

US EPA ARCHIVE DOCUMENT

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6482-1]

Review of Environmental Protection Agency Public Participation Policies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: The EPA Administrator, in EPA Report 100-R-99-006, dated July 1999, entitled “Aiming for Excellence - Actions to Encourage Stewardship and Accelerate Environmental Progress, Report of the EPA Innovations Task Force,” pledges the Agency to, “Evaluate and update EPA’s public participation requirements. We will assess how well our regulations and policies ensure public participation in decision making. We will report on what we find and develop an action plan to upgrade requirements and fill gaps.” EPA has convened an internal workgroup to conduct a review of EPA public participation regulations and policies in accordance with this pledge.

The workgroup is scheduled to give a report to the Administrator by January 31, 2000, which will contain an inventory of EPA regulations and policies regarding public participation and an initial assessment of how well these regulations and policies ensure public participation in decision making. The report will also contain an action plan to update requirements and fill gaps.

One of the primary policies being reviewed is the Final EPA Policy on Public Participation (Federal Register/Vol. 46/no. 12/Monday, January 19, 1981), herein referred to as the 1981 Policy. The statements in the 1981 Policy have been the basis for many of EPA's public participation requirements in the nineteen years since its initial publication.

The workgroup is seeking public comment on two issues at this time:

1. What changes need to be made to the 1981 Policy on Public Participation ?

(1a) What is working well, and how does the experience of the past nineteen years suggest the need for improvements in the general procedures for involving the public in EPA programs and decisions?

2. How can we further engage the public in the effort to revise the 1981 Policy and other EPA regulations and policies which may need to be updated in regard to public participation?

(2a) What are the suggested elements of a strategy to further engage the public in updating requirements and filling gaps in EPA's regulations and policies concerning public participation?

Comments received within the 30-day period designated in this notice will be taken under consideration as the workgroup writes the initial report to the Administrator in January 2000. Comments received after the 30-day period will be reviewed as the Agency further develops and implements an action plan to update the 1981 policy and, as necessary, other regulations and policies.

DATES: Comments must be submitted on or before December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Deborah Dalton at EPA by fax at (202) 260-5478, by email at: stakeholders@epa.gov . The 1981 Policy on Public Participation, without the responsiveness summary and preamble, has been attached to this FR Notice. You may also review the all inclusive 1981 Policy, as well as other information on EPA stakeholder involvement activities on EPA's website: www.epa.gov/stakeholders . The Report of the EPA Innovations Task Force may be reviewed on EPA's website: www.epa.gov/reinvent/taskforce/report99

SUPPLEMENTARY INFORMATION:

Title: Review of EPA Public Participation Regulations and Policies

Abstract: The EPA's Regulatory Steering Committee has convened an internal workgroup to conduct a review of EPA public participation regulations and policies in accordance with a pledge made by the EPA Administrator in EPA Report 100-R-99-006, dated July 1999, entitled "Aiming for Excellence - Actions to Encourage Stewardship and Accelerate Environmental Project, Report of the EPA Innovations Task Force." Action 9 of the Report reads: "Build leadership capacity in communities to participate in local environmental problem solving. Task 5 of Action 9 reads: "Evaluate and update EPA's public participation requirements. We will assess how well our regulations and policies ensure

public participation in decision making. We will report on what we find and develop an action plan to upgrade requirements and fill gaps.”

The workgroup is scheduled to give a report to the Administrator by January 31, 2000, which will contain an inventory of EPA regulations and policies regarding public participation and an initial assessment of how well these regulations and policies ensure public participation in decision making. The report will also contain an action plan to update requirements and fill gaps.

One of the primary policies being reviewed is the Final EPA Policy on Public Participation (Federal Register/Vol. 46/no. 12/Monday, January 19, 1981), herein referred to as the 1981 Policy. The purpose of this policy is to “strengthen EPA’s commitment to public participation and to establish uniform procedures for participation by the public in EPA’s decision-making process. This in turn will assist EPA in carrying out its mission, by giving a better understanding of the public’s viewpoints, concerns and preferences. It should also make the agency’s decisions more acceptable to those who are most concerned and affected by them.” The statements in the 1981 Policy have been the basis for many of EPA’s public participation requirements in the nineteen years since its initial publication.

Since 1981, EPA has made great strides in incorporating public participation in all facets of it’s work - from rulemaking to Superfund cleanups, program implementation, and permitting.

The workgroup views the 1981 Policy’s overall purpose and objectives as still generally appropriate, but it recognizes the need to update some of the specifics of the policy, e.g. to include the requirements

of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Negotiated Rulemaking Act, the Administrative Dispute Resolution Act, and Executive Order 12898 on Environmental Justice.

The workgroup will not actually update the policy by January 31, 2000, but will make general recommendations to the Administrator on the scope and timing of the update effort for the 1981 policy as well as other EPA regulations and policies. After the report is made to the Administrator in January 2000, the workgroup will address the changes to the 1981 policy in more detail and will be conducting a more intensive public participation effort to work on those changes. Specific EPA program offices may also be conducting processes to update their public participation policies.

The workgroup members feel strongly that it is essential for the public to have an opportunity to participate in the review of EPA's public participation regulations and policies. However, the short duration of the time available to present the initial report to the Administrator poses difficulties in obtaining meaningful participation in the review of a multitude of EPA regulations and policies. Therefore, the workgroup has decided to use the 1981 policy as the overarching statement of EPA's intentions and procedures.

The workgroup is seeking public comment on two issues at this time:

1. What changes need to be made to the 1981 Policy on Public Participation ?

(1a) What is working well, and how does the experience of the past nineteen years suggest the need for improvements in the general procedures for involving the public in EPA programs and decisions?

2. How can we further engage the public in the effort to revise the 1981 Policy and other EPA regulations and policies which may need to be updated in regard to public participation?

(2a) What are the suggested elements of a strategy to further engage the public in updating requirements and filling gaps in EPA's regulations and policies concerning public participation?

Comments received within the 30-day period designated in this notice will be taken under consideration as we write the initial report to the Administrator in January 2000. Comments received after the 30-day period will be reviewed as the Agency further develops and implements an action plan to update the 1981 policy and, as necessary, other regulations and policies.

Your comments are valuable to us and, while we have a short deadline for receiving them before we submit our report to the Administrator, we feel that your experiences and opinions will enrich both the initial report and subsequent action steps.

ATTACHMENT:

Final EPA Policy on Public Participation (1981)

This Policy addresses participation by the public in decision-making, rulemaking, and program implementation by the Environmental Protection Agency (EPA), and other governmental entities carrying out EPA programs. The term, “the public” as it is used here, means the people as a whole, the general population. There are a number of identifiable “segments of the public” who may have a particular interest or who may be affected one way or another by a given program or decision. In addition to private citizens, “the public” includes, among others, representatives or consumer, environmental, and minority groups; the business and industrial communities; trade, industrial, agricultural, and labor organizations; public health, scientific, and professional societies; civic associations; universities, educational, and governmental associations; and public officials, both elected and appointed.

“Public participation” is that part of the agency’s decision-making process that provides opportunity and encouragement for the public to express their views to the agency, and assures that the agency will give due consideration to public concerns, values, and preferences when decisions are made.

A. Scope

The requirements and procedures contained in this Policy apply to the Environmental Protection Agency and other governmental entities carrying out EPA programs (referred to herein as “agency”).

The activities covered by this Policy are:

EPA rulemaking, when regulations are classified as significant, (under terms of Executive Order 12044);

The administration of permit programs as delineated in applicable permit program regulations;

Program activities supported by EPA financial assistance (grants and cooperative agreements) to State and substate governments;

--The process leading to a determination of approval of State administration of a program in lieu of Federal administration;

--Major policy decisions, as determined by the Administrator, appropriate Associate Administrator, Regional Administrator, or Deputy Assistant Administrator, in view of EPA’s responsibility to involve the public in important decisions.

When covered activities are governed by EPA regulations or program guidance, the provisions of the Policy shall be included at appropriate points in these documents. Before those changes are made, the provisions of the existing regulations or program guidance shall govern.

B. Purpose

The purpose of this Policy is to strengthen EPA's commitment to public participation and establish uniform procedures for participation by the public in EPA's decision-making process. A strong policy and consistent procedures will make it easier for the public to become involved and affect the outcome of the agency's decisions.

This in turn will assist EPA in carrying out its mission, by giving a better understanding of the public's viewpoints, concerns, and preferences. It should also make the agency's decisions more acceptable to those who are most concerned and affected by them.

Agency officials will provide for, encourage, and assist participation by the public. Officials should strive to communicate with and listen to all sectors of the public. Where appropriate, this will require them to give extra encouragement and assistance to some sectors, such as minorities, that may have fewer opportunities or resources.

The Policy identifies those actions which are required and others that are discretionary, on the part of agency managers. The Policy assumes, however, that agency employees will strive to do more than the minimum required, and is not intended to create barriers to more substantial or more significant participation. The Policy recognizes the agency's need to set priorities for its use of resources, and

emphasizes participation by the public in decisions where options are available and alternatives must be weighed, or where substantial agreement is needed from the public if a program is to be carried out.

Public participation must begin early in the decision-making process and continue throughout the process as necessary. The agency must set forth options and alternatives beforehand, and seek the public's opinion on them. Merely conferring with the public after a decision is made does not achieve this purpose.

Agency officials must avoid advocacy and precommitment to any particular alternative prior to decision-making. The role of agency officials is to plan and conduct public participation activities that provide equal opportunity for all individuals and groups to be heard. Officials should actively seek to facilitate resolution of issues among disagreeing interests whenever possible.

Decision makers are aware that issues which are not resolved to the satisfaction of the concerned public may ultimately face time-consuming review. If the objectives of EPA's public participation program are achieved, delays to accommodate litigation should be reduced.

C. Objectives

In establishing a policy on public participation, EPA has the following objectives:

--To use all feasible means to create early and continuing opportunity for public participation in agency decisions;

--To promote the public's involvement in implementing environmental protection laws;

--To make sure that the public understands official programs and the implications of potential alternative courses of action;

--To solicit assistance from the public in identifying alternatives to be studied. And in selecting among alternatives considered;

--To keep the public informed about significant issues and changes in proposed programs or projects, as they arise;

--To create an equal and open access for the interested and affected parties to the regulatory process;

--To make sure that the government understands public goals and concerns, and is responsive to them;

--To demonstrate that the agency consults with interested or affected segments of the public and takes public viewpoints into consideration when decisions are made;

--To anticipate conflicts and encourage early discussions of differences among affected parties;

--To foster a spirit of mutual trust, confidence, and openness between public agencies and the public.

D. General Procedures for All Programs

Each Assistant Administrator, Office Director, or Regional Administrator shall determine forthcoming decisions or activities to which this Policy should be applied, and take the steps needed to assure that adequate public participation measures are developed and implemented.

To ensure effective public participation in any decision or activity, the agency must carry out five basic functions: Identification, Outreach, Dialogue, Assimilation, and Feedback.

1. *Identification.* It is necessary to identify groups or members of the public who may be interested in, or affected by, a forthcoming action. This may be done by a variety of means: developing a contact list of person and organization who may have expressed an interest in, may by the nature of their purposes or activities be affected by or have an interest in forthcoming activity; requesting from others in the agency or from key public groups, the names of interested and affected individuals to include; using questionnaires or surveys to find out levels of awareness; or by other means. If EPA is required to file an Environmental Impact Statement (EIS), the scoping process can be used to identify interested parties.

The responsible official(s) shall develop a contact list for each program or projects, and add to the list whenever members of the public request it. The list should be updated frequently, and it will be most useful if subdivided by category of interest or geographic area.

The contact list shall be used to send announcements of participation opportunities, notices of meetings, hearings, field trips and other events, notices of available reports and documents, and for identifying members of the public who may be considered for advisory group membership and other activities.

2. *Outreach.* The public can contribute effectively to agency programs only if it is provided with accurate, understandable, pertinent and timely information on issues and decisions. The agency shall make sure that adequate, timely information concerning a forthcoming action or decision reaches the public. The agency shall provide policy, program, and technical information at the earliest practical times, and at places easily accessible to interested and affected persons and organizations, so they can make informed and constructive contributions to decision-making. Information and educational programs shall be developed so that all levels of government and the public have an opportunity to become familiar with the issues and the technical data from which they emerge. Informational materials shall highlight significant issues that will be the subject of decision-making. Special efforts shall be made to summarize complex technical materials for the public.

a. *Methods.* The objective of the agency's public outreach program is to insure that the public understands the significance of the technical data so that rational public choices can be made. Outreach programs require the use of appropriate communication tools, and should be tailored to start at the public's level of familiarity with the subject.

The following, among other approaches, may be used for this purpose:

(1) publications, fact sheets, technical summaries, bibliographies;

(2) questionnaires, surveys, interviews;

(3) public service announcements, and news releases;

(4) educational activities carried out by public organizations.

b. *Content.* Outreach materials must include background information (e.g. statutory basis, rationale, or the triggering event of the action); a timetable of proposed actions; summaries of lengthy documents or technical material where relevant; a delineation of issues; alternative courses of action or tentative determination which the agency may have made; whether an EIS is, or will be, available; specific encouragement to stimulate active participation by the public; and the name of an individual to contact for further information.

Whenever possible, the social, economic, and environmental consequences of proposed decisions and alternatives should be clearly stated in outreach material. Technical evidence and research methodology should be explained. Summaries of technical documents should be footnoted to refer to the original data. Fact sheets, news releases, summaries, and similar publications may be used to provide notice of availability of materials and to facilitate public understanding of more complex documents, but should not be a substitute for public access to the complete documents.

c. *Notification.* The agency must notify all parties on the contact list and the media of opportunities to participate and provide appropriate information. As described in the first paragraph of Section 2.b. above. Printed legal notices are often required by program regulations, but do not substitute for the broader notice of the media and contact list required by this section.

d. *Timing.* Notification (above) must take place well enough in advance of the agency's action to permit the public to respond. Generally, it should take place not less than 30 days before the proposed action, or 45 days in the case of public hearings (exceptions in the case of public hearings are discussed under Dialogue, below).

Where complex issues or lengthy documents are presented for public comment, the comment period should allow enough time for interested parties to conduct their review. This period generally should be no less than 60 days. Where participation opportunities are to be provide in programs of

State, substate, and local governments supported by EPA financial assistance, notice shall be given by the recipient to the public within 45 days after award acceptance.

e. *Fees for Copying.* Whenever possible, the agency should provide copies of relevant documents, free of charge. Free copies may be reserved for private citizens and public interest organizations with limited funds. Any charges must be consistent with requirements under the Freedom of Information Act as set forth in 40 CFR part 2.

f. *Depositories.* The agency shall provide one or more central collections of documents, reports, studies, plans, etc. relating to controversial issues or significant decisions in a location or locations convenient to the public. Depository arrangements should be made when possible with public libraries and university libraries. Consideration must be given to accessibility, travel time, parking, transit, and to availability during off-work hours. Copying facilities, at reasonable charges, should be available at depositories.

3. *Dialogue.* There must be dialogue between officials responsible for the forthcoming action or decision and the interested and affected members of the public. This involves exchange of views and open exploration of issues, alternatives, and consequences.

Public consultation must be preceded by timely distribution of information and must occur sufficiently in advance of decision-making to make sure that the public's options are not foreclosed, and

to permit response to public views prior to agency action. Opportunities for dialogue shall be provided at times and places which, to the maximum extent feasible. Facilitate attendance or participation by the public. Whenever possible, public meetings should be held during non-work hours, such as evenings or weekends, and at locations accessible to public transportation.

Dialogue may take a variety of forms, depending upon the issues to be addressed and the public whose involvement is sought. Public hearings are the most familiar forum for dialogue and often are legally required, but their use should not serve as the only forum for citizen input. When used, hearings should be at the end of a process that has given the public earlier opportunity for becoming informed and involved. Often other techniques may serve a broader purpose:

- *Review groups or ad hoc committees* may confer on the development of a policy or written materials;
- *Workshops* may be used to discuss the consequences of various alternatives, or to negotiate differences among diverse parties;
- *Conferences* provide an important way to develop consensus for changing a program or the momentum to undertake new directions;
- *Task forces* can give concentrated and experienced attention to an issue;

- *Personal conversations and personal correspondence* gives the individualized attention that some issues require;

- *Meetings* offer a good opportunity for diverse individuals and groups to express their questions or preferences;

- *A series of meetings* may be the best way to address a long and complex agenda of topics;

- *Toll-free lines* can aid dialogue, especially when many questions can be anticipated or time is short;

- *A hearing panel* compiled of persons from representative public groups may be used in non-adjudicatory hearings to listen to presentations and review the hearing summary.

This list is not exhaustive, but it indicates the importance for program managers in being flexible and choosing the right techniques for the right occasions.

a. *Requirements for public hearings.*

(1) Timing of Notice. Notices must be well publicized and mailed to all interested and affected parties on the contact list (see 1. above) and to the media at least 45 days prior to the date of the

hearing. However, when the Assistant Administrator or Regional Administrator find that no review of substantial documents is necessary for effective participation and there are no complex or controversial matters to be addressed, the notice requirement may be reduced to no less than 30 days in advance of the hearing. Additionally, in permit programs, notice requirements will be governed by permit regulations and will be no less than 30 days. Notice for EIS's are covered by EIS regulation which calls for a 45-day review period, with an optional 15-day extension. Notice of the EIS hearing is generally contained in the Draft EIS. Hearings on EIS's are usually held before the end of the EIS review period, but no earlier than 30 days after the EIS notice. Assistant Administrators or Regional Administrators may further reduce or waive the requirements for advance notice of a hearing in emergency situations where there is imminent danger to public health and safety or in situations where there is a legally mandated timetable. Assistant Administrators may also reduce this requirement if they determine that all affected parties would benefit from a shorter time period.

Members of the public who object to a waiver may appeal to the Administrator, stating their reasons in detail.

(2) Content of Notice. The notice must identify the matters to be discussed at the hearing and must include or be accompanied by: (a) a discussion of alternatives the public is being asked to comment upon and the agency's tentative conclusions on major issues (if any); (b) information on the availability of an EIS and bibliography of other relevant materials (if appropriate), (c) procedures and

contact for obtaining further information; and (d) information which the agency particularly solicits from the public.

(3) Provision of Information. All reports, EIS's and other documents and data relevant to the discussions at the public hearings must be available to the public on request after the notice, as soon as they become available to agency staff. Background information should be provided no later than 30 days prior to the hearing.

(4) Conduct of Hearing. The agency conducting the hearing must inform the audience of the issues involved in the decision to be made, the considerations the agency will take into account under law and regulations, the agency's tentative conclusions (if any), and the information which the agency particularly solicits from the public. Whenever possible, the hearing room should be set up informally. The agency should allocate time for presentations, questions and answers, as well as formal commentary on the record. When needed, a pre-hearing meeting to discuss the issues should be held. Procedures must not inhibit free expression of views. When the subject of a hearing addresses conditions in a specific geographic area, the hearing itself should be held in that general area.

(5) Record of Hearing. The hearing record must be left open for at least ten days to receive additional comment, including any from those unable to attend in person, and may be kept open longer, at the discretion of the hearing officer. The agency must prepare a transcript or record of the hearing itself and add additional comments to the complete record of the proceeding. This must be available

for public inspection and copying at cost at convenient locations. Alternatively, copies shall be provided free. If tapes are used, they should be available for use and copying on conventional equipment. When a Responsiveness Summary (see Assimilation below) is prepared after a hearing, it must be provided to those who testified at or attended the hearing, as well as anyone who requests it.

b. *Requirements for advisory groups.* Formation of an advisory group is one of the methods that can be chosen to gain sustained advice from a representative group of citizens.

The primary function of an advisory group is to assist elected or appointed officials by making recommendations to them on issues which the decision making body and the advisory group consider relevant. These issues may include policy development, project alternatives, financial assistance applications, work plans, major contracts, interagency agreements, budget submissions, among others. Advisory groups can provide a forum for addressing issues, promote constructive dialogue among the various interests represented on the group, and enhance community understanding of the agency's action.

(1) Requirements for Federal EPA Advisory Committees: When EPA establishes an advisory group, provisions of the Federal Advisory Committee Act (Public Law 92-463) and General Service Administration (GSA) Regulations on Federal Advisory Committee Management must be followed.

(2) Requirements for State and Substate and Local Advisory Committees: (Explanatory Note: The following guidelines do not apply to advisory committees, as defined by the Federal Advisory Committee Act, which are established or utilized by EPA.) In instances where regulations, program guidance, or the public participation work plans of State, substate, or local agencies, call for advisory groups, the following special requirements will apply:

(A) Composition of Advisory Groups. Agencies must try to constitute advisory groups so that the membership includes the major affected parties, reflects a balance of interests, and consists of substantially equivalent proportions of the following groups:

- Private citizens. This portion of the advisory group would not include anyone who is likely to incur a financial gain or loss greater than that of an average homeowner, taxpayer, or consumer as a result of any action that is likely to be taken by the managing agency;

- Individual citizens or representatives of organizations that have substantial economic interests in the plan or project;

- Federal, State, local, and tribal officials. These may be both elected and policy-level appointed officials, so long as the elected officials do not come from the decision-making body the group is advising;

- Representatives of public interest groups. A “public interest group” is an organization which has a general civic, social, recreational, environmental, or public health perspective in the area, and which does not directly reflect the economic interests of its membership.

Generally, where an activity has a particular geographic focus, the advisory group should be composed of persons from that geographic area, unless issues involved are of wider application.

Where problems in meeting the membership composition arise, the agency should request advice and assistance from EPA or the State in the case of a delegated program. EPA shall review the agency’s efforts to comply, and approve the advisory group composition, or, if the agency’s efforts were inadequate, require additional actions.

(b) Resources for Advisory Groups. To the extent possible, agencies shall identify professional and clerical staff time which the advisory group may depend upon for assistance, and provide the advisory group with an operating budget which may be used for mailing, duplicating, technical assistance, and other purposes the advisory group and the agency have agreed upon. The agency should establish a system for reimbursing advisory group members for reasonable out-of-pocket expenses that relate to their participation on the advisory group.

(3) Advisory Group Recommendations: Recommendations, including minority reports and the minutes of all meetings of an advisory group, are matters of public information. As soon as these become available to agency staff, the agency must provide them to the public on request and distribute

them to relevant public agencies. Advisory groups may communicate with EPA or the public as needed, or request EPA to perform an evaluation of the assisted agency's compliance with the requirements of this part.

4. *Assimilation.* The heart of public participation lies in the degree to which it informs and influences final agency decisions.

Assimilating public viewpoints and preferences into final conclusions involves examining and analyzing public comments, considering how to incorporate them into final program decisions, and making or modifying decisions according to carefully considered public views. The agency must then demonstrate, in its decisions and actions, that it has understood and fully considered public concerns. Assimilation of public views must include the following three elements:

a. *Documentation.* The agency must briefly and clearly document consideration of the public's views in Responsiveness Summaries, regulatory preambles, EIS's or other appropriate forms. This should be done at key decision points specified in program guidance or in work for public participation.

b. *Content.* Each Responsiveness Summary (or similar document) must:

—explain briefly the type of public participation activity that was conducted;

- identify or summarize those who participated and their affiliation;
- describe the matters on which the public was consulted;
- summarize the public’s views, important comments, criticisms and suggestions;
- disclose the agency’s logic in developing decisions; and
- set forth the agency’s specific responses, in terms of modifying the proposed action, or explaining why the agency rejected proposals made by the public.

c. *Use.* The agency must use Responsiveness Summaries in its decision-making.

In addition, final Responsiveness Summaries that are prepared by an agency receiving financial assistance from EPA must also include that agency’s (and where applicable, its advisory group’s) evaluation of its public participation program.

5. *Feedback.* The agency must provide feedback to participants and interested parties concerning the outcome of the public’s involvement. Feedback may be in the form of personal letters or phone calls, if the number of participants is small. Alternatively, the agency may mail a Responsiveness Summary to those on the contact list, or may publish it.

a. *Content.* The feedback that the agency gives must include a statement of the action that was taken, and must indicate the effect the public's comments had on that action.

b. *Availability.* Agency officials must take the initiative in giving appropriate feedback, and must assure that all public participants in a particular activity are provided that feedback. As Responsiveness Summaries are prepared, their availability should be announced to the public. When regulations are developed, reprints of Preambles and final regulations must be provided to all who commented.

E. Work Plans

A work plan is a written document used for planning a public participation program. It may be an element of regulatory development plans or program plans. Each work plan should include the following elements: objectives, schedules, techniques, audiences and resources requirements. Work plans should be completed on both a program and project level or for each activity identified under Scope of the Policy.

Public participation work plans, undertaken by EPA or by applicants for EPA financial assistance, shall set forth, at a minimum:

1. Key decisions subject to public participation;

2. Staff contacts and budget resources to be allocated to public participation;
3. Segments of the public targeted for involvement;
4. Proposed schedule for public participation activities to impact program decisions;
5. Mechanism to apply the five basic functions - Identification, Outreach, Dialogue, Assimilation, and Feedback-outlined in section D of this Policy.

Reasonable costs of public participation incurred by assisted agencies, including advisory group expenses, and identified in an approved public participation work plan, will be eligible for financial assistance, subject to statutory or regulatory limitations.

Assistant Administrators and Regional Administrators will ensure that program work plans are developed in a timely manner for use in the annual budget planning process. Work plans will be reviewed by the Special Assistant for Public Participation, who will work with program and regional managers to ensure that work plans adequately carry out this Policy. Work plans may be used as public information documents.

F. Assistance to the Public

EPA recognizes that responsible participation by the various elements of the public in some of the highly technical and complex issues addressed by the agency requires substantial commitments of time, study, research analysis, and discussion. While the Agency needs the perspectives and ideas that citizens bring, it cannot always expect the public to contribute its efforts on a voluntary basis.

Assistant Administrators, office Directors, and Regional Administrators can provide funds to outside organizations and individuals for public participation activities which they, as EPA managers, deem appropriate and essential for achieving program goals, and which clearly do not involve rulemaking or adjudicative activities.

Participation funding Criteria-Any financial assistance awarded by the Agency for non-regulatory or non-adjudicatory participation should be based on the following criteria:

- (1) whether the activity proposed will further the objectives of this Policy:
- (2) whether the activity proposed will result in the participation of interests not adequately represented;
- (3) whether the applicant does not otherwise have adequate resources to participate; and
- (4) whether the applicant is qualified to accomplish the work.

These are the primary tests for public participation financial assistance. From among those who meet these tests, the Agency will make special efforts to provide assistance to groups who may have had fewer opportunities or insufficient resources to participate.

G. Authority and Responsibility

Public participation has an integral part in the accomplishment of any program. It should routinely be included in decision-making and not be treated as an independent function. Managers shall assure that personnel are properly trained, and that funding needs are incorporated in their specific budgets.

Responsibility and accountability for the adequacy of public participation programs belong primarily to the Regional Administrators and the Assistant Administrators, under the overall direction of the Administrator.

1. *The Administrator* maintains overall direction and responsibility for the Agency's public participation activities. Specifically, the Administrator, aided by the Special Assistant for Public Participation, will:

- (a) establish policy direction and guidance for all EPA public participation programs;

(b) review public participation program work plans, including resource allocation;

(c) coordinate public participation funding to outside groups to ensure the most economical expenditures;

(d) provide technical advice and assistance as appropriate;

(e) develop guidance and training needed to ensure that program personnel are equipped to implement the Policy;

(f) provide incentives to agency personnel to ensure commitment and competence; and

(g) evaluate at least annually the adequacy of public participation activities conducted under this Policy, and the appropriateness and results of public participation expenditures.

2. *Assistant Administrators* have the following responsibilities:

(a) identify and address those activities where application of this Policy is require;

(b) identify and address those forthcoming major policy decisions where the Policy should be applied;

(c) ensure that program work plans are developed annually to provide for adequate public participation in the above decisions and activities;

(d) implement approved work plans for public information and public participation activities;

(e) ensure that, as regulations for the programs cited in the Appendix of the Policy are amended, they incorporate the Policy's provisions;

(f) evaluate the appropriateness of public participation expenditures and activities under their jurisdiction, revising and improving them as necessary;

(g) encourage coordination of public participation activities;

(h) provide guidance and assistance to support regional office activities;

(i) seek public participation in decisions to modify or develop major national policies, at their discretion;

(j) consider funding authorized pilot and/or innovative demonstration projects;

(k) consider measures to ensure Policy implementation in appropriate managers' performance standards;

(l) provide financial assistance, as appropriate and available, for authorized public participation activities at the national level.

3. Regional Administrators have the following responsibilities:

(a) identify and address those EPA and EPA-assisted activities where application of this Policy is required;

(b) identify and address those forthcoming EPA and EPA-assisted major policy decisions where the Policy should be applied;

(c) ensure that work plans are developed annually by the programs and recipients to provide for adequate public participation in the above decisions and activities;

(d) implement approved work plans for public information and public participation activities;

(e) ensure that public participation is included by applicants in the development of program funding applications to EPA, and in other decisions as identified by this Policy;

(f) provide guidance and technical assistance to recipients on the conduct of public participation activities;

(g) evaluate annually public participation activities of State, substate, or local entities revising and improving them as necessary;

(h) encourage coordination of public participation activities;

(i) support and assist the public participation activities of Headquarters;

(j) ensure that Regional staff are trained, and resources allocated for public participation program;

(k) incorporate measures to ensure Policy implementation in managers' performance standards;

(l) provide small grants to representative public groups for needed public participation work;

(m) evaluate the appropriateness of public participation expenditures and activities, revising and improving them as necessary.

4. *The Director, Office of Public Awareness* has an important role in the development and support of Agency public participation activities. The Director will:

(a) assist Headquarters and regional programs in identifying interested and affected members of the public in compiling project contacts lists;

(b) support Headquarters and regional program in development and distribution of outreach materials to inform and educate the public about environmental programs and issues, and participation opportunities;

(c) develop annual public awareness/participation support plans to complement public participation work plans and identify resources requirements.

H. Compliance

Assistant Administrator, Office Directors, and Regional Administrators are responsible for making certain that, for the activities under their jurisdiction, all those concerned comply with the public participation requirements set forth in this Policy.

Regional Administrators will evaluate compliance with public participation requirements in appropriate State and substate programs supported by EPA financial assistance. This will be done during the annual review of the States' program(s) which is required by grant provisions, and during any other program audit or review.

If the Regional Administrator is not satisfied that this Policy is being carried out, he or she should defer the grant award until these conditions can be met where that course is legally permissible. A Regional Administrator may grant a waiver from specific requirements in this Policy upon a showing by the agency that proposed action will result in substantially *greater* public participation that would be provided by the Policy.

The Administrator of EPA has final authority and responsibility for ensuring compliance. Citizens with information concerning apparent failures to comply with these public participation requirements should first notify the *appropriate* Regional Administrator or Assistant Administrator, and then if necessary, the Administrator. The Regional Administrator, Assistant Administrator, or Administrator will make certain that instances of alleged noncompliance are promptly investigated and that corrective action is taken where necessary.

Appendix-List of Citations Covering Program Grants, Delegations, or Permits to States and Substate Governments

The Public Participation Policy will be incorporated in program regulations that cover financial assistance or delegations of authority to State or substate governments or approval of State programs. Where consolidated awards exist under these provisions, they also will be covered. Programs under the Clean Water Act, Safe Drinking Water Act, and the Resource Conservation Recovery Act are already covered by this Policy insofar as they have been amended, or will be amended, to incorporate 40 CFR part 25. Consolidated permit programs are covered by 40 CFR parts 122, 123, and 124. Regulations that refer to existing programs now covered by the Policy will have to be amended to incorporate its provisions. Where programs regulations are not yet written, the Policy shall be incorporated.

Clean Air Act (Public Law 95-95)

Air Pollution Control Program Grants

Sec. 105-Grants to State and local air pollution control agencies for support of air pollution planning and control programs. (Catalogue of Federal Domestic Assistance No. 66001.)

Sec. 106-Grants to interstate air quality agencies and commissions to develop implementation plans for interstate air quality agencies and commissions to develop implementation plans for interstate air quality control regions. (When funded.)

Urban Mass Transportation Technical Studies Grants (DOT)

Sec. 175-Grants to organizations of local elected officials with transportation or air quality maintenance responsibilities for air quality maintenance planning. (CFDA No. 20.505)

Sec. 210-Grants to State agencies for developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs. (When funded.)

Quiet Communities Act (Public Law 95-609)

Quiet Communities—State and Local Capacity Building Assistance

Sec. 14(c)-Grants to State and substate governments and regional planning agencies for planning, developing, evaluating, and demonstrating techniques for quiet communities. (CFDA No. 66.031.)

Toxic Substances Control Act (Public Law 94-469)

State Toxic Substance Control Projects

Sec. 28-Grants to State for establishing and operating programs to complete EPA efforts in preventing or eliminating risks to health or environment from chemicals. (CFDA No. 66.800.)

Federal Insecticide, Fungicide and Rodenticide Act (Public Law 95-398)

Pesticides Enforcement Program Grant

Sec. 23(a)-Funding to States/Indian tribes through cooperative agreements for enforcement and applicator training
and certification. (CFDA No. 66-700.)

Resource Conservation and Recovery Act (Public Law 94-580)

Sec. 3005(a)-Issuance of permits for treatment, storage and disposal of hazardous waste.

Sec. 3006-Delegation of authority to administer and enforce hazardous waste program.

Sec. 4002-State Planning Guidelines. Solid and Hazardous Waste Management Program
Support Grants

Sec. 4007-Approval for State, local, and regional authorities to implement State or Regional Solid Waste Plans and be eligible for Federal assistance. (CFDA No. 66.451)

Sec. 4008-Grants to State and substate agencies for solid waste management, resource recovery and conservation, and hazardous waste management. (CFDA No. 66.451.)

Sec. 4009-Grants to States for rural areas solid waste management facilities. (CFDA No. 66.451.)

Solid Waste Management Demonstration Grants

Sec. 8006-Grants to State, municipal, interstate or intermunicipal agency for resource recovery systems or improved solid waste disposal facilities. (CFDA No. 66.452.)

Solid Waste Management Training Grants

Section 7007-Grants or contracts for States, interstate agency, municipality and other organizations for training personnel in occupations related to solid waste management and resource recovery. (CFDA No 66.453.)

Safe Drinking Water Act (Public Law 95-190)

Sec. 1421(b)-Issuance of permits for underground injection control programs.

State Public Water System Supervision Program Grants

Sec. 1443(a)-Grants to States for public water system supervision. (CFDA 66.432.)

State Underground Water Source Protection–Program Grants

Sec. 1443(b)-Grants to States for underground water source protection programs. (CFDA 66.433.)

Clean Water Act (Public Law 95-217)

Construction Grants for Wastewater Treatment Works

Sec. 201-Grants to State, municipality, or intermunicipal agencies for construction of wastewater treatment works. (CFDA 66.418.)

Water Pollution Control-State and Interstate Program Grants

Sec. 106-Grants to State and Interstate agencies for water pollution control administration.
(CFDA 66.419.)

Water Pollution Control-State and Areawide Water Quality Management Planning Agency

Sec. 205(g)-Delegation of management of construction grants programs to State designated agency(ies). (CFDA 66.438.)

Sec. 208-Grants for State and areawide waste treatment management planning. (CFDA 66.426.)

Water Pollution Control-Lake Restoration Demonstration Grants

Sec. 314-Clean Lakes Program.

Sec. 402(a)-Issuance of permits under National Pollutant Discharge Elimination System.

Sec. 404-Issuance of permits for disposal of dredge and fill materials.

Public Law 94-580, sections 3005 & 3006;

Public Law 95-190, sections 1421-1423;

Public Law 95-217, section 402;

Public Law 95-217, section 404;

Public Law 95-95, section 165;

Proposed consolidated permit regulations, covering; Hazardous Waste Program under RCRA; UIC Program under SDWA. NPDES and section 404 of the Clean Water Act, and the PSD Program under the Clean Air Act.

Dated: _____

Kathleen Bailey
Senior Management Analyst