

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
POLICY OFFICE**

DOCUMENT ID: 012-0501-002

TITLE: Environmental Justice Public Participation Policy

EFFECTIVE DATE: April 24, 2004

Minor revisions were made to the appendices on December 20, 2004.

AUTHORITY:

The Air Pollution Control Act, 35 P.S. §§4001, et seq.

The Solid Waste Management Act, 35 P.S. §§6018.101, et seq.

The Clean Streams Law, 35 P.S. §§691.1, et seq.

The Storage Tank and Spill Prevent Act, 35 P.S. §§6021.101, et seq.

The Hazardous Sites Cleanup Act, 35 P.S. §§6020.101, et seq.

The Safe Drinking Water Act, 35 P.S. §§721.1, et seq.

The Municipal Waste Planning, Recycling and Waste Reduction Act, 53 P.S. §§4000.1, et seq.

The Infectious and Chemotherapeutic Waste Law, 35 P.S. §§6019.1, et seq.

The Surface Mining Conservation and Reclamation Act, 52 P.S. §§1396.1, et seq.

The Noncoal Surface Mining Conservation and Reclamation Act, 52 P.S. §§3301, et seq.

The Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. §§1406.1, et seq.

The Oil and Gas Act, 58 P.S. §601.101, et seq.

The Coal Refuse Disposal Act, 52 P.S. §§30.52, et seq.

The Pennsylvania Sewage Facilities Act, 35 P.S. §§750.1, et seq.

The Dam Safety and Encroachments Act, 32 P.S. §§679.101, et seq.

The Radiation Protection Act, 35 P.S. §§7110.101, et seq.

The Low-Level Radioactive Waste Disposal Act, 35 P.S. §§7130.101, et seq.

The Radon Certification Act, 63 P.S. §§20001, et seq.

POLICY: The Department of Environmental Protection (DEP) is expanding its public participation activities for some permits in areas with specific boundaries and demographic characteristics as described in this policy to ensure enhanced public notice and opportunities for input to the permit application process to accommodate environmental justice concerns.

BACKGROUND: In the Spring of 1999, the Environmental Justice Work Group (EJWG) was established to assist DEP in meeting its environmental justice objectives. In June 2001, the work group issued its report. This policy implements the public participation recommendations of that report.

PURPOSE: The purpose of this policy is to implement the public participation recommendations of the EJWG Report of June 2001. Specifically, it provides direction and guidance to DEP staff on how to identify an Environmental Justice Area using the area of concern as it relates to specific permit applications and demographic data, and how to enhance public participation during the permitting process for some permits in these areas.

APPLICABILITY: This policy applies to Department approvals, specifically to certain permits located in Environmental Justice Areas as described in this policy.

012-0501-002 / January 1, 2005 / Page 1

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall effect regulatory requirements. The policies and procedures herein are not an adjudication or regulation. There is no intent on the part of DEP to give the rules in these policies 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: 14 pages, including appendices.

LOCATION: Volume 01, Tab 14

012-0501-002 / January 1, 2005 / Page 2

I. General Information

A. Background

In the Spring of 1999, the Environmental Justice Work Group (EJWG) was established to assist DEP in meeting its environmental justice objectives. In June 2001, the work group issued a report that made recommendations in five broad categories: improving the condition of environmentally burdened communities; the permitting process; monitoring and enforcement; DEP organizational change; and ensuring implementation. The EJWG defined environmental justice as the fair treatment and meaningful involvement of all people with respect to the identification of environmental issues, and the development, implementation, and enforcement of environmental policies, regulations, and laws.

B. Office of Environmental Advocate

Among the recommendations was the creation of The Office of Environmental Advocate, whose role within the Department is to work as a liaison between the Department and the community. The office was subsequently created. The regional advocates in the office serve as a contact point in the region to aid in community outreach, defining Environmental Justice Areas, and developing an outreach strategy specific to each Environmental Justice Area. To contact any of the advocates, please refer to Appendix D.

