Subtask Group Recommendations – Public Engagement and Education for the Final Report

May 2024

Subtask Group: Public Engagement, Education and Outreach

(#1) Initial Challenge Identified:

Public meetings are a challenge because they mean something different to each person. The challenges that we explored were that members of the public are not always well versed in whether or not public meetings will occur or when in the project timeline they will occur, when they do happen public meetings can often turn into a vote reading/counting exercise which does not result in new substantive information that helps the agency, and at times lead to contention and public conflict. One of the initial challenges in the topic of public meetings was looking at when there is a meeting or not, which led to the understanding that there is discretion of the part of the agency for when to have a public meeting as well as what the meeting is structured like. There is no clear trigger currently, and the agency discretion can make academic sense but be less than ideal in practice.

Barrier(s):

Members of the public are not always clear of when or if a public meeting is going to be held. The discretion can create an unintentional first fight about whether or not to have a public meeting.

Recommendation:

DEQ's public guidance should more clearly identify when, what type, and how (structure) public meetings shall occur for proposed projects, regardless of the analysis type. That guidance should be included as a boilerplate statement in every scoping document (may need to be in the public notice because of discretion about whether or not there is scoping for every analysis) for each MEPA process that helps the public better understand what type of public engagement process there will be, how it is determined, when it will happen, etc. That language should also be included in the DEQ website. The goal is to make the public meeting (and engagement more broadly) component of the MEPA process more certain and predictable for both project sponsors and members of the public.

Rationale:

Our identified goal for public meetings in the subtask group was to have meetings that increase shared learning, facilitate more substantive comments to the agency, and decrease public debates and fights. It seems like one way to avoid conflict is to remove confusion up front about whether or not there will be a public meeting, what it will look like, and when it will occur.

The goal is to decrease the escalation of conflict and rather escalate the shared learning about the lay of the land and problems/challenges.

Key Strategies:

Possible Challenges and Outcomes:

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(#2) Initial Challenge Identified:

Originally, the MEPA statute created the Environmental Quality Council (EQC) and contemplated that entity as being responsible for tracking MEPA's implementation and providing necessary oversight as well as trainings, education, and outreach about the law. In the years that have passed, the EQC, whose budget and staffing are managed by the legislature itself through the Legislative Council, has struggled to continue that role given competing priorities and diminishing capacity of its talented, but small, staff. The result has been that it has largely fallen on public agencies to do their own oversight, training, and education internally and the public and legislature are on their own to access priorly created training and resource material. If the capacity of EQC is the primary challenge, there are two recommendations that stem from this challenge, which could be implemented individually or collectively to fill the void in oversight of consistent implementation across the executive and legislative branches, as well as made available to the public.

Barrier(s):

Current staff are doing great in their internal training. It can serve as a model to build from to help provide more uniform application of the law across the executive. Doing more with the current model is not possible without additional staff and resources from the legislature.

Recommendation:

DEQ should request the legislature fund one FTE (full time equivalent) whose primary task is providing MEPA compliance education and training for state employees. The position should be able to subcontract training or education work to eligible entities, including the other agencies, legislature and nonprofit entities or trade associations. The specific deliverables for the position including the development of and offering MEPA 101 and 201 trainings, and those trainings should be made across the executive branch to any agency who is required to implement MEPA in any of its decision-making.

Rationale:

On way to resolve the lack of coordinated training and education is to have the executive do it, and it makes most sense for DEQ to do it since it deals with MEPA more than other agencies.

Key Strategies:

Possible Challenges and Outcomes:

Need to find a way to compel other agencies to complete trainings, perhaps include it in their budget (i.e. funding for things only if they have a minimum compliance with the DEQ hosted training).

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(#3) Initial Challenge Identified:

Originally, the MEPA statute created the Environmental Quality Council (EQC) and contemplated that entity as being responsible for tracking MEPA's implementation and providing necessary oversight as well as trainings, education, and outreach about the law. In the years that have passed, the EQC, whose budget and staffing are managed by the legislature itself through the Legislative Council, has struggled to continue that role given competing priorities and diminishing capacity of its talented, but small, staff. The result has been that it has largely fallen on public agencies to do their own oversight, training, and education internally and the public and legislature are on their own to access priorly created training and resource material. If the capacity of EQC is the primary challenge, there are two recommendations that stem from this challenge, which could be implemented individually or collectively to fill the void in oversight of consistent implementation across the executive and legislative branches, as well as made available to the public.

