

July 1, 2022

NC Department of Environmental Quality
Attn: Public Affairs
1601 Mail Service Center
Raleigh, NC 27699-1601

Sent via email to publiccomments@ncdenr.gov

As organizations that have been involved in the Department of Environmental Quality's (DEQ) permitting process for decades, we submit these comments on the 2022 update to DEQ's Public Participation Plan (the Plan) as directed under Governor Cooper's Executive Order 246. Thank you for this opportunity, which we trust will help improve and strengthen the relationship between DEQ and the constituencies it serves.

We hope, prior to finalizing the plan, DEQ will incorporate all of the recommendations, aspirations, and orders in EO 246. Furthermore, we hope that the Secretary's Environmental Justice and Equity Advisory Board will be given a formal opportunity to review this plan and provide input.

Our comments are divided into the following sections: Statutory Authority and Public Participation, Public Notice, Community Education and Outreach, Screening Tools and Resources, and Measures of Success.

Statutory Authority and Public Participation

(Note: With regard to the following, please reference Page 1 of Draft Public Participation Plan)

DEQ's mission is to provide science-based environmental stewardship for the **health and prosperity of ALL North Carolinians**. Page one of the Public Participation Plan reminds us of DEQ's statutory authority behind this mission: "The primary purpose of creating, implementing, and regularly updating this Plan is to assist the Department and its staff in fostering stronger partnerships with individuals and groups that will contribute to the Department's statutory duty to **protect public health and the environment**." We start with these statements to emphasize the critical role DEQ plays in protecting public health and the importance of having strong, transparent, and collaborative partnerships with community members.

(Reference Page 2 of Draft Public Participation Plan)

In your reference to Title VI of the Civil Rights Act of 1964 you note DEQ's commitment to providing *fair treatment* and *meaningful involvement in the public participation process* regardless of race, color, national origin, or income. While the Plan focuses on meaningful involvement by the community in decision-making processes, we believe that in order to "*build trust with the public to strengthen community ties and partnerships, and work with community organizations to identify shared goals and opportunities for collaboration*", the fair treatment clause must be addressed.

At the top of Page 2, the Plan notes, "The law provides that no person shall, on the grounds of race, color, national origin, sex, age or disability be excluded from participation in, be denied the benefits of or be subjected to discrimination under Title VI of the Civil Rights Act of 1964" and goes on to refer to additional nondiscrimination laws and regulations.

According to Title VI, there are two types of discrimination: intentional and disparate. Disparate impact occurs when a recipient of federal financial assistance uses a facial neutral policy or practice that has a harmful and disproportionate effect based on race, color, or national origin. Harms considered in disparate impact include environmental harms like local air quality, adverse health effects such as asthma and heart disease, and non-health harms like nuisance odors and noise and economic harms.

Executive Order 246 notes that "meaningful, fair, and equitable public engagement in state agency decision making is necessary to avoid and remedy harmful impacts on communities most severely and frequently impacted by economic and environmental health disparities;..."

Most members of the general public who offer comments on planned permitted facilities do not have technical backgrounds in environmental science, law or engineering. Therefore, when soliciting feedback from the general public it is incumbent upon DEQ to specify the type of comments it would like to receive that would result in better public decision making as it seeks to fulfill its statutory duty. As EO also 246 states, "Agency public participation plans shall aim to improve communication, foster relationships, and enhance transparency in decision-making with all members of the public, including underserved communities and populations with limited English proficiency."

Should general comments be welcome from the public that are basic in nature (i.e., either in favor of, or opposed to an agency decision), responses from DEQ should be holistic in nature to address each of the comments provided in a Hearing Officer's Report. Specifically, in instances where comments from the public are lumped together for a response (i.e., In instances where DEQ may use language such as: "DEQ has

received X number of responses in favor of a permit, and Y against..."), DEQ should provide rationale for doing so, and elaborate on the reason for not providing a more comprehensive response.

The NC Utilities Commission has a "Ratepayer Advocate", the public staff. A role similar in nature could also exist at DEQ. A "Permit Advocate", of sorts, could help provide expertise and distill permits for the General Public. While true, organizations such as ours do often serve in that role, we do not have access to public funding, or as may sometimes be the case, know what it is that DEQ is specifically seeking in their public comment process. The EJ Coordinator or another DEQ staff member could be tasked to disseminate that 'inside' information to organizations and communities, and help inform the public about what they should be looking for or what to expect in a permitting process.

