

**ENVIRONMENTAL
JUSTICE
WORK GROUP**

**REPORT TO THE PENNSYLVANIA
DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

June 2001

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ENVIRONMENTAL JUSTICE WORK GROUP
DRAFT REPORT TO THE PENNSYLVANIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

PREAMBLE

The Pennsylvania Department of Environmental Protection's Environmental Justice Work Group (EJWG) strongly recommends that the Pennsylvania Department of Environmental Protection (DEP) act swiftly and decisively to make the improvement of conditions in environmentally burdened minority and low-income communities one of the Commonwealth's top priorities. We take this position because citizens of environmentally burdened minority and low-income communities often face more serious human health and environmental risks than the residents of other communities. The ripple effect of such endured risks extends well beyond the area of health into economic and other societal domains. Without addressing these environmental justice issues, the other perilous effects may be difficult, if not impossible, to address. The fact that DEP must step forward in a leadership capacity to confront these perils is indisputable. Such leadership is totally in accord with DEP's mission¹.

There are several overarching, core principles that the EJWG advocates for communities throughout the Commonwealth: empowerment, minimization of adverse environmental impacts and local economic development assistance.

However, the focus of this report is on how DEP can address environmental justice concerns in minority and low-income communities. Due to the complex problems that face these communities, creating a level playing field will be difficult at times. When used in this report, "level playing field" means that DEP should devote the attention, energies and resources to the environmental health and safety of minority and low-income communities that have historically been absent from these communities. The recommendations in this report offer a blueprint that will guide DEP toward achievement of environmental justice in the Commonwealth of Pennsylvania.

In many minority and low-income communities, a multitude of social and economic problems compound the environmental insults on those communities. These problems include limited education, limited access to information and decision makers, and limited financial

¹ "The Department of Environmental Protection's mission is to protect Pennsylvania's air, land and water from pollution and to provide for the health and safety of its citizens through a cleaner environment. We will work as partners with individuals, organizations, governments and businesses to prevent pollution and restore our natural resources."

resources. These constraints result in a limited participation in the decisions that affect their own communities. These barriers more often than not result in the disempowerment and disenfranchisement of those impacted minority and low-income communities.

The EJWG realizes that many of the environmental justice issues that face minority and low-income communities require interventions beyond both the mission and the jurisdiction of DEP. Therefore, it is vital that DEP actively collaborate with other state agencies, federal agencies, municipal governments, commercial and industrial facilities, grassroots organizations, and academia to address these problems. Only through a truly collaborative effort with these stakeholders can DEP resolve the environmental justice issues that exist in the Commonwealth.

The EJWG recognizes the value of pollution prevention as an important tool to the reduction of environmental impacts. Pollution prevention includes source reduction, recycling, materials substitution, and the use of management systems and technologies that will result in better environmental performance and less generation of pollution. The EJWG strongly advocates that increased pollution prevention efforts be an integral DEP tool to reduce environmental impacts throughout the Commonwealth. By partnering with and actively engaging existing facilities in pollution prevention programs, DEP can help address historical environmental justice concerns, reduce the current risks of exposure, and minimize any future environmental impacts.

Economic development is an important contributor to the health of any community. These recommendations are not intended to deter private and public interests from investing in any low-income and minority community. To the contrary, DEP can facilitate economic development in these communities through the remediation and restoration of contaminated sites. DEP can actively promote and encourage locally desired economic development by working with minority and low-income community residents, businesses located in low-income and minority communities, and municipal government and other relevant agencies.

The recommendations in this report target the specific environmental justice concerns of minority and low-income communities. Recognizing the above-mentioned socioeconomic obstacles of minority and low-income communities, the needs of these communities must be met before environmental justice can be ensured for all communities within the Commonwealth of Pennsylvania.

SUMMARY

The Environmental Justice Work Group (EJWG) was formed in spring of 1999 by the Pennsylvania Department of Environmental Protection (DEP) in response to an increasing awareness, both nationwide and within the Commonwealth, of environmental justice concerns. This summary briefly explains the work group's definition of environmental justice, the focus of the EJWG, and the annotated key points of the work group's recommendations to DEP. A complete list of the work group's recommendations to DEP appears in Appendix Four (see page 39).

What is Environmental Justice?

With respect to the Commonwealth of Pennsylvania, the Environmental Justice Work Group defines 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. Fair treatment means that no group of people including racial, ethnic or socioeconomic groups, will bear a disproportionate share of the negative environmental impacts resulting from industrial, municipal and commercial activities or from the execution of federal, state and local programs and policies. The attainment of environmental justice requires the Pennsylvania Department of Environmental Protection's proactive and ongoing review of environmental and administrative programs and policies, identification of inequities and work to assure equal consideration and protection.

What is the Focus of the Environmental Justice Work Group?

The work group recommends that DEP focus more on ensuring environmental justice for low-income and minority communities in Pennsylvania. The work group identifies types of DEP-regulated permits that warrant special attention when they are proposed or are presently operating in these communities.

What Does the Work Group Recommend to DEP?

The work group has produced the following five categories of recommendations:

1. **Improving the Condition of Environmentally Burdened Minority and Low-Income Communities.** These recommendations encourage DEP to work with other agencies to clean up and restore communities that already face significant environmental impacts. (See pages 14-16)

2. **The Permitting Process.** The work group recommends a 10-step procedure for the permitting of certain activities in minority and low-income communities. Among these steps are extensive recommendations for enhanced public participation, as well as recommendations for addressing cumulative and disparate impacts in the future. (See pages 16-25)
3. **Monitoring and Enforcement.** These recommendations are intended to eliminate the potential for disparity in the way facilities in minority or low-income communities are monitored and how DEP regulations are enforced. They recommend greater community involvement in the monitoring of facilities, and additional means to ensure the adequate enforcement and appropriate assessment of penalties. (See pages 25-27)
4. **DEP Organizational Change.** The establishment of an Environmental Justice Advisory Board and an Office of Environmental Advocate are recommended in order to facilitate DEP's actions in addressing current and future environmental justice concerns. Other recommendations in this section will improve the capacity of DEP to effectively communicate with all communities. (See pages 27-31)
5. **Implementation Plan.** These recommendations are intended to ensure an effective implementation of the work group's recommendations. The work group recommends that DEP monitor and rectify any unintended negative impacts to low-income and minority communities that may result from the implementation of these recommendations. (See pages 32-33)

A BRIEF HISTORY OF THE NATIONAL ENVIRONMENTAL JUSTICE MOVEMENT

The modern history of the environmental justice movement began as grassroots communities sought to eliminate disproportionate environmental impacts on low-income and minority populations. The environmental justice movement is often viewed as the bridge between the traditional civil rights movement and the mainstream environmental movement. This environmental justice movement includes concepts such as environmental racism² and environmental equity³ for disenfranchised and vulnerable communities.

Since 1971 policy makers have had evidence that persons with low incomes suffer disproportionately from the effects of pollution and environmental contamination.⁴ Although racial minorities were represented in the nation's share of low-income people, there was debate over whether race was a predictor of environmental consequences. In 1982, the State of North Carolina announced plans to dispose of contaminants in Warren County. Warren County had the highest percentage of African-Americans of any county in North Carolina. To fight the decision, a coalition of community and civil rights groups organized a protest that received national attention. Although the protest did not stop the disposal of PCBs in Warren County, it did involve the arrest of about 500 people, including some members of the U.S. Congress, and consequently, policy makers began officially to consider race as an indicator of environmental consequences.

In 1983, as a result of the Warren County protest, the General Accounting Office (GAO) released a report to Congress that provided specific proof that minorities suffer disproportionately from environmental impacts.⁵ This was the first major study to document a strong correlation between the racial composition of communities in the South and the siting of hazardous waste landfills.⁶ In 1987, the United Church of Christ's Commission for Racial Justice issued its report of a nationwide study that determined that the siting of hazardous waste landfills disproportionately impacted minorities. This report found:

² Environmental racism refers to any policy, practice or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups, or communities based on race or color. Dr. Robert D. Bullard, *Environmental Racism and "Invisible" Communities*. 96 W.VA. L. REV. 1037 (1994).

³ In 1992 EPA used the term environmental equity to refer to the "distribution of environmental risks across population groups" and to "policy responses to these distributions." Environmental Equity Workgroup, U.S. E.P.A., *Environmental Equity: Reducing Risk for all Communities* at 2 (1992).

⁴ Council on Environmental Quality, *The Second Annual Report of the Council on Environmental Quality* (1971).

⁵ GAO, *Siting Of Hazardous Waste Landfills And Their Correlation With Economic Status Of Surrounding Communities*, REP. TO CONGRESS, GAO Report No. RCED-83-168 (1983).

⁶ Although African Americans comprised only about 20 percent of the population in the areas represented in the study, they were in the majority in three of the four communities that the GAO studied. *Id.*

- Race was a more significant factor than level of income in the siting of hazardous waste facilities.
- Those communities with the greatest number of commercial hazardous waste facilities also had the highest proportion of minority residents.
- Communities with a commercial hazardous waste facility typically had twice the average minority percentage of population as communities without such a facility.

In the 1990s, as community activists continued to bring environmental inequities to the attention of mainstream America, several other significant benchmarks occurred. In 1990 the U.S. Environmental Protection Agency (EPA) formed the Environmental Equity Workgroup, which released its detailed recommendations in 1992. In 1991, the First National People of Color Environmental Leadership Summit adopted 17 principles of environmental justice⁷. In 1992, a *National Law Journal* study issued a report that stated:

- Hazardous waste sites in areas with the lowest minority populations were placed on the Superfund's National Priority List faster than those in areas having larger minority populations. (4.69 years for non-minority communities vs. 5.63 for minority communities.)
- The courts disparately impose penalties for Resource Conservation and Recovery Act violations. (Penalties 500 percent higher in non-minority communities.)
- In certain EPA regions, the pace of cleanup is slower in minority communities.

One of the most significant benchmarks occurred in February 1994 with the issuance of Presidential Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations."⁸ In 2000, EPA issued draft environmental justice guidance documents for state and local agencies that receive federal funding.

PENNSYLVANIA'S ENVIRONMENTAL JUSTICE HISTORY

The national history of environmental justice provided a context for DEP to recognize inequities, as they may exist in Pennsylvania. A number of factors prompted DEP to engage diverse stakeholders in discussions regarding how the agency could better serve minority and low-income communities in Pennsylvania.

⁷ These seventeen principles are available at www.igc.agc.org/saepaj/Principles.html.

⁸ In part, Executive Order 12898 requires federal agencies to determine whether their programs, policies or activities have disproportionately high and adverse human health or environmental effects on minority and/or low-income populations.

In January 1995, a resident of the City of Chester, Delaware County, presented moving testimony concerning adverse environmental conditions existing in her community to the National Environmental Justice Advisory Council, a federal multi-interest advisory group. In December 1996, Chester Residents Concerned for Quality Living (CRCQL) filed a lawsuit against DEP. The lawsuit alleged that DEP's waste facility permitting process violated Title VI of the Civil Rights Act of 1964⁹ and EPA's implementing regulations because it disproportionately impacted the predominately African-American residents of Chester. The case received national attention and eventually reached the United States Supreme Court on the question of whether private citizens have the right to sue in federal court for violations of EPA's regulations. The Supreme Court dismissed the case without reaching a decision on that question.¹⁰

During the summer of 1998, a company submitted a permit application for the construction and operation of an infectious medical waste autoclave facility adjacent to public housing units in Harrisburg. Concurrent to the permit application, the local housing authority granted a variance to allow construction closer to the units than is permitted normally. The residents and the president of the local chapter of the National Association for the Advancement of Colored People alleged that these actions occurred without consulting them or considering their concerns. DEP and EPA investigated this action and the company eventually withdrew its application.

In addition, a formal recommendation from the *Report of the Pennsylvania 21st Century Environment Commission*¹¹ addresses Pennsylvania's environmental justice issues. The commission, which included representatives of various interests, was asked to assist DEP with setting appropriate environmental policy goals for the future. The commission recognized that environmental justice issues existed in Pennsylvania and suggested further analyses and action that would result in equal environmental protection.

⁹ This provides that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

¹⁰ www.dep.state.pa.us (direct link "Office of Chief Counsel").

¹¹ *Report of the Pennsylvania 21st Century Environment Commission*, September 1998, page 42, recommends the following action: "Form a stakeholder group to study and make recommendations to the Governor on issues of cumulative environmental impacts and environmental justice. To ensure that no individual or community carries a disproportionate share of the environmental or health burden our society chooses, we need to better understand the impacts of those choices on specific areas..."

PENNSYLVANIA'S ENVIRONMENTAL JUSTICE FUTURE

In the spring of 1999, the EJWG embarked on a multi-faceted advisory process to ensure that Pennsylvania provides its minority and low-income residents the opportunity to have a quality environment. The impetus for this effort was, in part, initiated by former DEP Secretary James M. Seif's guidance to his staff in February 1999. The Secretary explained that DEP had the inherent responsibility to address two important issues: civil rights and environmental protection.

This report was prepared with the intent to assist DEP to meet its existing environmental justice objectives:

1. Identify any causes of environmental inequities in Pennsylvania.
2. Determine whether DEP's current decision-making processes can adequately address appropriate issues such as cumulative impact and nuisance issues.
3. Improve DEP's permitting program so that it is clear and understandable while still satisfying legal and administrative requirements.
4. Improve public participation in DEP's decision-making process to address any inequities.
5. Improve public outreach, beyond the permitting process, by enhancing long-term environmental education, communication and compliance assistance programs.

This report is the outcome of the effort to explore DEP's role in addressing environmental justice issues and to bring forth recommendations on how best to rectify any injustices, restore environmentally burdened areas and empower communities.

ENVIRONMENTAL JUSTICE DEFINITION FOR PENNSYLVANIA

The EJWG defines 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. Fair treatment means that no group of people including racial, ethnic or socioeconomic groups, will bear a disproportionate share of the negative environmental impacts resulting from industrial, municipal and commercial activities or from the execution of federal, state and local programs and policies. The attainment of environmental justice requires the DEP's proactive and ongoing review of environmental and administrative programs and policies, identification of inequities, and work to assure equal consideration and protection.

This definition incorporates concepts of both environmental justice and environmental equity. The focus of this report is the empowerment of minority and low-income communities

that suffer disparate, i.e. disproportionate, adverse environmental impacts as the critical first step in ensuring environmental equity in the Commonwealth of Pennsylvania.

To appropriately define low-income and minority communities, the EJWG sought to determine a set of criteria to identify communities which are truly low-income and truly minority. There is no commonly accepted method to accomplish this objective. The goal was to find criteria that were neither unduly exclusive nor overly inclusive. In order to meet these objectives, the EJWG used 1990 U.S. Census data, which was the most recent available at the time, to select the appropriate criteria for minority and/or low-income communities¹². The EJWG decided upon a minimum of 30 percent for a minority community designation and a minimum of 20 percent for a low-income community. Thus, a *minority community* is any U.S. Census tract with a 30 percent or greater minority population and a *low-income community* is any census tract with 20 percent or more of its population at or below the poverty level, as defined by the U.S. Census Bureau. In addition, any minority or low-income group within a tract, whose interest is not protected by the majority population of the community, can upon appropriate showing be considered a minority community.

