



February 17, 2024

Technical Guidance Coordinator
Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

Re: Comment on Draft Guidance Manual for Permitting of New Commercial Hazardous Waste Treatment and Disposal Facilities

To whom it may concern,

The following letter is submitted on behalf of the signatory organizations and individuals, as well as the Mountain Watershed Association (“MWA”), home of the Youghiogheny Riverkeeper, collectively “Commenters.” MWA is a nonprofit, community-led, environmental organization that works to protect, preserve and restore the Indian Creek and greater Youghiogheny River watersheds. MWA represents over 2,500 members, many of whom have been impacted by the hazardous waste facility operated by MAX Environmental Technologies, Inc., located in Yukon, Pennsylvania.

On January 20, 2024, the Pennsylvania Department of Environmental Protection published notice of its Draft Technical Guidance Document, Guidance Manual for Permitting of New Commercial Hazardous Waste Treatment and Disposal Facilities, in the Pennsylvania Bulletin. Commenters strongly support the inclusion of stronger public participation language and Environmental Justice Policy initiatives. However, Commenters strongly oppose the inclusion of language indicating that the public meeting and public hearing may be held consecutively, as these two public participation opportunities should be two stand alone events. Please find substantive comments on these items, as well as a number of others, below.



Public Participation Components of the Permitting Process

Generally

(1a). In the section titled “Pre-Application Meeting” within “Step I - The Pre-Application Process,” the DEP removed the following italicized language. “Prior to requesting a pre-application meeting, the developer should, *in addition to having already started a meaningful public participation process*, assemble and forward the following information to the Siting Team Leader: . . .” Commenters are **opposed** to this change and would like to have the italicized information included in the new guidance. This language serves as a reminder to the applicant that they should begin the public participation process as early as possible.

(1b). In the section titled “Submittal Components - Operations and Design (Part B) Permit Application” within “Step III - Phase II Criteria Review and part B Permit Application Process,” the DEP added language that provides that the applicant should submit the components “after the public information meeting,” whereas that language was not included in previous guidance. Commenters **support** inclusion of this language because it highlights the importance of engaging in the public participation processes prior to submitting the components of the operations and design permit application.

Notification Procedures

(2a). In the “Pre-Application Meeting” section of “Step I - The Pre-Application Process,” the DEP added the following sentence. “The applicant must provide public notice according to 25 Pa. Code § 270a.83 (relating to pre application public meeting and notice) at least 30 days prior to the pre-application public meeting.” Commenters **support** this change. The guidance did not previously outline the need for a timeline for public notice on the pre-application public meeting. The new guidance provides clear expectations for when public notice should be issued, and Commenters support the applicant being reminded of its requirement to provide such notice.

(2b). In addition to this new language, Commenters also **support** the inclusion of clear language that provides that if the applicant wishes to resubmit at any time, new notice would be necessary as well.

(2c.) Within the same section, the DEP removed the following italicized language. “*Within 15*



days of receipt of the pre-application submittal, the applicant, host municipality, host county, local interest group and other appropriate agencies will be notified of the receipt of the pre-application submittal.” Commenters **oppose** this change and would like to have the italicized information included in the new guidance. The new guidance would not set out any specific time frame for notice to these groups of pre-application submittal. Without a time limit, Commenters fear that operators will not notify the community in a timely way, which could result in the loss of critical opportunities to learn more and ensure adequate participation at an early stage in the process.

(2d). While Commenters are supportive of including the time frame, and 15 days is better than no time frame being set, Commenters also **support** reducing the time frame to 5 days, as early notification is key to ensuring parties’ best chances of adequate engagement and the procedure for issuing notification is not time intensive or extremely costly.

(2e). Within the “Submittal Components” section of “Step II - Phase I Exclusionary Criteria Review,” the DEP added a submittal component of “Proof of Public Notifications.” This includes notification to the host county and municipality, adjacent landowners, counties and municipalities within one half of a mile, and newspapers. Commenters **support** inclusion of “proof of public notifications” as a submittal component, as it provides evidence that public notice procedures have been followed prior to moving forward with the siting application.

(2f). In the section titled “60-Day Host Municipality Review” within “Step III - Operations and Design Application Process,” the DEP changed the timing guidelines for notification. Commenters **oppose** the change. The old guidance required the applicant to notify the host municipality and county of the 60-day review period, a minimum of two months *prior* to the development of the DEP’s draft recommendation. The new guidance only requires the notification to be within those last 60 days of the 10-month technical review and before they make the draft recommendation. This would mean per the new guidance, the applicant could submit the notice to the host municipality and county five days before the draft recommendation, as it would fall within 60 days. In contrast, the old guidance required it to be a minimum of two months, or approximately 60 days. Not allowing sufficient time for the host municipality to review prevents them from conducting an in-depth technical review of the application in preparation for the public comment period, inhibiting their right to public participation. Commenters recommend reverting back to the old language or changing the language to “*Prior to the final 60 days* of the 10-month technical review period and before the Siting Team develops a draft recommendation on the application, . . .” Additionally, DEP could more easily



incorporate suggestions made by the municipality before DEP finalizes its draft recommendation. That could provide the community with an opportunity to comment on any changes made in response to the municipality's suggestions because they would be present in the draft received by the broader public.

Comments Submitted by the Public

(3a). In the "Overview" section of "Step II - Phase I Exclusionary Criteria Review," DEP added that during Month 4.0, the "DEP will continue to accept comments up to 15-days beyond the close of the public hearing," and Commenters **support** this change. Commenters appreciate that the DEP will allow commenters an additional 15 days after the close of the public hearing to submit comments for review.

Environmental Justice

(4a). Within the "Introduction" section, the DEP added language to the guidance that provides that this is a trigger permit under the Environmental Justice Policy. The DEP noted that "permit applicants are encouraged to consult the PennEnviroScreen tool to see if their project falls in a designated Environmental Justice Area which would automatically trigger this policy." Commenters **support** the inclusion of Environmental Justice Policy initiatives in the permitting process.

(4b). Commenters do, however, **support** changing the language "encouraged" to be "required," as all applicants should be aware of whether their project falls within a designated EJ Area.

(4c). Language was also added to "Step I" in the "Steps in the Permitting Process," that explains that "if the facility site [sic] located in an Environmental Justice (EJ) area, DEP's EJ Public Participation Policy is followed. Otherwise, the applicant will still need to follow the standard public participation procedures as explained in the sections that follow." Commenters **support** this addition. This language outlines the importance of the public participation policy, whether it be the EJ policy or the standard policy.

(4d). Finally, within the "Pre-Application Meeting" section within "Step I - The Pre-Application Process," additional language regarding the Environmental Justice Public Participation Policy was included. Additionally, DEP noted that "where applicable, the DEP will ensure the EJ Public Participation Policy is maintained during the project." Commenters appreciate that the



DEP is highlighting their commitment to ensuring the policy is enforced and followed. As with the other provisions that were added to address the importance of environmental justice initiatives, Commenters **support** the inclusion of this language.

Hearings and Meetings

(5a). Within the “Overview” of the “Step II - Phase I Exclusionary Criteria Review” section, the DEP added that for Month 3.5, the “public hearing may be held immediately following [sic] public meeting or may be held as stand-alone event.” Commenters are **opposed** to the addition of this language into the new guidance. It is intended that there be a public meeting, as well as a public hearing, to satisfy public participation requirements. By combining the two events into one event, this is limiting the amount of time and opportunity for the public to engage at a meeting. By having them as separate events, this allows the public an additional opportunity to engage in the public process.

Moreover, a “combination meeting” is inadequate because it would result in residents lacking a critical opportunity in which to share any materials and information they gathered in response to the other event with their community. While it is true that residents could submit written comments to DEP afterwards, there is no way for the public to see one another's comments before a permit decision has been made. Public gatherings are the only time residents can make comments that are heard by other community members. The increased risks presented with the type of facility at issue here are almost certainly why DEP’s own policy-makers intentionally prescribed two public gatherings, when they regularly prescribe one.

Furthermore, proposed permits are often long and full of highly technical language that may be challenging for a lay person to parse. The public meeting provides an opportunity for members of the public to receive explanations and clarifications about the meaning and ramifications of the proposed permit terms. Time to process that information and, if desired, conduct independent followup research before commenting at the public hearing is critical to facilitating meaningful public participation.

(5b). Additionally, DEP added a new submittal component in the section titled “Submittal Components - Operations and Design (Part B) Permit Application” within the “Step III - Phase II Criteria Review and Part B Permit Application Process.” The guidance now requires that the following information is submitted: public meeting summary, list of attendees with addresses, copies of written comments, and materials submitted at the meeting. Commenters **support**



inclusion of this language to ensure that public input conveyed during public informational meetings is properly accounted for and then addressed during comment and response efforts.

Digital Platform

(6a). Language was also included within the new guidance that provides that certain public records will be maintained on a community website for the proposed facility. The comment and response document will be available on a digital platform, per the “Siting Team Final Determination” section within “Step II - Phase I Exclusionary Criteria Review.” Correspondence between the DEP and the applicant will also be available on a digital platform, per the “Public Review Files” section within “Step III - Phase II Criteria Review and Part B Permit Application Process.” The DEP also creates and maintains a community website for the applicant's and DEP's correspondences pertaining to the application. Commenters **support** the availability of a digital platform for the public to access these important public records.

Procedural Components of the Permitting Process

Certificate of Public Necessity

(7a). In the guidance document that currently exists, there is a section included on the “Certificate of Public Necessity.” This section was entirely removed in the new draft guidance, and Commenters are **opposed** to this change. The Certificate of Public Necessity process can be fairly in-depth and introduction of the process in a guidance document helps to make the information more accessible. Additionally, this section provides information to the public as to how the adequacy of public participation programs is considered in the CPN process.

Early Submission of Components

(8a). In the old guidance, there was a section titled “Early Submittal of Phase II Siting Criteria” within the “Step II - Phase I Exclusionary Criteria Review” section. This entire section was removed in the new guidance. Additionally, language regarding this early submission was removed from the “Submittal Components” section of “Step II - Phase I Exclusionary Criteria Review.” Commenters **support** removing the language regarding early submission in both of these sections. An applicant should not be allowed to do an early submission because it requires dedication of Department time and resources on review for something that may never come to fruition, because Phase I hasn't even been completed and approved. Additionally, this will help



to avoid the “sunk cost fallacy.” The amount of time and resources spent on an application might sometimes lead an agency to want to move forward with a permit, so that the time and energy spent was not wasted, when the application should have just been rejected. Thus, by ensuring that additional unnecessary time and resources are not spent on an application until necessary, this will help eliminate any fallacy that may arise.

Additional Submission Components for Phase I Review

(9a). In the section titled “Submittal Components” within the “Step II - Phase I Exclusionary Criteria Review” section of the new guidance, the DEP is requiring that applicants submit: a General Information Form, a Form HW-B, and a Form HW-E. Commenters **support** inclusion of the General Information Form, as it will assist in efficient coordination between various programs and departments.

(9b). Commenters are also **supportive** of the addition of Form HW-B, as it requires additional third-party review and confirmation of the data used in the application.

(9c). Finally, Commenters are **supportive** of the addition of Form HW-E, as it allows DEP to access the facility and assess any documents that may be useful to ensure the fulfillment of its mission.

Timeframes

(10a). Within the “Overview” of the “Step II - Phase I Exclusionary Criteria Review” section, the following language was added to the new guidance: “Prior to conducting the technical review for Phase I, the components of the Phase I siting application will first be reviewed for administrative completeness. The DEP’s goal is to complete the administrative completeness review within 30-days of receiving the Phase I siting application.” Commenters **support** the addition of the first sentence for clarity purposes.

(10b). However, Commenters **oppose** the addition of the second sentence. The review process has the potential to be fairly complicated and lengthy, so removing the 30-day goal provides the DEP with more flexibility for review.

(10c). Within the “Application Completeness Review” section within the “Step II - Phase I Exclusionary Criteria Review,” the DEP added a provision regarding an administrative



incompleteness letter. The new language is as follows: “If the Phase I Siting application is incomplete, an Administrative Incompleteness letter indicating the missing information will be issued to the applicant from DEP. The DEP will give the applicant a timeframe to respond to the deficiencies.” Additionally, “If the applicant does not provide the missing information requested in a timely fashion, the application will be returned to the applicant and no further action will be taken by the DEP.” Commenters **support** the inclusion of this language. The old guidance simply stated that if the application were incomplete, the applicant would get a notice of its deficiencies. The new guidance outlines a time frame for the applicant to respond to the deficiencies and if the time frame is not met, no further action is taken on the application. This allows the applicant to have a set, reasonable amount of time to address their deficiencies, while also ensuring that the DEP does not have to wait in limbo on an application for an unspecified amount of time.

(10d). In the “Overview” of “Step III - Phase II Criteria Review and Part B Permit Application Process,” the timeline for “Siting Team issues NOD addressing technical deficiencies in application” was changed from Month 2.0 to Month 1.0. Commenters **oppose** changing the NOD letter being issued after one month of review rather than two. By providing two months for the siting team to conduct their review, the greater the chance that the review will be thorough and not rushed. If the team finishes their review prior to two months, they can still issue the NOD early. These applications can contain hundreds, if not thousands of pages of detailed technical material that cannot be reviewed in a rushed manner.

(10e). In the section titled “Step IV - Permit Decision” within the “Steps in the Permitting Process, the Department added that the “Secretary issues notice of intent to either approve or disapprove the permit within 30-days of Siting Team recommendation.” Commenters **support** the inclusion of a timeframe for issuing a notice of intent to make a decision on the permit.

(10f). However, Commenters also **support** extending the time to 90-days, to allow the public additional time to respond to the notice of intent. Given the serious threats a hazardous waste facility presents to a community’s health and ecology, it is critical that the public have as much time as possible to respond to the impending decision by the Department.

Miscellaneous

(11a). Within the “Final Determination on Exclusionary Criteria” section of “Step II - Phase I Exclusionary Criteria Review,” the DEP added that the “applicant also has the option to resubmit the Phase I application, in which case, Phase I Exclusionary Criteria review is repeated.”



Commenters **support** inclusion of this language. It is important for applicants to know that if they wish to resubmit their application, they are also required to repeat the exclusionary criteria review.

(11b). In the “Draft Permit Preparation” within the “Step III - Phase II Criteria Review and Part B Permit Application Process” section, the DEP added that “in conjunction with the draft permit, a statement of basis or fact sheet is prepared and published by the DEP in accordance with § 270a.10(c)(10-12).” Commenters **support** inclusion of this language requiring the DEP to outline their findings with respect to why a draft permit should be issued. This will help to outline exactly why the DEP feels a permit is appropriate and meets all regulatory requirements.

(11c). Additionally, Commenters **support** making the statement of basis or fact sheet available on a digital platform, such as by including it on the website dedicated to the facility.

(11d). Finally, in the section titled “Secretary’s Final Decision” within “Step IV - Permit Decision,” the DEP added that “within 30 days of notice of the Secretary’s decision, any aggrieved person may file an appeal with the Environmental Hearing Board.” Commenters **support** inclusion of this language so that the public knows of their right to appeal a decision.

Commenters appreciate the opportunity to comment on this important technical guidance document revision, and thanks the Department of Environmental Protection for their thorough review and consideration of the various comments outlined above.

Regards,

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