

November 30, 2023

Pennsylvania Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222

Re: Environmental Justice Public Comment

Background

Many individuals in Pennsylvania are impacted by legacy pollution. Legacy pollution sites are environmental hazards and can impact both the environment and human health. In PA alone 1.4 million people live within a threat radius of a facility. The communities most impacted from unconventional oil and gas drilling (UOGD) are often the same communities that experienced coal mining and the fallout of that, as well as other previous industries that are often found in these communities.

In 2022 a new study released from Berkeley Public Health (Gonzalez, D.K.X., Nardone, A., Nguyen, A.V. et al., 2022) examined community exposure to oil and gas wells and the potential overlap with historically redlined neighborhoods. It is often understood how environmental problems can disproportionately impact communities of color or lower socio-economic status, but it has not always been understood how this came about or what the cause is.

In the 1930s, in response to the Great Depression, the federal Homeowners' Loan Corporation or HOLC reviewed neighborhoods and gave them a grade based on the risk they felt there was in a real estate investment. This led to neighborhoods that consisted of low-income individuals, immigrants, or people of color being mapped in red, which is what led to the name of redlining. Gonzalez and colleagues looked to examine the historic redlining and if it correlated with where oil and gas development infrastructure was built.

The results of this study clearly indicate the consideration that was given to the makeup of the district when determining where to build infrastructure. Cities that received a grade of A had 647 wells, cities that received a grade of B had 2,581 wells, cities with a C grade had 5,051 wells and cities graded with a D had 6,288 wells. Ultimately, redlined neighborhoods had nearly twice the density of oil and gas wells as compared to those who were not redlined.

This study is just a recent example that exemplifies the need for comprehensive environmental justice policy to protect all individuals regardless of race, socioeconomic

status, or any other factor that has been used in the past to exploit communities by placing larger amounts of infrastructure in their backyards.

Introduction

We commend the DEP for striving to create a more accessible and responsive public comment process and for wanting to bolster protections for environmental justice communities. We are, however, generally concerned that this proposed policy does not have the ability to create actual change and improve the environmental pollution impacts in EJ communities. It is not clear in reading this proposed policy how the policy will lead to positive change on the ground for residents.

Article I, Section 27 of the PA Constitution says, “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come.” We believe it is the DEP’s mission to uphold this and any EJ policy should be tied directly back to this.

Additionally, we are concerned by whether the initiative for greater community engagement is genuine. If communities see no value or results from their participation, they will not participate. In our experience, lack of participation is not due to lack of awareness. People in the communities where we work are not uninformed, but often feel that participation in meetings and hearings is futile. Participation can be a costly investment. Individuals in EJ communities will not and sometimes cannot take on these costs if there is no chance of impacting the result.

Overall, this policy does not mandate the integration of environmental justice into the system of the DEP’s environmental permitting and regulations. The onus is still on EJ communities to fight for the Constitutional rights guaranteed to all citizens of Pennsylvania. We feel strongly that we should not be pursuing environmental justice by putting the burden on the community to seek out DEP for help. For example, instead of making EJ communities come to the DEP for grant money to address past, current, or future environmental harms, the DEP should focus on what they can do to decrease environmental harm burdens in EJ areas. DEP should have policies in place that identify and prevent situations that perpetuate or create environmental injustice. We would like to see this policy be enforceable with clear actionable next steps being taken by the DEP to change the current system that perpetuates the undue burden of environmental harm on these communities.

Specific Concerns & Recommendations

There are a variety of concerns that the groups have regarding the current proposed EJ policy and these concerns are outlined below.

1. With regards to “opt-in” projects, we are concerned that without establishing criteria for whether to apply the EJ process to projects that fall into the “opt-in” category, decisions to “opt-in” a project may be heavily influenced by how loudly the community objects, rather than consideration of how it affects environmental justice. *We recommend that best practices are to establish criteria for the evaluation of projects on an “opt-in” list with the help of EJ communities that live in the vicinity of those types of projects.* For example, criteria for opting in an unconventional oil and gas development well site might be that the project will increase health burdens on the community and the project will expose the community to more than 1 UOGD well within 5 miles.
2. The outlined proposal states that, “Alternate methods of calculating community environmental burden may be proposed by applicants in order to satisfy the needs of the EJ Policy if they provide the same or greater level of protection. If an applicant wishes to propose another model of calculating community environmental burden that is similarly comprehensive to PennEnviroScreen, they can submit that method to the DEP for review and analysis.” We find this to be potentially concerning, especially due to the lack of clarity on what the review process would look like for the alternative methods. We recommend that this review process be developed with the input of EJ communities. In addition, communities should have the opportunity to propose alternate methods for calculating the environmental burden on the community, and the opportunity to appeal the EJ designation of a community.
3. Under enhanced public participation (page 6), it indicates that enhanced public participation is not ensured for the projects in EJ areas, but rather DEP has the discretion about whether to instigate the enhanced public participation process. We find this problematic as it leaves the decision regarding the level of community involvement up to the DEP staff, and it is not clear how this would be decided. Therefore, this provides the community with little reassurance that actions are being taken in their best interest.
4. Within the technical support section (page 12), there is a lack of information regarding where resources will be found and how they can be accessed by the public. We recommend that the DEP create a webpage resource with a list of resources, that DEP commit to making the list, posting it publicly, and maintaining it. Furthermore, the policy should describe proactive and concrete steps that are planned to help identify and connect people to technical assistance.
5. On pages 16 and 17, there is discussion of climate initiatives, but the Climate Action Plan is not specifically mentioned. The group advises that there should be

discussion of EJ issues in the Climate Action Plan and that there should be specific goals related to the interconnectedness of climate change and EJ communities.

6. Within the community development section under grants, we appreciate the noted areas for change but worry about the followthrough and practicality. We recommend that the DEP identifies specific benchmarks similar to the Justice 40 federal initiative (40% of federal funding to projects that serve EJ communities) in order to continually move towards a better future and see measurable change. If it is not feasible to establish benchmarks by the time of final adoption of this policy, setting a timeline in which the benchmarks will be identified would be beneficial.
7. In the community development section under Brownfields, consistent with the bulk of the policy, we see a lack of an identification of goals set and a lack of a commitment to evaluating if those goals have been met.
8. A communication strategy for this policy should be required and attached as an appendix. The communication strategy should focus on two-way communication that is capable of establishing dialogue with DEP as well as making announcements from DEP. In addition, a targeted plan focusing on outreach to EJ communities would be beneficial especially around areas that are to receive new permits and have yet to receive technical or financial assistance from DEP. We recommend that minimum targets, more specific actions, and relative timelines/target dates are set for the completion of these actions.
9. In the pre-project community outreach section (page 7-8), outreach should be required in EJ areas and not optional for applicants. We recommend that standards apply to the information shared by the applicant with the public at these events to ensure that the public is not receiving a highly edited and biased presentation of the applicant's project. Pre-project outreach events organized by the applicant and attended by the DEP risk communicating that the DEP is already in support of the project being applied for and may discourage public feedback and discussion and mislead people. There needs to be independence between the applicant and DEP in conversations with the public.
10. In reference to the language access plan (page 8), we would like to see DEP attach that as an appendix. We believe this is an integral part of establishing EJ policy and the public should be able to review it and consider how it impacts this policy.
11. Regarding permit applications (page 8-12), applicants should be required to submit a screenshot of their assessment of the Area of Concern as displayed on

the PennEnviroScreen tool. This would allow DEP staff to confirm that the applicant's assessment of EJ status in the given area is correct.

12. Additionally, with the notice of application (page 11), related public health information should be required including the public health impacts associated with the given type of infrastructure, type of emissions etc. There should be minimum requirements about what to include on this notice that are clearly informed by public health and environmental health issues associated with the given type of permit.
13. Regarding post-authorization inspections, compliance, and enforcement in EJ areas, all updates should be posted for the public on the EJ Project Portal. Individuals and organizations should not have to file a right to know in order to access that information. Additionally, we strongly suggest consideration be given to creating a ceiling for permits in EJ areas to ensure no further environmental harm can come to a community.
14. In regards to inspections (page 13), the DEP should require notification to the community if there are environmental or public health impacts as a result of a violation. Additionally, there needs to be a timeline for inspecting hazardous conditions that is more specific than "ASAP" as currently outlined in the document. We feel it is important that any hazardous situation receive priority.
15. We would like to see additional possible actions that could be taken on behalf of the DEP to ensure protection of EJ communities. This could include things like violations in EJ areas getting the maximum fine allowable by law.

