



May 11, 2022

Secretary Patrick McDonnell  
Pennsylvania Department of Environmental Protection  
400 Market Street  
Harrisburg, Pennsylvania 17101

**Comments on Draft Environmental Justice Policy, Doc. No. 012-0501-002**

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Dear Secretary McDonnell:

The Department of Environmental Protection’s proposed Environmental Justice Policy (the “Policy”) is a large improvement on the Department’s existing Environmental Justice Public Participation Policy (“existing policy”) and the Clean Air Council,<sup>1</sup> Citizens for Pennsylvania’s Future,<sup>2</sup> the Environmental Integrity Project,<sup>3</sup> Mountain Watershed Association,<sup>4</sup> and PennEnvironment (together, “Commenters”) are excited to see the Department implement many

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<sup>1</sup> The Clean Air Council is a nonprofit environmental health organization headquartered in Philadelphia. The Council has been working to protect everyone’s right to a clean environment for over 50 years. The Council has members throughout Pennsylvania and the Mid-Atlantic region who support its mission.

<sup>2</sup> Citizens for Pennsylvania’s Future (PennFuture) is a statewide, member-supported, environmental non-profit organization headquartered in Harrisburg. PennFuture is leading the transition to a clean energy economy in Pennsylvania and beyond; we protect our air, water, and land, and empower citizens to build sustainable communities for future generations.

<sup>3</sup> The Environmental Integrity Project (EIP) is a national nonprofit organization headquartered in Washington, DC with staff located in Pittsburgh and Philadelphia. EIP is dedicated to advocating for more effective environmental laws and better enforcement. EIP has three goals: (1) to provide objective analyses of how the failure to enforce or implement environmental laws increases pollution and affects public health; (2) to hold federal and state agencies, as well as individual corporations, accountable for failing to enforce or comply with environmental laws; and (3) to help local communities obtain the protection of environmental laws.

<sup>4</sup> The Mountain Watershed Association is a small, community-based, nonprofit organization concerned with the protection, preservation, and restoration of the Indian Creek and greater Youghiogheny River watersheds. The Association has over 2000 members and has operated since 1994.

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of the proposed changes. The proposed Policy still contains significant limitations. Some of these limitations are fundamental in nature, and would severely obstruct environmental justice in the Commonwealth. Other parts of the Policy could be improved with only minor amendments.

As a preliminary note, Commenters call on the Department to center the voices, concerns, and comments of frontline, fenceline, and environmental justice communities and organizations. Commenters are experts in law and policy and our comments reflect this expertise and experience. And while we have members in environmental justice communities and argue for environmental justice through our legal, regulatory, and policy work, it is critical that our comments not overshadow those from the people and organizations who have long-suffered from environmental racism, whose communities have been used as “sacrifice zones,” and who have born a disproportionate burden of the Commonwealth’s environmental harms.

Part I of these comments addresses the most fundamental problem with the Policy: that it does not specifically call on the Department to deny permits that would disproportionately harm environmental justice communities. There we identify examples of state and federal law that allow, and in some circumstances require, the Department to deny permits that appear to meet regulatory requirements, but nonetheless pose a risk to communities’ health and well-being. Until the Department acknowledges its authority under existing law to shape the substantive outcomes of the permitting process, any environmental justice policy will fail to promote the fair treatment or meaningful involvement of all Pennsylvanians.

Part II addresses a similarly fundamental flaw: that the Policy is only a policy. That Part contains a plea for the Department to seek a rulemaking based in part on the authorities identified in Part I. Next, Part III examines a few pieces of the Policy’s permitting process that, while on the right track, require clarification or strengthening to maximally improve environmental justice. And finally, Part IV suggests improvements to the Policy’s sections on training, enforcement, and grants.

## Table of Contents

- I. The Policy needs to advise the Department to deny permits that would harm environmental justice communities in the many situations where the law allows denials. 4
  - A. Several state laws provide the Department with the legal authority or responsibility to deny permits that could disproportionately harm certain communities..... 6
    - 1. The Department can and should factor environmental justice concerns into required cost-benefit analyses..... 7
    - 2. The Air Pollution Control Act requires the Department to deny permits that appear to meet regulatory requirements if granting would nevertheless harm public health or unreasonably interfere with the enjoyment of property..... 10
    - 3. The Policy should identify these and the laws where the Department has authority to prevent environmental injustice in permitting..... 12
  - B. The Environmental Rights Amendment requires the Department to guarantee people’s rights to clean air, pure water, and the natural, scenic, historic, and esthetic values of the environment..... 13
  - C. Title VI of the Civil Rights Act prohibits grantee programs that result in disparate impacts based on race, color, sex, or national origin. .... 15
- II. The Department should petition the Environmental Quality Board to adopt a rule on environmental justice. .... 17
- III. The proposed Policy’s permitting process could be improved in other ways. .... 17
  - A. The Policy should incorporate existing environmental justice areas into the proposed Policy for the near future..... 17
  - B. The Department should use a combination of absolute percentage and percentiles to designate environmental justice areas..... 18
  - C. Trigger permits should include synthetic minor permits. .... 18
  - D. The Policy should expand the geographic scope of the “areas of concern”. .... 19
  - E. The Policy should clarify when the Department should opt-in permits, and encourage it to do so. .... 19
  - F. The Policy should require the Department to make documents available on its website unless specific exceptions apply. .... 20
  - G. The Department should host a centralized environmental justice permitting webpage. .... 20

Clean Air Council, PennFuture, Environmental Integrity Project, & Mountain Watershed Association

- H. Public hearings should be both virtual and in-person whenever possible, and be accessible as a matter of course. .... 21
- I. The Policy should further detail the information public notifications must provide. .... 22
- J. The Policy should include an automatic extension of the 30-day public comment period when an extension is requested..... 24
- K. The Policy should require the Department to independently verify whether projects’ areas of concern include environmental justice areas..... 24
- IV. The Policy should further detail how the Department can alleviate existing environmental injustice. .... 24
  - A. The Department must craft a comprehensive strategy to combat existing environmental injustice. .... 25
  - B. The Policy should further describe the training for Department staff, which should include introductions and ongoing dialogue with environmental justice advocates. .... 25
  - C. The Policy should provide live updates for sections V, VI, and VII. .... 26
  - D. The Policy should provide compensation and other support for community liaisons. .... 26
  - E. The Policy should prioritize grants with both short- and long-term benefits. .... 27
  - F. The Policy should call on the Department to inform permit holders of its intent to prioritize enforcement in environmental justice areas. .... 27
  - G. The Department should offer a series of educational webinars about the Policy and related topics. .... 28
  - H. The Policy should explicitly include environmental justice communities in brownfield redevelopment. .... 28

**I. The Policy needs to advise the Department to deny permits that would harm environmental justice communities in the many situations where the law allows denials.**

The Policy defines “environmental justice” as the “fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the Commonwealth’s development, implementation, and enforcement of environmental laws, regulations, and policies.” And the Policy provides opportunities for people to be somewhat involved in (or at least informed about) the Department’s actions. But for involvement to be “meaningful” it must be able to change the outcome of the Department’s decisionmaking. If the

procedures prescribed in sections II, III, and IV of the Policy do not affect the Department's actions, then the Policy does not, and cannot, further environmental justice. The ability to speak at a hearing is not "meaningful involvement" if the decision maker will not act on the speaker's words, and "fair treatment" requires communities to be free from disproportionate environmental risk, not just to be informed of the risks they face.

