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Interim Final Environmental Justice Policy Prioritizes Community Engagement, Compliance

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Special to the Legal

On Sept. 16, the Pennsylvania Department of Environmental Protection (PADEP) will be adopting an interim final environmental justice policy (EJ policy), outlining the measures the PADEP will take to integrate environmental justice into its permitting and enforcement efforts. The EJ policy is a long-anticipated update to the PADEP's environmental justice public participation policy, which was adopted in 2004. This article provides an overview of the areas and projects subject to the EJ policy, the enhanced public participation and prioritized compliance and enforcement efforts that will be applied to projects subject to the policy, and describes what the regulated community can expect and do to incorporate the policy into project planning and operations.

WHERE THE EJ POLICY APPLIES

The EJ policy applies to "EJ areas," which are defined in the policy as the geographic area characterized by increased pollution burden, and



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vulnerable populations based on demographic and environmental data. According to the PADEP, approximately 20% of the commonwealth qualifies as an EJ area. To determine whether a facility or project is within an environmental justice area, the PADEP developed a mapping tool referred to as PennEnviroScreen. PennEnviroScreen uses 32 different environmental, health and socioeconomic indicators to identify environmental justice communities.

The EJ policy may also apply outside of an EJ area if the project is located within a half mile radius of an EJ area. The half-mile buffer area around a project location is referred to as an "area of concern."

WHAT THE EJ POLICY REQUIRES

The EJ policy has two primary components that are designed to facilitate environmental justice and redress environmental justice in the administration of the PADEP's legal duties: "enhanced" public participation; and prioritized compliance and enforcement. The "enhanced" public participation requirements apply to certain types of projects that are likely to have greater environmental impacts in EJ areas. The EJ policy provides a list of projects referred to as "trigger projects" that are automatically subject to "enhanced" public participation. Trigger projects include certain categories of NPDES permits, air permits, waste permits, mining permits, land application of biosolids, and concentrated animal feeding operations. The complete list is included as an appendix to the policy.

Even if a project does not qualify as a trigger project, the PADEP staff or community members can request that a project be designated as an "opt-in project." Opt-in projects are subject to the same "enhanced" public participation requirements as trigger projects. The EJ policy gives the PADEP wide discretion in deciding which types of

projects qualify as opt-in projects based on community concerns, present or anticipated environmental impacts, or reasonably anticipated significant adverse community environmental burdens. The EJ policy provides examples of the types of projects that might qualify for opt-in status such as scrap metal facilities, landfills, and incinerators, but there are dozens of other types of projects that may qualify including a broad catch-all category for “other projects as identified by the community.”

Trigger projects and opt-in projects are typically subject to public participation requirements under existing laws and regulations. The PADEP’s EJ policy seeks to “enhance” this participation by developing a project-specific and community driven public participation strategy to facilitate engagement and awareness of a project. The strategy will address how the community will be given notice (e.g., where, what mediums), who the community stakeholders are, accessing information via translation or interpretation services, where application materials can be accessed, public meetings and hearings, and public comment periods if not already required by applicable law.

Separate from the enhanced public participation in the permitting process, the EJ policy also prioritizes inspections, compliance and enforcement of PADEP permits in EJ areas. Although the PADEP is already required to conduct inspections under its various permitting programs, the policy allows the PADEP to prioritize inspections of facilities in EJ areas where the PADEP does not have the resources to conduct all inspections. Similarly, on the compliance and enforcement side, if the PADEP does not have the resources

to take all necessary enforcement actions at the same time, the EJ policy provides that the PADEP may prioritize enforcement actions in an EJ area. For civil penalties, the PADEP’s policy suggests that penalties may be enhanced for noncompliance in EJ areas where there are impacts to the environment or public health. Further, the PADEP intends to prioritize monitoring at facilities in EJ areas with multiple permits, multiple complaints, habitual violations, and sites with high volume generation or unique permit conditions.

WHAT TO EXPECT AND HOW TO PREPARE FOR THE EJ POLICY

Enhancing public participation in EJ communities is a laudable goal and widely supported. At the same time, public participation requirements can often delay the issuance of permits. To minimize or avoid delays, facilities should consider meeting with the PADEP, including its Office of Environmental Justice (OEJ), as early in the project planning process as possible. Specifically, applicants should prepare to work closely with the OEJ because the office is specifically tasked with implementing the EJ policy and has specific responsibilities under the policy. The OEJ’s importance within the PADEP organization continues to grow as the office has expanded to include regional coordinators, and the head of the OEJ serves as a special deputy secretary. Therefore, the OEJ will play an integral role within the PADEP’s organization as the department begins to implement EJ throughout its permitting processes.

In addition, even if not required by law, project proponents should consider

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early and frequent engagement with community stakeholders to learn about potential community concerns and develop plans to address those concerns. Lastly, facilities in EJ areas should be prepared for increased attention from the PADEP on compliance with and enforcement of existing environmental laws and regulations. In particular, facilities located in EJ areas with multiple permits, multiple complaints, and previous violations are likely to be the focus of increased enforcement efforts by the PADEP. •

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