Final EJ Policy and the PennEnviroScreen Mapping Tool, the guidance documents will not be given the same weight or deference as an adjudication or regulation. They also note that "DEP reserves the discretion to deviate" from the Policy,⁵ presumably without recourse or penalty. The Interim Final EJ Policy is permissive to the point of being ineffective. There is no requirement that applicants adhere to the Policy and no sanctions will be imposed if they fail to consider, let

⁵ Dept. of Env't Prot., Env't Justice Policy, page ii.

alone mitigate, their impacts on EJ areas. There is no requirement that DEP considers any of the comments or concerns from the community, nor that they do anything different as a result of the enhanced public participation. This affords no guarantees of protection for EJ communities as required by the Pennsylvania Constitution. For these reasons, and in addition to the need to strengthen the Policy as described herein, **we respectfully ask that the DEP promulgate a rule in place of the EJ Policy to include enforcement provisions that will protect EJ communities and make the Policy’s goals achievable.**

Just Treatment

EJ communities are overburdened areas that are comprised of “minority, low-income, tribal, or indigenous populations.”⁶ DEP is required under state and federal law to prevent EJ communities from being overburdened by environmental harm. By its admission, DEP’s Interim Final EJ Policy is more narrowly construed than commonly used EJ definitions. The Policy notes there may be “more expansive definition[s] of environmental justice terminology than as used in [the EJ Policy].”⁷ It is also inconsistent with statutory and regulatory EJ definitions. The limited definitions used in the EJ Policy mean that communities regularly found to qualify as EJ communities will not receive environmental justice considerations under the EJ Policy. This will have a discriminatory effect on these communities contrary to the requirements of state and federal law and the PA Constitution.

To provide EJ communities with the environmental protection set out in the Policy’s purpose, the communities considered must be at least as inclusive as the 2022 draft policy. Since DEP does not provide a list of which communities are designated EJ communities, it is difficult to determine if the new Policy achieves this goal. Creating a list of designated communities would alleviate any ambiguity around the inclusivity and accuracy of the Interim Final EJ Policy. Further, a list of identified EJ areas would increase accessibility to EJ community members and other interested parties who may not have access to the PennEnviroScreen mapping tool. This would

⁶ EJ 2020 Glossary, U.S. Env’t Prot. Agency (July 31, 2023) <https://www.epa.gov/environmentaljustice/ej-2020-glossary>.

⁷ Dept. of Env’t Prot., Env’t Justice Policy, page 6.

further the DEP's goal of increasing community involvement and public participation in the permit process for EJ areas.

The DEP should consider the requirements of Pennsylvania's Environmental Rights Amendment and state and federal law and promulgate a rule to address EJ concerns. Both federal and state laws compel equal treatment of Pennsylvania's citizens which requires consideration of environmental impacts on communities that are already overburdened. It is unjust to expect EJ communities to continuously bear the Commonwealth's pollution without a say in the matter. A rule would go further than the proposed Interim Final EJ Policy in achieving this result and would carry the weight of the law required for a meaningful impact on EJ communities.

Meaningful Involvement

Currently, the Interim Final EJ Policy contains intentions to increase engagement in EJ communities but lacks structure and clarity. These processes need to be defined to ensure meaningful engagement for EJ communities occurs and members of these communities can have their concerns addressed.

The Interim Final EJ Policy claims to expand meaningful engagement of the EJ community and other interested stakeholders but fails to provide concrete and measurable steps for how this result will be achieved. Notably, the Policy intends to "bring new voices to the environmental justice conversation in Pennsylvania. . . intentionally target[ing] stakeholders and communities that have not been formally engaged by the Department in the past."⁸ The Policy also mentions that "[o]utreach activities and other support for EJ communities regarding public participation . . . in addition to minimum legal requirements related to municipal or public notice, public meetings, public hearings and the opportunity for comment on applications or other regulatory decisions under review by DEP."⁹ The Interim Final EJ Policy does not describe what outreach activities, or "other support" includes or what EJ communities can expect from this engagement but DEP

⁸ *Id.* at page 8.

⁹ *Id.* at page 2.

hopes that it will “facilitate meaningful public comment through technical or other consulting support.”¹⁰

It is unclear what value this additional engagement will provide to EJ communities. Municipalities already include public notices, public meetings, and other opportunities for community engagement. Although DEP is offering to be involved in the process, it is not offering any new engagement opportunities for EJ communities. The Interim Final EJ Policy fails to address how community members will be notified of these meaningful engagement meetings. Community engagement is only productive when members of affected areas are notified of their opportunity to voice their concerns publicly. There is also no mention in the Interim Final EJ Policy of where EJ communities can learn about the applicants seeking permits in their areas. Meaningful engagement should afford community members the opportunity to be fully informed on the issues they are asked to speak about.

The Interim Final EJ Policy also intends to allow enhanced public participation opportunities for permits that are part of trigger projects even when the community does not request this level of engagement. Again, this enhanced public participation bears the same concerns as meaningful engagement in that it is unclear how EJ communities will be notified of their opportunity to participate or how they will be informed about the background of these projects. Since the policy is permissive, it is also ambiguous how DEP will designate projects as trigger projects. DEP explicitly “reserves the discretion to deviate from [the EJ Policy] if circumstances warrant,” which means many projects that should be “trigger projects” may not receive this designation.

The Interim Final EJ Policy is further complicated by the inclusion of opt-in projects. Although DEP includes a long list of projects that could be opted in, there is no clear process for requesting projects to be included as trigger projects. Again, the permissiveness of the policy calls into question how seriously requests for opt-in projects will be considered. Many of the projects included in the list of potential opt-in projects include a high potential for environmental damage at the time of installation and for future generations which is worrisome. These projects include major sources of air pollution, solid waste facilities that receive at least 100 tons of material daily,

¹⁰ *Id.*

and oil and gas wells and development.¹¹ The Interim Final EJ Policy does not explain why these types of facilities, with their high pollution and emission rates, would not automatically be labeled as trigger projects, which we believe they should clearly be.

Meaningful involvement is a crucial part of ensuring the EJ Policy is effective and that members of EJ communities have an opportunity to have their concerns heard and addressed. To achieve this result, the DEP needs to create clear procedures for community engagement, especially how community members will be notified of these opportunities and educated on prospective permitted projects. The methods for determining which projects are designated as trigger projects and how to opt-in projects also need to be made clear. Meaningful public participation also the ability to potentially change the outcome of the process. And yet, as further discussed herein, because neither the DEP nor the applicant is required to do anything different in the permitting process (e.g., mitigate impacts; modify, condition, or deny permits), by definition the enhanced public participation processes set forth in the Interim Final EJ Policy, while laudable and important in their own right, are not meaningful.

Fully Protected from Disproportionate and Adverse Human Health and Environment Effects

EJ communities disproportionately bear the burden of the Commonwealth's pollution which has health, safety, social, and economic ramifications. The EJ Policy must reflect methods to prevent these inequalities to protect EJ communities and prevent further environmental damage to these areas. The Final Interim EJ Policy is intended to address the disproportionate and adverse human health and environmental impacts experienced by EJ communities but (1) fails to address cumulative impacts and (2) includes an "area of concern" that is much too small to account for environmental harms from new and existing sources. Even with the enhanced public participation under the current Interim Final EJ Policy, environmental impacts in EJ communities are often not considered holistically, and DEP has permitted projects that will add to the pollution load in communities that are already overburdened by environmental degradation.

¹¹ Dept. of Env't Prot., Env't Justice Policy, page 25.

First, DEP staff must account for cumulative impacts when considering permit approvals in EJ communities. The Policy defines cumulative impacts as “the combination of the cumulative degradation of air, water, and land in a defined geographic area together with social determinants of health that make the population more sensitive to degraded environmental conditions.”¹² Despite defining cumulative impacts, the Final Interim EJ Policy does not mention how they will be measured or considered. For the EJ Policy to be effective, the Commonwealth must deny permits that “together with other environmental or public health stressors affecting the overburdened community, 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.”¹³ “[N]o group of people, including a racial, ethnic or socioeconomic group, should be disproportionately exposed to pollution or bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal or commercial operations.”¹⁴ Protection of EJ communities will only occur when the DEP upholds its environmental obligations and denies permits based on cumulative impacts. Other states, including New Jersey and New York, use cumulative impacts as criteria for permit denial of new facilities, which shows that this can be done. We encourage DEP to look to existing regulatory programs and develop a truly meaningful and protective EJ program for PA.

Second, the Interim Final EJ Policy fails to evaluate environmental impacts in a large enough area to be meaningful. The area of concern considered by the policy is a “geographic area measuring 0.5 miles in all directions from the location of the proposed” project.¹⁵ All of the environmental exposures referenced in the mapping guidance document create pollution burdens that extend well beyond a half mile radius from the point source. This is particularly true for air pollution: according to the EPA, particulate matter “can remain in the atmosphere for days to weeks” and “can travel hundreds or thousands of miles and influence the air quality in regions far from the original source;”¹⁶ and ozone pollution also travels far from its original source and “can

¹² Dept. of Env’t Prot., Env’t Justice Policy, page 2.

¹³ N.J. Stat. Ann. § 13:1D-160 (West).

¹⁴ N.Y. Env’t Conserv. Law § 48-0101 (McKinney).

¹⁵ Dept. of Env’t Prot., Env’t Justice Policy, page 1.

¹⁶ *What is Particle Pollution?*, U.S. Env’t Prot. Agency, <https://www.epa.gov/pmcourse/what-particle-pollution#:~:text=Some%20particles%20can%20remain%20in,far%20from%20the%20original%20source>

be detected in rural areas as far as 250 miles downwind from urban industrial zones.”¹⁷ DEP’s inclusion of only a half-mile radius in the Interim Final EJ Policy is not science-based and does not accurately account for pollution released by new and existing point sources. To provide meaningful protection to EJ communities, the Interim Final EJ Policy must consider the effects of pollution on the community, and not merely the adjacent properties to proposed point sources.