In instances where comments reference climate change, knowing exactly what DEQ is looking for, and what they can use in a permit is particularly important given the uncertainty involved with the range of impacts that could occur under different warming scenarios. For example, when citizens note that a project will increase levels of greenhouse gas emissions and further exacerbate climate change (which could increase the number of extreme high temperature days and inflame health conditions such as asthma), we encourage the Department to address the specific health conditions identified and explain how those concerns may or may not be valid.

Importantly, within EO 246, is a directive for Cabinet Agencies to incorporate the social cost of greenhouse gas emissions. However, this important metric was not mentioned in the Public Participation Plan. Specifically, communities deserve to know how the cumulative impacts of sources of pollution are impacting individuals. We encourage DEQ to take proactive measures to inform environmentally impacted communities of sources of pollution in their 'backyards'. This could include an annual inventory detailing the types and volumes of pollutants emitted per facility, published for each (EJ-identified) county in the state.

Beyond such a proactive approach, we advocate for DEQ to be as transparent as possible about the climate effects that projects permitted by DEQ will have on a community. Furthermore, we encourage DEQ to publicize the direct increase to greenhouse gasses, and the cumulative/total greenhouse gasses and levels of other pollutants in an air or watershed at the time of a public hearing or other such engagement with a community.

Public Notice

(Reference Page 3 of the Draft Public Participation Plan)

The proposed 30-day notice and comment period is not enough time for communities to review a permit application. While acknowledging that businesses seeking permits require the certainty that an air and water permit provides for certain business decisions, we advocate for allowing a minimum of 60 days for a community to review all permits. The sheer number of permits that are sought overwhelms communities and 60 days gives a community the opportunity to research and seek professional advice on permits of interest. Knowing of this extra time allowed to the public will no doubt encourage businesses to engage with affected communities more quickly.

When DEQ announces decisions, we urge you to make those announcements during the normal business day. While it is a common ‘public affairs’ strategy to announce controversial decisions on Friday afternoons, around holidays, and major events when the press and/or public is not paying attention, that tactic does not build public trust.

Community Education and Outreach

(Reference Page 3 of the Draft Public Participation Plan)

A frequent question that our organizations receive is regarding the difference between public hearing comments vs. formal written comments. When the Department solicits public feedback, we encourage the delineation to be made transparent and clear. If DEQ weighs one type of feedback over another, specify which will earn more attention in a formal process.

While not clearly under DEQ’s purview, we believe that the Department should take proactive steps to ensure that elected and appointed community officials are made aware of permitting actions taken in their local regions. Anecdotally, in an instance where a permit was being sought, a Town Manager was unaware that a business was seeking a permit to emit pollutants in their community; however, the Economic Development Director was aware of this action.

We suggest that DEQ develop a form letter or some other standardized method of communication to inform officials when an air quality permit application has been requested for an environmentally impacted community.

As has been stated previously, permitting or other decisions that the Department makes can be highly complex, and these are things that impact the public in profound ways. Communities should not be responsible for hiring experts, or forced to reach out to organizations that do have expertise to understand what specific points or issues mean to their health and wellbeing. We encourage DEQ to simplify language so that all North

Carolinians can understand what their government is allowing in their backyards (see attached example: Mecklenburg County Air Quality Permit Application FactSheet).

When the Department issues an Environmental Justice Report as an appendix or compendium to a permit, DEQ has stated it is for the express purpose of determining if it will undertake “enhanced public outreach”. Contradictory to that statement, the draft Participation Plan states on Page 8,

“In a Final EJ Report, staff continues to assess the potential impact the proposed construction and operation of the facility under review has on the surrounding communities, considers any relevant comments received during the public comment period, and provides advice to the regulatory technical staff as they prepare the Hearing Officer’s Report or other materials accompanying the Agency’s decision.”

Regardless of what the case may be, many communities do not understand the purpose of EJ Reports, they think that information is being used to justify whether or not a permit should be issued. We offer this observation in the hope that DEQ will make clear its rationale for obtaining data in EJ Reports, and use it for permitting purposes in compliance with Title VI of the Civil Rights Act and other applicable laws, rules, and regulations.

