



DEPARTMENT OF ENVIRONMENTAL QUALITY
POLICY AND PROCEDURE

Subject: DEPARTMENT POLICY AND PROCEDURE, DIVISION POLICY AND PROCEDURE, AND ADMINISTRATIVE PROCEDURES ACT GUIDELINE DEVELOPMENT, REVISION, RESCISSION, AND USE
Number: 09-013

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Category: Internal/Administrative External/Non-Interpretive External/Interpretive

A Department of Environmental Quality (DEQ) Policy and Procedure cannot establish regulatory requirements for parties outside of the DEQ. This document provides direction to DEQ staff regarding the implementation of rules and laws administered by the DEQ. It is merely explanatory; does not affect the rights of, or procedures and practices available to, the public; and does not have the force and effect of law.

ISSUE:

The DEQ uses a policy and procedure to establish requirements for employees to follow and to provide guidance to the regulated community. The DEQ establishes the process by which a new department or division policy and procedure is developed and an existing policy and procedure is revised or rescinded.

DEFINITIONS:

APA guideline (from Section 3 of the Administrative Procedures Act, 1969 PA 306, as amended [APA], MCL 24.203): “‘Guideline’ means an agency statement or declaration of policy that the agency intends to follow, that does not have the force or effect of law, and that binds the agency but does not bind any other person.”

Department policy and procedure: A written statement approved by the DEQ Director, providing direction to multiple divisions and/or the regulated community regarding how the DEQ manages its programs and activities. The direction may be provided in various forms, from general principles guiding action to specific actions that employees take or refrain from taking under described circumstances. A department policy and procedure can consist of a policy, procedure, or a combination of policy and procedure.

Division: A DEQ Division or Office (for ease of reference)

Division policy and procedure: A written statement approved by a division chief or the appropriate section or unit chief that provides direction to DEQ employees and/or the regulated community relative to a specific regulatory program or function for which that division is responsible. This includes a policy and procedure that pertains to a program within a section or unit of the division. A division policy and procedure can consist of a policy, procedure, or a combination of policy and procedure.

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DRL: The Division Rules Liaison

Interpretation of a rule or statute: It is not always apparent when a policy and procedure interprets or applies a statute or rule. If the answer to any of the following questions is yes, then the policy and procedure does interpret a rule or statute:

- Does this policy and procedure interpret a given statute or administrative rule, or address an ambiguity or lack of clarity in a statute or rule, by providing factors not otherwise explicitly included in a statute or rule, that the DEQ will use to consider:
 - Whether statutory or administrative rule requirements apply?
 - Whether statutory or administrative rule requirements are met with respect to demonstrating compliance?
 - Whether statutory or administrative rule requirements are met with respect to:
 - ◇ A control technology or device?
 - ◇ A design?
 - ◇ A method?
 - ◇ A detection limit?
 - ◇ Materials?
 - ◇ A product?
 - Eligibility for or to award a benefit, such as a grant or loan?
 - What information is necessary to grant a permit or other approval?

The preceding list of questions is not necessarily inclusive of all content that could result in a policy and procedure interpreting a rule or statute. It is intended to serve as a tool for DEQ staff to use in making that decision.

JCAR: Michigan Legislature's [Joint Committee on Administrative Rules](#)

Policy: A course of action or guiding principle that provides direction to reach a goal

Procedure: A series of steps to be followed as a consistent and repetitive approach to accomplish an end result. Policies translated into action are procedures. A procedure describes who does what and when.

Rule (from Section 7 of the APA, MCL 24.207):

“Rule” means an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency. Rule does not include any of the following:

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....(g) An intergovernmental, interagency, or intra-agency memorandum, directive, or communication that does not affect the rights of, or procedures and practices available to, the public.

(h) A form with instructions, an interpretive statement, a guideline, an informational pamphlet, or other material that in itself does not have the force and effect of law but is merely explanatory....

