

**The Black Church Center for Justice & Equality**  
**CASA**  
**Center for Coalfield Justice**  
**Clean Air Council**  
**Clean Water Action**  
**Community Action Association of Pennsylvania**  
**Community Legal Services**  
**Conservation Voters of Pennsylvania**  
**Earthworks**  
**Environmental Defense Fund**  
**Environmental Entrepreneurs (E2)**  
**Environmental Health Project**  
**The Environmental Justice Center of Chestnut Hill United Church**  
**Green & Healthy Homes Initiative**  
**Housing Alliance of Pennsylvania**  
**Justice at Work Pennsylvania**  
**Keystone Energy Efficiency Alliance**  
**League of Women Voters Pennsylvania**  
**Mobilify Southwestern Pennsylvania**  
**Moms Clean Air Force - Pa. Chapter**  
**National Housing Trust**  
**Natural Resources Defense Council**  
**One Pennsylvania**  
**PA Climate Equity Table**  
**PA Jewish Earth Alliance**  
**PennFuture**  
**Pennsylvania Council of Churches**  
**Pennsylvania Interfaith Power and Light**  
**Pennsylvania Utility Law Project**  
**Physicians for Social Responsibility Pennsylvania**  
**Pittsburghers for Public Transit**  
**POWER**  
**Regional Housing Legal Services**  
**Sierra Club Pennsylvania Chapter**  
**Solar United Neighbors of Pennsylvania**  
**Sustainable Pittsburgh**  
**Vote Solar**  
**Working for Justice Ministry**

May 11, 2022

**VIA eComment**

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

**Re: Recommendations on Draft Environmental Justice Policy**  
Document No. 012-0501-002

Dear Secretary McDonnell:

The undersigned frontline community, environmental, consumer, business, and faith-based organizations submit these joint comments and recommendations in response to the Department's Draft Environmental Justice Policy.

It is undeniable that communities of color<sup>1</sup> and low income communities<sup>2</sup> face disproportionately high levels of environmental pollutants, both within and outside of their homes. These same communities are more vulnerable to severe weather events – triggering more frequent displacement, increased health and safety risks, and other current-day impacts of climate change.<sup>3</sup> Communities of color and low income communities also face disproportionate economic burdens and most often lack access to individual and community resources necessary to remediate environmental inequities and strengthen community resiliency.

We commend the Department for its work on the public participation guidance in the permitting process that allows for impacted Pennsylvanians to meaningfully engage. It is our hope that the Department's inclusive approach to public participation for permitting processes in EJ areas will expand to other governmental functions that undergird the disproportionate burdens on the built, natural, and social environments in frontline communities. It is critically important that all Pennsylvanians have a meaningful opportunity to participate in matters that will have a significant impact on the lives and livelihood of themselves, their families, and the broader community in which they live and work.

Notwithstanding our strong support for the Department's efforts to develop the proposed policy, we note that there is still a long way to go. In addressing public participation in permitting decisions, this policy tackles one piece of environmental justice by helping to create a more formalized "seat at the table" for impacted communities in permitting decisions. But the policy does not adequately address many of the more complex and intersectional challenges inherent to addressing disproportionate environmental burdens in EJ communities. We therefore offer the following recommendations to strengthen the proposed EJ Policy, both in the context of the currently proposed policy and in looking ahead at the next steps for achieving environmental justice for Pennsylvanians:

- **Lengthen the public comment period for future updates of this policy and other formal environmental justice policies or rulemakings which may be promulgated in the future.**

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<sup>1</sup> Tessum, C.W. et al., PM<sub>2.5</sub> pollutants disproportionately and systemically affect people of color in the United States (2021), <https://www.science.org/doi/10.1126/sciadv.abf4491>.

<sup>2</sup> Hurdle, J., For Low-Income Pittsburgh, Clean Air Remains an Elusive Goal (2022), <https://e360.yale.edu/features/for-low-income-pittsburgh-clean-air-remains-an-elusive-goal>.

<sup>3</sup> EPA, Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts (2021), <http://www.epa.gov/cira/social-vulnerability-report>.

To adequately inform the public of the opportunity for input, we recommend that the Department provide a minimum 60-day comment period for environmental justice policy updates. The Department should deploy similar advertisement methods proposed in the draft policy – including local newspapers, social media posts shared with community groups and municipalities, etc. – to help inform the public of the opportunity to participate. Robust public engagement, especially within EJ communities, is key to building strong community relationships and equitable public policy.

- **Clarify and/or define key terms, including *Environmental Justice Area*; *Cumulative Environmental Impacts*; and *Disproportionate Environmental Impacts*.**

The Department’s proposed definition for “*Environmental Justice Area*” (EJ Area) is circular – defining EJ Areas as “the geographic location where DEP’s EJ Policy applies.” The term EJ Area should not be defined solely in relation to the EJ Policy itself, but should instead provide further definitional context.

We recommend that the term EJ Area be defined in this policy as “*a geographic location, as identified by the Department in furtherance of this policy, where the community faces disproportionate or cumulative negative impacts to their built, natural, or social environment.*” This proposed definition provides clarity yet retains flexibility for the Department to adjust its EJ area identification and mapping.

The Department’s proposed definition of EJ Area also explains that the methods of identifying an EJ Area are defined in a separate Department policy, which allows for more frequent updates. We agree that it is important to retain needed flexibility to update the Department’s mapping tools and improve identification of areas with disproportionate environmental burdens. However, this substantive information should be explained within the substantive policy - not in the definition.

Several key terms are also notably missing from the draft Policy – including the terms “cumulative environmental impacts” and “disproportionate environmental impacts.” In Governor Tom Wolf’s Executive Order, the Office of Environmental Justice was explicitly empowered to establish definitions for these key terms, which are foundational to understanding the intersectional nature of environmental justice. We strongly encourage the Department to incorporate definitions for these key terms into its draft EJ Policy.

- **Establish a cross-sector working group to refine criteria for EJ Areas.**

The Department’s criteria for EJ Areas are simultaneously too broad and too narrow, which makes it difficult to properly target deep community investment and grant funding in the most vulnerable communities across the Commonwealth. Further refinement is necessary to better pinpoint resources and craft appropriate remediation strategies unique to each impacted area.

In further refining criteria for identifying EJ Areas, we recommend the Department explore adoption of a tiered approach that would allow for more targeted investments in communities experiencing the highest cumulative impact – while also identifying and advancing appropriately targeted remedies in communities which may have fewer cumulative impacts but nevertheless face heightened environmental burdens.

A tiered cumulative impact analysis should include consideration of both environmental pollution and exposure levels (pollution indicators) and relevant socioeconomic factors (population indicators), such as:

- o Pollution indicators, including air quality (ozone, particulate matter, etc.), drinking water quality, lead exposure in children, pesticide usage, toxic release from hazardous waste and solid waste facilities, toxic release from fossil fuel extraction, and traffic density.
- o Population indicators, including poverty; race; age (with particular focus on the older individuals and children); educational attainment; ethnicity; health vulnerabilities (including but not limited to asthma, cardiovascular disease, etc.); housing, energy, and utility burdens; and limited English speaking households.

We urge the Department to utilize a cross-sector working group of frontline community members, environmental advocates, government agency representatives, policy specialists, housing, legal, and social services providers, and other stakeholders to help refine and scale criteria.

- **Delineate the party responsible for requirements identified throughout the draft policy.**

Some sections do not name responsibility to a particular Party, including the Party responsible for advertising the project summary to the community (Section ii, page 10) and the Party responsible for making the project summary available to the community in other languages predominantly spoken within the community besides English (Section iv, page 10). Assigning responsibility to a specific party – the Department, the applicant, or a different entity – helps ensure that the guidance is followed.

- **Fairly compensate community liaisons.**

The Department's policy relies on volunteer community liaisons to disseminate notice and information across the community. We believe it is inequitable to ask members of a frontline community to act as an educator and conduit between the Department and the community without fair compensation for their time and reimbursement for any personal resources necessary to perform the community liaison function. Community liaisons must be fairly compensated for their time and expenses. We submit that the cost of compensating community liaisons should not be borne by taxpayers – but instead should fall to the permit applicant to pay as part of the application fee.

- **Automatically extend review of unconventional gas well permits in EJ Areas by 15 days.**

The 45-day statutory timeframe for consideration of unconventional gas wells can be extended by 15 days for “cause shown” where notice is provided to the applicant.<sup>4</sup>

The Department should establish a policy recognizing that there is “cause shown” to extend review of unconventional gas well permits when those wells are proposed in EJ Areas. Adopting such a policy would provide a more realistic window of time to authentically engage with impacted communities.

- **Revise permit application to add whether a permitted activity is in an EJ Area, instructions to communicate with the Office of Environmental Justice, and explain the steps the applicant has taken or will take to engage with the community in the application.**

Implementation of the Department’s proposed public engagement rules should begin in the earliest stages of the application process – when the applicant is contemplating the permit. Permit instructions should include information about the Department’s EJ mapping tool, and should require applicants to identify whether the permitted activity will fall within an EJ Area. If so, the applicant should be required to contact the Office of Environmental Justice to review public engagement requirements and establish a timeline for compliance. This information should be included in the application for the application to be deemed complete.

- **Further develop Section V (Inspections, Compliance, and Enforcement), Section VI (Climate Initiatives), and VII (Community Development and Investments).**

The Department’s proposed EJ Policy condenses three critical issues – compliance, climate initiatives, and community development and investment – into a few brief paragraphs at the end of the policy. These issues warrant substantial additional time and attention to set forth appropriately comprehensive policy parameters. Indeed, while engagement in the permitting process is important, these other categories are key to remediating the vestiges of redlining that undergirds disparities in access to a safe and healthy environment, exacerbates poor health outcomes, and perpetuates intergenerational poverty.

We recommend that the Department establish inclusive, cross-sector work groups to develop these important aspects of the EJ Policy more fully. We note that the Department’s commitment to update the EJ Policy every four years is far too long to wait for more detailed policies guiding targeted reinvestment in EJ communities – especially given the influx of federal dollars prioritized for investment in EJ communities. Further development of these additional EJ policy topics should be a priority of the Office of Environmental Justice over the next year.

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<sup>4</sup> See 52 Pa. C.S. § 3211(e).

- **Strengthen partnerships across sectors and the public – particularly frontline community groups.**

We commend the Department for developing a public participation strategy naming the importance of community notification and education about the proposed permit, public input meetings and comment periods, and material accessibility through translation and interpretation services. But the Department needs to go beyond building a seat at the table – it must also clear the path to get there. Strong community relationships and community trust take time and intentionality to build.

To help build trust and improve communication with impacted communities, we recommend the Department:

- Develop a plain-language style guide for public-facing materials, which establishes a set reading level, consistent terminology, and other standards that will help ensure the content is easy to comprehend by the vast majority of community members
- Establish a set of public meeting “best practices” and/or improve pre-existing public participation policy.<sup>5</sup>
- Increase utilization of the expertise and leadership at the Environmental Justice Advisory Board (EJAB) to inform further policy development.
- Improve inter-agency communication to help inform Department policies and practices – especially regarding matters which are not necessarily within the Department’s expertise. This recommended engagement is less formal and in addition to the Department’s work with the Environmental Justice Interagency Council.
- Create a page on the Department’s website to house all information regarding the recommended community involvement initiatives as listed in the proposed policy, including a calendar of upcoming public meetings, community notifications, community educational materials, and other relevant matters.

These steps can help establish norms for participation and build trust in local communities.

- **Formalize Environmental Justice Policy guidelines by initiating a formal Environmental Justice Rulemaking.**

While informal policy is a good start, and sets intentions for the Department, it is not binding or enforceable law. We urge the Department to initiate a rulemaking to formalize aspects of the policy for which the Department has regulatory authority. While time in this review process has not allowed for us to identify specific areas where the Department has the regulatory authority to move forward with formal rulemaking, we stand ready to assist the Department in identifying those areas.

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<sup>5</sup> See, e.g., DEP Policy on Public Participation in the Permit Review Process, Doc. No. 012-0900-003 (eff. March 1, 2014); see also DEP Policy on Public Participation in the Development of Regulations and Technical Guidance, Doc. No. 012-1920-001 (eff. Aug. 8, 1996).

We note that legislative efforts are currently underway that could help to clarify the authority of the Department to promulgate formalized and comprehensive environmental justice rules. We are strongly supportive of such efforts. Nevertheless, we believe there are likely many areas within the Department's purview that already allow for promulgation of formal rules and urge the Department to not wait for further legislative action – and to proceed as appropriate under its existing authority.

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We are grateful for the opportunity to provide comments on this important draft language and look forward to its implementation in the coming months.

Sincerely,

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