

# **EPA Region 8 Practices on Communicating with Stakeholders Before, During, and After Permit and Rulemaking Comment Periods**

## **Interaction with Stakeholders Before the Comment Period, During Permit and Rule Development:**

- Meetings with outside parties
  - Permits:
    - To get information needed to process a permit (clarify applicant/contact/site information, etc.)
    - To generally discuss compliance
  - Rule development
    - General discussions of anticipated rule and related issues
      - EPA generally avoids discussing the anticipated contents of a proposed rule in detail.
      - Potential concerns about transparency, equity, and the Agency's ability to make an independent evaluation.
      - Deliberative process
- EPA Considerations
  - Docketing needs
  - Permit/rule terms not final until signature
  - FACA

## **Interaction with stakeholders during and after the comment period**

- Not barred by APA, but there are significant transparency and fairness considerations
- Docket: principal vehicle for receiving and communicating public comments
- Meetings with interested parties
  - *Meetings during the comment period*
    - EPA doesn't provide any information to select outside parties that is not already available to the public
    - EPA can't make any commitments about the final rule.
    - Meeting/communication summaries go into docket, as do written materials exchanged with outside parties
    - FACA: If there are meetings with multiple stakeholders, we seek to ensure that EPA receives views and advice on an individual basis and not from the group as a whole.
  - *Meetings after the comment period*
    - EPA may respond to status inquiries about the final rule
    - EPA doesn't disclose nonpublic information about the development or direction of the final rule.

- Meeting/communication summaries go into docket, as do written materials exchanged with outside parties
- We avoid soliciting or receiving information from outside parties after the close of the comment period.
- Risks from accepting and relying on new information in developing final rule: accept late comments, open for comment again

### **Considerations and Discussion Points for Increased Involvement by Impacted States**

- Need for national consistency
  - Region 8 will need to coordinate with HQ
- What types of Regional actions?
  - Water Quality Standards
  - CAA State Implementation Plans/Federal Implementation Plans
  - Permits
- Need for a defined process
  - Timing of review and comment
  - Meetings
  - Need to avoid delay – equity, statutory deadlines
- FOIA/State equivalents
  - Need to understand state open records laws
  - Assess potential value of confidentiality agreements, with exceptions for FOIA or open records requests
- Docketing
  - EPA would include all information received in the docket

### **References**

Administrator Douglas Costle, Memorandum: “Ex Parte” Contacts in EPA Rulemaking (Aug. 4, 1977).

Administrator Lisa Jackson, Memorandum: Transparency in EPA’s Operations (Apr. 23, 2009).

EPA’s Action Development Process, Creating and Managing Dockets: Frequently Asked Questions for EPA Action Developers (Oct. 2011), available at <http://intranet.epa.gov/actiondp/documents/docket-faq10-00-11.pdf>.

Callie Videtich (Acting Assistant Regional Administrator, Office of Partnerships and Regulatory Affairs, EPA Region 8) Memorandum: Permit Consistency Best Practices (March 12, 2015).