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Dear Committee Members:

My name is Ebony Griffin. I am a staff attorney at the Public Interest Law Center focusing on environmental justice and the Director of the Law Center's Garden Justice Legal Initiative. Thank you for allowing me the opportunity to speak before you today about an issue I feel so passionately about. I also want to commend you for taking steps to tackle this issue head on, especially at a time so critical to the future of our planet.

In my practice, I see the residual effects of environmental injustice: childhood asthma, increased cancer rates, high instances of mental illness, and decreased learning capacity. Pennsylvania ranks number 2 in the nation among states with the largest differences between races and between the wealthy and poor in exposure to air pollution.<sup>1</sup> Emissions from oil and gas operations cause ozone smog, in turn contributing to Black children throughout the city experiencing the majority of the 12,200 asthma attacks that occur in Philadelphia each year.<sup>2</sup>

Volatile organic compounds (VOCs) and methane vented and leaked from the oil and gas supply chain and nitrogen oxides (NOx) formed by sources such [as] gas flaring and engines at natural gas facilities react together in the presence of sunlight to form ozone smog. Smog can impair lung function, trigger asthma attacks, and aggravate bronchitis and emphysema. Children, the elderly, and people with existing respiratory conditions are the most at risk from ozone pollution.<sup>3</sup>

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<sup>1</sup>LAURA P. CLARK, ET. AL, *National Patterns in Environmental Injustice and Inequality: Outdoor NO<sub>2</sub> Air Pollution in the United States*, Figure 2 (2014), available at <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0094431#pone-0094431-g002>; Sydney Brownstone, *The 10 Most Polluted States for People of Color*, FAST COMPANY (last visited Dec. 7, 2018), <https://www.fastcompany.com/3029160/the-10-most-polluted-states-for-people-of-color>.

<sup>2</sup> LESLEY FLEISCHMAN ET AL., CLEAN AIR TASK FORCE, *Gasping for Breath: An Analysis of the Health Effects from Ozone Pollution from the Oil and Gas Industry* 4, 10 (2016), available at [http://www.catf.us/wp-content/uploads/2018/10/CATF\\_Pub\\_GaspingForBreath.pdf](http://www.catf.us/wp-content/uploads/2018/10/CATF_Pub_GaspingForBreath.pdf) (“Ozone smog that results from oil and gas industry pollution poses a real threat to children who suffer from asthma.”); see also *Oil & Gas Threat Map*, <https://oilandgasthreatmap.com/threat-map/>.

<sup>3</sup> FLEISCHMAN, *supra* note 2 at 6.

Another common environmental cause of asthma is fine particulate matter or PM 2.5.<sup>4</sup> Rates of PM 2.5 pollution in Philadelphia, often formed from emissions of Nitrogen Oxides from power plants<sup>5</sup>, are ranked the 12<sup>th</sup> worst out of 187 metropolitan areas across the country.<sup>6</sup> According to the U.S. Environmental Protection Agency, “[e]levated levels of fine particulate matter in the air pose significant health concerns for the people of Philadelphia and many areas in the United States.”<sup>7</sup>

### **A CASE STUDY**

The Nicetown neighborhood is an example of a community, with a 99% minority population, suffering from health disparities often caused by environmental pollution. The Pennsylvania Department of Environmental Protection (DEP) has designated Nicetown as an “Environmental Justice Area,” a location in which either at least 30% of the inhabitants are from minority groups or 20% are below the poverty level.<sup>8</sup> Over 60% of the Nicetown population is Black and 40% live below the poverty line.<sup>9</sup>

In November 2017, the Philadelphia Department of Air Management Services (AMS) approved a permit for SEPTA to install a combined heat and power plant (CHP) in the Nicetown neighborhood. The permit would allow the plant to emit an additional 21.8 tons per year (tpy) of Nitrogen Oxides (NO<sub>x</sub>), 16.4 tpy of Volatile Organic Compounds (VOCs), and 27.2 tpy of Carbon Monoxide (CO).<sup>10</sup>

Meanwhile, Nicetown already suffers from the diesel exhaust of many buses based at the Midvale Bus Depot in addition to exhaust from the nearby highway. Located near these pollution sources are at least five schools, a community center, several places of worship, and a number of parks. According to the City of Philadelphia’s 2017 Community Health Assessment, children living within the 19140 zip code have some of the highest rates of asthma hospitalization in Philadelphia.<sup>11</sup> Even still, Air Management

