

# PA Government Transparency Process Guide



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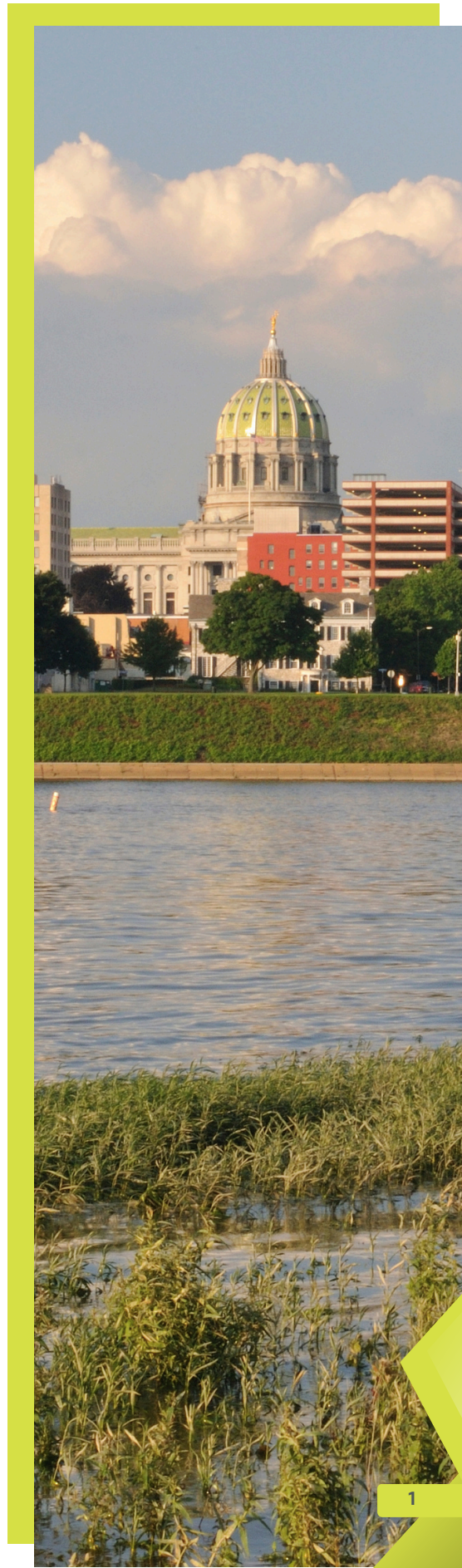


# Introduction

Pennsylvania has two laws addressing government transparency, and many of its environmental laws and permitting systems have public participation requirements. This guide briefly explains the two transparency laws, the Pennsylvania Right to Know Law and the Sunshine Act, as well as Pennsylvania Department of Environmental Protection's Environmental Justice Policy, and the public participation requirements of a few key environmental permitting schemes. This guide provides an overview of these laws and policies and how to use them, but doesn't address every detail of these laws and policies. This guide also includes helpful links from Pennsylvania agencies at the end for more information.

