

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Policy Office

**DOCUMENT NUMBER: 012-0501-002**

**TITLE:** Environmental Justice Policy

**EFFECTIVE DATE:** Upon publication of notice as final in the *Pennsylvania Bulletin*

**AUTHORITY:** Air Pollution Control Act (35 P.S. §§ 4001, et seq.); Solid Waste Management Act (35 P.S. §§ 6018.101, et seq.); Clean Streams Law (35 P.S. §§ 691.1, et seq.); Storage Tank and Spill Prevent Act (35 P.S. §§ 6021.101, et seq.); Hazardous Sites Cleanup Act (35 §§ 6020.101, et seq.); Safe Drinking Water Act (35 P.S. §§ 721.1, et seq.); Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.1, et seq.); Infectious and Chemotherapeutic Waste Law (35 P.S. §§ 6019.1, et seq.); Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1, et seq.); Noncoal Surface Mining Conservation and Reclamation Act (52 P.S. §§ 3301, et seq.); Bituminous Mine Subsidence and Land Conservation Act (52 P.S. §§ 1406.1, et seq.); Oil and Gas Act (58 P.S. § 601.101, et seq.); Coal Refuse Disposal Act (52 P.S. §§ 30.52, et seq.); Pennsylvania Sewage Facilities Act (35 P.S. §§ 750.1, et seq.); Dam Safety and Encroachments Act (32 P.S. §§ 679.101, et seq.); Radiation Protection Act (35 P.S. §§ 7110.101, et seq.); Low-Level Radioactive Waste Disposal Act (35 P.S. §§ 7130.101, et seq.); Radon Certification Act (63 P.S. §§ 20001, et seq.); *Pennsylvania Constitution (Article 1, § 27)*.

**POLICY:** It is the Department of Environmental Protection's (Department or DEP) policy to provide guidance around environmental justice in DEP's policies and programs, including on public participation opportunities for permitted activities in communities as described in this policy.

**PURPOSE:** Historically, minority and low-income communities have been disproportionately impacted by environmental hazards in their communities and exposed to a disproportionately high number of environmental and public health stressors, including pollution from numerous industrial, commercial, and governmental facilities located in those communities; and also have not had equitable opportunities to participate in decisions that may adversely impact their environment. Communities in these areas are most at risk of being unaware or unable to participate in environmental decision making or gain access to environmental resources and are particularly vulnerable. DEP's first environmental justice policy was created in 2004 and focused solely on public participation in the permit process. The Department realizes that it is critical to ensure robust participation from all communities, particularly minority and low-income communities in permitting processes. DEP also understands that while progress was made under the old policy, these communities still face challenges to public participation and engagement around permitting processes and have also faced other challenges to environmental decision making overall. DEP seeks to ensure that all Pennsylvanians are equipped with the proper resources and opportunities to meaningfully participate in decision-making processes and ensure that the Department integrates environmental justice guidelines in its policies and programs. DEP values input and participation from individuals living in or near Environmental Justice Areas. This policy outlines opportunities for community involvement and public participation in the permit application process for permits in Environmental Justice Areas. This policy also provides guidelines for an environmental justice framework that advances environmental justice and equity more broadly within DEP.

**APPLICABILITY:** This policy applies to DEP approvals, specifically to permits as described in this policy and to DEP program areas specifically named and included within this policy. While all DEP staff implement this policy, specific roles to be completed by the Office of Environmental Justice are also highlighted. This policy does not supersede the Permit Decision Guarantee policies or any applicable executive orders.

**DISCLAIMER:** The policies and procedures outlined in this guidance document are intended to supplement existing requirements. Nothing in the policies or procedures will affect regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the Department to give these rules that weight or deference. This document establishes the framework, within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

**PAGE LENGTH:** xx pages

## **I. General Information**

### **A. Definitions**

*Applicant* – Individuals, corporations, non-profit organizations, or others seeking a permit from DEP.

*Area of Concern* – Geographic area xxx miles around the proposed permit activity with potential impact to the environment or community.

*Census block group* – Geographical subdivisions within a census tract that generally maintain a population of 600 to 3,000 people and are the smallest geographical unit for which the Census Bureau publishes sample data.

*Community* – Residents and businesses located within an Environmental Justice Area or Area of Concern, which may be affected by a permitted activity.

*Community Environmental Project* - A project which substantially improves, protects, restores or remediates the environment, or which improves, protects or reduces risks to the public health or safety.

*Community liaison* – An individual who volunteers to act as a conduit between DEP and a segment of the population of which they informally represent and whom also assists in sharing information between the public and DEP.