C. Ten-step Permit Review Process for Trigger Permits

The work group recommended a ten-step review process for trigger permits. This policy covers only the first two steps: identifying the Environmental Justice Area and enhancing public participation in this area. This policy does not supercede the Department's Money Back Guarantee Program and should not have an affect on the identified tasks or the number of days to complete those tasks.

The Department views this policy as an important first step in addressing environmental justice concerns. The Department plans to develop other elements of an approach to environmental justice and will continue to seek ways to implement the remaining recommendations of the work group.

II. Technical Guidance

A. Types of Permits Covered

1. Trigger Permits

DEP reviews a multitude of different types of environmental approvals. In an effort to focus the Department's resources, the EJWG identified a group of trigger permits that regulate activities that may lead to significant public concern due to potential impacts on human health and the environment. The list of trigger permits is attached as Appendix A.

2. Opt-In Permits

All other permits not specified as trigger permits, including but not limited to General Permits, renewals or revisions, may serve as Trigger 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 significant adverse cumulative impacts. The applicant should not be required to provide information to DEP regarding neighboring facilities in order to determine whether the permit is an opt-in Trigger Permit. DEP should initiate and perform this analysis based on information and tools at its disposal, including information from the applicant's facility or project. The Office of Environmental Advocate, in consultation with the Regional or Bureau Director or District Mining Manager, and Program Manager, should make the decision whether an application should be an opt-in permit.

B. Step 1: How to Identify an Area of Concern and Status of Community

1. Defining the Area of Concern and Environmental Justice Area

An application for a trigger permit in an Environmental Justice Area is subject to enhanced public participation. Enhanced participation leads to improved communication among DEP, the applicant, and the people that live within an Environmental Justice Area. This section describes how to determine whether there is an Environmental Justice Area associated with that trigger permit.

- a) Department staff will determine the project's area of concern, as defined below. For all trigger permits, the area of concern will be defined as:
- A circle defined by a radius of one-half mile from the center of a proposed permit activity or, where an activity is not centralized, an area extending one-half mile beyond the boundary of the proposed activity
 - Areas of impact for which DEP is authorized to require analysis, such as traffic corridors, groundwater plumes and areas of significant air impact
 - Other reasonably anticipated impacts such as noise, subsidence, vibration or odor associated with the proposed permitted activity.

- b) If there is any census tract, entirely or in part, within this area of concern with a 30 percent or greater minority population or 20 percent or greater at or below the poverty level as defined by the US census bureau, the area of concern and the census tract together are considered an Environmental Justice Area. The enhanced public participation provisions of this policy apply to the area located within the area of concern and to the census tract.

If no such census tract exists within the area of concern, it is not considered an Environmental Justice Area and this policy does not apply.

2. Role of Permitting Staff and the Office of Environmental Advocate

In order to define where this policy will apply, Department permitting staff will be provided training on the Department's Geographic Mapping Tool eMapPA. This tool will give permitting staff a current, precise method to determine whether specific census tracts have a 30% minority population or a 20% low-income population. Data in the eMapPA system is based on the 2000 US Census.

Program staff must notify the Office of Environmental Advocate upon receipt of an application for a trigger permit in an Environmental Justice Area as described above. The notification should include the site location with latitude and longitude of the proposed activity.

A public participation strategy should be developed between the Office of Environmental Advocate and appropriate regional or district office program and community relations staff for each of these applications. This strategy should be designed to facilitate the participation of all citizens within the area of concern and the census tract, and should take into account the particular characteristics of: the community, the area of concern, the census tract, and the type of facility proposed. The strategy should also include an analysis of the resource requirements of the enhanced public participation. As a part of the strategy, Department staff should consider the options listed in Section C below.