## Pennsylvania Right to Know Law (RTKL) Overview

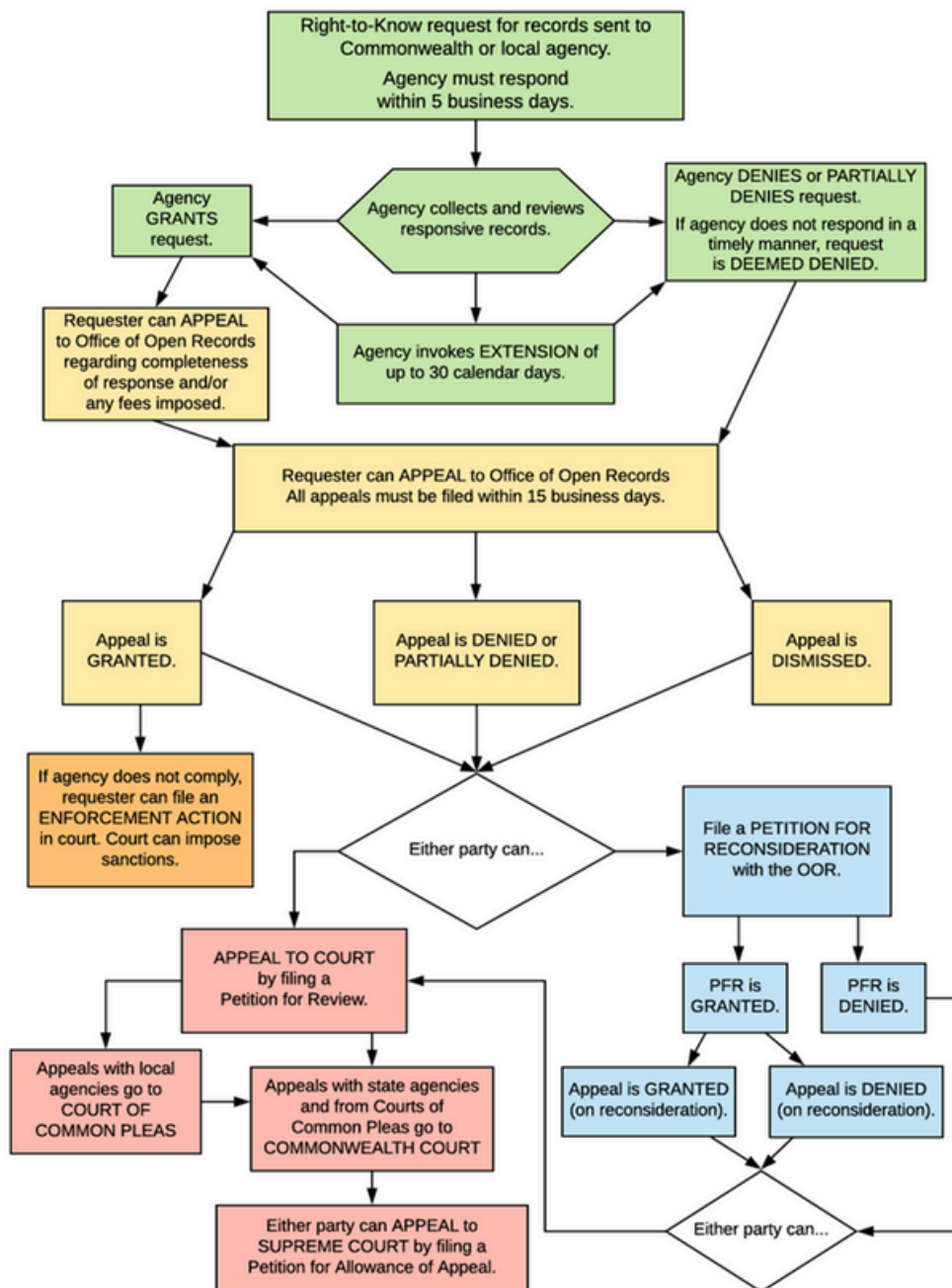
Pennsylvania's Right to Know Law allows for members of the public (including community organizations) to request records from state and local agencies. This ensures that citizens have the ability to know what their government is doing. Once someone submits a request to an agency, the agency must either grant or deny the request. The flow chart on the next page diagrams the options requestors have depending on the agency's response. Additionally, while agency records are generally public and requestable, the RTKL has exceptions. The two most relevant exceptions are on the page following the flow chart, and a link to the rest of the exceptions is also on that page.



# Pennsylvania Right to Know Law (RTKL) Chart

A helpful schematic for the RTKL timeline and appeal process:

## Pennsylvania's Right-to-Know Law: Request through Appeal



Source: Pennsylvania's Office of Open Records, RTKL Citizens' Guide, [OOR's RTKL Flow Chart: Request through Appeal](https://www.openrecords.pa.gov/RTKL/CitizensGuide.cfm), <https://www.openrecords.pa.gov/RTKL/CitizensGuide.cfm> (last updated Jan. 8 2021).



## Pennsylvania Right to Know Law (RTKL) Continued

### RTKL Exemptions

Agencies assume that every record they have is public unless:

1. The record is exempt under section 708 of the RTKL;
2. The record is protected by privilege (like attorney-client or doctor-patient privilege);
3. The record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree

There are 30 total exemptions under section 708. For the purposes of this guide, we've only included the exemptions we believed would be the most relevant to the types of records CRCQL may request in the future. [The full list of exemptions is available here, see section 708.](#)

### Public Safety and Private or Confidential Information Exemptions

Does the record:

- ☐ Involve someone's personal information, like their driver's license number, their social security number, or personal email addresses or telephone numbers?
- ☐ Put someone's personal safety at risk?
- ☐ Put public safety at risk?
- ☐ Reveal a trade secret?

If you checked yes, then this record is exempt from disclosure.

