

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE COMMUNICATION

January 24, 2001

TO: Russell J. Harding, Director
FROM: Lynn Y. Buhl, Director of the Southeast Offices
SUBJECT: Community Outreach Process Improvement



Since US EPA released its "Draft Interim Guidelines for Investigating Title VI Administrative Complaints" in February 1998, DEQ has struggled with whether or how to adjust our environmental permitting programs to prevent conditions giving rise to Title VI complaints. The Workgroup convened by DEQ and the City of Detroit issued a report in October 1999 that strongly emphasized the role of local government and the importance of community outreach in our permitting process. Rather than design a "fix" for all programs, I asked each division to design improvements to its processes. The responses were mixed. Therefore, I drafted a model community outreach plan for each division to consider and possibly modify for consistency with their enabling statutes.

The underlying premise to this approach is that public participation should occur much earlier in the permitting process. We believe local government is an important player in this discussion, for two major reasons. First, it has authority over issues often brought up by concerned citizens, such as noise, traffic and zoning. Second, it is a potential source of information to the DEQ on any particular characteristics of the community that may influence a permit review. By waiting until the end of our permit review process to conduct a public meeting, we may be missing opportunities for concerns to be identified and eliminated. By waiting until the end of the permit review process, we create the impression to the local community that the permit is a "done deal". Instead, our process should foster outreach to the local community early enough so that their concerns can be identified, discussed and hopefully accommodated as part of the application process. In addition, community outreach can be an opportunity to educate the public on what the permit application review involves and how it protects their health. It is also an opportunity to foster better communication between the permit applicant and its neighbors.

I also attach a table that compares our existing programs to the draft model.

Once you have reviewed and commented on this, I propose circulating it to the EJ Workgroup for their comments.

Attachment

cc: Gary R. Hughes, Deputy Director
Arthur R. Nash Jr., Deputy Director

MODEL COMMUNITY OUTREACH PLAN

January 24, 2001

DRAFT

I. Prior to permit application

Proposed Change: As part of its permit application, applicant should be required to demonstrate it has:

- notified local government officials, and
- hosted a public meeting or an information session for interested or potentially impacted neighbors prior to or simultaneously with the submission of the application.

DEQ staff should attend as neutral third-party observers.

Rationale: The current process places too much of the burden of community interaction on the DEQ and not enough on the applicant. The result is that DEQ appears as the advocate when the company should occupy that role and accept its responsibility for ongoing community relations should the permit be granted.

Comments from Division Chiefs/Deputies: We have no statutory authority to require permit applicants to conduct this public outreach. Nonetheless, it is a good idea. Most applicants will not perform such outreach if it voluntary and some who wish to do so will need training in how to conduct such a meeting. We need to look for inducements, perhaps similar to those offered under the Clean Corporate Citizen program.

II. At the outset of the permit application review by DEQ staff

Proposed Changes: (1) A DEQ letter confirming receipt of the application would request information about the public meeting:

- What issues were raised?
- Who attended?
- Was the application modified as a result?
- Is local government aware of complaints that fall within its jurisdiction?

(2) DEQ should routinely contact the local unit of government; request any characteristics of the community that could be a factor in evaluating the potential impact of the permit decision.

(3) DEQ should consider establishing a Resource Group comprised of representatives of state and local health and environmental departments, community representatives, DEQ, the permit applicant. This group should be available to assist concerned citizens with technical details.

(4) DEQ should notify neighboring jurisdictions, if a potential impact could reach those areas.

- (5) Finally, DEQ should conduct an informal "information exchange" with interested members of the community (including local government officials and the applicant) before much time is devoted to review of the application. This would allow community members to raise questions with staff and make them aware of historical issues. This would not be a negotiating session.

