

OA-2003-0005: FRL-7508-7.

Public Involvement Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of New Public Involvement Policy.

SUMMARY: The EPA is issuing its new Public Involvement Policy. The purpose of today's Notice is to advise the public and present the Policy. The new Policy provides guidance to EPA staff on effective and reasonable means to involve the public in EPA's regulatory and program implementation decisions. The core of the Policy is the recommended seven basic steps for effective public involvement, which the Agency should consider when making major decisions on rules, policies and program implementation activities. The Policy is directed internally, but EPA's partners in states, tribes or local governments may also find it to be a useful tool for them..

FOR FURTHER INFORMATION CONTACT: Patricia Bonner, Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W. Washington, DC 20460-0001; 202-566-2204; bonner.patricia@epa.gov. For printed copies, telephone 202-566-2216.

SUPPLEMENTARY INFORMATION: How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OA-2003-0005. The official public docket consists of the complete Public Involvement Policy with its appendices and addenda, public comments on the 1981 and draft 2000 Policy, the Agency's Response to Comments and the Framework for Implementing EPA's Public Involvement Policy. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information Docket, EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744.

2. *Electronic Access.* You may access this Federal Register document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr/> or use <http://www.epa.gov/publicinvolvement> to access the Policy and all its attachments. Electronic versions of items in the public docket are available through EPA's electronic public docket and comment system, EPA Dockets (EDOCKET). You may use EDOCKET at <http://www.epa.gov/edocket/> to access the index listing of the contents of the official public docket and documents that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number. You may still access any of the publicly available docket materials through the EPA Docket Center.

BACKGROUND

On January 19, 1981, the Environmental Protection Agency (EPA) published its first Agency-wide Public Participation Policy (46 FR 5736, Jan. 19, 1981). In November 1999, the EPA requested public comment on whether and how to change that Policy, and subsequently began a process to revise the policy and create a plan to implement it across the Agency. In December 2000, EPA released a draft revised Public Involvement Policy for public comment (65 FR 82335, Dec. 28, 2000). The comment period closed on July 31, 2001, following a two-week internet-based dialogue on "Public Involvement in EPA Decisions," which included 1,144 participants from all 50 states.

OVERVIEW OF EPA'S NEW PUBLIC INVOLVEMENT POLICY

The Policy's core elements are the following seven basic steps for effective public involvement:

1. Plan and budget for public involvement activities
2. Identify the interested and affected public
3. Consider providing technical or financial assistance to the public to facilitate involvement
4. Provide information and outreach to the public
5. Conduct public consultation and involvement activities
6. Review and use input, and provide feedback to the public
7. Evaluate public involvement activities

This Policy is meant to encourage development of new tools for public involvement and should not limit the degree or types of public involvement already in use at EPA. Agency guidance, which EPA is issuing simultaneously with this Policy, provides specific recommendations for accomplishing each of these seven steps, while also acknowledging the need for EPA officials to use discretion when planning and implementing public involvement activities.

The Policy reflects changes over the past 22 years such as:

- New and expanded public participation techniques
- New options for public involvement through the Internet
- EPA's emphasis on assuring compliance
- Increased use of partnerships and technical assistance
- Increased public access to information
- Increased capacity of States, Tribes and local governments to carry out delegated programs

The Policy also reflects EPA's experience with public involvement from the national to the local level, and incorporates many ideas provided to EPA through public comments on the draft Policy. Today's Notice is limited to this brief introduction and the core policy statement. Concurrent with this Notice, EPA is also issuing the following supporting documents to facilitate and promote support the Policy's implementation:

Appendix 1- "Guidance for Implementing Public Involvement at EPA"

[<http://www.epa.gov/publicinvolvement/policy2003/guidance.pdf>.]

Appendix 2 - Definitions that are integral to this Policy

Appendix 3 - Examples of EPA's Public Involvement Regulations

Appendix 4 - Federal Advisory Committees

Addendum 1 - Selected tools the Agency has developed since 1981 to assist EPA staff and regulatory partners in conducting public involvement and consultation

Addendum 2 - Summary of comments and EPA's responses.

Two additional documents may be of interest. The Agency's complete "Response to Comments on EPA's Draft 2000 Public Involvement Policy" is available at <http://www.epa.gov/publicinvolvement/responsetocomments.pdf> and the "Framework for Implementing EPA's Public Involvement Policy" is available at <http://www.epa.gov/publicinvolvement/framework.pdf>. (All documents referenced in the Policy are also available upon request to Public Involvement Staff, USEPA/OPEI/OEPI/PPCD Mail Code 1807T, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460.)

The goal of this Policy is to improve the effectiveness of EPA's public involvement activities, ensure well-informed decisions, and encourage innovative methods for involving the public. As EPA implements the Policy, the Agency plans to share its experiences with states, tribes, local governments and other partners and interested parties.

Date:

Christine Todd Whitman,

Administrator.

EPA's PUBLIC INVOLVEMENT POLICY (Final May 2003)

Introduction

EPA's mission is to protect human health and the environment. To achieve that mission, EPA needs to continue to integrate, in a meaningful way, the knowledge and opinions of others into its decision-making processes. Effective public involvement can both improve the content of the Agency's decisions and enhance the deliberative process. Public involvement also promotes democracy and civic engagement, and builds public trust in government.

EPA has long been committed to public involvement. The fundamental premise of this Policy is that EPA should continue to provide for meaningful public involvement in all its programs, and consistently look for new ways to enhance public input. EPA staff and managers should seek input reflecting all points of view and should carefully consider this input when making decisions. They also should work to ensure that decision-making processes are open and accessible to all interested groups, including those with limited financial and technical resources, English proficiency, and/or past experience participating in environmental decision-making. Such openness to the public increases EPA's credibility, improves the Agency's decision-making processes, and informs its final decisions. At the same time, EPA should not accept any recommendation or proposal without careful, critical examination.

This Policy supplements, but does not amend, existing EPA regulations that prescribe specific public participation requirements applicable to EPA's activities under specific statutes, such as those found at 40 CFR Part 25 "Public Participation in Programs Under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act." (See 40 CFR Part 25, which can be found at <http://www.epa.gov/publicinvolvement/pdf/part25.pdf>.) The public participation requirements contained in such regulations specify the minimum required level of public participation. (A partial listing of existing public participation regulatory requirements is contained in Appendix 3.) Whenever feasible, Agency officials should strive to provide increased opportunities for public involvement above and beyond the minimum regulatory requirements.

What is Public Involvement?

The term "public involvement" is used in this Policy to encompass the full range of actions and processes that EPA uses to engage the public in the Agency's work, and means that the Agency considers public concerns, values, and preferences when making decisions. The term "the public" is used in the Policy in the broadest sense to include anyone, including both individuals and organizations, who may have an interest in an Agency decision. (See Appendix 2 for a detailed definition of "public" and other important terms.)

What Are the Purposes, Goals and Objectives of This Policy?

The purposes of this Policy are to:

- Improve the acceptability, efficiency, feasibility and durability of the Agency's decisions
- Reaffirm EPA's commitment to early and meaningful public involvement
- Ensure that EPA makes its decisions considering the interests and concerns of affected people and entities
- Promote the use of a wide variety of techniques to create early and, when appropriate, continuing opportunities for public involvement in Agency decisions
- Establish clear and effective guidance for conducting public involvement activities

Effective public involvement will make it easier for the public to contribute to the Agency's decisions, build public trust, and make it more likely that those who are most concerned with and affected by Agency decisions will accept and implement them. This policy supports EPA in meeting statutory and regulatory requirements regarding public participation, particularly in environmental permitting programs and enforcement activities.

EPA goals for public involvement processes are to:

- Foster a spirit of mutual trust, confidence, and openness between the Agency and the public
- Ensure that the public has timely, accessible and accurate information about EPA programs in a variety of formats so that people can better understand the implications of potential alternative courses of action
- Consult with interested or affected segments of the public and take public viewpoints into consideration when making decisions
- Learn from individuals and organizations representing various public sectors and the information they are uniquely able to provide (community values, concerns, practices, local norms, and relevant history, such as locations of past contaminant sources,

potential impacts on small businesses or other sectors, industry conducted study results, etc.)

- Solicit assistance from the public in understanding potential consequences of technical issues, identifying alternatives for study, and selecting among the alternatives considered
- Keep the public informed about significant issues and changes in proposed programs or projects
- Foster, to the extent possible, equal and open access to the regulatory process for all interested and affected parties
- Understand the goals and concerns of the public, and respond to them
- Anticipate conflict and encourage early discussions of differences among affected parties
- Promote the public's involvement in the Agency's mission of protecting human health and the environment
- Explain to the public how its input affected the Agency's decision

To achieve these purposes and goals, while recognizing resource constraints, Agency officials should strive to provide for, encourage, and assist public involvement in the following ways:

- Involve the public early the public early and often throughout the decision-making process
- Identify, communicate with and listen to affected sectors of the public (Agency officials should plan and conduct public involvement activities that provide equal opportunity for individuals and groups to be heard. Where appropriate, Agency officials should give extra encouragement and consider providing assistance to sectors, such as minority and low-income populations, small businesses, and local governments, to ensure they have full opportunity to be heard and, where possible, access to technical or financial resources to support their participation.)
- Involve members of the public in developing options and alternatives when possible and, before making decisions, seek the public's opinion on options or alternatives
- Use public input to develop options that facilitate resolution of differing points of view
- Make every effort to tailor public involvement programs to the complexity and potential for controversy of the issue, the segments of the public affected, the time frame for decision making and the desired outcome
- Develop and work in partnerships with state, local and tribal governments, community groups, associations, and other organizations to enhance and promote public involvement

When Does This Policy Apply?

This Policy applies to all EPA programs and activities. In programs or activities where the public is already meaningfully involved, EPA can use this Policy to enhance that public involvement. Where the existing level of public involvement needs to improve, this Policy provides suggestions for how to move forward. Finally, this Policy can serve as a model for building public involvement into new programs as they are developed.

The activities where conducting meaningful public involvement should particularly be considered include:

- EPA rulemaking, when the regulations are expected to be classified as Significant Actions (under the terms of Executive Order 12866)
- EPA issuance or significant modification of permits, licenses or renewals

- Selection of plans for cleanup, remediation or restoration of hazardous waste sites or Brownfields properties
- EPA's decision on whether to authorize, delegate or approve states or local governments to administer EPA programs consistent with the relevant regulatory requirements for each program (Note: Tribes seeking approval to administer environmental programs under EPA statutes generally also seek "treatment in a similar manner as a state (TAS)" status from EPA. Appropriate opportunities for public participation are contained in the relevant statutory and regulatory provisions establishing a TAS process. Consult with the Office of Regional Counsel or the Office of General Counsel, and/or the American Indian Environmental Office for assistance.)
- All other policy decisions that the Administrator, Deputy Administrator or appropriate Assistant, Regional or Associate Administrator determine warrant public participation in view of EPA's commitment to involve the public in important decisions
- The development of significant information products (as the Office of Environmental Information has defined them in Appendix 2: Definitions)
- For activities not listed here, EPA staff may use this Policy in whole or in part to strengthen decision making

In planning and conducting public involvement activities, Agency officials should rely on the sound use of discretion. The Policy is not a rule, is not legally enforceable, and does not confer legal rights or impose legal obligations upon any member of the public, EPA or any other agency. Resource constraints, the need for timely action and other considerations may affect the appropriate nature and extent of public involvement. For example, a compelling need for immediate action may make it appropriate to limit public involvement. In particular, the desire to reach agreement among all parties, while valuable, should not prevent the Agency from carrying out its responsibility to make decisions or take actions to preserve and protect the environment and public health.

Nevertheless, the Agency should approach all decision making with a bias in favor of significant and meaningful public involvement. Experience throughout government has shown that a lack of adequate participation or of effective means for participation can result in decisions that do not appropriately consider the interests or needs of those that will be most affected by them. Furthermore, early involvement can ultimately reduce delay, by avoiding time-consuming review, public debate or litigation. Finally, decisions based on meaningful public involvement are likely to be better in substance and stand the test of time, avoiding the need to reopen controversial issues.

Does This Policy Affect Authorized, Approved or Delegated Programs?

EPA developed this Policy for EPA staff use, but it also may be useful to States, Tribes and local governments that implement federally delegated, authorized or approved programs. EPA encourages these entities to adopt similar public involvement policies if they have not already done so. EPA intends to discuss the effectiveness of their public involvement activities during periodic meetings with States, Tribes and local governments, and will obtain their input about ways to improve EPA's activities. EPA will not use whether a State, Tribe or local government has adopted EPA's Public Involvement Policy as a criterion for the authorization, approval or delegation of programs or the award of grants. In general, recipients may use grants for continuing environmental programs and Performance Partnership Grants to fund public

involvement activities to the extent that costs are allowable under OMB Circular A-87 and applicable EPA regulations. (Note: Some statutory or regulatory provisions require compliance with certain public participation requirements before EPA may approve a grant. See 40 CFR 25.11 and 25.12.) The grant applicant may comply with such requirements without adopting EPA's Policy.

What are the Roles of States, Tribes and Local Governments?

State agencies, Tribes and some local governments have unique roles regarding EPA's programs and decisions:

1. State agencies, Tribes and some local governments may be co-regulators with EPA. In some cases, they implement authorized, approved or delegated Federal programs. In other cases, they run independent, but closely-related programs. In both cases they work closely with EPA as regulatory partners, and EPA will consult them as appropriate when implementing this Policy. In addition, they may have expertise that can be valuable to EPA in designing public involvement activities.
2. State agencies, Tribes and local governments also may be regulated parties when they undertake activities that are subject to Federal laws and regulations. As regulated parties, they are also members of the community of regulated stakeholders, and would benefit from the application of the Policy like other regulated parties.
3. Whether they are partners helping EPA implement a program or members of the regulated community affected by EPA regulations, state agencies, Tribes, and regional and local governments often play an active role in making recommendations on policies, rules, plans and recommendations under development, and providing input on EPA's decisions.

The role of Tribes is unique in another way. Each federally-recognized Tribal government is a sovereign entity that has an individual government-to-government relationship with the federal government. EPA should coordinate and consult meaningfully with Tribes to the greatest extent practicable for agency actions that may affect the tribes. This Policy complements EPA's efforts to consult with Tribes. See Executive Order 13175, Consultation and Coordination With Indian Tribal Governments November 6, 2000.

Consultation should be a meaningful and timely two-way exchange with Tribal officials that provides for the open sharing of information, the full expression of Tribal and EPA views, a commitment to consider Tribal views in decision making, and respect of Tribal self-government and sovereignty. The Agency should allow comment from Tribes early in the planning process and prior to making a decision. However, consultation does not imply that the Tribes or any other non-EPA entities that are consulted can stop an Agency action by withholding consent.

How Does the Policy Relate to Environmental Justice?

This Policy complements and is consistent with EPA's environmental justice efforts. "Environmental Justice" is the fair treatment of people of all races, cultures, and incomes, including minority and/or low-income communities and Tribes, with respect to the development, implementation, and enforcement of environmental laws and policies, and their meaningful involvement in the decision-making processes of the government. Environmental justice is achieved when everyone, regardless of race, culture or income, enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making

process to have a healthy environment in which to live, learn and work. This includes ensuring greater public participation in the Agency's development and implementation of its regulations and policies. (Memorandum from EPA Administrator Christine Todd Whitman, dated August 9, 2001, "EPA's Commitment to Environmental Justice.") (See also, Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994.) Thus, ensuring meaningful public involvement advances the goals of environmental justice.

EPA's Seven Basic Steps for Effective Public Involvement

The EPA should ensure that it conducts meaningful public involvement activities and implements all public involvement provisions required by statute.

There are seven basic steps to consider when planning for public involvement. Agency officials should exercise judgment and carefully consider the particular circumstances of each situation in determining how to carry out those steps. Agency staff and managers should strive to provide the most meaningful public involvement opportunities appropriate to each situation. Agency officials should consider the issues, locations, potential environmental and human health consequences of the activities, potential for controversy, specific needs of the public and the Agency, and other circumstances when designing public involvement processes. For instance, enhanced opportunities for public involvement should be created for those situations in which there is the potential for greater environmental or human health consequences or controversy. It is important to note that the Agency needs to set priorities for its use of resources, and that budgetary constraints may affect the implementation of any of these elements.

The seven basic steps for effective public involvement in any decision or activity are:

1. Plan and budget for public involvement activities
2. Identify the interested and affected public
3. Consider providing technical or financial assistance to the public to facilitate involvement
4. Provide information and outreach to the public
5. Conduct public consultation and involvement activities
6. Review and use input and provide feedback to the public
7. Evaluate public involvement activities

The recommended goals, actions and methods for each of these steps are described in Appendix 1, Guidance for Implementing Public Involvement at EPA, at <http://www.epa.gov/publicinvolvement/policy2003/guidance.pdf>.

Who is Responsible for Managing the Application of this Policy?

Under the overall direction of the Administrator, and consistent with this policy, Assistant, Regional and Associate Administrators are responsible for ensuring that their managers and staff encourage and facilitate public involvement in programs and activities. Public involvement should be an integral part of any Agency program. Moreover, the Agency should strive to achieve public involvement that is commensurate with the potential impact of the activity. The Assistant, Regional or Associate Administrators should make certain that concerns about the adequacy of public involvement are heard and, where necessary, acted upon as resources allow. Managers should encourage and facilitate the proper training, support and counseling of

staff, and, recognizing overall budgetary constraints, should plan for and provide adequate funding for training or other needs in their specific budgets. (See more detailed responsibilities section in Appendix 1 at <http://www.epa.gov/publicinvolvement/policy2003/guidance.pdf>.)