

# 2023 Annual Meeting & Honors Program

## DEP Interim Final Environmental Justice Policy and Environmental Law Update

November 13, 2023

Kevin Garber

# EJ Definition

Interim Final Environmental Justice Policy (Sept. 16, 2023):

“Environmental justice means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people:

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# EJ Definition

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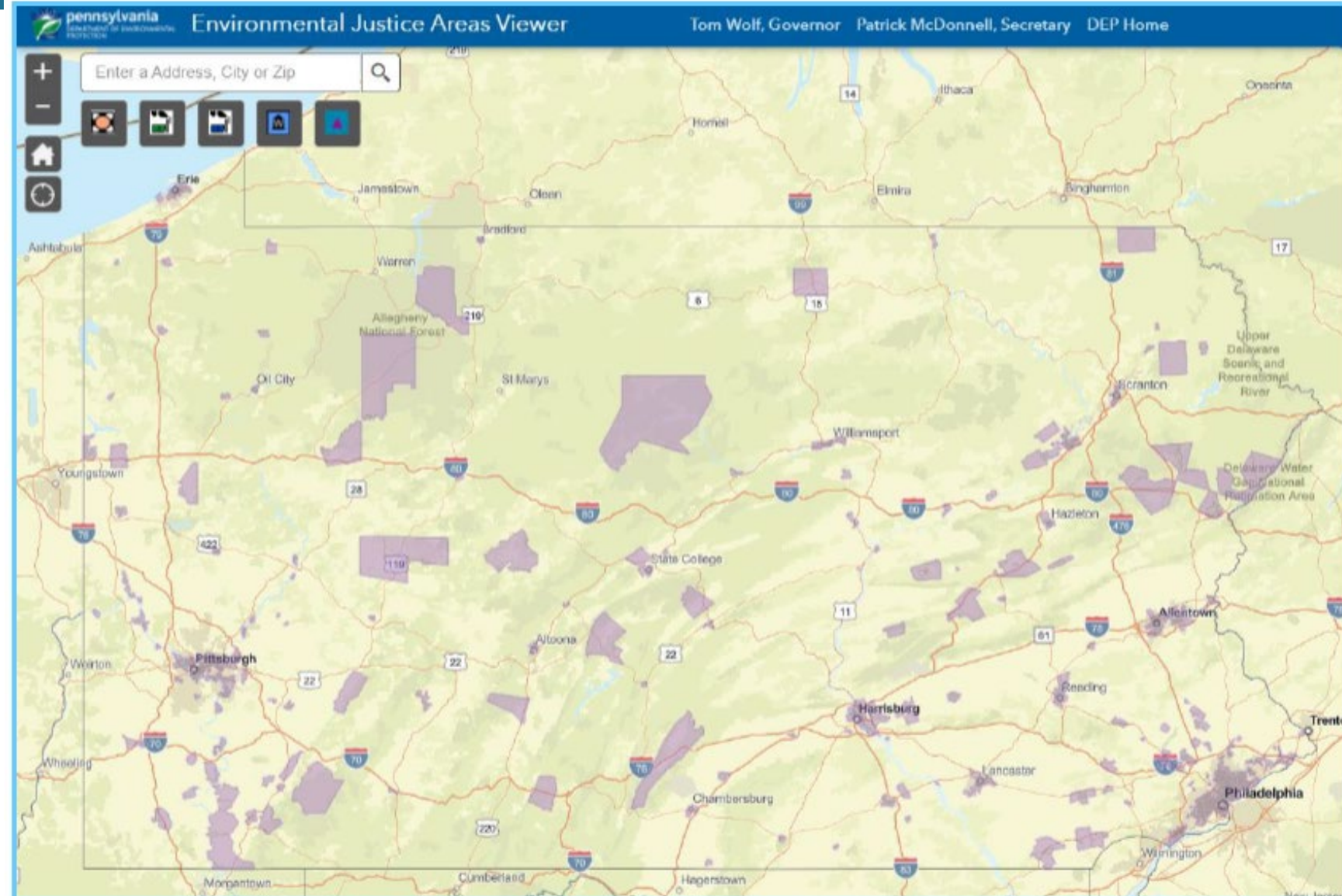
- (i) are fully protected from **disproportionate and adverse human health and environmental effects** (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and
- (ii) have **equitable access to a healthy, sustainable, and resilient environment** in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.”