*Environmental Justice (EJ)* – Environmental justice embodies the principle that communities and populations should not be disproportionately exposed to adverse environmental impacts. Environmental Justice is the fair treatment and meaningful involvement of all people with the development, implementation, and enforcement of environmental policies, regulation, and laws; as well as with respect to the identification of environmental issues that affect the most vulnerable communities.

*Environmental Justice Advisory Board (EJAB)* – An advisory board that provides recommendations to DEP Justice and provides a forum for stakeholders to share environmental concerns in their communities.

*Environmental Justice Area* – Any census block group with a 30 percent or greater minority population or 20 percent or greater at or below twice the poverty level as defined by the U.S. Census Bureau or at least 10 percent of households have limited English proficiency.

*Environmental Justice Area Identification* – Identification of Environmental Justice Areas is necessary for implementation of a realistic policy. There is not a perfect science for identifying EJ areas and advancements in ways to identify areas facing environmental injustice are evolving. The Environmental Justice Area Identification should be reviewed and updated in accordance with this plan.

*Environmental Justice Areas Viewer* – (<https://dep.pa.gov/ejviewer>) An interactive environmental justice mapping tool that contains environmental and demographic indicators to better understand their relationships, patterns and trends.

*General permit* – A permit with specified standard conditions on a regional or statewide basis. If the permit application is complete and meets the specified standard conditions, a permit may be issued by DEP.

*Individual permit* – A permit with site-specific conditions for a proposed activity. DEP reviews each individual permit application based on the unique conditions of the permit application.

*Low income* – Means a household that is at or below twice the federal poverty threshold as determined annually by the United States Census Bureau.

*Minority* – Individuals who identify themselves as Black/African-American, LatinX, Latino/a/Hispanic, Asian, Indigenous people and other people who identify as non-white.

*Opt-in permit* – Permits that do not qualify as trigger permits, but DEP believes warrant special consideration and enhanced public participation based on: identified community concerns; present or anticipated environmental impacts; or reasonably anticipated significant adverse cumulative impacts.

*Pre-Application Conference* – A meeting that allows DEP program staff, applicants, and their consultants to discuss project details and seek clarification on applicable regulatory and statutory requirements. Pre-application conferences result in a better understanding of the project, necessary permits, and required notifications prior to application submission.

*Public hearing* – Formal, structured proceedings that afford the public the opportunity to provide verbal testimony on an application under review by DEP. All verbal testimony provided at a public hearing will be considered and responded to by DEP in a Comment-Response Document and through other relevant documentation associated with the application decision.

*Public meetings* – Meetings used to provide information about a proposed project and to foster dialogue through a question-and-answer format. The intent of public meetings is to help the public obtain information about the proposed project. The content of public meetings does not become part of the official record and will not be addressed in the Comment-Response Document issued by DEP.

*Trigger permit* – Specific permits located in an Environmental Justice Area that may lead to significant public concern due to potential impacts on human health and the environment.

## **B. History and Background**

EJ is the principle that all people have the right to be protected from environmental hazards and to live in and enjoy a clean and healthy environment, regardless of race, color, national origin or income. Environmental justice promotes the fair treatment of all people and encourages meaningful involvement throughout the development, implementation, and enforcement of environmental policies, regulations, and laws. Fair treatment means that no person or community should bear a disproportionate share of negative environmental impacts. Historically, social and economic forces perpetuated environmental injustices for minority and low-income communities. Barriers preventing EJ communities from addressing such injustices include inadequate access to information and decision makers, limited education levels and lack of financial resources. These constraints result in limited participation in decision-making processes and a hindered understanding of the environmental and community impacts of a permitted activity.

The Environmental Rights Amendment (ERA) can be used as a tool available to the community to address equal justice in low income and minority communities, and may help the most vulnerable communities while improving a sustainable Pennsylvania.

In 1999, the Pennsylvania DEP created an Environmental Justice Work Group (EJWG) to assist the Department in meeting its environmental justice objectives. In 2001, the EJWG issued a report that made five program implementation recommendations to address environmental justice concerns: collaborate with other agencies to improve the condition of environmentally overburdened communities; reassess permitting processes; enhance monitoring and enforcement; consider a Department organizational change; and reevaluate the implementation of policies. DEP has been implementing these recommendations through the establishment of the Office of Environmental Justice, the Environmental Justice Advisory Board (EJAB) and other initiatives. In 2004, DEP created the Environmental Justice Public Participation Policy which provides a framework for DEP to foster community engagement throughout permitting processes and to ensure disenfranchised communities are meaningfully involved in the decisions that affect their environment, health, and safety.

There may be varying experiences in the environmental permit review process among communities in Pennsylvania. The lack of easily obtained, understandable information is often cited as a major cause of these experiences. To address this disparity, minority and low-income communities should be given equitable access to information, consultation, and accommodation by DEP. Increasing meaningful public participation will mitigate adverse impacts in predominantly minority and low-income communities.

Public participation affects how DEP provides information, elicits input, and communicates with individuals within minority and low-income communities before, during, and after permitting processes. This policy describes when to use this policy based on the type of permit application and the geographic location of the proposed permitted activity. This policy also provides guidelines for an environmental justice framework that advances environmental justice and equity more broadly within DEP.

## **C. Office of Environmental Justice**

The Office of Environmental Justice (OEJ) fulfills a critical role within DEP, ensuring that Pennsylvanians at risk from pollution and other environmental impacts have a voice in decision-making processes and help ensuring environmental justice populations have access to resources supporting overburdened

communities. DEP's OEJ serves as a liaison between DEP, communities, and regulated entities. The OEJ Regional Coordinators serve as a contact point to aid in community outreach, understanding, and involvement in the environmental decision-making process, and for connecting the regulated industry to their neighbors in communities facing environmental justice issues. OEJ also stays abreast of the latest advancements in EJ policy at the federal, state, and local level and is a resource to DEP staff, Pennsylvania legislators, community activists, and others who are looking to create and implement policies around Environmental Justice.

### **1. Staffing**

The Director of the Office of Environmental Justice (OEJ) will coordinate the implementation of this Policy, track progress and prepare annual reports for public distribution.

### **2. Training**

OEJ will develop a plan to provide environmental justice training to DEP staff and effectively implement the Policy to ensure that EJ remains a priority. OEJ will also be a resource on advancements in EJ policy at the federal, state, and local level for DEP staff, Pennsylvania legislators, community activists, and others who are looking to create and implement policies around Environmental Justice.

### **3. EJ Organization and Mailing List**

Working in coordination with the Interagency Environmental Justice Working Group, the Director will develop and maintain a list of EJ community and advocacy organizations and an "EJ Mailing List" consisting of these organizations and interested members of EJ populations, and others. This list will be distributed OEJ to be incorporated into mailing lists for newsletters and other general outreach information. This list can also be shared with DEP staff or other partners looking to conduct outreach around particular projects, including, but not limited to Act 2 public involvement plans.

### **4. Alternative Media Outlets**

OEJ will develop a list of alternative information outlets to be made available to DEP program areas seeking public comments and to project proponents who may be asked to publish public notices for projects that are in or may otherwise impact EJ populations. OEJ will continually maintain this list by adding new outlets, as needed, for newly identified EJ areas, keeping contact information up to date, and by deleting outlets that are no longer in business or relevant for this purpose.

### **5. Information Repositories**

In addition to using normal governmental information repositories, OEJ, will consider the use of alternative information repositories in EJ Areas reside, including Non-Governmental Agency establishments.

### **6. EJ Maps**

Identification of Environmental Justice Areas is necessary for implementation of a realistic policy. There is not a perfect science for identifying EJ areas and advancements in ways to identify areas facing environmental injustice are evolving. OEJ has developed the EJ Viewer to identify EJ populations to be serviced by this Policy. DEP will review and update the mapping of EJ populations when the most recent U.S. Census decennial data becomes available. DEP will reassess the mapping

at least every 2 years based on ACS data and adjust as needed. If other mapping tools utilized by the Commonwealth become available, they may be used to support analyses of EJ Areas for purposes of this policy. The Environmental Justice Area Identification should be reviewed and updated in accordance with this plan. Updates should consider the latest federal, state, and local efforts to identify areas of environmental injustice.

#### **7. OEJ Website**

OEJ website will provide an online EJ repository for information about the Commonwealth's environmental justice activities, mapping tools and data, initiatives, and resources.

#### **8. Annual EJ Report**

OEJ will issue an annual report that details the programs of the Office of Environmental Justice, outlines results of the trigger permit public participation process set forth in this policy and evaluates ways in which environmental justice criteria were used for awarding grants and prioritizing program funding for the prior fiscal year. The report will show, at the census block group level, the amount of DEP public funds, or publicly leveraged funds, used and for what projects. The annual report will also identify federal, state, and local advancements in environmental justice policy, law, and area identification. Additionally, OEJ will convene an annual public meeting to report on the progress of the EJ Policy.

#### **9. Language Access Services**

OEJ will assist in creating and implementing a Language Access Plan for DEP. This will help to expand outreach to all Pennsylvanians, including those with limited English proficiency or other communication challenges. The Language Access Plan for DEP will outline policies around translation and interpretation that will help to ensure that those with limited English proficiency or other communication challenges are able to participate in meetings and hearings, review appropriate documents and permits, and communicate directly with DEP staff. This will be done through written translation, verbal interpretation, sign language interpretation, and telecommunication relay services as appropriate.

