



# CENTER FOR COALFIELD JUSTICE

P.O. Box 4023 • 31 E. Chestnut Street • Washington, PA 15301

• 724.229.3550 • [www.centerforcoalfieldjustice.org](http://www.centerforcoalfieldjustice.org) •

• [info@centerforcoalfieldjustice.org](mailto:info@centerforcoalfieldjustice.org) •

November 28, 2023

Submitted via eComment

Jessica Shirley, Acting Secretary

PA Department of Environmental Protection

400 Market Street

P.O. Box 2063

Harrisburg, PA 17105-2063

**Re: Comments on the Interim Final Environmental Justice Policy Document No. 015-0501-002**

Dear Acting Secretary Shirley,

Thank you for the opportunity to comment on the proposed revisions to the Department of Environmental Protection's ("Department") Environmental Justice Policy and PennEnviroScreen. The Pennsylvania Climate Equity Table respectfully submits the following comments.

The Pennsylvania Climate Equity Table ("PACET") is a collective of nine organizations working together towards a just and equitable transition from our extractive economy to a regenerative, renewable, and just economy. We strive to build power in Black, Brown, and impacted communities on environmental and climate justice issues that intersect with the economy.

**1) PACET applauds the Department for listening to community voices and making necessary revisions to the Policy.**

We applaud the Department and its Office of Environmental Justice ("OEJ") 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 the Department integrates EJ guidelines in its policies and programs." We appreciate that many of our concerns were addressed in the policy revisions.

Specifically, we applaud the Department and OEJ for completing the task of appropriately defining what is considered an Environmental Justice ("EJ") area within the state of Pennsylvania. We concede that there is no perfect definition, as every community has its history,

burdens, and challenges. Additionally, the following are other areas PACET feels are positive gains to the interim EJ Policy.

- A broader definition of “EJ Area,” “Cumulative Environmental Impacts,” and “Disproportionate Environmental Impacts” including:
  - Looking at existing issues in EJ areas (other than race and financial metrics)
  - Using data that goes beyond census tracts
  - Including socioeconomic data and more tailored population characteristics
- Increasing the amount of time and resources communities receive concerning potentially adverse effects related to permit applications, including:
  - Application materials available to the public
  - Enhanced public notice procedures
  - Working with local environmental organizers
  - Providing translation services
  - Encouraging Permittees to meet with community stakeholders before developing and submitting applications to the Department

**2) Critical portions of the Department’s Interim EJ Policy still fall short of its stated goal. PACET urges the Department to quickly revise the Policy considering this comment and its own evaluation.**

- a) *The Department should utilize its existing authority to incorporate environmental justice considerations into existing permitting procedures.*

PACET 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. PACET also recognizes that legislation has been introduced to ensure 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 constructing, operating,

and modifying 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, the Department may not alter its permitting decision even if a broader analysis revealed multiple environmental justice issues. 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. If the Department's permitting policies continue to emphasize 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 a better balance between development and human and environmental health protection.

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*, 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 the preservation of the environment's natural, scenic, historic, and aesthetic values. *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. PACET 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.

b) *The PennEnviroScreen is only as good as the data entered into it.*

EJ screening tools currently used by federal and state agencies have had an amazing impact on many EJ communities nationwide. Without a doubt, the PennEnviroScreen will also prove to benefit EJ areas in the Commonwealth. However, the tool is only as good as the data that is fed into the tool.

- Is the data coming from the Department?
- Is the data coming from community members?
- Is the data coming from an outside contracted party?
- Is the data coming from Industry?

It only makes sense for the Department first to enter its own data as it is the sole and primary data source for all major air, water, and soil pollution contributors. Meaning that the Department must first look internally to understand what it has historically and currently permitted to be discharged and emitted in the Commonwealth. Secondly, the Department can then review and enter data on unpermitted emissions and discharges via Notice of Violations and inspection reports. Starting internally only makes sense as this would provide the Department with real data that is verifiable and tracked.

The Department must also use all relevant data available to ensure that it is doing its due diligence to reflect the most relevant and up-to-date data. It was shared recently that the OEJ is not currently using or considering the Climate Change Advisory Committee (“CCAC”) mandated report on Pennsylvania and climate change in its own mapping tool. As the CCAC’s 2021 report (“Report”) states, “...climate change will not affect all Pennsylvanians equally.” Pennsylvania Climate Impacts Assessment 2021, PA DEP May 2021, revised July 28, 2021, 1-128, 107. The Report recommended that as the state works to reduce climate risks, it is not only aware of the impacts but that care needs to be taken so as not to “exacerbate existing inequities.” *Id.* at 107-108. One step towards this recommendation would first be to be aware of where the environmental areas are compared to where the climate impacts are. Again, this highlights the importance of ensuring that the Department utilizes all applicable data for its mapping tool.

### **3) The Department Must Take Proactive Steps Concerning Language Access to Ensure That a Much Larger Audience is Included in the Decision-Making Process.**

The PACET is excited that this new EJ policy is set out to expand information and make the permitting process more accessible to those who historically were not given a voice in the permitting process. However, there is a lag in the policy regarding language access. Anyone living within the Commonwealth needing translation services must follow the Language Access Plan. This is an essential tool for those in the Commonwealth who are non-English speaking.

However, this creates an additional burden for those needing more resources and time to participate in this critical process, which runs against the spirit of the Policy itself.

The PACET is requesting that the Department and Permittees be proactive in the permitting process by better understanding the communities in which they operate. One step that would accomplish this is to provide all material related to the proposed development in the three primary spoken languages (not including English) in the county where the development has been proposed. Other options would consist of the top three spoken languages (not including English) in the Department's regions or, at the very least, the top three spoken languages (not including English) in the Commonwealth.

Thank you for your consideration. If you have any questions, please get in touch with us anytime.

Respectfully,

Ethan Story, Esq.  
Advocacy Director  
Center For Coalfield Justice

### **The PA Climate Equity Table**

APIPA	CASA
Center for Coalfield Justice	Make the Road PA
PA Stands Up	Philadelphians Organized to Empower and Rebuild (POWER)
Philly Thrive	Pittsburgh United
One PA	

The PA Climate Equity Table seeks to unite urban, rural, and suburban voices for racial, economic, and climate justice by building: community; electoral power; shared racial and environmental justice analysis; and policy change. We seek a just and equitable transition from our extractive economy to an economy that is regenerative, renewable, and just.

We envision a thriving Commonwealth that prioritizes the health and wellbeing of all its people, works for ecological justice, protects the sacredness of our air, water, and land, champions worker's rights and status, and advances racial and economic justice in communities.

We serve as a coordinated and aligned effort of local-based organizations working together to achieve common goals that will benefit all across the state. The table strives to:

- **Build power** in Black, Brown, and impacted communities on environmental and climate justice issues that intersect with economy and other sectors;
- **Move community-driven policy solutions** on a radical yet possible vision for a more equitable, just, climate-resilient and fossil-free Pennsylvania economy; and
- **Be a voice for racial equity** and justice on climate issues that is an alternative to environmental and decarbonization efforts that are not rooted in community solutions.

Founded in 2018, current members of the PA Climate Equity Table include:

- CASA
- Center for Coalfield Justice
- Make the Road PA
- PA Stands Up
- Philadelphians Organized to Empower and Rebuild (POWER)
- Pittsburgh United
- Philly Thrive
- One PA
- APIPA

For more information, please contact Prem Rajgopal at [Prem@paclimateequity.org](mailto:Prem@paclimateequity.org).