

Talking Points & Comments on DEQ's 2022 Public Participation Plan

On January 7, 2022, NC Governor Roy Cooper signed Executive Order (EO) 246, "North Carolina's Transformation to a Clean, Equitable Economy." One of the EO 246 requirements included updated Public Participation Plans for "meaningful, fair, and equitable public engagement in state agency decision-making."

In March, the Governor's office began accepting comments via a "NC Access Survey", and similar efforts were conducted by the Andrea Harris Taskforce and the NC Department of Environmental Quality (DEQ) Secretary's Environmental Justice and Equity Advisory Board. Over the last several months, Governor's agencies began appointing an Environmental Justice (EJ) Lead, each, and DEQ released their updated Public Participation Plan and Language Access Plan (Plan) on June 1, 2022. They are accepting comments through July 1, 2022.

We applaud efforts by state officials to incorporate more effective public participation in government decision-making. North Carolina communities have experienced years of limited opportunities to participate in state decision-making processes for environmental policy and permitting. This has been particularly difficult for historically marginalized and underserved communities under traditional power dynamics. It's not to say that there were no opportunities to engage in state actions as a member of the public, just that there are some significant limitations.

While we appreciate and recognize the current efforts, particularly efforts to reduce barriers to accessibility of hearings and meetings, as well as language barriers, DEQ's 2022 Plan nonetheless does not address a number of concerns we and communities raised. In particular, we are concerned with the limited transparency, inadequate notification periods, and community disempowerment during decision-making processes. Meaningful participation should mean that people have an opportunity to be heard *and* that their concerns carry weight in decision-making processes.

A Step in the Right Direction

DEQ recognized the need to increase their outreach and education activities to allow more opportunities for meaningful input and participation from impacted communities. The Plan appears to work toward equitable participation by paying particular attention and resources to engaging with marginalized populations.

First, they recognized that notification about permitting decisions need to go beyond a single newspaper notice. Flyers should be posted where the impacted community can see, such as grocery stores, post offices, or other local centers or information boards frequently used by the public. For rural areas with limited community centers, mailers would be used. The Plan also mentions potential use of social media and radio. We



appreciate the acknowledgement that “current statutory requirements for disseminating information for public notice have not kept pace with evolving media communications.”

Secondly, DEQ recognizes that while virtual meetings offer more opportunity for some community members to participate, it can be a barrier for others. The Plan shows good practice in planning in-person meetings as close to the impacted community members as possible, especially in areas with limited internet access. People should not be expected to travel to the state capital or areas outside of their community to participate in a public hearing and DEQ has recognized this inequity.

Recommendations for Improved Meaningful Public Involvement

First and foremost is the need for a clear understanding of what we mean by “meaningful” public participation.

Meaningful public participation means that community voices:

- A. Have an Opportunity to HEARD**
- AND**
- B. Carry Substantive WEIGHT.**

To ensure these elements are adequately met, we have the following recommendations to assist DEQ, and all state agencies, with ensuring both a transparent government in the sunshine and engagement with the public that is meaningful and effective.

- 1) If DEQ is truly seeking public input and involvement, there must be an avenue to deny permits based on public feedback that is not technical in nature, including environmental justice, cumulative, and health impacts.**
 - a. Along those same lines, the public should be provided with what the rubric/scoresheet looks like for approving permits.
 - b. Given the uncertainty of which comments are recorded or how they are transcribed, DEQ should make all public hearing transcripts available to the public. Especially given the isolating nature of the current format of virtual public meetings, it is important for the public to be able to see all comments.
 - c. Those wishing to submit oral comments at public hearings should know how much time they will be given to speak ahead of the hearing. Only allowing 2 minutes for each comment is inadequate, and a 3-4 minute minimum should be considered.
- 2) Provide a clear definition of “Overburdened Community” or “EJ Community” that specifies community of color (black, brown, indigenous, latinx), rural, and low-income. This would include Indigenous / American Indian communities, whether recognized at either the federal or state level.**
- 3) Increase opportunities for input and participation, including earlier involvement and increased comment period timeframes.** While we appreciate



that DEQ acknowledged the need to modernize and diversify forms of communication for notices, we do have other aspects about notice that we believe would provide for more functional and meaningful public participation.

- a. Provide notice when a permit application is submitted to the agency, not just when there will be a hearing or intent to act on the permit.
 - i. Notice to the public at this stage is simply too far along in the process and provides too short notice and preparation time for the public to meaningfully comment.
- b. Permits should require both the address of the applicant's place of business and the address of each site to be permitted, including general permits. The business vs. facility addresses are often different and make it difficult to determine what communities are impacted.
- c. Permit applications should include a visual workflow chart of where in the process the permit resides, showing details of each of the steps required:
 - i. Submission, public notice, completeness review, technical review, legal review, applicant revisions, public hearings, public comment period, review of public feedback, additional revisions, and other state and federal permits required for facility to proceed to construction, renewal, amending, etc.
- d. Both rulemaking and permit public meeting and hearing notices should require at least 60 days for public inspection and review prior to the meeting/hearing with comments accepted for at least 60 days. Anything less puts the public at a disadvantage of reviewing, analyzing, and understanding a highly technical permit which lay folks may need assistance to understand. The sheer volume of permit applications in some communities overburdens those communities to somehow find the time to review, understand, and comment on matters that both the applicant and DEQ have had months to review and prepare.

