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Pennsylvania Asphalt Pavement Association
2022 Environmental Seminar

Environmental Justice: **What You Need to Know About Recent State and Federal Policy Updates**

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AGENDA

- **Pennsylvania EJ Developments**
- **Federal EJ Initiatives**
- **Case Study – Michigan Asphalt Plant**

Environmental Justice in Pennsylvania

A BRIEF HISTORY OF EJ IN PA

- **1999 - Department of Environmental Protection (DEP) establishes EJ Work Group**
- **2001 - EJ Work Group issues a report with recommendations in five categories**
 - Improving the condition of environmentally burdened communities
 - The permitting process
 - Monitoring and enforcement
 - DEP organizational change
 - Ensuring implementation
- **2004 – DEP issues current EJ Policy**

ENVIRONMENTAL JUSTICE, DEFINED

- **The EJ Work Group defined “environmental justice” as follows:**
 - “The fair treatment and meaningful involvement of all people with respect to the identification of environmental issues, and the development, implementation, and enforcement of environmental policies, regulations, and laws.”

GOV. WOLF'S 2021 EXECUTIVE ORDER

- **Connects Environmental Justice to Article I, Section 27 of the Pennsylvania Constitution:**
 - “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.”
- **Formally establishes:**
 - DEP Office of Environmental Justice (“OEJ”)
 - DEP Environmental Justice Advisory Board (“EJAB”)
 - Environmental Justice Interagency Council (“EJIC”)

THE CURRENT DEP EJ POLICY (2004)

TWO GOALS FOR CURRENT EJ POLICY

(1) Identifying EJ areas.

(2) Enhancing public participation in those areas through the DEP permitting process.

TRIGGER AND OPT-IN PERMITS

- **Trigger permits**

- Mining permits, including large mineral surface mines
- NPDES industrial wastewater permits for discharge at or above 50,000 gallons/day
- Major source air permits / major modifications
- Waste treatment/disposal facility permits

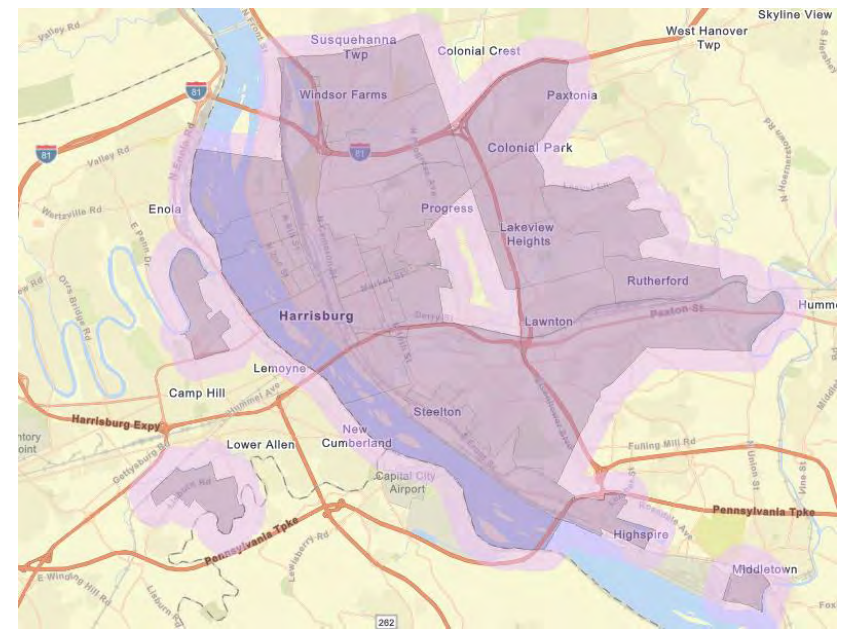
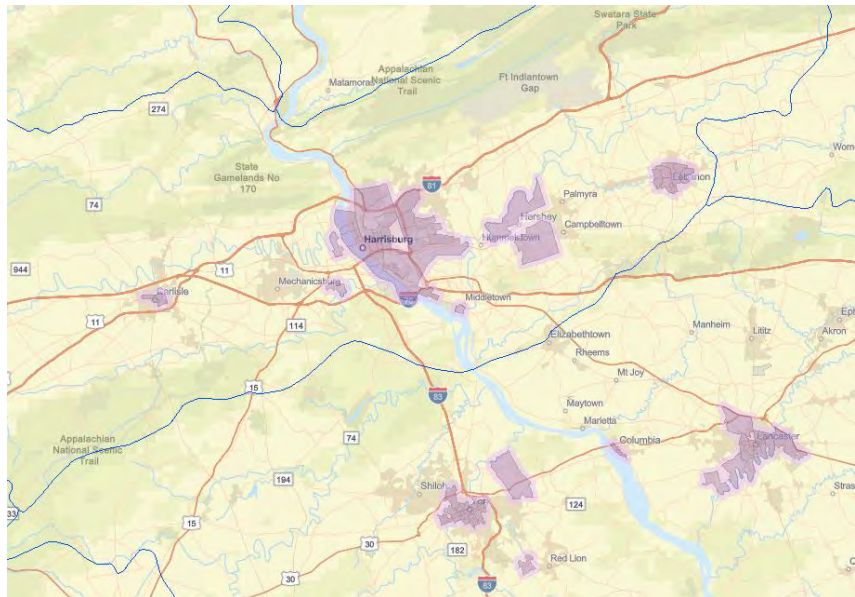
- **Opt-in permits**