Rationale: DEQ should hear about community problems earlier in the process, before staff has invested numerous hours in a permit review without knowing all the facts. Community representatives have indicated repeatedly that an informal session in a conference room is likely to be more productive than a formal hearing OR meeting in an auditorium. Clarification early on in the process of which factors DEQ can consider and which it cannot would improve credibility of the Department. The permit applicant has a greater stake in this process than does DEQ, and should be present to hear what issues exist. If advised early enough, perhaps those concerned over a non-DEQ issue will have the opportunity to raise it with the proper governmental authority or with the permit applicant. The EJ Workgroup's recommendations included the formation of a Resource Group.

Comments from Division Chiefs/Deputies: An important concern is the efficient use of limited Department resources. No one wants to plan heightened community outreach over a permit that is of little interest (and in theory, impact) to anyone. Several divisions asked what threshold factors would trigger enhanced efforts. Rather than relying on a demographic analysis, as proposed by US EPA, the following approach is suggested:

- If the proposed operation is "controversial". This assessment can be based on past experience. All divisions seemed able to identify the types of proposed facilities that have generated controversy in the past.
- If the proposed operation involves lead or mercury emissions, or perhaps other bioaccumulative toxics of concern in the Great Lakes, then staff should ask local health department specifically for information relating to pre-existing conditions. This would probably be most effectively accomplished by developing a questionnaire. In this instance, DEQ may want to prepare a "siting analysis" that reviews pathways of exposure and potential impacts.

The above suggestions apply when either of these triggers is met.

III. When application review is complete and permit is proposed

Proposed Changes: (1) Publish notice of public comment period more broadly than in local newspaper; also on Web page; consider notifications via Email to interested parties; postings in public library or post office; public service announcements on television or radio; mailings; church bulletins

- (2) A public meeting should be planned at the outset of the comment period, or at some point during the comment period when time remains for an individual to prepare and

submit comments based on what he or she heard at the public meeting (minimum two weeks).

Rationale: We need to avoid the appearance of a "done deal".

Comments from Division Chiefs/Deputies: This needs to be done in a way that doesn't delay permit approval and doesn't increase costs substantially.

IV. Format of public meeting

Proposed Changes: (1) The public meeting should begin with the applicant making an introductory presentation that describes the proposed operation. DEQ should then comment on the extent of its legal authority and on the scope of its review, followed by a summary of the issues. A fact sheet would be available. If a hearing is required, it should be combined with a public meeting. As is now done with our Department meetings across the state, staff should be available for informal discussions for one to two hours prior to a formal hearing where testimony is taken on the record.

(2) DEQ staff should be familiar with any issues relating to the same facility that are being handled by other divisions. The answer of "that aspect doesn't affect this permit" isn't satisfactory. It makes our review appear superficial.

Rationale: The applicant should have a larger role in the public meeting. DEQ should strive to portray its role as it really is: neutral third party interpreter of the law. The current process in which DEQ summarizes the proposed permit for the public causes us to be perceived as advocates.

Public hearings, if conducted without any opportunity before or after for interaction with the attendees, are stilted and cause staff to be viewed as "removed" or "insulated" from the public.

The current process has the hearing officer recite the department's legal authority at the outset. That information could be printed and made available as an appendix to a "plain English" fact sheet that is made available to meeting attendees as well as submitted for the record. Instead, the introductory remarks should be educational and focus on explaining what the statutory requirements include and don't include. In short, there are numerous issues that staff has considered in its permit review process. Those should be summarized, as the public understands very little of the specifics of the DEQ review and consequently doesn't believe we've thoroughly examined the issues. Our presentation should end with our identifying the particular issues of concern in this proposed permit and how DEQ dealt with them.

Comments from Division Chiefs/Deputies: There was support for the idea of creating a greater role for the permit applicant in any public outreach activities. Several expressed concern over the idea that division staff should be expected to be familiar with another division's issues with the same facility.

V. After the Public Meeting

Proposed Change: A tape should be maintained and a Responsiveness Summary prepared that answers the specific questions (which can be grouped, but should be quoted) posed by the audience. As much documentation as possible should be available for downloading from the DEQ web site.

