

MEMO

TO: Interested Stakeholders

FROM: Jessica Shirley
Policy Director

DATE: April 13, 2020

RE: Virtual Public Hearings in Response to COVID-19 Pandemic

PURPOSE

Due to the COVID-19 pandemic, all gatherings of people pose a threat to public health through the spread of the novel coronavirus. In accordance with the Governor’s emergency disaster declaration and based on the advice of the Pennsylvania Department of Health, until further notice, the Department of Environmental Protection (DEP) will not host in-person public hearings. DEP will instead hold “virtual public hearings” in instances where hearings are required by law.

For the purpose of this policy, “virtual” means a web-based hearing, using a platform such as WebEx, with a telephonic option. This memo provides background and information on when and how virtual public hearings will be scheduled.

BACKGROUND

DEP acknowledges the critical importance of public participation in all proposals under review by DEP, or in the case of regulations, the Environmental Quality Board (EQB). This is true whether the public is providing feedback on a proposed permit, regulation, or other agency action.

Public hearings are formal, structured proceedings that afford the public the opportunity to provide verbal testimony on regulations, permits, and other proposals set forth by DEP or the EQB. DEP/EQB consider all verbal testimony provided at a public hearing and all other written or electronic comments received during a formal public comment period and responds to public input in a Comment and Response Document or through other relevant documentation.

Verbal testimony provided at a public hearing receives equal consideration as comments submitted in writing to DEP and EQB. Further, DEP/EQB requires all verbal presenters at public hearings to also provide their comments in writing.

APPLICABILITY

DEP's mission places the highest value on public health and safety. DEP values public input and strives to ensure that opportunities to receive comment and testimony continue during the COVID-19 pandemic, but in a manner that is protective of Pennsylvania residents.

DEP acknowledges that, in order to inclusively and equitably accommodate input from the regulated community and affected residents of the Commonwealth, public hearings should be held in person unless there is an exigent reason preventing an in-person hearing, such as an emergency disaster declaration. As DEP strives to maintain equitable and inclusive public participation in all proceedings, all in-person public hearings will be canceled when operating under an emergency disaster declaration to preserve public health to the safest degree possible.

DEP/EQB will only schedule virtual public hearings if public hearings are specifically required by statute or regulation. DEP acknowledges that the public has varying levels of access to online resources and telephones to participate in virtual public hearings. Therefore, virtual public hearings will *only* be held if a public hearing is required by regulation or statute in order for DEP to maintain its important work.

PROVIDING COMMENTS TO DEP

Beyond the provision of public hearings, DEP and EQB always provide multiple opportunities to the public for submitting comments. For those that do not have access to the internet, comments on a proposal should be provided in writing, as directed in the *Pennsylvania Bulletin*. Written comments are evaluated the same as comments provided as verbal testimony at a public hearing and are given equal weight in that evaluation. Written comments can be received online, by email, and through postal mail for all proposals. Further, DEP and EQB always requests written copies of verbal testimony at public hearings to be entered into the formal public record. In particular emergency circumstances, DEP may determine that an extended public comment period is warranted and can provide for such through public notice.

PROCESS

Public Notice

DEP and EQB will continue to follow all applicable statutory and regulatory requirements in scheduling and publishing notice of any public comment period. Notices published in the *Pennsylvania Bulletin* and in newspapers will include language directing people to access DEP's website for information regarding how to access a virtual hearing, if one is required to be held as part of the public comment period.

As is customary for in-person public hearings, public notices will also provide directions regarding registration for providing public comments via any scheduled virtual public hearing. Pre-registration may be required up to 24 hours prior to the scheduled virtual public hearing.

For Persons Wishing to Speak at a Virtual Public Hearing

Registration to speak at a virtual public hearing will be conducted in a similar manner as registration to speak at in-person public hearings. Prospective commenters will need to register with the meeting organizer as directed in published notifications. While commenters are encouraged to pre-register for in-person public hearings, pre-registration will be a requirement to speak at virtual public hearings, given the logistical considerations involved with holding hearings through online platforms. Commenters who have not pre-registered to speak will not be permitted to speak during virtual public hearings. Again, this is required given online platform limitations.

Individuals who wish to register to provide testimony at a virtual public hearing will need to be a resident of Pennsylvania. Residency can be verified by home address or P.O. Box located in Pennsylvania which will be required when the individual registers to give testimony. Commenters will also be asked to provide an email address, telephone number, and if they are providing testimony on behalf of an organization.

When individuals register to speak at a virtual public hearing, they will be given a time assignment, based on the order in which they registered (e.g., Larry Lawrence will be told they are the second person to register and are scheduled to speak from 5:05 – 5:10 pm).

Given that virtual public hearings can be easily accessed by individuals and organizations from any location, organizations will only be permitted to have one representative speak at one hearing. If multiple hearings are held on the same proposal, the organization may only provide testimony at one virtual public hearing. This ensures DEP and EQB can provide equal time for everyone who wishes to speak.

For Persons Wishing to Attend a Virtual Public Hearing

Anyone is welcome to attend a virtual public hearing to listen to public comments provided on a DEP or EQB proposal. However, due to limitations of technology, DEP and EQB will be unable to allow for “walk in” commenters during the virtual public hearing. Anyone wishing to provide testimony at a virtual public hearing must pre-register, as described above.

Virtual Public Hearing Format

All testimony provided during a virtual public hearing will become part of the official public record of a proposal. All virtual hearing participants are expected to mute themselves when they are not providing testimony to DEP or EQB.

Modified but similar rules apply for participation in a virtual public hearing as they do for an in-person public hearing. Commenters will be invited to speak in the order they registered. Commenters will be allotted up to five minutes to present their testimony. With an online platform, there is a risk that commenters may be cut off prematurely or disconnected, depending on their connection. This makes it especially important that commenters provide their comments to DEP in writing via email or postal mail.

DEP reserves the right to remove a participant from a virtual public hearing. If a commenter offers inappropriate or threatening commentary, they will be given a warning, alerting them if the behavior continues, they will be disconnected. If the behavior continues, the moderator will disconnect them as indicated. DEP will also remove any participant that interrupts a person providing testimony.

After a commenter provides verbal testimony, the moderator of the hearing (e.g., the hearing host/chair) will request the commenter submit their comments via email immediately following their testimony. Video demonstrations or screen sharing by commenters will not be permitted. Only spoken words will be recorded in a hearing transcript.

Recording/Stenographer

Like in-person public hearings, virtual public hearings will employ the services of a stenographer to transcribe the hearing. An official record of the virtual public hearing will be prepared by the stenographer.