In many rural, low-income communities, the impacts from mineral extraction are a major concern. In the late 1960s, a national movement surfaced, bringing legislative attention to the impacts of mining on the environment, private property and coalfield residents' quality of life. Although Pennsylvania had laws requiring some reclamation, until passage of laws like Pennsylvania's Surface Mining Reclamation and Conservation Act of 1971 and the federal Surface Mining Reclamation Control Act of 1977, damages were still allowed. As a result, Pennsylvania has an estimated \$15 billion legacy of environmental impacts from abandoned mines and streams destroyed by acid mine drainage. Current laws still allow impacts to occur, including subsidence and water loss while requiring reclamation and restoration of damages. On that basis, the work group included mining activities in its list of permits that trigger an enhanced DEP permit process in low-income and minority communities.

During its deliberations, the work group addressed the concerns of all coalfield residents in a similar fashion to low-income and minority communities. With a few exceptions, the work group considered providing coalfield residents the same empowerment afforded low-income and minority communities. The EJWG recognizes the special concern of these communities; however, the members could not agree on the inclusion of coalfield communities as a separate

¹² In the implementation of these recommendations, DEP should use the most current data available from the U.S. Census Bureau.

entity specifically addressed by this report. Instead, the EJWG recommends that the concerns of all mining communities should be considered as a priority for the Office of Environmental Advocate's program within its policy review function.

This report focuses solely on minority and low-income communities. DEP should take the necessary steps to first address the special needs and concerns of these communities by prioritizing the implementation of the EJWG recommendations for these communities. After addressing the needs of these communities, DEP should then focus on how to avoid future inequities in Pennsylvania.

LEVELING THE PLAYING FIELD

When used in this report, "level playing field" means that DEP should devote the attention, energies and resources to the environmental health and safety of minority and low-income communities that have historically been absent from these communities. The recommendations contained in this report that focus on DEP's permitting processes and environmental cleanup programs should be implemented in a manner that will overcome any past inequities, eliminate any current disproportionate environmental burdens within minority and low-income communities, and prevent future inequities. DEP should work with minority and low-income communities to maintain and preserve areas of their communities that do not currently contain degraded properties.

In conclusion, selectively elevating specific populations to a position equal to that of another population is the leveling we recommend DEP embrace.

RECOMMENDATIONS

While DEP is committed to the execution of Pennsylvania's environmental laws, the implementation of these same regulations and statutes has not ensured the equal participation of all communities in the Commonwealth's environmental decision-making. Many Pennsylvania residents have not participated in local advisory councils, municipal planning and zoning boards, state policy development or state permitting programs. The following set of recommendations is intended to empower low-income and minority communities, which historically have been unable to place themselves at the table with traditional decision makers.

Because no single approach will resolve the environmental justice issues or prevent future issues from arising in the Commonwealth, a broad range of recommendations has been produced. The recommendations focus on four areas that will level the playing field for minority

and low-income communities.

1. DEP should take action to reduce or eliminate the existing environmental burdens in minority and low-income communities.
2. DEP should ensure that minority and low-income communities have opportunities to become full and active participants in permit review processes.
3. DEP should enforce regulations and statutes and apply internal guidance and policies in minority and low-income communities to increase monitoring in these communities.
4. DEP should provide organizational structures that foster a productive exchange of information with minority and low-income communities and ensure a proactive approach to environmental justice issues.

1. IMPROVING THE CONDITION OF ENVIRONMENTALLY BURDENED MINORITY AND LOW-INCOME COMMUNITIES

The successful restoration of minority and low-income communities does not rely solely on the permitting power of DEP. However, DEP's mission and role in industrial, community-based and academic environmental endeavors provides the agency with great latitude in functioning as a facilitator of new ideas and new programs. DEP should embrace this opportunity to bring diverse ideas and programs to the table to be fully explored by all interested parties.

DEP should not delay its improvement initiatives for environmentally burdened minority and low-income communities. Postponing improvement initiatives could compound existing environmental exposures, thus increasing the difficulty of improving the environmental conditions in these communities.

We recognize that DEP has been the target of Title VI and environmental justice complaints that also involve other agencies at the state and local levels. In some cases those other agencies have been slow to respond to environmental justice related actions because the public generally directs complaints at DEP. By leading a formal interagency effort, DEP will improve the environmental conditions in environmentally burdened minority and low-income communities because it will be better positioned to:

1. Identify all agencies involved in environmental improvement actions.
2. Develop and influence coordination systems to improve the environmental conditions in environmentally burdened minority and low-income communities and address Title VI or environmental justice complaints.
3. Avoid interagency policy gaps.
4. Continue environmental justice education among the agencies.

1.1. Benchmarks for Improvement

In coordination with the proposed Environmental Justice Advisory Board (EJAB)¹³, DEP should establish specific standards and benchmarks by which to measure and guide its improvement efforts. To provide both DEP and the environmentally burdened minority and low-income communities with a better understanding of the relevant data, trends and improvements needed, these standards and benchmarks should be developed as soon as possible. If the data does not exist, then DEP should use staff or external consultants to develop this data. We also recommend that DEP provide the EJAB with periodic status reports on its improvement efforts.

1.2. Assessment of DEP Programs

DEP should review and assess the effectiveness of its existing programs that are applicable to the restoration of environmentally burdened communities and expand those programs that can help the agency attain the standards and benchmarks that are recommended by the EJAB and established by DEP (see 1.1). If those programs are not measurably improving the conditions of environmentally burdened minority and low-income communities, we recommend that DEP amend or eliminate such programs.

1.3. Improvement Plans

DEP should develop new policies, procedures and programs that will measurably improve specific environmental conditions of environmentally burdened minority and low-income communities. An improvement plan should be developed for communities with the worst environmental conditions. DEP should consider including the following efforts as a part of that plan:

- Initiate periodic meetings with communities to help facilitate restoration and other improvements.
- Promote and support local environmental advisory councils.
- Promote compliance assistance programs. For example, DEP could develop challenge programs that encourage companies to voluntarily reduce impacts in exchange for special recognition and/or other incentives.
- Provide mandatory workshops, counseling and other environmental management systems assistance for impacting businesses in order to gain or exceed compliance with

¹³ See Recommendation 4.1, page 27.

environmental regulations, implement good housekeeping practices, and reduce environmental impacts to the surrounding community.

- Promote technical assistance funding.
- Promote grant programs.
- Facilitate internship opportunities for local students in local industries.
- Support and encourage the development and subsequent funding of partnerships between communities and educational institutions, non-profit organizations, consultants and attorneys, professional associations and public and private libraries.

1.4. Collaboration with Other Agencies

Improving the conditions of environmentally burdened minority and low-income communities with the ultimate goal of addressing human health concerns and improving the overall environmental and ecological health of an area involves an array of interrelated issues. Among these issues are the remediation and redevelopment of contaminated sites (i.e., “brownfields”), advancing economic development programs, revisiting traffic patterns, tackling urban blight, creating and implementing local comprehensive plans, promoting community involvement, creating and preserving open space and recreational areas, improving the visual landscape and restoring natural resources. Issues related to human health are particularly critical. Fully addressing some of these issues will exceed the scope of DEP’s authority. For this reason DEP should lead in the coordination of local, state and federal governmental agencies that can play a role in improving the conditions of environmentally burdened minority and low-income communities. To assume this critical leadership role in interagency coordination, DEP should advise the governor and his cabinet of both the challenges and opportunities that exist in environmentally burdened communities.

2. THE PERMITTING PROCESS

DEP must make use of the full scope of its permitting authority to foster community benefit and to prevent community harm. Furthermore, DEP should seek additional authority where needed to make permit decisions based on cumulative impact. Permitting activities encompass issuance, modification and denial.

The EJWG recognizes that the environmental permit review process often creates tension among local elected officials, residents, the applicant and DEP. Debates arise concerning the impacts that the proposed activity will have on human health and the environment. The proof of cause-and-effect relationships, however, is sometimes difficult to determine with scientific

certainty. While the best available scientific understanding should be the basis of DEP's decision making, DEP should not allow the lack of scientific certainty to prevent it from protecting and improving the quality of life for minority and low-income communities. Therefore, through its deliberation, the EJWG sought to provide DEP with the means to ensure a cautionary approach throughout its permit review process.

The lack of easily obtained, understandable information is often cited as a major cause of contention and ultimately environmental injustices. Minority and low-income communities should be given the same access to information, consultation and accommodation by DEP at the same level historically granted to non-minority and non-low-income communities. DEP needs to make fundamental changes in how it provides information, elicits input, and communicates with individuals within minority and low-income communities before, during and after the permitting process.

DEP should take additional measures, i.e., enhancements and heightened scrutiny, to ensure that there is no disparity in the manner in which communities are affected by DEP's activities. For example, DEP should ensure that the cumulative effect of other emissions and discharge sources upon these communities would be a factor in determining how such activities are to be monitored. Heightened scrutiny, combined with enhanced public participation, will mitigate or eliminate a substantial portion of significant adverse impacts in minority and low-income communities.

DEP reviews more than a thousand types of environmental permits. In an effort to assist DEP with focusing its resources, the EJWG has identified a group of Trigger Permits¹⁴ that should warrant heightened scrutiny by DEP and an enhanced public participation process when they are proposed for minority and low-income communities. **Trigger Permits** are those DEP regulated activities that may lead to significant public concern due to potential impacts on human health and the environment. Individual permits outside this list may serve as Trigger Permits if DEP believes they warrant special consideration. For all Trigger Permits, DEP should define an Area of Concern. The **Area of Concern** for a Trigger Permit should be defined as all U.S. Census tracts contained entirely or in part within 1) 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; and 2) areas of impact for which DEP is authorized to require analysis, such as the traffic corridors, groundwater plumes and areas

¹⁴ See Appendix One, page 34.

of significant air impact¹⁵; and 3) other reasonably anticipated impacts (e.g., noise, subsidence, vibration, odor, etc.) associated with the proposed permit activity.

A 10-step permit review process, which is further detailed in Recommendations 2.1-2.10, should apply to a proposed Trigger Permit. In implementing its permitting process, DEP should 1) identify the Area of Concern and determine whether it includes a minority or low-income community. For any minority and low-income community within an Area of Concern, DEP should 2) enhance its public participation efforts; 3) determine if the proposed activity is in compliance with all applicable statutes and regulations related to the protection of the Commonwealth's natural resources; and 4) determine whether there has been a reasonable effort to minimize the impacts on the community. Then, DEP should 5) identify potential impacts and, if significant adverse impacts are anticipated, either conduct or require an analysis of those Cumulative Impacts¹⁶ utilizing case-by-case flexibility; and 6) determine if the impacts from the proposed activity likely will create a disparate impact on the community and, again utilizing case-by-case flexibility, conduct or require a disparate impact analysis. If there are cumulative and/or disparate impacts, DEP should 7) examine the feasibility for additional mitigation of impacts; 8) analyze the remaining environmental harm that will result and the benefits to be derived; and 9) determine whether the benefits of the proposed activity outweigh the harm. Finally, DEP must 10) issue a decision regarding the proposed permit.

To provide clarity regarding its permit review processes, during the implementation of these recommendations, DEP should provide timelines for the components of this 10-step process.

2.1. Determine Community

In order to determine if a permit application should follow the permit review process outlined in this report, DEP and the permit applicant must first determine if a proposed Trigger Permit will impact a minority and low-income community¹⁷.

¹⁵ As defined by 40 CFR, Part 51, Appendix W.

¹⁶ Cumulative impacts are the combined impacts of multiple sources within any Area of Concern. The impacts of each individual source may fall below established parameters and regulated limits, but the aggregate of these impacts may have significant adverse impact on the environment and health of the community.

¹⁷ See definitions on page 12 or 37. Maps are available in Appendix Two, page 36.

2.2. Enhanced Public Participation

The following recommendations will improve communication among DEP, the applicant, and the people whom live within an Area of Concern.

2.2.1. Community Outreach

- A. DEP should strongly encourage applicants to meet with community stakeholders, including meetings prior to submission of a permit application. Stakeholders include environmental groups, citizens' groups, individuals, government officials and businesses. The purpose of these meetings should be to 1) inform community members of the proposed activity, 2) answer questions from stakeholders, 3) exchange information on how the impacts of the proposed activity could be mitigated, 4) exchange information on how the impacts should be monitored, and 5) involve communities in identification of the potential benefits and adverse impacts of the proposed activity. A meeting with community stakeholders prior to permit application submission would enable an applicant to prepare an application that addresses community interests and concerns, as well as provide the community with information early in the permit review process.
- B. DEP should produce and distribute fact sheets regarding the proposed activity. These fact sheets should be written in language easily understood by the majority of readers within the areas of concern.
- C. DEP should use mobile or temporary offices, which can be located in announced, public areas. Particularly during permit review processes, these offices should provide opportunities for document review, public outreach and public comment.
- D. DEP should provide the residents, both before and after permit approval, with information regarding permit conditions including the monitoring of impacts and enforcement options, and the appropriate steps to follow if the community believes the conditions are unacceptable or have been violated.
- E. A major issue for minority or low-income communities throughout the permitting process is the lack of access to technical and other expertise. Therefore DEP should encourage the development and funding of minority and low-income community partnerships with universities and colleges, non-profit organizations, consultants, attorneys, professional associations and public and professional libraries to facilitate communities meaningful participation in permit review processes.

2.2.2. Public Information

Group members felt that past efforts to notify community members of proposed actions were insufficient and that future efforts should address the diversity of community members in an Area of Concern, including those for whom English is not their primary language.

- A. DEP should create a system through which individuals and groups in all communities can register to be notified of proposed Trigger Permits. To accomplish this, DEP may develop an electronic system, however, it is essential that DEP ensure a similar service is available for individuals and groups without Internet access.
- B. Public notices, written in terminology and languages easily understood by the majority of readers within the area of concern, should be sent to publications widely read by those residents and placed locally in areas of high visibility. These may include, but are not limited to:
 - Local newspapers
 - Community newsletters
 - Church bulletins
 - Public service announcements sent to local radio and television stations
 - Notices broadcast on local cable television stations
 - Notices posted in areas of high foot traffic
 - Notices to environmental activist groups
 - Notices to local community centers, such as senior citizen service centers

2.2.3. Public Meetings

These recommendations stem from the belief among EJWG members that sharing information and meaningful community participation early in the permitting process is vital to the promotion of environmental justice. There are several different methods for the public to be involved with permitting activities. Public notices and public hearings normally allow DEP and other agencies to receive feedback from the public regarding a particular application. Public meetings, public availability sessions and open houses are examples of interactive sessions where there is dialogue among the public, applicant, elected officials and DEP. These interactive sessions are not normally subject to the same record-keeping requirements as public hearings and public notices.

