



417 Walnut Street  
Harrisburg, PA 17101  
717 255-3252 / 800 225-7224  
FAX 717 255-3298  
www.pachamber.org

Jessica Shirley, Director  
Office of Policy  
Pennsylvania Department of Environmental Protection  
Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA 17101

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**RE: Draft Environmental Justice Public Participation Policy (012-0501-002)**

On behalf of the Pennsylvania Chamber of Business and Industry, the largest, broad-based business advocacy organization in the Commonwealth, thank you for the opportunity to comment on the Department's draft Environmental Justice Public Participation Policy (EJ Policy). Our membership comprises close to 10,000 member businesses of all sizes and industry sectors throughout the state—from sole proprietors to Fortune 100 companies—representing nearly 50 percent of the private workforce in the Commonwealth. Our mission is to articulate and advocate on public policy issues that will expand private sector job creation and lead to a more prosperous Pennsylvania for all its citizens.

As our member companies engage in the permitting process for various projects that will enable such job creation and prosperity, we value both the opportunity for interested parties to participate in the public comment process, as afforded by the guiding statutes and regulation, as well as an efficient and effective permitting process that produces durable decisions.

With this background in mind, we have some concerns with the proposed language in the policy. First, the policy notes, without much further discussion that, "[t]he Environmental Rights Amendment (ERA) can be used as a tool available to the community to address equal justice in low income and minority communities, and may help the most vulnerable communities while improving a sustainable Pennsylvania." The policy does not explicate exactly how a constitutional amendment can be wielded as a tool to accomplish certain ends. It is rather our view that constitutional amendments provide both the foundation and limits of government action, upon which policy may be appropriately pursued. To the extent that the Supreme Court's decision in the Pennsylvania Environmental Defense Fund case applied trust doctrine to the Commonwealth's management of public natural resources, the state must proceed in a manner that is in the interest of the beneficiaries of the trust. This should not be interpreted as rationale to halt development in or near any part of the state, whether or not it is an "environmental justice" area as determined by the policy's criteria. Further, DEP must not administer its Environmental Justice program (nor, broadly speaking, its permitting reviews) in such a manner that discourages economic expansion in economically depressed areas of the state.

Second, we also suggest the Department amend the draft policy in sections dealing with "opt-in permits" such that any mention of the word "should" be replaced with "may." The sentence on page 4, "DEP holds the responsibility of determining which permits will be Op-in Permits" can be read to imply the Department is establishing an obligation for itself to make such a determination on every permit and authorization that comes in – opening up possible litigation from parties challenging permits and authorizations by disputing how DEP proceeded with such determinations, thus necessitating DEP document its deliberative process regarding EJ evaluations. We do not believe the Department intends to

establish such an obligation for itself, especially given the Department's continued resource constraints. However, the policy as it is written reads that staff "should" conduct an EJ analysis for every permit and authorization that is before the agency, including a consultation with no less than six DEP staff – OEJ, the Regional Director, Bureau Director, District Mining Manager, Program Manager and Community Relations Coordinator. Amending the language in the sections regarding Opt-In Permits to read "may" instead of "should," in addition to specifically declaring that DEP is not deciding an EJ analysis must be conducted for every application, will clarify the extent of the Department's obligations.

Third, we support the use of a census block analysis versus a census tract analysis. It is our understanding that conducting analyses at the census block level would be consistent with other states and existing EPA guidance.

Finally, we do not support the proposed expanded list of trigger permits. It is our understanding that when the concept of a trigger permit was being developed by the working group for the 2001 Environmental Justice Working Group Report, the working group recognized the importance of limiting the types of permits considered to be trigger permits given the expansive definition of an "environmental justice community" and "affected area of concern." One rationale for adding new types of projects to the trigger list is presumably that such projects have been demonstrably shown to have targeted or adversely impacted in a disparate manner low income or minority populations. But the types of projects being proposed as additions to the trigger list are not in fact such projects and we do not believe the Commonwealth's history with respect to the development of these projects supports their inclusion on the trigger list. With respect to waste permits, we suggest the Department limit the enhance public participation policy for only new facilities or major modifications that increase waste disposal capacity or tonnage rates. With respect to underground injection control permits, it is our understanding that DEP intends to continue to yield primacy to EPA for review of these projects and it is unclear why it is now necessary for the state to include these types of projects on the trigger permit list.

Thank you for your consideration of our comments on this matter, and we look forward to continuing to work with the Department on establishing policy that protects the environment and affords continued economic development.

Sincerely,



Gene Barr  
President and CEO