# EJ Areas and Area of Concern

EJ Areas = 30%  
People of Color and/or  
20% Low income

Area of Concern = 0.5-  
mile buffer

Determined when an application  
is administratively complete



# Trigger Permits

- Mining
  - Large industrial mineral surface and underground mines
  - Revisions to add acreage for mineral removal
- Water
  - NPDES permits – Industrial wastewater facilities (> 50,000gpd)
- Air
  - New major sources or major modification of existing source

# Opt-In Projects

A project requiring permits, authorizations, or approvals,

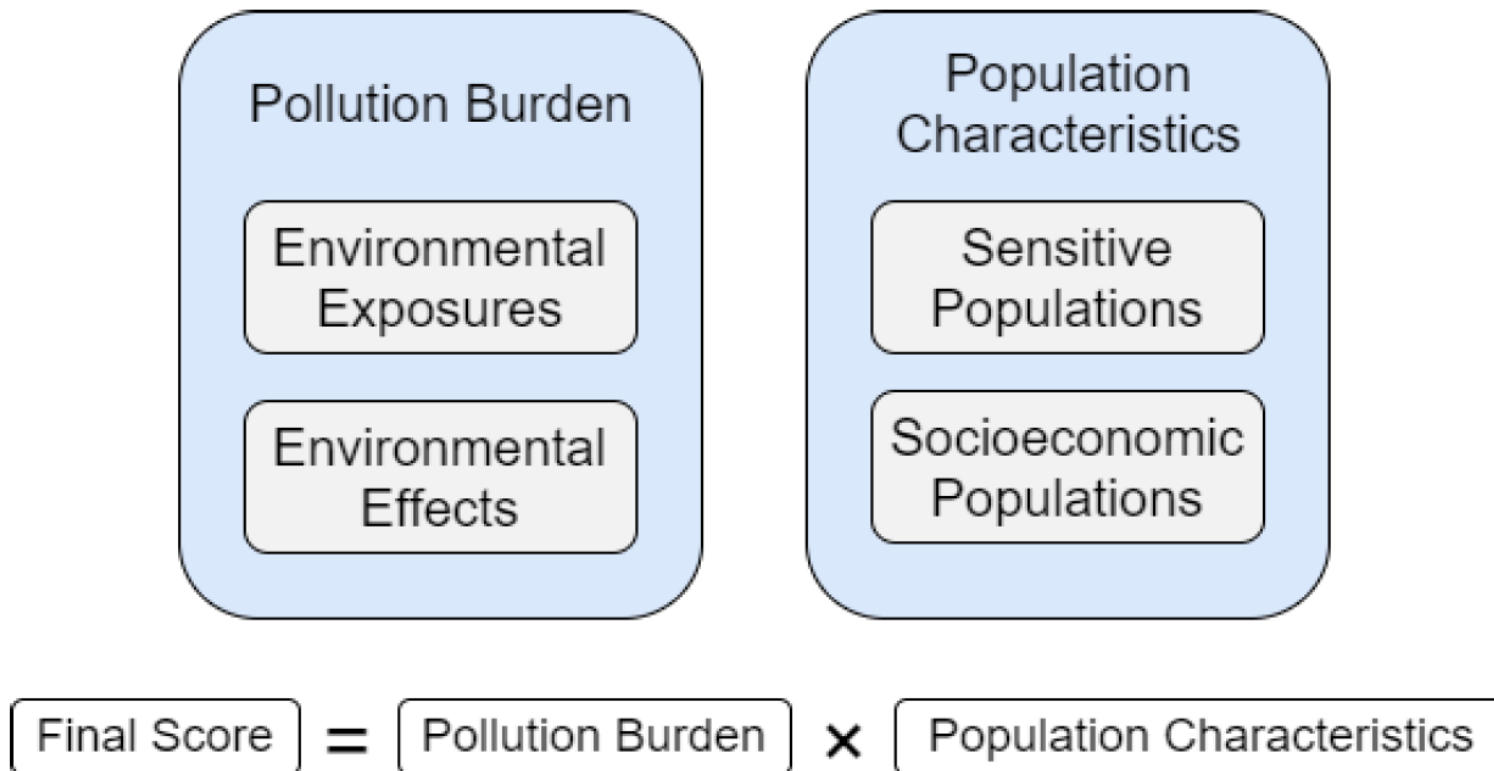
→ that is not a trigger permit,

→ which **DEP determines** should be evaluated as an EJ project

→ based on:

1. identified community concerns,
2. present or anticipated environmental impacts, or
3. reasonably anticipated significant adverse community environmental burden.

