



## **Standard Operating Procedure (SOP)<sup>1</sup> for District Mining Operations**

### **Public Participation – Hearings and Informal Conferences**

**SOP No. BMP- 009**

**December 20, 2021**

This Standard Operating Procedures describes the options by which the Bureau of District Mining Operations addresses requests for public meetings or informal conferences concerning a proposed permit action and outlines the regulatory requirements to be met by the specific District Mining Office (DMO) for these events.

#### **BACKGROUND**

When the DMO receives a request for a public hearing/informal conference, the DMO – in coordination with regional legislative, communications, and environmental justice staff as appropriate – has limited discretion to decide the appropriate format, and how to proceed with the event based on the anticipated extent of public interest. The regulations require that a hearing or informal conference be held if there is a request unless the requester provides a written withdrawal (25 §§ 77.123, 25 §§ 77.242, 25 §§ 86.34, 25 §§ 86.125, 25 §§ 86.171). However, to ensure that the public is best served in response to a request for a public discussion on a permit action, the following procedure is presented. Some requirements are rooted in regulation while others are from the Department’s policies, best practices, and past experiences.

#### **PROGRAM SPECIFIC PRACTICES**

##### Coordination of Staff

All public discussions concerning proposed mining actions should be performed in conjunction with the appropriate regional Community Relations Coordinator (CRC), Local Government Liaison (LGL), and Environmental Justice Regional Coordinator (if the activity is proposed in or near an Environmental Justice Area) - each of whom have a role in communicating indirectly or directly with the public.

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<sup>1</sup>The process and procedures outlined in this Standard Operating Procedure (SOP) are intended to supplement existing requirements. Nothing in the SOP shall affect regulatory requirements. The process, procedures and interpretations herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in this SOP that weigh 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.

- The CRCs are employed by the Department's Office of Communications and work with the members of the media, and plan and moderating public meetings and hearings and other public events for Regional Offices and DMOs. CRCs can help plan and moderate public hearings and meetings, prepare agendas and informational handouts, decide when to notify media, and advise when to arrange security coverage, among other roles.
- The LGLs are employed by the Department's Legislative Office and work with the Governor's office, state legislative offices, local and county governments, and economic development organizations.
- The Environmental Justice Regional Coordinator is employed by the Department's Office of Environmental Justice, works with members of the community and advocacy organizations in Environmental Justice Areas (See *Environmental Justice Public Participation Policy*), and should be consulted when activity is proposed in or near an Environmental Justice Area.

### Public Comment Period and Scheduling

In addition to the applicant publishing a public notice of a permit application in a local newspaper, the DMO publishes a notice of receipt of the application in the *Pennsylvania Bulletin*. Both notices invite the public to provide formal written or electronic comments on a proposed mining operation action which can include a request for a public participation event ("informal conference" or "public hearing" - see Public Participation Formats section). These notices must include a Department contact name and address, instructions for submitting comments (including an email address), and the end date of the comment period. Comments submitted to the DMO during the formal public comment period will be considered and included in a comment/response document.

When any permit action includes a public participation event, the public comment period must remain open until comments can be collected in response to that event. If the DMO receives a request for a public participation event after the end of a public comment period, they may choose to schedule an event or not, however, the DMO should make a reasonable effort to resolve the late request directly with the requester.

If the DMO receives a request for a public participation event when there is insufficient interest to warrant scheduling such an event, and the regulations allow for such discretion, the DMO may contact the requester to suggest alternatives such as a field meeting with interested parties and the applicant. The DMO should still involve the CRC in such circumstances. If the citizen withdraws the request in writing, the permit file must include documentation of the resolution of the citizen's public participation request. If the request is not withdrawn in writing, the public hearing or informal conference must be held in compliance with the regulatory requirements.

If scheduling a public participation event is justified, regulations specific to the type of mining and action require it to be held within 60 days of the close of the public notice and at least two weeks after DMO publishes the meeting announcement in a newspaper local to the proposed mining operation. For bond release requests, the time limit is only 30 days. The DMO may have difficulty meeting this time limit to schedule a public participation event for various logistical reasons (e.g. permit modification, availability of venue, request for a specific date, holidays, etc.). If the time limit is not met, the DMO should document the reason(s) in the permit review checklist and/or the comment and response document and the public comment period must remain open until the comments can be collected in response to that event.

## Public Participation Format

The scope of the event should fit the individual situation, considering factors such as the number of commenters, the degree of interest, and the complexity of the proposed action. The DMO can be flexible in the public participation format provided it meets the minimal regulatory requirements. An attempt should be made to hold events on weekday evenings (after normal business hours) when possible to maximize convenience to attend.