As it stands, the Policy does not advise the Department to meaningfully act on any of the information it receives from the public. It must hold public meetings, accept comment, and publish a response document, but that is just "involvement" not "fair treatment and meaningful involvement." To achieve "fair treatment" of "all people regardless of race, color, national origin, or income" the Department must prevent (and reverse) the buildup of cumulative and disparate harms on black and brown communities, immigrant communities, and low-income communities, even if each application it receives appears to comply with other regulatory requirements. To achieve "meaningful involvement," the public's comments and opposition must be able to change the outcome of the Department's decisionmaking.

Numerous state statutes and regulations grant the Department power to deny permits based on public opposition, cumulative impacts, and disproportionate harms to environmental justice communities. To promote the "fair treatment and meaningful involvement of all people," the Policy needs to instruct the Department to act on these opportunities.<sup>5</sup> The Policy should also instruct the Department about its obligations under Pennsylvania's constitution and federal law to alter its substantive decisionmaking to prevent disparate outcomes. It is no defense that a state statute demands a permit grant when the state constitution or federal law demands denial.

The remainder of this Part will discuss several of these sources of state and federal law, to illustrate ways the Department can and must alter its substantive decisionmaking under existing law. First, we will examine a non-exclusive list of state statutes under which the Department can reject permits for disparate harm to some communities. Second, we will discuss the Environmental Rights Amendment. And third, we will examine how the Civil Rights Law of 1964 requires the Department to deny permits if granting them would disproportionately harm communities of color, regardless of state law to the contrary – therefore *requiring* the

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<sup>5</sup> Indeed, as we argue in Section II, we believe the Department should make more than just policy and petition the Environmental Quality Board to promulgate environmental justice regulations.

Department to deny even seemingly mandatory permits that would worsen environmental racism.

**A. Several state laws provide the Department with the legal authority or responsibility to deny permits that could disproportionately harm certain communities.**

Department officials and employees have created considerable confusion regarding the Department's ability to deny permits. Although some oil and gas statutes seem to require the Department to grant permits under certain circumstances, most statutes reserve discretion for the Department to grant or deny permits. Implementing regulations then give texture to that discretion, requiring certain analyses and determinations that the Department still has room to shape.

Despite statutory and regulatory language to the contrary, Department officials and employees have implied or even stated outright that the Department lacks discretion to deny permits that meet minimum regulatory requirements. Given a charitable reading, these statements obfuscate that the Department is responsible for evaluating whether standards are met, and that the regulations require the Department to make judgement calls that it has the legal authority to make differently. At worst, such claims are complete mis-statements of law. Regardless of the reading, such obfuscation is indefensible in the environmental justice context, where "meaningful involvement" requires communities to understand the law governing the Department's decisions and the Department's obligations. Moreover, if Department employees wrongfully believe they do not have the power to deny permits when they in fact do, then community input cannot meaningfully affect Department decisionmaking.

This subpart of these comments will give several examples of state law where the Department's job is not merely ministerial, where it has the authority or occasional responsibility to deny permits, and where it would therefore be unjust to claim that the Department must grant permits. These are all areas where the Policy should call on the Department to deny permits that would harm environmental justice communities. First, we look to cost-benefit analysis. There, the Department is clearly mandated to evaluate harms, such as those to environmental justice communities. These cost-benefit analyses are only a small selection of the rules where the Department has more leeway to evaluate permit applications. Many statutes and regulations require the Department to make reasonable judgement calls, to interpret the data and the science and to determine whether permits should be granted or denied on its determinations. After

discussing cost-benefit analysis, this subpart discusses one such example: The Air Pollution Control Act.

1. *The Department can and should factor environmental justice concerns into required cost-benefit analyses.*

Several regulations require the Department to perform a cost-benefit analysis before granting permits – and require denial if the benefits do not clearly outweigh the costs. (*E.g.*, 25 Pa. Code §§ 105.16(b) (requiring cost-benefit analysis during water permitting); 127.205 (requiring cost-benefit analysis during air permitting); 271.127 & 287.127 (requiring cost-benefit analysis during solid-waste permitting)). All such regulations give the Department the legal authority to deny permits that would harm environmental justice communities.

a. How to incorporate environmental justice concerns into cost-benefit analysis

Methodologically sound cost-benefit analysis includes sensitivity/uncertainty analysis and the weighing of factors. To head off any potential disparate impacts and ensure fair treatment, the Policy should call on the Department to resolve questions of uncertainty in favor of protecting environmental justice communities. Arguably, such resolution is already demanded by the requirement that benefits “clearly” or “significantly” outweigh harms in some of these regulations, but the Policy should clarify this regardless.

In addition, the Policy should specify that the Department will more heavily weigh harms to environmental justice communities and areas with existing sources of pollution. The Policy could include a table with weight factors that apply to certain costs in environmental justice communities, based on criteria such as the number of existing permitted sources those communities host. For an example in the air permitting context, the Policy could suggest that, after monetizing possible public health effects to an environmental justice community, the Department multiplies that cost by 1.33, or by 1.66 if the community already has a major source of air pollution, or by 2 if it already has two major sources of air pollution, etc.

Weighing the harms from a new source because of the harm from existing sources is necessary to account for cumulative impacts. These impacts currently evade review during most permitting processes, even though they are a primary driver of environmental racism and injustice. The Department must account for cumulative impacts to achieve “fair treatment” of all Pennsylvanians. Numerous studies dating back three decades or more have revealed that communities of color are disproportionately exposed to environmental hazards such as landfills,

polluted drinking water, and sources of air pollution. (Center for Public Health and Environmental Assessment, EPA, *Supplemental Integrated Science Assessment for Particulate Matter*, EPA/600/R-19/188 (2021) (finding racial disparity in exposure to air pollution); Robert J. Sampson & Alix S. Winter, *The Racial Ecology of Lead Poisoning: Toxic Inequality in Chicago Neighborhoods 1995-2013*, DUBOIS REVIEW: SCIENCE RESEARCH ON RACE 2016 (finding racial disparity in exposure to lead); Robert D. Bullard, *Race and Environmental Justice in the United States*, 18 YALE J. INTERNAT'L L. 319 (1993) (finding racial disparity in exposure to various waste sites)).

