

DARYL METCALFE, MEMBER
HOUSE OF REPRESENTATIVES
ROOM 144 MAIN CAPITOL
PO BOX 202012
HARRISBURG, PENNSYLVANIA, 17120-2012
PHONE: (717) 783-1707
FAX: (717) 787-4771

Website: RepMetcalf.com



House of Representatives
Commonwealth of Pennsylvania
Harrisburg

CRANBERRY TOWNSHIP MUNICIPAL CENTER
2525 ROCHESTER ROAD, SUITE 201
CRANBERRY TOWNSHIP, PA 16066
PHONE: (724) 772-3110
FAX: (724) 772-2922

ENVIRONMENTAL RESOURCES AND
ENERGY COMMITTEE
CHAIRMAN

April 26, 2022

Honorable Patrick McDonnell
Department of Environmental Protection
400 Market Street
Harrisburg, PA 17101

Dear Secretary McDonnell:

As members of the House Environmental Resources and Energy Committee, we write to you today to express our serious concerns with the Department of Environmental Protection's (DEP) draft environmental justice policy and to have this letter serve as the committee's statement to that effect as part of the policy's public comment period.

The Committee voted today, April 26th, in favor of sending you this letter on behalf of our constituents and businesses throughout the Commonwealth that will be impacted by this policy if it is enacted as written. This letter will be rather brief, as at the outset, it is important to state that we do not believe that it is within DEP's authority to effectuate this policy, which will make such a significant change to the Department's permit application and review process.

The draft policy is very careful to state that it does not actually impose any obligations on regulated entities and that this policy is being enacted using DEP's existing enforcement discretion, but the broad and sweeping language used throughout the rest of the policy make this impossible to believe. Will any entity submitting a permit application feel safe not following the Department's "recommendations" or will instead they feel forced to follow every suggestion made in this policy document for fear of what will happen to their application if they have not done so? These recommendations become obligations when the Department says that this is how they would like things done in a policy document such as this.

If DEP wanted the changes made that this policy document represents, it needed to come through the General Assembly and propose legislation, as there is no current legislative authority for this policy document. At the very least, the Department should be attempting to promulgate this through the regulatory process, which would give the General Assembly, public, and Independent Regulatory Review Commission a more substantial opportunity to weigh in on this proposal.

To briefly hit on a few points about the language of the policy itself, the broad scope of the policy is frankly overwhelming. The text of the policy does not explicitly limit itself to permits which are applied for within environmental justice areas, despite this seeming to be the intent of the Department. In

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addition, the policy specifies that any permits which are not the ones contemplated under the policy may be brought into the requirements of the policy “if DEP believes they warrant special consideration.”

This clause essentially renders any list of permits described under the policy as meaningless since it grants DEP absolute discretion to require that any permit of any kind comply.

Some additional points about the unbelievable broad grant of authority the Department is bestowing on itself through the policy include language that the Department can prioritize inspection and enforcement in areas “where environmental and public health conditions warrant increased attention” none of which are defined terms within the policy. Furthermore, the DEP grants itself the ability “to add reasonable enhancements to civil penalties at its discretion” in the text of the policy. Again, these are potentially broad changes that should not be made through a policy document.

Finally, it does not seem like the document was polished and ready for the public when it was published as a draft policy. There are a number of instances of inconsistencies and confusing language throughout the document, including at a most basic level that there are permits listed as both “opt-in” or “trigger” permits depending on the section of the policy that one is looking at.

This proposed draft policy is unacceptable and has the potential to greatly increase the difficulty surrounding the Department’s permitting process, a process which is already notorious for delays and inconsistencies. We urge the DEP to withdraw this misguided draft policy. We, the undersigned members of the House Environmental Resources and Energy Committee, write this letter to draw your attention to our concerns.

Sincerely,

Daryl D. Metcalfe
Chairman, Environmental Resources & Energy