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Pennsylvania Department of Environmental Protection

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January 29, 1996

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Office of the Secretary

Maurice Forrester
Chairman
DEP Citizens Advisory Council
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Dear Maurice:

Unfortunately, the weather prevented a discussion with Council this month about following-up on your Public Participation Reform report, so I wanted to propose here what I would have told the Council in person.

First, let me thank the Council and all the other advisory committee members that contributed to this report. The Ridge Administration has made open government and creating more effective opportunities for public participation a priority. When I asked the Council last February to work on the complex issue of public participation reform, I didn't expect to receive such a thorough product so quickly.

The elements of effective public participation you outline in the report -- building trust, building understanding among diverse interests, improving decisions, achieving early "buy-in," striving for balance and inclusivity and validating a commentor's right to a response, I think are right on target.

I would propose that DEP formally adopt these elements as "principles" in a new department-wide public participation policy. The new policy would also establish the basic procedures for using the tools we have to provide opportunities for participation, generally define how advisory committees can more effectively provide comments to DEP, provide guidance on timely involvement and for making information available to the public. The first policy would cover the development of regulations and policies. An early draft of that policy is enclosed for your consideration. A second policy would cover effective public participation in the permitting process.

Your comments about the need to develop a standard set of rules for the operation of advisory committees is well taken. A clear mission statement, by-laws and procedures are important to their effectiveness. The comments and recommendations made by committees on



regulations should also be forwarded to the Environmental Quality Board to clearly inform members of their suggestions. There should also be uniform procedures for reimbursing committee members for expenses.

I would propose creating a new policy which establishes a basic set of ground rules for advisory committee operation so they can provide more effective input to DEP and encourage the broadest possible participation. This policy must, of course, be consistent with the statutes creating these committees and flexible enough to accommodate the interests of individual committees.

To further improve communication between our advisory committees and the public, I will be inviting the chairs of each of our advisory committees to submit regular reports on their activities to our weekly *Environmental Protection Update* newsletter so others can be kept better informed of their activities.

I am very glad the Council has joined DEP in supporting legislation that will prevent frivolous lawsuits designed to discourage public participation. We have been actively working with Rep. Camille George, the sponsor of House Bill 281, to pass legislation that would make it much more difficult to file such lawsuits.

To reinforce this position, I propose DEP adopt as one of our public participation principles a "Freedom to Participate" statement that says DEP will actively oppose efforts by our own staff or others that prevent or discourage effective public participation through the use of frivolous lawsuits or other means of intimidation.

I am very interested in working with the Council to develop alternatives for enhancing the role of our regional roundtables. While roundtables are active in some of our regions, it is clear we need to take steps to revitalize the roundtables as a more effective tool for two-way communication on local implementation of our programs.

As you have seen over the last year, we have undertaken major initiatives to open this agency to outside opinion and put a priority on sharing information and proposals. Whether it is through our free weekly *Environmental Protection Update* newsletter, World Wide Web site or a new attitude toward participation, we think the groundrules have now changed in dealing with DEP. We are promoting open, constructive discussion of issues.

We have also tried to use a number of alternative public participation mechanisms to make participation more effective, chiefly through the use of regulatory negotiation and stakeholder groups. Our experience so far indicates these methods have an important role in opening this agency to other opinions on key issues.

January 29, 1996

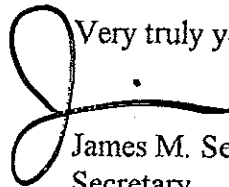
We have already adopted a general policy on the use of regulatory negotiation after asking for public input and are supporting Sen. Brightbill's legislation -- Senate Bill 872 -- that would formalize our regulatory negotiation and stakeholder tools. We would appreciate your additional suggestions on how these kinds of processes can be improved.

At least two other projects have been suggested to improve public participation -- a handbook on public participation covering both regulatory development and permit reviews and an update of the Conservation Directory, a listing of environmental groups throughout the state. We would be happy to work with Council on both these projects.

I view the process of improving public participation in DEP not as a single report or action, but as an ongoing process where we learn from our mistakes and successes. I understand the Council will be working on a variety of other recommendations to follow-up on this initial report.