The Department should be familiar with one of the most famous of these studies, done in Chester, Pennsylvania. The EPA risk assessment there found that “emissions from facilities in and around Chester provide a large component of the cancer and non-cancer risk to the citizens of Chester.” (U.S. EPA, *Chester Environmental Risk Study Summary Report*, page 3 (1995), <https://www.epa.gov/sites/default/files/2016-03/documents/chesterenvironmentalriskstudysummaryreport6-1995.pdf>). That report was published *before* the Department granted permits to the Covanta municipal waste incinerator, which operates in Chester to this day. The Department did so despite significant and sustained public opposition, and continues to renew this and other permits in Chester.

If the Department fails to account for the cumulative effects of multiples hazards, it is likely to grant permits that ostensibly comply with most regulatory requirements, but nonetheless disproportionately harm some communities in contravention of civil rights law and environmental justice principles. Taking those harms into account during required cost-benefit analyses will help avoid that injustice. The remainder of this subpart details three examples of regulations that demand the Department do cost-benefit analysis: in solid waste permitting, water permitting, and air permitting.

b. Cost-benefit analysis and solid waste permits

Before the Department can issue permits for most municipal or residual waste facilities, the permit applicant must “demonstrate that the benefits of the project to the public clearly outweigh the known and potential environmental harms.” The Department must then review this ‘environmental assessment’ and determine whether it identified all potential harms and whether those harms would be sufficiently mitigated. (25 Pa. Code §§ 271.127; 287.127).



The Department has issued a policy to guide its review of these environmental assessments (Environmental Assessment Process, Phase I Review; Document Number 254-2100-101; 2002, “environmental assessment policy”). Importantly, the environmental assessment policy calls on the Department to “[l]ook at and beyond compliance with statutes and regulations. Harms may exist even when the law is complied with...” It goes on to insist that harms be analyzed both individually and collectively, in part to “reveal important patterns or inequities.” An area being overburdened, being mostly black and brown, or having a high poverty rate are relevant of potential “patterns or inequities.”

The obvious connection here should not remain merely implied. The Environmental Justice Policy should call on the Department to require special weight to harms to the public health and environmental resources of environmental justice communities, and to not fear denying permits where those harms are too high. It should similarly call on the Department to look at and beyond compliance with statutes and regulations when determining that harm. After all, “harms may exist even when the law is complied with,” and the disproportionate distribution of such harms is at the root of environmental injustice and environmental racism.

c. Cost-benefit analysis and water permits

The Department has similar responsibilities when reviewing water-related permits under 25 Pa. Code Chapter 105. Specifically, the Department must determine whether dam, water obstruction, and encroachment projects will have an adverse environmental impact; if a project will have such an impact even after mitigation, the Department “will not” approve a permit unless “the Department finds that the public benefits of the proposed project will outweigh the harm to the environment and public natural resources.” (25 Pa. Code § 105.16).

Chapter 105 gives a non-exclusive list of possible public benefits, but does not define harm. Possible harms to public health and resources are obvious candidates, even where the law is followed. The Policy should call on the Department to give special weight to the cumulative harms on environmental justice communities and their natural resources when performing these analyses, and to err on the side of environmental protection where there is uncertainty.

d. Cost-benefit analysis and New Source Review under the Clean Air Act

The federal Clean Air Act requires alternative and cost-benefit analysis during New Source Review. (Clean Air Act. 42 U.S.C. § 7503(a)(5); see *Communities for a Better Env’t v.*

*Cenco Refining Co.*, 180 F.Supp. 2d 1062 (C.D. Cal. 2001)). Pennsylvania’s regulations incorporate this requirement at 25 Pa. Code Chapter 127.205, which states “The Department **will not issue** a plan approval, or an operating permit” unless certain requirements are met, including “an analysis... which demonstrates that **the benefits** of the proposed facility **significantly outweigh the environmental and social costs** imposed within this Commonwealth as a result of its location, construction or modification.” (emphasis added).

Unlike with the above-referenced laws, the Department appears to have completely forsaken section 127.205’s cost-benefit analysis requirement, and has approved numerous permits without so much as an attempt to monetize the costs of its permitting decisions. Such actions are unacceptable, particularly when environmental justice communities are more likely to bear these burdens. The Department must begin doing cost-benefit analysis for plan approvals and operating permits, as required by state and federal law. And the Policy should require the Department to incorporate environmental justice into this analysis. It should further clarify the relevant benefits and costs, and what it means for benefits to “significantly outweigh” costs (especially in an environmental justice area). As with its environmental assessment policy, the Environmental Justice Policy should clarify that “harms may exist even when the law is complied with.”

2. *The Air Pollution Control Act requires the Department to deny permits that appear to meet regulatory requirements if granting would nevertheless harm public health or unreasonably interfere with the enjoyment of property.*

Outside of the cost-benefit analysis context, many state laws provide the Department with legal authority to deny permits. One example is the Air Pollution Control Act (APCA), which requires the Department to deny permits that would harm public health or cause a nuisance, even if the permit appears to otherwise comply with the APCA and the federal Clean Air Act. (35 P.S. §§ 4001–4015). Both the Air Pollution Control Act and its regulations require the Department to make two determinations before issuing air permits: one concerning whether the source would violate the APCA, and another determining whether the source would “cause air pollution” – meaning whether it will harm public health or interfere with the enjoyment of life or property. (35 P.S. § 4003; 25 Pa. Code § 121.1).

The APCA has a specific and key definition of “air pollution”:

The presence in the outdoor atmosphere of any form of contaminant...in such place, manner or concentration inimical or which may be inimical to the public health, safety or welfare or which is or may be injurious to human, plant or animal life or to property or which unreasonably interferes with the comfortable enjoyment of life or property.

(35 P.S. § 4003). Before the Department may approve any plan approval or operating permit, the APCA requires it to determine that the underlying source will comply with the EPA’s and the Environmental Quality Board’s regulations, *and* that the source “will not cause air pollution.”

(35 P.S. § 4006.1(b)(2)). The Act later notes that the Department “may refuse to grant plan approval...or to issue a permit to any source that the department determines is likely to cause air pollution **or** to violate this act, the Clean Air Act or the regulations promulgated under either...” (*Id.* at (d) (emphasis added)).

The APCA is careful to list these as two different grounds for denial. Doing so means the Department must determine both whether an air pollution source would “violate this act” (i.e., meet regulatory minimums for a plan approval, operating permit, etc.) *and* whether that source would harm public health, life, or property, or unreasonably interfere with the enjoyment of life or property. The APCA therefore assigns the Department with the responsibility to deny permits that ostensibly comply with relevant regulations, but nevertheless would harm human health or cause a nuisance.