- A. Within 30 days of the permit application submittal, the applicant in coordination with DEP should schedule a timely public meeting to inform the residents within an Area of Concern of the scope and nature of the project. The applications should not

be deemed complete until this meeting is scheduled. The meeting above would be in addition to any other required DEP public meetings and hearings. Where appropriate or necessary, DEP should organize additional public meetings or interactive sessions.

2.2.4. Summary of Permit Application

Some community members find permit applications difficult to understand due to technical language and/or limited English proficiency. This makes it difficult for residents to anticipate and evaluate potential impacts on their community.

- A. DEP should require applicants to provide a plain-language summary of the application that explains, in terms understandable to the majority of readers within the area of concern, the purpose and location of the proposed facility or action, what actions the permit would authorize and its anticipated impacts (including visual, noise, traffic and other adverse impacts). DEP should review this summary for technical accuracy and completeness prior to its submission to the community. The inclusion of this summary should be part of DEP's review for administrative completeness.
- B. DEP should provide guidance regarding the qualities of a good summary to applicants and potential applicants. These permit summaries could also be used by DEP for community outreach.

2.2.5. Document Availability

Group members believe that access to relevant information is vital to the meaningful participation of communities in the permitting processes. In some communities, DEP regional and district offices may be difficult to reach, particularly during non-business hours. While the Internet should be pursued to facilitate access for the many, minority and low-income residents still have limited access to electronic communication. These recommendations are intended to improve the accessibility and quality of data available. EJWG members voiced a strong desire for communities to have access to correspondence among the parties involved in the permitting process.

- A. Through extended hours or by appointment, DEP should provide opportunities for all community members to review public files during evenings and weekends.
- B. Each DEP regional and district office should identify additional convenient locations at which the public can review the complete files pertaining to all nearby proposed Trigger Permit applications. These locations may include public libraries, municipal offices and volunteer organizations. DEP should provide training, including guidance on how to

locate materials in the files and orient the reader, to those responsible for granting access and maintaining these files. DEP-produced fact sheets outlining the permit process, public participation opportunities and steps for contacting the appropriate DEP staff and programs should be included in these files. The files available at remote locations, including log sheets and correspondence, should be provided and updated by DEP. When necessary, DEP may require applicants to submit multiple copies of materials. DEP should be responsible for maintaining the integrity of the files. Files should be updated in a timely manner. Files available at remote locations should include:

- A cover sheet logging all materials included in the file and their date of submission to the file.
- Complete copies of all permit applications.
- Color copies of all color-coded maps, charts and other documents.
- All official correspondence in DEP files between DEP and the applicant, community members, the EPA and/or other federal or state agencies relating to the permit application.
- Comment response documents.

2.2.6. Conflict Management

Early communication between applicants and communities should reduce the number of disputes that arise during permit processes and after permit decisions.

- A. When there is community opposition to a proposed Trigger Permit activity in a minority and low-income community, a priority of DEP should be to encourage the use of formal and informal, voluntary alternative dispute resolution (such as mediation or arbitration) after application submittal and prior to a final permit decision. DEP should offer assistance to the parties in mediation, the facilitation of meetings or selection of a neutral third-party mediator. When appropriate, and as agreed to by the parties, DEP could participate in these processes. In order to facilitate these processes, DEP should use its authority to issue a draft permit decision prior to a final decision. DEP should explore expanding the issuance of a draft permit decision to all Trigger Permits.
- B. When the timelines within DEP guidance, regulations or statutes prevent the effective use of alternative dispute resolution in minority or low-income communities, DEP should recommend changes to these timelines or revise its guidance.

2.3. Compliance with Regulation

As part of the permit review process, DEP should determine if the proposed activity is in compliance with all of its applicable statutes and regulations.

2.4. Minimizing Impacts

Applications for new and renewed Trigger Permits should include a description of how the applicant made a reasonable effort to minimize impacts and potential risks to public health and the environment.

2.5. Cumulative Impact Analysis

EJWG members agree that DEP should address cumulative impact concerns. However, the EJWG decided that further consideration was needed in this area including a definition of cumulative impact analyses, the identification of reliable analytical tools, the cost of analyses and who should pay those costs, the time allowed for these analyses and the scope of circumstances in which cumulative impact analyses are appropriate.

- A. DEP, in conjunction with selected members of the EJWG, the Environmental Justice Advisory Board and other relevant agencies, should develop and promulgate a cumulative impact process (including how to conduct a cumulative impact analysis). In devising this process, the parties should consider the health status of the community.
- B. If DEP determines that such analyses are necessary based on the anticipated significant adverse impacts to a minority and low-income community, DEP should require an applicant to conduct a cumulative impact analysis.
- C. DEP should initiate a cumulative impact analysis in minority and low-income communities when DEP determines it is necessary but such an analysis cannot reasonably be required of the applicant.
- D. The DEP cumulative impact process should allow case-by-case flexibility rather than routinely requiring an analysis of all potential impacts.
- E. DEP should seek authority as needed to make permit decisions based on cumulative impacts.

2.6. Disparate Impact Analysis

National evidence indicates that minority and low-income communities have historically borne unequal adverse environmental impacts. The EJWG focused on devising a disparate impact analysis process that prudently addresses environmental and human health concerns in

certain situations when heightened scrutiny is necessary to protect minority and low-income communities. The central issues discussed by the EJWG are 1) whether to expend resources on a full disparate impact analysis absent a significant adverse impact finding, 2) whether to address potentially controversial impacts that may fall below established standards, and 3) how to develop a disparate impact analysis that would not deter economic development in minority and low-income communities. DEP should monitor the implementation of these recommendations to ensure that communities are not excluded from economic development based on demographic characteristics, which is often called “redlining.”

- A. DEP, in conjunction with selected members of the EJWG, the Environmental Justice Advisory Board and other relevant agencies, should develop a disparate impact screening process for Trigger Permits. That process would be used to determine if a community is likely to experience a disparate impact from a proposed action. In devising this process, the parties should consider the health status of the community.
- B. If a significant adverse impact is reasonably anticipated from a proposed Trigger Permit and the community is likely to experience a disparate impact, then DEP should be authorized to require the applicant to conduct a disparate impact analysis.
- C. When disparate impacts are anticipated for a Trigger Permit, DEP should encourage the applicant to enter discussions and voluntary mediation with stakeholders from the area of concern in order to mitigate or eliminate potential disparate impacts. Stakeholders should be identified through public meetings as well as other public involvement strategies. These discussions could be considered by DEP in its decision to require a disparate impact analysis for the proposed action.

2.7. Mitigation of Impacts

If a proposed activity may create disparate impacts, DEP should encourage the applicant to pursue additional mitigation efforts. Mitigation may include the reduction of impacts of the proposed activity. For example, the use of pollution prevention techniques, alternate technology, alternate routes, alternate configurations or the addition of infrastructure may lead to a lessening of impacts associated with a proposed action.

2.8. Harms and Benefits Analysis

DEP should analyze any remaining environmental harm that will result and the benefits to be derived from the proposed activity.

2.9. Harms and Benefit Determination

At the conclusion of a harms and benefit analysis, DEP should determine whether the benefits of the proposed activity outweigh the environmental harm.

2.10. Decision

At the completion of this process, DEP must issue a decision on the proposed permit. DEP's decision-making authority extends to the issuance of a permit, the issuance of a permit with conditions or a permit denial.

3. MONITORING AND ENFORCEMENT

These recommendations are intended to eliminate the potential for disparity in the way facilities in minority and low-income communities are monitored and regulations are enforced. DEP should enforce the environmental regulations and statutes, and apply internal guidance and policies using the same criteria it uses in communities that are not low-income or minority. DEP should also provide for increased monitoring in these communities, along with enhanced efforts to identify and remedy current instances of non-compliance. The work group attempted to balance a desire for meaningful involvement in monitoring protocols with concerns of communities dictating unwarranted and expensive investigations. The following recommendations constitute an attempt to level the playing field for minority and low-income communities:

3.1. Community Involvement in Monitoring

- A. DEP inspectors should respond to complaints in a timely manner.
- B. DEP should inform communities about monitoring and enforcement issues such as what constitutes a violation, how to report a concern to DEP, how citizens can monitor permitted activities and what is expected of permittees¹⁸.
- C. DEP should assist communities in the review of inspection reports and enforcement documents.
- D. When investigating potential permit violations or as impetus to begin such investigations, DEP should review and consider data provided by community members as supporting documentation.

¹⁸ See Recommendation 4.3, page 29.

- E. DEP should report back to communities and interested organizations and individuals regarding the status of violations, consent decrees and penalties assessed.

3.2. Local Inspectors

DEP should increase the use of positions like the Corridor Inspector in the City of Chester/Southwest Philadelphia area. This Corridor Inspector position has proven to be beneficial where there is a concentration of permitted facilities in an area. This DEP employee focuses attention on a small geographic area and develops relationships with local residents, the elected officials and local operators of the facilities; ensures routine inspections and timely responses to complaints where DEP is responsible for inspections¹⁹; and coordinates multi-media (air, water and land) inspections. Likewise, Special Subsidence Agents have been employed in specific mining areas.

3.3. Enforcement

- A. DEP should ensure that regulations and permit conditions are equally and fully enforced.
- B. To encourage compliance with regulations, DEP should consider increasing its use of injunctive procedures, including revocation of permits or closure orders.
- C. DEP should provide for increased monitoring and enhance its efforts to identify and remedy current instances of non-compliance in minority and low-income communities.

3.4. Penalties

- A. DEP should encourage companies to pursue Community Environmental Projects²⁰ in lieu of the payment of penalties. This process, which is approved by DEP on a case-by-case basis, benefits the community in the event of a permit violation.
- B. DEP should assess penalties for permit violations in the same manner in all communities.
- C. In setting penalties, DEP should consider the economic benefit to the operator resulting from the violation.

¹⁹ In Allegheny and Philadelphia counties, local agencies perform these inspections in certain programs through delegation agreements.

²⁰ EPA has a similar program entitled Supplemental Environmental Projects.

3.5. Going Beyond Enforcement

- A. DEP should be more proactive in promoting good housekeeping and good engineering practices. DEP should provide training to inspectors on how to go beyond its enforcement role to achieve this objective.
- B. DEP inspectors should encourage site visits by the Office of Pollution Prevention and Compliance Assistance (OPPCA), facilitate meetings between communities and permittees, and report potential problems to other relevant local and state agencies.

4. DEP ORGANIZATIONAL CHANGE

The following recommendations are intended to create an organizational structure and improve operations within DEP to enable the agency both to address current environmental justice concerns and to prevent similar issues from arising in the future.

4.1. Environmental Justice Advisory Board

- A. DEP should form an Environmental Justice Advisory Board whose members are appointed by the Secretary. The purpose of the board would be to advise DEP on environmental justice issues and to oversee the implementation of the EJWG consensus recommendations contained in this document. The advisory board should meet twice a year, or more frequently, as issues dictate.
- B. Members of the board should be selected to attain a broad perspective. Specific interests should be considered for representation on the board and at least two members of each of the following groups should be included: grassroots environmental and community advocates, civil rights advocates, industry, academia, local government, labor, legal, community health and DEP. The board also should be geographically representative of the Commonwealth. Priority consideration should be given to individuals nominated by the EJWG.
- C. DEP should pursue the provision of a stipend for board members to ensure there will be no personal financial burden resulting from participation in board activities.
- D. The board should develop and ratify bylaws that, at a minimum, will specify its organizational structure and how the board will make decisions. The organizational structure may include subcommittees that have specific tasks for defined timeframes.
- E. Responsibilities assigned to the Environmental Justice Advisory Board should include advising DEP in 1) program creation and planning, 2) development of program policy and 3) program reviews. Specifically, DEP should consult with the board during the

early stages of program development and periodic program reviews, so that board members can provide advice with regard to environmental justice issues, such as DEP policy towards permit compliance. Among the first items for consideration by the board should be the degree of independence that the Office of Environmental Advocate should have from DEP and make appropriate recommendations. The board also should consider a process and specific criteria for a community to “opt-in” for consideration as a minority or low-income community.

- F. DEP should provide adequate notice to the board regarding issues, programs and permits that may raise environmental justice concerns and/or are related to board duties.
Adequate notice means that the board has time to discuss the issues and provide input to DEP before a decision is made. DEP should designate this as a specific duty for one or more DEP staff persons.
- G. DEP should provide a liaison and administrative support for the board. This should be a responsibility of the proposed Office of Environmental Advocate.
- H. Board members should be provided notice of vacancies on other DEP advisory boards and given equal consideration for appointment as voting members to those boards. These appointments should be selected to provide the greatest input into programs and regulations that affect low-income and minority communities.
- I. The board should offer recommendations on how DEP, in conjunction with state and local agencies as needed, could integrate the current health status of a community into environmental assessment and decision making.

4.2. DEP Environmental Justice Training

The work group recognizes that DEP cannot improve its relationship with low-income and minority communities without providing its staff with training that celebrates diversity and provides effective techniques for working with different types of communities. The following recommendations will help DEP focus its resources on the necessary training programs:

- A. DEP should seek advice and involvement from members of the EJWG, and when formed, the Environmental Justice Advisory Board and Office of Environmental Advocate, in the planning and implementing its training programs that are relevant to issues raised in this report. Where appropriate, DEP may choose to directly involve members of minority and low-income communities or other knowledgeable individuals in such training programs. DEP will provide guidance on training methods for prospective instructors from these communities.

- B. DEP should provide communications training for all DEP personnel (regarding such issues as sensitivity, diversity, communication and team building), including but not limited to how to 1) interact respectfully with people of different gender, culture, race, age, occupation and class; 2) listen respectfully to people who are not experienced working with DEP; and 3) help people access information and involve themselves in environmental issues.

4.3. DEP Outreach and Education

Effective community outreach should be one of DEP's primary responsibilities because outreach can build the capacities of communities to participate more meaningfully in permitting and monitoring activities. To accomplish this in the most effective manner, the EJWG recommends the creation of a new office to ensure that citizen concerns are addressed. Furthermore, DEP should make the agency more accessible via telephone and the Internet.

4.3.1. Office of Environmental Advocate

- A. DEP should create, fund and adequately staff an Office of Environmental Advocate (OEA). The mission of this office is to ensure all citizens' issues and concerns are addressed in an equitable and expeditious manner. The OEA should be overseen by the Secretary of DEP but will copy all pertinent correspondence to the Governor's Office. If citizens' concerns are not resolved to the satisfaction of those citizens, then the Office of Environmental Advocate may advise the Secretary of DEP. A director of the Office of Environmental Advocate, who should be housed at DEP's Central Office, should administer the OEA. Duties of this administrator include supervision of the regional offices' Environmental Advocates.
- B. Because there is a higher concentration of permitted facilities in the state's southern regions, DEP should designate a minimum of one Environmental Advocate in those regional offices. Central Office will serve the Northern regional offices; however, DEP should consider the need for Environmental Advocates located in the northern regions. These positions should report directly to the Office of Environmental Advocate in Central Office. Primary duties of these staff members should be community advocacy, outreach and education. All OEA staff should work with regional and district office staff to address citizens' concerns in an equitable and expeditious manner.
- C. Responsibilities of the OEA and its staff should include, but are not limited to:
- Providing citizens with information and explanations regarding DEP policies and

procedures, Environmental Hearing Board processes and opportunities for public participation.

