

Citizens Advisory Council

to the Department of Environmental Protection

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July 22, 2013

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Robert Altenburg
Policy Office
Department of Environmental Protection
400 Market Street, 16th Floor
Harrisburg, PA 17101-2301

Re: Comments on DEP ID: 012-0900-003. Policy on Public Participation in the Permit Review Process.

Dear Mr. Altenburg:

The Department of Environmental Protection (Department or DEP) Citizens Advisory Council (Council or CAC) is pleased to be part of the review of the proposed *Policy on Public Participation in the Permit Review Process* published in the June 22, 2013 *Pennsylvania Bulletin*, and submits the following comments for consideration.

Council supports the approach that the public be afforded the opportunity to review and provide comment on a permit or other applicable authorization application submitted for Department review, and Council offers several suggestions to reach the goal of the Department to respond appropriately and in a timely manner to all relevant comments received during the permit application review process.

As stated in in the current Policy (dated July 16, 2005) public participation is an integral part of environmental decision making. Council agrees with this statement, and encourages the Department to retain this sentiment in the proposed Policy, rather than delete it as proposed.

The proposed Policy should be revised to include a new provision for "*File Reviews When New Information Is Made Available.*" Council has heard from the Pennsylvania League of Women Voters concerning instances where new information was added to a permit file very close to or on the last day of the comment period. As a result, the public did not have the opportunity to review the new information. Council recommends the following provision be added to the proposed Policy to address the issue:

"VI. File Reviews When New Information Is Made Available

Public review of a permit application shall only begin when the Department determines the application and the permit file are complete and can be made available for public review within the designated public comment period.

If new information is added by the applicant or the Department that substantially changes the permit application, the comment period for that application will be extended by 10 business days and interested parties shall be given the right to review the new information during that time under the Department's informal file review procedures."

In addition to the 10 day public comment period after an application is significantly revised, the proposed Policy should be revised to include a 10 day public comment period to be routinely provided after any hearing or public meeting.

Also, in Section VI, there is no indication what constitutes a substantive revision to a permit application that might require republication of a notice for public comment. The Department should retain wording similar to wording found in the current Policy (dated July 16, 2005, Section IV. E.) The examples given in the current Policy would be helpful to DEP staff as they evaluate if a project change comes under this section. The provisions suggested for the final Policy are as follows:

For these purposes, the phrase "changes substantially" means, among other things:

- *an increase of 30% or more, in the size of the facility or activity contemplated in the original proposal;*
- *a change in the purpose for or function of the project;*
- *a material change in the location of the project;*
- *a change in the materials to be used in constructing or operating the project that could reasonably be expected to result in a change in the nature or increase in the amount of discharge or emissions, or could result in an increased risk of environmental contamination;*
- *a material increase in the environmental impact of the project; and*
- *a change in the environmental medium or media that would be subject to an impact from the project.*

Council commends the Department for including a web-based public hearing option in Section IV. B. Council suggests several practical conditions be added:

- “1) Web-based hearings should be used to supplement or extend the reach of in-person hearings, not be used as a substitute. This is especially true for hearings in Environmental Justice or other communities which may not have adequate Internet access. For example, web-based access to a hearing might be arranged in a church or other meeting area to allow access for more members of the public who might not be able to travel to the hearing site or who do not have individual Internet access.
- 2) DEP should also consider including web-based access for public information meetings and informal conferences with the same conditions.”

To better reflect the preferred sequence of events, the order of the subsections under Section IV should be restacked and placed in the chronological order in which the activities should occur, specifically the Public Information Meeting section should be placed before the Public Hearings section. The reason for a public information meeting is to inform the public on the proposal and if they choose, to offer comments at a subsequent hearing or during the comment period.

Section IV. D. relating to Informal Conferences, it is not clear when conferences might occur in the review process. The existing Policy (dated July 16, 2005), contains specific instructions on the conferences and the current wording should be retained. Also, even though the content of the conference may not become part of the official record, there should be a provision added stating that a record of all informal conferences shall be made and retained in the project file, especially in those cases where the meeting is required by statute or regulation. In addition, if new information is developed during an Informal Conference, it should be handled under the “New Information” process recommended previously.

Under *Section VI* relating to *Republication to Afford Additional Public Participation*, Council recommends that the Department retain the language found in the current Policy which states “*the Department will consider whether it is appropriate or useful to afford an additional opportunity for public review and comment*”, rather than revise the wording as proposed to the “*Department may consider*”.

The proposed revisions to *Section VII, subsection A.* should prove helpful to those responsible for preparing a comment/response document. It includes instruction on what to do if the Department agrees with a comment, but is missing instruction if the Department disagrees with a comment. Council recommends that the following sentence, which is contained in *Section III. General Policy* of the current Policy, be retained in the proposed Policy and moved to Section V. A. Specifically, the sentence to be retained reads: *If the Department does not address the relevant comment through the permit decision, Department staff will provide a reasonable explanation of the Department’s position.*

New *Section VIII. Additional Information* is a helpful addition to the Policy; however, the section does not contain enough instruction explaining the *Permit Applicant Outreach Activities Checklist* (0110-FM-CO0110) and how it should be used. Not until you track down the Checklist in the *eLibrary* is it clear that the Department intends for the Checklist to be completed by the applicant and submitted as part of the application package. It is not clear how DEP would consider the information provided on

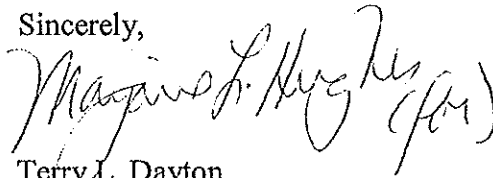
the Checklist. Also, it would be more convenient if the Checklist were offered as an appendix or attachment to the Policy rather than located elsewhere.

The Department is commended for adding Appendix B relating to Public Hearing Guidelines. The simple instructions provided should prove helpful to Department staff as they plan and conduct hearings. It is recommended that item #9 be reworked to offer a less authoritative tone by revising it to read "To aid in accurately transcribing the hearing, it is important that attendees remain quiet when others are presenting testimony."

As a companion piece to this Policy, the Department should develop a simple easy-to-understand brochure designed to inform the public how and when they can be part of the permit process, the resources available to them, and the key times for input. It is especially important to clearly articulate in the brochure the Department's authority to require changes to a project, or lack of authority to deny a permit if it meets all regulatory requirements. It is misleading for the Department to seek public comment if those comments would have no impact or standing in the permit review. Perhaps this brochure could be launched as part of training the Department provides to assist DEP employees in communicating with the public or as a separate information webinar. Council is available to assist in developing the brochure.

If you have any questions regarding these suggestions, please contact Marjorie Hughes, CAC Executive Director at 717-787-4527 or at mahughes@pa.gov.

Sincerely,

A handwritten signature in black ink that reads "Marjorie L. Hughes" followed by a circled "for" in parentheses.

Terry L. Dayton
Chair

Citizens Advisory Council

cc: E. Christopher Abruzzo, Acting Secretary, DEP