

MDEQ Adopts New Public Participation Process

On April 10, 2002, the Michigan Department of Environmental Quality (MDEQ) adopted a new “policy and procedure” dealing with public participation on so-called “controversial permitting actions.” The new policy is significant because it will place important new, yet informal, requirements on permit applications.

According to the MDEQ, the intent of the new policy, entitled ***Public Participation & Community Outreach for Controversial Department Actions***, is to shift the majority of the responsibility for public education and participation to the permit applicant, even though there are few statutory or regulatory requirements that actually require the applicant to provide information to the public that address issues raised. In response, the MDEQ says that the “current process places the burden of involving the public and addressing its concerns on the DEQ instead of the permit applicant,” and then “the public perceives the Agency as an advocate for the proposal rather than an objective technical resource and an impartial decision-maker administering the law.”

The detailed policy process is to be applied to projects that fall into three categories: (1) the type of facility is controversial; (2) the proposal includes a dramatic change in land use; or (3) the project involves pollutants of concern in Michigan. Examples of such projects, which are detailed in the full policy report, include: incinerators/combustors (air permits), mobile home parks (wastewater discharge permits), waste disposal facilities and projects involving polychlorinated biphenyls (PCBs), dioxin, mercury, and lead.

The new policy will be utilized at the discretion of the Division Chief responsible for the permit or action at issue. Early in the permit process, the applicant would be “persuaded” to conduct an informational meeting, or MDEQ would schedule an informal meeting. The

applicant would be encouraged to provide notice of the project and would be “requested” by MDEQ to “work with neighboring communities and local governments to address the community concerns and interests.” The policy also indicates that the applicant will be requested to make detailed, easily understood information available for the public’s access in making informed decisions regarding the process.

The policy also describes a new, less formal “open house” or “public forum” meeting procedure. This would consist of a number of booths or displays set up around the perimeter of a meeting room, with MDEQ staff available to answer questions and to direct the public to the appropriate location or person to have their concerns addressed. Preferably the applicant will attend and be available to answer questions about the proposal. Interested parties may also submit formal comments on the record at the meeting.

Finally, MDEQ says that it will strive to improve the public participation process in order to achieve meaningful public involvement and comment, while still meeting the legal requirements under the Administrative Procedures Act and the applicable enabling statute. The policy is not intended for all MDEQ decision-making actions, and does not apply to rulemaking.

The full text of the new policy is available on the internet at <http://www.ecobizport.com/MDEQ09-007.html>. For general questions about the policy, contact MDEQ’s Ken Silfven at (517) 241-7397.