



## Governor Wolf's Executive Order and Pennsylvania Legislature Emphasize Environmental Justice

On October 28, 2021, Governor Tom Wolf issued an Executive Order (Order) addressing environmental justice in the Commonwealth ([Executive Order 2021-07](#)). In support of the Order, Pennsylvania legislators announced environmental justice actions that would reflect the directives of the Order.

### Executive Order

Gov. Wolf's Order largely focuses on the establishment of bodies within the Department of Environmental Protection (DEP) and an interagency council within the Executive Branch to better address environmental justice, which is addressed in further detail below. The Order also asserts:

1. The Commonwealth's duty to "ensure the rights and duties of Article I, Section 27 protect all the people of Pennsylvania" and the significance of environmental justice in President Biden's [Executive Order 14008](#) and his administration's mission;
2. That low-income communities and communities of color residents bear a disproportionate share of adverse climate and environmental impacts with accompanying adverse health impacts; and
3. That all Pennsylvanians are entitled to meaningful involvement in decision-making that impacts their lives, environments, and health and that such involvement is critical to reduce adverse impacts.

### Environmental Justice Advisory Board

The Order formally established the existing [Environmental Justice Advisory Board](#) (EJAB). The EJAB makes recommendations to the DEP Secretary concerning environmental justice policies, practices, and actions. The EJAB shall meet at least semi-annually.

### Office of Environmental Justice

The Order formally establishes the existing [Office of Environment Justice](#) (OEJ) within the DEP. In 2002, the DEP established the Office of Environmental Advocate. In 2015, the DEP renamed the Office of the Environmental Advocate as the Office of Environmental Justice. The OEJ acts as a point of contact for residents in low-income areas and areas with a higher number of minorities. The primary goal of

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the OEJ is to increase communities' environmental awareness and involvement in the DEP permitting process. While the office is not newly established, the Order includes some notable new roles and responsibilities for the OEJ.

The Order directs the OEJ to develop and publish an environmental justice strategic plan (EJ Plan) every five (5) years. The EJ Plan should include recommendations for advancing environmental justice, focusing attention on the environmental and public health issues and challenges confronting the Commonwealth's minority and low-income populations. The plan should also make recommendations on the integration of Environmental Justice considerations into existing DEP programs.

The Order further directs the OEJ to revise the Enhanced Public Participation Policy (EJ Policy). The Order suggests a revised EJ Policy should include the definitions of "Environmental Justice Area," "cumulative environmental impacts," and "disproportionate environmental impacts." The Policy should include established criteria for Environmental Justice Areas. Importantly, the EJ Policy should include standardized mitigation and/or restoration practices for consideration by applicants and permit application reviewers in the permitting or cleanup context. This requirement may result in the development of standards or best management practices, where none previously existed, for mitigation and restoration practices. The DEP is currently working to update the EJ Policy and earlier this year released a [working draft](#) of the revised EJ Policy. It is anticipated that a revised EJ Policy will be released for public comment in the coming months. Following the DEP's response to those comments and subsequent changes to the EJ Policy as a result of that input, the DEP has signaled that it intends to finalize the revised EJ Policy as early as the spring of 2022. The Order does not dictate a timeline for DEP to finalize a revised policy.

#### Environmental Justice Interagency Council (EJIC)

The Order establishes the Environmental Justice Interagency Council (EJIC). This new body will require coordination between executive agencies to comprehensively address environmental justice. This new body shall consist of the Secretaries (or their designees) of Conservation and Natural Resources, Education, Agriculture, Health, Transportation, Community and Economic Development, as well as cabinet members or agency heads as determined by the governor. The EJIC will advise the governor's office and executive agencies, review the environmental justice strategic plan, ensure Commonwealth consistency with federal environmental justice programs, and recommend an environmental justice training plan for all executive agencies. Further, each executive agency included in the EJIC shall develop a strategic plan every five years to promote Environmental Justice, in accordance with each agency's authority, mission, and programs. The EJIC will meet within 90 days of October 28, 2021, and at least semi-annually going forward.

#### **Pending Legislative Action**

In concert with Gov. Wolf's Order, two proposals are now moving through the legislature. On October 26, 2021, Representative Donna Bullock (D-Philadelphia) proposed a resolution recognizing the 30th anniversary of the adoption of the 17 principles of Environmental Justice that were presented to delegates at the First National People of Color Environmental Leadership Summit ([Resolution 151](#)). And earlier this year, Senator Vincent Hughes (D-Philadelphia) proposed a bill echoing Gov. Wolf's Order (Senate Bill 189). The bill proposes to permanently establish the OEJ and the EJAB. Additionally, the bill proposes to establish an Environmental Justice Task Force and Regional Environmental Justice Committees.

According to the bill, the OEJ would be charged with the creation of an EJ Task Force (Task Force). The Task Force would plan a strategy and develop guidelines for the operation of new Regional Environmental Justice Committees (Regional EJ Committees), which would provide an avenue for residents to raise environment justice concerns. Municipalities or residents would be able to file a petition directly with a Regional Environmental Justice Committee regarding adverse exposure to environmental health risks or to disproportionate adverse effects resulting from the implementation of a state law, regulation, guideline or policy affecting public health or the environment. A petition would trigger an initial review by the Regional EJ Committee and a public meeting with the relevant municipality to discuss the petition. Within 120 days of the public meeting, the Task Force would be required to issue an action plan to address the petition.

## What's Next?

As the DEP continues to work on revisions to the current EJ Policy, they will certainly look to include revisions as directed by the Order into their working draft. In their May 2021 meeting the EJAB discussed updates to the proposed EJ Policy and the EJ Policy will be discussed again at their next meeting on November 16, 2021 ([Agenda](#)). Further, the EJAB will also discuss the Order and meet with a representative of the Office of the Attorney General to discuss environmental justice at their next meeting.

Babst Calland will be tracking the revisions to the EJ Policy and subsequent actions taken in response to Gov. Wolf's Order. If you have any questions about the environmental justice developments described in this *Alert*, please contact Sean McGovern at 412-394-5439 or [smcgovern@babstcalland.com](mailto:smcgovern@babstcalland.com) or Evan Baylor at 202-868-0538 or [ebaylor@babstcalland.com](mailto:ebaylor@babstcalland.com).

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