

May 10, 2022

Office of Environmental Justice  
Department of Environmental Protection  
P.O. Box 2063  
Harrisburg, PA 17101

**Re: Environmental Justice Policy Revision DOCUMENT NUMBER: 012-0501-002**

Speaking on behalf of the Environmental Health Project (EHP), I would like to present our perspective on the Pennsylvania Department of Environmental Protection's (DEP's) proposed Environmental Justice Policy revision. EHP is a Pennsylvania-based organization focused on the public health consequences of shale gas operations as well as the related petro-chemical buildout. Relevant to this hearing, we are concerned about the environmental justice (EJ) circumstances in communities that bear the impacts of shale gas operations, such as well pads, compressor stations, injection wells, and waste sites that receive fracking waste. It should be noted that in addition to the impacts in the immediate communities, research has shown that emissions from shale gas operations make their way to EJ communities far afield from the sites themselves.

EJ communities are already affected by racial or socio-economic burdens but are also often burdened with existing health conditions and risks of future disease. Being below the federal poverty line increases risk of mental illness, chronic diseases, increased mortality, and lower life expectancy. Risks for heart disease, diabetes, and obesity are higher among those with the lowest income and educational levels. Additionally, there are racial disparities in health, irrespective of socioeconomic status. For example, African American women have higher pregnancy-related mortality rates compared to white women and have higher odds of preterm and low-birthweight births. Infant mortality is higher for blacks than whites. These are not insignificant problems for families. Additionally, children born preterm or low birthweight can require a lifetime of health needs that are costly both to families and to state governments.

We appreciate the DEP's attention to opening communications between its OEJ office and community members and hope that it carries out this commitment in good faith. It is vital that community members and grassroots organizations have the opportunity to be *meaningfully* heard in their concerns about environmental injustice in the face of industrial activity. Being heard, however, it is not enough. EJ communities don't just need to provide input and to know what industrial activities are moving in and what they will be emitting. They need their government to step in and provide a firewall between company profit-seeking and the community's health needs.

EHP's primary concerns with the proposed policy revision are:

1. *Trigger permits* intended to give EJ communities a voice in the decision-making process do not apply to oil and gas permitting.
2. Opt-in permitting in EJ communities should include waste sites that accept fracking waste.
3. Communication does not necessarily mean a productive exchange of perspectives and evidence.
4. Communication itself is not the end goal.
5. Intensifying inspections, compliance, and enforcement practices need to be adequately funded.

Trigger permits. Trigger permits are an important part of the DEP's EJ plan. They are permit applications that raise particular concerns about communities already at risk. They prompt extra attention and community stakeholder input. The policy reads: "All permit applications subject to 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." The policy further reads: "Public hearings are formal, structured proceedings that give the public the opportunity to provide verbal testimony on a permit application under review by DEP." The problem with this is that Pennsylvania law requires the DEP to act on oil and gas permits within 45 days of receiving an application. This, the DEP acknowledges, makes the trigger permit process out of reach in shale gas communities. We understand that this 45-day directive comes from the General Assembly, but we believe that the DEP can still do better by the OEJ. We hope that the DEP will press legislators not to leave EJ communities out of the process by tying them to the 45-day window. Short of that, we hope that the DEP will find meaningful ways to pay close attention to circumstances in EJ communities faced with shale gas development and factor those circumstances into permitting decisions.

Opt-in permits for waste. The opt-in permit is a "permit that otherwise does not qualify as a public participation trigger permit, but [that] DEP believes warrants special consideration and enhanced public participation based on identified community concerns, present or anticipated environmental impacts, or reasonably anticipated significant adverse cumulative impacts." As with the trigger permit, communities housing waste sites that take fracking waste should warrant special consideration. Fracking waste can include toxic chemicals and radioactive material. The fracking waste issue is a difficult one for the DEP because *hazardous waste* is not necessarily labeled as such and therefore can be stored in an unsecure and dangerous manner. The communities that store this waste are sometimes EJ communities that can be exposed to toxic emissions through both air and water pathways.

Open communication. Recognizing the conditions of environmental injustice occurring in shale gas hosting communities, the EJ policy "intends to encourage operators to provide information about planned and ongoing activities, and for local communities to engage in the discussions and decisions driving environmental and economic impacts that affect them." This is a step

down from trigger permits. Here, DEP will distribute the project summary at a community meeting and then post it. Communities may get information from the operator and from DEP prior to, or within, that 45-day period, and it is important for communities to know more about the exposures they will face. But the problems we see with this process include (a) the DEP is *encouraging* rather than *requiring* operators to provide relevant information, and (b) the compressed timeframe leaves little room for deliberation about specific permits.

Communication alone is not enough. In our recent white paper ("[Pennsylvania's Shale Gas Boom: How Policy Decisions Failed to Protect Public Health and What We Can Do to Correct It](#)"), we note the importance of communities having access to the decision-making process, but granting access in and of itself does not protect them from disease. If community members, perhaps armed with evidence from academic or government publications about the dangers posed by shale gas sites, make a solid case for denying the permit, the DEP, through its EJ program, should not grant the permit. The onus should be on the operator to prove that its new facility will not cause undo symptoms and diseases.

Inspections, compliance and enforcement. The proposed revision is concerned with prioritizing inspections, compliance, and enforcement in "EJ areas or areas where environmental and public health conditions warrant increased attention." We support these goals. The proposed policy revision points to a number of ways the DEP could tackle industry violations that endanger the public's health. We expect that this effort is applicable to oil and gas sites and operators. We know that, for this to be effective, the DEP needs adequate funding from the General Assembly.

In an effort to make good to the community, DEP proposes that it will give money from operator fines directly to that community if it has a "shovel ready" project. If administered appropriately, it seems like a reasonable policy. The fines, however, must be considerably burdensome to the operator and truly serve as a deterrent. If not, we fear that it sets up the possibility that the operator can buy the favor of the community by seeming to invest in a community project.

Thank you for considering my comments.

Respectfully yours,

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