We support the Department’s suggestion that a Public Meeting (pg 4 of Draft) be held to accompany a Public Hearing. Additionally, we advocate for DAQ to host *regular* public information and education sessions in EJ communities regarding all Title V permit applications. Many environmental organizations have tried to assist the Department in improving the understanding of permitting processes and decisions over the years. We are willing and ready to continue to improve the collective education of our communities.

Screening Tools and Resources

(Reference Page 7 of the Draft Public Participation Plan)

The Draft Public Participation Plan states that “Utilizing the CMS (Community Mapping System) will allow staff to flag communities that may be better served by additional engagement,” and also that the Draft EJ Report will include the “county health overview, identification and location of potential sensitive receptors, (and) the presence of other industrial or permitted sites”, which would be derived from the CMS. However, due to missing and inadequate information in the CMS, the above tasks are not entirely possible.

Though the establishment of the CMS was a result of a Title VI settlement involving swine operations, the CMS is least informative about impacts from animal operations among all NC industrial and permitted sites. What information is available about these

operations on the CMS, requires additional steps by the user, which are left out of user instructions and otherwise remains undocumented by DEQ.

The first example to support this statement is that the facilities feature in the mapping system does not include deemed permitted operations, namely dry waste poultry operations. Excluding an entire ag-industrial sector known to adversely impact air and water quality leaves a gap in information when looking at community impacts. The CMS does identify wet-waste poultry, swine, and dairy permits/certificates of coverage (COC), yet none of these animal operations are included in the “info summary” tool which is presented as a complete list of the number and type of permits in a given map extent.

Animal operations are not able to be viewed at the same visibility range as other permits, and even when zoomed in close enough to view, the information can still be misleading. Often, a symbol on the map represents a mailing address on a permit rather than a specific facility location. Additionally, a single dot symbolizing an animal operation COC, can actually represent several swine houses and waste lagoons - each a separate source of pollution and risk of health impacts. Furthermore, these dots do not represent where waste is sprayed or spread, again leaving out information that would help identify community impacts.

Further, regarding EJ reports and flagging communities for enhanced engagement, the Draft Public Participation Plan states that “The System (CMS) includes demographic, socioeconomic, and health data at the census block group or county level.” While the CMS may include this information, this is not something easily accessible or comprehensible by a user.

Health data is input into the system by county, and demographic information is entered by census block groups. Currently when using the EJ Tool feature, there is no indicator to let the user know which geographic area the demographic and health data actually represents. The information on the EJ Tool data page states the user is viewing the “Selected Area Demographics”, but this does not represent an area that the user selected (even if the user has chosen a census block group for which to obtain specific EJ data within the tool). Rather, the data shown is averaged across the number of census blocks that appear within the map window. The same is true with the community health data. If a permit is sited close to a county border, the user will likely be viewing health data averaged across more than one county rather than the county that hosts the permitted facility. Aside from the fact that whole county data, much less multiple county data, is not sufficient to inform about the health impacts experienced by a localized community, the user is likely to miss that the information is misrepresented on the CMS’ localized EJ report.

Lastly, the Plan mentions using the CMS for “identification and location of sensitive receptors.” It is worth noting here that these sensitive receptors cannot be viewed on the same map as the facilities. Therefore, a user could not, for example, use the map’s buffer tool to draw a radius around a facility and gain information about the number and location of churches, schools, nursing homes, or other sensitive receptors within a given distance of a facility.

A Community Screening tool needs to have two purposes: (1) to collect and distribute the information in the community, including at a public meeting; (2) provide an analysis of the impact of the proposed facility on environmental and public health given existing conditions and scale. Overall, in order to utilize the CMS for the aforementioned purposes, as well as those currently outlined in the DEQ Draft Public Participation Plan, this screening tool will require a number of functionality fixes, upgrades, and additions - only a sample of which are outlined above-, and should include input from EJ *community* members as key stakeholders in that process.

Measures of Success

The NCDOT Statewide Public Involvement Plan, pages 9-1 to 9-12, provides a detailed overview on the importance of measuring the success of public involvement activities. Page 9-1 notes that “Public involvement success measures are established, monitored, and reported because they reflect the difference between simple procedural compliance and actual compliance with the intent of the law, regulations, guidance, and standard protocol. This difference is critical for agencies seeking to establish the credibility of their efforts and is required to sustain community engagement.”

