

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Policy Office

DOCUMENT NUMBER: 012-0900-003

TITLE: Policy on Public Participation in the Permit Review Process

EFFECTIVE DATE: March 1, 2014

AUTHORITY: The Administrative Code 4 Pa. Code § 1.151, et seq.

POLICY: It is the policy of the Department of Environmental Protection (department) that the public be afforded the opportunity to review and provide comment on a permit or other applicable authorization (“permit”) application submitted for department review. It is the intent of the department to respond appropriately and in a timely manner to all comments received during the permit review process, particularly those comments received during the formal public comment process for a permit. The department will not make a final decision on a permit until the formal comment period has concluded and all comments have been considered.

PURPOSE: The purpose of this policy is to establish a framework within the applicable regulatory and statutory requirements for public participation in the permit review process. This policy includes guidelines on the specific forms of public involvement the department may invoke to seek public comment on a permit. The policy also includes guidelines for responding appropriately to public comments received during the formal public comment process for a permit.

APPLICABILITY: This policy applies to all permits and authorizations issued by the department for which a formal public comment period is provided. For purposes of this policy, a formal public comment period on a permit is initiated through the publication of a notice in the *Pennsylvania Bulletin*. This policy does not apply to licenses, registrations, certifications or Notices of Intent and registrations for coverage under a general permit or a permit-by-rule.

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

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

PAGE LENGTH: 10 pages

I. Background

The department is committed to decision-making that is open, transparent and accountable. A critical component of this commitment is the department's responsibility to seek public input and participation in the permit review process and to consider that input in reviewing the application. This policy outlines the department's guidelines to include public participation in the permit review process. This policy establishes consistent guidelines for how the department requests public comments and how it will review and respond 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 Review Process*" policy complements the "*Policy for Public Participation in the Development of Regulations and Technical Guidance*" (Document # [012-1920-001](#)).

Existing Legal Requirements for Public Participation in the Permit Review Process

Different application types may be subject to varying public participation requirements by statute or regulation. The department will follow all applicable public participation requirements set forth in such statute and regulation, and to the extent that anything in this policy conflicts with a legal requirement, the legal requirement governs. This policy builds upon the existing requirements and provides a consistent framework for required public participation activities.

Environmental Justice

Some permit applications in certain areas as defined by the department's "*Environmental Justice Public Participation Policy*" (Document # [012-0501-002](#)) may involve additional steps that the department will take to ensure adequate public notice and participation. For more information, see the department's website at www.dep.state.pa.us and select "Public Participation" and "Office of the Environmental Advocate."

III. General Policy

The department may utilize a variety of means to ensure adequate public notice of an application including publication in the *Pennsylvania Bulletin*, use of local media, publication on the department's website, use of the department's eNotice system, and other types of notification appropriate to a particular permit application. For purposes of this 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 and are interested in participating. For any public notice issued, department staff will follow legal requirements and otherwise ensure that sufficient information is provided to assist the public in determining the potential impacts of the project.

Department staff will encourage public participation in the permit review process. While each project may be different and have different degrees of public participation requirements set by

statute or regulation, department staff will consider the most appropriate method to obtain valuable public comment for the prospective project. In making this determination, department staff should consider consulting with the Office of the Environmental Advocate, Community Relations Coordinator, and/or Local Government Liaison as appropriate. Public participation tools available for department staff include, but are not limited to, the publication of a notice in the *Pennsylvania Bulletin*, public hearings, public information meetings, and informal meetings.

Applicants are encouraged to schedule a pre-application conference with the department as soon as practicable to discuss the permitting needs for the project prior to submitting an application. A pre-application conference is the foundation for improved understanding and communication between the potential applicant and the department. The pre-application conference allows the department and applicant to discuss project details and seek clarification on applicable regulatory and statutory requirements. This conference should also include discussion of the public participation requirements applicable to the project. The department may also recommend that the applicant seek public input, or conduct other voluntary outreach activities prior to submitting a permit application to the department.

The department will consider all public comments prior to making a determination and will provide a substantive response to each comment submitted during the formal public comment period, including comments received at a public hearing, if applicable. Such responses will be provided in a Comment-Response Document, a Record of Decision, and/or other relevant documentation associated with the application decision. Guidelines for department staff to prepare a Comment-Response Document appear in Section VII of this policy. The response document(s) developed by the department will be made available to the public upon permit decision, or earlier in the process if appropriate.

During the technical review of a permit application, the department may discover deficiencies with the application that the applicant will have an opportunity to address in accordance with the provisions of the department's "*Policy for Implementing the Department of Environmental Protection Permit Review Process and Permit Decision Guarantee*" (Document # 021-2100-001). Any changes made to a permit application during the technical review of that application will be managed in accordance with that policy. If the applicant proposes changes to the project proposal after the public comment period closes, department staff will consider whether additional opportunity for public comment should be afforded, consistent with the provisions of Section VI below.

