

Submitted via email and www.regulations.gov

January 16, 2024

Ms. Stacey Lobatos
Office of Environmental Justice and External Civil Rights
Mail Code 2201A
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Release of Achieving Health and Environmental Protection Through EPA’s Meaningful Involvement Policy; Docket ID No. EPA-HQ-OEJECR-2023-0326

Dear Ms. Lobatos:

The undersigned trade associations appreciate the opportunity to comment on the U.S. Environmental Protection Agency’s (EPA) Release of Achieving Health and Environmental Protection Through EPA’s Meaningful Involvement Policy. 88 Fed. Reg. 78,747 (Nov. 16, 2023). Our associations represent a broad cross-section of the U.S. economy—including large and small businesses in the manufacturing, mining, energy, agriculture, infrastructure, construction, recycling, chemical distribution, and transportation sectors—all of which are essential to ensuring our nation’s economic security and maintaining our modern standard of living. We and the businesses we represent are committed to responsible development that provides economic opportunities in the form of good-paying jobs and other community investment, while fostering environmental stewardship and innovation at their facilities.

We regularly engage with EPA by commenting on proposed regulations and guidance documents, testifying at public hearings, and participating in other engagement opportunities on matters affecting the business community. The businesses we represent also actively engage in community education and involvement regarding these operations. We therefore have a significant interest in EPA’s revised Meaningful Involvement Policy. We welcome the opportunity to partner with EPA and its Office of Environmental Justice and External Civil Rights (OEJECR) on this important effort and believe that the agency’s environmental justice actions will be more effective and durable if the business community has a seat at the table. As OEJECR works to develop the agency’s final meaningful involvement policy, we urge your consideration of the following key comments and recommendations.

1.) EPA Should Actively Engage Trade Associations in the Process and Consider Them Valuable Partners.

We commend EPA for acknowledging that for purposes of public engagement, “the public” includes not just individuals, but also “trade, news, industrial, agricultural, and labor

organizations.”¹ Trade associations and their members can be valuable partners and sources of information for the agency. For example, trade associations may be able to offer useful technical expertise and insight into how EPA initiatives can impact specific sectors, businesses, and communities. They can also help identify other stakeholders who might be affected by EPA activities. Collaboration with national and local trade associations can facilitate efficient sharing of information about EPA's regulatory activities and engagement opportunities.

Where EPA uses the term "the public" in this document, we recommend that the term be interpreted broadly as encompassing all the above listed entities, including trade associations. For instance, when EPA mentions actively involving "the public" early in the decision-making process, we suggest that the term "the public" be interpreted broadly, consistent with EPA's own definition.

2.) EPA Should Provide at Least 60 Days for Public Comment on Proposed Rules and/or Guidance Documents and Offer Deadline Extensions When Appropriate.

We encourage EPA to clarify its expectations regarding default or minimum comment periods. EPA should consider setting a default of at least 60 days for most comment periods on proposed regulations and/or guidance documents. EPA's 2003 version of its Public Involvement Policy expressed a preference for comment periods of at least 60 days, stating “[u]nless the applicable statute or regulation provides otherwise, the comment period for public review of unusually complex issues or lengthy documents generally should be no less than 60 days.”² We encourage EPA to retain this language in the revised policy. Allowing at least 60 days for public comment on proposed rules and/or guidance documents would allow stakeholders to provide more meaningful comments and feel heard during this process.

We also encourage EPA to clarify that it will consider extending comment deadlines if the agency chooses a shorter period and receives stakeholder input asking for an extension. Such consideration should also be given if the initial deadline falls during a holiday or other timeframe when it will be difficult to obtain meaningful feedback. We understand the agency must balance efficiency with providing adequate time for the public to provide meaningful comment. However, recent agency actions demonstrate the need for additional flexibility when requested by members of the public. Recently, several agency comment periods overlapped with major U.S. religious and cultural holidays, including Thanksgiving, Hannukah, Christmas, and Kwanzaa. There were no statutory or court-imposed deadlines or pressing policy purposes that prevented EPA from extending the comment deadline in these instances. Nevertheless, EPA chose not to do so, despite requests to this effect. Understanding and being sensitive to such situations would help to bolster EPA's goal for more meaningful engagement on its policies.

