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July 21, 2013

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Pursuant to Pennsylvania Bulletin 43 Pa.B. 3421, Saturday, June 22, 2013, please accept the following public comments on the Department of Environmental Protection (DEP) "Policy on Public Participation in the Permit Review Process" (Policy), Document Number 012-0900-003.

I take strenuous objection to many aspects of Policy on the following grounds:

1. DEP has abandoned its role as "an advocate for protecting human health and the environment".

The current (July 16, 2005) version of Policy (Current Policy) states in section IV D:

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. [Emphasis added.]

In its place, the revised version of Policy simply states:

"The Department's role in the permit review process is to determine if the application is complete, technically adequate and that it addresses all applicable regulatory and statutory requirements. ... it is not the Department's role to act as an advocate for or against issuance of a permit."

While I can certainly appreciate DEP's candor in acknowledging the facts on the ground so painfully evident to those of us citizens who *are* acting as advocates for protecting human health and the environment that DEP's current role is in fact to **suppress** efforts at such protection, that does not make it acceptable. It is simply outrageous that the word 'health' has been deleted from a policy document on public participation. Unfortunately, and inexcusably, it falls to us citizens to remind DEP what its mission is. Consider the following definition of air pollution found in 25 PA Code § 121.1:

"The presence in the outdoor atmosphere of any form of contaminant, including, but not limited to, the discharging from stacks, chimneys, openings, buildings, structures, open fires, vehicles, processes or any other source of any smoke, soot, fly ash, dust, cinders, dirt, noxious or obnoxious acids, fumes, oxides, gases, vapors, odors, toxic, hazardous or radioactive substances, waste or other matter in a place, manner or concentration **inimical or which may be inimical to public health**, safety or welfare or which is or may be injurious to human, plant or animal life or to property or which unreasonably interferes with the comfortable enjoyment of life or property." [Emphasis added.]

DEP is not free to blithely ignore the wording of 25 PA Code § 121.1. It is painfully clear to many members of that mighty community known as “we the people” that health must be at the absolute top of consideration when DEP considers its role in overseeing public participation. Exclusion of protection of health and the environment from the description of DEP’s role in the permit review process is **indefensible**. The wording from IV D of Current Policy **must be restored**.

2. DEP has denied the authority of the Constitution of the Commonwealth of Pennsylvania.

Current Policy cites many sources as its authority, including Article 1 Section 27 of the Constitution of the Commonwealth of PA. As above, I can appreciate DEP’s candor in acknowledging the facts on the ground that DEP has been vigorous in **preventing** citizens from asserting their rights under Article 1 Section 27. As above, this is unacceptable. It is exactly through the public participation process that citizens should be able to assert their Article 1 Section 27 rights. By unacceptably removing Article 1 Section 27 from the authority section of Policy, DEP is attempting a kind of de facto, back door repeal of Article 1 Section 27. Article 1 Section 27 **must be restored** as an authority.

3. All determinations that a source of air pollution is a minor source (especially determinations of synthetic minor source) must be subject to Public Participation.

EPA has been especially clear about this. In commenting on DEP Bureau of Air Quality’s draft General Permit GP-5, EPA stated:

“EPA has consistently stated that to be federally enforceable, two criteria must be met: (1) the limitations must be contained in a permit **that is federally enforceable and has undergone public participation** and (2) the limitation must be enforceable as a practical matter. Since the application for authorization does not undergo any public review **EPA does not believe that it would be federally enforceable.**” [Emphasis added.]

By broadening the application of GP-5 to all ostensible minor sources, DEP has denied public participation on the determination that a source is a minor source. This is unacceptable. DEP must allow public participation on all minor source determinations. This is especially important in the case of a *synthetic* minor source. Determination that specific “artificial” emissions limits establish a site as a synthetic minor source can only be done by examining the specifics of that site. Synthetic minor sources should not in any case be accepted as eligible for GP-5, and must be given full public participation. DEP **must make it explicit** that these cases fall under Policy Section IV language

“Additional forums or venues, including public hearings, public information meetings, and informal conferences can be used by the Department, as required by statute or regulation, or as warranted, ...”

4. Public participation must be allowed on any Plan Approval application (general or otherwise) which seeks to establish federally enforceable emissions limits.

DEP’s response to EPA’s comment that a permit under GP-5 would not be federally enforceable — due to lack of public participation — was to acknowledge that “the permit” is not federally enforceable but “the emissions limits” are. This ignores completely **the determination** that the claimed emissions limits apply to the particular facility covered in the application. To state that certain emissions limits (in the abstract) are “federally enforceable” while ignoring clear guidance from EPA that there must be public participation in the determination that these limits apply is unacceptable. DEP must allow public participation in all minor source determinations.

