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Submission via www.regulations.gov and email to MeaningfulInvolvementPolicy@epa.gov

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
EPA Docket Center
Office of Environmental Justice and External Civil Rights Docket
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Achieving Health and Environmental Protection Through EPA's Meaningful Involvement Policy, Docket ID No. EPA-HQ-OEJECR-2023-0326

Dear Administrator Regan:

Thank you for this opportunity to comment on the U.S. Environmental Protection Agency's ("EPA") draft policy, "Achieving Health and Environmental Protection Through EPA's Meaningful Involvement Policy," which updates EPA's 2003 "Public Involvement Policy." On behalf of Waterkeeper Alliance, the undersigned U.S. Waterkeeper groups, and our respective tens of thousands of individual members and supporters, we welcome efforts by EPA to improve public engagement. We write in support of many proposed changes in this draft policy and are additionally identifying several areas where the policy needs to be improved. Overall, we are concerned that the policy itself appears to be optional for EPA actions. While we understand that implementation and application of the policy requires flexibility and discretion in deciding how it should be applied to a given action, EPA staff should not be free to simply disregard the policy altogether when determining how the agency will engage with the public. EPA needs a public engagement policy that applies to all of its actions to ensure that the public consistently has an opportunity to meaningfully participate in agency actions that affect their interests.

Waterkeeper Alliance is a not-for-profit environmental organization dedicated to protecting and restoring water quality to ensure that the world's waters are drinkable, fishable, and swimmable. We are composed of more than 300 Waterkeeper groups based in 48 countries on six continents, covering over 2.75 million square miles of watersheds. In the United States, Waterkeeper Alliance represents the interests of more than 150 U.S. Waterkeeper groups and their more than one million members and supporters that live, work, and recreate in or near waterways across the country—many of which are severely impaired by pollution. In the past three years alone, Waterkeeper Alliance, Waterkeepers, and our respective supporters in the

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United States have submitted more than 50,000 public comments on EPA actions, and Waterkeeper Alliance and Waterkeeper organizations regularly attend public meetings and hearings with EPA, demonstrating our collective knowledge about EPA processes and our strong interest in engaging on issues that impact our communities, water, and environment.

Meaningful Involvement Policy

The stated purpose of EPA's "Meaningful Involvement Policy" is to "promote an EPA-wide approach to meaningful involvement that can be tailored for program and regional needs and outline practices that EPA staff can choose to use as they design public outreach components of EPA's decisions and carefully consider public input."

As a fundamental matter, to meet its stated goal, adherence to and implementation of the Meaningful Involvement Policy must not remain discretionary. The proposed policy states: "*[h]istorically, public participation opportunities did not always succeed in reaching all interested or affected segments of the public.*" To adequately address the historical lack of meaningful public engagement on EPA actions, the proposed policy must **require** EPA staff to adhere to and implement the policy, and EPA staff must receive training and guidance to do so. Evaluating needs and opportunities for meaningful involvement by community members in EPA actions should never be optional. EPA can, and should, evaluate opportunities for meaningful involvement by the public in all decisions that have potential to impact human health and the environment.

Key Concepts

The proposed policy is built on a set of "key concepts" that require further refinement. For example, one of the ways EPA seeks to ensure meaningful involvement is by providing people "*an opportunity to participate in decisions about activities that may affect their environment and/or health.*" To achieve this goal, the policy must seek to ensure people have a **reasonable and accessible** opportunity to participate in decisions about activities that may affect their environment, community, and/or health. We outline in this public comment a number of actions EPA can take to better ensure staff provide reasonable and accessible opportunities for engagement.

The proposed policy calls for EPA decision makers to "*seek out and facilitate the involvement of those potentially affected.*" To constitute "meaningful involvement," the policy should further define what actions will be taken to facilitate such involvement. For example, EPA decision makers should take action to *inform, engage, and listen to* people potentially impacted.

For purposes of this policy, in addition to those listed, "EPA actions" should also include actions taken under Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), Resource Conservation and Recovery Act ("RCRA"), and other actions, including enforcement actions, involving regulating, responding to, evaluating, and cleaning up pollution or restoring the environment.

Lastly, EPA's definition of the "public" should also include Tribal Governments when referring to

government agencies, including federal, state, municipal, and local agencies.

EPA's Meaningful Involvement Approach

The public participation spectrum should be updated to more narrowly define the limited and rare circumstances where the public would not have the opportunity to influence EPA's decision-making. EPA asserts in the proposed policy that, in some cases, the public cannot have an opportunity to "*influence decision making.*" In such cases, the policy proposes EPA staff "inform and outreach" so the public can "*understand EPA's decision-making process.*" The public should always have a meaningful opportunity to inform EPA's decision-making except in very rare circumstances.