Barrier(s):

Funding and capacity of the EQC. Current EQC staff is doing more than they can sustain already. If we are going to ask the EQC to do more, the Legislative Council needs to increase funding and resources available to do it.

Recommendation:

The Environmental Quality Council should complete an analysis of available resources and staffing within the Legislative Environmental Policy Office and needs associated with MEPA. That analysis and recommendations should then be delivered to the Legislative Council for consideration. The goal is to increase the capacity of the EQC, and thereby the Legislative Environmental Policy Office, by at least one FTE (full time equivalent) who has a primary workplan dedicated to the oversight of implementation, training, and education of MEPA across state government. The deliverables of the position should include trainings, educational materials, a database of current legal challenges and outcomes, technology solutions to MEPA education and outreach, and prioritization of major issues affecting implementation. The person shall report to the EQC.

Rationale:

If it is the role of the EQC to provide these things (which could be clearer) then give them the resources to do that.

Key Strategies:

Possible Challenges and Outcomes:

Need to find a way to compel agencies to complete trainings, perhaps include it in their budget (i.e. funding for things only if they have a minimum compliance with the EQC hosted training).

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(#4) Initial Challenge Identified:

The persistent challenge identified throughout this work group is the lack of general understanding between the differences in MEPA process and MEPA documents versus the permitting processes, laws, and documents. One challenge that creates is a lack of clear direction to the public about how to engage in the MEPA process and be providing relevant to MEPA feedback to the agency. Of particular note to this work group is the tremendous opportunity and role the public has in providing contextual information that substantively benefits the agency and the product of the analysis. It is a bit simplistic to call MEPA just procedural, but it does differ from substantive and conditioning permitting statutes. What is clear is that the public generally does not understand what the agency is looking for when it seeks their engagement.

Barrier(s):

The definition of substantive comment is in the eye of the beholder. It is also very unclear to the members of the public that don't live in this space.

Recommendation:

DEQ should define substantive comment in their internal guidance with the key audience being members of the puble to better enumerate what types of feedback and comments the agency is seeking through the MEPA process. By clearly articulating in guidance what the agency is seeking, it can help clarify and set expectations for the public. That guidance could be included in similar boiler plate language to recommendation #1 that goes out with every notice.

Stop describing MEPA as "just procedural not substantive" in our language about MEPA as an agency. It shuts down the public from participating right at the moment we need their engagement to better and more substantively understand the landscape of a proposed project. By saying it is not substantive, we are setting the expectation that their substantive comments that provide new information are not useful to the agency. No, MEPA cannot condition a permit or deny/modify like the permitting statute can, but it can substantively inform the analysis. Consider continuing to build on internal communication technique of "yes, and…" by saying "Yes, MEPA is a procedural statute, and the information generated from thoughtful participation by project sponsors and the public can enrich the discussion and influence future decisions."

Develop fact sheets and examples that help illustrate the "substantive comment" definition to use at the beginning of public meetings.

Rationale:

The goal is to attempt to make the participants feel like they were heard and the agency to get actual substantive comments that improve the durability of the decisions made and make the analysis of projects richer and more informed.

Key Strategies:

Possible Challenges and Outcomes:

The definition is tricky and it is impossible to create all possible scenarios.

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(#5) Initial Challenge Identified:

Throughout this process, a common theme is that all participants in the MEPA process come to the table to participate with different levels of knowledge about the MEPA process itself as well as the information specifically relevant to the proposed project. The challenge is compounded by the fact that everyone walks in the door with a varying level of baseline information about the law, the roles of participants, and basic facts about the proposal. As with nearly all state agency websites, it can be further challenging to access the needed documents that are beneficial to understanding both the process and the substance of a proposal. We believe that better is possible to provide the notice of the process and proposal as well as to accessing the documents central to participating in those processes.

Barrier(s):

We are probably somewhat stuck in the website constraints that we have. The agency is doing the best to make the website work in the current iteration. Changes can be complex and costly (and there may not be the money available to do major overhauls).

Recommendation:

DEO should continue to improve the functionality of its website for hosting all MEPA related trainings, education materials, and a project-by-project search function to unlock all related η by

decision documents for the public to be able to access. It should also provide a better way to be noticed about specific projects and opportunities to participate. An alternative recommendation could be for EQC to do this work and explore technology solutions to these challenges housed by the legislature.
Rationale:
Key Strategies:
Possible Challenges and Outcomes: