

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
POLICY OFFICE**

DOCUMENT ID: 012-0900-003

TITLE: Policy on Public Participation in the Permit Application Review Process

EFFECTIVE DATE: July 16, 2005

AUTHORITY:

Article I, Section 27 of the Pennsylvania Constitution
The Air Pollution Control Act, 35 P.S. §§4001, et seq.
The Solid Waste Management Act, 35 P.S. §§6018.101, et seq.
The Clean Streams Law, 35 P.S. §§691.1, et seq.
The Storage Tank and Spill Prevent Act, 35 P.S. §§6021.101, et seq.
The Hazardous Sites Cleanup Act, 35 §§6020.101, et seq.
The Safe Drinking Water Act, 35 P.S. §§721.1, et seq.
The Municipal Waste Planning, Recycling and Waste Reduction Act, 53 P.S. §§4000.1, et seq.
The Infectious and Chemotherapeutic Waste Law, 35 P.S. §§6019.1, et seq.
The Surface Mining Conservation and Reclamation Act, 52 P.S. §§1396.1, et seq.
The Noncoal Surface Mining Conservation and Reclamation Act, 52 P.S. §§3301, et seq.
The Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. §§1406.1, et seq.
The Oil and Gas Act, 58 P.S. §601.101, et seq.
The Coal Refuse Disposal Act, 52 P.S. §§30.52, et seq.
The Pennsylvania Sewage Facilities Act, 35 P.S. §§750.1, et seq.
The Dam Safety and Encroachments Act, 32 P.S. §§679.101, et seq.
The Radiation Protection Act, 35 P.S. §§7110.101, et seq.
The Low-Level Radioactive Waste Disposal Act, 35 P.S. §§7130.101, et seq.
The Radon Certification Act, 63 P.S. §§20001, et seq.

POLICY: Public participation is an integral part of environmental decision-making, and it is the policy of the Department that applications for Department approval should provide for effective involvement of the public. It is the intent of the Department to respond appropriately and in a timely manner to all relevant comments received during the permit application review process, particularly when there is a formal public comment process.

PURPOSE: The purpose of this policy is to establish a framework for public participation in the permit application review process. It addresses the issue of responding appropriately to comments made by the public during the review process, and on the timeliness of permit decisions, by providing consistent guidelines for responding to public comments received during the permit application review process.

APPLICABILITY: This policy applies to all permit or plan approval applications reviewed by DEP when there is a public comment process associated with that application. It does not apply to Notices of Intent for coverage under a general permit or any permit by rule.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall effect regulatory requirements.

The policies and procedures herein are not an adjudication or regulation. There is no intent on the part of DEP to give the rules in these policies that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

PAGE LENGTH: 10

LOCATION: Volume 1, Tab 14

I. Background

Involving the public in making decisions about the environment often results in a better decision. Giving the public access to relevant information and a chance to participate in the decision-making process is an integral part of the way the Department operates.

The Department will continually seek to broaden public participation in the decisions the Department makes and give members of the public ample opportunity to share their views by providing comments to the Department for consideration.

By this policy statement, the Department is expanding its guidelines to address public participation in the permit application review process. This policy establishes consistent guidelines for how DEP reviews and responds to comments received during the public participation process in the review of a permit application.

II. How This Policy Relates To Other Public Participation Requirements

Public Participation in the Development of Regulations and Technical Guidance

The Department has a policy in place to address public participation in the development of regulations and technical guidance. The Public Participation in the Permit Application Review Process policy complements the Policy For Public Participation In The Development Of Regulations And Technical Guidance (Document ID#: [012-1920-001](#))

Existing Requirements for Public Participation in the Permit Application Review Process

Different application types may be subject to varying public participation requirements by state and federal statutes, regulations and guidance. The Department will follow all applicable public participation requirements. This policy builds upon those requirements by providing a consistent framework for required public participation activities. It addresses elements not covered by other documents, and seeks to tailor the public participation strategy to the individual project when appropriate.

How to Get More Information

Public participation requirements for different types of applications can be found in the DEP Guide to Permits. For a copy of the guide, please contact the appropriate regional or district

mining office, or visit the DEP website at www.dep.state.pa.us and type in the DEP Keyword “permits”. The public can also register for eNOTICE, a service that will provide a notice by e-mail of information related to applications received in their area, by clicking on the eNOTICE symbol on DEP’s website, or go directly to the following link: <http://www.dep.state.pa.us/enotice/>

III. General Policy

The public includes citizens, interest groups, local governments, businesses, industry associations, and any individual or group who may be affected by the proposed project or activity and shows an interest in participating.

Public participation activities, including planning for and soliciting public input, considering public comments, and responding to public comments, are an integral part of the review process. Considering and responding to public comments should not unduly delay finalizing permit decisions if responses to comments are prepared as soon as possible after receipt.

Public involvement in the permitting process should occur as early as practically possible and as allowed or required by state or federal statute, regulation or guidance.

The Department should utilize a variety of means to ensure adequate public notice of an application including eNotice, publication in the Pennsylvania Bulletin, and other types of notification appropriate to a particular application. Department staff should review all published notices to ensure that they contain enough information for the public to determine a basic level of interest in the projects.

Applicants are encouraged to contact the Department prior to submitting an application. The Department may be able to provide information concerning the permit process, environmental issues including pollution prevention and energy efficiency, and public concerns that should be addressed in the permit application. Addressing these concerns in the initial submission of the application will result in a better application, fewer public comments, and a more effective review process. One of the items that should be discussed prior to submitting an application is how the public may participate in the permit application review process. In many cases, the Department also recommends that the applicant seek public input prior to submitting an application. Department staff will invite all other relevant state agencies to attend a pre-application conference and will strongly encourage these agencies to attend.

Department staff will make every effort to encourage public participation in the permit review process. While each project may be different and have different degrees of public participation requirements set by state or federal statute, regulation or guidance, Department staff should consider the best way to obtain valuable public comment for that project. Staff responsible for reviewing an application should consult with community relations staff (CRC), the local government liaison (LGL), and environmental advocate (EA) in their region.

The Department’s Center for Collaboration and Environmental Dispute Resolution (CEDR) is available to Department staff to consult for ideas on effective public participation. CEDR is coordinated through the Department’s Policy Office and acts as a neutral entity that assists interested parties in resolving matters through facilitation and mediation. For any project that is likely to be controversial, or is expected to generate significant public interest, Department staff should contact the CEDR to discuss options for ensuring effective public participation. CEDR

will work with the Department's outreach staff to create a set of outreach ideas appropriate for the application. For more information about these services, visit CEDR's website at <http://www.depesf.state.pa.us/cedr>.

When developing a strategy for public participation for an application, staff will, at a minimum, meet the regulatory requirements for public participation applicable to the project. Tools available for Department staff include public information meetings, informal conferences, and public hearings. Program staff are encouraged to discuss the different public participation opportunities and explore different options in consultation with CEDR, CRCs, LGLs and EAs. .

After a public hearing, Department permitting staff will prepare, and make available to the public, a Comment and Response Document. The guidelines for preparing the Comment and Response document appear in Section V. Any time there is a public hearing and the Department receives a formal comment from the public regarding a specific permit application for Department approval during established public comment processes, DEP will respond through a Comment and Response Document. The Comment and Response document will be made available to the public upon approval or denial of the application, or earlier in the process if appropriate.

The department must carefully consider all formal public comments, and every relevant comment deserves a substantive response. The public should understand how their comments have been taken into account during the review of the application. Appropriate steps will be taken during the review of an application to address concerns, and the review of relevant comments should occur during the application review rather than held until the end of the process. At times the Department may not agree with a comment, or may not have the authority to address the concern raised. If the Department does not address the relevant comment through the permit decision, Department staff will provide a reasonable explanation of the Department's position.

All responses, including Comment and Response documents, should be as clear and concise as possible. Technical language should be used only when necessary and appropriate to respond to a technical comment.

When appropriate, Department staff should seek to incorporate the public's concerns in the technical review letter to the applicant. These concerns may include non-technical issues. Note that the public meeting or hearing should be conducted prior to preparing and sending the technical review letter.

Minor changes to a project happen routinely during the Department's review of permit applications. There are, however, occasions when a proposed facility or activity, for which the project proponent submitted permit application(s), changes substantially during the course of the Department's review. At times these changes come about as a result of the proponent's wishes; at other times these changes occur as a direct result of the Department's comments or notes of deficiencies. When there are significant changes to a project proposal, Department staff should consider whether additional opportunity for public comment should be afforded, consistent with the provisions of section IV (E), below.

IV. Specific Public Participation Guidelines

A) Public Hearings

Public hearings are formal, structured proceedings. The purpose of a public hearing is to afford members of the public the opportunity to provide oral and/or written comments for the record on an application under review by the Department. The Department shall conduct a public hearing when required by legislation or regulation and may require a public hearing at other times, particularly when there is significant interest in the community. Public hearings should be scheduled at a location in the community where the proposed project is located. To ensure that all attendees have adequate time to provide comment, public hearings are not open dialogue. Written comments may be submitted at the hearing, and a time limit of a maximum of ten minutes will be imposed for oral testimony. Those presenting testimony may not yield their extra time to another person. An official record of the hearing will be prepared by an independent court reporter. Responses to oral and written comments received during the hearing will be included in the comment and response document (see Section V).

Department staff may choose to answer questions, provide information, or use an alternative public participation process prior to, or following, the official public hearing. Program staff should discuss the public hearing format, and whether or not other informational meetings should be held in conjunction with the hearing (or even in lieu of a hearing), with Department staff responsible for outreach as noted in the general policy statements above.

Timing of Public Hearings

Department staff should schedule hearings during the official public comment period or as appropriate for the application under review, to allow ample time to properly consider public comments after the transcripts are received and before the application is approved or denied.

Unless mandated by state or federal law, Department staff may cancel a public hearing if no interested individuals register to offer testimony. If the Department cancels a public hearing, it will provide public notice of the cancellation that is at least equivalent to the notice required of the hearing. In addition, the Department will provide adequate advance notice of the cancellation.

Transcripts from Public Hearings

All public hearings should be transcribed.

According to Commonwealth contract guidelines, transcripts should be provided to the Department within 21 days of the hearing. If transcripts are not received in a timely manner, regional staff should contact their regional business manager for resolution. Central office staff should contact the Bureau of Office Systems and Services, Contracts and Procurement Division.

The Department will not make a final decision until the written transcript is received and all relevant comments have been considered and addressed. Programs should routinely prepare a substantive draft comment response document prior to receipt of the transcript based on written notes taken at the hearing and on written comments received.

B) Public Information Meetings

The Department may hold a public information meeting at any appropriate time in the application review process. The purpose of the meeting must be very clear. Some things to consider when planning and holding a public information meeting include:

- How will this public input be used?
- What is the timing of public input in the review and decision-making process? Does the public participation come at the beginning, end, or middle of the process?
- What are the public's particular interests and needs and how can the Department meet them?
- What other resources or people would be helpful to have in attendance to address concerns or answer questions?
- Could the meeting benefit from having a neutrally perceived facilitator?
- What are the Department's responsibilities to the attendees after the meeting?
- How can the room be set up to promote constructive dialogue?
- How can the Department be sure that all interested members of the public are informed of the meeting, including its logistics and purpose?

It is important for Department staff to use all in-house consulting resources, including the regional community relations coordinators, local government liaisons and environmental advocates, and the Environmental Dispute Coordinator of the Department's Center for Collaboration and Environmental Dispute Resolution, to design the meeting to meet its purpose. District Mining Offices do not have these resources directly within the offices, but these resources are also available to them. DMO staff should involve the CRCs, LGLs and EAs in the corresponding regional offices.

C) Informal Conference

The Department will conduct an informal conference when required by legislation or regulation and may require an informal conference at other times, especially when there is significant interest in the community. These conferences are less formal than public hearings and provide opportunities for discussion with program staff and permit applicant. They will be held within 60 days of the close of the public comment period. The Department will make an electronic or stenographic recording of the conference, unless all parties waive such recording. The Department will provide its findings resulting from the conference to the permit applicant, and to each person who is a party to the conference, within 60 days of the conference.

D) Role of DEP in Public Hearings, Meetings, or Conferences

In all of the meetings mentioned above, or any other public meeting held in connection with a permit application, the Department's role is that of an objective reviewer of the application and an advocate for protecting human health and the environment rather than an advocate of the proposed project or activity. The format of each meeting, conference or hearing should reflect this role. During a meeting that allows for dialogue, Department staff should refer all questions to the applicant that are more appropriate for the applicant to answer. The Department should strongly encourage attendance and participation by the applicant at such meetings. Department staff

responsible for setting up public meetings and hearings are strongly encouraged to consider alternative formats that emphasize the Department's objective role, including the use of a facilitator. Please contact the Department's Center for Collaboration and Environmental Dispute Resolution for more information. For any project that is likely to be controversial, or is expected to generate significant public interest, Department staff should contact the CEDR.

E) Republication to Afford Additional Public Participation

When a project changes substantially during the pendency of the application(s), the Department will consider whether it would be appropriate or useful to afford an additional opportunity for public review and comment. For these purposes, the phrase "changes substantially" means, among other things:

- change of 30% or more, in the size of the facility or activity contemplated in the original proposal;
- change in the purpose for or function of the project;
- change in the location of the project;
- change in the materials that would be used in constructing or operating the project;
- change in the environmental impact of the project; and
- change in the environmental medium or media that would be subject to an impact from the project.

The purpose for soliciting additional public participation is to assure that the public has an opportunity to be heard about the actual project for which the Department contemplates issuing a permit or permits. When the Department concludes that it should re-publish notice of a project because of substantial changes, it will publish the second notice in at least the same venues in which the first notice was published, and will notify, by first class mail, all those who participated in the earlier round of comments.