The regulations repeat this dual determination requirement for both plan approvals and operating permits. 25 Pa. Code §§ 121.1 (defining “air pollution” with the same language as 35 P.S. § 4003); 127.13b (“The Department will deny a plan approval for a source if... The Department has determined that the source is likely to cause air pollution **or** to violate the act, the Clean Air Act or the regulations promulgated under the act or Clean Air Act...” (emphasis added)); § 127.422 (“The Department will deny or refuse to revise or renew an operating permit...[if] The Department has determined it is likely to cause air pollution **or** to violate the act, Clean Air Act or regulations thereunder...” (emphasis added)).

Even if each existing source in a community complies with the minimum regulatory requirements, the cumulative and disparate impacts of multiple sources can harm human health and interfere with the enjoyment of life in these communities. The City of Chester is burdened with a cluster of major air pollution sources; each appears to comply with regulatory requirements, but residents have long noted that the fumes, odors, noise, and trucks from a local

incinerator prevent them from using their properties or even opening their windows. (David DeMarco, *Chester is Rising Podcast*, <https://rss.com/podcasts/chesterisrising/>. Episode 1, 11:38 to 13:00 (June 30, 2021)). If a local source, alone or in tandem with others, prevents people from the reasonable use of their properties (including sitting outside of their homes), or from even being able to open their windows without coughing fits, it certainly “interferes with the comfortable enjoyment of life or property.” Such a source causes “air pollution” according to the APCA, and the APCA requires the Department to deny its permit. (25 Pa. Code § 127.422).

The Air Pollution Control Act demands the Department determine whether or not a source will cause these problems before it is allowed to grant permits – it should use this power to investigate whether sources interfere with everyday life, despite ostensible compliance. The Department cannot improve environmental justice by accepting comments, then dismissing them without investigation in a pro forma response document, nor by claiming it must grant a permit to a nuisance because it followed some checklist to determine RACT. If the Department wants to treat all people fairly and according to the law, it will take its responsibilities under the APCA and similar laws seriously. To make a difference, the Department must bravely embrace its power, granted by the General Assembly, to protect Pennsylvanians. It must not only listen to, but also *act on* comments from those who will be harmed by a source, like the people of Chester. It must be willing to determine that a source will cause air pollution, and therefore deny its permit. The Policy should so require.

3. *The Policy should identify these and the laws where the Department has authority to prevent environmental injustice in permitting.*

The Air Pollution Control Act is only one example where the Department must make a determination that is more than rote application of numbers, but requires the Department to interpret applications for compliance with broad policy goals set by the General Assembly. During the rest of the New Source Review process, for example, the Department must determine what technologies are “available” for a pollution source based on how cost-effective they are. No statute or regulation sets a strict cut-off for this analysis; the Department decides what is reasonable in each case. It is irresponsible and inaccurate for the Department to pretend its staff are not making judgement calls when making such determinations – judgement calls that can and should be guided by a comprehensive environmental justice Policy.

The Policy should provide a non-exclusive list of laws (longer than that provided here) where the Department can and should consider environmental justice as part of its required determinations. If the Policy is to be effective, it must instruct the Department to act on this information and deny permits that would cause injustice.

**B. The Environmental Rights Amendment requires the Department to guarantee people’s rights to clean air, pure water, and the natural, scenic, historic, and esthetic values of the environment.**

The Environmental Rights Amendment (ERA) is cited as a basis for the proposed Policy. But the Policy does not mention or consider the DEP’s responsibilities under the ERA. That is a fundamental flaw, given that the ERA constrains what the Department, and even the General Assembly, can take away from the people of this Commonwealth. The ERA creates two rights: the first is the people’s right to a healthy environment; the second is common ownership of the Pennsylvania’s natural resources, with the government as trustee. (PA. CONST. Art. I § 27). Because it guarantees the first right to “all the people,” environmental justice is baked in to the ERA. (*Id.*). And the Commonwealth’s trust responsibilities bind the Department. The Policy should squarely address the Department’s responsibilities under the ERA.

The Pennsylvania Supreme Court has already made the connection between the ERA and environmental justice. In *Robinson Township v. Commonwealth*, the Pennsylvania Supreme Court noted the self-executing nature of the ERA, and how it binds the Commonwealth’s actions. (623 Pa. 564, 646–659; 684–85 (2013)). In that case, the Supreme Court nullified parts of a law that would have, among other things, allowed unconventional oil and gas drilling anywhere in Pennsylvania, regardless of local zoning restrictions. (*Id.* at 692). That particular provision was unconstitutional because it would cause some communities to “carry much heavier environmental and habitability burdens than others.” The Court noted that a “disparate effect is irreconcilable with the express command that the trustee [i.e., the Commonwealth] will manage the corpus of the trust for the benefit of ‘all the people’” (*Id.* at 693, quoting the ERA). The Court thereby recognized that a law that will result in environmental injustice is unconstitutional and void.

Several cases have discussed the responsibilities of Commonwealth agencies under the ERA. Agencies are required, at a minimum, to consider the impacts of their decisions on Pennsylvania’s public resources before committing to those decisions. (*Robinson Twp.*, 623 Pa. at 647). As recently as 2021, the Supreme Court reinforced the responsibility of agencies to

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adhere to trust principles when managing funds raised by the exploitation of Pennsylvania's resources. (*Pa. Env'tl. Def. Found. v. Commonwealth*, 255 A.3d 289, 314 (Pa. 2021)).

The Commonwealth Court has created some confusion about when and how it thinks agencies can act under the ERA. But the Supreme Court has long recognized that “No implementing legislation is needed to enunciate these broad purposes and establish these relationships; the amendment does so by its own *ipse dixit*.” (*Payne v. Kassab*, 468 Pa. 226, 245-46, 361 A.2d 263, 272-73 (1976)). The Supreme Court has pointed out that lower courts have failed to recognize that the ERA goes beyond statutory protection. (*Robinson Twp.*, 623 Pa. at 693 & fn. 40).

Recently, in *Pennsylvania Environmental Defense Fund*, the majority of the Supreme Court adopted the *Robinson Township* plurality. There, it rejected the Commonwealth Court's reliance on outdated tests that limited “the viability of constitutional claims to cases in which ‘the General Assembly had acted and by the General Assembly's policy choices, rather than by the plain language of the amendment’” (255 A.3d at 295 (*quoting Robinson Twp.*, 83 A.3d at 966)). Instead, the Supreme Court has repeatedly clarified that the ERA's right to clean air, pure water, and the preservation of natural values “constitutes a limitation on the Commonwealth's power to act in degradation of those values,” without the requirement of statutory explication. (*Id.* at 296). Being constitutional, this precedent applies to all Department decisionmaking, even for seemingly mandatory oil and gas permits.

All of these legal realities have implications for environmental justice. The ERA prohibits “disparate effects,” and laws that require such effects may be null. Agencies must consider how their decisions will affect Pennsylvania's resources. And the ERA limits the Commonwealth's power to degrade air, water, and other natural values. The Policy should squarely address and implement the ERA, and the Department's powers and duties to pursue environmental justice thereunder. At a minimum, the Policy should reiterate the Supreme Court's position that “disparate effect is irreconcilable with the express command that the trustee [i.e., the Commonwealth] will manage the corpus of the trust for the benefit of ‘all the people,’” and that laws causing such effects are therefore unconstitutional and unenforceable. (*Robinson Twp.* 623 Pa. at 693). The Department should further recognize the compounding effect of historical environmental racism and present-day cumulative impacts on disadvantaged communities, and that the Department must counteract those impacts as trustee of the Commonwealth's resources.

**C. Title VI of the Civil Rights Act prohibits grantee programs that result in disparate impacts based on race, color, sex, or national origin.**

Federal law also governs the Department's actions. Federal civil rights law outlaws disparate effects based on race and other demographic, and therefore provides further legal authority for the Department to deny permits that would disproportionately harm environmental justice communities. In fact, if it does not comply with this federal mandate, the Department risks losing federal funding. This risk is growing with the EPA's increased attention to civil rights compliance. And the latest data suggest nationwide problems with civil rights compliance. The Policy should encourage the Department to follow federal civil rights law – namely, Title VI of the Civil Rights Act of 1964.

Title VI prohibits discrimination under any program or activity receiving federal financial assistance. (42 U.S.C. §§ 2000d–2000d-7). The EPA grants the Department federal financial assistance through several programs. The EPA's Title VI regulations prohibit any funding recipient from running programs with methods that “have **the effect** of subjecting individuals to discrimination because of their race, color, national origin, or sex” or from selecting “a site or location of a facility that has the purpose **or effect** of excluding individuals from, denying them the benefits of, or subjecting them to discrimination...” (40 C.F.R. § 7.35 (emphasis added)).

As indicated by the emphasis, these regulations prohibit administering a program that results in disparate **effects** based on race – regardless of the reason for those effects. Title VI and the EPA's regulations are federal law. Being such, they tie the Department's hands despite any state law to the contrary. U.S. CONST. Art VI., para. 2. Title VI therefore prohibits the Department from granting permits that would disparately burden people based on race, *even if granting those permits is mandatory under state law.*

The EPA has recently begun ramping up its Title VI enforcement. EPA officials have vowed to become “more proactive” in affirmatively enforcing Title VI (rather than being reactive to state actions, as it was in the recent past) and dedicating more resources to resolving Title VI complaints from the public. (*EPA Drilling Down on Civil Rights Complaints, Top Lawyer Says*, Bloomberg Law (Feb. 15, 2022), <https://news.bloomberglaw.com/environment-and-energy/epa-drilling-down-on-civil-rights-complaints-top-lawyer-says>; *EPA launches civil rights revamp*, E&E News Greenwire (Dec. 14, 2021) <https://www.eenews.net/articles/epa-launches-civil-rights-revamp/>; *EPA Lawyer Vows Use of 'Affirmative Authority' To Enforce*

*Civil Rights Law*, Inside EPA (Oct. 15, 2021), <https://insideepa.com/daily-news/epa-lawyer-vows-use-affirmative-authority-enforce-civil-rights-law>). In the approaching time of increased enforcement, the Department needs to pay attention to Title VI compliance if it wishes to keep its federal funding.

By assigning extra process without advising the Department to administer its programs differently, the proposed Policy does not address the problems Title VI seeks to ameliorate. When enforcing Title VI, the EPA has clarified that public involvement is not for its own sake, but is meant to prevent substantively different outcomes for communities based on race. (Letter from Lilian S. Dorka, Director, External Civil Rights Compliance Office, EPA, to Heidi Grether, Director, Michigan Dep't of Env'tl. Quality (Jan. 2017) EPA File No. 01R-94-R5, ["Genesee Letter"] page 2 (ordering a Michigan agency to improve its "public participation program **to reduce the risk of future disparate treatment**" (emphasis added))). The additional process is a tool for communities that lack political power to prevent disparate treatment, not just to inform those communities of harms they have no choice but to face.

In the Genesee Letter, the EPA detailed its evaluation of whether Michigan's Department of Environmental Quality had created disparate impacts based on race. (*Id.* at 17–23.) That included investigating harms where no regulation or statute was violated. The EPA specifically "examined whether site-specific information demonstrates the presence of adverse health effects from the NAAQS pollutants, even though the area is designated attainment for all such pollutants and the facility recently obtained a construction and operating permit that ostensibly meets applicable requirements." (*Id.* at 21).

Nationwide data suggests widespread Title VI issues that the Department should pay attention to in its Policy. The EPA's current draft Integrated Science Assessment on Particulate Matter found "both PM2.5 exposure and health risk disparities by race and ethnicity, specifically among non-White populations." (EPA/600/R-19/188, at ES-1–ES-2). These health risks were demonstrated at levels well-below the current NAAQS. (*Id.*) Many, if not most, sources of PM2.5 are permitted by state agencies such as the Department. This statistically significant, race-based disparity in exposure to PM2.5 and its ill health effects implies serious problems – permitting patterns that likely violate Title VI. The Department's environmental justice policy will ring hollow if it does not acknowledge such disparities, inform the public of their possible reproduction, and actually act to prevent them.



The Policy should account for the probability that areas with disadvantaged communities suffer from disparate health impacts, even though facilities in the area “ostensibly meet[] applicable requirements.” Permitting such facilities can still violate Title VI, and therefore be illegal under federal law. The Policy must call on the Department to prevent such outcomes, and reverse them where they already exist, or environmental justice will remain elusive in PA.

**II. The Department should petition the Environmental Quality Board to adopt a rule on environmental justice.**

Another issue with the proposed Policy is that it is merely a policy. Perhaps the most important step to advancing environmental justice in Pennsylvania is for the Environmental Quality Board to promulgate an enforceable rule to advance environmental justice. While a policy is better than no policy, a rule with the force of law is much more, for at least three reasons. First, the industry will take such a rule more seriously than a policy. Second, a rule can require permit applicants to provide the Department with the information it needs to meaningfully advance environmental justice. And third, a rule can empower Pennsylvanians suffering from environmental injustice to fight for their future: while a policy may encourage public comment, residents can enforce a rule through appeals or other legal action.

Above, these comments laid out several state laws where the Environmental Quality Board has the power to issue regulations: statutes like the Air Pollution Control Act, the Clean Streams Law, and the Solid Waste Management Act. The Board could eliminate confusion by passing a regulation laying out an environmental justice strategy for the Department’s enforcement of these laws. The Department should petition the Board to do just that.

**III. The proposed Policy’s permitting process could be improved in other ways.**

The Department could make a few minor clarifications and adjustments to the Policy in Sections II, III, and IV that would reap dividends in promoting environmental justice.

**A. The Policy should incorporate existing environmental justice areas into the proposed Policy for the near future.**

The Department has said it will take a more flexible approach to identifying environmental justice areas under the proposed Policy. Until the new approach is proven effective, the Department should continue to treat areas currently designated as environmental justice areas as such. It should continue to do so at least until the new criteria are established, but preferably should continue to do so for some probationary period, perhaps 2 years or so, while

the Policy is implemented. Doing so will give the Department the time to adjust the criteria until it finds what is best for promoting environmental justice, without risking harms to communities that erroneously fall outside of the new criteria.

**B. The Department should use a combination of absolute percentage and percentiles to designate environmental justice areas.**

The existing policy uses two absolute percentages to designate environmental justice areas: absolute percentage of people in poverty, and absolute percentage of people of color. Other environmental justice mapping methodologies, such as EPA's EJScreen, examine percentiles, a relative metric. Percentiles compare, for example, one area's absolute percentage of people in poverty to the percentage of poverty in other areas. A census block with a 35% absolute poverty rate may be in the 60th percentile for the Commonwealth, meaning it has a higher percentage of people in poverty than 60% of census blocks in the state.

To properly classify environmental justice communities, the Department should use both absolute and relative criteria. For example, the policy could specify that any area with a 30% or higher poverty rate, or in the 70th or higher percentile for poverty rates in the state, is an environmental justice area. The same can be done with criteria including percentage population of color, percentage of people with a primary language other than English, etc.

The reasoning for use of relative criteria should be obvious: relatively more environmental hazards in the areas with the most people of color is the very definition of environmental racism. But it is important to continue to use some absolute criteria as a backstop, because communities can lack political power even if they have relatively more political power than others. For example, any community with a high absolute percentage of poverty is likely to need assistance in involvement in the permitting process, even if there are poorer communities out there.

**C. Trigger permits should include synthetic minor permits.**

Synthetic minor operating permits are inherently suspect. Placing synthetic minors in environmental justice areas is equally so, as companies may intentionally opt for synthetic minors while knowing they will modify the permit to become major down the line. The Policy should count synthetic minor permits as trigger permits. Public notifications concerning synthetic minors should also include a truly plain language explanation of the potential for these facilities

to become major sources of pollution whether by accidentally violating its permit or by modifying the permit, without any physical change to the source.

**D. The Policy should expand the geographic scope of the “areas of concern”.**

The Policy defines “areas of concern” as “a geographic area measuring 0.5 miles in all directions from the location of the proposed permit activity with potential impact to the environment or community.” The 0.5-mile radius is arbitrary and will not capture the full zone of impact for many sources. Air pollution sources such as paper mills and power plants are correlated with health impacts from wheezing to infant mortality at distances of 30 miles and farther. *See, e.g.,* Karen Clay, Joshua Lewis & Edson Severnini, *Canary in a Coal Mine: Infant Mortality, Property Values, and Tradeoffs Associated with Mid-20th Century Air Pollution*, NAT’L BUREAU EC. RES. 22155 (2022) (DOI: 10.3386/w22155); Maria C. Mirabelli & Steve Wing, *Proximity to pulp and paper mills and wheezing symptoms among adolescents in North Carolina*, 102 ENVTL. RES. 96–100 (2006). The Department must expand the geographic scope of the area of concern in the Policy to accurately reflect the effects of pollution and the attendant environmental harms.

Ideally, the Policy would call for a contextual look at pollution sources to determine their areas of concern. For many air permits, for example, the Department or the applicant must perform modeling of pollution dispersion, giving the Department plenty of data about where harms will accrue. If this is infeasible for most sources, the Policy could contextually identify the area of concern for each kind of permit (major sources of air pollution, for example, are likely to have relatively large areas of concern).

**E. The Policy should clarify when the Department should opt-in permits, and encourage it to do so.**

The Policy is right to note that the Department should look to the EJ Areas Viewer and consider “community concerns, present or anticipated environmental impacts, and anticipated cumulative impacts” as reasons to opt-in a permit. These are certainly the right criteria to examine. But the Policy would be more useful to both advocates and to industry if it directed the Department on *how* to use the EJ Areas Viewer and these criteria to opt-in permits.

The Policy should advise the Department to opt-in permits in an area with concentrations of poverty and people of color well above the normal thresholds. For example, there are parts of Philadelphia where the percentage of people in poverty is double or even more than triple the

Clean Air Council, PennFuture, Environmental Integrity Project, & Mountain Watershed Association

current 20% threshold for the existing policy to apply. (E.g., Census tract 74 Block Group 2 (42% poverty rate); CT 36 BG 2 (50% poverty rate); CT 33 BG 6 (52% poverty rate); CT 162 BG 1 (53% poverty rate); CT 162 BG 2 (73% poverty rate); CT 69 BG 1 (poverty rate 78%)). Many of these same block groups are nearly 100% people of color. Calling for more permits to be opted-in in areas like these is obvious.

The Policy should also advise the Department to be liberal in opting-in permits. After all, it is better to err on the side of inclusion because enhanced participatory functions could assist most, if not all, projects.

**F. The Policy should require the Department to make documents available on its website unless specific exceptions apply.**

The Council was glad to see that the Policy encourages the Department to make digital copies of information accessible “where possible” and mentions that the Department may add information to its website. Access is easiest when potential commenters do not need to request documents, as when they are posted to the website. Quicker access to relevant documents gives commenters more time to examine the law and make useful comments. The Policy should call on the Department to *always* make digital copies of relevant documents available on its website. If the Department is worried about potential burden on servers, the Policy can require access only during the pendency of any comment period. It could also provide an exemption for files that exceed a certain size, where the website will instead enumerate the process for accessing any files above that size.

In addition, the Department should grant fee waivers for record requests for paper documents related to facilities, applications, and permits and authorizations located in environmental justice communities. Even small fees can be prohibitively expensive for some residents, especially in impoverished communities. A list of all relevant documents, regardless of whether those records are posted online, should be listed online or otherwise easily available to the public for review.

**G. The Department should host a centralized environmental justice permitting webpage.**

Much like the Department does with many of its pipeline permits, the Department should host a webpage for all permit applications that fall under the Policy. The Policy indicates that the Department may create a site-specific project website for individual projects, but hosting this

information online is critical to providing meaningful participation. It should be required by the Policy. This webpage should identify:

- Each pending application, and any existing related facilities or permits;
- Public notifications and plain language summaries (see also Part III.I below);
- All relevant documents and records of the application (see also Part III.E above);
- The relevant Department and applicant contact information for each application;
- Any comments received on each application;
- And any final permits or decisions issued by the Department.

Having a centralized environmental justice application webpage will streamline access to critical information. It would also allow for environmental justice communities to see the types of facilities, designs, applications, comments, and decisions from other, possibly similar facilities to better educate them on the process, potential legal and technical issues, and the concerns of similarly situated communities.

**H. Public hearings should be both virtual and in-person whenever possible, and be accessible as a matter of course.**

The Policy usefully indicates that all public meetings under it will be virtually accessible, even if held in person. It should further specify that in-person events with virtual accessibility should be the default, so long as the Department can address any public health concerns (by requiring mask-wearing and offering masks to attendees, for example). Despite its benefits, solely remote meetings have drawbacks for achieving environmental justice.

Remote meeting attendance has many perks: it can allow more people to attend meetings at times when they otherwise would not be able to do so, and it does so without risking public health. The Policy's call for remote attendance options for all meetings is therefore a useful boon. There are problems with holding only virtual meetings, however. Not everyone has a stable internet connection, or a device capable of attending virtual meetings. And if an individual has a technology problem that interrupts their attendance or testimony at the last moment it can be difficult to fix, or even to notice. It is highly likely that disadvantaged communities will face more trouble from problems such as these.

And, more insidiously, the webinar-style virtual meetings that have become prevalent make it difficult for community members to coordinate and to keep track of attendance to meetings. The Council works with several grassroots organizations, and has heard multiple

Clean Air Council, PennFuture, Environmental Integrity Project, & Mountain Watershed Association

complaints that it is impossible for community members to know if there is high turn-out at a meeting because many virtual meeting formats hide this information from attendees. There is social importance to the filling of physical space by concerned residents – and being able to identify whether the people in attendance are neighbors or not. People are able to connect and discuss their concerns before and after in-person meetings. People are more likely to feel supported and heard when actually among their peers. And it would be foolish to assume that seeing high turnout has no impact on Department employees, if only in helping them grasp how important some decisions are for a community.

In addition, the Department should proactively require the applicant to offer and bear the burden of providing closed captioning and transcription services, and as needed translation services for all public hearings and meetings.

**I. The Policy should further detail the information public notifications must provide.**

It is good that the Policy notes that public notifications should be in plain language and “should address the purpose and location of the proposed activity or facility, and anticipated impacts.” Detailed, accurate, and impartial information about a project’s possible impacts is of the utmost importance for environmental justice communities.

But, quite frankly, the Council and its partners have been frequently disappointed with past plain language summaries. The summaries tend to fail to truly be in plain language – listing off technical titles of polluting sources without definition, for example – while simultaneously failing to address the anticipated impacts of a project. Instead, the summaries briefly explain the Department’s process for reviewing a permit application and list off the pollutants the project will emit or discharge.

A statement that a new facility will be a major source of NO<sub>x</sub> is not a useful plain language statement. Nor is an assurance that the Department will review a permit application for legal compliance. These statements are jargon and further shroud, rather than illuminate, the repercussions of the Department’s actions. While permit applicants have scientists, experts, lawyers, and resources, most communities do not have immediate access to independent experts who can explain to them how their health is likely to be affected by increased NO<sub>x</sub> emissions, or lawyers to explain to them what compliance with the Clean Air Act’s Reasonably Available

Technology Standard really means. To compensate for this expertise gap, the Policy should carefully detail the information that public notifications should provide.

When discussing sources of air pollution, public notifications must vigorously detail the likely impacts on air quality. While these impacts include compliance with legal standards, it is more important for communities to understand *the actual effects on the ground* – i.e., what the science suggests could happen to their health and environment based on the change in air quality, regardless of compliance with regulations.

For example, the EPA’s supplemental Integrated Science Assessment on Particulate Matter details how breathing PM causes many significant cardiovascular problems at concentrations below the current PM NAAQS. (EPA/600/R-19/188, at ES-1–ES-2). Specifically, the EPA concluded that the current science demonstrates a causal relationship between breathing PM at concentrations as low as 5.9  $\mu\text{g}/\text{m}^3$  and health effects including ischemic heart disease, myocardial infarction, heart failure, coronary heart disease, stroke, and atherosclerosis progression. (*Id.*) If an air contamination source will produce PM in a community, then that community has not been informed of the anticipated impacts of the source until they are informed about the health effects linked with breathing PM at that concentration, even if the area is in compliance with the NAAQS. Anything less is not “plain language,” but obfuscation.

The Department could find it useful to develop reusable, plain language fact-sheets about all the Clean Air Act criteria pollutants, and their health effects at levels both above and below the NAAQS. These could be developed in consultation with public health experts, or adopted from existing materials if the EPA or another trusted source has produced them. These fact sheets could then be incorporated into plain language summaries (directly, and not by reference, for ease of use by residents).

Similarly, the Policy should lay out the likely impacts on water quality for any permit that will affect water quality. As with air quality, some permitted sources will harm water quality in tangible ways even if they comply with the NPDES program, for example. Communities must be informed of these possible harms, or they cannot give meaningful input into the permitting process.

**J. The Policy should include an automatic extension of the 30-day public comment period when an extension is requested.**

Environmental permitting nearly always includes highly technical and legal matters, but the Policy expects environmental justice communities to provide input with only 30 days' notice. 30 days is often a tight deadline for professionals and experts to analyze documents and prepare comments. To guarantee meaningful public involvement, the Policy should provide an automatic 60-day extension of the 30-day public comment period whenever an extension is requested.

**K. The Policy should require the Department to independently verify whether projects' areas of concern include environmental justice areas.**

The Policy places the burden of identifying both the environmental justice area and the area of concern on applicants. Given the importance of these classifications, the Department cannot simply rely on statements and conclusions of the applicant, who is not bound by the Policy or the Environmental Rights Amendment. Instead, the Department must be required to independently review and verify these triggering classifications in every permit application.

**IV. The Policy should further detail how the Department can alleviate existing environmental injustice.**

The Policy's sections on permit review may help prevent new sources from unreasonably burdening communities in the Commonwealth. But reviewing future permits alone cannot reduce the burdens that already exist. Residents of Chester, for example, have been successful in preventing many new sources of pollution from entering their already overburdened community. But they are still fighting the sources that existed prior to the famous CRCQL v. DEP case, including the Covanta trash incinerator and the Delcora Sewage Sludge incinerator. It is common knowledge that securing a renewal for a Title V permit is little trouble compared to securing a plan approval in the first instance. The Policy should address entrenched existing sources and the resultant environmental injustice.

The proposed Policy already goes beyond the existing policy by its inclusion of the grant program, the staff training, and the renewed attention to enforcement in environmental justice areas. As above, there are some ways to improve these sections of the Policy to further fight injustice, which the Council lays out below.