A public event should facilitate the acceptance of useful comments to be taken into consideration by the Department during the review. To best achieve that, the public process should deliver pertinent information to the interested public about the project and allow the public to ask specific questions of both the applicant and the Department (or other parties in attendance). This informational portion minimizes confusion or misunderstanding by interested citizens and promotes the submission of better-informed and more specific comments.

The DMO should consider these three goals of a public participation event:

1. Achieve the regulatory requirements related to public participation for that permit action, including keeping an accurate record of the comments provided during the event;
2. Provide useful information to the public about the proposed permit action so they can tailor their comments or objections to be most effective; and
3. Provide a suitable means for the public to participate and to submit comments or objections.

25 Pa Code coal and noncoal regulations invoke public participation terms differently:

- Chapter 77 Non-Coal Mining
  - §§ 77.123, 77.242 and 77.504 use the term “public hearing or informal conference” to apply to public participation in permit application, bond release, and operating within distance limitations.
- Chapter 86 Surface and Underground Coal Mining: General
  - § 86.34 is titled “informal conferences” regarding applications.
  - § 86.103 uses “public hearing” with regards to operating within distance limits but a public hearing under this section is equated to a “informal conference” in § 86.34(d) referring to this section on distance limits.
  - § 86.125 requires a “public hearing” in response to a petition for areas unsuitable for mining.
  - § 86.171 uses “public hearing or informal conference” and “informal conference” to refer to bond release.

The Technical Guidance Document *Policy on Public Participation in the Permit Review Process* 012-0900-003 lists public participation options that can be interpreted to correspond to those terms contained in mining regulations and statutes. The term “public hearing” is consistent across programs. An “informal meeting” described in the policy most closely resembles an “informal conference” referenced in mining regulations and statutes. The two public participation options for mining actions are described below.

## Informal Conference

Informal conferences can include any event that is not a formal, strictly structured acceptance of testimony. The informal nature allows for exchanges of information between all parties, discussions to clarify potential misunderstanding, and collection of either written or verbal comments and objections from the public. Informal conferences can be a small assembly of interested persons or an open house format that allows for the public to become more familiar with the proposal.

The informal conference must be publicly noticed in accordance with the corresponding regulations for coal or noncoal permits. Publication in the PA Bulletin is recommended at least two weeks prior to the meeting (in addition to the newspaper publication requirement).

When possible, the DMO should schedule these meetings to allow the participants time afterwards (2 weeks is typical) to develop and submit formal written comments. Specific comments may be recorded by DMO staff. During the event, however, staff should emphasize to the participants that the written comments are preferred as part of the record and these should be provided within the allotted public comment period.

A facilitated presentation and question-and-answer session should be audio-visually recorded. At the conclusion of the meeting, the moderator should summarize the discussion, documenting all pertinent verbal comments, and announce that written comments will be accepted until a stated date after the meeting. The DMO then takes these comments into consideration in further review of the application. Issues or concerns brought up during these meeting can be discussed with the CRC to determine if further action is needed.

A sign-in sheet should be used at the event. A summary of this meeting and a list of the attendees must be included in the permit review documentation.

## Public Hearing

A public hearing is a formal, structured proceeding that offers the public an opportunity to provide oral or written testimony on an action under review by the Department. A brief presentation to explain the application occurs in the introduction, but discussion is limited to allow for public oral testimony only, with no direct exchanges or question-and-answer opportunities between DEP and the public. All oral testimony provided at a public hearing will be recorded with a response eventually provided in the DMO comment/response document, not at the time of the testimony.

An official transcript of the public hearing should be prepared and be available for review with the permit application file.

It is recommended for most cases that a public hearing include an informal "open house" session beforehand lasting from ½ to 2 hours. This format is outlined in Appendix B. The combination of the informal and formal events is most effective in that it accomplishes two important functions: 1.) Interested citizens can obtain information about the proposed activity and ask questions of DMO staff and the applicant in a more non-confrontational exchange without being required speak in front of a crowd; 2.) It provides for the presentation and recording of oral testimony in a public setting. From past practices, DMO staff has observed that including the "open house" portion streamlines the public hearing portion, as many people have

their pressing concerns alleviated. Yet, those individuals who wish to make a public statement still may do so. The DMO staff should consider making brief presentations prior to accepting testimony to outline the regulatory and policy framework for issues that are anticipated to be raised in the hearing such as blasting, water supply replacement, etc.