- Facilitating interactions and building relationships between communities and those who can address their issues, such as government, public and private institutions and advocacy groups.
- Ensuring that citizens' concerns have been adequately addressed and that DEP's decisions are clearly communicated to those citizens.
- Attending public meetings, hearings and other citizen-attended events related to proposed DEP actions relevant to environmental justice issues.
- Recommending legislation and participating in developing and revising DEP programs, policy and guidance regarding environmental justice or public involvement.
- Because the work group recognizes the concerns of communities directly impacted by the extraction of coal and other minerals²¹, reviewing and making recommendations, as appropriate, on the following mining program issues: 1) public participation, 2) monitoring and enforcement and 3) environmental impacts such as property damage, natural resource damage and human health impacts.
- Monitoring the effectiveness of DEP community outreach and education programs.
- Advising executive management regarding identified areas in which the public is having difficulty working with DEP and suggesting ways to resolve conflicts and improve communication.
- Fostering open, honest communications between DEP staff and citizens and advocacy groups.
- Participating in the selection of Environmental Justice Advisory Board members
- Producing an annual report of its activities.
- Establishing relationships with multi-culture organizations in the Commonwealth.
- Providing information regarding funding sources and access to DEP programs, including technical support and the restoration of impacted communities.

²¹ While the environmental justice movement is primarily linked to the civil rights movement and the plight of minority and low-income communities, coalfield communities in Pennsylvania and throughout Appalachia similarly struggle with environmental, social and economic problems resulting from their long history of resource extraction. A major similarity among these communities is the lack of a community voice in decision-making.

4.3.2 Toll-free Telephone Access

DEP should establish toll-free telephone access for Commonwealth citizens seeking information regarding all DEP actions and services. All DEP offices (central, regional and district) should be accessible toll-free.

4.3.3. Outreach and Education Topics

- A. DEP outreach and education programs should include, but not be limited to, information and training on the following topics:
 - Environmental regulations
 - Access to DEP resources, information and data
 - Monitoring and enforcement of DEP regulations and the appropriate steps for issuing a complaint with DEP
 - Working with minority communities
 - Sustainable development, including brownfields redevelopment
 - Steps for appealing a permit decision via the Environmental Hearing Board
 - Opportunities for public involvement in DEP decision-making processes
- B. DEP should continue to coordinate with the Pennsylvania Department of Education and the Environmental Justice Advisory Board to provide comprehensive, age-appropriate environmental education for students in kindergarten through grade 12. Topics to be considered should include, but not be limited to environmental justice, air quality including the risks of fine particulate air pollution, waste reduction, pollution prevention, sustainable development, land use, mining impacts, balancing issues, permit processes, volunteerism and stewardship.
- C. The community education efforts of DEP should:
 - a. Invite community members and community environmental education providers to the table to establish an understanding of the full environmental education process and then assist the group in the completion of a community environmental education resources and gap analysis;
 - b. Support and strengthen environmental education programs that have been identified as already being in place; and
 - c. Support this group as it works to fill the identified gaps in the community environmental education process.

5. IMPLEMENTATION PLAN

DEP Secretary David E. Hess and former Secretary James M. Seif committed DEP to implement the consensus recommendations of the EJWG. To the extent possible, EJWG recommendations should be implemented through changes to DEP policy. Where required, DEP should seek the regulatory and statutory authority necessary to put these recommendations into effect.

5.1. DEP Action Plan

DEP should produce a detailed action plan for the implementation of each recommendation within six months of the formal submission of this report. The Environmental Justice Advisory Board should review the progress made regarding the consensus recommendations and provide a six-month and a one-year report to the work group.

5.2. EJWG Oversight

DEP should convene a full EJWG meeting six months and a second full EJWG meeting one year following the submission of the work group report. At these meetings, DEP and the Environmental Justice Advisory Board should report the progress made on each of the work group consensus recommendations and other scheduled or completed DEP actions that address environmental justice concerns. At the second meeting, the work group should decide whether or not it requires subsequent meetings to monitor the implementation of this report.

5.3. Implementation Training

DEP should provide workshops in minority and low-income communities so they will know how to take advantage of the measures presented in this report. DEP should also train its staff on the implementation of the recommendations.

5.4. Prevention of Unintended Effects

- A. To provide clarity, DEP should provide expected timelines for implementing the suggested permit review process.
- B. DEP should monitor the economic impacts of the recommendations in this report. If there is evidence that implementation is resulting in a reduction of economic development opportunities in minority and low-income communities, DEP should make

the necessary revisions to the implementation of these recommendations in order to reduce or eliminate these negative economic effects.

5.5. Review of DEP Programs

DEP should conduct a periodic review of its programs, in order to determine whether these programs result in disparate impacts to minority or low-income communities. The report of these reviews should be made available to the public.

APPENDIX ONE: 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

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

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 or transfer of the above permits
- 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. Opt-in Permits

Individual 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)

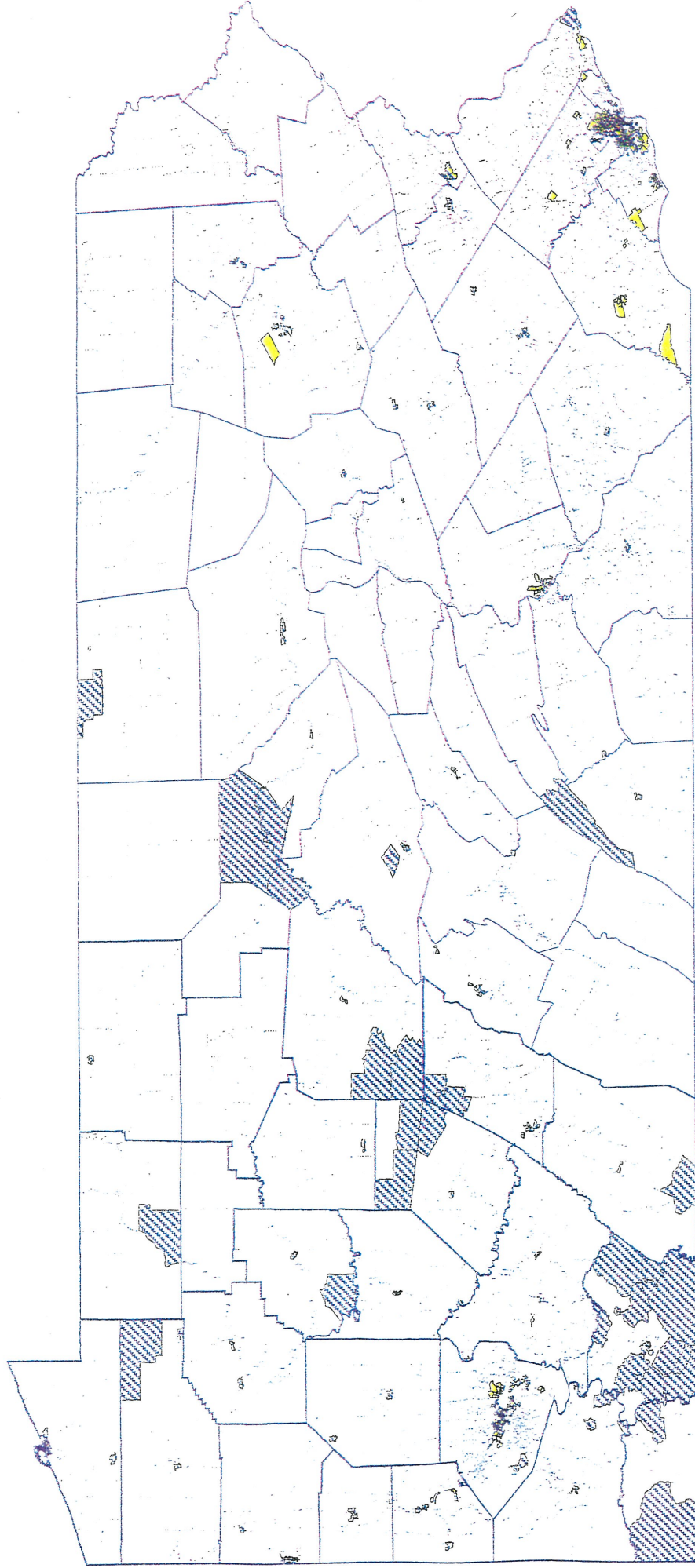
reasonably anticipated significant adverse cumulative impacts. The applicant should not be required to provide information to DEP regarding neighboring facilities in order to determine whether the permit is an opt-in Trigger Permit. DEP should initiate and perform this analysis based on information and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

APPENDIX TWO: MAPS OF MINORITY AND LOW-INCOME COMMUNITIES

The attached maps are based on 1990 U.S. Census data. The shaded areas depict communities that meet the EJWG definition for minority and low-income communities. These maps will be updated as new census data becomes available.