RAO: DEQ's Regulatory Affairs Officer

POLICY:

I. Department and Division Policy and Procedures

Department and division policy and procedures are categorized by their intended audience and content. Below are the definitions of the three categories:

Table 1 – Categories of Department and Division Policy and Procedures		
Category	Definition	Examples
Internal/Administrative	Internal administrative matters that are intended solely for DEQ staff.	How to order business cards or reserve a motor pool vehicle.
External/Non-Interpretive	Policy and procedures that directly or indirectly affect those regulated by the DEQ but do not contain an interpretation of a rule or statute.	The process of voiding an air permit application.
External/Interpretive	Policy and procedures that directly or indirectly affect those regulated by the DEQ and contain an interpretation of a rule or statute.	The amount of waste stored in satellite accumulation areas.

It is not necessary to develop a policy and procedure to require or prohibit an action when the action is already required or prohibited by relevant authority. For example, it is not necessary to develop a department policy and procedure to prohibit employees from exceeding the posted speed limit while driving a state vehicle on state business, since such an action is already prohibited by a statute. Examples of superseding requirements include any statute, rule, union contract, or a Department of Technology, Management and Budget Administrative Guide policy.

The department or a division cannot develop a policy and procedure that would constitute a rule (see definition of rule, above). Only a rule binds parties outside the agency. Each policy and procedure will contain the following language printed at the beginning of the document:

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the DEQ. It is merely explanatory; does not affect the rights of, or procedures and practices available to, the public; and does not have the force and effect of law.

Educational publications are documents that restate information contained in rules, statutes, and department and division policy and procedures. Examples include fact sheets, guidebooks, and Frequently Asked Questions (FAQs). An educational publication shall not be used to create a new policy and procedure.

A. Elements of a Policy and Procedure

A policy and procedure should include a statement of the issue(s) to be addressed by the policy and procedure and may include any necessary definitions, a policy statement or statements, and any procedures. A policy statement can include a description of the actions that an employee may take, should take, must take or must refrain from taking and the circumstances under which the policy applies.

A division developing a policy and procedure that affects a program, policy, or employees of another division must consult with, and incorporate comments from, the affected division(s) prior to adoption of the policy and procedure. Any issue that cannot be agreed upon between involved divisions must be referred to the DEQ Deputy Director for resolution prior to adoption of the policy and procedure.

B. Process for Policy and Procedure Development, Revision, or Rescission

A department or division policy and procedure must be developed, revised, or rescinded using the following process:

- 1. Identification of Issue.** An issue for which a policy and procedure is appropriate may be identified by any DEQ employee. An employee may likewise identify a need for a policy and procedure revision or rescission. An employee should raise the issue (i.e., policy and procedure development, revision, or rescission) for approval through the employee's chain of command, starting with the employee's supervisor up to the DEQ Deputy Director if a department policy and procedure (or up to the manager in the employee's chain of command or other employee designated by the division chief, if a division policy and procedure).

The department or a division may make a nonsubstantive revision to an existing policy and procedure to reflect updated factual information, such as a change in the division's organizational structure, without review and approval as required in Paragraph 5, below.

- 2. Approval of Issue.** The DEQ Deputy Director approves the issue for department policy and procedure development, revision, or rescission. He or she may direct the originating division to draft a new or revised policy or otherwise assign responsibility for drafting the policy. In the case of a proposal to rescind a department policy and procedure, the division requesting rescission should prepare a briefing memorandum

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explaining the basis for rescinding the policy and procedure. The briefing memorandum should follow the format for an internal memorandum contained in the DEQ Correspondence Guidelines.

A manager in the employee's chain of command or other employee designated by the division chief shall approve an issue for a division policy and procedure development or revision prior to commencement of development or revision of the document. He or she shall assign responsibility for development of the draft new or revised policy and procedure as appropriate.

In considering an issue proposed for policy and procedure development, the approving manager or designated approving employee shall explicitly consider whether the issue would be better addressed through rulemaking or APA guideline as defined by the APA (see definition of APA guideline) and document his/her decision and rationale. The DEQ Deputy Director can be consulted in making this decision. The RAO is responsible for following the procedures for promulgating an APA guideline. See Section II, below, for details.

- 3. Stakeholder Involvement in the Development of Department and Division Policy and Procedures Categorized as External/Interpretive.** Concurrent with development of a new or revised policy and procedure, the approving manager or designated approving employee shall also prepare or assign a staff member to prepare a plan for stakeholder involvement in the development or revision of a department or division policy and procedure categorized as external/interpretive (see Table 1). Although not required, careful consideration should be given to stakeholder involvement for the development of a policy and procedure that does not involve rule or statute interpretations. If stakeholder involvement is sought for a policy and procedure categorized as external/non-interpretative, a stakeholder plan is not required.