C. Step 2: Enhanced Public Participation in Environmental Justice Communities

1) Community Outreach

- a) DEP strongly encourages applicants to meet with community stakeholders. To promote open dialogue early in the permitting process, when the Department sends correspondence to the applicant notifying the applicant that the application is administratively complete, the letter should indicate that the application is subject to enhanced public participation. The Department may also convey this information in a separate response to initial permitting inquiries from the applicant. See Appendix E for a sample letter.
- b) DEP should produce and distribute information sheets regarding the proposed activity.
- c) DEP will maintain presence or availability in the local area throughout the permitting process on a case-by-case basis, including the possible use of mobile or temporary offices.
- d) DEP should provide residents with information regarding proposed permit conditions.

2) Public Information

- a) DEP should encourage the use of eNOTICE, DEP's automated e-mail notification of permit activities in an area defined by the user. Department staff should also

be aware of other methods of spreading this information to those without access to e-mail.

- b) Public Notices should be written in terminology and languages easily understood by the majority of readers within the Environmental Justice Area. Notices should be placed to publications widely read by residents in those areas besides the legal notice section, and placed locally in areas of high visibility. Examples of effective vehicles for notification include, but are not limited to local newspapers, community newsletters, church bulletins, public service announcements and 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.
- c) Applicants are encouraged to mail appropriate information about the project to all residents of an Environmental Justice Area.

3) Public Meetings

a) Pre-application meetings

As part of the enhanced public participation strategy, DEP will strongly encourage potential applicants to meet with community stakeholders prior to submitting an application to the Department. The Department should, if invited, attend this meeting and answer any community concerns relating to the permit review process. Within the time of a pre-application meeting and the actual submission of the application, the Department should develop the public participation strategy outlined above. If the Department is not aware of the pre-application meeting, or the applicant does not hold a pre-application meeting, the public participation strategy should be developed within 30 days of the application being deemed as warranting the enhanced participation.

b) Informational meetings

DEP, in coordination with the applicant, should schedule an informational meeting within 30 days of receipt of application. The purpose of the meeting is to inform the residents of in Environmental Justice Area of the scope and nature of the project in a timely, interactive manner. This meeting is in addition to any other currently required public meetings and hearings.

c) Applicants' role

Applicants are encouraged to fully participate in the meeting, and may take the lead in setting up and conducting the meeting. It is to everyone's benefit that the meeting takes place as early in the process as possible.

4) Summary of Application

DEP should provide a plain language summary of the application that explains the project in terms understandable to a majority of readers within an Environmental Justice Area. It should address the purpose and location of the proposed activity or facility, and anticipated impacts. These summaries can also be used in other aspects of public outreach.

A sample plain language summary is attached as Appendix B.

5) Document Availability

Access to relevant information is vital to meaningful participation of Environmental Justice Area in the permitting process. Steps to ensure access to this information for members of an Environmental Justice Area can include extended hours for file review or reviews by appointment to include evenings and weekends; identification of convenient locations where the public can review applications; additional support on how to locate materials in a file; and full copies of files at remote locations.

III. Improving the Condition of Environmentally Burdened Communities

The EJWG recommended that the Department seek to improve the condition of environmentally burdened communities by establishing benchmarks for improvement, assessing DEP programs for effectively improving conditions of these communities, and developing plans to improve conditions.

One of the most effective ways this can be accomplished is through the Department's program planning process. It is the Department's intent to ensure that the needs of environmentally burdened communities are considered through a strategic planning process by including specific environmental and public health objectives, indicators and actions in the planning process. This will allow the

Department to target some of its resources towards activities that improve the condition of environmentally burdened communities.

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
- 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.

6. CAFO (Concentrated Animal Feeding Operation)

7. Opt-in Permits

Permits not specified above, including renewals of the above permits, may serve as Trigger 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 significant adverse cumulative impacts. The applicant should not be required to provide information to DEP regarding neighboring facilities in order to determine whether the permit is an opt-in Trigger Permit. DEP should initiate and perform this analysis based on information and tools at its disposal including information from the applicant's facility or project.

