



Pennsylvania Aggregates and Concrete Association

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August 28, 2018

Mr. John Brakeall  
Technical Guidance Coordinator  
Department of Environmental Protection  
Policy Office  
Rachel Carson State Office Building  
P.O. Box 2063  
Harrisburg, PA 17105-2063

**RE: Environmental Justice Public Participation Policy**  
**DEP ID: 012-0501-002**  
**[48 Pa.B. 4174]**  
**[Saturday, July 14, 2018]**

Dear Mr. Brakeall:

The Pennsylvania Aggregates and Concrete Association (PACA) is the trade organization for the aggregates (crushed stone, sand and gravel), ready mixed concrete and cement companies in Pennsylvania. Our 162-member companies, of all sizes and types, are involved in the production of the above commodities or provide support products and services to the construction materials companies. We appreciate the opportunity to comment on the above proposed document.

Natural aggregates—crushed stone and sand and gravel—are used for residential, commercial and public works projects, as well in agriculture and chemical processes. Limestone is used in everything from building roads and houses to agricultural lime and kitty litter to high purity products used in chemical processes. Members of Congress consider limestone to be a national security commodity. Pennsylvania consistently ranks in the top three in the nation for production of crushed stone and in the top six in the nation for production of sand and gravel. The industry's top customers in Pennsylvania are PennDOT, the Pennsylvania Turnpike Commission and municipal governments.

We mine where there is quality stone available and we cannot pick up and move our operations. The industry has been actively and positively involved for over 100 years in helping to provide sustainable jobs and tax revenue in service to various and many Pennsylvania communities. The stewardship and ownership of these natural aggregate resources requires a caring and comprehensive balance of personnel, environmental, economic and community considerations. On behalf of these businesses, and with this perspective, we offer the following comments on the above draft Policy Document (Policy) published in the July 14, 2018 *PA Bulletin*.

#### **A. General**

1. We object to the overall implication by this document that the noncoal industry does not sufficiently take into account public participation in a timely, interactive manner. The Noncoal Surface Mining and Reclamation Act (52 P.S. §§ 3301, et seq.), implemented in 25 *PA Code* Chapters 77.121-.124, addresses the public review, participation and comment processes of a noncoal permit application. Current regulations already allow any Pennsylvanian an opportunity to be heard, to comment, and an opportunity to review files of

noncoal mining projects. When there is public interest in the project, industry personnel meet with those affected to inform and explain.

At the time of filing an application with the Department, an applicant for a noncoal permit, transfer, renewal or revision is required to place an advertisement in a local newspaper of general circulation in the locality of the proposed noncoal mining activities once a week for four consecutive weeks. The advertisement contains, among other items, the following information:

- information necessary to allow local residents to readily identify the proposed permit area, including streams, boundaries, and activities proposed,
- the location where a copy of the application is available for public inspection, and
- the name and address of the Department's appropriate District or Regional Office to which written comments, objections or requests for public hearings or informal conferences on the application may be directed.

Additionally, the city, borough, incorporated town or township in which the activities are located, as well as Federal, State and local government agencies with jurisdiction over, or an interest in the area of the proposed activities are notified.

Whenever public hearings or informal conferences are requested, our members participate fully, as do the DEP District Mining Offices. In many cases, our members continue to meet individually with interested local groups to explain the application and activities. We mine where there is quality rock available and do not "perpetuate environmental injustices for minority and low-income communities."

We believe the current policy as written is sufficient to allow for public participation for the Mining Program noncoal permits. And while we are submitting additional comments on the proposed Policy, it is to generate an understanding of what is already required under the noncoal statute and regulations and obtain answers to our confusion.

2. In reviewing the Environmental Justice Advisory Board's (EJAB) membership<sup>1</sup>, we find no noncoal mining industry representatives, even though mining permits are a majority of those proposed to be affected by this document. Furthermore, Article IV of the Environmental Justice Advisory Board Bylaws indicate "The Board shall consist of 15 members from a broad cross-section of interests including, ...industry".<sup>2</sup> And Article II of the Bylaws indicates, "The EJAB is authorized by the Secretary of the Pennsylvania Department of Environmental Protection."

Therefore, we request Secretary McDonnell appoint representation of the noncoal mining industry to the EJAB, in numerical correlation with the number of noncoal mining permits to be addressed in this document.

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<sup>1</sup> Found at: <https://www.dep.pa.gov/PublicParticipation/EnvironmentalJustice/Pages/Membership.aspx> on August 24, 2018.

<sup>2</sup> Found at: [https://www.dep.pa.gov/PublicParticipation/EnvironmentalJustice/Documents/Final\\_By-laws%205-7-2013.pdf](https://www.dep.pa.gov/PublicParticipation/EnvironmentalJustice/Documents/Final_By-laws%205-7-2013.pdf) on August 24, 2018.

3. The document gives the Environmental Justice Office authority it does not have statutorily. The Environmental Justice Office’s webpage lists its primary goal as “Minimizing Adverse Environmental Impacts”<sup>3</sup>. The Noncoal Surface Mining and Reclamation Act (52 P.S. §§ 3301, et seq.), implemented in 25 PA Code Chapter 77 is the statute and regulations required legislatively to be used to minimize any adverse environmental impacts. Furthermore, we cannot move our facilities—we mine where there is quality product available. Given that, we suggest this goal be reworded to reflect a more appropriate interest in ensuring that those who live in the vicinity of the operation are aware of changes to the permits through the public participation process.

## B. The Disclaimer

1. “The policies and procedures outlined in this guidance document are intended to supplement existing requirements. Nothing in the policies or procedures will affect regulatory requirements.” However, the draft Policy doesn’t agree with what is in the statute and regulations for noncoal mining. The noncoal mining regulations and the statute outline what we specifically need to do for public notification and participation process. Additionally, “policy” has in the past affected regulatory requirements in that even if one complies with the regulations, “policy” affects additional requirements.