The amount of stakeholder involvement will vary for each new policy and procedure or revision. The stakeholder involvement shall reflect the potential impacts of the policy and procedure on the regulated community and other parties and the level of stakeholder interest expected in the development or revision of the policy and procedure.

The plan for stakeholder involvement should address the following elements:

- a. Likely stakeholders, their level of interest in the document or revision, and their likely position on the issue;
- b. The stakeholder involvement method(s) proposed for use based on the assessment done in Item a; for a list and description of several potential

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stakeholder involvement methods, please see the Stakeholder Participation Matrix in Appendix C;

- c. The timetable for implementing the stakeholder involvement methods;
- d. The DEQ employee(s) responsible for implementing the methods identified; and
- e. How stakeholder input will be evaluated for incorporation into the draft document and how the stakeholders who provided the input will be informed of how their input influenced the final product.

Upon completion of an initial draft stakeholder involvement plan for a division policy and procedure, the approving manager or designated approving employee shall submit the draft stakeholder involvement plan to his/her division chief for approval through the chain of command. An approving manager or other designated approving employee shall obtain division chief approval of the stakeholder involvement plan prior to implementation of the plan. The division chief shall notify the DEQ Deputy Director of implementation of a stakeholder involvement plan.

Upon completion of an initial draft stakeholder involvement plan for a department policy and procedure, the DEQ Deputy Director shall approve the plan before implementation of the plan.

In unusual circumstances, a division chief or DEQ Deputy Director may except from stakeholder input a policy and procedure categorized as external/interpretive, if the exception is consistent with the overall purpose of this policy and procedure. If the division chief excepts a document from stakeholder input, he or she shall concurrently notify the DEQ Deputy Director of the exception. The following policy and procedure would not require a stakeholder plan:

- An enforcement policy and procedure that contains information about enforcement strategy or priorities, discussions of enforcement discretion, or information on penalty calculations.

- 4. Format for a New or Revised DEQ Policy and Procedure.** The department and division policy and procedures shall be developed or revised using the format, elements, and templates from Appendix A and Appendix B, respectively.

If a division policy and procedure would be better served in a different format, the division chief shall approve or deny the request. If approved, the template in Appendix B shall be completed and reference the alternative formatted document.

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A new or revised division policy and procedure shall be assigned a number using the division acronym as the prefix and the chronological number as the suffix (e.g., WRD - 01).

- 5. Review and Approval of Department and Division Policy and Procedures.** A division policy and procedure categorized as internal/administrative requires review and approval by the appropriate unit, section, or division chief, depending on the staff impacted. The approvals for a department policy and procedure categorized as internal/administrative or external/non-interpretive; a division policy and procedure categorized as external/non-interpretive; and division and department policy and procedures categorized as external/interpretive are explained below:
- a. Department Policy and Procedure Categorized as Internal/Administrative or External/Non-Interpretive.** This is a two-step approval process involving executive management and the DEQ Senior Management Team (SMT).

Review and Approval of Policy and Procedure Draft by Management. The originating division preparing the draft must submit the policy and procedure draft to the DEQ Deputy Director for review and approval. The draft must be accompanied by a briefing memorandum, using the format for an internal memorandum contained in the DEQ Correspondence Guidelines, briefly explaining the issue and summarizing the new or revised policy and procedure. Policy and procedure revision drafts should be done in a strike/cap or other format that clearly shows the proposed revisions.

Review and Comment on Policy and Procedure Draft by the SMT. If the DEQ Deputy Director approves the draft, the originating division should forward the draft, including the briefing memorandum, to the SMT for review and comment. The SMT should be allowed at least two weeks to review the proposal and provide comments to the originating division. The SMT members, at their discretion, may share the proposal with their staff members to obtain staff member comments. The originating division should collect the comments from the SMT and incorporate into the policy and procedure.

If the proposed revision is minor in nature, the originating division may submit a policy and procedure revision to the DEQ Deputy Director recommending no review by the SMT. An example of a "minor" revision includes a revision made for the sole purpose of updating the name of a position or organizational entity named in the policy or any other change that does not substantively change the policy statement(s) or direction given to staff or the regulated community in the policy and procedure. A revision proposed in this manner must be submitted to the DEQ Director through the DEQ Deputy Director with a cover briefing memorandum as described above, including an explanation of why review by the SMT is not needed.