We recommend that DEQ issue an annual report on public participation and transparency. Included in such a report should be a listing of all of the public officials notified of permit applications, numbers of individuals heard from through public engagement activities, average permit application times, tons (or other such metrics) of pollutants avoided, and other such information.

We realize that incorporating many of the recommendations listed herein would vastly change the way the Department operates, and perhaps may add additional costs or challenges to overcome. However, your constituency, the North Carolina taxpayer, expects that DEQ will fulfill its mission to protect the environment, public health, and help create economic prosperity. Having that constituency be better informed is in the Department’s best interest, and we hope that these comments will help strengthen the relationship between the public, the business community, and DEQ. To that end, creating measures of success to benchmark progress and measure outcomes of public participation are a critical piece to the Public Participation Plan.

Sincerely,

June Blotnick
Executive Director
CleanAIRE NC

Jefferson Currie II
Lumber Riverkeeper
Winyah River Alliance

Donna Chavis
Lumbee Leader
RedTailed Hawk Collective

Lib Hutchby
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Co-founders

West End Revitalization Association (WERA)

CHARLOTTE PIPE AND FOUNDRY COMPANY

PERMIT APPLICATION FACTSHEET

PROPOSED CHANGES

Charlotte Pipe and Foundry Company, located at 1335 S. Clarkson Street in Charlotte, NC, operates a gray iron foundry that produces cast iron pipe and fittings from scrap metal primarily for commercial plumbing applications. The facility is classified as a major source under Title V of the Clean Air Act.

Changing conditions in sewer systems warrant the need for a more resistant pipe coating. The proposed modification adds an e-coat line, as an alternative to the current asphalt coating. The proposed reamer and external shot blast unit are being installed to prepare the pipe surface for better coating application.

Equipment Being Added:

1. E-coating – a process that coats pipes with paint using an electrical current
2. Pipe reamer – a grinder that removes rough edges from the interior of the pipes
3. Pipe external shot-blaster – a machine that prepares the pipe surface to allow the E-coating to adhere to the pipes
4. Natural gas ovens (2) – heat sources that dry and harden the coating on pipes
5. Natural gas heat recovery unit – reduces natural gas usage in the ovens

Equipment Being Removed:

1. Permanent Mold pipe casting machines (3) and associated grinding equipment
2. Rocolast pipe casting machine
3. Core machine (specifically a “Sneezer” machine)

PROJECTED EMISSION CHANGES

New emissions are primarily from paints used in the new E-coating process, resulting in a projected 10.7 tons per year increase of volatile organic compound emissions. Increases in other pollutants are projected to be less than 2 ton per year. Potential particulate matter emissions will decrease with removal of other pipe making equipment. Emissions of toxic air pollutants were also evaluated but did not trigger permitting under North Carolina’s air toxics rule.

ODOR MANAGEMENT

The facility is required to consider the potential for odor impacts and implement odor management techniques when planning for new emission sources. The facility included an evaluation of odor for the new emission sources in the application. The following odor controls will apply to the coating process and will be incorporated into the new permit:

- Odorous materials will be stored in a tightly sealed containers or storage tanks;
- Spills will be cleaned up as soon as possible;
- MCAQ will be informed about any new materials before they are used; and
- Substitute materials will be evaluated periodically to determine if less odorous products exist.

COMMUNITY INPUT

Mecklenburg County Air Quality (MCAQ) values community input during the permitting process.

Comments that accurately and specifically address a concern about the draft permit are most effective. Public comments can impact permit conditions, making for a more comprehensive and complete compliance document. However, MCAQ is required by law to issue permits for industrial activities that comply with all relevant federal, state, and local regulations.

SUBMIT COMMENTS

Comments on the draft permit for Charlotte Pipe & Foundry will be accepted on or before **June 2, 2020**.

Comments may be submitted

1. via e-mail to MCAQ@MecklenburgCountyNC.gov;
2. by leaving a voicemail at 980-314-3144; or
3. by U.S. Mail addressed to Mecklenburg County Air Quality 2145 Suttle Avenue Charlotte, NC 28208.

LEARN MORE

[AirQuality.MeckNC.gov/Comment](#)

[Draft Permit Link](#)

[Application Review Summary Link](#)

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