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PublicInterestLawCenter   
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John Brakeall  
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Policy Office  
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Re: Comments on Review of Pennsylvania's Environmental Justice Public Participation Policy, Proposed Rule (July 14, 2018), (012-0501-002).

Dear Mr. Brakeall:

The Public Interest Law Center appreciates the opportunity to comment on the Pennsylvania Department of Environmental Protection's Draft Public Participation Policy ("the Policy"), particularly after the commenting deadline. And we commend the Pennsylvania Department of Environmental Protection (DEP) on taking the important step towards improving public participation standards for Environmental Justice (EJ) Areas in the permitting process. However, as amended, Pennsylvania's Environmental Justice Public Participation Policy falls short in ensuring meaningful community engagement.

### COMMENTERS

Our clients are historically disenfranchised communities that have experienced and fought against environmental racism and have advocated for many of the issues that this Policy seeks to prevent. We are submitting these comments on behalf of the following organizations:

- Wynnefield Residents' Association (WRA) is a non-profit community organization serving the Wynnefield community. Its membership is open to persons living in the Wynnefield neighborhood. Founded in 1957, WRA is committed to improving the social, economic, and physical well-being of Wynnefield. WRA is particularly interested in issues concerning public participation after recently discovering that a large, regional utility is planning to construct a project in their community that poses environmental and health concerns. WRA only learned of the plans for their neighborhood after a resident stumbled upon employees surveying the property.
- Eastwick Friends and Neighbors Coalition (EFNC) is a community organization dedicated to ensuring that all stake holders in the Eastwick neighborhood have a voice in creating a healthy, vibrant, sustainable community. EFNC works to educate, inform, and involve the community in decisions impacting the

environmental, economic, and social health of Eastwick. The Eastwick neighborhood faced similar challenges after discovering that a developer planned to construct a large, multifamily project in a flood plain. After years of fighting to be heard, EFNC is now an active voice in issues affecting its constituency.

As a result of their unique experiences, these groups offer valuable insight on ways to make the community engagement surrounding environmental projects in EJ Areas more meaningful.

## SUMMARY

DEP acknowledges that “historically, minority and low-income Pennsylvanians have not had equitable opportunities to participate in decisions that may adversely impact their environment.”<sup>1</sup> Furthermore, DEP states that “the lack of easily obtained, understandable information is often cited as a major cause of these experiences.”<sup>2</sup> To address these issues, DEP in this Policy “seeks to ensure that all Pennsylvanians are equipped with the proper resources and opportunities to meaningfully participate in decision-making processes.”<sup>3</sup> And without qualification, DEP states that “to address this disparity, minority and low-income communities should be given equitable access to information, consultation, and accommodation by DEP.”<sup>4</sup>

The draft Policy is a step in the right direction. But for DEP to achieve its stated purpose, DEP should create a regulation, instead of only providing guidance. But even as a Policy, DEP must broaden the Policy’s reach and provide for complete accountability on the part of DEP and the applicants. Throughout our comments, we provide suggestions on how DEP could accomplish this goal. Finally, we suggest strategies that DEP might implement to make public participation both easier and more meaningful to the community members and the applicants.

## COMMENTS

### **A. THIS POLICY SHOULD BE ENACTED AS A REGULATION IN ORDER TO ACHIEVE ITS STATED PURPOSE**

First, DEP must give this policy the weight of regulation and strengthen language throughout the document in order for it to be effective. DEP currently includes a disclaimer in this Policy that states: “the policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the Department to give these

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<sup>1</sup> P.A. DEP’T OF ENVTL. PROT., ENVIRONMENTAL JUSTICE PUBLIC PARTICIPATION POLICY, i (Draft July 14, 2018), *available at* [http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=53737&DocName=ENVIRONMENTAL%20JUSTICE%20PUBLIC%20PARTICIPATION%20POLICY.PDF%20%20%3Cspan%20style%3D%22color%3Ablue%3B%22%3E\(NEW\)%3C%2Fspan%3E](http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=53737&DocName=ENVIRONMENTAL%20JUSTICE%20PUBLIC%20PARTICIPATION%20POLICY.PDF%20%20%3Cspan%20style%3D%22color%3Ablue%3B%22%3E(NEW)%3C%2Fspan%3E).

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.* at i.

<sup>4</sup> *Id.* at 3.

rules that weight or deference.”<sup>5</sup> Additionally, outside of the official disclaimer, DEP includes this vague and confusing statement: “DEP strongly encourages all applicants to fulfill the steps in this policy. However, DEP should implement the steps in this policy if an applicant is unable or unwilling to do so.” As written, the Policy is toothless and it is unclear if, and how, DEP would address an applicant that does not comply with this Policy.

In order to be effective, the Policy must have regulatory power. It is imperative that DEP treat this Policy with the force of regulation, with compliance obligations and clearly defined penalties for noncompliance. Otherwise, DEP has no way to hold itself or applicants accountable for failure to provide for public participation in the permit application process in EJ Areas. Moreover, Article I, Section 27 of the Pennsylvania Constitution (the Environmental Rights Amendment or ERA), requires that the state act to protect citizens’ rights to a healthy environment.<sup>6</sup> Consistent with that obligation, DEP should adopt and enforce regulations as a way to protect its constituency’s constitutional rights.

We therefore urge DEP to eliminate its disclaimer statement and to strengthen language throughout the Policy. To accomplish this, we suggest that DEP add a statement of responsibility, similar to the New York State Department of Environmental Conservation’s Environmental Justice and Permitting Policy, explaining that DEP “shall provide oversight to ensure compliance with this policy.”<sup>7</sup> Additionally, DEP should consider adding policy directives to help ensure that the goals and sentiments of this Policy are actually achieved. New York includes such policy directives in its policy, including measures to educate applicants on environmental justice, educational workshops for the public, drafting legislation to establish funding for assisting the public in the permit review process, and establishing mandatory public participation requirements.<sup>8</sup>

## **B. THIS POLICY SHOULD BE EXPANDED TO ACHIEVE ITS STATED PURPOSE**

### **1. DEP Should Make this Policy More Inclusive by Requiring Some Form of Community Engagement for all Permits**

In order to accomplish its enumerated goals, DEP must expand this policy to apply to all permits proposed in EJ Areas. Currently, this policy applies only to trigger permits and opt-in permits. However, communities located in EJ Areas are uniquely vulnerable to environmental risk and discrimination regardless of the permit type. Historically EJ Areas bear a disproportionate share of negative environmental impacts

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<sup>5</sup> *Id.* at ii.

<sup>6</sup> “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.” P.A. Const. art. I, § 27.

<sup>7</sup> N. Y. STATE DEP’T OF ENVTL. CONSERVATION, ENVTL. JUSTICE AND PERMITTING, CP-29, DEC POLICY, 6 (2003).

<sup>8</sup> *Id.* at 4.

and are likely already exposed to significant levels of pollution from a variety of sources. A facility might escape classification as a trigger permit yet still have substantial estimated emissions that have the potential to adversely impact public health. For example, a facility with an estimated CO emission of 92 tons per year (tpy) would be classified as a minor source, even though its projected emissions are a mere 8 tons below the 100 tpy threshold. Additionally, even where a minor source may have very low estimated emissions levels, other emissions sources likely already exist in the area, thereby potentially increasing pollution levels to dangerous levels for an already vulnerable population.

The fact that DEP determines what qualifies as an opt-in permit, with no community input required, severely undercuts the power of the public participation process as an educational and advocacy tool, as well as DEP's stated policy goals. In order to empower these vulnerable communities and pursue truly meaningful public participation, we urge DEP to expand this policy so that the public participation process is triggered by any and all permits proposed in EJ Areas.

Additionally, and importantly, we urge DEP to commit to taking the information, insights, and concerns received during the community engagement process and folding them into any decisions made regarding permits in EJ Areas. Without this commitment, it will be difficult for DEP to effect the change that it desires regarding meaningful public participation in environmental permitting.

## **2. DEP Should Expand its Measurement for Areas of Concern.**

Currently, DEP measures an "Area of Concern" 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."<sup>9</sup> A half-mile radius is insufficient. We urge DEP to update this measurement to a full mile radius, as Illinois has done in its public participation policy.<sup>10</sup>

### **C. THE POLICY SHOULD PROVIDE FOR COMPLETE ACCOUNTABILITY ON THE PART OF DEP AND THE APPLICANTS**

#### **1. Even if Not a Regulation, the Policy Should Include Mandatory Language Rather Than Permissive Language Throughout**

Currently, the Policy contains mostly recommendations or suggestions, but not commitments on the part of DEP. Indeed, DEP describes the policy as a "guidance document,"<sup>11</sup> and uses permissive words like "should," "may," "encourages," and "if feasible" throughout. There are sections of this Policy that must be mandatory, without any ambiguity. To instill a sense of accountability and legitimacy for the Policy, DEP

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<sup>9</sup> P.A. DEP'T OF ENVTL. PROT., *supra* note 1, at 4.

<sup>10</sup> ILL. ENVTL. PROT. AGENCY, ENTL. JUSTICE PUBLIC PARTICIPATION POLICY, 1 (2018).

<sup>11</sup> P.A. DEP'T OF ENVTL. PROT., *supra* note 1, at i.

must replace permissive language with mandatory language such as “will” and “shall.” For example:

- DEP **will** review project summaries submitted by applicants for accuracy.
- DEP **will** be responsible for various methods of disseminating information.
- DEP staff **will** notify the appropriate community with updates when substantive changes are made to the permit application.
- DEP **will** ensure access to information for the EJ Area community members by identifying convenient locations.
- DEP **will** also add permit materials to its website.
- Supporting materials (maps of the site, traffic analyses, cost/benefit analyses, etc.) **will** be made available to the public, if feasible.

P.A. DEP’ T OF ENVTL. PROT., ENVIRONMENTAL JUSTICE PUBLIC PARTICIPATION POLICY, 6-8 (Draft July 14, 2018).

## **2. DEP Should Clarify that it Will Make the Ultimate Decision on Whether a Project Falls within an Area of Concern.**

Currently, Section (II)(B)(1) states that “the applicant should determine the project’s Area of Concern”<sup>12</sup> when completing the General Information Form. However, the Policy later states that DEP holds the responsibility for determining the project’s Area of Concern. This inconsistent language makes DEP’s intentions unclear. DEP, in conjunction with its relevant advisory boards, must be solely responsible for making this determination, regardless of the type of permit. We urge DEP to clarify that making the “Area of Concern” determination is its responsibility and also, at which stage in the process it makes this determination.

## **3. The Applicant Should be Involved in Devising the Public Participation Strategy.**

Currently, the language of this Policy only states that the Public Participation Strategy (PPS) “should be” developed between different entities affiliated with DEP (OEJ, regional or district office programs, Community Relations Coordinators, and Local Government Liaisons).<sup>13</sup> The applicant is not required nor expected to take part in the creation of this strategy, and it is unclear whether DEP then provides the applicant with this strategy. However, it is valuable for the applicant to engage with the community in order to come up with its own strategy. It facilitates meaningful dialogue between applicants and the communities that they are entering, and building these relationships is crucial for building community trust.