A specific recent case is instructive. Although DEP Plan Approval 63-00958A, Welling Compressor Station, Washington County, was a full Plan Approval application and not a GP-5, the emissions limits applied for would today qualify for a GP-5. The application covered 2 Caterpillar G3516B engines with associated oxidation catalysts, 9 Waukesha P9390GSI with associated oxidation catalysts, and dehydration equipment. The public participation process **revealed that emissions had been calculated incorrectly**, and as applied for the facility would not be a minor source. As a result, the applicant withdrew one Waukesha engine. This is a documented case in which **public participation revealed that the minor source determination was not correct**. Consider what would happen if the applicant applies for all 11 engines under today's GP-5, and receives the same analysis Welling received prior to Public Comment. The permit would be approved and there would be no opportunity to challenge the minor source determination. This is a documented case from DEP's own records that illustrates clearly: there must be public participation in minor source determinations.

5. Public Participation sections of DEP's Environmental Justice Policy document must be incorporated by reference in the Policy on Public Participation. Public comment must be accepted on Environmental Justice public participation policy together with general public participation public comment.

By compartmentalizing discussion of Public Participation in several places (Policy, Environmental Justice policy, General Permit eligibility sections) DEP has sought to disguise from the public the ways in which flaws in these documents interact. The result is to deny public participation and confuse the discussion of this denial. Consider the issue of Environmental Justice. For many permits, the question of whether Environmental Justice applies to a permit application is determined by whether that permit meets the criteria for a "trigger permit". For air pollution, a permit must qualify as Major Source in order to become an Environmental Justice trigger permit. But as we have seen, under the combination of Policy and GP-5, there is no public participation for a minor source compressor station application under GP5. This means that **there is no Environmental Justice enhanced participation** (the entire purpose of Environmental Justice!) for almost all compressor stations. This is unacceptable.

Policy should be withdrawn. DEP should issue a new document containing Public Participation policy, Environmental Justice trigger permit criteria, and General Permit eligibility criteria in a single document, so there can be an integrated discussion of public participation across all forms of DEP guidance. If need be the relevant sections from other policy documents can be indicated in the Public Participation Policy document and incorporated by reference, but comment must be accepted in an integrated discussion of all aspects of Public Participation. To deny us that discussion is to deny public participation in the issue of Public Participation — the ostensible purpose of the present comment period.

6. All documents relevant to an application must be conveniently available to the public in a timely fashion during the application review process.

Public participation in a permit application is only meaningful if the public can know the details of both the application and DEP's analysis of that application. The File Review process is burdensome to those with workday obligations, such as employment. Wait times to receive a File Review appointment may be so long that a public comment period will have expired by the time one is allowed to review the documents. File Review materials should be scanned and placed on the Internet for all permits undergoing Public Participation. There is simply no excuse in the 21st century for such an antiquated system of document management as is exhibited by DEP.

7. All Comment Response documents must be made available to the public by publication on the Internet.

Issues brought up in Public Comment periods tend to recur in permit after permit. While a commenter on a specific permit will receive the Comment Response document on *that* permit, a commenter will not likely have access to Comment Response documents for earlier permits in which the same issue may have been raised. So

while a commenter may be informed by a Comment Response document, the public in general is not. All Comment Response documents must be published on the Internet, and Policy should establish this as DEP's requirement.

8. All documents cited or referred to in a Comment Response document must be made available to the public by publication on the Internet.

It can happen that in attempting to refute a public comment, the author of the Comment Response document may refer to "information the department has received" without either appending that information as an attachment to the Comment Response document or citing it as residing in a location where it will be available to the commenter. Here is an example, from a Comment Response document I myself received:

"The Department has recently received air quality screening data on behalf of Pennsylvania Waste Industries Association for a model landfill scenario in which multiple landfill gas-fired engines [not the same kind of facility as being commented on!] emit formaldehyde. the PTE for formaldehyde in this scenario is approximately ..." [Technical discussion follows.]

This is unacceptable. In effect, the response to my comment was a document, with which as commenter I was not provided. By basing a reply to my comment on information the "Department has recently received", DEP responded to my comment using *private information*. This should not be allowed. The instructions for preparing a Comment Response document must make clear that all information used as the basis for a response must be either contained in or attached to the Comment Response document or cited from public information.

Respectfully submitted,
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