



CENTER FOR COALFIELD JUSTICE

PO Box 4023 • 14 E. Beau Street • Washington, PA 15301 • 724.229.3550

www.coalfieldjustice.org • info@coalfieldjustice.org

May 11, 2022

Submitted via eComment

Technical Guidance Coordinator
Department of Environmental Protection Policy Office
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

**Re: Comment on Draft Environmental Justice Policy (012-0501-002)
Noticed in 52 Pa.B. 1537 (Saturday, March 12, 2022)**

Dear Technical Guidance Coordinator,

Thank you for the opportunity to comment on the proposed revisions to the Department of Environmental Protection's ("Department") Environmental Justice Policy. The Center for Coalfield Justice ("CCJ") respectfully submits the following comments. The undersigned organizations support these comments.

The Center for Coalfield Justice is a Pennsylvania-incorporated not-for-profit organization with federal Internal Revenue Service § 501(c)(3)-status recognition located in Washington, PA. CCJ's mission is to "improve policy and regulations for the oversight of fossil fuel extraction and use; to educate, empower and organize coalfield citizens; and to protect public and environmental health." CCJ has over three thousand members and supporters and is governed by a volunteer Board of Directors.

CCJ thanks the Department for recognizing the need to revise its Environmental Justice Policy to ensure "that all Pennsylvanians are equipped with the proper resources and opportunities to meaningfully participate in the decision-making process and ensure that DEP integrates EJ guidelines in its policies and programs." CCJ strongly supports the proposed revision to achieve these purposes. However, critical portions of the Department's proposal fall short of its stated goal. CCJ urges the Department to quickly revise the Policy in light of this comment and its own evaluation.

I. The Department should utilize its existing authority to incorporate environmental justice considerations into existing permitting procedures.

CCJ understands that the Environmental Justice Policy is technical guidance, which limits how much the Department can use it to shape the behavior of permit applicants. CCJ also recognizes that legislation has been introduced to ensure that environmental justice considerations are part of all Pennsylvania policymaking. In the meantime, the Department should better utilize its existing statutory and regulatory authority to achieve its environmental justice goals.

The Department's Office of Environmental Justice ("OEJ") has been largely unable to further the ultimate goal of environmental justice because of the Department's permitting process that favors development over environmental protection and tends to ignore the negative impacts that development can have on surrounding populations. Without excusing corporations of responsibility for their actions and the resulting environmental harm, the reality is that industry operates pursuant to statutes, regulations, and permitting policies developed by the Department. Unfortunately, the Department has done little to integrate environmental justice considerations into existing permitting procedures. Failing to make these changes has and will continue to result in facilities being awarded permits for activities that further burden environmental justice communities. The ease with which companies have obtained permits for the construction, operation, and modification of facilities that disproportionately burden minority and low-income communities is alarming.

Under Pennsylvania's current permit application process, the Department appears unwilling to look beyond the narrow permitting criteria. Consequently, even if a broader analysis revealed multiple environmental justice issues, the Department may not alter its permitting decision. The Department has adopted a rationale that directly undermines its own Office of Environmental Justice: if a facility satisfies the minimum permitting requirements, as currently interpreted by the Department, then the permit will be issued regardless of other effects, including allegations of disproportionate impact. As a result, environmental justice communities continue to shoulder a disproportionate share of environmental burdens. As long as the Department's permitting policies continue to place a greater emphasis on development over the prevention of harmful health and environmental impacts, environmental injustice will continue. However, specific changes can be made to improve the current permitting policies, providing for a better balance between development and the protection of human and environmental health.

The Department must address environmental justice concerns during both technical guidance development and permitting processes. Many of Pennsylvania's environmental laws and regulations have environmental justice implications embedded within them. In *Eagle Environmental, L.P. v. DEP*, a proponent of a landfill challenged the treatment of its permit application under a regulation's harm/benefits test, which required the Department to weigh the public benefits of a landfill against the articulated and potential environmental harms to the environment, public health, and safety. *Eagle Environmental, L.P. v. DEP*, 884 A.2d 867 (Pa. 2005).

The Pennsylvania Supreme Court held that the balancing analysis was a “flexible and effective means to implement and enforce” the provisions of the Solid Waste Management Act. The Court found that the regulation at issue was strengthened by the Act’s reference to the constitutional guarantee of the people’s right to clean air, pure water and to the preservation of the natural, scenic, historic, and aesthetic values of the environment. *Id.* at 879 (citing Pennsylvania Constitution, Art. I, § 27). This interpretation strengthens agency efforts to account for and mitigate adverse environmental impacts upon Environmental Justice Communities.

Importantly, *Eagle Environmental* and the landfill regulations do not expressly reference “environmental justice.” OEJ should perform an in-depth review of various environmental statutes. CCJ believes that such a review would reveal numerous legal means to incorporate and prioritize environmental justice considerations into planning, permitting, and environmental review under existing law.