With this in mind, we urge DEP to require applicants to be meaningfully involved in the creation of a PPS from the outset. Importantly, as a part of the strategy, applicants should be required to indicate specified information (for example, identified community stakeholders, publications or places to distribute information about the project, etc.) that

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<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.* at 5.

will help guide effective community engagement. New York, for example, requires applicants to “demonstrate that the applicant will” do each of those things.<sup>14</sup> Alternatively, instead of coming up with their own strategies, applicants could collaborate with DEP on creating the PPS, as is done in Illinois.<sup>15</sup> For collaborations, DEP may consider providing community outreach templates as seen in California’s *Department of Toxic Substances Control Public Participation Manual*.<sup>16</sup>

#### **4. An Approved Public Participation Strategy Must be a Prerequisite to Application Review.**

The PPS is at the crux of the public participation process, as it is meant to “facilitate the participation of all residents within the Area of Concern and the census block group(s).”<sup>17</sup> It provides evidence that community engagement has been planned for effectively. Currently, the language of this Policy only states that this strategy “should be” developed between different entities affiliated with DEP.<sup>18</sup> Such a crucial part of the public participation process ought to be explicitly mandatory, not a mere suggestion. Furthermore, DEP should examine the quality of the PPS before continuing the application review process, and if the PPS is not satisfactory, the process should be halted. This is entirely feasible. For example, Connecticut’s EJ public participation policy states that “prior to filing a permit application with the Department, an Environmental Justice Public Participation Plan (the “Plan”) must be submitted for review and approval for any applicable facility proposed to be located or expanded in an environmental justice community.”<sup>19</sup> Given the gravity of these strategies, we urge DEP to adopt similar stipulations requiring that PPSs are submitted and approved by DEP before the application review process can continue.

#### **5. DEP Should use the Public Participation Strategy to Hold Applicants Accountable at the End of the Application Review Stage.**

The PPS should be an indication of what the applicant will do during the application review stage and DEP should use the PPS to hold applicants accountable at the end of the application review process. Applicants should be required to submit a report to DEP detailing their progress in adhering to their strategies. This will give communities a sense that applicants are being held accountable for their community engagement, and also incentivize applicants to take the PPS and their execution of it seriously. Connecticut and New York both require applicants to submit a report prior to making the final permitting determination detailing their progress in adhering to their plans.<sup>20</sup> Information can include, for example: documentation of contact with local

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<sup>14</sup> N.Y. STATE DEP’T OF ENVTL. CONSERVATION, *supra* note 7, at 8.

<sup>15</sup> ILL. ENVTL. PROT. AGENCY, *supra* note 10, at 2

<sup>16</sup> CAL. ENVTL. PROT. AGENCY, DEP’T OF TOXIC SUBSTANCES CONTROL, PUBLIC PARTICIPATION MANUAL (2001).

<sup>17</sup> P.A. DEP’T OF ENVTL. PROT., *supra* note 1, at 5.

<sup>18</sup> *Id.*

<sup>19</sup> CONN. DEP’T OF ENERGY AND ENVTL. PROT., OFFICE OF THE COMM’R, ENVTL. JUSTICE PROGRAM, THE ENVIRONMENTAL JUSTICE PUBLIC PARTICIPATION GUIDELINES, 7 (2012).

<sup>20</sup> *Id.* at 7; N.Y. STATE DEP’T OF ENVTL. CONSERVATION, *supra* note 7, at 8.

officials and groups; all supporting documents proving public outreach efforts (newspaper clippings, radio broadcasts, etc.); and identifying any measures implemented by the applicant as a result of community outreach. And when DEP makes final permitting decisions, DEP should consider the applicant's community engagement efforts. We strongly encourage DEP to adopt policies similar to New York and Connecticut in this regard.