**A. The Department must craft a comprehensive strategy to combat existing environmental injustice.**

Training, grants, and enforcement alone are not likely to end the unreasonable cumulative burdens that many communities like Chester face. Sources of pollution that ostensibly comply with the requirements of their individual permits can still contribute to unreasonable and discriminatory harm. The Policy should acknowledge that past placement of environmental hazards did not include safeguards to prevent discrimination. It should then dedicate a portion of the strategic planning required by Executive Order 2021-07 to creating a roadmap for identifying and eliminating the injustice that exists, using every tool at its disposal (denying permit renewals, grants to remedy pollution, etc.).

**B. The Policy should further describe the training for Department staff, which should include introductions and ongoing dialogue with environmental justice advocates.**

The Council is extremely pleased to see that the Policy includes staff training. Given the contradictory and worrying statements referenced in Part I.A. above, it would appear that this training is extremely necessary. Some Department employees and officials act as though they believe that their job is to grant permits. That is not the case. The job of permit staff is to evaluate permit applications, and to act as trustees over Pennsylvania's air, water, and other natural values. The distinction is of great importance, as an employee whose job is to grant permits will find ways to grant permits, while an employee whose job is to manage a trust over Pennsylvania's environment for the benefit of residents will embrace their power to deny permits that would harm Pennsylvanians.

To advance environmental justice, the Department must change its culture from the ground up – not merely making staff aware of environmental injustice, but altering the way they approach every aspect of their jobs. Staff should embrace, not fear, their duty to prevent the perpetuation of injustice. It is especially important that rank-and-file staff at regional offices, those whose positions are not public-facing, receive this training, so they can internalize the stakes of their day-to-day activities.

During the permitting process, state permitting agents meet and communicate extensively with permit applicants, and all that communication may lead to unconscious bias in favor of applicants. Staff training can head off any unconscious bias by clarifying staff's roles, drawing attention to possible bias, and by establishing relationships with environmental justice advocates.

Clean Air Council, PennFuture, Environmental Integrity Project, & Mountain Watershed Association

Training for regional staffers should include introductions to regional advocates, and should foster ongoing dialogue to balance the scales. Ideally, the Policy should specify that Pennsylvanian environmental justice advocates assist the Office of Environmental Justice in the planning for training.

Finally, the Policy should specify a few points that the training will cover. To fully inform staff of their environmental justice responsibilities, the training must at least cover:

- Title VI of the Civil Rights Act of 1964 and the Department's responsibilities under that Title.
- The Environmental Rights Amendment, including:
  - Pennsylvanians' rights to pure air, clean water, and the enjoyment of their public resources, and
  - The Department's trust responsibility over those resources.
- How to do a methodologically sound cost-benefit analysis for all the laws that require such, and how to properly weigh harms to environmental justice communities during such analyses.
- How to assess and consider cumulative impacts in the context of their decisionmaking.
- The history of the environmental justice movement and its foundational literature by authors such as Dr. Robert Bullard.

**C. The Policy should provide live updates for sections V, VI, and VII.**

The Council is excited to see that the proposed Policy prioritizes grants, climate initiatives, and enforcement in environmental justice areas. The Policy should also create trackable metrics for determining the success of these programs and make sure that the Department's progress is always publicly auditable. It would be a simple task to create a webpage that live-tracks the Department's enforcement actions and grant awards. Where relevant or convenient, the webpage could incorporate data already tracked in places like eFacts, and link to those other databases.

**D. The Policy should provide compensation and other support for community liaisons.**

The Commenters are very pleased to see that the Policy calls for the use of community liaisons. The Department needs to have connections with the communities whose futures it

shapes. But the Policy puts this burden on a volunteer without compensation. Such a practice continues to place an inappropriate and inequitable burden on the community to defend itself. To overcome this additional burden on environmental justice communities, community liaisons should be fully compensated for their time and reimbursed for any personal resources expended to perform the tasks as a community liaison.

**E. The Policy should prioritize grants with both short- and long-term benefits.**

It would be especially prudent to prioritize grants that are likely to lead to both short-term and long-term benefits. For example, weatherization, electrification, and distributed renewable energy projects will immediately improve energy justice and both indoor and outdoor air quality, while also helping the transition to safer sources of energy. Over the long-term, this transition will drive energy prices down. Transition to fuel-free resources like solar, wind, and geothermal will also insulate energy prices from shocks caused by global fuel markets, as Pennsylvanians have witnessed with natural gas because of the war in Ukraine. Community solar and net-metering with rooftop solar can also economically empower environmental justice communities, which will likely cause a multiplier effect.

The Policy should explicitly prioritize grants for projects with likely short- and long-term benefits, or whose benefits may have a “multiplier effect,” and should give examples of such projects, including those focused on weatherization, electrification, and distributed/community renewable energy projects in environmental justice communities.

**F. The Policy should call on the Department to inform permit holders of its intent to prioritize enforcement in environmental justice areas.**

The Department should directly inform owners and operators of polluting sources in environmental justice areas. Such information may preemptively improve operator compliance, and it certainly could not hurt. The Department should also notify permit applicants about its enforcement priorities. If permit applicants know their sources will be highly scrutinized both during and after the permitting process, they are more likely to rigorously plan for compliance. The information may even influence private-side decisionmaking on source locations.

For decades, industry has recognized that it is easier to develop environmental hazards when you target areas that are older, poorer, and less educated. (CERRELL ASSOCIATES, POTENTIAL DIFFICULTIES FACING WASTE-TO-ENERGY CONVERSION PLANT SITING, at 16–18, 39

(1984)). Experience taught them that this is the path of least resistance. The Department needs to close off that path, or it will be responsible for continuing environmental injustice.

**G. The Department should offer a series of educational webinars about the Policy and related topics.**

The Policy lists several legal and regulatory issues and processes that are important for environmental justice and impacted communities to understand and to be involved in. For example, the Policy indicates that impacted communities should be aware of and engage in local and regional land use planning and sign up for eNotice alerts. Getting up-to-speed and involved in land use planning and parsing the arcane eNotice platform are difficult tasks. Training would empower community members to take an active role in the future of these processes. Whether on its own or working with outside consultants, the Department should offer webinars or other presentations to the public on these topics and others that could empower Pennsylvanians to participate in shaping their futures. These presentations can then be hosted on the environmental justice webpage described in Part III.G above.

**H. The Policy should explicitly include environmental justice communities in brownfield redevelopment.**

Commenters share the Department's support of the assessment, clean up, and sustainable reuse of brownfield properties. But, while brownfield redevelopment initiatives and environmental justice often share common goals, local communities are frequently excluded from meaningful participation in redevelopment. This exclusion can lead to brownfield redevelopment perpetuating inequities and imposing pollution burdens on already overburdened communities. It is not justice for the toxic site of a former coal mine to be replaced with a new, fresh major source of air pollution, for example.

Communities are the best source of ideas for productive and sustainable reuse for the brownfields they host. Therefore, the Policy should facilitate meaningful public participation of environmental justice communities in brownfield redevelopment.



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