I look forward to working with you to develop the policies I have outlined here and other projects to implement the Ridge Administration's objective to expand opportunities for public participation.

The next meeting of Council is on the same day as a Northeast Ozone Transport Commission meeting, so I will be unable to attend. I would like to have David Hess attend the meeting in my place so we can continue the dialogue on public participation.

Very truly yours,

James M. Seif
Secretary

Enclosure

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF POLICY AND COMMUNICATIONS**

(DRAFT - FOR DISCUSSION)

DRAFT

TITLE: Public Participation in the Development of Regulations and Technical Guidance

AUTHORITY: Regulatory Review Act of 1989

POLICY: The Department will ensure that all guidance documents and regulations are developed with effective participation by the public during all steps in the process.

PURPOSE: The purpose of these guidelines is to improve public access to information and decision-making in the Department.

APPLICABILITY: These guidelines are applicable to all technical guidance documents and regulations.

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I. BACKGROUND

One of the primary objectives of this Administration is to improve public access to information and decision-making in the Department. A key area where the Department can make substantial improvements deals with our procedures for involving the public in the development of both regulations and technical guidance. Public participation is an integral part of the development process. The Department recognizes that no one person or group speaks for the public. As a result, the Department must reach out to broaden public participation to understand what the public thinks, to better inform the Department, and to ensure that the public understands what the Department is doing and why it is doing it.

II. GENERAL POLICY

All regulations and technical guidance documents should be developed with effective involvement from the public. To be effective, the following principles should be followed:

1. **Public involvement in the process must occur early and often.** Public participation takes more time and effort up front, but will result in a better decision which is less controversial and requires less outreach, education and defense.
2. **Public trust is earned through openness, outreach, consistency and results.** Public involvement is integral to sound decision-making. Public participation allows the Department to tap a much broader range of expertise than it has available in-house.
3. **Public dialog will increase understanding among all interests affected by environmental decisions.** Public dialog can aid both the regulated community and the public in understanding their individual expectations, resulting in more workable and widely-acceptable solutions.
4. **Public input should be solicited from all sectors of society.** Equal opportunity for comment and equal consideration of comments from the private and public sectors should be provided.
5. **The public deserves substantive responses to all comments they submit.** The Department should carefully consider all public comments, regardless of their origin, and provide a response through a comment and response document, not just an acknowledgment.
6. **Freedom to Participate.** The Department will encourage broad participation in its decision making and discourage actions which prevent effective participation.

Effective participation also means two-way communication and the willingness of the public to take advantage of the various opportunities to participate. To encourage public participation in the development of regulations and technical guidance documents, the Department will use various methods of obtaining input. These methods are designed to provide the public with the information needed on how and when to get involved in developing regulations and technical guidance documents to impact effectively on environmental issues and decision-making.

III. METHODS OF OBTAINING PUBLIC INPUT

To participate effectively in the development of regulations and policies, the public must be informed of how and when they can get involved. The Department must notify both the regulated community and the general public and ask for input in the development of regulatory alternatives. There are several methods for obtaining public input. The Department should use the most effective method, or combination of methods, on a case-by-case basis. What works in one area may not work in another.

1. Use of Advisory Committees

The Department will use its existing advisory committees in the development of regulations and technical guidance documents and in the review of public comments. The Department will provide timely briefings and consult with the appropriate advisory committee on regulations prior to Environmental Quality Board (EQB) consideration. For proposed regulations, the Department will consult with the appropriate advisory committees early in the drafting stage of proposed regulations. Advisory committee members will be provided with a copy of a draft regulation in advance of an advisory committee meeting to provide members with adequate time to review the proposal. Advisory committees may also recommend that the Department use the Advance Notice of Proposed Rulemaking procedure. For final regulations, the Department will report to the appropriate advisory committees on the extent and nature of comments and involve the advisory committees in decisions to use the Advance Notice of Final Rulemaking procedure or to proceed with regulatory negotiation.

The Department will notify the EQB of the involvement of the advisory committee in the Executive Summary of the regulatory package. The Executive Summary will explain how the advisory committee was involved in the development of the regulation by providing the advisory committee meeting date or dates when the regulation was discussed and a brief summary of the advisory committee's comments or actions regarding the rule. In addition, the Department will provide the EQB with the advisory committee's report or meeting minutes related to its review of the regulation.