#### **D. THE POLICY SHOULD PROVIDE MORE WAYS TO MAKE PUBLIC PARTICIPATION MEANINGFUL AND EASIER**

##### **1. DEP Should be Intentional in Describing the Communities it Seeks to Protect.**

According to the definitions page of this policy, DEP defines "Environmental Justice" as: "the fair treatment and meaningful involvement of all people with the development, implementation, and enforcement of environmental policies, regulation, and laws; as well as with respect to the identification of environmental issues that affect the most vulnerable communities."<sup>21</sup> While this is a good start, we believe the definition should be updated to be more encompassing of the needs of EJ Areas specifically. Firstly, DEP elaborates on the definition in the background section of this policy, stating that "fair treatment means that no person or community should bear a disproportionate share of negative environmental impacts."<sup>22</sup> This clause is more than just background; it is an essential part of the definition, and this phrasing appears in the policies of other states as well.<sup>23</sup> We encourage DEP to include this statement in the definition of Environmental Justice presented in the definitions section of this document.

Additionally, other states such as New York have enhanced the definition from "the fair treatment and meaningful participation of all people," as is written in Pennsylvania's policy, to specifically highlight communities that have historically been impacted by EJ issues. For example, New York's definition of Environmental Justice begins this way: "The fair treatment and meaningful involvement of all people regardless of race, color, or income...."<sup>24</sup> We believe this distinction is important because it is necessary to specifically identify the communities that this policy hopes to empower. As such, we urge DEP to adopt a similar clause into its definition of Environmental Justice.

Similarly, DEP should replace the term "minority" with "people of color" throughout this document, to ensure that no ambiguity exists in determining the target group. DEP uses the term "minority" to describe the communities that have been historically impacted by Environmental Justice issues. However, minority is a broad term. The reality is that not all minorities have historically been impacted by Environmental Justice issues. In its definition of Environmental Justice, DEP states that it

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<sup>21</sup> P.A. DEP'T OF ENVTL. PROT., *supra* note 1, at 1.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *See, e.g.*, N.Y. STATE DEP'T OF ENVTL. CONSERVATION, *supra* note 7, at 3.

<sup>24</sup> *Id.*

strives to address the “most vulnerable communities.”<sup>25</sup> Historically, people of color specifically are the minorities who have been vulnerable to environmental discrimination and face Environmental Justice challenges. In keeping with the intent and goals of this policy, we urge DEP to replace “minority” with “people of color” wherever it appears in order to make sure that the correct communities are being centered.

## **2. DEP Should Make Sure that Any and All of its Entities Engaging in EJ Work and/or with EJ Communities Are Representative of those Communities.**

In describing why public participation for EJ Areas is important, DEP acknowledges that “increasing meaningful public participation will mitigate adverse impacts in predominantly minority and low-income communities.”<sup>26</sup> Further, DEP states that “throughout the permitting process, DEP values input from individuals living in or near EJ Areas.”<sup>27</sup> In order to effectively facilitate the meaningful public participation of Environmental Justice communities, community members must be part of DEP’s EJ bodies, including (but not limited to) the Office of Environmental Justice (OEJ) and the Environmental Justice Advisory Board (EJAB). This Policy suggests that DEP and/or the applicant must make a number of assumptions about how to best serve those living in EJ Areas, including:

- Determining what counts as an opt-in permit;
- Determining effective strategies for community notification;
- Determining if translation is necessary;
- Determining what constitutes “understandable to a considerable majority of readers within an EJ Area;”<sup>28</sup>
- Determining what constitutes “convenient” times and “central and accessible locations” for public meetings<sup>29</sup>; and
- Identifying “convenient” locations for document review.<sup>30</sup>

The purpose of the public participation process is to ensure that communities are able to speak for themselves and have a say in how these processes are executed. In order to effectively accomplish these steps in the public participation and permitting processes, and to effectively accomplish the general purpose of this policy, we urge DEP to take concrete steps towards ensuring that community members are represented in its EJ bodies, particularly the EOJ and the EJAB. For EJAB in particular, DEP should require that a certain number of seats on EJAB be filled by persons residing in EJ Areas.

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<sup>25</sup> P.A. DEP’T OF ENVTL. PROT., *supra* note 1, at 1.

<sup>26</sup> *Id.* at 3.

<sup>27</sup> *Id.* at i.

<sup>28</sup> *Id.* at 6.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 3.

