



August 28th, 2018

Technical Guidance Coordinator, Policy Office
Department of Environmental Protection
Rachel Carson State Office Building
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**RE: PA DEP Revised Environmental Justice Public Participation Policy
(DEP ID: 012-0501-002)**

These comments are written on behalf of Philadelphia Climate Works, a labor-community coalition in Philadelphia advocating for local policies to reduce carbon emissions by creating high-quality jobs and tangible social benefits for a diverse and growing number of impacted constituencies. We'd like to thank the Department of Environmental Protection for updating the Environmental Justice Public Participation Policy and for the opportunity to offer comments. As a coalition that focuses on environmental and climate justice issues, Philadelphia Climate Works represents stakeholders who may be impacted by this new policy and the individual permit process.

We appreciate the robust changes reflected in the Background (Section 1, B) that more accurately describes the burdens endured by EJ communities and the considerations that the Department must apply to ensure meaningful public participation throughout the development, implementation, and enforcement of environmental policies, regulations, and laws. The Department notes in the Background that, "fair treatment [of all people] means that no one person or community should bear a disproportionate share of negative environmental impacts," (Section I, B, Paragraph 1) and that "increasing meaningful public participation will mitigate adverse impacts in predominantly minority and low-income communities."

Philadelphia Climate Works agrees with this viewpoint, and thus urges the Department to adopt the following policy suggestions that will help the Office of Environmental Justice mitigate adverse impacts to communities like ours and increase the public's understanding of environmental permit reviews and potential impacts to their health and safety.

However, to truly improve meaningful participation, we urge the Department to prioritize rebuilding trust with the EJ communities it serves by fully integrating the concerns highlighted by the communities they've engaged with in the permitting process and beyond. The Department needs to emphasize transparency and regulatory accountability for permitted activities, which means that considerations for EJ communities need to extend beyond the steps for public

participation in permitting and include meaningful participation in decision-making and full engagement in post-permitting activities, like violations and penalties.

Summary of Comments to Draft EJ Policy

The goal of this policy is “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,” (Section I, B, Paragraph 3) but the ability of our communities to meaningfully engage in this decision-making process is limited by the narrow scope of this policy, which provides public participation opportunities for communities without:

- making this policy a requirement with regulatory weight;
- appropriate measures to limit permitted projects impacting EJ communities;
- accountability for applicants to do their due diligence in engaging impacted communities;
- consistent outreach, notices and educational efforts before, during, and after the permitting process by the Department;
- outreach and coordination between municipalities and the Department; or
- a list of trigger permits that accurately reflect risks and the concerns of the community.

Strengthening the Policy

The policy includes a disclaimer that it is “not an adjudication or a regulation, and DEP does not intend to give this document that weight or deference.” The Department should instead require all applicants to adhere to this policy and it should be given regulatory weight; this policy should not be discretionary or elective for applicants and DEP.

The language that is currently used in the policy suggests that the steps outlined in the Process for Applicants and DEP (Section II, B) are merely suggested activities that the average project applicant may opt-out of. This choice in language (i.e. the applicant *should*, or *may* vs *must* or *will*) has the potential to significantly limit opportunities for community members to be informed about a potential project being sited in their community in a timely, coordinated fashion. We urge DEP to revise the disclaimer and make the suggested community outreach steps for applicants requirements.

Limiting Impacts to EJ Communities

The overall purpose of this policy is too narrow. The Department is encouraging EJ communities to engage with the permitting process without any indication that their meaningful participation in the process will impact the decision-making on the permit. The Department indicates that Trigger Permits, which spotlight activities that have led to significant public concern for toxic exposure that could harm human and environmental health, and Opt-In Permits, warrant “heightened scrutiny” from DEP. However, the Department has not indicated in any section of this policy that the purpose of identifying Trigger and Opt-In Permits is to limit those permitted activities in an EJ area.