2. Use of the Advance Notice of Proposed Rulemaking Procedure

The Advance Notice of Proposed Rulemaking procedure enables the Department to solicit comments on draft regulations prior to action by the Board. This procedure precedes the proposed rulemaking process and involves publishing a notice in the *Pennsylvania Bulletin* and the *UPDATE*, and posting on the DEP World Wide Web site that the Department is soliciting comments on draft regulations. In addition, the Department will solicit comments through the appropriate advisory committee and through the various forums listed under "Availability of Documents."

Comments submitted to the Department on draft regulations as a result of an Advance Notice of Proposed Rulemaking will be summarized by the Department in the preamble, discussed with the appropriate advisory committee and submitted to the EQB as part of the proposed rulemaking package. The proposed rulemaking, which will discuss the comments received during the Advance Notice of Proposed Rulemaking phase, will be available to the public two weeks prior to the EQB meeting at which time the proposed rulemaking will be considered by the EQB.

Use of this procedure will provide the public with an additional opportunity to comment on a proposed regulation. The proposed regulation will be developed with greater input from the public and those we regulate.

3. Use of the Notice of Proposed Rulemaking Procedure

The Department will solicit comments on proposed regulations through the notice of proposed rulemaking in the *Pennsylvania Bulletin*, the *UPDATE* and the DEP World Wide Web site. The Department will also notify the public of such proposals and solicit comments through public meetings and through the forums listed under "Availability of Documents." The Department will consider all public comments received and will prepare a substantive response. The Department will solicit comments from the appropriate advisory committee on the proposed rulemaking and on the draft comment and response document. The comment and response document will be forwarded to those individuals who commented on a proposed rulemaking.

4. Use of the Advance Notice of Final Rulemaking Procedure

The Advance Notice of Final Rulemaking procedure will provide an additional opportunity for the public to see changes that were made to a proposed regulation and to comment on these changes. This procedure precedes the final rulemaking process and involves publishing a notice in the *Pennsylvania Bulletin*, the *UPDATE* and on the DEP World Wide Web site that the Department is soliciting comments on a draft final regulation. Individuals who submitted comments on the proposed regulation during the official public comment period will also be provided with this notice.

Interested parties may contact the Department for a copy of the draft final regulation and submit comments on the changes from the proposed regulations. The Department will also solicit comments through the forums listed under "Availability of Documents."

Comments submitted to the Department on changes from proposed rulemaking as a result of an Advance Notice of Final Rulemaking will be discussed with the appropriate advisory committee and summarized by the Department in the preamble of the final rulemaking. Changes to the draft final regulation will also be discussed. The Department will also prepare a summary of issues and responses for the EQB. This summary will identify the sections of the regulation which were changed as a result of the Advance Notice of Final Rulemaking. The Department will also include a list of the persons who commented on the Advance Notice of Final Rulemaking. This summary will be mailed to the EQB at least two weeks prior to the EQB meeting.

The Department may use this procedure in instances where a proposed rulemaking generated significant public interest, where there was substantial confusion about the intent of the rulemaking, where the nature of the changes were such that additional public review was warranted, or when requested by an advisory committee or requested by the EQB. This procedure will not be applicable to regulations with statutorily mandated deadlines, where these additional public comment periods would result in missing such deadlines.

5. Public Information Meetings

The Department will hold a public information meeting or meetings on a proposed regulation or technical guidance document if it anticipates a need to inform the public on environmental issues or explain a new proposal and respond to questions. The Department would chair these public meetings, explain the regulation or technical guidance document, and respond to questions. Public meetings are publicized using the forums listed under "Availability of Documents."

6. Public Hearings

Public hearings may be conducted by the Department or the EQB for the purpose of accepting comments on a proposed rulemaking. An official record of the hearing is prepared by an independent court reporter. Public hearings are scheduled at a location in the state which may be affected by a proposed rulemaking. For example, public hearings are scheduled in the watershed affected by a proposed stream redesignation. Public hearings are publicized using the forums listed under "Availability of Documents."