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<sup>4</sup> “Meeting the PM<sub>2.5</sub> standard nation-wide would prevent at least 15,000 premature deaths; 75,000 cases of chronic bronchitis; 10,000 hospital admissions for respiratory and cardiovascular disease; hundreds of thousands of occurrences of aggravated asthma; and 3.1 million days when people miss work because they are suffering from symptoms related to particle pollution exposure each year.” *EPA Awards \$100,000 to Philadelphia to Monitor Particle Pollution*, U.S. ENVTL. PROT. AGENCY (last visited Dec. 10, 2018), <https://www.epa.gov/newsreleases/epa-awards-100000-philadelphia-monitor-particle-pollution>.

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

<sup>6</sup> *State of the Air*, AMERICAN LUNG ASSOCIATION 19 (2018), available at <https://www.lung.org/assets/documents/healthy-air/state-of-the-air/sota-2018-full.pdf>.

<sup>7</sup> *EPA awards*, supra note 4.

<sup>8</sup> *PA Environmental Justice Areas*, P.A. DEP’T. OF ENVTL. PROT. (last visited Dec. 7, 2018), <https://www.dep.pa.gov/PublicParticipation/OfficeofEnvironmentalJustice/Pages/PA-Environmental-Justice-Areas.aspx>.

<sup>9</sup> See generally *id.*

<sup>10</sup> Notice of Application for Plan Approval at the Midvale Bus Facility at 1, available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUK EwiUluT25pPfAhXpct8KHcohCkEQFjAAegQICBAB&url=https%3A%2F%2Fwww.phila.gov%2Fhealth%2Fpdfs%2FSEPTA%2520Roberts%2520Complex%2520Plain%2520Language.pdf&usg=AOvVaw2RJA326Ah9g2MDtNsrF8B7>.

<sup>11</sup> *2017 Community Health Assessment*, PHILADELPHIA DEP’T. OF PUB. HEALTH, Slide 129 (Sept. 2017), <https://www.phila.gov/media/20181105154556/2017-CHA-slide.pptx>.

Services approved a permit for the construction of yet another pollution emitting facility, specifically SEPTA's natural gas power plant, in this neighborhood.

Going on record with her opposition to the plant, Councilwoman Cindy Bass highlighted that, "the Environmental Protection Agency has flagged Nicetown as a neighborhood with some of the highest rates of fine particulate air pollution in the nation.... That is without the addition of a natural gas plant."<sup>12</sup>

### **THE PROBLEM**

The permitting system in Philadelphia, and in Pennsylvania as a whole, analyzes potential emissions sources individually as opposed to taking a holistic view of pollution by community. In this situation, Nicetown residents did everything they were supposed to do in opposition to this plant. They attended public meetings to ensure their voices were heard. At these meetings, they presented facts about the current health of the community and expressed concerns about what would happen to vulnerable residents if the plant was constructed. They received support from their Councilperson who also publicly opposed the plant. Still, AMS granted the permit.

Likely, AMS granted the permit for two main reasons: 1) the applicant apparently complied with all applicable administrative requirements, leaving it little discretion to deny the permit and 2) in a vacuum, a minor source<sup>13</sup> of air emissions faces a lower burden in permitting than a major source, and it is incredibly difficult to overturn a minor source permit. However, in communities like Nicetown that are inundated with pollution sources, one additional minor source could potentially exacerbate serious health issues.

Additionally, many applicants will limit emissions to mere decimal points below the threshold to avoid classification as a major source. Logically speaking, health risks from pollution sources increase incrementally; meaning that there is no magic switch that is triggered when you reach the major source threshold. The difference in the impact on health between 99 tpy of pollutant and 100 tpy of pollutant is negligible. As such, many communities are filled with facilities operating under less stringent requirements but posing essentially the same risks to their health.

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<sup>12</sup> *Power Charges Environmental Racism in Nicetown*, POWER (last visited Dec. 7, 2018), <https://350philadelphia.org/2018/09/14/power-charges-environmental-racism-in-nicotown/>. Ozone and particulate matter pollution are two of the most widespread, serious types of air pollution in the United States. *Air Pollution: Current and Future Challenges*, U.S. ENVTL. PROT. AGENCY (last visited Dec. 10, 2018), <https://www.epa.gov/clean-air-act-overview/air-pollution-current-and-future-challenges>. See also *EPA awards*, supra note 4.