Rationale: The current hearing process that doesn't call for staff to respond to questions and then doesn't generate a written response to the questions later makes the whole process appear superficial and pointless to the public.

Comments from Division Chiefs/Deputies: The original proposal suggested that a transcript of all meetings/hearings be maintained. Hearing a chorus of complaints over the cost, the proposal was modified to recommend that a tape be maintained.

Comparison of Existing Community Outreach Process for DEQ Permits
To Model Process
January 24, 2000

Current Process	Model Process
No requirement that applicant conduct public meeting, except federal MSW incinerator regulations.	Public meeting conducted by applicant before or when permit application is submitted to DEQ. DEQ should attend but not be part of presentation. Also applicant should be required to notify local unit of government. Letter confirming receipt of application would ask whether any issues were identified at the public meeting or have been brought to applicant's attention by local unit of government or anyone else.
AQD required to maintain list of all major source/modification permit applications; pertinent portions must be furnished and updated to Chairman of Board of County Commissioners.	DEQ should inform Mayor and County Commissioners of all permit applications within their jurisdiction upon receipt of those applications. DEQ's notification should request any pertinent information or issues from local government.
No technical expertise available from State to interested parties. Some Technical Assistance Grant funds from US EPA.	Resource Group comprised of health and environmental department staff, private sector technical experts, permit applicant available to explain permit details to citizens.
Staff generally available throughout process for meetings with interested parties.	Upon receipt of application and depending on outcome of applicant's public meeting, staff conducts information exchange with interested community representatives and local government officials.
If proposed facility known to be controversial, staff often does additional analysis; meets with groups –on case-by-case basis. AQD required to issue public notice and opportunity for public comment and meeting.	If proposed facility known to be controversial OR lead or mercury are among the proposed emissions, then staff communicates with local unit of government and local health department; inquires whether there are any pre-existing background conditions in community to consider. DEQ should develop a questionnaire that solicits useful information. DEQ prepares a siting analysis. A public meeting is scheduled with or without request.

Current Process	Model Process
Public notice with opportunity for public comment and hearing is required for major sources/modifications. Hearing conducted by DEQ after permit review completed, if requested.	Once DEQ review is complete, public notice of permit application, and DEQ conducts public meeting, if requested.
Formal notice of 30-day public comment period published in local newspaper and sent to mailing list; public hearing conducted by DEQ at the end of the public comment period.	Formal notice of comment period published in newspaper, on Web page, posted at public library? Post office? Public meeting conducted by DEQ should be at outset of the comment period.
Notice by DEQ to local government officials of public hearing; SWQD's goes to local unit of government, health department, drain commissioner and adjacent property owners.	Notice by DEQ to local unit of government, health department adjacent property owners and drain commission (if water resources impacted) of public meeting.
No requirement to notify neighboring communities (government or citizen).	If potential migration or impact beyond jurisdictional boundaries, notice to neighboring local unit of government and citizen group(s), if known
Formal hearing process discourages Q&A with staff; just records testimony. Staff available informally before and after.	Combined hearing/meeting format: staff officially available for 1-2 hours before hearing.
Recitation of legal authority as part of introduction/welcome to hearing.	Plain language explanation of scope of DEQ's review and authority. (i.e., what does staff look at?) Have fact sheets that list statutory/regulatory citations.
DEQ describes project, then opens forum for testimony.	Applicant presents proposal; DEQ highlights the issues and then opens the forum for testimony.
No publication of transcript or response; available upon request.	Response should be available on DEQ web page. Tape available upon request.
Responsiveness Summary: No consistency across divisions. Some draft the responsiveness summary by grouping questions into general issue categories rather than listing specific questions and answers.	Specific answers to specific questions should be drafted and available. (Questions can be grouped, but should be quoted).
Inadequate knowledge of other division involvement; if questioned, the response is often a cursory "that doesn't impact this permit review" without explanation.	Staff should be prepared to summarize other division issues and describe process by which those would be resolved in a different forum.