4) DEQ's website needs to be more user friendly and kept up-to-date.

- a. It is difficult to find information on permits and records, public meetings, and even some general information including who to contact for a given concern. Searching the website with a keyword often yields results and pages with outdated information.
- b. Permit portals should be more accessible, easier to browse, and searchable such as allowing searches, dropdowns, expansion/minimization of lists, and automated notices for permit applications based on any combination of the following criteria: address, county, type of permit, type of facility, etc.
- c. It is also difficult to find and identify ways to sign up for DEQ's e-mail notices and alerts as each subdivision has a different format and location for these listservs. A solution would be consistent formatting across all subdivisions, more prominent display of the opportunity to register for listservs, and a centralized site to sign up for any/all DEQ listserv options.
 - i. An example of a single sign-up page for all types of permit applications can be found here:
<https://prodenv.dep.state.fl.us/DepPass3Profile/welcome>



- d. The Community Mapping System (CMS), while a useful tool established as a result of a Title VI settlement involving swine operation, lacks significant data and detail to assist the user in identifying and analyzing EJ impacts from a proposed permit.
 - i. For example, 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.
 - ii. The Plan states that “The System (CMS) includes demographic, socioeconomic, and health data at the census block group or county level.” However, only demographic information is entered by census block group and health data is input into the system by county. The data shown is averaged across the number of census blocks that appear within the extent of the map window, potentially skewing the data and misinforming the user.
 - iii. 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.

5) Ensure equitable participation, with particular attention paid and resources devoted to active engagement with marginalized populations.

- a. We applaud DEQ’s recognition that while virtual meetings offer more opportunity for some community members to participate, it can be a barrier for others. The Plan shows good practice in planning in-person meetings as close to the impacted community members as possible, especially in areas with limited internet access. People should not be expected to travel to the state capital or areas outside of their community to participate in a public hearing and DEQ has recognized this inequity.
- b. Hearings and meetings should also be held multiple times (typical 9-5 M-F, evenings, and weekends) to allow working individuals of various working hours to participate without having to miss work and income.
- c. DEQ’s policies and definitions with regard to opportunities for meaningful participation may not match with those of impacted communities.
- d. EJ reports for permit applications sometimes inform when “enhanced public engagement” is needed, but the Public Participation Plan doesn’t clearly describe what that means or whether or not it has proven outcomes.
 - i. DEQ should provide clarity about the purpose and use of EJ Reports and the weight, if any, is given to the reports in approving or denying a permit.
 - ii. The public deserves better transparency and an outline of each type of outreach process.



- iii. If a community is not selected for “enhanced public engagement” there must be an avenue of recourse that is outlined to hold permittees or DEQ accountable.

6) Increasing accessibility of hearings, meetings, and information

- a. Given the technical nature of permits, DEQ should provide an easily understandable version of drafts for the public.
 - i. This should include known health risks associated with a given contaminant or emission covered by the permit.
 - ii. Assign Public Information Officers who are assigned to certain permits and assist with providing detailed information in lay terms and to answer questions from the public about the permit, including technical items. Similar to the NC Utilities Commission’s Public Officer, DEQ should have a similar Permitting Officer to provide services in representing the public’s interests.
 - iii. Borrow from DEQ’s Permit Applicant Toolbox to provide a similar toolbox for concerned community members who want to learn more about permits and understand them without technical jargon.
- b. Much like requesting translation services, there should be an option to request a pre-hearing meeting or information session and not just a presentation by the permit applicant.

7) Implement a public scoping and involvement process that is balanced and inclusive. Equal access to “DEQ’s ear” - transparent about how many meetings DEQ has had with company.

- a. Much like the public scoping process of the National Environmental Policy Act, required at the environmental assessment phase, DEQ should be meeting with potentially impacted communities at the forefront of a permit application submission, as a body independent of the applicant.

Conclusions

We appreciate DEQ’s effort to provide for increased public engagement, opportunity to be heard, and make improvements to further build DEQ’s relationship with the public. We also appreciate the continued opportunity to provide input on the Plan, and look forward to continuing to communicate with DEQ officials to work towards a robust and equitable Public Participation Plan that ensures increased transparency, robust notification and comment periods, and overall decreases barriers to accessibility of hearings and meetings, language barriers, and community disempowerment during decision-making processes. We look forward to meaningful public participation where the people not only have an opportunity to be heard, but one in which their non-technical concerns carry weight in decision-making processes.