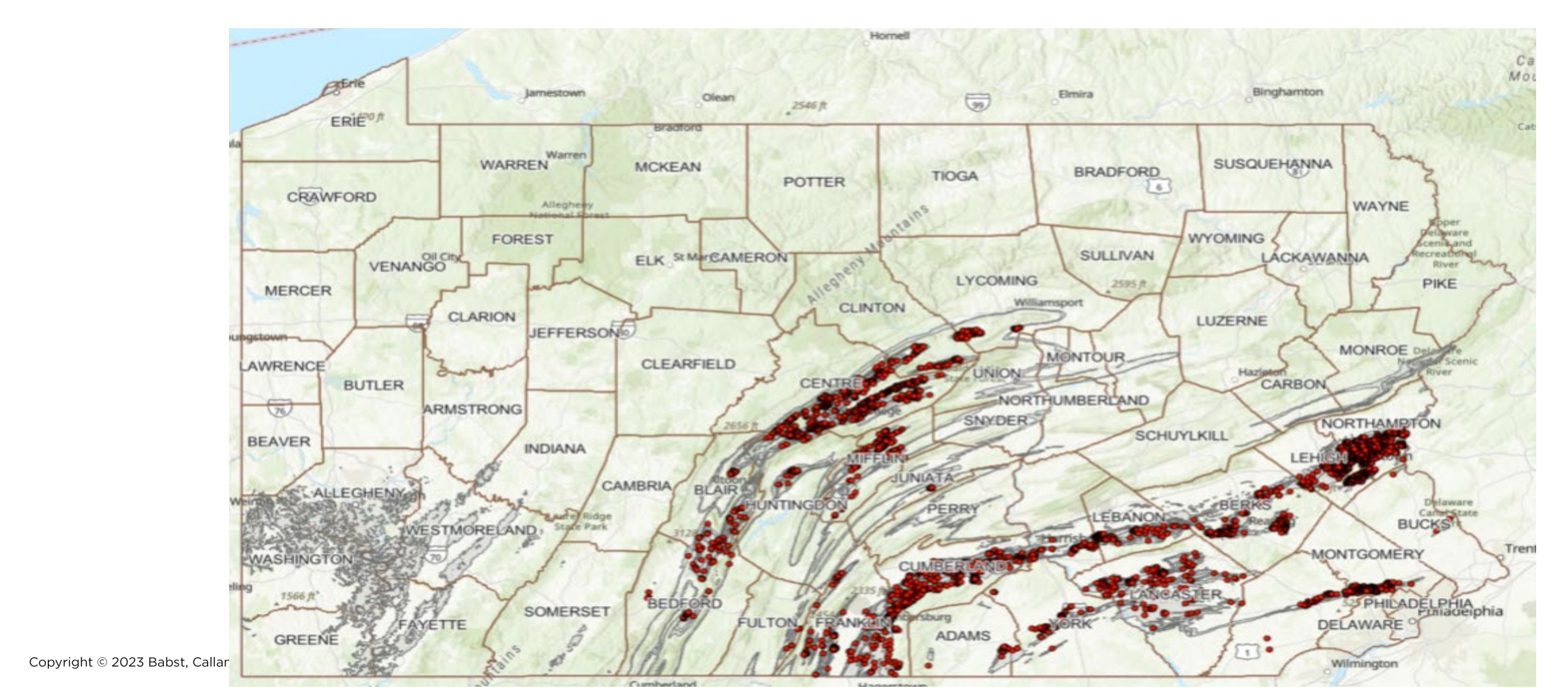
# PennEnviroScreen Tool



# PennEnviroScreen Tool

Pollution Burden: Environmental Exposures	Pollution Burden: Environmental Effects	Population Characteristics: Sensitive Populations	Population Characteristics: Socioeconomic Population
Ozone	Oil Gas Locations (Conventional wells)	Asthma	Low Educational Attainment
PM2.5	Oil Gas Locations (Hydraulic Fracturing / unconventional wells)	No Health Insurance	Linguistic Isolation
Diesel Particulate Matter	Proximity to Railroads	Cancer	Housing-Burdened Low- Income Households
Toxic Air Emissions	Land Remediation	Disability	Poverty
Toxic Water Emissions	Hazardous Waste and Storage Sites	Heart Disease	Unemployment
Pesticides	Municipal Waste Sites		Race
Traffic Density	Coal Mining		Age over 64
Compressor Stations	Impaired lakes and streams		Age under 5
Children's Lead Risk	Abandoned Mining Concerns		
	Flood Risk		

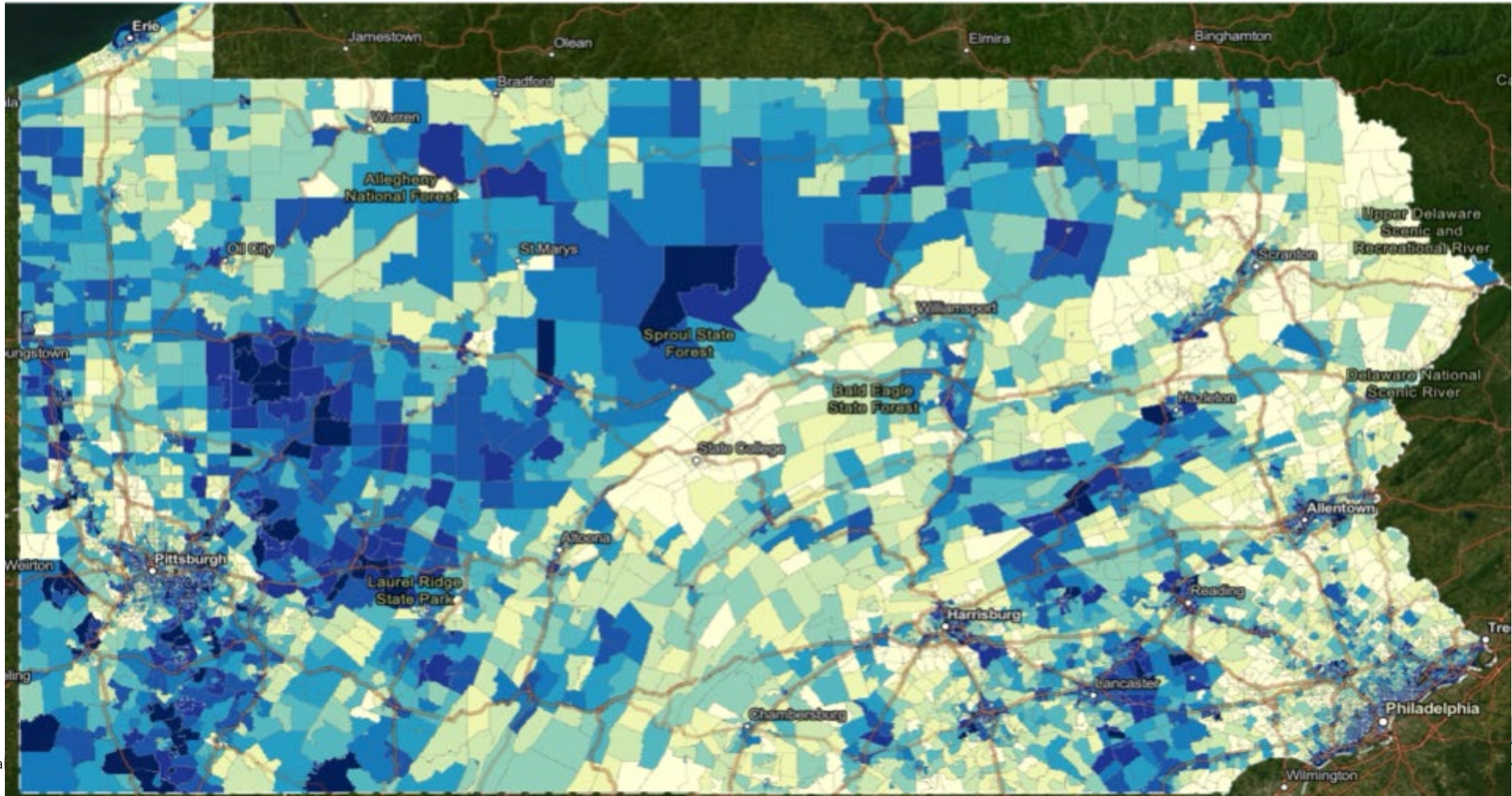






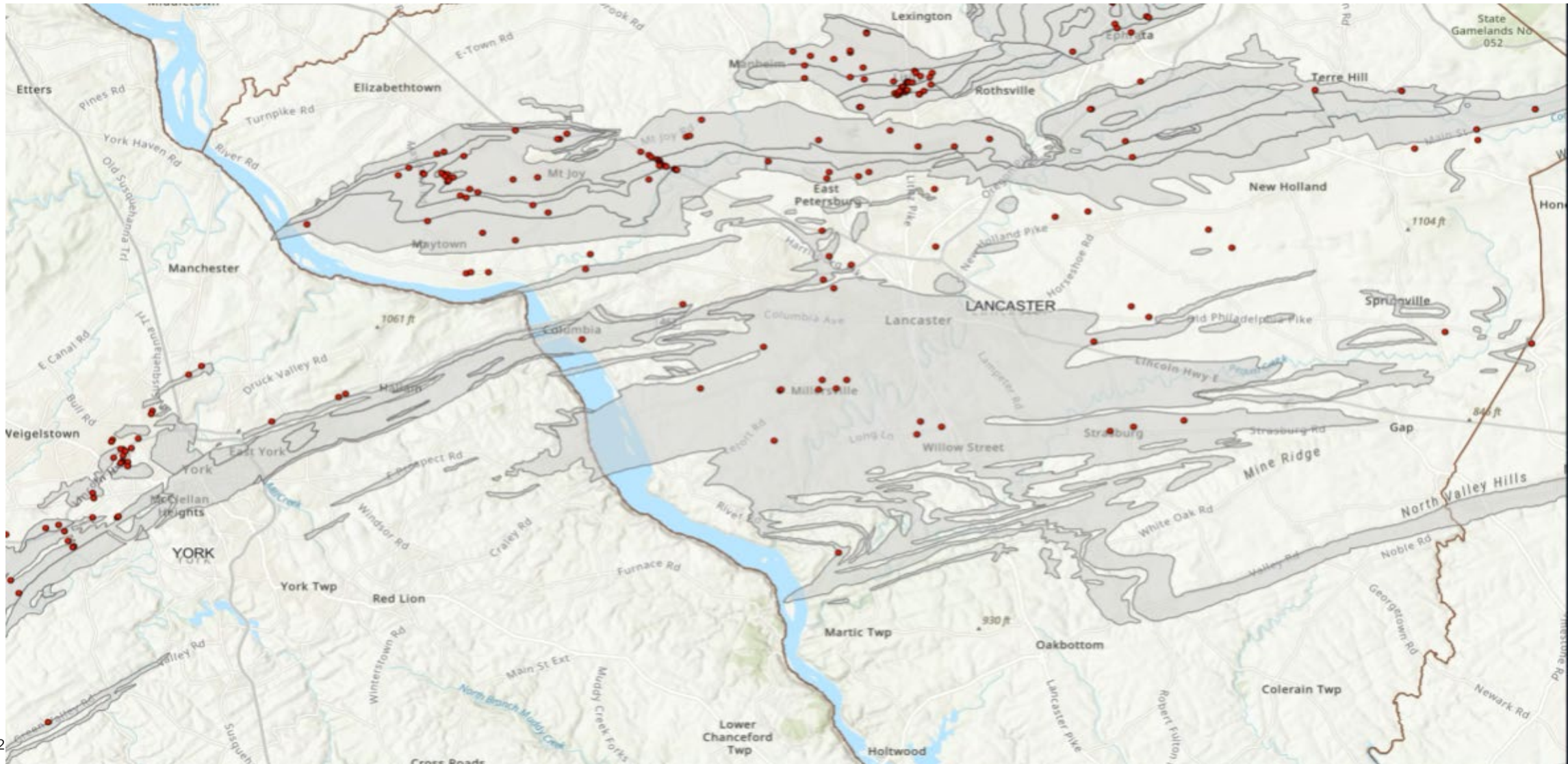
# PennEnviroScreen Tool

## Statewide Environmental Justice Areas

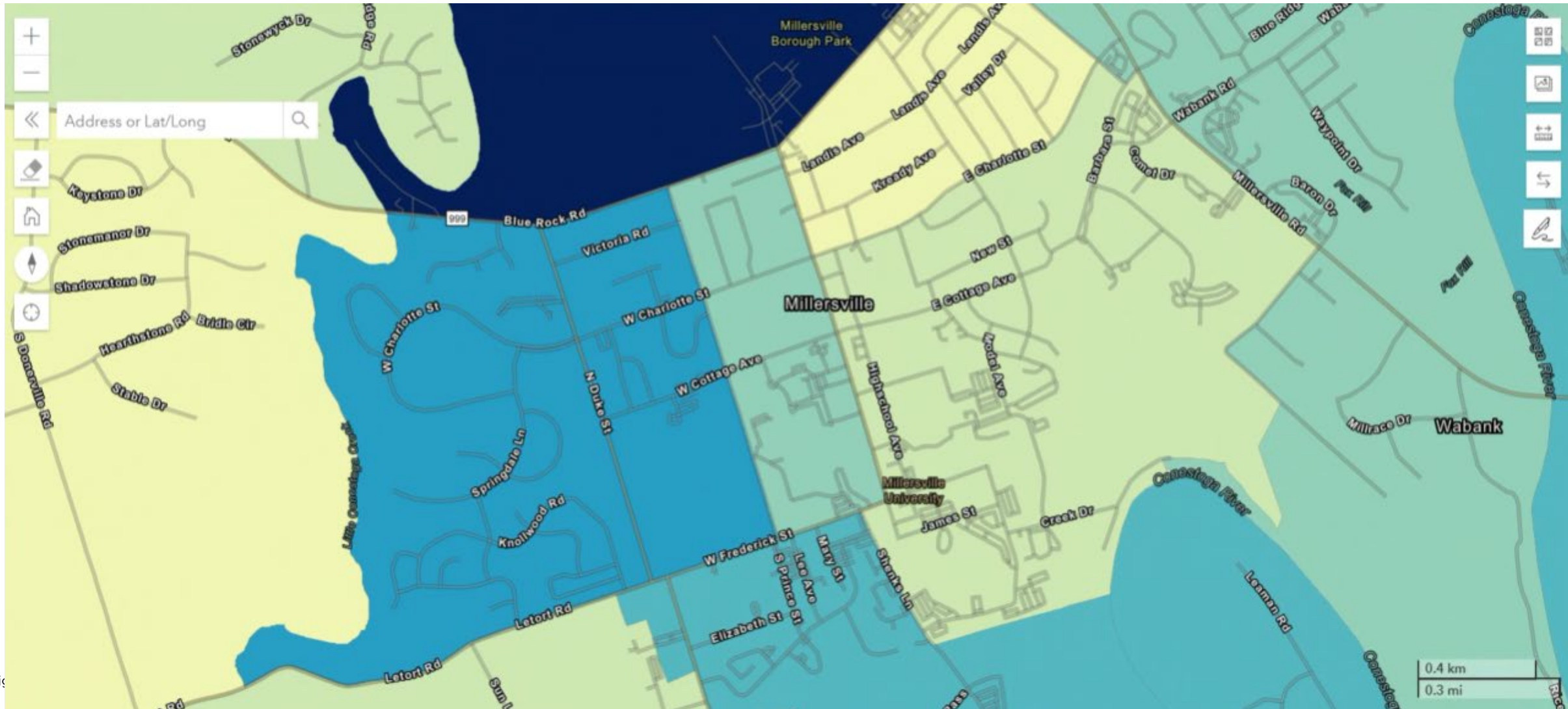




# Lancaster County - Lancaster/Millersville Area

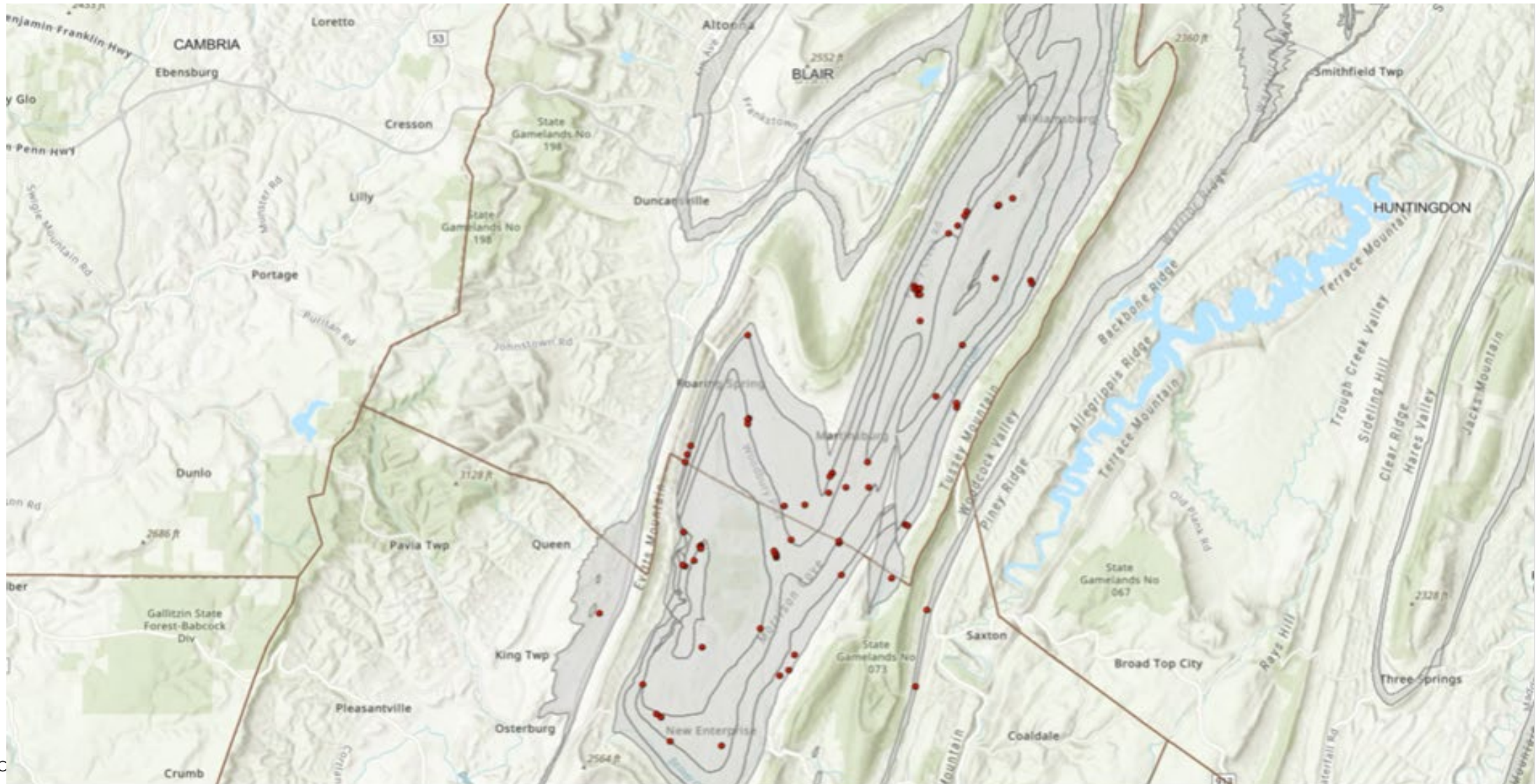


# Lancaster County - Lancaster/Millersville Area





# Blair County – Roaring Spring / Martinsburg Area



# Blair County – Roaring Spring / Martinsburg Area



# Enhanced Public Participation

## 1. Pre-Project Community Outreach

- Meet “community stakeholders”
- Invite OEJ or other DEP staff