7. Regulatory Negotiation

The Department has developed guidance for using regulatory negotiation as a technique for developing new agency policies and regulations. The guidance is intended to provide a general outline of procedures for determining when to use regulatory negotiation that can be varied to meet individual issues by agency managers. Regulatory negotiation is a process whereby representatives of the interested parties serve on a committee and attempt to reach a consensus regarding proposed regulations. In some instances the committee will draft and base its agreement on actual draft regulatory language. More often, the group will develop and agree on a conceptual framework for the regulation which the agency then uses as the basis for draft regulatory language. Regulatory negotiation is not a tool that can be used for every policy or regulation. It is best suited where issues are fairly well defined and capable of being discussed by stakeholders that represent a variety of perspectives.

8. Regulatory Agenda

The Department will publish an annual list and summary of regulations which will be proposed for the upcoming year. This regulatory agenda will provide an early notice to the public of the Department's plans for adopting new regulations.

9. Sunset Review

The Department will publish an annual sunset schedule in the *Pennsylvania Bulletin* and *UPDATE*. The schedule will contain the *Pennsylvania Code* chapters which will undergo a sunset review to determine whether the regulation effectively fulfills the goals for which it was intended.

IV. PUBLIC COMMENT PERIOD

All proposed rulemakings are subject to a public comment period of at least 30 days. The public comment period begins on the date of publication in the *Pennsylvania Bulletin*. The public comment period ends on the deadline date specified in the "Public Comment" section of the preamble. Some proposals require longer comment periods by virtue of a statutory mandate. The EQB or the Department may authorize a longer comment period on particularly complex rulemakings or those that generate significant public interest.

All comments received by the public during the public comment period are included in the official public comment record. Copies of the public comments are forwarded by the Department to the Senate and House Environmental Resources and Energy Committees and to the Independent Regulatory Review Commission. The official public comment period record for all rulemakings is maintained by the Office of Policy and is available for public review.

V. CONSIDERATION OF PUBLIC COMMENTS

The Department will prepare a Comment and Response Document for all proposed rulemakings. This document will provide a thorough response to all comments submitted during the public comment period. This document will also address any comments submitted by the Standing Committees and the Independent Regulatory Review Commission. The Department will discuss these comments with the appropriate advisory committee. The comment and response document will be included in the final rulemaking package and forwarded to those individuals who submitted public comments.

VI. AVAILABILITY OF DOCUMENTS

Open public access to existing information, including policies, procedures, and data, and early notice and outreach on upcoming decisions is important in building trust between the Department and the public. To meet this goal, the Department shall make technical guidance documents and regulations accessible to the public through the following means:

1. Hard copies of draft and final regulations and technical guidance documents will be provided free of charge. If significant interest on a proposed or final rulemaking is expected, the Department will provide actual *Pennsylvania Bulletin* copies of the regulations.
2. The UPDATE, a weekly agency newsletter, will provide the latest information on regulations and technical guidance documents.
3. Local newspaper notices of public meetings and hearings will be published.
4. Electronic Access - The Department will encourage effective two-way communication through electronic access. The *UPDATE* is available free by electronic mail. The Department has also established a World Wide Web site to provide the public with a direct electronic link to the Department including copies of regulations and technical guidance documents. The public can also send e-mail directly from the Web site to request documents. Comments on proposed regulations and technical guidance documents can also be filed with the Department electronically. The following are specific ways to access Department information electronically:

DEP World Wide Web Site: <http://www.dep.state.pa.us>

(Comments on regulations may be submitted electronically to the EQB or the Department at RegComments@A1.DEP.STATE.PA.US)

DEP & DCNR UPDATE newsletter: Send e-mail request to DEPUPDATE:@A1.dep.state.pa.us

General Information E-mail: DEPINFO@A1.dep.state.pa.us

5. **Other Methods of Public Notification** - To reach out to the interested parties, the Department will also use the following communication networks: roundtables; interest groups, business groups, government associations, mailing lists of individuals and groups interested in specific subjects, and general outreach through the media, including the use of cable-TV notices.
6. **General Information** is available through DEP, P.O. Box 2063, Harrisburg, PA 17105-2063, 717-783-2300; fax: 717-783-8926.