### Preparing for a Public Participation Event

- A. Coordinate with the CRC as early as possible as additional steps such as notifications and press releases may need to be prepared. The CRC, the District Mining Manager, and DMO staff should decide if the permit application or action is suitable to have its own web page for posting of information related to the application or action. Generally, consider the number of commenters expected and how communication with them can best occur to decide on adding an informational public webpage.
- B. The following types of venues are generally recommended for the meeting: local municipal buildings, community buildings, fire stations, public schools, county conservation offices, and other State Agency buildings near where the proposed project is located. The venue should be appropriate for individuals with mobility impairment and appropriate for the audio/visual needs of the event.
- C. Prepare copies of Department factsheets or publications that may be useful to the public (water supply replacement, citizens guides, etc.) to be made available at the meeting. Consult with the CRC on new materials that are prepared for the event.
- D. Address staff scheduling and any overtime or travel requests necessary for the event.
- E. If security will be needed, determine whether security be provided by the operator of the venue, local enforcement, or the State Police.
- F. Prepare the notice of the event to be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area as soon as possible. Double check all dates and details of the publication notice to ensure it meets the regulatory requirements. Submit it to the paper three weeks in advance of the event to allow for potential publishing delays. Note that if an NPDES permit is part of the application available for public comment, then § 92a.83 Public notice of public hearing is also applicable. This section requires publication in the *PA Bulletin* 30 days ahead of the hearing date. See Appendix A: Sample Public Notice for an example of how to set up the publication notice.
- G. Allot 2.5 to 5.0 hours of staff time for the event, in total, depending upon the format, expected attendance, and the complexity of the proposal and information to be presented. Arrive one hour early to set up and greet attendees.
- H. Arrange for tables to be available at the meeting facility for handouts and displays. Encourage the permit applicant to also prepare helpful informational displays. CRC staff recommends that these displays be separate from the audience area where possible (lobby or entrance area). Prepare informational displays and a summary sheet of the permit application. Provide an informational handout with suggested formats for oral and written testimony.

### Summary Sheet Handout

The lead reviewer in coordination with the supervisor should prepare an information summary sheet for distribution at the meeting. Have enough copies for those attending and consider that extra copies may be taken for others not in attendance. Include the following:

- a) Company name

- b) Facility name
- c) Township and county
- d) Application number
- e) Public viewing options
- f) Timeline - Date application was accepted, approximate review and applicant response timeframes, deadline for comment submittals, date comment/response will be distributed.
- g) Contact information for the DMO (general, not a specific person) including an email address and phone number.
- h) Small-scale map of the site (cropped from USGS topo showing permit boundaries)
- i) Explanation of the proposed activities including mention of pumping/treatment, NPDES discharge(s), blasting, variances, or other notable information that may be of concern to the public.
- j) References and links to any pertinent fact sheets and publications for further information, if applicable.
- k) Links to appropriate Pa Code regulations.

#### Cancelation of a Public Participation Event

DMO staff may postpone an event for inclement weather or other unforeseen issues. Contact the CRC immediately. A notice must be republished with the new date and details. The CRC or Department moderator can also terminate a public event if continuing it risks the safety of staff or the public or if the event is no longer productive.

#### Additional Public Event Considerations

Most of the following applies to a public hearing event but may also apply to informal conferences as appropriate:

- A. Use name tags to help the citizens know who to approach with questions.
- B. The CRC or DMO representative announces to the attendees that their name address and email address on the sign-in sheet is required only to receive any additional correspondence including the comment/response document and notice of final permit decision. The signee can indicate if they prefer mail or email for future correspondence. A staff member should check the sign-in sheet to make sure all entries are legible and clarify any ambiguity.
- C. Meeting handouts should be available near the sign-in sheet.
- D. Staff should sit together and be introduced to the audience by name, standing if the venue is large.
- E. If applicable to the format, indicate that a copy of the recorded testimony will be available by written request (or on the DMO website, if applicable) and provide the contact person and an address for this request (email preferred). Announce that the findings of the conference and the decision to issue, deny, or ask for additional information with regards to the application (permit action decision) will be distributed to the citizens who have registered their information on the sign-in sheet approximately 60 days after the meeting conclusion.
- F. Attendees can submit their comments directly to the DMO in writing as part of the formal testimony, or within 2 weeks (as the DMO has decided) as part of an extended comment period. If no written version is submitted at the time of the testimony, paraphrase the comments so that they can be noted in the comment/response document.

After the Public Participation Event

- A. Prepare a comment/response document. The format is described in *the Policy on Public Participation* TGD, but for extensive comments, a spreadsheet format may be suitable to prepare within the limited time frame. The final document must be readable in a PDF format without excessively small print. An extensive comment/response document is typically reviewed by CRC and Department attorneys before finalizing.
- B. Distribute the findings and permit action decision to all attendees of the public participation event and the applicant within 60 days of conducting the event. This does not have to be the detailed Comment and Response document. If the comments are so voluminous that the comment/response document cannot be completed within the 60-days, a summary should be provided with a notice that the detailed responses will follow in a given time frame.
- C. Retain the distribution list from part B above and use it for notification of the final permitting decision.