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b. Division Policy and Procedure Categorized as External/Non-Interpretive.

The manager in the employee's chain of command or other employee designated by the division chief shall review the policy and procedure and forward to the division chief. The division chief shall approve a draft new policy and procedure and any draft revision to an existing policy and procedure.

c. Division Policy and Procedure Categorized as External/Interpretive. A draft new or revised division policy and procedure categorized as external/interpretive shall be approved by the division chief and DEQ Deputy Director before being placed into use by the DEQ staff. Below is a description of this two-step process:

Division Chief Approval. The division chief shall approve a draft new policy and procedure and any draft substantive revision to an existing policy and procedure, in consultation with appropriate division management and the management of other affected divisions, prior to requesting final approval by the DEQ Deputy Director.

The division chief shall determine, in consultation with division management, whether Department of Attorney General (DAG) review and approval of the draft policy and procedure is necessary and will obtain such review and approval in the event it is deemed necessary before sending the draft policy and procedure to the DEQ Deputy Director for final approval.

The division chief shall review the determination regarding the need for rulemaking or APA guideline made by the approving manager or authorized employee in paragraph B.2. and either affirm or edit the determination before sending the draft policy and procedure to the DEQ Deputy Director for final approval.

DEQ Deputy Director Approval. A draft new or revised policy and procedure sent to the DEQ Deputy Director for approval shall be accompanied by a briefing memorandum signed by the division chief, using the internal memorandum format contained in the DEQ Correspondence Guidelines. The briefing memorandum shall:

- Succinctly state the issue that the policy and procedure addresses and summarize the new or revised policy and procedure;
- Summarize any DAG reviews, reviews by other DEQ divisions, the external/stakeholder notifications, and input sought and received if applicable;
- Summarize how or if input was incorporated into the final version of the policy and procedure;
- Identify any unresolved stakeholder issues;

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- Include documentation of results of the division chief's review of the need for rulemaking or APA guideline conducted (see above), including the rationale for the division chief's determination; and
- Use a strike/cap or other format that clearly shows the proposed revisions.

d. Department Policy and Procedure Categorized as External/Interpretive.

This is a two-step approval process involving executive management and the SMT, as follows:

Review and Approval of Policy and Procedure Draft by Management. The originating division preparing the draft must submit the policy and procedure draft to the DEQ Deputy Director for review and approval. The draft must be accompanied by a briefing memorandum, using the format for an internal memorandum contained in the DEQ Correspondence Guidelines, briefly explaining the issue, summarizing the new or revised policy and procedure, and addressing the six bullets found in paragraph B.5.c.

The originating division preparing the draft shall determine whether DAG review and approval of the draft policy and procedure is necessary and will obtain such review and approval in the event it is deemed necessary before sending the draft policy and procedure to the DEQ Deputy Director for final approval.

The originating division preparing the draft shall review the determination regarding the need for rulemaking or APA guideline made by the approving manager or authorized employee in paragraph B.2. and either affirm or edit the determination before sending the draft policy and procedure to the DEQ Deputy Director for final approval.

Review and Comment on Policy and Procedure Draft by SMT. If the DEQ Deputy Director approves the draft or proposal, the originating division should forward the proposal, including the briefing memorandum, to the SMT for review and comment. The SMT should be allowed at least two weeks to review the proposal and provide comments to the originating division. The SMT members, at their discretion, may share the proposal with their staff members to obtain staff member comments. The originating division should collect the comments from the SMT and incorporate them into the policy and procedure.

- 6. Use of Policy and Procedures.** The presumptions and directions set forth in a policy and procedure are rebuttable and do not have the force of law unless they become terms of an enforceable order. These presumptions may be rebutted informally through the DEQ chain of command (see paragraph B.7., below).

A DEQ employee shall not cite a policy and procedure as the basis for a compliance or enforcement action.

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A DEQ employee shall not apply changes to a policy and procedure retroactively by reconsidering regulatory decisions made under the original policy and procedure unless the underlying statute or rule that is currently applicable has changed since the original decision.