II. The Department’s current definition of Environmental Justice Area is too narrow to accomplish the purpose of the draft Environmental Justice Policy.

The Department’s current definition of Environmental Justice Area is too narrow to accomplish the purpose of the draft Policy. The purpose of the draft Policy is to ensure that all Pennsylvanians are equipped with the resources and opportunities to meaningfully participate in the decisions-making process. Race and income are obvious metrics for identifying Environmental Justice Areas. However, those two metrics alone are not sufficient to achieve the stated purpose of the draft Policy. For example, the current metrics do not factor in existing environmental burdens on communities. The Department cannot simply evaluate the impacts of a proposed facilities in a vacuum. Instead, the Department must consider proposed and existing impacts within a particular community. The Department should also expand the data that it considers beyond the census tracts. Other metrics such as homeownership rates, assisted school lunches rate, disability, and elderly populations are relevant and should be considered.¹

III. The Department’s Office of Environmental Justice should improve research and data collection methods to determine the environmental, social, and economic impact of industrial activities.

CCJ applauds the Department’s commitment to publish annual reports and a strategic plan every five (5) years. Information is essential to the development, application, and enforcement of environmental law and policy. An effective environmental protection system relies upon environmental decision makers and stakeholders having access to the necessary information. Access to information is particularly important, and lack of access is particularly acute, in areas disproportionately burdened by harmful industrial nuisances.

¹ Some of these metrics can be connected to income levels but may not be directly correlated.

CCJ encourages the Department to include research and data related to industrial activities and their environmental, social, and economic impact in its annual reports and strategic plans. The Department cannot effectively regulate activities without information about how those activities affect human health and the environment. This kind of information is necessary to define the causes of environmental degradation accurately and to design appropriate solutions and programs. The draft Policy references “programs of the OEJ” but fails to define those programs adequately. Data related to the impacts of industrial activities will undoubtedly shape those programs. Moreover, such information is necessary for the Department’s evaluation of whether a permit qualifies as an “Opt-in permit.”

To improve information gathering and data analysis, the Department should develop strategies and build a strong scientific foundation for supporting environmental justice and conducting disproportionate impact analyses, particularly methods to appropriately characterize and assess cumulative impacts of existing and proposed industrial activities in over-burdened communities. Since many environmental statutes require permit applicants to evaluate the cumulative impacts of their proposed activity, the Department should collect and evaluate existing cumulative impacts based on the information submitted by project proponents and residents living with those impacts.

IV. The Office of Environmental Justice must increase the likelihood that communities will be apprised of projects with potentially adverse consequences as early as is feasible in the permitting process.

Community members cannot effectively participate in the environmental decision-making process without dependable access to information about industry's existing and proposed environmental activities. Reliable access to information is also critical to the ability of community members to know what environmental risks they may face or are currently facing in their communities. Information empowers people with knowledge about environmental conditions in places where they live, work, or recreate. We applaud the Department for recognizing the need for enhanced public notice procedures, including working with environmental organizations (like CCJ) and providing translation services when requested.

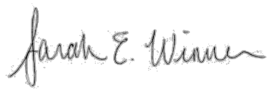
For the Department to increase transparency and public participation, the Department must develop a robust plan to educate and inform communities when the Department is making permitting decisions. The draft Policy is undoubtedly a step in the right direction. Still, CCJ believes that the Department should clarify what is expected of both DEP and permit applicants under the Policy. Ensuring that mechanisms are put in place to provide early notification of activities affecting overburdened communities is vital.

V. The Office of Environmental Justice should focus on both decreasing impacts and increasing benefits in its strategic plan.

The environmental justice strategy should focus on both decreasing impacts and expanding benefits. For instance, access to parks, open spaces, and green areas is vital to healthy communities. Equally as important is revitalization through environmental cleanup and development of previously impacted sites. By addressing the disparity in part through expansion rather than redistribution, the Office of Environmental Justice would have the opportunity to work creatively with the community and collaborate with other state agencies, which would ultimately increase the Office's visibility and accessibility.

Thank you for your consideration. If you have any questions, please contact us anytime.

Respectfully,



Sarah E. Winner, Esq.
Senior Attorney
Sarah@coalfieldjustice.org

Ethan Story, Esq.
Community Advocate
Ethan@coalfieldjustice.org

Briann Moye, Coordinator
PA Climate Equity Table
briann@paclimateequity.org

Elizabeth Alex Chief of Organizing and Leadership
CASA and CASA in Action
ealex@wearecasa.org

Jenny Rafanan Kennedy, Executive Director
Pittsburgh United
jenny@pittsburghunited.org

Melissa Marshall, Esq.
Community Advocate
Mountain Watershed Association
melissa@mtwatershed.com

Rabbi Julie Greenberg, Director

POWER Climate Justice and Jobs
JGreenberg@powerinterfaith.org