### **D. Environmental Justice Advisory Board**

The EJAB is comprised of fifteen individuals appointed by the DEP Secretary with personal and professional expertise in environmental justice issues. The EJAB meets at least quarterly to provide a forum for stakeholders to share environmental concerns in their communities and to make recommendations to DEP's OEJ. Additionally, EJAB reviews and provides recommendations on initiatives that impact the health and safety of environmental justice communities, including any updates to this policy.

## **II. Permit Review Process**

### **A. Permits Covered**

#### **1. Trigger Permits**

DEP reviews a multitude of environmental approvals. DEP's Trigger Permits (Appendix A) are identified as permits relating to regulated activities that have traditionally led to significant public concern due to potential impacts to the environment, human health, and communities. Application reviews for these permits warrant heightened scrutiny by DEP and enhanced public participation. All trigger permits are Individual Permits and do not encompass General Permits.

## 2. Opt-In Permits

Permits not specified above, including renewals of the above permits, but not individual permits, may serve as Opt-In Permits if they involve the following project facilities: (1) major source of air pollution; (2) resource recovery facility or incinerator; (3) sludge processing facility, combustor, or incinerator; (4) sewage treatment plant with a capacity of more than 50 million gallons per day; (5) transfer station or other solid waste facility, or recycling facility intending to receive at least 100 tons of recyclable material per day; (6) scrap metal facility; (7) landfill, including, but not limited to, a landfill that accepts ash, construction or demolition debris, or solid waste; or (8) medical waste incinerator. In addition, any permits not specified in this Policy as trigger permits or determined to be an Opt-In permit including but not limited to General Permits, renewals or revisions, may serve as Opt-in Permits if DEP believes they warrant special consideration.

In making its determination for including Opt-in Permits, DEP should consider: 1) identified community concerns; 2) present or anticipated environmental impacts; and 3) reasonably anticipated cumulative impacts. The applicant should not be required to provide information to DEP regarding neighboring facilities in order to determine whether the permit should be an Opt-in Permit. DEP holds the responsibility of determining which permits will be Opt-in permits. DEP should initiate and perform this analysis based on information and tools at its disposal, including a review of information from the applicant's facility or project and an assessment through EJ Areas Viewer (<https://dep.pa.gov/ejviewer>) and other mapping tools developed by DEP and Commonwealth agencies that demonstrate environmental and health conditions in EJ Areas. The EJ Areas Viewer is an online mapping tool that shows EJ Areas as defined by this policy, DEP permitted activities, EPA permitted activities, and various demographic and health data obtained from state and federal agencies. The EJ Areas Viewer is connected to DEP's eFACTS database and provides up-to-date permitting, inspection, and compliance information on facilities permitted by DEP.

EJ Areas Viewer should be used to assist in making informed decisions regarding all aspects of environmental justice.

The OEJ, in consultation with the appropriate Regional Director, Bureau Director, District Mining Manager, Program Manager, and Community Relations Coordinators should decide whether an application should be an Opt-in permit.

## **B. Process for Permit Applicants and DEP**

### **1. Steps Prior to Submission and Review of a Permit Application**

a) When completing the General Information Form (GIF) of a permit application, the applicant should determine whether the project is in an Environmental Justice Area and the project's Area of Concern, as defined in the bullet points below.

- Enter the proposed project's address into the EJ Areas Viewer mapping tool to determine whether the community is in an Environmental Justice Area or an Area of Concern.
- The Area of Concern is identified by a radius of xx miles from the center of a proposed permit activity or, where an activity is not centralized, an area extending xx miles beyond the boundary of the proposed activity. The project's Area of Concern should also include: other areas or communities that may experience reasonably anticipated impacts such as noise, subsidence, vibration or odor associated with the type of facility proposed.

b) If there is an EJ Area, entirely or in part, that falls within the Area of Concern and the permit application is a trigger permit, then this policy should be implemented. An EJ Area is defined as any census block group with a 30 percent or greater minority population, or 20 percent or greater living at or below two times the poverty level as defined by the most recently available decennial or mid-decade U.S. Census Bureau data. The public participation provisions of this policy apply to the area located within the Area of Concern and to the entire census block group.