## C. Definitions

1. Community liaison - Given the Department’s budget issues, we don’t believe this position is warranted nor should the permit fees pay for this position. However, this person should be a true neutral, non-political party agreeable to both DEP and the applicant. All noncoal industry applications require significant technical expertise to be able to understand the permit application. Any such liaison needs significant technical and actual operating experience relevant to the industry permit application.

## D. Census Tract vs Census Block Group

1. Citizens have an individual responsibility to obtain the information he/she wants. Much information is already available due to the regulatory requirements and via eFACTs, the *PA Bulletin*, and now the EJ Viewer. If as a citizen, you want more information that what is already sufficient and provided, you have a responsibility to make an effort to get it. Permit fee dollars are to operate the noncoal mining program and should not be used to pay for the Mining Program’s increased workload, as a result of a revised Environmental Justice policy, particularly when environmental justice requirements already exist within the statute and regulations. Realigning the size of the tract to attract further attention to facility changes feels like a political end-around rather than “open dialogue between Pennsylvania industries and EJ communities.” We request the Census Tract continue to be used.

## E. Permits Covered

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<sup>3</sup> Found at: <https://www.dep.pa.gov/PublicParticipation/OfficeofEnvironmentalJustice/Pages/default.aspx> on August 24, 2018.

1. Trigger Permits appear to be all of the noncoal mining permits. How were the trigger permits chosen? Even though many of these are in the existing document, we are requesting the criteria and reasoning used to include them.

Additionally, the Policy assumes that all permit applications submitted have adverse effects. This is simply inaccurate. Given that the location of many of these have been in place for nearly 100 years, and current regulations already require public participation, we do not understand why the application reviews for these permits “warrant heightened scrutiny by DEP,” as the DEP Mining Program already is required to do a **comprehensive** review on these applications. Please explain/define the process/steps/supporting science the Department will use for “heightened scrutiny.”

2. Opt-In Permits - “In making its determination for including Opt-in Permits, DEP should consider: 1) identified community concerns; 2) present or anticipated environmental impacts; and 3) reasonably anticipated cumulative impacts... The OEJ, in consultation with the appropriate Regional Director, Bureau Director, District Mining Manager, Program Manager, and Community Relations Coordinators should decide whether an application should be an Opt-in permit.” This entire process usurps the role of the Mining Program, whose Office is “responsible for the policies and [implementation] of programs that regulate or minimize the impact from the extraction of coal and noncoal.”

Please define and identify what criteria is used and who determines when DEP identifies community concerns. Please define and identify what criteria is used and who determines “present or anticipated environmental impacts.” Please define and identify what criteria is used and who determines “reasonably anticipated cumulative impacts.”

#### **F. Process for Permit Applicants and DEP**

1. The suggested process is out of sync with the regulations for noncoal mining and seeks to extend the time to obtain a permit. It is our continued goal, and DEP has enforced this thinking over the past several years, to submit an application that is as technically complete as possible the first time through. When an applicant submits a permit application for review, discussions have already taken place with the District Mining Office and others, and a review of environmental justice areas has already occurred. We are required to, at the time of filing an application with the Department, start the public notification. Upon receipt of a complete application, DEP publishes a notice in the *PA Bulletin* and to everyone affected of the proposed permit application. See 25 PA Code Chapter 77.121 for detailed requirements. PACA supports the pre-application process, however, if the Department wants more pre-applications, perhaps the Department should consider dropping the pre-application fee to encourage more applicants to use the pre-application process.
2. We look forward to DEP’s promised use of an electronic permitting process, thereby allowing for the required electronic submission of information. Please provide the date of when that will occur for each type of noncoal mining permit application. Copies of permit applications are already certified as part of the permit application submission.

3. Again, please see 25 PA Code Chapter 77.121 for what the noncoal mining industry is required to submit as part of the public notification. Project summaries are not required by the regulations or statute to be prepared and, therefore, should be prepared by DEP, since the Policy believes DEP needs to check them for accuracy. Placement of these summaries outside of the regulations and statute, as well as translating into additional languages other than English, should be done by the EJ Office. This should not be a responsibility of the permit applicant.
4. Public participation strategy - This document is a public participation strategy. DEP's role should be non-partisan and they should use the regulations and statute to determine approval of a permit application. Further in-depth organizing of community responses to a project is outside of DEP's mission and appears political.

Please identify specifically what a public participation strategy would look like, who designs and implements it, what opportunity exists for participation by the permit applicant in its drafting and implementing, the components of a strategy and the expected effect of such a strategy.

5. Supporting materials - The "anticipated permit process timeline" is already set by the Department's Permit Guarantee Decision. No changes should be made to lengthen the time for permit application reviews.

The mining industry cannot move. We mine where there is quality stone. The permit application speaks for itself as to what is being proposed and contains what is required by regulation and statute.

Any project websites developed by DEP should not include any permit applicant confidential information nor increase the burden of information to be supplied by the applicant, as all required information is contained in the application.

6. "All verbal testimony provided at a hearing will have equal weight to written comments submitted during the open public comment period to DEP." Anyone can stand up and proclaim they are opposed to a project, particularly those persons corralled/encouraged by outside forces. Unless that position is supported in writing and backed by a substantial reason that affects them directly, there is no accountability of those that speak. Those who speak should live within the EJ area and be sufficiently engaged in the process to put their position in writing. Their position can be noted by DEP, but should not carry the same weight as written comments. We request this sentence be deleted from the proposed document.

Again, we appreciate the opportunity to comment and should you have any questions or comments, do not hesitate to contact us.

Sincerely,

Peter T. Vlahos  
President