### **3. The Opt-In Permit Determination Process Should be Revised to Include the Environmental Justice Advisory Board as a Consulting Party.**

Currently, opt-in permits (defined in a previous comment) are determined by six entities within and/or affiliated with DEP: the OEJ; a Regional Director; a Bureau Director; the District Mining Manager; the Program Manager; and the Community Relations Coordinator.<sup>31</sup> Opt-in permits are determined in part by “identified community concern; present or anticipated environmental impacts; and reasonably anticipated significant adverse cumulative impacts.”<sup>32</sup> It is critical that EJAB be involved in determining what qualifies as an opt-in permit for two reasons. First, DEP describes the members of EJAB as people with “personal and professional expertise in environmental justice issues.”<sup>33</sup> Given this level of expertise, it is more than appropriate, if not necessary, that such individuals provide insight in the determination process.

Second, according to this Policy, EJAB meets quarterly to “provide a forum for stakeholders to share environmental concerns in their communities and to make recommendations to DEP’s OEJ.”<sup>34</sup> Given that opt-in permits warrant particular community concern, it is critical that community members be represented in the decision-making process as much as possible, and that EJAB regularly interfaces with them. For the reasons mentioned above, we urge DEP to revise the process for determining opt-in permits by making EJAB another party in making this determination.

### **4. DEP Should Notify the Relevant Local Official, In Addition to the Applicant, As Soon As it is Determined that the Policy will be Implemented.**

Currently, the language of this policy states that DEP “should contact the permit applicant as soon as it is determined that the policy will be implemented.”<sup>35</sup> Considering that this would trigger heightened community interest in the proposal and the public participation process, we urge DEP to require that the relevant local officials (e.g. council person, municipal or county official, or state representative) in the impacted communit(ies) be notified as well.

### **5. DEP Should Require Applicants to Submit Electronic Copies of Permit Applications to DEP, Especially if They are Trigger or Potential Opt-In Permits.**

Currently, this Policy states that “applicants are encouraged to submit to DEP electronic copies of permit applications if they are trigger or Opt-in permits.”<sup>36</sup> The availability of electronic copies is imperative to ensuring and encouraging community involvement for a number of reasons. Considering the heightened potential community concern around trigger and potential opt-in permits, we urge DEP to require that applicants submit electronic copies of permit applications to DEP for these permits.

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<sup>31</sup> *Id.* at 4.

<sup>32</sup> *Id.* at 1-2.

<sup>33</sup> *Id.* at 3.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 5.

<sup>36</sup> *Id.* at 6.

Additionally, DEP must continue to ensure that hard copies are readily available to the public.

**6. DEP’s Guidelines for Notifying the Community and Document Availability During the Application Review Process for Trigger or Opt-In Permits Should be More Inclusive.**

The content of this section overlooks many realities of people living in EJ Areas in Pennsylvania. This section only addresses literate individuals. In Philadelphia alone, 22% of people over the age of 16 lacked basic literacy skills in 2003<sup>37</sup>, and according to the Office of Adult Education of Philadelphia there are 550,000 adults in the city who “need to develop their workforce literacy skills.”<sup>38</sup> As a whole, in 2003 13% of Pennsylvanians lacked basic literacy skills.<sup>39</sup> With this in mind, community notification must be accessible to non-readers. For this reason, we urge DEP to create videos explaining project summaries and any other pertinent written information, and that those videos be advertised alongside any written digital communications about proposals, as well as shown at public meetings. These are vital functions of DEP, and it is crucial so that community members receive complete, information.

**7. DEP’s Guidelines Around Public Meetings and Hearings During the Application Review Process for Trigger or Opt-In Permits Should be Strengthened.**

The current policy states that DEP and the applicant should schedule public meetings. Considering that these two parties are then responsible for determining times and locations that are appropriate for the community, it is insufficient to not have a community representative involved in the scheduling of these meetings. A community liaison or stakeholder should be involved in the process of scheduling public meetings. If a community liaison or similarly functioning person from within DEP is to handle this process, this should be specified explicitly.

Moreover, DEP should require the presence of translators at all public meetings, particularly in communities where languages other than English are commonly spoken. Illinois, for example, pledges to “make a good faith effort” to provide translators in such communities.<sup>40</sup> Languages for translators should be based on the languages spoken in the community. Additionally, whenever possible an American Sign Language interpreter should be present.

In addition, there should be stronger stipulations or recommendations on when public meetings should be scheduled. The policy only states that the schedulers “should” begin scheduling a public meeting within 30 days of accepting an application as

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<sup>37</sup> *National Assessment of Adult Literacy State and County Estimates of Low Literacy*, U.S. DEP’T OF EDUC., NAT’L CTR. FOR EDUC. STATISTICS, <https://nces.ed.gov/naal/estimates/StateEstimates.aspx> (last visited Sept. 4, 2018)

<sup>38</sup> *Philaliteracy*, CITY OF PHILA., OFFICE OF ADULT EDUC., <http://philaliteracy.org/> (last visited Sept 4, 2018).

<sup>39</sup> *National Assessment of Adult Literacy State and County Estimates of Low Literacy*, *supra* note 37.

<sup>40</sup> ILL. ENVTL. PROT. AGENCY, *supra* note 10, at 5.

administratively complete and technically adequate.<sup>41</sup> While it is recommended that meetings are held as early in the process as possible, this should be strengthened. For example, a revision could be that a public meeting must occur at least X days before a public hearing or the end of the public commenting period.

And in the current policy only one public meeting “should” be scheduled.<sup>42</sup> But at least one public meeting should be required, and DEP should encourage multiple meetings and should also create stipulations around community outreach and turnout. For example, perhaps if no community members show up to the first one, it should at least be suggested that another be scheduled.

Given the reality of inequities in literacy in Pennsylvania, it is crucial that the public comments period and public hearings are accessible to those who cannot read. Currently, public comments only take two forms: written, and public hearings. However, public hearings are not currently required by this policy, so the only reliable form of public comment is written.

In light of this, we strongly urge DEP to broaden the method of public comment to be more accessible and inclusive, particularly for individuals who are illiterate or do not speak or write English proficiently. To begin, public hearings should be required. At the very least, this policy should explicitly outline under what circumstances they are required. For example, New York states: “when a draft EIS [Environmental Impact Statement] includes an evaluation of additional burdens on a potential environmental justice area, the DEC shall conduct a public hearing regarding the proposed action.”<sup>43</sup>

Finally, the same stipulations about scheduling public meetings at times and locations that are convenient to the majority of community members should apply to public hearings. This also goes for the necessity of translators at every public hearing. We strongly urge DEP to amend the public comments and hearings processes to accommodate these changes.

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<sup>41</sup>P.A. DEP’T OF ENVTL. PROT., *supra* note 1, at 7.

<sup>42</sup>*Id.*

<sup>43</sup>N.Y. STATE DEP’T OF ENVTL. CONSERVATION, *supra* note 7, at 9.

## CONCLUSION

In summary, we encourage DEP to consider our comments and suggested revisions to its Environmental Justice Public Participation Policy as a means toward fostering healthy dialogue and community engagement in EJ Areas. We thank you again for your time and consideration.

Respectfully submitted on behalf of Wynnefield Residents' Association and Eastwick Friends and Neighbors Coalition by

THE PUBLIC INTEREST LAW CENTER

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The following Signatories express their support for the Comments submitted on Pennsylvania's Environmental Justice Public Participation Policy, Proposed Rule (July 14, 2018) (012-0501-002), on behalf of Wynnefield Residents' Association and Eastwick Friends and Neighbors Coalition by the Public Interest Law Center:

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**WE ACT for Environmental Justice**

Omega and Brenda Wilson  
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