### Agency Internal Decisions/Deliberations Exemptions

Does the record:

- ☐ Include information about the hiring and job performance of an agency employee?
- ☐ Involve a draft of a bill, resolution, ordinance, regulation, policy statement prepared by or for an agency?
- ☐ Involve an agency's predecisional deliberations?
- ☐ Include an agency official's personal notes?
- ☐ Involve records related to a noncriminal agency investigation?
- ☐ Include drafts of agency meeting minutes before the next scheduled meeting of an agency?
- ☐ Include minutes from an agency meeting where the public was excluded from attending?
- ☐ Involve records having to do with agency procurement of services prior to the award of contract?
- ☐ Involve communications between an agency and its insurance carrier?

If you checked yes, then this record is exempt from disclosure.



## Pennsylvania Right to Know Law (RTKL) Continued

How responsive are agencies required to be under the law?

Agencies are required under the RTKL law to respond or invoke an extension of time to RTKL requests within five business days of their receipt of the request. The five-day timer begins once the agency's open-records officer has received the request. Only the open-records officer receiving your records request will begin the five day timer.

This means that if you are emailing a request, send the records request to the agency's open-records officer. If you are filling out a form, or mailing in a request, it may be worth following up by email with the agency's open records officer, even when you receive an automated email receipt from the agency.

Note on agency responsiveness:

Though the RTKL imposes strict time limits for agency responses, agencies may still attempt to exceed these limits. In 2023, the Reporters Committee sent Philadelphia's chief legal officer a letter concerning the City's practice of delaying on records requests. The Reporters Committee obtained a RTKL request log from the City from January 1, 2022 to November 16, 2022, and found that while the City generally sent timely responses within 5 days, it frequently invoked its 30-day extension, and exceeded the 30 day extension period about 18% of the time.

We are not sure if these types of delays are also occurring within PA state agencies, but it is something to be aware of when submitting a records request.





## The Sunshine Act

### What is the Sunshine Act?

The Sunshine Act describes what agency business must happen in a public setting. When agencies are taking “official action,” including creating policy, making decisions, taking votes, or making recommendations, agencies are required to do this in an open and public meeting. The public must have prior notice of these meetings, as well as an opportunity to comment.

### What types of agency gatherings are covered under the Sunshine Act?

A meeting is a prearranged gathering of agency members, which is attended or participated in by a “quorum” of agency members, which is the minimum number or majority of voting members of an agency that must be present for the agency to conduct business. The number of members needed to form a quorum varies by the type of agency. For instance, PA DEP’s definition of quorum is a majority of members.

For public meetings, agencies (including committees) must provide at least three days advance notice prior to the first regularly scheduled meeting of the calendar or fiscal year AND must provide a schedule of their meetings for the rest of the calendar or fiscal year.

The notice – which must include the date, time, and location of the meetings – must be printed in a newspaper circulated in the community where the meeting is held. A notice must also be posted at the location(s) where the meetings are to take place.

take place. The notice must be posted in time to allow for its circulation or publication in the location where the agency is located or where the meeting will occur. For meetings that are rescheduled after the agency’s meeting schedule has already been published, agencies must provide at least 24 hours advance notice, with the notice printed in a local newspaper and posted at the location where the meeting is to take place.

### What requirements do agencies have for posting agendas?

If the agency has a website, the agency must post the agenda, which includes a list of each matter of agency business that will be discussed at the meeting, no later than 24 hours before the meeting. This agenda must also be posted at the location of the meeting and the agency’s office. Additionally, the agenda must be distributed to meetings attendees.

### Are there legal remedies for Sunshine Act violations?

Yes. A legal challenge must be filled within 30 days from the date of a meeting which is open, or within 30 days of discovering that an action illegally occurred at a meeting which was not open.

A legal challenge regarding an illegally closed meeting must be filed within one year from the date of the meeting. Agency members found in violation of the Sunshine Act will be fined. Winning a Sunshine Act challenge will not undo the illegal action, but the prevailing party may recover attorney’s fees.



# Pennsylvania Department of Environmental Protection Environmental Justice Policy

Overview: This policy details the measures DEP will take to educate, engage, and empower Pennsylvanians living in EJ areas. Additionally, the policy describes the measures DEP will take to ensure opportunities for community involvement and public participation in the permit application process for permits in EJ areas. The policy applies to the review of applications administered by DEP for environmental authorizations, as well as the review of DEP permits, and to DEP program areas and initiatives named and included within the policy.

This is DEP's guidance, so DEP gets to decide when they do or don't apply it, and there are no legal remedies or consequences if they don't apply it when you think they should.