When DEQ staff are aware that someone is undertaking an action that relies on guidance that is undergoing revision, they shall discuss the impending change with the affected party and work with that party to determine the most appropriate course of action.

To the extent that a policy and procedure interprets a rule, and that interpretation has been consistently applied for a period of time, the DEQ should consider updating the rule to directly incorporate the interpretation at the next opportunity.

- 7. Informal Appeal of DEQ Interpretation of Statute or Rule in a Policy and Procedure.** A DEQ employee applying a policy and procedure shall invite a person who expresses concern about that employee's application of a policy and procedure to express his/her concern to the employee's division chief or other employee designated by the division chief as a means of informal appeal of the DEQ's interpretation of the statute or rule. The division chief or designated employee shall review the person's concern.

If the division chief or designated employee finds that the person's concern has merit, he/she shall contact the person who expressed concern to discuss alternative(s) for demonstrating that statutory or rule requirements have been met and identify a mutually agreeable alternative.

If the division chief or designated employee does not agree that the person's concern has merit, the division chief or designated employee shall elevate the concern through the chain of command for review until the person is satisfied, or until the concern has been raised to the DEQ Deputy Director, whichever comes first.

- 8. Frequency of Review.** A policy and procedure should be reviewed and revised within at least five years from its creation or last revision date by the division or appointed person who authored the document.
- 9. Staff Training in Use of a Policy and Procedure.** Division management are encouraged to train staff members in the purpose and appropriate use of a new or revised division policy and procedure as it becomes effective. Each DEQ division should inform affected parties of the content and intended use of a new or revised policy and procedure and, to the extent practicable, provide outreach and training to affected parties. The RAO has the training responsibilities for department policy and procedures.

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10. Publication and Maintenance of Policy and Procedures. Once approved by the DEQ Director, the original, signed copy of the department policy and procedure will be maintained on file by the RAO, who will also announce adoption of the policy and procedure to all DEQ employees by means of an e-mail. Department policy and procedures categorized as internal/administrative will be posted on the DEQ Intranet. All other department policy and procedures will be posted on the DEQ's Policy and Procedure Internet Web site. All postings will be coordinated by the RAO.

All division policy and procedures categorized as external/non-interpretive or external/interpretive shall be posted on the DEQ's Policy and Procedure Web site by the appropriate division staff.

II. APA Guidelines

A. The [APA](#) gives departments the authority to promulgate guidelines. APA guidelines go through a public comment period and are published in the *Michigan Register*; therefore, this policy promulgation approach should be used for the more complex policy decisions or those policy and procedures required by rule or statute. This decision point is explained in Section I, paragraph B.2. Below are the APA guideline promulgation procedures. The forms identified in the procedure, below, are found on the Office of Regulatory Reinvention's Web site. Go to www.michigan.gov/orr and select "The Rulemaking Process."

Step	Who	Does What
A1.	Division	DEQ staff submits the proposed APA guideline using a format approved by the RAO and the completed " Notice of Proposed Guideline " through the division's chain of command to the division chief. The process for creating the draft guideline shall follow the process explained in Section I, paragraphs B.1. through B.5.
A2.	Division Chief	Reviews the proposed guideline and Notice of Proposed Guideline and informally discusses and updates the DEQ Deputy Director. A. If the proposed guideline is approved, notifies the DRL to proceed with guideline promulgation. B. If the proposed guideline is not approved, the guideline and Notice of Proposed Guideline is returned to the DRL with an explanation. Return to Step A1.
A3.	DRL	The DRL submits an electronic copy of the guideline and Notice of Proposed Guideline to the RAO.