General Concerns & Recommendations

1. Generally speaking as a non-binding policy, we have concerns that there is no assurance that this policy will be followed now or by future administrations. We believe the DEP should work with the legislature to enact laws which would authorize the DEP to enforce the provisions in this policy. If justice is to be pursued, DEP must be prepared to explicitly show exactly where it could be doing more if the statutes and regulations would allow. We believe the policy should state DEP's intent to identify and eliminate restrictions that hinder DEP's fulfillment of environmental justice policy goals.
2. We find the language throughout the document to be noncommittal, leaving communities to understand that their environmental fates are determined at the whim of hidden decision-making strategies. DEP should change discretionary

language throughout the Policy (e.g. use of "may", "should", "could") to compulsory language (use instead "will" or "must") that confirms the department's commitment to centering environmental justice in its operations.

3. The DEP's commitment to achieving environmental justice is unclear due to a lack of clear goals throughout the policy. DEP must clarify goals throughout the policy, adding quantitative and qualitative evaluation metrics capable of measuring progress toward goals, assessing what activities are successful in furthering goals, and triggering reevaluation of goals and methods over time.
4. The definition of "Area of Concern" is ultimately an arbitrary number with no foundation in science or experience. Direct environmental impacts (emissions into air, water, soil; noise and light pollution, etc.), measurable health consequences, and economic disruptions are commonly observed over much larger distances and vary with the type of project. DEP should specify a larger *Area of Concern* as its minimum. Best practice would be to use an Area of Concern specific to each type of project and that is informed by the latest understanding and research on the impacts of those projects. These Area of Concern definitions should be reevaluated on a planned schedule in order to incorporate the most current knowledge on impacts.
5. The policy needs to acknowledge and address financial and other barriers to public participation that members of EJ communities often face. DEP needs to consult with EJ communities to identify these barriers and require that measures be taken to reduce these barriers whenever a public hearing is held in an EJ area, whether hosted by the DEP or an applicant. DEP should consider providing cash stipends, transportation, child care, and other accommodations (in the same way that Language Access has been codified). Anytime that DEP requests the input, participation or guidance of EJ community members as liaisons or board members, there should be budget funding to encourage participation that does not unduly burden community members.
6. There are too many opportunities for applicants to influence how the policy affects outcomes (they can suggest alternative methods, they can choose to engage in activities suggested by the policy etc.) and not enough opportunities for communities to engage. We feel that EJ communities should be able to nominate or appeal designation as an EJ community with alternate methods.
7. The policy doesn't appear to address existing permits and facilities that are already active in EJ areas and how they will be impacted by this policy. What are the EJ policies that apply to them? Are they grandfathered into the policy or would they have to meet the same expectations? What opportunity do individuals in EJ communities have to participate in the future of those decisions? We believe this is an area lacking clarity in the current policy and further information needs to be provided.

8. The policy is unclear on how it uses the definition of cumulative impacts to prevent further exposures in already overburdened communities. After being used in the definitions section, it does not appear in the document. We understand that cumulative impacts go into defining a community as EJ, but there is no statement about how cumulative impacts will be addressed in permitting, violations, and the general application of DEP's policy into oversight of applicants. For example, there is a bill modeled after NJ legislation that requires environmental assessment every time a project is proposed in an EJ community to determine whether they can tolerate any additional burdens. We believe this needs to be clarified and something needs to be added to address this.

The following groups have reviewed and signed on in support of these comments prepared by Protect PT:

Allegheny County Clean Air Now (ACCAN)
Beaver County Marcellus Awareness Community (BCMAC)
Breathe Project
Clean Air Council
Climate Reality: Pittsburgh & Southwestern PA Chapter
Community Partners in Asthma Care
CREATE Lab, Carnegie Mellon University
Environmental Health Project
Environmental Integrity Project
Fractracker Alliance
Mountain Watershed Association
Physicians for Social Responsibility PA
Protect Elizabeth Township
Rail Pollution Protection Pittsburgh (RP3)
Sunrise Movement Pittsburgh
Three Rivers Waterkeeper
Women for a Healthy Environment