Combined Minority and Poverty Data

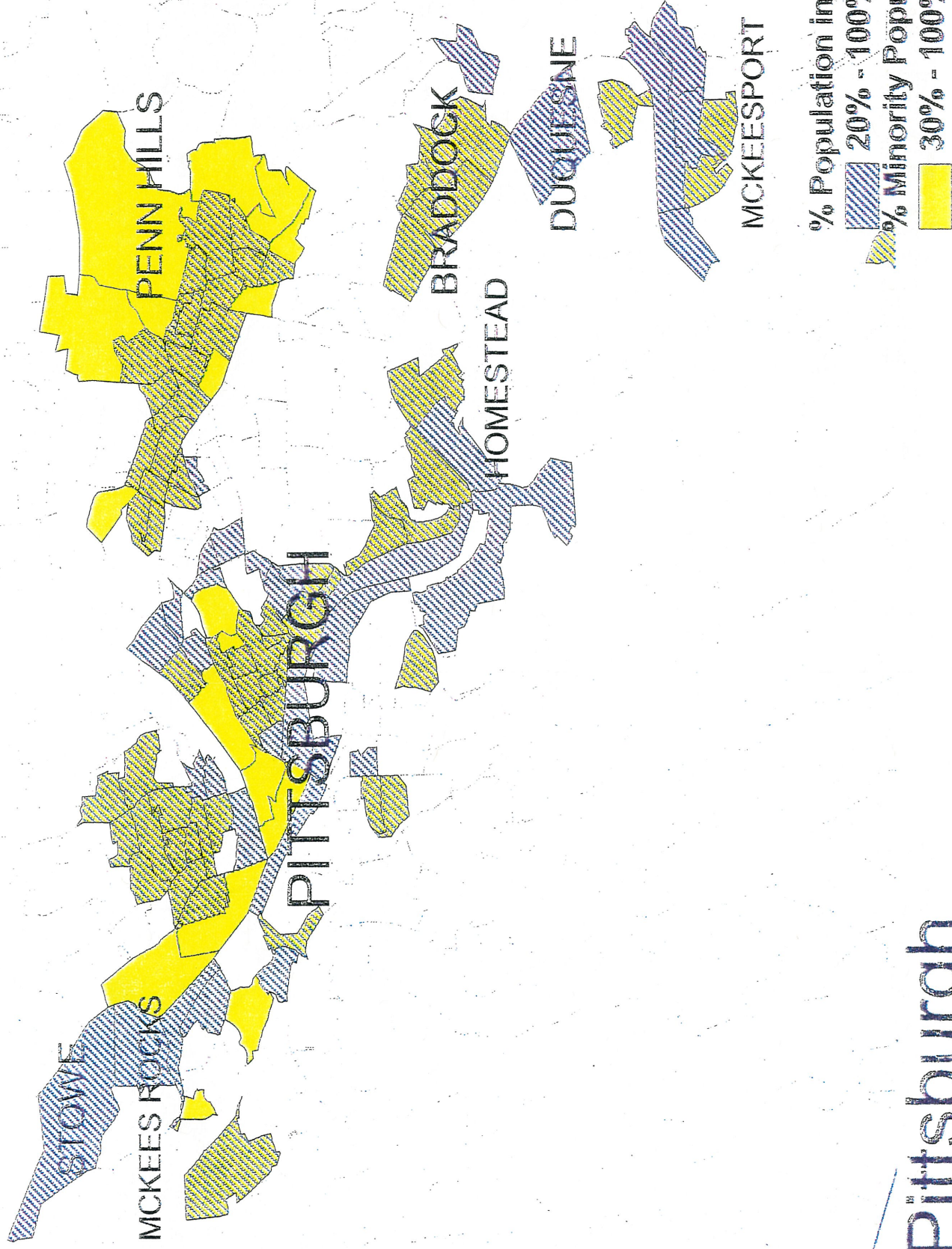
Based on 1990 Census Data



% Population in Poverty
20% - 100%
% Minority Population
30% - 100%

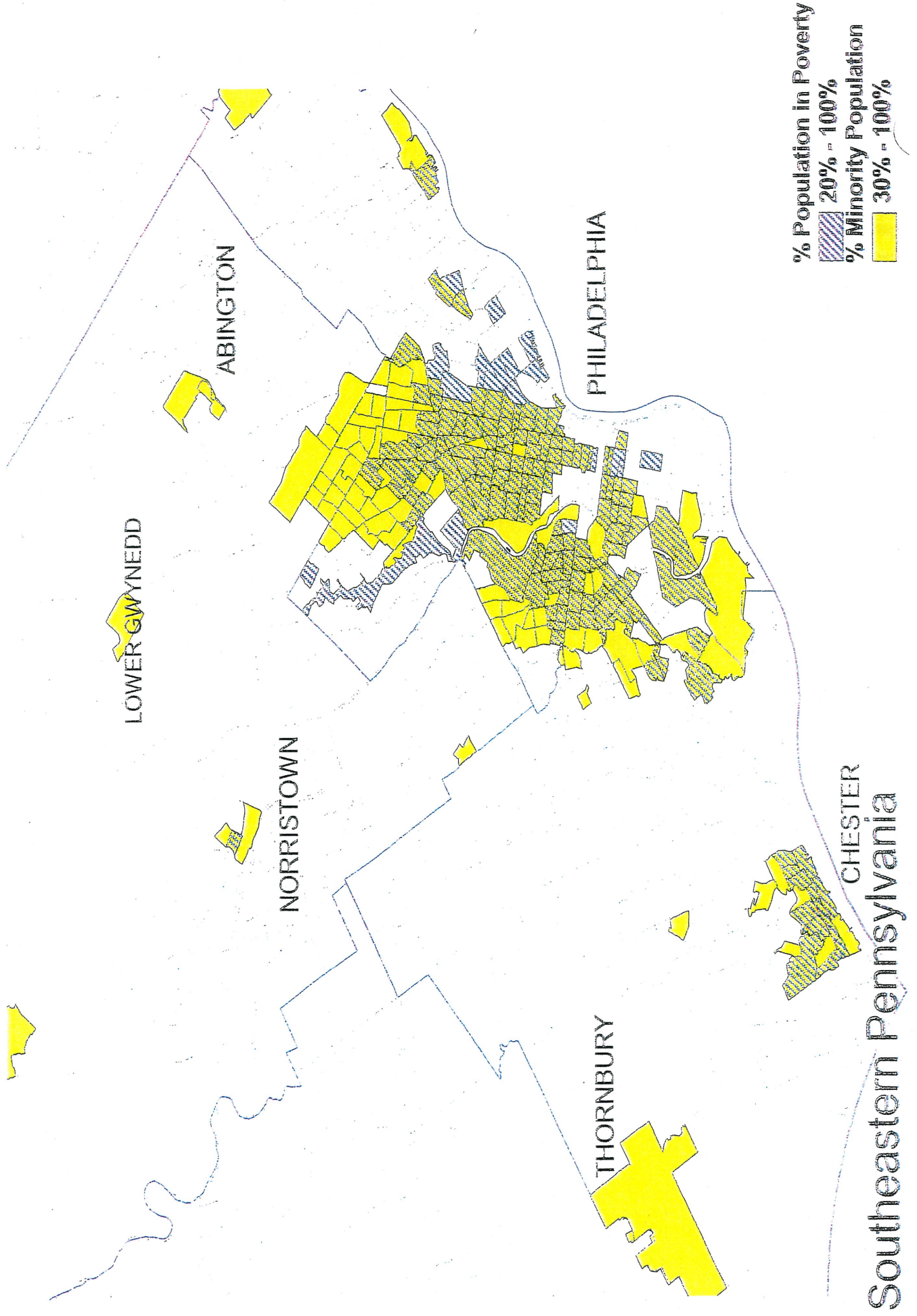
Combined Minority and Poverty Data

Based on 1990 Census Data



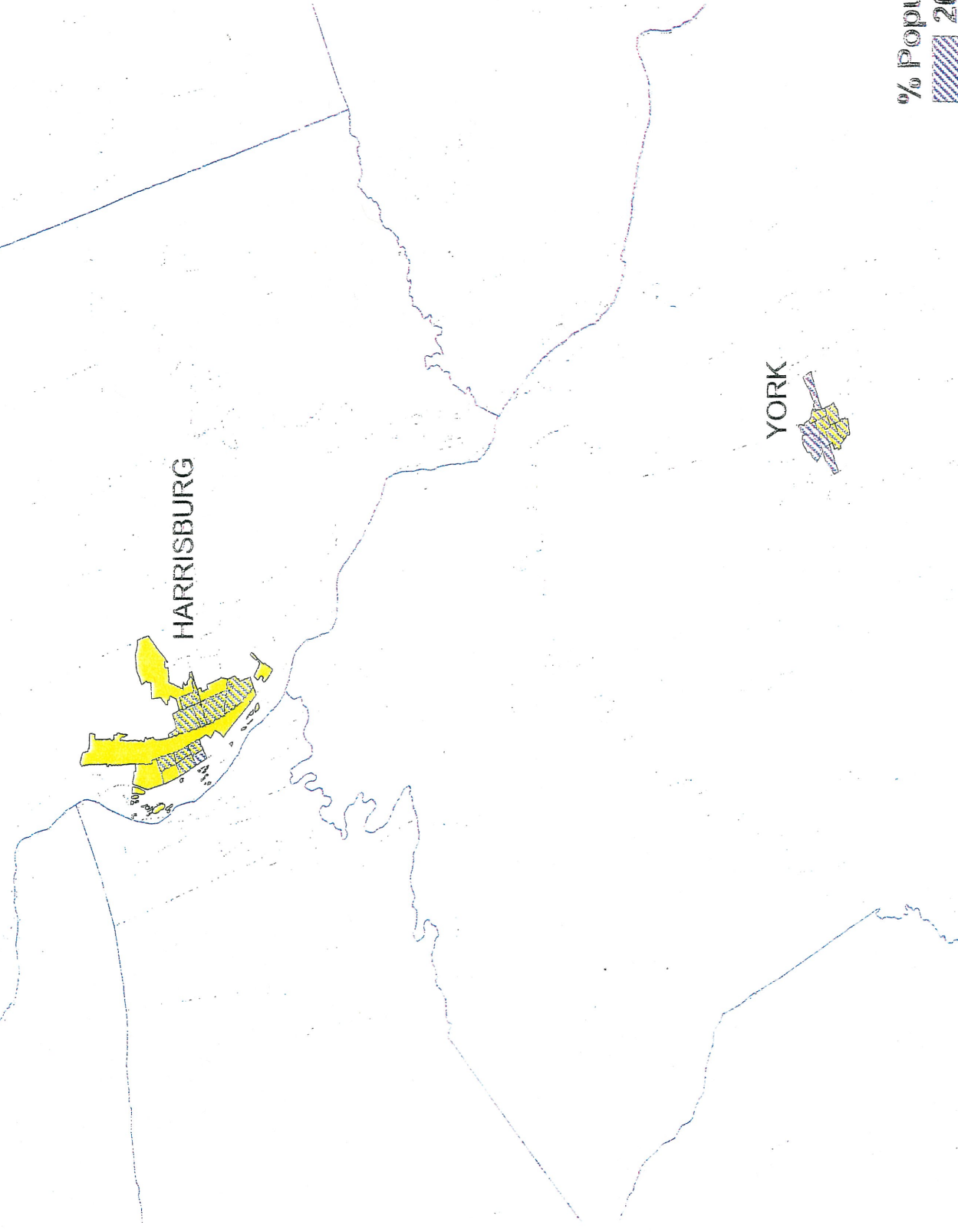
Combined Minority and Poverty Data

Based on 1990 Census Data



Combined Minority and Poverty Data

Based on 1990 Census Data

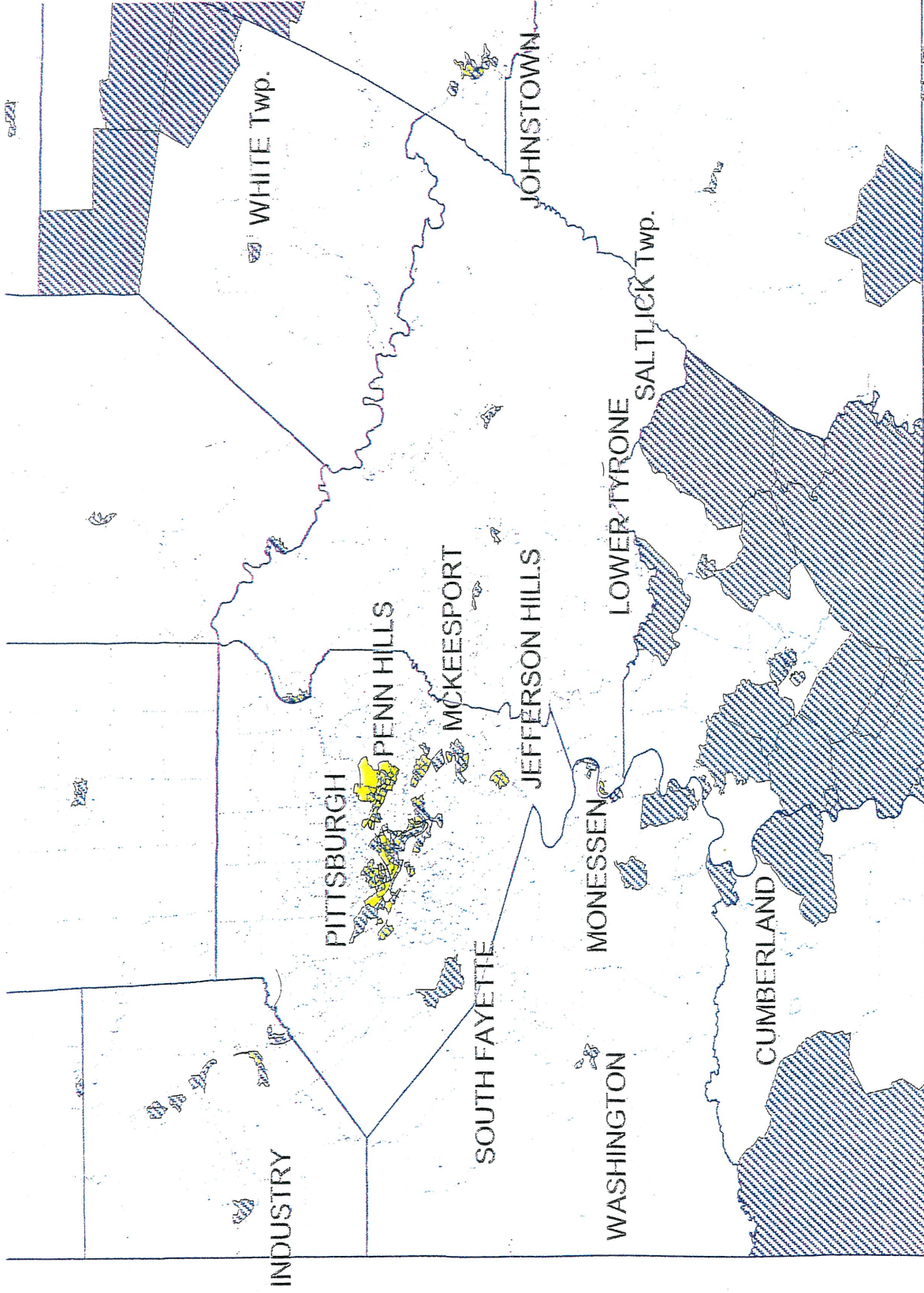


% Population in Poverty
20% - 100%
% Minority Population
30% - 100%

Southcentral Pennsylvania

Combined Minority and Poverty Data

Based on 1990 Census Data

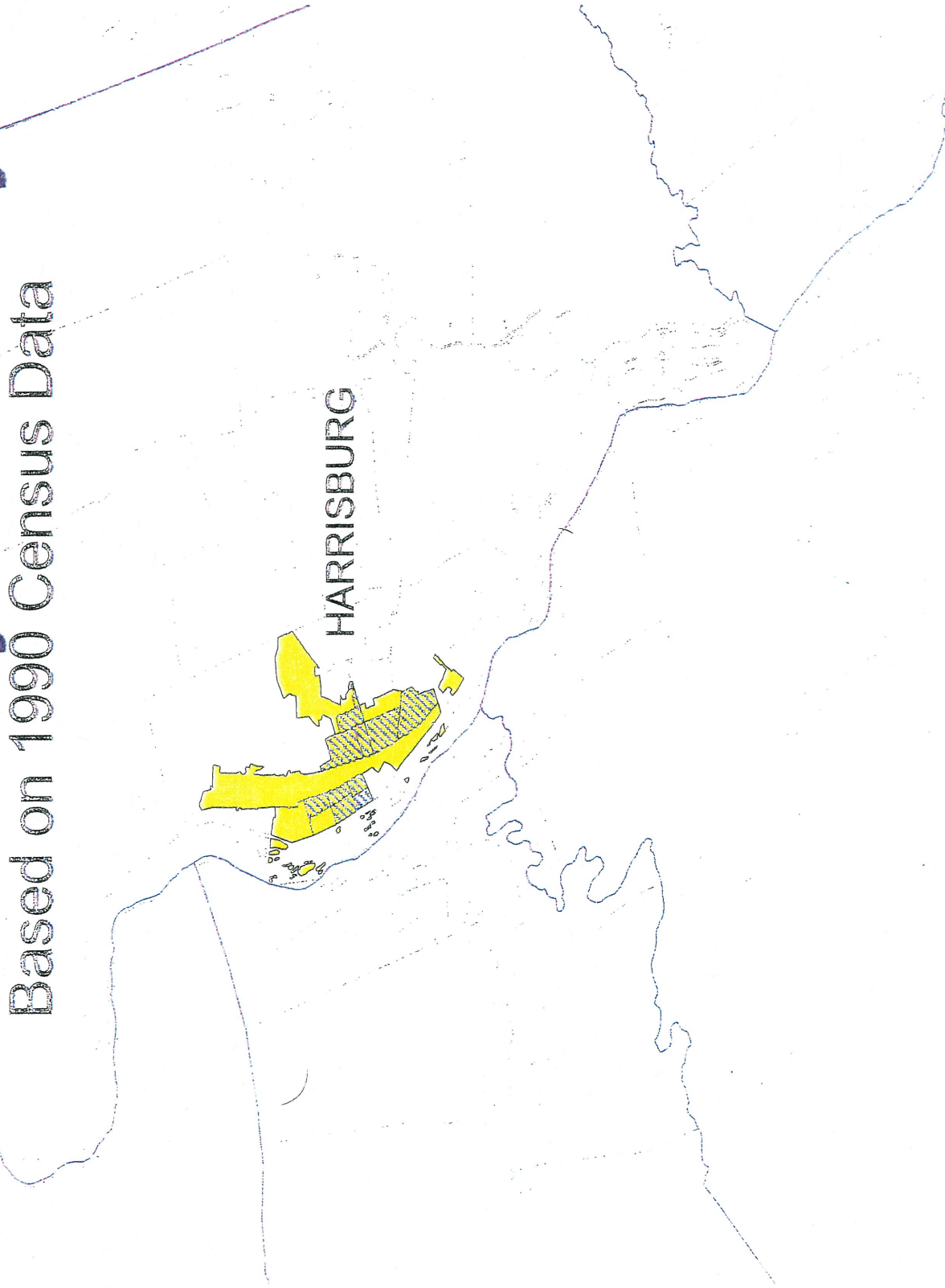


% Population in Poverty
20% - 100%
% Minority Population
30% - 100%

Southwestern Pennsylvania

Combined Minority and Poverty Data

Based on 1990 Census Data



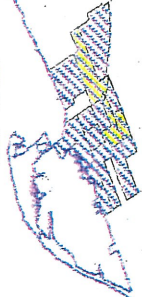
% Population in Poverty
20% - 100%
% Minority Population
30% - 100%

Harrisburg

Combined Minority and Poverty Data

Based on 1990 Census Data

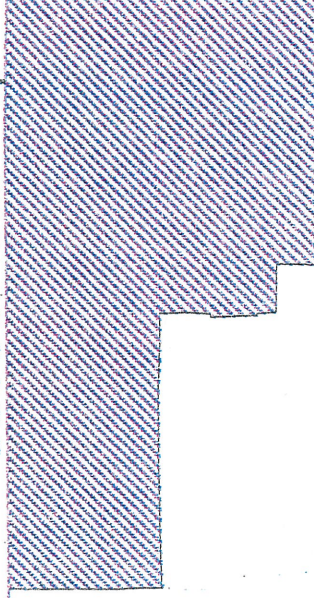
ERIE



EDINBORO



BLOOMFIELD TWP.