Section 1 of the proposed policy relating to considerations relevant to EPA's determination of the appropriate level of public participation for a project must include the potential community impact of the agency's decision. The series of questions provided in EPA's Public Participation Guide¹ focuses solely on EPA staff's intentions, and should be revised to include clear, objective criteria based on the potential impacts to community members.

EPA should provide ***clear, objective criteria based on community and environmental impacts***, as well as ***guidance and training***, to assist EPA staff in determining the appropriate level of public participation. While the proposed policy states in Section 2 under "Identifying the Public," "*[t]he severity of the potential impact is also very important and may inform the level and type of participation,*" this important factor is not included as a relevant consideration in *determining* the appropriate level of public participation. Several of the factors² outlined under Section 2 should be used to identify the appropriate level of public participation.

Lastly, to ensure meaningful and consistent levels of public participation in all relevant decisions across the agency, the level of community participation **must not** hinge on budget, capacity or competing priorities as EPA proposes.

Table 1.1. EPA's Public Participation Spectrum

The Public Participation Spectrum outlined in Table 1.1 should be updated in the following ways. First, EPA proposes to "provide and exchange data, opinions, and options during one or two instances" in an effort to "consult" and "exchange" information with the public. The public typically needs more than one opportunity to engage. It is unclear in the Public Participation Spectrum if one or two instances applies to all EPA decisions. We urge EPA to clarify the Public

¹ U.S. EPA, Public Participation Guide: Introduction to Public Participation, available at: <https://www.epa.gov/international-cooperation/public-participation-guide-introduction-public-participation>.

² EPA factors to include in identifying the level of public participation from Section 2, *Identifying the Public*:

- *Describe the interested and affected public.*
- *What are the main interests and values regarding the issue at hand?*
- *Which of these interests are most important, and why?*

Participation Spectrum to ensure an adequate number of public engagement activities are carried out by staff in all cases.

Second, EPA should include in-person community hearings and opportunities to join an email listserv where EPA shares up-to-date information and opportunities for engagement for the “inform and outreach” actions. Third, the “involve and recommendations” actions should include all of the activities used for “inform and outreach” and “consult and info. exchange.” Lastly, community advisory groups should be included as stakeholders for the “empower” portion of the spectrum.

To ensure consistency and help promote transparency and accountability, and to ensure that staff is consistently applying a public engagement evaluation to EPA actions, EPA should consider consolidating the *Meaningful Involvement Policy*, *Environmental Justice Collaborative Problem-Solving Model* and *EPA’s Community Action for a Renewed Environment Roadmap*. EPA could also consider merging the *Public Participation Models* in Appendix A and providing guidance and training to EPA staff to assist them in identifying the appropriate approach.

Meaningful Involvement Policy Goals

EPA Goal: Identify groups or members of the public who may have expressed an interest in or who, by the nature of their location, purposes, or activities, may be affected by an upcoming EPA activity or action.

To achieve this goal, the proposed policy should **require** EPA staff to conduct assessments to identify interested members of the public, including requiring EPA staff to consider environmental health concerns, when making assessments regarding identifying impacted community members. The proposed policy should also include the following additional considerations: potential impacts of water pollution, air pollution, fish consumption advisories, CERCLA sites, and RCRA remediation sites.

Section 2, “Identifying the Public,” currently states:

At a minimum the EPA team should understand government structures, nation-to-nation treaties, and identify key community-based organizations. The EPA team could consider developing a jurisdictional network map of the Tribal, local, state, and federal agencies or organizations/entities that may have interest or jurisdiction in the impacted area, including areas of overlap. This assessment should identify how the community receives and shares information from or with these entities.

Developing this knowledge and foundational information is central to the EPA’s mission and **must not be optional**. It is reasonable to require EPA staff to identify government structures, nation-to-nation treaties, and community-based organizations, and to develop a jurisdictional framework map illustrating the community impact and outreach opportunities. EPA should make clear throughout the proposed policy that such assessments are **required**, and any findings

made are preliminary, until confirmed by input from impacted community members.

As part of the assessment process, the proposed policy instructs EPA staff to consider ways to obtain information including consultations with government partners. Again, such consultations should be required under the policy. In addition, the policy should include consultation with community-based organizations and non-governmental organizations. Absent these steps, meaningful involvement by the public will not be possible on a consistent basis.

