



Citizens Advisory Council

to the Department of Environmental Protection
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July 14, 2015

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Mr. Patrick McDonnell, Director
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RE: Technical Guidance Document ID #012-0900-001: Policy for Development and Publication of Technical Guidance

Dear Mr. McDonnell:

Thank you for the opportunity to provide the Department of Environmental Protection (DEP) comments on recent changes announced to technical guidance document ID #012-0900-001: Policy for Development and Publication of Technical Guidance. The Citizens Advisory Council (CAC) appreciates the Department's efforts to revise the policy to enhance transparency and strengthen public engagement associated with the development of technical guidance and other non-regulatory documents.

The CAC was briefed on the changes proposed to the aforementioned technical guidance at its June 16, 2015, public meeting. While the CAC has reviewed the policy and the comments below, Council did not formally approve or adopt the following comments at a public CAC meeting; therefore I am submitting the following comments for the Department's consideration on my behalf alone.

I offer for the Department's consideration the following comments:

Definition of Non-regulatory Documents and Use of the Term: While it is laudable to include definitions in the guidance to distinguish the various documents that are considered to be Non-regulatory Documents, it is suggested that further clarification be included in the document so that readers can ascertain whether technical guidance documents are considered to be Non-regulatory Documents. A definition is currently provided in the guidance for Non-regulatory Documents, but the term 'technical guidance' is not included in that definition, which may lead to confusion. For example, while the adoption of a Non-Regulatory Agenda is supported to enhance public transparency, the agenda, by definition, should include all documents as defined as 'Non-regulatory Documents' including internal guidelines, policy statements, guidance manuals, decisions, rules and other written materials that provide directives, guidance or other relevant compliance-related information to the public. Currently, the Department's Non-Regulatory Agenda, advertised for availability at 45 Pa.B. 3423, only lists technical guidance documents that are intended to be modified or developed in the coming year by DEP. While a listing of all documents in the agenda that are defined as non-regulatory documents, including Standard Operating Procedures (SOPs), would



be beneficial and greatly enhance DEP's communication with the public, if the Department only intended to include technical guidance documents in the agenda, this point should be clarified in the guidance and the term 'Non-regulatory Documents', including the title 'Non-Regulatory Agenda' should be modified.

Technical Guidance Document Inventory Management: It is recommended that DEP address in guidance document #012-0900-001 that all technical guidance document identification numbers that were rescinded or removed from the guidance document inventory will be reserved. This will aid in preventing any unintended confusion by the public who may seek a specific guidance document whose identification number has been reused for another document. In addition, for those technical guidance documents removed or rescinded, DEP should continue to list the Identification Number and Title of that document in the technical guidance inventory on DEP's eLIBRARY to explain to the public why the document was removed or rescinded. This measure will enhance DEP's transparency and provide information to the public who may not be aware of why a guidance document was rescinded or removed from the inventory.

Role of DEP Advisory Committees in the Review of Technical Guidance: Requiring DEP consult with advisory committees in the development of technical guidance is critical and I commend DEP for including this requirement in guidance document #012-0900-001. To ensure consistent approaches among the various DEP advisory committees, it is recommended that the guidance more clearly define the roles, responsibilities and expectations associated with DEP's collaboration with its advisory committees on the development of technical guidance.

Standard Operating Procedures and Technical Guidance: It is recommended that DEP reexamine the content of its Standard Operating Procedures (SOPs) documents that were developed for the implementation of the Permit Decision Guarantee Program to ensure information necessary to inform the public of compliance-related information, in particular civil penalty assessment protocols, are available publicly and exist separately as Technical Guidance Documents. With regard to guidance associated with civil penalty assessments, this information should always be available to the public and regulated entities to enhance transparency on the factors and rationale DEP uses to establish civil penalty amounts. Without the public disclosure of this information, enforcement through civil penalty actions by DEP is vulnerable to public scrutiny concerning questions of consistency, appropriateness, and fairness of the enforcement action.

Pre-Draft Stage Requirements for Developing New Guidance or Substantive Revisions to Existing Guidance: In addition to soliciting input during the pre-draft stage of a technical guidance document, it is recommended that guidance document #012-0900-001 specify that DEP will require the relevant program intending to develop or revise a guidance document to formally notify the Policy Office of their intentions. This directive will enhance internal coordination and communication, and aid in the development of the Non-Regulatory Agenda. Such notification could be achieved through the development and use of an "Intent to Develop or Revise Technical Guidance" internal memo.

eNOTICE for Technical Guidance: It is recommended that guidance document #012-0900-001 include a description of DEP's responsibilities under the *eNOTICE for Technical Guidance* system, including an explanation of the public notifications available under the system and DEP staff responsibilities to manage the system.

eCOMMENT System Guidance: DEP's efforts to enhance transparency through the implementation of an eCOMMENT system is commendable and will serve to increase public engagement in DEP's policy development activities. With the implementation of this system, it is recommended that separate guidance be developed by DEP to explain the purpose of the system so that the public is aware of its objectives. In addition, it is recommended that guidance document

#012-0900-001 be amended to clarify that the system is being implemented for the solicitation of public comments on all DEP Non-regulatory documents. With this recommendation, I note that the technical guidance currently states that the eCOMMENT system is to increase transparency in the development of technical guidance; however, the eCOMMENT system is currently being used by DEP to solicit comments on a number of proposals, including General Permits, policies and other documents.

Public Comment on DEP's Rationale to Rescind a Technical Guidance Document: To aid in transparency, DEP should allow public comment on its rationale for rescinding a technical guidance document. The input from the public may influence DEP's final decision and/or result in the development of other information needed by the public to understand their compliance-related obligations.

Annual Publication of Non-Regulatory Public Documents Pursuant to Executive Order 1996-1: It is recommended that DEP clarify in guidance document #012-0900-001 that it will bi-annually publish its Non-Regulatory Agenda in addition to adhering to its non-regulatory public document publication responsibilities under Executive Order 1996-1.

I appreciate the opportunity DEP has provided to allow public comment on the modifications it has proposed to its Policy for the Development and Publication of Technical Guidance. If you have any questions regarding my above comments and recommendations, please contact me at 717.787.8171 or by email at mtate@pa.gov.

Sincerely,



Michele L. Tate
Executive Director
Citizens Advisory Council

cc: CAC members