- Determined by DEP on case-by-case basis, considering:
 - Identified community concerns
 - Present or anticipated environmental impacts
 - Reasonably anticipated significant adverse cumulative impacts

IDENTIFYING EJ AREAS

- **Any Census tract with:**
 - 30% or greater minority population, or
 - 20% or greater population below poverty line
- **Defining the Project “Area of concern”**
 - Half-mile radius from proposed permit activity
 - Other Project-related areas of impact, e.g. traffic corridors, groundwater plumes or areas of significant air impact
- **The EJ Policy applies if there is any EJ census tract, entirely or in part, within the Project’s Area of Concern.**

PADEP EJ AREAS VIEWER



ENHANCED PUBLICATION PARTICIPATION REQUIREMENTS IN EJ AREAS

- DEP Program Staff will notify DEP Office of Environmental Justice upon receipt of trigger permit in an EJ area.
- DEP will then “strongly encourage” the applicant to join it in various activities relating to:
 - Community outreach
 - Public information
 - Public meetings
 - Summary of application (prepared by DEP)
 - Document availability

DEP'S DRAFT EJ POLICY (MARCH 2022)

BROADER THAN EXISTING EJ POLICY

- **Inspections, Compliance and Enforcement**
 - DEP will prioritize inspections, compliance and enforcement in EJ areas.
 - Civil penalty enhancements in EJ areas.
 - Interaction with existing penalty guidance?
- **Grants and Brownfield Redevelopment**
 - DEP will prioritize grants and redevelopment projects in EJ areas.
- **Climate Initiatives**
 - DEP will integrate EJ considerations in implementing climate-related initiatives.
- **Oil and Gas Public Engagement**

NEW DEFINITION OF “EJ AREA”

- **Flexible (vague) definition of “environmental justice area”**
 - “[T]he geographic location where DEP’s EJ Policy applies”
 - “The methods to identify EJ Areas are specified in a separate document supplementing this policy.”
 - Suggests that EJ areas will be based on census block groups (not larger census tracts).
 - “DEP will reassess the mapping at least every two years based on the U.S. Census Bureau’s American Community Survey data and adjust as needed.”

ABANDONING THE “AREA OF CONCERN”?

Current EJ Policy:

- “If no such census tract exists within the area of concern, it is not considered an Environmental Justice Area and this policy does not apply.”