Appendix B
Sample Plain Language Summary

Summary of Acme Corporation's Air Plan Approval Application

The Acme facility, formerly known as Environmental Operations, is located at First and Second Streets in the City of Diversity. The company makes consumer paper products. Acme has several production machines that are powered by a 65-megawatt cogeneration facility that is fueled with anthracite-culm, fuels and other waste products permitted by the Department of Environmental Protection (DEP).

On August 23, 2001, Acme applied for an air quality plan approval to conduct a 6-month trial burn. The trial will involve burning up to 8% of Tire Derived Fuel (TDF) in their boiler along with other fuels already permitted by DEP. If approved, small tire chips will be shipped from a facility in Anytown and transported to Acme. The proposal does not require any modifications to the boiler. In 1999, Acme conducted a 3-day trial burn using 4, 6, and 8% of TDF. The results did not exceed Acme's current permitted limits. However, some pollutants had higher emission rates when burning TDF than when burning other permitted fuels. Others had the same or lower emission rate. The attached table shows the test results, their emission rates without burning TDF, and their emission rates while burning TDF. These results may not be accurate due to the brief test burn. The shaded areas indicate increases.

During a pre-application meeting in Diversity on March 22, 2001, Acme and the DEP met with a few community members to discuss Acme's proposal. In that meeting, Acme agreed to fund a third party consultant to assist the community with the technical details of the permit application. The community will have the opportunity to help select the consultant from a list of agreed upon qualified individuals.

DEP must ensure that this proposal will comply with all applicable air quality requirements, including the use of best available technology to control emissions. DEP will require Acme to conduct stack tests to determine the emissions from burning TDF. The stack test results will be reviewed to determine what the impact and risks, if any, will be to the community downwind. Acme must show that the concentration of certain pollutants while burning TDF will not pose an unacceptable risk to the community.

A Public Availability Session (PAS) will be held on November 13, 2001 from 4 p.m. to 8 p.m. at the Environmental Community Center, 7th and 8th Streets in Diversity. This is an informal "open house" where the public can ask questions of DEP, Acme and other invited interest groups.

If DEP reviews the application and finds that Acme will comply with all applicable requirements, a draft plan approval will be proposed. The public will have an opportunity to provide oral comments on the draft plan approval at a public hearing, or in writing for 30 days following the hearing.

If you would like to review the application, four copies are available at these convenient locations in the City of Diversity:

Diversity City Hall Diversity Residents Concerned for Quality Living
36 East Fifth Street 2731 West Third Street

Contact: Councilperson Contact: Community Leader
(888) 555-7742 (888) 555-6683

012-0501-002 / January 1, 2005 / Page 9

Local Library The Diversity Environmental Advisory Council
 620 Engle Street Environmental Community Center

Contact: Joe Librarian 7th & 8th Streets
 (888) 555-3454 Contact: Maggie May
 (888) 555-2430

For more information contact:

Alice Wright Company Spokesman
 Pennsylvania Department of Acme Corporation
 Environmental Protection First St. and Second St.
 Office of Environmental Advocacy Diversity, PA 12345
 (610) 832-6311 (888) 555-6099

Acme emissions with and without burning Tire Derived Fuel (TDF) based on 1999 test burn	Units	Emissions without TDF	Emissions with TDF	% Change in Emissions	Current Permit Limit
Pollutant					
Nitrogen Oxides	Pounds/million BTU	.073	.073	0	.30
Sulfur Dioxide	Pounds/million BTU	.438	.439	.23	.72
Particulate	Pounds/million BTU	.017	.029	70.59	.05
Total Hydrocarbons	Pounds/hour	.28	1.11	296.43	5.47
Hydrochloric Acid	Pounds/hour	10.44	4.91	-52.97	No Limit
Dioxin	Nanograms/hour (estimate)	136,430.58	5,784,656.59	4140	No Limit
Lead	Pounds/hour	.013	.016	23.08	No Limit
Manganese	Pounds/hour	.01	.014	40	No Limit