V. Comment and Response Document

A. Format

A sample format of the Comment and Response document is included as Appendix A.

The document should consist of a cover page with the name of the project, the name of the applicant, the type of permit(s) being approved or denied, the date the public hearing or conference was held, and the county and township where the proposed project or activity is located.

The document should list all of the commentators who submitted comments, both oral and written, during the public hearing. All commentators should be numbered sequentially.

The Comment and Response document may include background information or summary of the application.

All comments should be summarized and grouped according to subject matter. Miscellaneous comments should be in a separate category that follows the specific issue categories.

At the end of each summarized comment, the number of the commentator who submitted the comment should be listed.

Each comment should be followed by a Department response. Each response should adhere to the general guidelines listed above in Section III. If the Department agrees with a comment, the document should say so and explain what changes (if any are required) have been made. If the Department does not agree with a comment, the document should say so and should provide a reason or reasons for rejecting the comment.

The Comment and Response Document should be reviewed and approved by the Program Manager and program counsel.

Addresses

The program will keep a record of addresses of all persons providing comment to the Department pertaining to a specific application. Commentators should be mailed a copy of the Comment and Response Document. If a large number of comments are received or as resources allow, the Department may post the document to its website and send a brief notification of the document's availability to all commentators. Because of security concerns, the Department should not publish the addresses of the commentators in the document; however, the addresses will remain a part of the public record and are available for inspection subject to the provisions of applicable laws.

B. Public Availability of the Comment and Response Document

The Comment and Response Document will be made available to the public at the time the permit application is approved or denied, or earlier if appropriate.

A copy of the Comment and Response Document should be mailed to each person or entity providing formal oral or written comment at the public hearing. As an alternative, the document may be posted to the regional web page, and a notice of availability sent to each person or entity providing formal comment during the hearing. A copy of the Comment and Response Document must be available for public inspection as part of the record file associated with the application.

C. Relation of Comment and Response Document to Other Department Policies

1) Coordination

The Department's Money-Back Guarantee Program recognizes that some projects may require multiple DEP permits. Under that policy (Document ID: [013-2000-001](#)),

coordinated permits are generally held until all reviews have been completed. When this is the case, the Department should prepare and issue one Comment and Response Document for all permit applications at the time the Department approves or denies the applications. The Comment and Response Document should include responses to all public comments made during the review of that project, regardless of the specific application for which the comment was received, and the comments should be organized by permit application. When this is not the case (for example, when there may be a year or more separating different approvals for the same project) a separate comment and response document for each approval will be prepared.

2) Land Use

The Department often receives comments regarding the land use implications of projects. Any comments regarding land use from either a county or a municipality may also be subject to the Department's Policy for Consideration of Local Comprehensive Plans and Zoning Ordinances in DEP Review of Permits for Facilities and Infrastructure (Document ID: [012-0200-001](#)) and should be considered according to the process outlined in that policy. The county or municipal comments should be responded to by permit review staff in the Comment and Response Document or any other vehicle used by that program to respond to comments, and should include the results of any land use review conducted. For further assistance on comments made by a municipality or county regarding land use, please contact the Policy Office at 717-783-8727.

Comments received from the general public other than the county or municipality regarding the land use impacts of a proposed project are not subject to consideration under the above referenced policy. Any comments received from the public concerning land use issues should be responded to in the manner outlined in this policy. If Department staff needs assistance in preparing a response to a comment regarding land use, they may consult with the Policy Office.

3) Environmental Justice

The steps outlined in this policy are considered a minimum to ensure an adequate response to public comments. Some permit applications in certain areas as defined by the Department's Environmental Justice Public Participation Policy may have additional steps that the Department should take to ensure adequate public notice and participation. For more information, review the Environmental Justice Public Participation Policy Document (Document ID: [012-0501-002](#)), or contact the Department's Office of Environmental Advocate at 717-783-5630.

FORMAT FOR COMMENT AND RESPONSE DOCUMENT

(cover page)

BIG COMPANY
BIGGER PROJECT
ACTIVITY PERMIT (Approved or Denied)
SOME TOWNSHIP
ANY COUNTY
COMMENT AND RESPONSE DOCUMENT
DATE

(page 1)

List of Commentators

1. John Smith
Citizen
 2. Jane Smith
President, Neighborhood Watch
 3. John Jones
Solicitor, Great Township
 4. Jane Jones
Manager, Big Company
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COMMENTS AND RESPONSES

General Comments

1. Comment:

Response:

Test Procedures

2. Comment:

Response:

3. Comment:

Response: