



New York State
Adirondack
Park Agency

Department of
Environmental Conservation

Amendments to Agency 1: Policy and Guidance System

Overview and Public Comments

May 10, 2023

Presentation Outline

- Goals of proposed amendments
- Public Comments
- Proposed revisions based on public comment
- Questions and Discussion



Goals of Proposed Amendments

- Simplify the process for amending or adopting policy, where appropriate



Public Comment

- Public comment period held through close of business on April 21, 2023
- Nearly 130 comments received, +3 after the comment period
 - Over 30 unique comments, with the balance form letters originating from an advocacy organization



Public Comment - Themes

- Number of meetings
- Public notice
- Public input
- Nature of policy



Public Comment – Number of Meetings

- 3-meeting process
 - Has proved beneficial to the board, staff, and public for fleshing out substantive issues
 - Encouraged deliberate consideration of important matters, instead of appearance of acting on a whim
- 2-meeting process
 - For non-ministerial changes that directly affect the public
 - At first meeting staff present to Board and Board sends to public comment; at second meeting Board acts to adopt/amend
 - Ensures opportunity for public consideration and comment
- 1-meeting process
 - One-meeting cycle effectively eliminates public input
 - Proposed policy leaves all check and balance mechanisms intact, while being more focused on substance



Public Comment – Public Input

- “Imperative that [...] opportunities to respond to proposals remain a part of the process”
- “Elimination of the ‘networking’ requirement deliberately and effectively undermines the public's opportunity to participate
 - “Staff and the Board cannot just assume they will be able to identify the answers to these listed ‘considerations’ without networking.”
- Public involvement “is critical to the thoughtful and effective development of policies that affect the public.”



Public Comment – Public Notice

- Need clarification
 - Proposed language confusing, esp. regarding notice of ministerial changes and supporting materials
 - Clarify when staff vs. board can initiate comment period
- Process
 - Non-Ministerial Changes
 - Press release, APA website, ENB
 - At least 2 weeks before Agency meeting
 - Ministerial Changes
 - APA website
 - At least 8 days before Agency meeting
 - Meeting materials typically not posted until Friday afternoon before meeting



Public Comment – Nature of Policy

- Guidance only
 - “Each policy --which stands by itself-- needs a reminder that each is not intended to be applied rigidly (which if it were, would subject the proposal to a much more cumbersome SAPA process). The Agency and the public should be reminded each time a formal policy is adopted that it is not a rigid declaration.”



Proposed Revisions since March meeting

- Clarification of ministerial vs. non-ministerial changes
 - Purely ministerial or directed by state law or policy
 - Ex – changes to policy on meeting minutes; making policy gender neutral
 - Notice for public comment through the Agency meeting agenda and supporting materials
 - Non-ministerial changes
 - Affects substantive rights of the public under the laws and regulations administered by the Agency
 - Ex – substantive changes to the Towers Policy
 - Noticed public comment period with notice provided on Agency website, by press release, and in ENB
- Retained statement that each policy is guidance only



Questions & Discussion





New York State
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Amendments to Agency 2: Public Comment Policy

Overview and Public Comments

May 10, 2023

Presentation Outline

- Goals of proposed amendments
- Public Comments
- Proposed revisions based on public comment
- Questions and Discussion



Goals of Proposed Amendments

- Address concerns raised by Board members regarding public comment
- Simplify the policy on public comment
- Provide for consistency in public comment process
- Allow adequate time for staff and the Board to review written comments
- Allow opportunity for applicants to respond to and potentially modify proposals based on comments



Public Comment

- Public comment period held through close of business on April 21, 2023
- Nearly 600 comments received, +3 after the comment period
 - Less than 100 unique comments, with the balance form letters originating from advocacy organizations



Public Comment - Themes

- Importance of public input
- Current policy
- Oral comment opportunities
- Written comment deadlines
- Posting of Agency agenda and meeting materials



Public Comment – Importance

- “Public comments ... serve a real function of collecting legal, scientific, and technical insights ... that may not otherwise have been contemplated by the Agency. They also provide the public with an accountability method to review agency actions and help build the record for legal action ...”
- Intent “to ... eliminate public confusion ... is commendable. However, other proposed changes within the policy appear to limit overall public engagement and comments.”
- “Like all agency’s or government bodies you should be encouraging public comment on all issues.”
- “[The Agency] needs to address ways in which public participation can be increased, an unfinished endeavor begun many years ago with the Public Issues Forum.”
- “[S]hrinking of meetings ... to one day, and now limiting comment opportunities even further ... speaks again to the Agency’s interest in becoming less burdened by public involvement...”



Public Comment – Current policy

- Current policy works well:
 - “[...]the current Public comment document written in 2009 does not need to be changed. By observation it worked well for many years.”
 - “Trust in the process is critical and was missing decades ago until the Agency adopted a formal process to allow the public opportunities to participate and see others participating in the process.”
 - “Thus the change in the policy to replace “Public” with “Agency” may seem small and technical but misses the larger point that the Agency is working in the public interest.”



Public Comment – Oral Comment

- Retain at the beginning and end
 - Opportunity at end not sufficient, will discourage public comments
 - Common for oral comments to be at the beginning
 - Consistency and predictability - end of the meeting is not a fixed time, making planning difficult, especially if travelling
 - Practicality
 - Hard for workers/caretakers to take off time/make arrangements for uncertain end of meeting
 - May have to plan to use library/public location for adequate bandwidth
 - Discriminates against those with low socioeconomic status, favoring those with means and ability to be present at any time
 - Keep time at end for those unable to speak at beginning
 - Comments are more appropriate for “fresh minds”
 - Attendance at its maximum at the beginning
 - Comments at beginning are not disruptive



Public Comment – Oral Comment cont.

- Proposal unclear
 - What does “at or near the end of each open meeting” mean?
 - End of each day of a two-day meeting or only the second day?
- Length of comment period
 - Clear limits
 - Reasonable time limits are good
 - Eliminate overall time limit so that everyone who wishes can comment – seldom see comments last more than 10-15 min.
 - Suggestions
 - 15 minutes at the beginning and 15 minutes at the end
 - 20-30 minutes at beginning
 - 2-3 minutes per commenter
 - Set a visible timer
 - Prioritize those wishing to express alternative opinions to earlier commenters – would require signup to include topic and position



Public Comment – Oral Comment cont.

- Remote comment
 - Continue to allow remote and in-person comments
 - Need clear, written remote instructions, e.g., mute computer when on phone
- Clear rules
 - Stating the rules and enforcing them benefits all
 - Can prevent *ex parte* communication with clear statement of rules
- Limitation on content
 - Keep language allowing comment at the end on matters prohibited for comment at the beginning
 - Comments at beginning advise conversations and considerations
 - Change would eliminate right to comment on policy changes
- Members should be required to respond to questions and comments



Public Comment – Written Comment

- Accept comments at any time
 - Some concerns arise at the last minute
 - Comments should be received and considered at any time
 - Cannot be on top of every issue at specific times
 - Always at the discretion of the Agency
- Need adequate time to comment
 - Public needs time to look at issues



Public Comment – Written Comment cont.

- Posting of materials
 - Need to review draft permits, draft resolutions, staff analysis, etc.
 - APA not posting or historically has not posted materials until Friday afternoon before meeting
 - Post agenda and materials at least a week before meeting
 - Monday 5pm (three days before meeting) deadline only if ...
 - Agenda released 2 Mondays before meeting and all materials posted 2 Wednesdays before meeting, OR
 - All materials posted at least 8 days before meeting, OR
 - All materials posted at least 7 business days before meeting
 - FOIL response times not adequate to meet comment deadlines



Public Comment – Written Comment cont.

- Noticed public comment periods
 - Need clarity for deadlines
 - Clarify end of comment period, e.g., close of business
 - If APA Act §809 matters, those deadlines control
 - For non-§809 matters, guarantee a minimum comment period
 - Publish notice at least 14 days before end of comment period
 - Accept comments only if received by close of business on the last day of the noticed period
 - Clarify whether written comment on a permit on the agenda would be accepted 3 days before meeting
 - Notice
 - Neighbors not notified under §809 → community members not aware until on the agenda



Public Comment – Written Comment cont.

- Clarity
 - Explicitly state dates and times of deadlines
 - Define close of business (e.g., 5:00pm EST) or end of day (11:59pm EST) of the day the comment period closes
 - Address impact of federal holidays



Public Comment – Written Comment cont.

- Comment dissemination and tracking
 - Up to Agency to better process large volume of comments, not limit
 - Include section detailing how comments disseminated to Board members and that they were read in advance of the meeting
 - Ensure Board members have access to public comments directly so that they are not presented out of context
 - Track that comments were received and read
- UMP comments
 - Concern that changes eliminate public comment on draft UMPs
 - Concern that memo did not address striking reference to UMPs
 - While APA-DEC MOU addresses public comment opportunities for UMPs, not referenced in policy



Proposed Revisions since March meeting

- Retain oral comment periods at beginning and end of meeting
- Provide clear rules for oral comment
- Clarify deadlines for written comment
- Commit to earlier posting of agenda
- Clarify applicability to UMP comment periods



Questions & Discussion