¹ U.S. EPA, Achieving Health and Environmental Protection Through EPA's Meaningful Involvement Policy, Public Review Draft (Oct. 2023) at 9.

² U.S. EPA, Public Involvement Policy (May 2003) at 13, *available at* <https://archive.epa.gov/publicinvolvement/web/pdf/policy2003.pdf> (last visited Jan. 16, 2024).

3.) EPA Should Ensure Transparency of Data Used.

EPA should ensure the public understands not all data is equivalent and should discuss limitations on any data set it uses to make assumptions. For example, in the section entitled “Provide Information and Outreach,” EPA enumerates the content of outreach materials.³ While the list provided in this section includes “Technical evidence and research methodologies explained in nontechnical language,” this section should include an explanation of the substance of the technical data and any constraints to the data.

Similarly, in the section outlining “Review and Use Input and Provide Feedback to the Public,” additional information should be provided under the section laying out EPA’s review and use of information.⁴ EPA should include a bullet summarizing data received, including any limitations to the data (e.g., lack of quality assurance/quality control, non-EPA methods). From a data quality perspective, EPA should also make every effort to ensure that the data it relies upon is grounded in science and evidence, easily reproduceable, and that sources are made publicly available. EPA should also employ expert independent peer-reviews where appropriate to ensure consistency of its conclusions.

4.) Efforts To Streamline EPA’s Information Sharing Are Welcome but Need Additional Modification.

We appreciate EPA’s proposed information sharing efforts, including early access to program and technical information, and increased early engagement in the decision-making process.⁵ These efforts are consistent with EPA’s 2003 guidance, and we suggest maintaining and further enhancing those provisions here.⁶ Regulations that consider early input from stakeholders result in improved decision-making. Guaranteeing that regulated entities have a fair chance to participate in the process promotes transparency and may lead to better agency policies. Some additional actions EPA should consider to further improve this process include:

- a) Ensuring that specific proposed changes to the Code of Federal Regulations (CFR) are adequately captured in a rule’s preamble/proposed regulatory text documents that appear in the *Federal Register* and not just in separate documents in the rulemaking docket.

³ *Id.* at 28.

⁴ *Id.* at 36.

⁵ *Id.* at 26.

⁶ *Supra note 2* at 4. “The Agency should approach all decision making with a bias of significant and meaningful involvement. Experience throughout government has shown that a lack of adequate participation or of effective means for participation can result in decisions that do not appropriately consider the interests or needs of those that will be most affected by them. Furthermore, early involvement can ultimately reduce delay, by avoiding time-consuming review, public debate, or litigation. Finally, decisions based on meaningful public involvement are likely to be better in substance and stand the test of time, avoiding the need to reopen controversial issues.”

- b) Mandating clear, dated, searchable, and sortable naming conventions for supporting documents that appear in the regulatory docket.
- c) Creating user-friendly, centralized databases for policy and guidance documents so that they are easily searchable.
- d) Structuring outreach meetings to offer broad flexibility for both in-person and virtual options, and at varying times of the day.

We appreciate EPA's consideration of these comments and recommendations. We look forward to further engagement with the OEJECR team on this and other important initiatives. Please contact Prianka Sharma at psharma@artba.org if you have any questions.

Respectfully submitted,

Alliance for Chemical Distribution
American Coke and Coal Chemicals Institute
American Dairy Coalition
American Petroleum Institute
American Road & Transportation Builders Association
Essential Minerals Association
National Asphalt Pavement Association
National Association of Home Builders
National Association of Manufacturers
National Mining Association
National Oilseed Processors Association
National Pork Producers Council
Plastics Industry Association (PLASTICS)
The Aluminum Association
The Fertilizer Institute