MEADVILLE



% Population in Poverty

20% - 100%

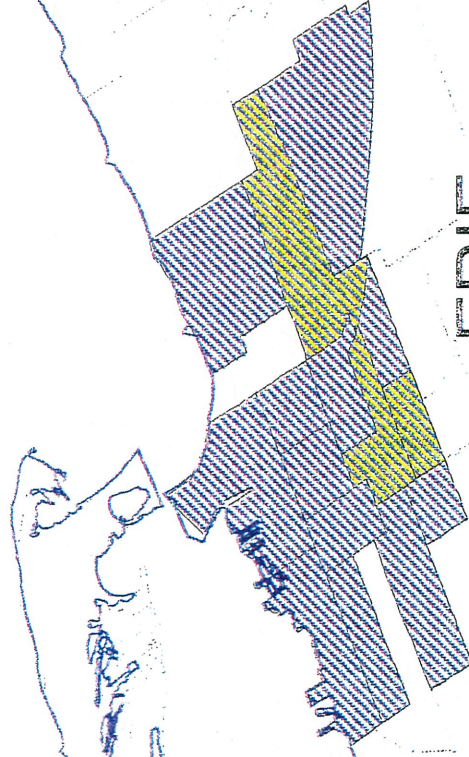
% Minority Population

30% - 100%

Northwestern Pennsylvania

Combined Minority and Poverty Data

Based on 1990 Census Data



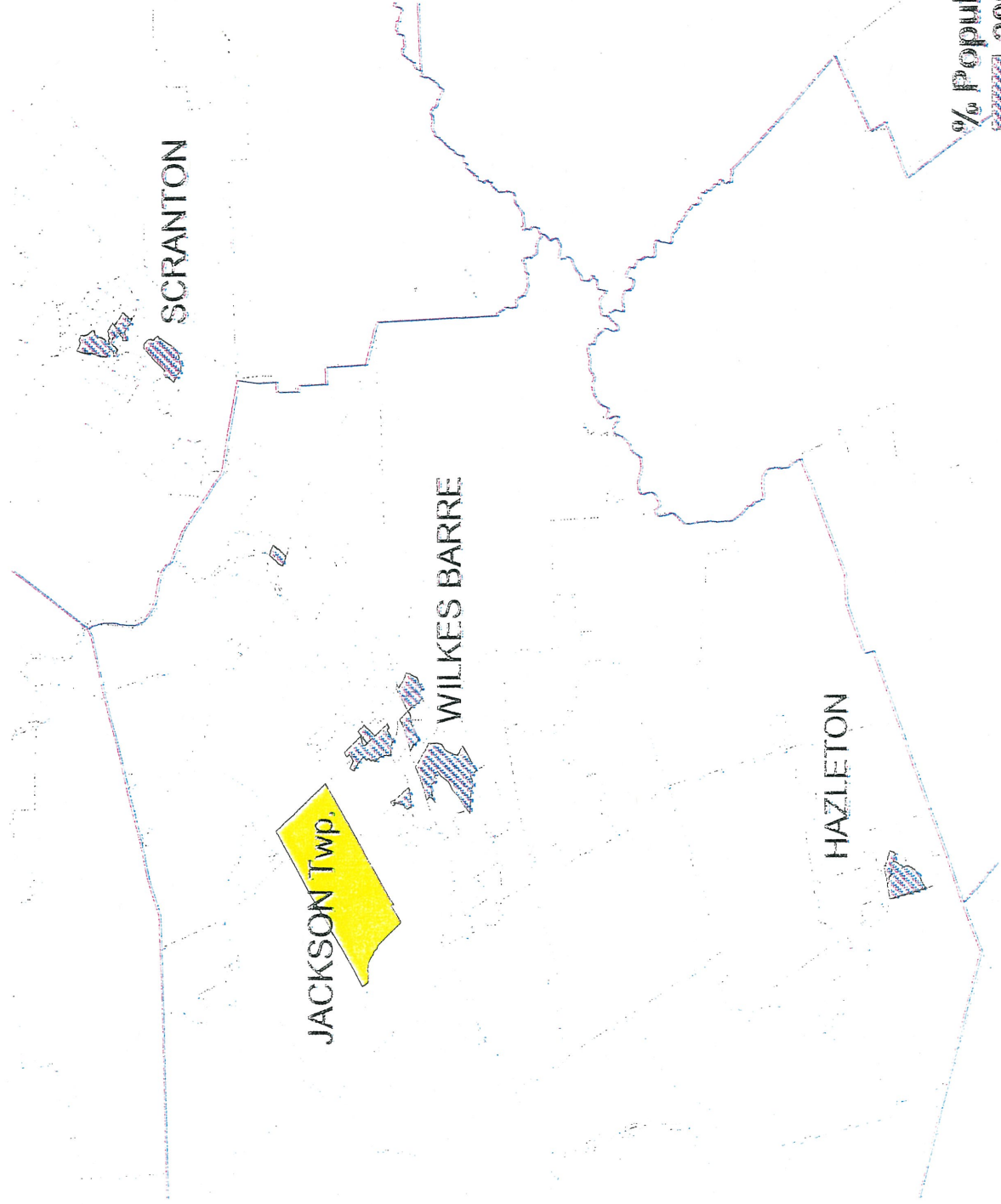
ERIE

% Population in Poverty
20% - 100%
% Minority Population
30% - 100%

Erie

Combined Minority and Poverty Data

Based on 1990 Census Data



Northeastern Pennsylvania

APPENDIX THREE: DEFINITIONS

1. Area of Concern

The area of concern for any proposed permit is defined as all U. S. Census tracts contained entirely or in part within 1) a circle defined by a radius of one-half mile from the activity-appropriate center or boundary of a proposed permit activity; 2) areas of impact for which DEP is authorized to require analysis, such as the traffic corridors, groundwater plumes and area of significant air impact; and 3) other areas of impact (e.g., noise, subsidence, vibration, odor, etc.) associated with the proposed permit activity.

2. Executive Order 12898

Executive Order 12898 is titled, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." In part, it requires federal agencies to determine whether their programs, policies or activities have disproportionately high and adverse human health or environmental effects on minority and/or low-income populations.

3. Low-Income Community

A low-income community is any census tract with 20 percent or more of its population at or below the poverty level, as defined by the U.S. Census Bureau. In addition, a low-income group within a tract, whose interest is not protected by the majority community upon appropriate showing, may be considered a low-income community.

4. Minority Community

A minority community is any U.S. Census tract with a 30 percent or greater minority population. In addition, any minority group within a tract, whose interest is not protected by the majority community upon appropriate showing, may be considered a minority community.

5. Title VI of the United States Civil Rights Act of 1964

This provides that, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

6. 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.

APPENDIX FOUR: LIST OF RECOMMENDATIONS

This table lists all of the recommendations made to DEP by the EJWG. Page numbers refer to the location of the recommendation in the text of the report.

1. IMPROVING THE CONDITION OF ENVIRONMENTALLY BURDENED MINORITY AND LOW-INCOME COMMUNITIES		
1.1	Benchmarks for Improvement	p.15
In coordination with the proposed Environmental Justice Advisory Board (EJAB) ²² , DEP should establish specific standards and benchmarks by which to measure and guide its improvement efforts. To provide both DEP and the environmentally burdened minority and low-income communities with a better understanding of the relevant data, trends and improvements needed, these standards and benchmarks should be developed as soon as possible. If the data does not exist, then DEP should use staff or external consultants to develop this data. We also recommend that DEP provide the EJAB with periodic status reports on its improvement efforts.		
1.2	Assessment of DEP Programs	p.15
DEP should review and assess the effectiveness of its existing programs that are applicable to the restoration of environmentally burdened communities and expand those programs that can help the agency attain the standards and benchmarks that are recommended by the EJAB and established by DEP (see 1.1). If those programs are not measurably improving the conditions of environmentally burdened minority and low-income communities, we recommend that DEP amend or eliminate such programs.		
1.3	Improvement Plans	p.15
DEP should develop new policies, procedures and programs that will measurably improve specific environmental conditions of environmentally burdened minority and low-income communities. An improvement plan should be developed for communities with the worst environmental conditions. (See page 15 for a list of efforts to be considered for these plans.)		
1.4	Collaboration with Other Agencies	p.16
DEP should lead in the coordination of local, state and federal governmental agencies that can play a role in improving the conditions of environmentally burdened minority and low-income communities. To assume this critical leadership role in interagency coordination, DEP should advise the governor and his cabinet of both the challenges and opportunities that exist in environmentally burdened communities.		
2. THE PERMITTING PROCESS		
2.1	Determine Community	p.18
In order to determine if a permit application should follow the permit review process outlined in this report, DEP and the permit applicant must first determine if a proposed Trigger Permit will impact a minority and low-income community.		

²² See Recommendation 4.1, page #.

2.2.1	Community Outreach	p.19
<p>A. DEP should strongly encourage applicants to meet with community stakeholders, including meetings prior to submission of a permit application. Stakeholders include environmental groups, citizens' groups, individuals, government officials and businesses. The purpose of these meetings should be to 1) inform community members of the proposed activity, 2) answer questions from stakeholders, 3) exchange information on how the impacts of the proposed activity could be mitigated, 4) exchange information on how the impacts should be monitored, and 5) involve communities in identification of the potential benefits and adverse impacts of the proposed activity.</p> <p>B. DEP should produce and distribute fact sheets regarding the proposed activity. These fact sheets should be written in language easily understood by the majority of readers within the areas of concern.</p> <p>C. DEP should use mobile or temporary offices, which can be located in announced, public areas. Particularly during permit review processes, these offices should provide opportunities for document review, public outreach, and public comment.</p> <p>D. DEP should provide the residents, both before and after permit approval, with information regarding permit conditions including monitoring of impacts and enforcement options and the appropriate steps to follow if the community believes the conditions are unacceptable or have been violated.</p> <p>E. DEP should encourage the development and funding of minority and low-income community partnerships with universities and colleges, non-profit organizations, consultants, attorneys, professional associations and public and professional libraries to facilitate communities meaningful participation in permit review processes.</p>		
2.2.2	Public Information	p.20
<p>A. DEP should create a system through which individuals and groups in all communities can register to be notified of proposed Trigger Permits. To accomplish this, DEP may develop an electronic system, however, it is essential that DEP ensure a similar service is available for individuals and groups without Internet access.</p> <p>B. Public notices, written in terminology and languages easily understood by the majority of readers, should be sent to publications widely read by the residents and placed locally in areas of high visibility. (For examples of ways to provide notice, see page 20.)</p>		
2.2.3	Public Meetings	p.20
<p>A. Within 30 days of the permit application submittal, the applicant in coordination with DEP should schedule a timely public meeting to inform the residents within an area of concern of the scope and nature of the project. The applications should not be deemed complete until this meeting is scheduled. The meeting above would be in addition to any other required DEP public meetings and hearings. Where appropriate or necessary, DEP should organize additional public meetings or interactive sessions.</p>		
2.2.4	Summary of Permit Application	p.21
<p>A. DEP should require applicants to provide a plain-language summary of the application that explains, in terms understandable to the majority of readers within the area of concern, the purpose and location of the proposed facility or action, what actions the permit would authorize and its anticipated impacts (including visual, noise, traffic and other adverse impacts). DEP should review this summary for technical accuracy and completeness prior to its submission to the community. The inclusion of this summary should be part of DEP's review for administrative completeness.</p> <p>B. DEP should provide guidance regarding the qualities of a good summary to applicants and potential applicants. The permit summaries could also be used by DEP for community outreach.</p>		

2.2.5	Document Availability	p.21
<p>A. Through extended hours or by appointment, DEP should provide opportunities for all community members to review public files during evenings and weekends.</p> <p>B. Each DEP regional and district office should identify additional convenient locations at which the public can review the complete files pertaining to all nearby proposed Trigger Permit applications. These locations may include public libraries, municipal offices and volunteer organizations. DEP should provide training, including guidance on how to locate materials in the files and orient the reader, to those responsible for granting access and maintaining these files. DEP-produced fact sheets outlining the permit process, public participation opportunities, and steps for contacting the appropriate DEP staff and programs should be included in these files. The files available at remote locations, including log sheets and correspondence, should be provided and updated by DEP. When necessary, DEP may require applicants to submit multiple copies of materials. DEP should be responsible for maintaining the integrity of the files. Files should be updated in a timely manner. (Recommended contents of these remote files are listed on page #.)</p>		
2.2.6	Conflict Management	p.22
<p>A. When there is community opposition to a proposed Trigger Permit activity in a minority and low-income community, a priority of DEP should be to encourage the use of formal and informal, voluntary alternative dispute resolution (such as mediation or arbitration) after application submittal and prior to a final permit decision. DEP should offer assistance to the parties in mediation, the facilitation of meetings, or selection of a neutral third-party mediator. When appropriate, and as agreed to by the parties, DEP could participate in these processes. In order to facilitate these processes, DEP should use its authority to issue a draft permit decision prior to a final decision, and should explore expanding the issuance of a draft permit decision to all Trigger Permits.</p> <p>B. When the timelines within DEP guidance, regulations or statutes prevent the effective use of alternative dispute resolution in minority or low-income communities, DEP should recommend changes to these timelines or revise its guidance.</p>		
2.3	Compliance with Regulation	p.23
<p>As part of the permit review process, DEP should determine if the proposed activity is in compliance with all of its applicable statutes and regulations.</p>		
2.4	Minimizing Impacts	p.23
<p>Applications for new and renewed Trigger Permits should include a description of how the applicant made a reasonable effort to minimize impacts and potential risks to public health and the environment.</p>		

2.5	Cumulative Impact Analysis	p.23
<p>EJWG members agreed that DEP should address cumulative impact concerns. However, the EJWG decided that further consideration was needed in this area including definition of cumulative impact analyses, identification of reliable analytic tools, the cost of analyses and who should pay those costs, the time required for these analyses, and the scope of circumstances in which cumulative impact analyses are appropriate.</p> <ul style="list-style-type: none"> A. DEP, in conjunction with selected members of the EJWG, the Environmental Justice Advisory Board and other relevant agencies, should develop and promulgate a cumulative impact process (including how to conduct a cumulative impact analysis). In devising this process, the parties should consider the health status of the community. B. If DEP determines that such analyses are necessary based on the anticipated significant adverse impacts to a minority and low-income community, DEP should require an applicant to conduct a cumulative impact analysis. C. DEP should initiate a cumulative impact analysis in minority and low-income communities when DEP determines it is necessary but such an analysis cannot reasonably be required of the applicant. D. The DEP cumulative impact process should allow case-by-case flexibility rather than routinely requiring an analysis of all potential impacts. E. DEP should seek authority as needed to make permit decisions based on cumulative impacts. 		
2.6	Disparate Impact Analysis	p.23
<p>The EJWG focused on devising a disparate impact analysis process that prudently addresses environmental and human health concerns in certain situations when heightened scrutiny is necessary to protect minority and low-income communities. DEP should monitor the implementation of these recommendations to ensure that communities are not excluded from economic development based on demographic characteristics.</p> <ul style="list-style-type: none"> A. DEP, in conjunction with selected members of the EJWG, the Environmental Justice Advisory Board and other relevant agencies, should develop a disparate impact screening process for Trigger Permits. That process would be used to determine if a community is likely to experience a disparate impact from a proposed action. In devising this process, the parties should consider the health status of the community. B. If a significant adverse impact is reasonably anticipated from a proposed Trigger Permit and the community is likely to experience a disparate impact, then DEP should be authorized to require the applicant to conduct a disparate impact analysis. C. When disparate impacts are anticipated for a Trigger Permit, DEP should encourage the applicant to enter discussions and voluntary mediation with stakeholders from the area of concern in order to mitigate or eliminate potential disparate impacts. Stakeholders should be identified through public meetings and other public involvement strategies. These discussions could be considered by DEP in its decision to require a disparate impact analysis for the proposed action. 		
2.7	Mitigation of Impacts	p.24
<p>If a proposed activity has the potential to create disparate impacts, DEP should encourage the applicant to pursue additional mitigation efforts. Mitigation may include the reduction of impacts of the proposed activity. For example, the use of pollution prevention techniques, alternate technology, alternate routes, alternate configurations or the addition of infrastructure may lead to a lessening of impacts associated with a proposed action.</p>		