- Describe in the GIF:
  - “the anticipated direct and indirect environmental impacts from the project”

# Enhanced Public Participation

## 2. The Permit Application – new elements

- Pre-application meeting with DEP
- Public participation strategy - OEJ develops
- Notice on the EJ Project Portal
- Public meetings – 30 days after complete application; DEP leads
- Public comment
- DEP technical support – a free consultant to the community (?)

**NOTE:** *“DEP will ensure the Climate Action Plan addresses climate adaptation planning for EJ Areas”*



# Enhanced Public Participation

## 3. Permit Issuance – DEP to advise the community about:

- Compliance, inspection reports, NOVs, enforcement
- Permit revisions / renewals
- Permit transfers

# Enhanced Public Participation

## 4. Inspections, Compliance and Enforcement

- Inspections – prioritized in EJ Areas; focus on public health
- Enforcement and Compliance Team to focus on EJ Areas
  - Civil penalty enhancement
  - On-line complaint form

# Some Big Implementation Issues

1. Who is the “community”?
2. Free-lance “Community Liaisons”
3. Changing EJ areas, without notice
4. Opt-in permits
5. Mining must occur where the reserves are located
6. Permit reviews will take longer; inconsistent with “PAback” and EO 2023-07
7. Permit reviewers may become indecisive (when have “community concerns” have been addressed)

# Federal EJ Funding


October 24, 2023 – EPA granted \$5.3M to fund 8 EJ projects

- \$1M to City of Philadelphia – institutionalize EJ within municipal policies and practices
- \$1M to DEP – community programs to “address environmental issues before a crisis”
- \$500,000 to John Bartram Association (Phila) – climate resilience
- \$328,827 to Allegheny County – climate preparedness in 38 EJ areas

