

# PADEP's Interim Final Environmental Justice Policy Now in Effect

**November 1, 2023**

*Pittsburgh, PA and Washington, DC*

*FNREL Mineral and Energy Law Newsletter*

*Pennsylvania – Mining*

**(Joseph K. Reinhart, Sean M. McGovern, Gina F. Buchman and Christina M. Puhnaty)**

The Shapiro administration recently released its [Interim Final Environmental Justice Policy](#) (Interim Final Policy) and latest [Environmental Justice Mapping and Screening Tool](#) (PennEnviroScreen). The Policy took effect on September 16, 2023, when official notice of the interim final rulemaking was published in the *Pennsylvania Bulletin*. See 53 Pa. Bull. 5854 (Sept. 16, 2023).

The Commonwealth first adopted an environmental justice policy (EJ Policy) in 2004 to provide citizens in EJ communities enhanced public participation opportunities during certain Pennsylvania Department of Environmental Protection (PADEP) permit application processes. In 2018, PADEP circulated a draft revised policy for public comment, but ultimately withdrew the proposed revisions in 2020 following receipt of public comments. After conducting further outreach in 2021, PADEP proposed an updated policy that would refine and expand the scope of the withdrawn 2018 revisions. On March 12, 2022, PADEP released a draft of the EJ Policy for public comment, and subsequently received more than 1,200 comments during the comment period.

The Interim Final Policy is the latest version of the EJ Policy to have been released by PADEP since the comment period closed last spring. Although PADEP had previously indicated that it was working to prepare a Comment Response Document in tandem with the Interim Final Policy, it has yet to release such a document. The Interim Final Policy will likely have a tangible impact on permitting and enforcement processes for various industries going forward.

The Interim Final Policy requires use of the PennEnviroScreen tool, which will replace PADEP's current EJ Areas Viewer tool. PennEnviroScreen is currently live and fully accessible to the public. PADEP began using the tool on September 16, 2023, to determine whether facilities are located in EJ areas based on 32 environmental, health, socioeconomic, and demographic indicators. Industry should be aware that PADEP plans to regularly update the criteria used to evaluate areas where the Interim Final Policy applies (EJ areas). To allow for a level of certainty, however, the Interim Final Policy states that "the EJ Areas in effect at the key decision point of the project will follow that project." Interim Final Policy § III; see also *id.* at Appendix B, "Environmental Justice Area Criteria."

PADEP regulated activities that are listed as "Trigger Projects" in Appendix C of the Interim Final Policy automatically require application of the Policy's provisions. Examples include various mining permits (bituminous and anthracite underground and surface mines), waste permits (landfills, transfer stations, commercial incinerators), and air permits (new major source of hazardous pollutants or criteria pollutants). *Id.* at Appendix C, "Public Participation Trigger Projects." While the 2022 Draft Policy had classified oil and gas unconventional well permits as Trigger Projects, the Interim Final Policy does not; however, various types of unconventional oil and gas projects are listed as "Opt-In Projects." Other Opt-In Projects include resource recovery facilities, scrap metal facilities, and "other projects as identified by the community." *Id.* After receiving a request from the community or a PADEP staff member to apply the Interim Final Policy to Opt-In Projects, PADEP may decide to do so using its "discretion and expertise." *Id.* § V(A)(2).

PADEP plans to form an Enforcement and Compliance Team to

prioritize inspection and monitoring at sites which have multiple authorizations, multiple on-record complaints, habitual violations sites with high volume generation or unique permit conditions, EJ communities, and sites of significant geographic location and to ensure timely and appropriate responses to violations, implement an efficient criminal referral protocol, and ensure effective collaboration.

*Id.* § VI(B)(1). The Interim Final Policy also indicates that PADEP interprets impacts to the environment or the public health and safety at an EJ area to be a relevant factor in the calculation of penalties for violations, and may include a dollar figure in the penalty amount for such a violation “provided there is adequate evidence to support a factual finding that the violation caused harm and the penalty amount fits within the statutory limits.” *Id.* § VI(B)(2).

The Interim Final Policy’s publication date was also the start of a formal public comment period that ran until November 30, 2023. Receipt and review of public comments on the Interim Final Policy will be yet another “critical benchmark towards the final EJ Policy,” which is due from PADEP in 2024.

*Copyright © 2023, The Foundation for Natural Resources and Energy Law, Westminster, Colorado*

**Babst | Calland**  
Attorneys at Law

PITTSBURGH, PA | CHARLESTON, WV | HARRISBURG, PA | LAKWOOD, NY | STATE COLLEGE, PA | WASHINGTON, DC