IV. Public Participation Options

To obtain valuable public comment on a permit, at a minimum, the department will issue a notice in the *Pennsylvania Bulletin* about the project and the public comment period deadline. Additional forums or venues, including public hearings, public information meetings, and informal meetings can be used by the department, as required by statute or regulation, or as warranted, to solicit public comment or inform the public regarding a pending permit application.

A. Written/Electronic Comments in Response to a *Pennsylvania Bulletin* Notice

The *Pennsylvania Bulletin* is published weekly by the Pennsylvania Legislative Reference Bureau and is Pennsylvania's official gazette for information. The

Pennsylvania Bulletin is accessible online at www.pabulletin.com. When a comment period is opened, the notice will provide the public with instructions on submitting written/electronic comments on a pending application, including the address where comments should be submitted. A formal comment period commences on the date the *Pennsylvania Bulletin* notice is published and concludes on the comment deadline specified in the notice. Those comments submitted to the department during the formal public comment period and by the specific means advertised in the *Pennsylvania Bulletin* notice will be considered and responded to by the department in a Comment-Response Document or through other relevant documentation associated with the application decision.

B. Public Hearings

Public hearings are formal, structured proceedings that afford the public the opportunity to provide oral testimony on an application under review by the department. All oral testimony provided at a public hearing and all other written/electronic comments received during the formal comment period will be considered and responded to by the department in a Comment-Response Document and through other relevant documentation associated with the application decision. All oral testimony provided at a hearing will have equal weight to those comments submitted in writing to the department.

The department will follow all applicable statutory and regulatory requirements in scheduling a hearing, including providing the public with adequate information about the proposed activity and notice at least two weeks in advance of the hearing, if not otherwise specified in statute or regulation. The department will conduct a public hearing when required by statute or regulation and will consider scheduling a public hearing at the written request of the community where significant local interest in the pending application is demonstrated to the department. (For the purpose of this policy, “local” includes any area that would be directly impacted by the proposed activity.)

A written request for a public hearing must include the requestor’s name, address, telephone number, and the rationale for the request. The written request should be received by the department prior to the close of the official public comment period or as early in the public comment period as possible in order to facilitate efficient public participation. In those instances where the department receives a request for a hearing at the conclusion of a public comment period and agrees to schedule a hearing, the department will extend the duration of the public comment period to accommodate the public hearing and any additional time required by statute or regulation.

Timing and Location of a Public Hearing

Public hearings should be scheduled at a location in the community where the proposed project is located or at a nearby facility that provides convenient access to members of the potentially impacted community. A public hearing should, when feasible, be scheduled during the public comment period and allow ample time after the hearing for potential commentators to submit written comments to the department on the pending application.

Notice of Scheduling or Cancellation of a Public Hearing

If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. The department will provide at least two weeks advance notice to the public of a pending public hearing. Department staff may postpone a public hearing in the event of inclement weather or other unforeseen issues that make holding the hearing impractical or may prevent the public from participating. Staff may also terminate a public hearing if it is determined that continuation risks the safety of department staff or the public or if the guidelines for the hearing (provided in Attachment B) can no longer be adhered to and the hearing is no longer productive. If the department postpones a public hearing, it will provide appropriate public notice of the cancellation where practical. This may include publication of the cancellation in the *Pennsylvania Bulletin*, publishing a notice in local media, and posting the cancellation on the department's website. When a public hearing is rescheduled, details concerning the rescheduled hearing will be made available to the public in the same venues where the original notice or hearing cancellation was published.

Public Hearing Guidelines

Guidelines and procedures for the management of a public hearing are included in Attachment B. These procedures may be altered by department staff as necessary to address any applicable statutory or regulatory requirements and the particular circumstances of the public hearing.

Transcripts from Public Hearings

An official record of the public hearing will be prepared by an independent court reporter. Transcripts will be available for review at designated locations and when possible, available electronically on the department's website. Copies of the hearing transcripts can be purchased through the court reporter or the department will be able to provide copies approximately three (3) weeks after the meeting is held, depending on the length and complexity of the subject matter.

Web-based Public Hearings

When permissible under relevant statutes or regulations, the department may use web-based systems as a platform for public hearings. Such hearings are subject to the same forms of public notice as traditional public hearings and will adhere to the guidelines in Attachment B.

C. Public Information Meetings

Public information meetings are used to provide information about a proposed project and to foster dialogue related to the issues the project raises through a question-and-answer session format. Such meetings will be held when required by statute or regulation or other times at the department's discretion. When public information meetings are scheduled, they will be advertised in local media, on the department's website, and through other types of notification required by statute or regulation or as otherwise appropriate to the particular permit application.