If no such census block group exists within the Area of Concern, it is not considered a trigger permit and this policy may not apply. However, if DEP determines the project warrants special consideration, the permit may be considered an EJ Opt-in permit, in which case this policy applies regardless of the Area of Concern.

c) For trigger permits, potential opt-in permits, and, perhaps as a general strategy, applicants are encouraged to have a pre-application conference.

d) As part of the public participation strategy, DEP strongly encourages potential applicants to meet with community stakeholders prior to submitting an application to DEP. DEP would, if invited, attend this meeting and address community concerns relating to the permit review process.

e) If a pre-application conference was not held, DEP Program staff should contact the OEJ upon receipt of an application for a trigger permit or potential Opt-in permit located in an EJ Area. The notification should include the site location with latitude and longitude of the proposed activity. DEP Program staff should contact the permit applicant as soon as it is determined that the policy will be implemented.

f) A public participation strategy should be developed between DEP's OEJ and appropriate regional or district office program, Community Relations Coordinators, and Local Government Liaisons for each application. This strategy should be designed to facilitate the participation of all residents within the Area of Concern and the census block group(s), and should consider the characteristics of the community, the Area of Concern, and the type of facility proposed. The public participation strategy should be developed within 30 days of determining that the policy will be enacted. If DEP sends correspondence to the applicant notifying the applicant that the application is administratively complete, the letter should indicate that the application is subject to the EJ Public Participation Policy.



g) The applicant will be encouraged to meet with DEP permitting personnel, local government officials, and other local stakeholders, as deemed appropriate, to review the proposed permitted activity. DEP strongly encourages all applicants to fulfill the steps outlined in this policy. However, DEP should implement the steps in this policy if an applicant is unable or unwilling to do so. This may result in a lengthened application review time.

h) Applicants are encouraged to submit to the Department electronic copies of permit applications if they are trigger or Opt-in permits. The electronic copies of the permit applications should be certified and redacted of sensitive or proprietary information and separated by section.

## 2. Steps During Permit Application Review for Trigger or Opt-in Permits

### a) Notifications to Community

i. A project summary of the application should be produced by the applicant that explains the project in terms understandable to a considerable majority of readers within an EJ Area. It should address the purpose and location of the proposed activity or facility, and anticipated impacts. The project summary should be reviewed by DEP for accuracy. These summaries may also be used in other aspects of public outreach.

ii. The project summary should be placed in publications widely read by residents within the EJ Area besides the legal notice section, and placed locally in areas of high visibility and disseminated via electronically. Examples of effective vehicles for notification include, but are not limited to, local newspapers, community newsletters, church bulletins, public service announcements, social media posts shared with community groups and municipalities, notices on local radio and television stations, notices posted in areas of high foot traffic, notices to local environmental groups, and notices to local community centers.

iii. DEP should work with community liaisons to implement various methods of transmitting information on the proposed permit including electronic and physical distribution. Applicants are encouraged to communicate the appropriate information about the project to as many residents of an EJ Area as reasonably possible.

iv. In areas where the predominant language spoken or read is not English, the information should be made available in both English and the predominant language spoken or read in that community.

v. DEP staff should notify the appropriate community with updates when substantive changes are made to the permit application, including when a modification is made. Such notification will be made using various media including print, electronic mail and social media.

### b) Document Availability

#### i. Access to Materials

DEP should ensure access to information for members of an EJ Area by identifying convenient locations where the public can review applications; receive support on how to locate materials in a file; and access full copies of files at remote locations. Where possible DEP should ensure digital copies of information are made available. Community liaisons may assist DEP in determining locations for hosting permit materials and assist in determining how to disseminate materials. These locations may include

libraries, municipal offices or community organizations, including both the physical locations, websites, and social media accounts of these groups. DEP may also add permit materials to its website to promote remote access of permit materials.

#### ii. Supporting Materials

Maps of the site, traffic analyses, cost/benefit analyses, and other supporting materials should be made available to the public, if feasible. The anticipated permit process timeline will be developed and provided along with the other materials, and updated by DEP personnel, as necessary.

DEP may create a site-specific project website for trigger permits and Opt-in permits on a case-by-case basis.

#### c) DEP Availability

i. DEP should be available by phone and email to the local community throughout the permitting process and provide physical presence on a case-by-case basis when feasible. DEP should provide residents with information and assistance, as needed, to understand content within the proposed permit application. DEP may identify community liaisons who assist with the distribution of information.

#### d) Public Meetings

i. DEP, in coordination with community liaison(s), DEP staff and the applicant, should begin scheduling a public meeting within 30 days after accepting an application as administratively complete and technically adequate. The Policy on Public Participation in the Permit Review Process (Document # 012-0900-003) provides a review of the various forms of public participation the Department may use to share information and solicit feedback on a permit with the public.

ii. The purpose of the public meeting is to inform the residents in the EJ Area of the scope and nature of the project in a timely, interactive manner. Meetings should be held in central and accessible locations and at dates and times that are convenient for a majority of the affected community. This meeting is in addition to any other public participation meeting that may be required.