# NGO Anti-Industry Funding

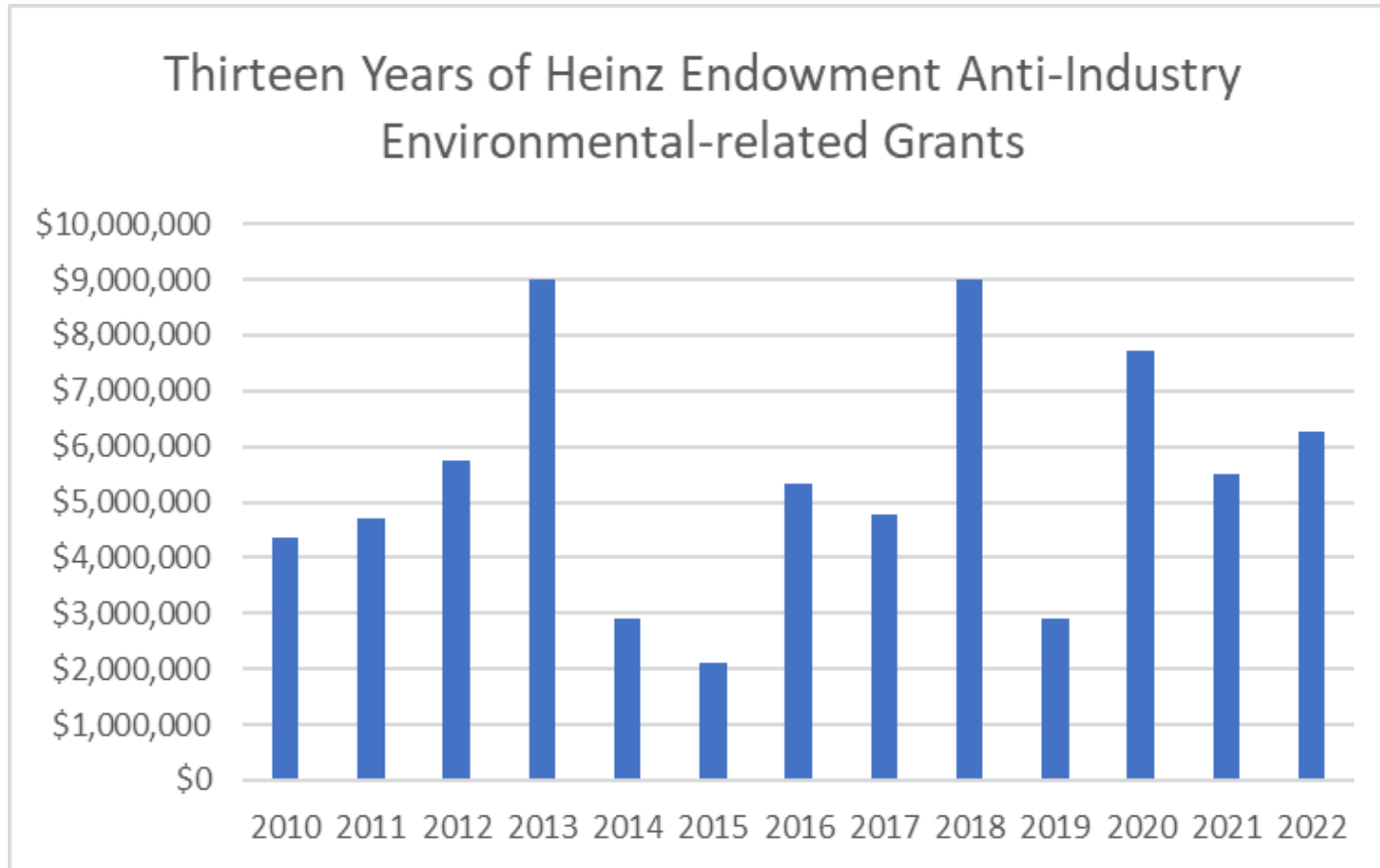
## New Grants in 2022 with anti-industry goals

- Bridgeway Capital
- Cambridge Health Alliance Foundation
- Center for Coalfield Justice
- Citizens for Pennsylvania's Future
- Clean Water Fund
- Community Foundation for the Alleghenies
- Environmental Integrity Project
- Food & Water Watch
- PennEnvironment Research and Policy Center
- Pittsburgh United
- Sierra Club Foundation
- Southwest Pennsylvania Environmental Health Project



Since 2010, more than 150 organizations have received funding from Heinz Endowments for anti-industry activity

# NGO Anti-Industry Funding



More than **\$70 million**  
has been granted for  
anti-industry work over  
a 13-year period

An average of more  
than **\$5 million**  
per year.

From just this **ONE**  
foundation.

# Other New Developments

- ❖ RGGI declared unconstitutional
  - *Bowfin Key Holdings v. DEP*, No. 247 M.D. 2022 (Commw. Ct. 11/16/23)
  
- ❖ DEP failure to act is not appealable
  - *Glahn v. DEP*, No. 1273 C.D. 2021 (Commw. Ct. 7/10/23)
  
- ❖ Proposed revisions to spill reporting
  - 25 Pa. Code § 91.33



Thanks for listening.

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