2.8	Harms and Benefits Analysis	p.24
The DEP should analyze any remaining environmental harm that will result and the benefits to be derived from the proposed activity.		
2.9	Harms and Benefit Determination	p.25
At the conclusion of a harms and benefit analysis, DEP should determine whether the benefits of the proposed activity outweigh the environmental harm.		
2.10	Decision	p.25
At the completion of this process, DEP must issue a decision on the proposed permit. DEP's decision-making authority extends to the issuance of a permit, the issuance of a permit with conditions, or a permit denial.		
3. MONITORING AND ENFORCEMENT		
3.1	Community Involvement in Monitoring	p.25
<p>A. DEP inspectors should respond to complaints in a timely manner.</p> <p>B. DEP should inform communities about monitoring and enforcement issues such as what constitutes a violation, how to report a concern to DEP, how citizens can monitor permitted activities, and what is expected of permittees.</p> <p>C. DEP should assist communities with reviewing inspection reports and enforcement documents.</p> <p>D. When investigating potential permit violations or as impetus to begin such investigations, DEP should review and consider data provided by community members as supporting documentation.</p> <p>E. DEP should report back to communities and interested organizations and individuals regarding the status of violations, consent decrees, and penalties assessed.</p>		
3.2	Local Inspectors	p.26
DEP should increase the use of positions like the Corridor Inspector in the City of Chester/Southwest Philadelphia area. This DEP employee focuses attention on a small geographic area and develops relationships with local residents, the elected officials and local operators of the facilities; ensures routine inspections and timely responses to complaints where DEP is responsible for inspections; and coordinates multi-media (air, water, and land) inspections.		
3.3	Enforcement	p.26
<p>A. DEP should ensure that regulations and permit conditions are equally and fully enforced.</p> <p>B. To encourage compliance with regulations, DEP should increase its use of injunctive procedures, including revocation of permits or closure orders.</p> <p>C. DEP should provide for increased monitoring and enhance efforts to identify and remedy current instances of non-compliance in minority and low-income communities.</p>		
3.4	Penalties	p.26
<p>A. DEP should encourage companies to pursue Community Environmental Projects in lieu of paying penalties. This process, which is approved by DEP on a case-by-case basis, benefits the community in the event of a permit violation.</p> <p>B. DEP should assess penalties for permit violations in the same manner in all communities.</p> <p>C. In setting penalties, DEP should consider the economic benefit to the operator resulting from the violation.</p>		

3.5	Going Beyond Enforcement	p.27
<p>A. DEP should be more proactive in promoting good housekeeping and good engineering practices. DEP should provide training to inspectors on how to go beyond its enforcement role to achieve this objective.</p> <p>B. DEP inspectors should encourage site visits by the Office of Pollution Prevention and Compliance Assistance (OPPCA), facilitate meetings between communities and permittees, and report potential problems to other relevant local and state agencies.</p>		

4. ORGANIZATIONAL CHANGE		
4.1	Environmental Justice Advisory Board	p.27
<p>A. DEP should form an Environmental Justice Advisory Board whose members are appointed by the Secretary. The purpose of the board is to advise DEP on environmental justice issues and to oversee the implementation of the EJWG consensus recommendations contained in this document. The advisory board should meet twice a year, or more frequently, as issues dictate.</p> <p>B. Members of the board should be selected to attain a broad perspective. Specific interests should be considered for representation on the board and at least two members of each of the following groups should be included: grassroots environmental and community advocates, civil rights advocates, industry, academia, local government, labor, legal, community health and DEP. The board also should be geographically representative of the Commonwealth. Priority consideration should be given to individuals nominated by the EJWG.</p> <p>C. DEP should pursue the provision of a stipend for board members to ensure there will be no personal financial burden resulting from participation in board activities.</p> <p>D. The board should develop and ratify bylaws that, at a minimum, will specify how the board will make decisions and its organizational structure. The organizational structure may include subcommittees that have specific tasks for defined timeframes.</p> <p>E. Responsibilities assigned to the Environmental Justice Advisory Board should include advising DEP in 1) program creation and planning, 2) development of program policy, and 3) program reviews. Specifically, DEP should consult with the board during the early stages of program development and periodic program reviews, so that board members can provide advice with regard to environmental justice issues, such as DEP policy towards permit compliance. Among the first items for consideration by the Board should be to consider the degree of independence that the Office of Environmental Advocate should have from DEP and make appropriate recommendations. The board also should consider a process and specific criteria for a community to “opt-in” for consideration as a minority or low-income community.</p> <p>F. DEP should provide adequate notice to the board regarding issues, programs and permits that may raise environmental justice concerns and/or are related to board duties. Adequate notice means that the board has time to discuss the issues and provide input to DEP before a decision is made. DEP should designate this as a specific duty for one or more DEP staff persons.</p> <p>G. DEP should provide a liaison and administrative support for the board. This should be a responsibility of the proposed Office of Environmental Advocate.</p> <p>H. Board members should be provided notice of vacancies on other DEP advisory boards and given equal consideration for appointment as voting members to those boards. These appointments should be selected to provide the greatest input into programs and regulations that affect low-income and minority communities.</p> <p>I. The board should offer recommendations on how DEP, in conjunction with state and local agencies as needed, could integrate the current health status of a community into environmental decision making.</p>		

4.2	DEP Environmental Justice Training	p.28
<p>A. DEP should seek advice and involvement from members of the EJWG, and when formed, the Environmental Justice Advisory Board and Office of Environmental Advocate, in the planning and implementing its training programs that are relevant to issues raised in this report. Where appropriate, DEP may choose to directly involve members of minority and low-income communities, or other knowledgeable individuals in such training programs. DEP will provide guidance on training methods for prospective instructors from these communities.</p> <p>B. DEP should provide communications training for all DEP personnel (regarding such issues as sensitivity, diversity, communication and team building), including but not limited to how to 1) interact respectfully with people of different gender, culture, race, age, occupation and class; 2) listen respectfully to people who are not experienced working with DEP; and 3) help people access information and involve themselves in environmental issues.</p>		
4.3.1	Office of Environmental Advocate	p.29
<p>A. DEP should create, fund and adequately staff an Office of Environmental Advocate (OEA). The mission of this office is to ensure all citizens' issues and concerns are addressed in an equitable and expeditious manner. The OEA should be overseen by the Secretary of DEP but will copy all pertinent correspondence to the Governor's Office. If citizens' concerns are not resolved to the satisfaction of those citizens, then the Office of Environmental Advocate may advise the Secretary of DEP. A director of the Office of Environmental Advocate, who should be housed at DEP's Central Office, should administer the OEA. Duties of this administrator include supervision of the regional offices' Environmental Advocates.</p> <p>B. Since there is a higher concentration of permitted facilities in the state's southern regions, DEP should designate a minimum of one Environmental Advocate in those regional offices. Central Office will serve the Northern regional offices; however, DEP should consider the need for Environmental Advocates located in the northern regions. These positions should report directly to the Office of Environmental Advocate in Central Office. Primary duties of these staff members should be community advocacy, outreach and education. All OEA staff should work with regional and district office staff to address citizens' concerns in an equitable and expeditious manner.</p> <p>C. (A full list of responsibilities of the OEA appear on pages 29-30.)</p>		
4.3.2	Toll-free Telephone Access	p.31
<p>DEP should establish toll-free telephone access for Commonwealth citizens seeking information regarding all DEP actions and services. All DEP offices (central, regional and district) should be accessible toll-free.</p>		

4.3.3	Outreach and Education Topics	p.31
<p>A. DEP outreach and education programs should include, but not be limited to, information and training on the following topics:</p> <ul style="list-style-type: none"> • Environmental regulations • Access to DEP resources, information and data • Monitoring and enforcement of DEP regulations and the appropriate steps for issuing a complaint with DEP • Working with minority communities • Sustainable development, including brownfields redevelopment • Steps for appealing a permit decision via the Environmental Hearing Board • Opportunities for public involvement in DEP decision-making processes <p>B. DEP should continue to coordinate with the Pennsylvania Department of Education and the Environmental Justice Advisory Board to provide comprehensive, age-appropriate environmental education for students in kindergarten through grade 12. Topics to be considered should include, but not be limited to environmental justice, air quality including the risks of fine particulate air pollution, waste reduction, pollution prevention, sustainable development, land use, mining impacts, balancing issues, permit processes, volunteerism and stewardship.</p> <p>C. The community education efforts of DEP should:</p> <ul style="list-style-type: none"> a. Invite community members and community environmental education providers to the table to establish understanding of the full environmental education process and then assist the group in completion of a community environmental education resources and gap analysis; b. Support and strengthen environmental education programs that have been identified as already being in place; and c. Support this group as they work to fill the identified gaps in the community environmental education process. 		
5. IMPLEMENTATION PLAN		
5.1	DEP Action Plan	p.32
<p>DEP should produce a detailed action plan for the implementation of each recommendation within six months of the formal submission of this report. The Environmental Justice Advisory Board should review the progress made regarding the consensus recommendations and provide a six-month and a one-year report to the work group.</p>		
5.2	EJWG Oversight	p.32
<p>DEP should reconvene a full EJWG meeting six months and a second full EJWG meeting one year following the submission of the work group report. At these meetings, DEP and the Environmental Justice Advisory Board should report the progress made on each of the work group consensus recommendations and other scheduled or completed DEP actions that address environmental justice concerns. At the second meeting, the work group should decide whether or not it requires subsequent meetings to monitor the implementation of this report.</p>		
5.3	Implementation Training	p.32
<p>DEP should provide workshops in minority and low-income communities so they will know how to take advantage of the measures presented in this report. DEP should also train its staff on the implementation of the recommendations.</p>		

5.4	Prevention of Unintended Effects	p.32
A. To provide clarity, DEP should provide expected timelines for implementing the suggested permit review process.		
B. DEP should monitor the economic impacts of the recommendations in this report. If there is evidence that implementation is resulting in a reduction of economic development opportunities in minority and low-income communities, DEP should make the necessary revisions to the implementation of these recommendations in order to reduce or eliminate these negative economic effects.		
5.5	Review of DEP Programs	p.33
DEP should conduct a periodic review of its programs, in order to determine whether these programs result in disparate impacts to minority or low-income communities. The report of these reviews should be made available to the public.		

APPENDIX FIVE: WORK GROUP PROCESS

Formed by the Pennsylvania DEP in the spring of 1999, the EJWG consists of approximately 20 members and their alternates, representing a range of viewpoints and interests from across the Commonwealth of Pennsylvania²³. Representatives on the work group include individuals from community, civil rights and environmental advocacy groups, industry, academia, local government, labor, community health and DEP itself. Members were recruited in two ways: by recommendation from organizations and/or individuals, and by a public volunteer process. Potential members were interviewed by telephone or in person by the independent facilitators that were retained by DEP to coordinate the work group process. Former DEP Secretary James Seif made the final selections and sent invitation letters to the selected individuals. A DEP Internal Work Group, consisting of DEP staff from all program areas, provided administrative and technical support. A facilitation team, consisting of independent facilitators contracted by DEP and staff facilitators from DEP, assisted the EJWG in its deliberations. A steering committee composed of work group members representing diverse interests, in consultation with the facilitation team, designed meetings and set agendas.

Beginning in June 1999, the EJWG members volunteered their time and expertise for monthly two-day meetings and participated in subcommittee work between meetings. Meetings were held in Harrisburg, Carlisle, Pittsburgh and Philadelphia. The work group was guided by a set of operating procedures that were adopted early in the process.

The group used a consensus process, defined as reaching agreement on an issue, that at a minimum, each member can accept. When expressing their opinions on proposals, group members often used a four-level framework to gauge support:

- Level One: in full support
- Level Two: willing to go along with some concerns
- Level Three: with significant concerns, but will not block consensus
- Level Four: must block consensus

For all of the recommendations in this report, although there was a range of support, all work group members were at one of the first three consensus levels. Levels of support are not indicated in the report²⁴.

Public participation was sought and encouraged in several ways:

- Public Comment periods during each meeting.

²³ See Appendix Six, page 51.

²⁴ See Appendix Nine, page 57 for the personal comments submitted by individual work group members.

- Presentations by guest speakers.
- Public Forums in Harrisburg, Pittsburgh and Philadelphia to which community leaders, municipal officials and interested individuals were invited.
- Community forums held throughout the state, for the purpose of eliciting comments and suggestions on this report²⁵.
- *Environmental Protection Update* notices and press releases.
- Posting of information on the DEP website

²⁵ A discussion of the comments submitted during these forums is available in Appendix Eight, page 55.

**APPENDIX SIX: LIST OF WORK GROUP MEMBERS, ALTERNATES, THE
INTERNAL DEP WORK GROUP, AND FACILITATORS**

Work Group:

The following individuals were members of the EJWG. Each member was encouraged to designate an alternate. Alternates participated fully in discussions of the work group and as members of subcommittees. During decision-making, members and alternates represented one seat and the table and spoke with one voice.

Each member submitted the affiliations that appear beneath their name.

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John Waffenschmidt
Director of Environmental Affairs
American Ref-Fuel

Curt Hurst (alternate)
Vice President, Southern Region
American Ref-Fuel

Susan M. Wilson
Citizens Advisory Council to DEP

Jolene Chinchilli (alternate)
Citizens Advisory Council to DEP

Alice Wright
Formerly, Deputy Executive Director,
Governor's Advisory Commission on
African American Affairs;
Community Relations Coordinator,
Pennsylvania Department of Environmental
Protection

Internal Work Group Members:

Members of the Internal Work Group (IWG) acted as a resource to the EJWG. At invitation of the EJWG, members of the IWG participated in work group and subcommittee discussions. Members of the IWG did not participate in decision making.