Draft EJ Policy:

- “If no such census block group exists within the Area of Concern, it is not considered a trigger permit and this policy may not apply. However, if DEP determines the project warrants special consideration ... **the permit may be considered an EJ Opt-in Permit, in which case this policy applies regardless of the Area of Concern.**”

STEPS PRIOR TO SUBMISSION OF PERMIT APPLICATION

- ***Applicant*** should determine whether the project is in an EJ area using EJ Areas Viewer
- ***Applicant*** encouraged to hold pre-application meetings with DEP, community stakeholders, and local governmental officials.
 - “DEP may use the steps in this policy if an applicant is unable or unwilling to do so.”
- ***Applicant*** encouraged to submit to DEP electronic copies of permit applications
- DEP develops public participation strategy

STEPS DURING APPLICATION REVIEW

- **Notifications to community**
 - *Applicant* should produce and publicize project summary
 - DEP and Applicant communicate information to community
 - DEP provides updates when substantive changes made to permit application
- **Public meetings**
 - DEP should begin scheduling within 30 days of accepting application; applicants are encouraged to participate
 - Held in central and accessibly locations
- **Public comments**
 - 30 day public comment period for all permits subject to the Policy.

PUBLIC COMMENT

- DEP is holding virtual public hearings on the updated Draft EJ Policy
 - April 5
 - April 12
 - April 28 at 12pm
 - May 4 at 6pm
- May 11, 2022 – deadline for written comments.