Log of revisions to this SOP	
2020-1-13	Original published.
2021-12-20	Edited to add information about 1.) publication for informal conferences, and 2.) NPDES permits subject to Chapter 92 requirements on public hearings when the associated mining application will have a public hearing.

## Appendix A: Public Notice Template

Include appropriate details and revise as necessary to suit the proposed action. Include optional or additional language [in brackets] as applicable. The same notice should be provided to both the *PA Bulletin* and local newspaper.

\* \* \* \* \*

Notice is hereby given that the Pennsylvania Department of Environmental Protection (Department) will hold a *[public hearing/informal conference]* concerning the [proposed action description] submitted by *[company name]*. *[Company name]* has made application to the Department for *[proposed description]* in *[township, county]*, Pennsylvania. All interested parties are encouraged to attend.

The *[active/proposed/bond release]* site, known as the *[name of facility]* consists of *[number]* acres and is situated at *[site address]*, on the property of *[name(s)]*. The *[name]* 7.5 Minute U.S.G.S. Topographic Map contains the area described.

The site is located within *[name]* watershed.

[The associated NPDES application describes a potentially degrading discharge to *[receiving strea]* which is designated as *[stream classification]*. To justify this discharge, the operator has submitted a justification for allowing lower water quality as necessary to accommodate important economic or social development in the area in which the waters are located.]

[The application includes a request for a road/stream variance for *[details]*]

The *[public hearing/informal conference]* will be held on *[date, time and address of the location of the meeting]*.

[An open house will be conducted between *[start to end time]*, during which time Department representatives will be available to answer questions concerning the permit application.]

[Beginning at *[start time]*,] [F]ormal comments regarding the permit application, both oral and written, will be accepted. Commentators are encouraged to provide a written transcript of oral comments to the Department.

A copy of the permit application is on file for public review at the *[location and address]*.

If you are a person with a disability wishing to attend this meeting and require an auxiliary aid, service, or other accommodation to participate in the proceedings, please contact *[name, title, phone number and email of contact]* to discuss how we may best accommodate your needs. If necessary, you may use the AT&T Relay Service by calling 1-800-654-5984 (TDD Users) or 1-800-654-5988 (Voice Users) and request that your call be relayed to District Mining Manager. \*



*\* The CRC contact person can be listed here instead. The CRC may provide alternate public notice wording regarding the coordination of the event.*

## **Appendix B: Suggested Format for Public Participation Event**

The outline can be altered as necessary to address any applicable statutory or regulatory requirements and the circumstances of the event.

### 1. Event Setup

Arrive at least 1 hour prior to meeting start time.

- A. Arrange tables and chairs.
- B. Arrange sign-in sheets and other documents.
- C. Review meeting structure with presenters.

### 2. Open House Segment (30 min to 2.0 hours)

- A. Allow meeting attendees to examine information pertaining to proposed project.
- B. Interact with meeting attendees to address questions.
- C. For Public Hearings: encourage the audience to seek answers to their questions during the informal portion. Explain that the formal portion is for prepared comments and testimony that will be recorded by a stenographer, and that no answers from DEP will be provided during the hearing.
- D. Fifteen minutes before the allotted time is up, announce when the upcoming formal portion will begin, and that the audience can provide or listen to testimony.

### 3. Event Segment (1.0 - 2.0 hours)

- A. Call meeting/hearing to order at scheduled start time.
- B. Relate the meeting structure, rules, and timeline.
- C. Introduce the DMO staff.
- D. A DMO representative describes the proposed mine site and application.
- E. Applicant presents additional pertinent information concerning the proposed project (5minutes only).
- F. Remind audience that comments should remain relevant to this specific permit application and that other mining-related or environmental issues should be reserved to discuss with DMO staff after the meeting.
- G. Remind speakers to be concise and specific in their comments.
- H. Emphasize that questions will not receive a response but will be recorded and be addressed in the comment/response document.
- I. Maintain strict speaking rules, allowing only one person to speak at a time and not over 5 minutes. Verbal cues, a timer, or cards are also useful to maintain the speaking time limit.
- J. Account for all those who wish to give testimony.
- K. Announce that additional written comments will be accepted for 2 weeks following meeting. Be clear on the date noting that the DMO is not obligated to address comments after that time.

### 4. Closing

- A. Announce if any DMO staff will remain for a time to answer questions.

- B. Thank all in attendance for participating in the permit review process and close the meeting.
- C. Wait for all citizens to exit before the last DEP staff leave the venue.