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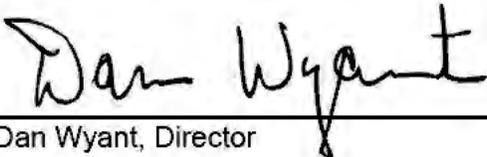
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Step	Who	Does What
A4.	RAO	Mails or e-mails a copy of the Notice of Proposed Guideline to all persons who have requested "advance notice of proposed action that may affect the person." Posts the Notice of Proposed Guideline and proposed guideline on the DEQ's Policy and Procedure Web site.
A5.	RAO	Submits the Notice of Proposed Guideline electronically to the ORR.
A6.	Division	Accepts public comments for at least 35 days after the Notice of Proposed Guideline appears in the <i>Michigan Register</i> . Reviews the public comments and makes any changes to the guideline in response. Sends the final guideline to the RAO.
A7.	RAO	Mails or e-mails a copy of the final guideline to all persons who have, in writing, requested "advance notice of proposed action that may affect the person." Posts final APA guideline on the DEQ Policy and Procedure Web site. Electronically submits a copy of the final guideline to the ORR.
A8.	ORR	Sends electronic copy to the JCAR. Publishes the final Notice of Adopted Guideline in the <i>Michigan Register</i> .

Approved:



Dan Wyant, Director

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Step	Who	Does What

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Who	Does What

REFERENCES: [if applicable]

APPENDICES: [if applicable and as needed]

Can include (but not limited to):

- Forms
- Questions and Answers
- Checklists
- Contact Lists
- Stakeholder Lists

DIVISION/SECTION/UNIT CHIEF APPROVAL:

, Chief

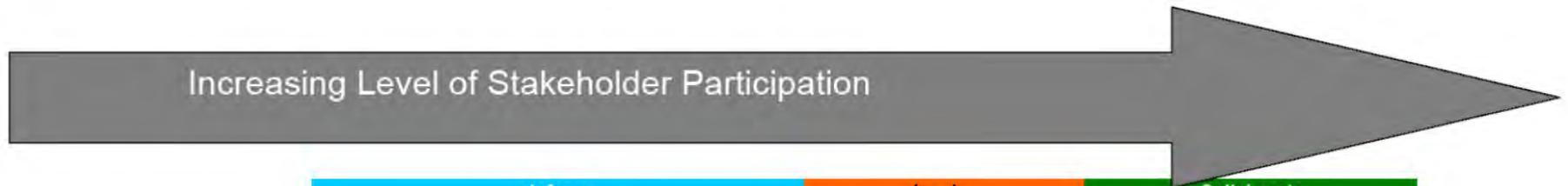
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DEPUTY DIRECTOR APPROVAL: [if External/Interpretive]

Jim Sygo, Deputy Director

Date

Appendix C



		Inform	Involve				Collaborate			
Stakeholder Participation Goal		To provide stakeholders with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions	To work directly with the stakeholder throughout the process to ensure that stakeholder concerns and aspirations are consistently understood and considered				To partner with the stakeholders in each aspect of the decision including the development of alternatives and the identification of the preferred solution			
Promise to the Stakeholders		We will keep you informed.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how stakeholder input influenced the decision				We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible			
Stakeholder Involvement Method	Key Performance Measures	Will it enhance the stakeholder's understanding of the process and/or topic of discussion?	Will it help identify problems?	Will it help identify solutions and/or solve a problem?	Will it help depolarize an issue?	Is it intended to achieve consensus?	Will it provide feedback loop to inform stakeholders of agency decision and basis for decision (e.g. transparency)	Will it provide for feedback on the effectiveness of the process?	Will it enhance the stakeholder's trust of the agency?	
Mass Mailing		Yes	Maybe*	Maybe*	No	No	Maybe*	Maybe*	No	
E-mail Distribution		Yes	Maybe*	Maybe*	No	No	Maybe*	Maybe*	No	
Posting on DEQ Web Page		Yes	No	No	No	No	No	No	No	
Posting on Social Networking Sites		Yes	Yes	Maybe*	Probably Not	No	Maybe*	Maybe*	No	
Present Draft Document to Standing Advisory Group		Yes	Yes	Yes	Maybe	Maybe	Yes	No	Maybe	
Present Draft Document to Ad Hoc Advisory Group		Yes	Yes	Yes	Maybe	Maybe	Yes	No	Maybe	
Stakeholder Participation in Drafting Document		Yes	Yes	Yes	Yes	Yes	Yes	Maybe**	Yes	

* If a feedback loop mechanism (e.g., asking for comments & providing contact person info) is designed into the process.

**A survey of the stakeholders has to be included at the conclusion of the stakeholder process.

This matrix is adapted from the International Association of Public Participation (IAP2) matrix. For more information, please visit: http://www.iap2.org/associations/4748/files/IAP2%20Spectrum_vertical.pdf