When planning such meetings, department staff should consider consulting with the Office of the Environmental Advocate, Community Relations Coordinators, Local Government Liaisons, and any other appropriate staff.

The intent of public information meetings is to help the public obtain information about a proposed project, thereby assisting the public in developing their comments. Therefore, the content of public information meetings does not become part of the official record, and will not be addressed in the comment-response document issued by the department. Such meetings may be held in addition to other forms of public participation and will not be used as a substitute for public hearings.

The department encourages attendance and participation by the applicant at public information meetings and will refer to the applicant all questions that are more appropriate for the applicant to answer. An applicant may also, at its own discretion, hold its own public information meeting(s). Such meeting(s) should be held as early in the project as possible, including before submission of the application.

D. Informal Meetings

Informal meetings are used to afford interested parties the opportunity to discuss issues related to a proposed project with department staff and the permit applicant in a less formal setting than public hearings or public information meetings. Such meetings will be held when required by statute or regulation or at other times during the review process at the department's discretion.

When the department is considering requests for such meetings, it may give added weight to requests from parties involved with or potentially impacted by the proposed project.

When determining the invitees and the format for the meeting, the department should first consider any applicable statutory or regulatory requirements in addition to the goals of the meeting and what will best serve the participants. Invitations to informal meetings may be limited to the requestor, the applicant, and specifically identified parties; or the meeting may be announced publicly. The format for the meeting may include a question-and-answer period, a roundtable discussion, an open house session, or other format as appropriate.

Department staff should ensure participants are aware that the content of informal meetings does not become part of the official record, and is not required to be addressed in the Comment-Response Document issued by the department. Such conferences will not be used as a substitute for other appropriate forms of public participation.

While the content of these meetings may not become part of the official record, the department should, where possible, schedule these meetings such that participants can use information from this meeting in the development of their official comments.

V. Role of the Department in Public Hearings, Public Information Meetings, or Informal Meetings

In a venue that allows for public dialogue on a pending application, the department's role includes: communicating to the public the factual information related to the project; and the

statutory and regulatory standards applicable to the project, including the various steps in the department's review of the application. While the department may assist the various parties in reaching agreement, it is not the department's role to act as a mediator or an advocate for or against issuance of a permit.

VI. Extension of Public Comment Period

When a project changes after the public comment period closes, the department will consider whether it is appropriate or useful to afford an additional opportunity for public review and comment.

The purpose for extending the public comment period would be to assure that the public has an opportunity to provide comments on the actual project that the department is reviewing. When the department concludes that it should extend the public comment period, it will publish the corresponding notice in the same venues in which the original notice was published and will notify all individuals who provided comments on the initial permit application.

VII. Comment-Response Document

A. Format of Comment-Response Document

A sample format for the comment-response document is included as Attachment A. The Comment-Response Document should have a cover page with the following information: the name of the project; the name of the applicant; the type of permit(s) being applied for by the applicant; the dates of the published public comment period; the date of the public hearing, public information meeting or informal conference was held, if applicable; and the county and township where the project or activity will be located.

The Comment-Response Document may include background information or a summary of the project in question.

The document should list all public commentators who submitted comments during the official public comment period, including state and federal agencies, if applicable. This should include both oral testimony from the public hearing (when applicable) and written/electronic comments received by the department. All commentators should be numbered sequentially.

All comments should be summarized and grouped according to subject matter. Miscellaneous comments should be in a separate category following 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 will be followed by a response that explains how the comment was addressed or the reason it was not addressed. All responses will be as clear and concise as possible. The department will only use technical language in the Comment-Response Document when necessary and appropriate to respond to a technical comment. At times the department may not have the authority to address the concern raised, or it may be outside the scope of the permit application.

Addresses

The program will keep a record of addresses of all persons providing comment to the department pertaining to a specific project. Because of security concerns, the department will 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, and may be provided as part of a response to a Right to Know Law request, subject to the provisions of applicable laws.

B. Public Availability of the Comment-Response Document

The Comment-Response Document will be made available to the public at the time the department renders a decision on the permit application or earlier in the process if appropriate. Notice of the availability of the Comment-Response Document will be sent to each person or entity that provided formal oral testimony and/or written/electronic comments.

A copy of the Comment-Response Document will also be available for public inspection as part of the record file associated with the permit and may be provided as part of a response to a Right to Know Law request. Requests for paper copies may incur copying charges in accordance with department policy.