<sup>13</sup> In an area designated attainment for the National Ambient Air Quality Standards (NAAQS), a minor source is one emitting less than 100 tons per year of any pollutant or less than 10 tons per year of any single hazardous air pollutant. See *Minor NSR Basic Information*, U.S. ENVTL. PROT. AGENCY (last visited Dec. 7, 2018), <https://www.epa.gov/nsr/minor-nsr-basic-information>. See also *Who Has to Obtain a Title V Permit?*, U.S. ENVTL. PROT. AGENCY (last visited Dec. 7, 2018), <https://www.epa.gov/title-v-operating-permits/who-has-obtain-title-v-permit>.

## **POTENTIAL SOLUTIONS**

Legal scholars have contemplated the best solution to inequitable environmental permitting for decades. The common theme is that, to make a difference in the lives of vulnerable communities, Philadelphia must change the way it analyzes and approves permits with environmental impacts. Below, I explain three different ways this could be accomplished.

### **Cumulative Impacts Analysis**

First, Philadelphia must require that permit issuing agencies consider pollutants in the aggregate when making permitting determinations in environmental justice communities. Specifically, new permitting processes must take a cumulative impacts<sup>14</sup> approach to determining potential effects of pollutants on vulnerable communities. The White House Council on Environmental Quality (CEQ) defines cumulative impact as:

...the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. 40 CFR §1508.7

In practice, this would require the City to conduct modeling in every environmental justice community where a new permit is proposed and look at the potential emissions from the proposed site in conjunction with emissions from existing sources.

### **Health Impacts Analysis**

Additionally, Philadelphia must adopt a permitting model that looks at the health of a community prior to granting permits. Examples of viable options include an Environmental Justice Protocol (EJP) and a Vulnerability Scale. The EJP, first proposed by former Public Interest Law Center attorney, the late Jerome Balter, would make protection of public health and civil rights explicit parts of the permit application review process.<sup>15</sup> The EJP is based on a comparative public health analysis resting on the idea that communities with poor public health need protection from environmental pollution *regardless* of the cause of the health disparity.<sup>16</sup> This protocol would make use of state and local health department statistics to provide stakeholders with a practical means for determining which communities must be protected against pollutant emitting facilities.

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<sup>14</sup> The U.S. Environmental Protection Agency has defined cumulative impacts as the combined, incremental effects of human activity. *See* U.S. ENVTL. PROT. AGENCY, CONSIDERATION OF CUMULATIVE IMPACTS IN EPA REVIEW OF NEPA DOCUMENTS 1 (1999), available at <https://www.epa.gov/sites/production/files/2014-08/documents/cumulative.pdf>.

<sup>15</sup> Jerome Balter, *The EPA Needs a Workable Environmental Justice Protocol*, 12 TUL. ENVTL. L.J. 357, 368 (1999).

<sup>16</sup> *Id.* at 367.

In practice, the EJP would require state and local agencies to promulgate laws, regulations or protocols requiring the analysis of public health and demographical data as part of the permitting process.<sup>17</sup> Unlike the cumulative impacts analysis, which would apply only to facilities in environmental justice areas, the EJP would apply to all permits with environmental impacts.

Another option is the Vulnerability Scale. The Vulnerability Scale is similar to the EJP in that it puts the health of a community at the forefront of a permitting decision; however, it is more simplistic in application. The Vulnerability Scale would assign a numerical value to communities based on criteria such as maternal health, community asthma rates, childhood hospitalization rates, etc. The community would then receive a “grade” based on the total sum of its vulnerability criteria. If based on this number, calculated from empirical and public health data, a community is considered vulnerable, then the City would place a moratorium on siting new facilities within a certain radius of the community.

### **CONCLUSION**

Communities of color and low income communities are most often those left dealing with the effects of environmental pollution. In order to solve this issue, Philadelphia must take the lead on creating new and equitable policies aimed at undoing environmental racism. Thank you for taking the time to consider this testimony.

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<sup>17</sup> *See id.* at 368.