Applicants are encouraged to fully participate in the meeting and coordinate with DEP to organize and conduct the meeting. It is beneficial to all stakeholders that the meeting takes place as early in the process as feasible. Public meetings are intended to provide information to the community regarding the proposed permit application and assist residents in developing their official comments.

iii. All public meetings made under this policy will be accessible virtually by DEP. If meetings are in person the meeting will be held in person and virtually.

#### e) Public Comments

i. All permit applications undergoing this policy will have an open public comment period for at least 30 days. Providing comments during the public comment period is the opportunity for the public to provide input in the review of a permit application. All public comments should pertain to the proposed permit application and activity.

ii. Public hearings are formal, structured proceedings that give the public the opportunity to provide verbal testimony on a permit application under review by DEP. All verbal testimony provided at a

hearing will have equal weight to written comments submitted during the open public comment period to DEP.

### **III. Community Input**

The community within an EJ Area and Area of Concern may benefit from enhanced public participation by being provided the opportunity to ask questions and make comments that could impact the conditions of a permitted activity. Input from the community helps to ensure an equitable decision-making process.

Enhanced public participation may mean translation of materials or interpretation services prior to and during public meetings where the relevant EJ Population uses a primary language other than English in the home.

#### **A. Input Before DEP Permit Review**

1. Many of the decisions that affect a community's environment will be made at the local or municipal level prior to DEP final agency action. It is important that DEP assist in helping community members understand the value of being involved at all phases of the decision-making process, which often begins before DEP receives a permit application. Moreover, some concerns a community may have regarding a proposed activity, such as zoning, may not be in DEP's jurisdiction.
2. Residents are encouraged to review their county comprehensive plans and municipality zoning ordinances and involve themselves in local planning decisions.

#### **B. Input During Permit Review**

1. DEP should support communities by proactively working with community liaisons to provide information to communities so that they are able to understand what is being proposed in the permit application; and enable communities to interface with the permit applicant and DEP to understand the impacts and ask questions; provide feedback to the permit applicant; and provide feedback to DEP through official public comments.
2. Following publication in the Pennsylvania Bulletin, permit application documents are available upon request, and additional summary documents may be provided to help with comprehension of the materials.
  - a) Both the applicant and DEP will provide contact information where questions may be directed.
  - b) Individuals may wish to receive eNotice alerts when permit applications are received, or permit actions are taken, in their communities.
3. The public comment period provides the opportunity for individuals, organizations and businesses to provide comments to DEP on the proposed permit application. The Department will consider all public comments prior to making a determination and will provide a substantive response to each comment once the formal public comment period has concluded. DEP's responses to public comments will be provided to all commenters through a Comment and Response document, a Record of Decision and other relevant documentation associated with the application decision. DEP will not make a final

decision on a permit until all public comments received during the public comment period have been considered.

### **C. Input Following a Permit Decision**

1. DEP staff should update the community via notifications when a permit decision is rendered. The Comment and Response document will be made available to the public at the time the Department renders a decision on the permit application, or earlier if appropriate.
2. DEP staff should provide the community with documents or upload to the website substantial post-permit decisions and documents including, but not limited to: inspection reports, findings, notices of violations, and consent agreements.
3. DEP should update the community via notifications when substantive changes are made to the permit, including when a permit renewal is applied for, or when a permit is modified or transferred to another entity.
4. The public may request information of DEP informally via email, phone, file review, or by submitting a formal Right to Know request. DEP's Regional Directors, District Mining Directors, Community Relations Coordinators, and other office staff in coordination with community liaisons and legislators may determine which methods will be appropriate based on the characterization of the materials, the number of requests received, as well as other criteria.
5. Enhanced public participation may include use of alternative media outlets such as community or ethnic newspapers, websites, social media posts, use of alternative information repositories, and translation of materials or interpretation services prior to and during public meetings where the relevant EJ Population uses a primary language other than English in the home.

### **D. Filing a Complaint**

A formal complaint concerning the operation of a permitted facility may be made by completing the online Environmental Complaint Form or by calling 866-255-5158 or the appropriate DEP Regional Office. DEP staff will follow up on the complaint. The OEJ may assist communities with reviewing inspection reports, enforcement documents and providing assistance when filing a complaint.

## **IV. Oil and Gas Public Engagement**

Due to the presence of substantial oil and gas operations in the state, DEP has developed a public participation process specifically for the unconventional Oil and Gas industry to engage with environmental justice communities where oil and gas related operations are sited or proposed. The intention of this process is to encourage operators to provide information about planned and ongoing activity, and for local communities to engage in the discussions and decisions driving environmental and economic impacts that affect them. This initiative only applies to unconventional oil and gas drilling operations. The proposed public participation policy used for trigger permits cannot be made applicable to unconventional oil and gas drilling due to the 45-day permit review period specified by the Pennsylvania Legislature.

### **A. Public Engagement**

1. Drilling Operations – The Oil and Gas program in collaboration with the Office of Environmental Justice should conduct an annual assessment of operators with anticipated or actual drilling operations in EJ areas.
2. Project Overview - Each operator identified in the annual assessment should develop an overview of projects that explains the scope and operations of the projects in terms understandable to a considerable majority of readers within an EJ Area. It should address the purpose and location of the proposed activity or facility, timing of operations and anticipated impacts. The project summary should be reviewed by DEP for accuracy. These summaries may also be used in other aspects of public outreach.
  - a. DEP should distribute the project summary at the meeting, email it to local government authorities and to meeting participants and post on the DEP Website.
  - b. In areas where the predominant language spoken or read is not English, the information should be made available in both English and the predominant language spoken or read in that community on DEPs website.

#### B. Community Meetings

1. The DEP should invite operators identified in the annual assessment as having anticipated drilling activity to participate in a community meeting. The DEP should outreach to identified operators to plan meetings in communities impacted by this activity. At this meeting, DEP should convene local government officials, the operator and community stakeholders to review the operator’s planned activities for the year. The meeting may be held virtually or in person or using both methods as necessary.
2. DEP should transmit notes from the Community Meetings to all participants via email within 30 days of the meeting, post Community Meeting notes on the Website and submit the notes for posting with the relevant local government authority.

#### C. Education

1. DEP should develop a Webinar outlining the oil and gas permit process, access to permits through eFACTS and policies. The Webinar should be posted on the DEP Website and revised annually.
2. DEP will develop an analysis of EJ Areas on the Oil and Gas public mapping tool to ensure information about EJ is up to date.

### V. Inspections Compliance, and Enforcement

#### 1. Prioritizing Inspections

DEP will look to prioritize inspections in EJ Areas or areas where environmental and public health conditions warrant increased attention. DEP will analyze federal and state models to understand the factors that determine where violations are most likely to occur. DEP will analyze inspection and compliance data based on facility type, compliance history, and other factors to prioritize inspections. Prioritized inspections will allow DEP to target resources to

minimize violations and disproportionate environmental and public health impacts. Once developed, DEP will also report analyzing methods and inspection prioritization.

## **2. Prioritizing Compliance**

DEP will prioritize compliance in EJ Areas or areas where environmental and public health conditions warrant increased attention. DEP will analyze federal and state models to understand best practices for improving compliance and enforcement in EJ Areas. DEP will analyze compliance data based on facility type, compliance history, and other factors to target resources to minimize violations and disproportionate environmental and public health impacts. Where violations have created adverse health or environmental impacts in EJ Areas, DEP will enforce compliance to the greatest degree applicable. Once developed, DEP will also report analyzing methods for prioritizing compliance and enforcement.

## **3. Community Environmental Projects**

DEP prioritizes implementing the Policy for the Consideration of Community Environmental Projects in Conjunction with Assessment of Civil Penalty (Document Number 012-4180-001) in Environmental Justice Areas. OEJ will develop and maintain a list of community-based projects which may be used by agencies and external parties when considering opportunities for mitigation projects for the Community Environmental Project initiative.

# **VI. Community Development and Investments**

## **A. Grants**

The DEP Grants Management Policy prioritizes environmental justice in grantmaking. In particular, the DEP Grants Management Policy provides additional consideration for applications that support community-driven projects that emphasize environmental justice and are located in EJ Areas. DEP grant guidance documents should include an overview of Environmental Justice and grant applications should provide preference in the grant evaluation and scoring process for applications located in an EJ Area or emphasize environmental justice.

DEP will develop systems for tracking and reporting grants submitted and awarded in Environmental Justice Areas and grants that emphasize environmental justice. Tracking and reporting will be conducted annually to identify gaps and make improvements in funding for Environmental Justice. DEP will have these systems in place by the next year funding cycle for these grant programs following the effective date of this policy.

## **B. Promoting Brownfields Redevelopment**

DEP strongly supports the assessment, clean up and sustainable reuse of brownfield properties. Redevelopment of brownfields can play a critical role in environmental, social, and economic improvement in Environmental Justice communities. DEP will continue to prioritize Environmental Justice Areas in its collaborative work with state, local, and federal agencies, non-profit, and private

sector partners. DEP will work with partners on training, technical assistance, capacity building, and strategic planning and identifying funding for brownfields redevelopment.

### **C. Higher Education Environmental Partnership Program (HEEP)**

OEJ will continue implementation of the Higher Education Environmental Partnership Program (HEEP). HEEP creates a partnership between academic institutions and local communities to provide technical assistance and training. HEEP allows Universities to bring resources to address community concerns while providing Universities with the opportunity to apply their studies on the ground. OEJ will facilitate and foster connections between academic institutions and communities of need.

## **VII. Policy Updates**

This Policy will be reviewed by the DEP Secretary at least every four years to determine whether revisions are necessary. The policy should be updated in accordance with the latest resources at the federal, state, and local levels, as identified in the OEJ annual reports. In particular, analysis of newly passed laws, improvements in the identification of EJ Areas, and feedback on the existing policy should be reviewed for updates and improvements. There should be a public involvement process involved in these policy updates, with particular consideration given to hearing from communities experiencing environmental injustice. There should also be a formal public comment and engagement process as part of the policy update. The Secretary will review the Policy, and implementation and after public engagement, may determine to amend the Policy.

## Appendix A Trigger Permits

Trigger Permits are for those DEP regulated activities that may lead to significant public concern due to potential impacts on human health and the environment. Application reviews for these permits warrant heightened scrutiny by DEP and an enhanced public participation process.

1. NPDES (water) Permits
  - A. Industrial wastewater facilities (discharge at or above 50,000 gallons per day)
2. Air Permits
  - A. New major source of hazardous air pollutants or criteria pollutants
  - B. Major modification of a major source (changes that could result in an increase in emissions or a facility expansion)
3. Waste Permits
  - A. Landfills and other disposal facilities
  - B. Transfer stations
  - C. Commercial incinerators and other waste processing facilities
  - D. Commercial hazardous waste treatment, storage and/or disposal facilities
  - E. Major modification of the above (changes that result in an increase in capacity or a facility expansion)
4. Mining Permits
  - A. Bituminous underground mines
  - B. Bituminous and anthracite surface mines
  - C. Large industrial mineral surface mines
  - D. Coal refuse disposal
  - E. Large coal preparation facility
  - F. Revision of the above permits (revisions that involve additional acreage for mineral removal)
  - G. Using biosolids for reclamation
5. Land Application of Biosolids
  - A. Individual permit
6. CAFO (Concentrated Animal Feeding Operation)
  - A. New or expanded operation of greater than 1,000 Animal Equivalent Units (AEUs)
  - B. Concentrated Animal Operation of greater than 300 AEUs in Special Protection Watershed
  - C. Concentrated Animal Operation with direct discharge to surface waters.
7. Oil and Gas Permits
  - A. Drill and Operate Permit
  - B. Drill and Operate Change in Use



## 8. Opt-in Permits

Permits not specified above, including renewals of the above permits, but not individual permits, may serve as Opt-In Permits if they involve the following project facilities: (1) major source of air pollution; (2) resource recovery facility or incinerator; (3) sludge processing facility, combustor, or incinerator; (4) sewage treatment plant with a capacity of more than 50 million gallons per day; (5) transfer station or other solid waste facility, or recycling facility intending to receive at least 100 tons of recyclable material per day; (6) scrap metal facility; (7) landfill, including, but not limited to, a landfill that accepts ash, construction or demolition debris, or solid waste; or (8) medical waste incinerator. In addition, any permits not specified in this Policy as trigger permits or determined to be an Opt-In permit including but not limited to General Permits, renewals or revisions, may serve as Opt-in Permits if DEP believes they warrant special consideration.

In making its determination for including Opt-in Permits, DEP should consider: 1) identified community concerns; 2) present or anticipated environmental impacts; and 3) reasonably anticipated cumulative impacts. The applicant should not be required to provide information to DEP regarding neighboring facilities in order to determine whether the permit should be an Opt-in Permit. DEP holds the responsibility of determining which permits will be Opt-in permits. DEP should initiate and perform this analysis based on information and tools at its disposal, including a review of information from the applicant's facility or project and an assessment through EJ Areas Viewer (<https://dep.pa.gov/ejviewer>) and other mapping tools developed by DEP and Commonwealth agencies that demonstrate environmental and health conditions in EJ Areas. The EJ Areas Viewer is an online mapping tool that shows EJ Areas as defined by this policy, DEP permitted activities, EPA permitted activities, and various demographic and health data obtained from state and federal agencies. The EJ Areas Viewer is connected to DEP's eFACTS database and provides up-to-date permitting, inspection, and compliance information on facilities permitted by DEP.

EJ Areas Viewer should be used to assist in making informed decisions regarding all aspects of environmental justice.

The OEJ, in consultation with the appropriate Regional Director, Bureau Director, District Mining Manager, Program Manager, and Community Relations Coordinators should decide whether an application should be an Opt-in permit.