The minimal areas and lack of cumulative pollution considerations in the EJ policy make it ineffective to provide any meaningful protection to EJ communities. Studies have proven that pollution impacts are far-reaching and at a minimum, DEP needs to consider the effects of new point source emissions on the entire EJ community. By expanding the area of concern, DEP will gain a better understanding of the cumulative impacts these communities will face when DEP reviews permits that contribute to an EJ community’s pollution load. EJ communities in pollution dense areas suffer from health, socioeconomic, and safety implications from pollution exposure. DEP does a disservice to these areas by not including cumulative impacts and larger areas of concern in its EJ Policy. Without policy improvements, the DEP will continue to approve permits that further handicap these communities.

Prevention of Further Environmental Injustice and Redress of Historic Environmental Injustice

DEP has consistently (and erroneously) argued that it lacks the authority to include enforcement provisions in its EJ Policy, and consequently it continues to fail to meet its own clear definition of environmental *justice*. However, Article I, Section 27 of Pennsylvania’s Constitution necessary includes environmental justice by guaranteeing the environmental rights thereunder available to “all the people.”¹⁸ Furthermore, Article I, Section 27 makes it incumbent upon the Commonwealth to preserve “Pennsylvania’s public natural resources [which] are the common property of all the people, including generations yet to come.”¹⁹ The Department of *Environmental*

¹⁷ Craig Freudenrich, Ph.D., *How Ozone Pollution Works*, HOWSTUFFWORKS

<https://science.howstuffworks.com/environmental/green-science/ozone-pollution.htm#:~:text=Significant%20levels%20of%20ozone%20pollution,downwind%20from%20urban%20industrial%20zones.&text=Ozone%20pollution%20can%20travel%20from%20urban%20to%20rural%20areas.>

¹⁸ Pa. Const. art. I, § 27.

¹⁹ *Id.*

Protection, as its name makes implies, is the agency best situated to uphold the Commonwealth's environmental trustee obligations. DEP's mission is "to protect Pennsylvania's air, land, and water from pollution and to provide for the health and safety of its citizens through a cleaner environment."²⁰ Unfortunately, the Interim Final EJ Policy does nothing to prevent further environmental injustice, because absolutely nothing in the Policy provides for, let alone requires, DEP to deny a permit or require any mitigation that is aimed at prevention of additional pollution. DEP's Final Interim EJ Policy does nothing to redress historic environmental injustice since it simply allows more polluting facilities to come into EJ communities, albeit with enhanced notice to the community members. The mission of protecting the environmental rights of all citizens can only be achieved by promulgating an environmental justice rule that includes sanctions for polluters and requires DEP staff to deny permits whose environmental impacts would overburden EJ communities. The current Interim Final EJ Policy lacks the enforcement necessary to protect EJ communities from additional injustices and does nothing to redress past injustices.

To this end, DEP must not heed the comments of many developer and industry interests that call on DEP to roll back and further weaken its EJ Policy. DEP has a duty to protect EJ community members' environmental rights, and its current Interim Final EJ Policy is the ground floor – and not the ceiling – for DEP to meet its trustee obligations. The purpose of environmental justice is to provide *justice* to those overburdened communities who have been forced to bear a disproportionate amount of pollution and other social and economic burdens; kowtowing to industry requests to do less would instead maintain the harmful status quo, would undermine DEP's stated commitment to environmental justice, and would continue to impose environmental injustices upon Pennsylvanians.

* * *

PennFuture appreciates the work DEP has put into improving the EJ Policy. This is a needed step towards environmental justice in Pennsylvania. However, we feel more work is needed to protect EJ communities from environmental harm and encourage community engagement and public participation in permit approvals for pollution sources in EJ areas.

²⁰ MISSION STATEMENT, PA. DEPT. OF ENV'T PROT.



We respectfully request the following improvements to the EJ Policy:

1. Promulgate a rule instead of a policy, which includes the ability to mitigate, condition, or outright deny permits, to provide EJ communities protection with the force of law;
2. Change the color coding of the map to make it easier to read;
3. Create a comprehensive list of designated EJ communities for those community members who do not have reliable internet access;
4. Create better procedures for more meaningful community engagement;
5. Clarify procedures for trigger projects and opt-in project designations;
6. Require cumulative effects be reviewed as part of permit review; and
7. Deny permits whose cumulative effects overburden EJ communities.

Thank you for your consideration of these comments.

Respectfully submitted,

A handwritten signature in blue ink that reads "Lindsay A. Williamson".

Lindsay A. Williamson

Legal Intern

williamson@pennfuture.org

A handwritten signature in black ink that reads "Abigail M. Jones".

Abigail M. Jones

Vice President of Legal & Policy

jones@pennfuture.org

cc: Fernando Treviño, Special Deputy Secretary, DEP OEJ (ftrevinoma@pa.gov)