Federal Environmental Justice Initiatives

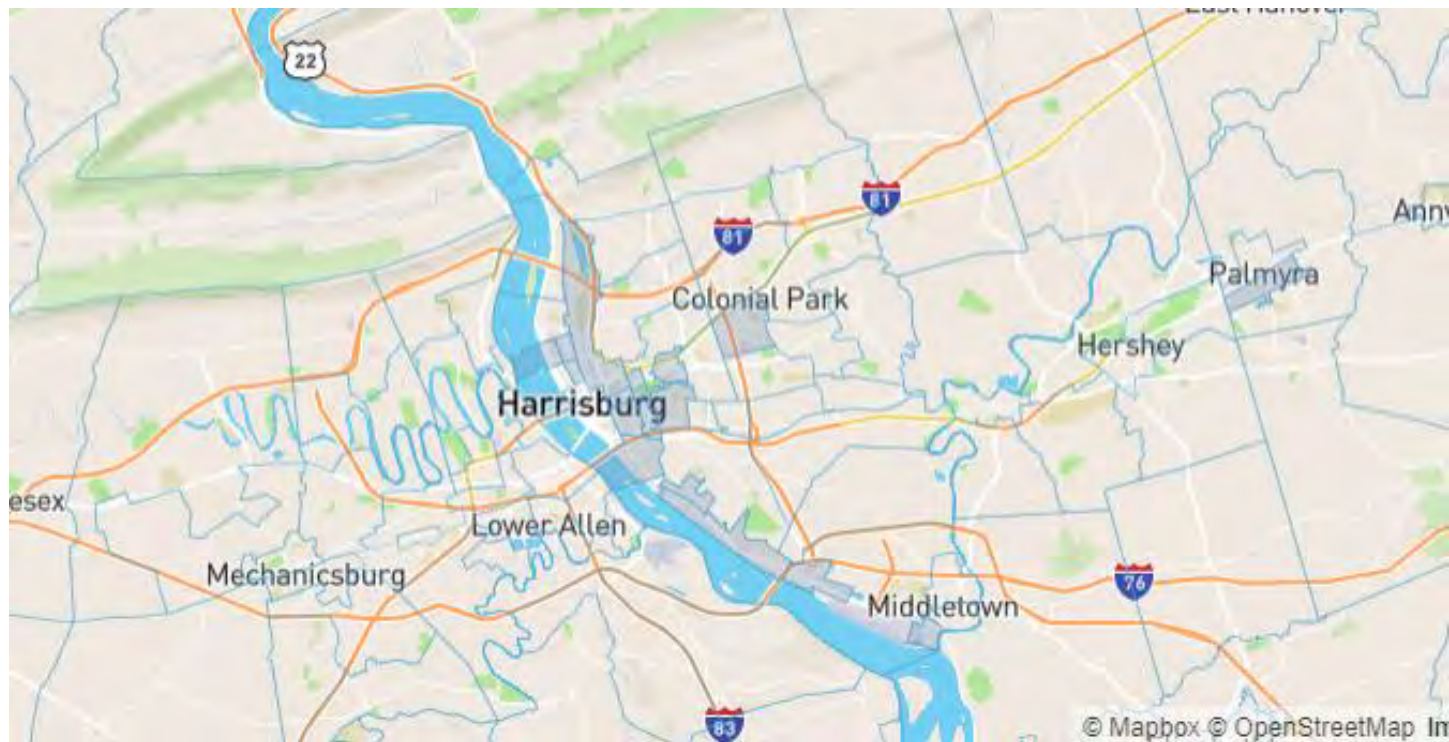
JUSTICE40

- **President Biden’s Justice40 Initiative**
 - 40% of benefits of federal investments in the following areas to flow to disadvantaged communities.
 - Clean energy; energy efficiency; **clean transit**; affordable and sustainable housing; training and workforce development; remediation of legacy pollution; and clean water infrastructure.
- **White House EJ Advisory Council Recommendations (May 2021)**
 - Identifies programs and policies to include in Justice40
 - Includes investment in transit hubs, public transportation, electrification of fleets, “alternate shared transit entrepreneurship”
 - **“Highway Expansion” and “road improvements” identified as examples of projects that “will not benefit” EJ communities.**

EJ SCREENING TOOLS

- **Existing Tool – EJScreen**
 - Currently used by USEPA
- **New Tool - Climate and Economic Justice Screening Tool (“CEJST”)**
 - Product of the White House EJ Advisory Council
 - Intended to implement Justice40 Initiative
 - Currently in “beta version”
 - A community qualifies as “disadvantaged” if:
 - Census tract is above the threshold for one or more environmental or climate indicators
 - **And** is also above the threshold for the socioeconomic indicators (low income and higher education enrollment)
 - Does not include race as an indicator

CLIMATE AND ECONOMIC JUSTICE SCREENING TOOL



EPA STRATEGIC PLAN FOR 2022-2026

- Released March 28, 2022
- **Goal 2: Take Decisive Action to Advance Environmental Justice and Civil Rights**
 - Address disproportionate impacts and EJ concerns in EPA planning and agreements
 - Address EJ concerns in 40% of CERCLA; oil spill; Homeland Security; and FEMA environmental emergency exercises with EPA participation annually.
- **Goal 3: Enforce Environmental Laws and Ensure Compliance**
 - Conduct 55% of inspections at facilities in EJ communities

Case Study

CASE STUDY – MICHIGAN ASPHALT PLANT

- Project developer applied with the MI Dept. of Environment, Great Lakes, and Energy (“EGLE”) for a minor source air permit to install and operate a hot-mix asphalt plant near Flint border
- EPA Region 5 intervened in the permit proceeding.
 - Using EJScreen, EPA identified area as a target community for EJ initiatives
 - EPA requested EGLE to (a) require cumulative analysis of emissions from proposed plant and nearby industrial sources, (b) consider alternative monitoring methods, (c) make monitoring data publicly available, (d) require consideration of alternative sites
 - EPA also directed EGLE to assess its own obligations under civil rights laws and policies.

CASE STUDY – MICHIGAN ASPHALT PLANT

- After extending the public comment period and holding extra community meetings, EGLE ultimately issued the permit, citing the applicant's compliance with all applicable statutory/regulatory requirements.
- Final permit included additional conditions (e.g., prohibited burning of waste oil, limited fuel sulfur content, more string stack testing).
- Local community groups have appealed the decision to state court.

Questions?

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