Patrick Anderson
EPA Region 3 (on temporary assignment
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Director's Office, Southeast Region

Michael Corbin
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Corbin Law Firm, P.C.
DEP Consultant

Phil Conlin
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Mark Freed
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Facilitators:

Facilitators were contracted by DEP to facilitate the meetings and work of the EJWG.

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Winsor Associates

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APPENDIX SEVEN: ADVISORY PANEL MEMBERS AND ACKNOWLEDGEMENTS

Advisory Panel to the Environmental Justice Work Group:

During the process of developing this report, some individuals withdrew from the work group due to time constraints and other commitments. Some of these individuals chose to remain involved in the process as a member of the Advisory Panel. Advisory Panel members received all of the work group mailings and were asked to provide comments on draft reports.

Joel Hersh
Pennsylvania Department of Health

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Wharton School Department of Business
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Howard Kunreuther
Wharton School Risk Center

Haywood Turrentine
National Environmental Justice Advisory
Committee (NEJAC)

Philip Lewis
Rohm & Haas Company

Harry Smith
Grand Central Sanitary Landfill Inc.

Joseph Minott
Clean Air Council

Acknowledgements:

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For making presentations

Reggie Harris, U.S. Environmental Protection Agency, Region 3
Samantha Fairchild, U.S. Environmental Protection Agency, Region 3
Chris Thomas, U.S. Environmental Protection Agency, Region 3
James Thompson, U.S. Environmental Protection Agency, Region 3
Jerome Balter, Public Interest Law Center of Philadelphia
Dr. David Whaley, West Virginia University
George Ellis, Pennsylvania Coal Association

For helping with community tours and community meetings

Zulene Mayfield, Chester Residents Concerned for Quality Living
Herman Fryer, City of Chester Environmental Advisory Committee
Maggie Powell and Ken Green, Eastwick Project Area Committee
Rhonda Hill-Wilson
Leake Community Center in Chester
Eastwick United Methodist Church in Philadelphia
Allegheny County Health Department in Pittsburgh
Martin Luther King Center in Erie

For meeting with the Work Group

Rodney Brooks, Urban League of Metropolitan Harrisburg
Charles Chivis, Greater Harrisburg NAACP
John Shelton, Chester NAACP
Barbara Sosa, Community Action Commission
Patricia West, City Council, Chester
Donald Wise, Summit Terrace Neighborhood Association

APPENDIX EIGHT: WORK GROUP RESPONSE TO PUBLIC COMMENT ON THE DRAFT REPORT

In March 2001, the Environmental Justice Work Group released a draft report to the public and asked for comments. The report was distributed directly to individuals and organizations on a mailing list maintained by the DEP. The report was also available on the Internet.

In the spring of 2001, the EJWG held seven community forums throughout the Commonwealth. The purpose of these forums was for work group members to share information and recommendations contained in a draft report and to solicit comments and suggestions from community members.

Date	Location	Attendance
March 26	Chester	57
April 3	Philadelphia	48
April 5	Harrisburg	18
April 10	Pittsburgh	29
April 11	Washington	31
April 16	Erie	17
April 18	Wilkes-Barre	20

The majority of comments and suggestions voiced by community members attending the forums, in addition to written comments that were submitted, fell into one of eight general categories.

- Monitoring and Enforcement
- Restoration of Historically Burdened Areas
- Implementation of EJWG Recommendations
- Coalfield Communities and Mining Impacts
- Community Health
- Role of Municipal Governments
- DEP Ideology and Priorities
- Composition of the EJWG

During its April 2001 meeting, the EJWG devoted a great deal of its time to discussing the input that it received from the public. While the work group was not able to reach consensus on many of the issues raised, several changes were made to the document based on public comments. Some of these changes are highlighted below.

Monitoring and Enforcement

The work group reached consensus regarding the inclusion of recommendations to increase compliance through greater use of injunctive procedures and better communication with the public regarding enforcement actions. Also, the consideration of issues regarding noncompliance has been added to the responsibilities of the proposed Environmental Justice Advisory Board.

Mining Communities

After lengthy debate, the work group could not reach consensus on including coalfield communities as a distinct entity addressed in the report. To ensure that the needs of low-income and minority communities were addressed in coalfield regions of the Commonwealth, mining permits were retained in the list of Trigger Permits. In addition, addressing the concerns of coalfield communities was added to the recommended duties of the proposed Office of Environmental Advocate.

Community Health

The concept of human health has been incorporated into the recommendations for cumulative impact and disparate impact analyses.

**APPENDIX NINE: WORK GROUP MEMBER PERSONAL STATEMENTS
REGARDING THE REPORT**

Each work group member had the opportunity to submit a personal statement to be included in the report. The statements that were submitted appear on the following pages.

Personal Statement of Beverly Braverman

Coalfield citizens were part of this environmental justice document until after the sixth draft, which was published in March 2001 for public review. That document included all of the coalfields and the people who live in/over them. The battle for environmental justice has been waged in the coalfields for over 100 years. The communities in which these battles waged were often referred to Appalachian sacrifice zones. They were/are sacrificed, and held captive, to the location of the resource and the country's desire for cheap fuel.

According to Draft Six of this document, "In many mining communities, a multitude of environmental, social, and economic problems compound their environmental insults. . . coalfield communities in Pennsylvania and throughout Appalachia similarly struggle with environmental, social and economic problems resulting from their long history of resource extraction. A major similarity among these communities is the lack of a community voice in decision-making. . . Current laws still allow impacts to occur, including subsidence and water loss while requiring reclamation and restoration of damages. The work group therefore recognizes the special needs of communities directly impacted by the extraction of coal and other minerals."

One of the focuses of this report was the empowerment of mining communities that suffer disproportionate, adverse environmental impacts. Mining communities were deleted except as to low-income communities at the eleventh hour. I think this occurred mainly because there was a fear that limited resources could not stretch to restore all the injustices in minority and low-income communities, let alone all the injustices in coalfield communities, generally. Consequently, I feel that the mining issue was deleted based on economics, not environmental justice considerations. In other words, the reason it was a nonconsensus item was that some work group members felt the resources that would be used to implement this section would be so great there would be no/few resources left for low-income/minority communities. Not that the problems do not exist in the coalfields nor that they were not environmental justice problems.

I do not appreciate the method by which captive communities (mining) were excluded. I believe that we violated the procedures established at the beginning of this two-year process. Draft Six had consensus recommendations, including mining communities as environmental justice communities. We had consensus to include it. We needed consensus to remove it. We did not have that consensus.

The work group did not focus on mining laws which ALLOW deprivation of property without due process, but it did focus on ways to empower affected mining communities so they could be involved with activities taking place in their own communities. Mining communities were to be accorded higher scrutiny during the permitting process. This involved nine of the ten steps in the permit review process. Only disparate impact analysis was excluded in the case of mining communities.

Another component of the search for environmental justice that was excluded as to mining communities was restoration. There are existing programs to supply funding for mine drainage restoration projects. The work group felt new efforts and funding for restoration should be confined to minority/low income communities.

There is strong opposition from the mining industry to community empowerment. It is imperative that people know and understand their rights when mining takes place. No other industry has the right to destroy your home without your consent and deprive you of your water supply without your consent. No other industry has been given the right to force entry onto your property by the laws of the state. Historically, coalfield communities have been kept barefoot and pregnant. When this was true, it was much easier to control the people in them. We think it is true no longer.

Personal statement for inclusion in the EJWG report

To understand this report it is necessary to first understand the rules set by the Department of Environmental Protection for the Environmental Justice Work Group. Each recommendation would be made by consensus, that is, all members of the Work Group would agree with the wording of the recommendation. If any one member objected to a recommendation, it would be killed. If a member agreed to a recommendation, even if the agreement lasted for many months, that member could reconsider and kill the recommendation. Even after the last meeting of the Work Group members could, and did, kill a recommendation.

The Department of Environmental Protection promised to implement any recommendation that was arrived at by consensus and appeared in the final report. Several members of the Work Group were employees of the Department.

The Work Group discussed the possibility of listing non-consensus recommendations in an Appendix. This possibility did not receive consensus.

These facts help to explain the limited reach of the report.

Jo Ann Evansgardner & Gerald H. F. Gardner May 22 2001

**Comments of Patrick O'Neill and John Hadalski
From the City of Philadelphia**

1. The process has been long, and sometimes contentious, but compromise has been achieved amongst members in an effort to reach consensus. The Work Group's recommendations reflect the collaborative nature of the process. While DEP is asked to do a great deal, in those areas of the Commonwealth where there are existing programs to eliminate blight, safeguard public health, ensure water quality through effective use of locally managed resources, it is hoped that DEP will coordinate with and enhance those efforts, and not supplant local initiatives in these areas.
2. In a City like Philadelphia, nearly all neighborhoods may qualify as environmental justice communities simply by virtue of its large minority population. It is hoped that the recommendations offered here will not overly, unduly, or unfairly burden the City or other urban areas simply because of the racial make-up of our communities. These must not create a new type of red-lining for redevelopment or financial services for neighborhoods whose citizens have worked long and hard to escape past stigma. Finally, certain areas of the Commonwealth, such as the mining communities may require increased protection, even though racial demographics may disqualify them from usual environmental justice considerations.
3. The report identifies biosolids in two of its fourteen Trigger Permits. The report singles out a special class of mining permits, Trigger 4G, and more generally as Trigger Permit 5 for individual biosolids land application permits. Biosolids recycling regulations and practices are among the most studied and regulated of all water and land treatment activities. Hundreds of thousand tons of biosolids products are recycled annually in Pennsylvania, benefiting the environment, the landowners, and the communities served by wastewater services. Strong beliefs and commitment to influence governmental decisions unquestionably motivate individuals who place themselves in opposition to biosolids recycling. But the public is very well served by the current regulatory system, as it strikes a good balance of scientific and technical issues with potential environmental affects, and it provides appropriate opportunity for expression of community concerns. The singling out of biosolids for special concern in the report is not warranted, and these references should be removed.

The scientific record shows that biosolids recycling benefits the environment and has no significant adverse effects on human or animal health. Federal and state regulations are based on a review of over two thousand peer-reviewed research papers. Biosolids recycling is a practice that is widespread in the Commonwealth, and benefits many of its citizens who receive efficient and effective wastewater treatment services. Use of biosolids supports the farming community by providing a source of nutrients that is economical and that improves yields. Biosolids recycling produces unmatched results in restoring productivity of strip mined sites for wildlife habitats and for agricultural use, absent addition of such organic material these sites will not recover.



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May 31, 2001

Honorable David Hess, Secretary
Pennsylvania Department of
Environmental Protection
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17105

Dear Secretary Hess:

For the last 24 months, PECO Energy Company ("PECO") has watched with keen interest the activity of your Environmental Justice Work Group, and through our environmental counsel, have participated actively in developing policy and procedure recommendations for implementing an environmental justice strategy in the Department of Environmental Protection ("Department").

The Final Report, which entailed a tremendous effort on the part of the Work Group's divergent stakeholders, has resulted in numerous consensus recommendations. These recommendations may increase the time required for PECO to obtain some permits from your Department and the attendant delays may increase our cost of doing business. Nonetheless, PECO endorses the Final Report and the efforts of the Work Group.

A key reason for PECO's endorsement is that we are committed to being not merely a presence in the communities we serve, but a member of those communities, working hand-in-hand with them to achieve common goals and shared prosperity. Having such a long-term, productive partnership with the communities we serve is an integral part of our corporate vision to be the most recognized and admired utility services company in the world.

We look forward to working with the Department and our communities to help implement a workable environmental justice strategy.

Sincerely,

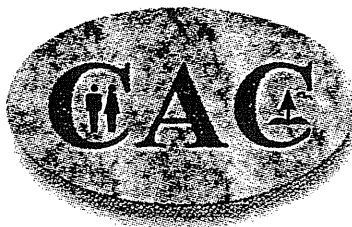
Personal Statement of Hershel J Richman and Eli R. Brill

Re: Environmental Equity Work Group Report

We firmly support the objective that no individual or community should bear an adverse, disproportionate share of the environmental degradation or health burdens from our society. We also believe that this objective must be achieved using good science. We believe that the Department of Environmental Protection should be engaged in a proactive, ongoing review of the environmental conditions in those communities that have been identified in this report as “low- income and minority communities”. The Department should develop the empirical evidence necessary to support the presumption inherent in this report that those communities do, in fact, experience a greater share of negative environmental impacts. Each community will be unique and it is imperative that such uniqueness be fully characterized before potentially new facilities are proposed.

In order to continue to foster appropriate and positive economic development in Pennsylvania’s low-income and minority communities, the empirical evidence identifying the uniqueness of those communities, developed prior to the manifestation of such new projects, will provide the appropriate balance between protection and economic development.

We hope that the Department continues to vigorously analyze environmental justice issues using the best scientific and technical knowledge.



Citizens Advisory Council

to the Department of Environmental Protection

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Please Note: Our New Fax Number is 717-772-5748

The Work Group has 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." Because studies show that minority and low income communities have historically borne a disproportionate share of the negative environmental impacts resulting from industrial, municipal, and commercial activities, the report targets their specific environmental justice needs as the first priority for Pennsylvania to work towards environmental justice for all communities.

While I agree that our first focus should be on known "environmental justice" communities, I remain unconvinced that our two simple criteria capture all communities already bearing or at risk of bearing undue environmental burdens. The Work Group defined minority and low-income communities based on somewhat arbitrary thresholds that we thought would include certain communities most in need of assistance and empowerment. However, communities that are not captured by these thresholds that also bear a disproportionate environmental impact, or that may be imminently at risk of doing so, will only receive additional assistance to the extent that some of the recommendations will have to be implemented across the board.

For example, because of its focus on permitting, *the report does not address communities bearing undue burdens from past activities, unless the communities meet the defined criteria.* The Citizens Advisory Council has received testimony on a number of communities already bearing disparate environmental impacts, which may not be eligible to take advantage of the recommendations contained in this report simply because of demographics.

It also does not specifically address issues related to coalfield communities. While the environmental justice movement is primarily linked to the civil rights movement and the plight of minority and low-income communities, coalfield justice has historically been a concern in Pennsylvania and throughout Appalachia. Coalfield communities struggle with environmental and socioeconomic problems resulting from resource extraction, and share similar socioeconomic factors with "environmental justice" communities, including the lack of a community voice in decision-making. While the work group recognized the special needs of coalfield communities, it could not reach agreement on specifically including them in its recommendations.

Finally, I remain unconvinced that government should only react to existing conditions, and instead would have recommended a more proactive approach in order to also prevent the creation of future environmental justice communities. The report should have included some general recommendations specifically designed to avoid the creation of more environmental justice communities by ensuring that all communities have certain public participation rights.

I support the recommendations contained in the report as a first step towards environmental justice in Pennsylvania, but encourage the department, the Environmental Justice Advisory Board and the Office of Environmental Advocate to maintain a broader view in implementing and evaluating the effectiveness of the Workgroup's recommendations.

Susan M. Wilson
Executive Director
Citizens Advisory Council to DEP

