

**Recommendations On Improving Public Participation
In Regulation And Technical Guidance Development
Adopted by DEP's Citizens Advisory Council
May 22, 2013**

Background

On March 27 the Citizens Advisory Council to DEP issued [an invitation to the public](#) and members of DEP's 22 active advisory committees for ideas on how to improve public participation in developing environmental regulations, technical guidance and formal policies.

The invitation was designed to help the Council provide DEP with early input into its announced plan to update its existing regulatory and technical guidance development public participation policies.

In response to the invitation, Council receive comments from a dozen individuals, groups, local governments and advisory committee members offering suggestions and comments.

Committee Meeting

On May 13 members of the CAC Public Participation Committee held a conference call to review the suggestions and make recommendations to the full Council. On the call were Gail Conner, Nancy Perkins, David Hess, Marjorie Hughes, Executive Director, and Holly Cairns, Acting Director of DEP's Office of Environmental Advocate.

Below is a summary of the changes to public participation gleaned from the comments and the Committee's own discussion and adopted by the full Council on May 22.

Marge Hughes and the Committee prepared a comment response document identifying individual comments made by commenters and the Council's final recommended response to document how the comments were considered.

Also included is a list of comments received by Council on public participation issues not related to the development of regulations and guidance. The Committee and the full Council felt these additional comments merited discussion as DEP revises its permit review and other public participation policies.

The Council stands ready to work with DEP to implement the recommendations contained in this report.

Recommendations

Commenters commended the Council for undertaking the effort to improve public participation and in several ways said the fundamental principles of true public participation are: civic engagement, empowerment, transparency and accountability.

The result of effective public participation should be to produce a more informed public, reduce mistrust in our institutions and in industry, establish cooperative relations and generate legitimacy for the decisions made.

To strengthen public participation in the regulatory and guidance development process, the Council offers for consideration--

-- **Citizens Guide:** Several commenters suggested DEP do a better job explaining, in plain language, the opportunities the public has to become involved in the regulatory and guidance development process and what the department's and a citizen's expectations are at each step in the process.

The Council recommends DEP prepare a citizens guide to participating in the regulatory and guidance

development process which clearly describes the tools available to keep informed on which issues are before the department and how they can be involved.

The Guide should explain how to use tools like the [advisory committee webpages](#), the [Public Participation Center](#), the [Regulatory Agenda](#) and a [Regulatory Update](#), the [eNOTICE](#) email notification service and the [Pennsylvania Bulletin](#).

DEP should describe how to submit comments, the format of public hearings and public meetings, the process for recording oral or written comments, guidelines for respectful behavior at meetings and hearings, and how the agency will consider and respond to the comments, for example, through a comment and response document, and the timeline for decision-making.

The Council is specifically interested in working with DEP to implement this recommendation.

-- Plain Language Statement of Purpose: Commenters said the agency should, in plain language, help people understand the reason or objective behind making a regulation or guidance change, the extent of scientific understanding behind the change and why the public should care a change is being made.

The Council recommends DEP prepare a Plain Language Statement of Purpose for each regulation and policy it develops providing a description of the objective and reasons behind the change, the scientific basis (whether complete or not) for the change and how groups or individuals and the environment would be affected, negatively or positively, along with the description of the Public Participation Plan (see following recommendation).

This Statement should be designed to be a “Read Me First” introduction to the proposal with links or a description of all the supporting documents, forms and presentations available to the public for an in-depth review of the issue all in one place.

The Council recognizes the preambles published with regulations and other tools like the [Regulatory Analysis Form](#) and Fee Report Form ([Click Here for an example](#)) provide additional background information, but it often is not in “plain language” and without “technical jargon” as commenters recommended.

Unfortunately, information in tools like the Regulatory Analysis Form are not typically posted on the Environmental Quality Board or advisory committee webpages for easy public review presently and they should be. There is also no similar analysis for changes in technical guidance.

There is also information required to be prepared by [Act 60 of 2011](#) requiring DEP to describe any scientific data used to develop a regulation and [Act 76 of 2011](#) requiring DEP to analyze the impact of any regulation on small business which would also be useful as background on proposed regulations.

Some of this information is included in the Regulatory Analysis Form, but it also may be available separately as proposed regulations are prepared. There is no similar analysis for changes in technical guidance.

The Council is sensitive to the concern of requiring more paperwork to be generated by the agency for each proposed regulation and technical guidance and the Department should review the forms and other background documents required to be prepared to see if those can be simplified without the loss of information the public needs to effectively review a proposal.

The Council is specifically interested in working with DEP to implement this recommendation.

-- Public Participation Plan: Commenters recommend DEP provide early and consistent outreach to stakeholders involved in a regulation or technical guidance change under development and have a clear plan on which tools DEP should use to involve the public.

The Council recommends DEP develop a Public Participation Plan for significant regulation and

guidance changes which includes early identification of interested and affect members of the public, identification of the specific public outreach tools it will use to develop and solicit public comments on the change, i.e. informal or formal stakeholder groups, work groups, advisory committees, public meetings and hearings, appropriate supporting documents, white papers and presentations, both online and hardcopy, special webpages and a timeline for activities, including responding to comments and presenting the final product.

The Plan should encourage the widest possible distribution of information on the proposed regulation or technical guidance changes through a variety of media-- online, newspapers, social media and other tools.

The Council strongly believes all interested parties in the process should be treated equally, receive the same white papers, drafts of rulemakings or policies or presentations and at the same time to limit confusion and promote fairness in dealing with stakeholders.

The Council is particularly interested in working with DEP to implement this recommendation.

More Specific Recommendations

The following are suggestions on specific topics recommended by commenters and the Council consideration--

-- **One Public Participation Center:** Online tools like the [advisory committee webpages](#), the [Public Participation Center](#), the [Regulatory Agenda](#) and a [Regulatory Update](#), proposals [open for comment](#), the listing of proposals with [closed comment periods](#), the [eNOTICE](#) email notification service and links to the [Pennsylvania Bulletin](#) are scattered throughout DEP's website. In fact, there are several "public participation" webpages on the website.

These tools should all be consolidated into one location for easy access by the public, along with the Citizens Guide which describes the purpose of each tool and the relevant supporting documents for each regulatory and guidance proposal.

DEP should also have a single Calendar of Events noting upcoming Advisory Committee-related meetings and calls, all public meetings and hearings related to regulatory and technical guidance development and other significant agency activities (see recommendation below).

The Council notes DEP this week has again begun to post agency events on an updated [Calendar function](#) on its website which responds to this recommendation.

-- **Policy Agenda/Policy Update:** Presently DEP does not have a Technical Guidance Agenda which lays out the policies the agency plans to develop in each program over the coming six months, like the [Regulatory Agenda](#) does for regulatory development and there should be.

DEP should also consolidate and better organize the webpages it now devotes to technical guidance [open for comment](#), [recently closed](#), [recently finalized](#) by not only where the guidance is in the process and by date, but also by program area. It should also be clear where the public [can get copies](#) of the guidance at each step.

-- **eNOTICE:** DEP's [eNOTICE](#) email notification service has not been updated in more than 10 years and should be made much more user friendly. The current system notifies individuals who have signed up for the service notice by email. Typically these notices are sent when the Environmental Quality Board publishes proposed or final regulations in the Pennsylvania Bulletin. It also provides intermittent notice of proposed and final technical guidance changes published in the Bulletin.

At a minimum, the service should be changed to consistently notify users of the opportunity to comment on all regulations and all technical guidance changes and their final disposition.

It could also be expanded to tie into a new Calendar of Events (see recommendation below) to provide notice of issues of interest to the subscriber coming up before DEP's Advisory Committees.

-- Advisory Committee Procedures: A number of commenters made suggestions about advisory committee procedures adopted by Council--

-- Advisory Committee webpages should be updated with agendas and handouts on a timely basis with the goal of posting meeting materials 14 days before a meeting date;

-- DEP should keep the basic information on each Advisory Committee webpage current-- committee members and contact information, DEP staff liaison and the meeting schedule;

-- There should be consistent public notice of all advisory committee subcommittee and work group meetings and conference calls to allow the public the opportunity to participate;

-- The department should review the [advisory committee webpages](#) to determine which committees or groups are still active and identify those which are not; and

-- Reimbursement of the expenses incurred by members of Advisory Committees should be done in a timely manner. It was brought to the attention of Council that some members of the Radiation Protection Advisory Committee have not been reimbursed for expenses they incurred since October of 2012.

In response to a comment about sharing information on Advisory Committee activities between Committees, the Council recommends Advisory Committee members regularly review [the report](#) DEP presents to the CAC each month outlining significant activities going on within the agency.

In addition, the improvements recommended in this report will also make information sharing easier for Committee members.

-- Calendar of Meetings/Hearings/Events: DEP should again publish an online calendar of all Advisory Committee-related meetings and calls, all public meetings and hearings related to regulatory and technical guidance development and other significant agency activities.

The Calendar should also highlight the agenda items on the upcoming Advisory Committee meetings and where the public can get handout items. Also providing a way to search the Calendar by DEP region or county would also be helpful.

The Council notes DEP this week has again begun to post agency events on an updated [Calendar function](#) on its website which responds to this recommendation.

-- Staff Training/Evaluation Of Public Participation Efforts: An important part of implementing any public participation policy is to provide training to program staff on the tools available to encourage public participation, the basic policies and principles behind the agency's public participation program and the seriousness with which the agency believes in public participation and its value to the agency in improving the quality and effectiveness of the regulations and technical guidance it publishes.

DEP should also periodically review the individual application of its public participation tools to determine how effective they are in encouraging real public participation.

The Council is particularly interested in working with DEP to implement this recommendation.

-- Inappropriate Use Of Technical Guidance: The use of technical guidance which function as regulations

was raised by the comments received by Council, specifically with respect to guidance documents issued by DEP creating exemptions from the full permitting process for sources of air pollution. Although guidance documents frequently have a provision saying the policies and procedures outlined in guidance documents should not affect regulatory requirements, the Council agrees technical guidance should not be treated as regulations by agency staff. The Council advises the Department of this concern and asks for its response on this issue.

Other Elements Of The Council Report

- Comment/Response Document
- Listing of Other Important Public Participation Issues Raised