Note: This is an interim final document. PA DEP released this document in September 2023 and held a comment period until November 30, 2023. No comment response document has been released, but we spoke with DEP and a final policy is expected by the end of the year or early next year.

The relevant portion of the EJ Policy for the purpose of this guide is DEP's Enhanced Public Participation Policy. This guide focuses on the Enhanced Public Participation Policy section of the EJ Policy.

## What projects does the enhanced public participation policy cover?

Two types of projects: trigger projects and opt-in projects. Trigger projects are the projects this policy automatically applies to. Trigger projects include water, air, waste, and mining permits, as well as factory farms, or CAFOs (concentrated animal feeding operations), and land application of biosolids.

Opt-in projects are projects that DEP can exercise its discretion to apply this policy to, or the public may request that projects be designated as Opt-in projects. DEP lists incinerators, sewage treatment plants, oil and gas development permits, or approvals of major sources of air pollution as types of projects that could be considered for Opt-in projects.

To request that DEP consider a project as an Opt-in project, you can use the Opt-In Project Request form to request DEP designate a proposed project for Enhanced Public participation. When creating your request, consider using PennEnviroScreen, discuss community concerns, potential environmental impacts and how those impacts relate to a community's existing environmental burden. All these factors are ones DEP has stated that it will consider when deciding to designate an Opt-In project.

## Pennsylvania Department of Environmental Protection Environmental Justice Policy Continued

What communities are covered under the enhanced public participation policy?

The public participation provisions are designed to, at minimum, target the area located within the geographic area measuring 0.5 miles in all directions from the location of the project and to the census block group identified in PennEnviroScreen as having increased environmental burden affected by the project.



### Enhanced Public Participation Strategy

When DEP has determined a Trigger or designated Opt-In Project permit application is complete, a public participation strategy should be developed by DEP's OEJ and appropriate regional or district office programs, Regional Communications Managers, and Local Government Liaisons. The strategy is designed to facilitate the participation of all residents within the 0.5 mile geographic area of the project and the affected census block groups.

At minimum, the strategy should evaluate additional outreach methods to engage the public. This can include, but is not limited to, notice, one or more public meetings or hearings (virtual or in-person), and opportunity for comment. It should indicate potential meeting locations and identify convenient times for the the community.

The plan should describe how the Language Access Plan requirements will be satisfied and consider whether technical assistance is available or should be recommended to the community. Finally, the strategy should indicate where the public may review application material in person and where to electronically access application materials.

The public participation strategy should specify the appropriate level of notice for the project. The public participation strategy will identify where all notices associated with the project will be placed in high visibility areas of the community, and the publications widely read by residents within the EJ Area. The strategy should also indicate how and where notices will be disseminated electronically. Direct outreach to concerned residents may also be considered as notice for a project, whether through a phone call, letter, or email. Where appropriate, notices will also be published on DEP's website on the EJ Project Portal.

## Pennsylvania Department of Environmental Protection Environmental Justice Policy Continued

### Public Meeting Requirements

Public hearings are held by DEP as part of a formal comment period, but public meetings are different and may be facilitated by either DEP or the applicant. These meetings should be scheduled no later than within 30 days of DEP accepting an application as administratively complete and technically adequate. The policy provides that the meetings can be held virtually or in-person and should be held in central and accessible locations and at dates and times that are convenient for most of the affected community.

### Comment

DEP will consider providing a public comment period for all Trigger and Opt-In permit applications if public comment is not already required by the applicable regulations (most permit applications will already require a comment period). The comment period will be based on regulatory requirements. For projects not subject to regulatory public comment requirements, the public comment period may be shorter than 30 days.

### Notice requirements

In addition to any regulatory notice, DEP will post notice of receipt of the application on the DEP EJ Project Portal—which doesn't exist yet. The notice must explain the project in plain language, include a description of the purpose of the project as well as its location, and include a summary of the anticipated direct and indirect environmental impacts for the Area of Concern. It should also indicate where application materials are available for review. Finally, the notice should include the anticipated permit process timeline.

The notice should be published and distributed in accordance with the public participation strategy developed for the project.

DEP staff will also publish notice of a permit application decision on the DEP EJ Project Portal and notify communities. The EJ Portal will also include decision related documents, including the Comment-Response Document, permit issuance or denial, and any record of decision.

### Filing a Complaint Concerning Operation of a Regulated Facility

A complaint concerning the operation of a permitted facility may be made by completing the online Environmental Complaint Form, at [dep.pa.gov/environmentalcomplaints](https://dep.pa.gov/environmentalcomplaints) or by calling 866-255-5158, or the appropriate DEP Regional Office or District Oil and Gas or Mining Office. DEP staff will follow up on the complaint. The Office of Environmental Justice may assist communities with understanding the technical aspects of reviewing inspection reports, enforcement documents, and the process of filing a complaint.

### Possible records from this process CRCQL could request under RTKL:

General Information Firm, Pre-Project Community Outreach plans, public participation strategy documents, information regarding facility inspections and compliance.



## PA Environmental Review Process

EPA requires states to evaluate the environmental impact of all projects receiving federal funding, known as State Revolving Fund (SRF) projects. In Pennsylvania, the State Environmental Review Process ("SERP") fulfills that requirement. The Uniform Environmental Review Process Guidelines are how PA DEP implements the SERP.

The specific financial assistance programs and agencies that can utilize the UER are:

- The Clean Water State Revolving Loan Fund (PENNVEST, DEP, EPA)
- The Drinking Water State Revolving Loan Fund (PENNVEST, DEP, EPA)
- The Community Development Block Grant Program (DCED and HUD)
- Other Federal Funding Efforts (EPA)

In environmental reports, it is recommended that the agency describe the steps taken to ensure public participation in the planning and implementation of the project and include dates of any public meetings, newspaper advertisements, or other actions. The agency should summarize any information provided to the public, such as anticipated benefits, impacts, and user rates. Comments from the public should be summarized as well as the agency's responses.

## PA Environmental Permitting

Below, we've detailed the permitting processes for two types of air and water permits in PA. These types of permits involve public participation processes you may want to get involved in.

Additionally, you can sign up for email notices for these two types of permits (in addition to others). The e-notice system will provide you with alerts about permit applications, notices of intent to remediate, as well as regulation updates, and comment periods. Sign up for e-notices here: [PA DEP E-Notice Subscription Site](#)

## PA Title V Permitting Public Participation Requirements

What are Title V facilities?

Title V of the Clean Air Act requires major sources of air pollutants to obtain and operate in compliance with an operating permit.



## PA Title V Permitting Public Participation Requirements Continued

What are the requirements for public participation?

### Notice

Notice shall be given by publication by the permit applicant in a newspaper of general circulation in the area where the source is located and by the DEP in the Pennsylvania Bulletin and to persons on a mailing list developed by the Department, including those who request in writing to be on the list.

The notice should include, in addition to information about the Title V facility, the contact information of a person that people can contact to obtain additional information, including copies of the permit draft, the application, and other materials relevant to DEP's permitting decision. The notice should include the time and place of a hearing that may be held, including the procedures for how to request a hearing if it has not already been scheduled.

DEP will give notice of a public hearing at least 30 days in advance of a hearing.

### Comment & Filing a Petition to EPA

DEP will provide at least 30 days for public comment.

DEP must provide EPA with a copy of the permit application. EPA has 45 days to object to a permit for not complying with applicable requirements. If EPA objects to a permit, DEP must revise and submit a proposed permit to EPA within 90 days.

If a group wishes to petition EPA following a permit approval, they must raise a comment during the public comment period.

Petitions are based only on objections to the permit raised during the public comment period, unless the petitioner demonstrates that it was impracticable to raise the objections within the period, or the grounds for objection rose after the comment period. If you want to petition EPA to object to a permit, it's best to consult a lawyer with experience in Title V permit works, as these petitions must include certain information.

If EPA grants the petition and objects to the permit, DEP will suspend the permit until EPA's objection is resolved. However, if a permit was issued after the 45-day EPA review period and prior to an EPA objection, the permit is still in effect until EPA modifies, terminates, or revokes the permit (so construction can begin, facilities can keep operating, etc). If EPA modifies, terminates, or revokes the permit, then the permit is suspended until DEP issues a revised permit that satisfies EPA's objection.





# PA National Pollutant Discharge Elimination System Permitting Programs (NPDES) Public Participation Requirements

## What is a NPDES Permit?

A point source discharge into PA surface waters requires a NPDES permit. NPDES permits last 5 years.

## Notice requirements for NPDES Permits

Every complete application for an NPDES permit, as well as every new draft individual permit, or major amendment to an individual permit, will be published in the Pennsylvania Bulletin. The notice will be posted by the applicant near the entrance to the applicant's premises, and at the facility or location where the discharge exists. The contents of the notice must include:

1. The name and address, including county and municipality, of each applicant.
2. The permit number and type of permit applied for.
3. The stream name of the waterway to which each discharge is proposed.
4. The address of the State or interstate agency premises at which interested persons may obtain further information, request a copy of the NPDES forms and related documents.

## Comment period

Following publication of notice, there is a 30 day comment period. Written comments submitted by the public during the comment period will be considered by DEP when making its final determinations. The comment period may be extended at the discretion of DEP for one additional 15 day period (45 days total).

## Public hearings on permit applications

DEP provides the opportunity for any interested person or group of people to request or petition for a public hearing on the application. The request or petition should be filed within the 30 day comment period. The request or petition must indicate the interest of the party filing the request and reasons why a hearing is warranted.





## PA NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITTING PROGRAMS (NPDES) PUBLIC PARTICIPATION REQUIREMENTS CONTINUED

### Public hearings on permit applications continued

DEP will hold a hearing if there is significant public interest (indicated by the filing of requests or petitions)—so the more people and groups who ask for a hearing, the better. If there is doubt about the level of public interest, DEP should still favor holding the hearing.

Any hearing will be held in the geographical area of the proposed discharge. Notice of the hearing will be published in the Pennsylvania Bulletin, and in at least one newspaper of general circulation within the geographical area of the discharge and will be sent to all persons or government agencies that received a copy of the fact sheet for the draft permit. All notices of a public hearing will be published at least 30 days before the hearing.

### Fact sheets

If you want, you can request that DEP provide you with a fact sheet about the draft permit. This fact sheet, at minimum, must contain information related to the documentation of permit conditions. Permit conditions include:

1. A brief description of the type of facility or activity permitted.
2. The type and quantity of wastewater or pollutants evaluated in the permit.
3. Documentation that the applicable effluent limitations and standards considered in development of the draft permit.
4. Documentation that applicable water quality standards will not be violated.
5. A brief summary of the basis for the draft permit limitations and conditions including references to applicable statutory or regulatory provisions.



## PA NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITTING PROGRAMS (NPDES) PUBLIC PARTICIPATION REQUIREMENTS CONTINUED

### Notice of final action on a permit

Following the 30-day comment period and any public hearing, DEP will decide to approve or reject the permit. Comments received during the comment period will be addressed and documented by DEP and made available for public review. Final DEP action will be published in the Pennsylvania Bulletin.

### Appealing a permit decision (applies to both Title V and NPDES permits)

When an appeal of DEP's decision on a permit is filed, notice of the appeal, and notice of the hearing date, if any, will be published in the Pennsylvania Bulletin. In addition, notice of DEP's final action will be published in the Pennsylvania Bulletin.

Appeals of permit decisions follow 30-day timelines. There are different ways the 30-day countdown kicks in. First, a person aggrieved by the action of DEP (e.g., a group wants to challenge a decision granting a permit) must file their appeal with the Environmental Hearing Board (EHB) within 30 days after the notice of the action has been published in the Pennsylvania Bulletin. Or, if notice of the action is not published in the Pennsylvania Bulletin, they must file within thirty days after actual notice of the action.



# Further Resources

## Citizen's Guide to RTKL and the Sunshine Act

- [This resource](#) is helpful for outlining the most relevant parts of the RTKL for CRCQL.
- The [full list of RTKL exemptions is available here](#), see section 708.

## RTKL agency responsiveness links:

- [Read the Reporters Committee letter here.](#)
- [Article about the letter.](#)

## RTKL and Sunshine Act webinar training

- The OOR also conducts RTKL and Sunshine Act webinar training for groups that wish to learn about both laws and their applications. [Find more information here.](#)

## Environmental Justice Policy

- [The relevant portion of the EJ Policy for the purpose of this guide is DEP's Enhanced Public Participation Policy.](#) This guide focuses on the Enhanced Public Participation Policy section of the EJ Policy.

## PA DEP ENVIRONMENTAL REGULATORY PROCESS

- [Environmental Regulatory Process in Pennsylvania](#)
- [This document](#) provides an overview of the environmental regulatory process in PA, and outlines the steps that process takes, how to submit comments, and information about public hearings.

## Environmental Hearing Board (EHB)

- [EHB's website and e-filing system for appeals is linked here.](#)
- For more information regarding the EHB and what types of DEP actions are appealable, check out the [Insider's Guide to the Pennsylvania Environmental Hearing Board.](#)
- Another important aspect to note is that parties, except individuals appearing on their own behalf, must be represented by an attorney. [§1021.21.](#)