Without an explicit purpose to protect communities from exposure to environmental hazards or a clear indication that this policy can affect permitting decisions, residents living in environmental justice areas may be discouraged to engage with the public participation process.

The Department should fully implement its charge to protect Pennsylvania's air, land and water from pollution and to provide for the health and safety of the residents of Pennsylvania through a cleaner environment, by expanding the OEJ and this policy's purpose to actually protect our most vulnerable communities. By expanding the mission of the OEJ and for this policy with clear criteria for limiting regulated activities that increase toxic exposure that is accessible, the Department will send a message that the concerns and knowledge held by EJ communities will be seriously considered in permitting decisions, which can improve trust between the Department and the communities it serves.

Requirements for Applicants

The Department should provide more stringent requirements for applicants to engage EJ and impacted communities with outreach and education. Applicants should be required to hold pre-application meetings with the communities within the Area of Concern, since many community members come into the public participation process after decisions have been made regarding siting and permitted activities. Residents of the Area of Concern should have the opportunity to engage with the applicant directly as early in the permitting process as possible. Applicants should also be required to distribute robust, understandable information to the public, including the project summary, purpose and location of the proposed activity or facility, anticipated impacts, maps, fact sheets, and other supporting resources in the languages used by the community impacted. The Department should be required to review these for accuracy and help guide the applicant to distribute information as widely as possible.

More Robust Outreach and Education Efforts from DEP

Currently, the Department places the onus on communities to request for assistance, permit application materials, and educational resources. This policy should set stronger guidelines and requirements for making information accessible to EJ communities. EJ communities may not be able to access information or even know that they could reach out to the Department for additional assistance. The Department should place a high importance on making any information related to an applicable permit as widely available as possible and targeted specifically to reach the Area of Concern and the community. That means that DEP should prioritize forming meaningful and transparent relationships to liaisons to the community, since the Department is the primary ally to these communities.

All information pertaining to the permitting process and application materials should be available online and in hard copy at convenient locations, such as municipal buildings, libraries, recreation centers (along with communication with municipalities to include notices during monthly borough meetings), community-based organizations and local businesses like markets and convenience stores in the Area of Concern.

Regular updates should be shared widely before, during, and post-permitting, especially if the notice is for a permit violation. The language currently used is loose and noncommittal (i.e. the Department *should* vs *will*). We suggest that DEP provide clearer and more robust steps for providing access to information for residents living in environmental justice areas.

Engagement and Education for Municipalities

The Department's community outreach efforts should also engage the local level by also educating municipalities and local policymakers on environmental justice and DEP's role. In the policy, DEP encourages community members to get involved on the local and municipal level since decisions regarding projects often begin on that level first. However, DEP should make this policy and all information related to the EJ community status of the area, and the limitations of DEP to have jurisdiction over the proposed projects in the area, available to communities by sharing digital and hard copies, setting up educational meetings with municipal leaders, and supporting municipalities to integrate environmental justice policies in local policies. Municipal leaders are more equipped to engage their community members on the local level on zoning and community planning, and can also play a greater role in connecting DEP with the community for state level public participation.

Miscellaneous Comments

DEP should expand their list of trigger permits to include more air quality and oil and gas permits in response to the concerns that dozens of community participants shared during [OEJ's Listening Sessions](#). The revised plan removed two air quality permits (SFMAP and SMAAT) and added two oil and gas permits (DOWDR and DOWCU).

Conclusion

We thank the Department for the opportunity to comment on the draft Environmental Justice Public Participation Policy, and we appreciate the work that was done to update this policy. We hope that our comments will further help the Department to improve its coordination with applicants, communication with residents in EJ communities and relevant municipalities, and reduce barriers to participation. In addition, we hope that our suggestions encourage the Department to institutionalize greater authority to limit impacts to EJ communities and prioritize the protection of the health and safety of all Pennsylvania residents. We look forward to viewing the final policy and to future opportunities for public participation.

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