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

Coordination

The department's "*Permit Coordination Policy*" (Document # 400-200-301) recognizes that some projects may require multiple department permits. Under that policy, where appropriate, interdependent permits that are required for a project may be issued simultaneously with the concurrence of the appropriate Assistant Regional Director, District Mining Manager, District Oil and Gas Manager or Bureau Director, depending on the program and location issuing the permit. While simultaneous permit decision may not be possible or recommended for all projects, the department will continue to process related permits to ensure timely permit decision in accordance with the "*Policy for Implementing the Department of Environmental Protection (Department) Permit Review Process and Permit Decision Guarantee*" (Document # 021-2100-001).

When multiple department permits are issued simultaneously as a part of a project, the department may consolidate responses into a single Comment-Response Document.

Land Use

The department often receives comments regarding the land use implications of projects. These and any other comments will be evaluated and responded to in the corresponding Comment-Response Document for the project.

Counties and municipalities submitting comments regarding land use should be advised that there is a more formal process for ensuring land use issues for a project are addressed. That process is outlined in the department's "*Policy for Consideration of*

VIII. Additional Information

For additional information about public participation in connection with the permitting process, department staff, applicants, and the public may consult the department’s website at www.dep.state.pa.us; click on “Public Participation Center” and “Get Involved!”

More information on permits received and the ability to track the progress of a specific permit exists through Pennsylvania’s Environment, Facility, Application, Compliance Tracking System (eFACTS) on the department’s website. Additionally, through the department’s electronic notification system (eNotice), users can request updates to specific items in the form of email notices when changes in the status of the selected items occur or when new items are available for viewing. Items that can be selected include: permit applications, draft technical guidance documents, regulations and Land Recycling Act 2 Notices. More information can be obtained on the Department’s website by selecting “Public Participation Center” and “Be Informed!”

For issues relating to environmental justice areas, the public may also wish to contact the Regional Environmental Advocate. A list of Regional Environmental Advocates can be found on the department website by selecting “Public Participation” and “Office of Environmental Advocate.”

Attachment A

FORMAT FOR COMMENT-RESPONSE DOCUMENT

(Cover Page)

COMMENT-RESPONSE DOCUMENT
XYZ COMPANY
ABC PROJECT
PERMIT DECISION (Approved or Denied)/PERMIT NUMBER (if applicable)
TOWNSHIP, COUNTY
PUBLIC COMMENT PERIOD DATES
PUBLIC HEARING DATE(S) (if applicable)
PUBLIC MEETING DATE(S) (if applicable)
INFORMAL MEETING DATE(S) (if applicable)

DATE

(Page 1)

PROJECT DESCRIPTION (if applicable)

(Page 2)

LIST OF COMMENTATORS

1. John Smith
Citizen
2. John Jones
Solicitor, ABC Township
3. Jane Jones
Manager, XYZ Company

(Page 3)

COMMENTS AND RESPONSES

Test Procedures

1. **Comment:**

Response:

Project Design

2. **Comment:**

Response:

Attachment B

Public Hearing Guidelines

1. The hearing officer will clearly announce any specific ground rules and introduce all department employees present prior to the beginning of testimony. The hearing officer should also announce where the transcript of the hearing will be available for review and, if appropriate, where copies of the transcript can be obtained.
2. Witnesses who have pre-registered to testify will be called in the order they registered. After those witnesses have testified, and as time allows, other parties who wish to testify will be called in the order they signed in.
3. Witnesses who are not present when called may be called again at the conclusion of all other testimony, should time permit.
4. Testimony is limited to no more than five minutes for each witness.
5. Witnesses may not yield their time to other witnesses; organizations are requested to designate one witness to present testimony on its behalf.
6. Witnesses may refer to charts, graphs, and other relevant visual aids that can be reasonably included in the record, but may not use signs, props or advertisements while providing testimony. Witnesses may not submit physical evidence.
7. Each witness is asked, but not required, to submit copies of his or her testimony to aid in transcribing the hearing and so that comments are appropriately addressed in the Comment-Response Document.
8. To aid in accurately transcribing the hearing, it is important that witnesses remain quiet while testimony is being presented.
9. Witnesses should begin by stating their name and affiliation for the record, prior to presenting testimony. Spelling names and terms that may not be generally familiar is recommended so the transcription can be as accurate as possible. Witnesses who have not provided contact information during pre-registration should also provide such information.
10. Because the purpose of a hearing is to receive testimony on the proposal, department staff will not address questions about the proposal during the hearing. The department may allot time to address questions before or after the public hearing, or schedule a public information or informal meeting.

Comments submitted in writing any time during the official public comment period carry the same weight as testimony presented at a public hearing. For that reason, it is not necessary for witnesses to read written comments in their entirety to have them become part of the record. Witnesses are encouraged to verbally summarize their written statement.