Additionally, the contact lists EPA outlines in Section 2 of the proposed policy should be clearly reflected in the Public Participation Spectrum for the sake of completeness. Specifically, the following language contained in Section 2 could be added to the Public Participation Spectrum: *“Contact lists may be used to send various EPA announcements, which can include notices of public meetings, hearings, field trips, and other outreach and engagement events; notices of available information, reports, and documents; and communications with members of the public who may be considered for advisory group membership and other activities. EPA may use postal mail, social media, and other avenues to disseminate information, as appropriate.”*

EPA Goal: (1) Provide the public with access to accurate, understandable, pertinent, and timely information to facilitate effective public participation in EPA decision-making processes and (2) assist the public in understanding the reasons for EPA actions, the legal framework for decision making, and the significance of the related technical data so the public can provide meaningful comments.

To improve public participation opportunities, the proposed policy should require EPA staff to take questions from the public and respond during public meetings so that all attendees can benefit from hearing both the questions posed by other stakeholders and the agency’s responses to those questions. Allowing stakeholders to speak, ask questions, and receive responses during public meetings is also important to inform other stakeholders and the agency about the viewpoints of interested and impacted people. When EPA staff defer any discussion or questions until after the public meeting at informational tables or more informally to agency staff remaining after the meeting, which is a common practice, questions must be posed by individuals directly to one or more staff members and only that questioner and maybe a few bystanders hear the question and response.

This practice is problematic for community members with no expertise in the issues discussed during the meeting that are looking to other community members with expertise to help them learn about the subject matter and engage with EPA. This practice prevents the agency from receiving important information about interests and concerns of affected people and entities. It deprives the public of hearing EPA’s responses to stakeholder statements and questions, which can dramatically reduce the public’s understanding of, and engagement on, an issue or agency action. There is often limited time available for individuals to pose these questions to EPA staff after the meeting and the public may need to return to work or family obligations so may miss the opportunity entirely.

Failing to provide an opportunity for the public to present their views and ask questions during

public meetings often deprives the public of the opportunity to engage *meaningfully* with the agency. Public meetings may be the only opportunity for some stakeholders to engage with the agency for a variety of reasons, such as limited or no internet access, language or technical barriers, or the lack of time or knowledge to monitor and engage with agency actions through formal notice and comment processes. Allowing the public to engage with and pose questions to EPA staff during public meetings improves agency knowledge and accountability and is one of the most important ways that EPA can meet its stated objective to ensure the agency's actions are *"informed by the individuals with lived experience and expertise and processes that are inclusive of a diverse set of voices."*

Additionally, the proposed policy leaves it to the discretion of EPA staff to create an outreach plan with clear timelines and sequenced actions aligned with overarching goals based on feedback from the intended audience. To meaningfully facilitate public participation, EPA must create such outreach plans. The proposed policy should be revised to **require** the creation of outreach plans.

The proposed policy should also require EPA staff to consult Tribal governments and Indigenous peoples in the creation of an Indigenous Knowledge plan.

To ensure effective communication with people with limited English proficiency, the proposed policy should require EPA staff to engage state and local government agencies and community-based organizations serving individuals with limited English proficiency, such as statewide or local Offices of New Americans and/or state refugee resettlement agencies. Informational materials provided to the public should not only be in plain language but should also be translated into the most common languages spoken in the affected communities.

Public comment periods should be **a minimum of 60 days** in all cases, and longer for more complex actions. In addition to the methods outlined in the proposed policy, notices should be sent to community members and impacted people via the U.S. Postal Service. The content of outreach materials should include, not only a timetable of proposed actions, but also a *description* of the proposed actions.

EPA Goal: Understand the interests and needs of the affected public and provide for the exchange of information and views and the open exploration of issues, alternatives, and consequences between the public and EPA teams responsible for the forthcoming EPA action or decision.

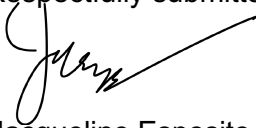
EPA should hold listening sessions in impacted communities where people can attend in person, in addition to online engagement opportunities. Some community members cannot participate virtually because they lack necessary hardware or high-speed internet service. Local community-based organizations are well-positioned to assist in outreach efforts.

We applaud the proposed policy's call to include directly impacted community members in Federal Advisory Committees. This practice should be an agency-wide priority in all Federal Advisory Committees.

EPA Goal: Evaluate the effectiveness of this policy and of public participation activities to ensure EPA is adequately practicing meaningful public participation in its actions.

EPA should track and report to the public the number of public engagement activities it conducts and the number of people and entities involved, including the number of impacted community members. EPA should also solicit feedback from the public regarding the effectiveness of its public participation activities and make findings based on publicly available feedback. The agency should use this and other data to evaluate effectiveness on an annual basis and take prompt action to address limitations or inadequacies through amendments to its policies, training, or other methods that will address the issues.

Respectfully submitted,



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