

## **RESPONSE TO CITATION OF PERCEIVED DEFICIENCIES**

### **Presidential Executive Order 12898 on Environmental Justice**

You suggested a failure to abide by the Executive Order on Environmental Justice. The reality is that Executive Order 12898 directs Federal agencies to identify and address disproportionate high and adverse effects on minority and low-income populations. And, under the National Environmental Policy Act procedures used by the Department of Energy, such identification and analysis processes are incorporated into the development of Environmental Impact Statements, as is consistent with the **guidance** that you cited. You can easily verify those facts by examining previously issued Environmental Impact Statement documents prepared by the Department of Energy.

You suggested that outreach was inadequate or non-existent. In reality, the Gilberton area was visited well before issuance of the Notice of Intent and well before planning the public scoping meeting. Visual examinations and discussions with **residents of Frackville** and the surrounding areas were conducted. As a result of that visit and subsequent planning, results indicate that outreach was effective in covering all areas and residents in close proximity to the proposed site for the project, as evidenced by the broad representation of communities at the public meeting.

### **Location for the Public Scoping Meeting**

You suggested that the public scoping meeting was held in an inappropriate location. In fact, the location of the May 5, 2003, public scoping meeting and the media outlet for advertising the meeting were initially identified as appropriate by **residents of Frackville**, a community "north of the mountain" where the project would be located. Subsequent research by DOE confirmed their appropriateness, and the geographic representation at the meeting confirmed the adequacy of those choices. Contrary to your assertion, as evidenced by results, any cultural, social, economic, or geographic differences did not deter participation in the public scoping meeting.

You suggested that the public scoping meeting was held at an inappropriate time, due to your claim that elderly residents would be deterred by the need to drive at night. In reality, which you failed to consider, an enhanced opportunity was provided for public participation beginning at 4:00pm, during daylight hours, which would have been particularly beneficial to those residents that you assert would have been deterred from participation. As clearly indicated in announcements for the meeting, that early start would be accompanied by greater opportunities for direct discussions and interactions with Department of Energy personnel, which may well have been more appreciated by elderly residents.

A noted inconsistency in your listing of asserted deficiencies: your exclusion of populations from state correctional institutions in establishing elderly population demographics while including populations from those same state correctional institutions in establishing minority population demographics.

### **Access to Documents**

You suggested a general lack of access to documents. In reality, your request for proposal information was properly handled by Ms. Diane Madden. Ms. Madden's response to your request for documents containing proprietary information (i.e., the WMPI application) was consistent with governmental procedures and regulations, with standards of performance that would be expected from private sector organizations as a basis for their doing business with governments at all levels, and with quality practices in dealing with business-sensitive information submitted to the government by private sector companies and organizations.

Contrary to the assertion that the Notice of Intent, which contained both a project description and a synopsis of potential environmental consequences, as well as a projected schedule and alternatives, was the only project document made available to the members of the public at the scoping hearing on May 5, 2003, as you should have confirmed by your indicated attendance at that meeting, the following information resources were provided for attendees:

- a flow chart and description of the proposed facility;
- an artist's rendering depicting the proposed facility in relation to existing structures;
- a fact sheet describing the proposed project and providing contact information;
- comment cards summarizing the scope of the proposed project and methods for communicating comments and concerns; and
- a booklet containing questions and answers regarding the proposed project

Personnel from DOE and WMPI were also available for discussions. Absent from the variety of information resources distributed or made available at the meeting, as would be expected, were documents containing proprietary information.

Obviously, no project yet exists in response to the proposed application from WMPI, and thus progress reports will not be available until project initiation, if final approval results. We did receive one additional request for information related to technology that is proposed to be included in the Gilberton facility; while the relevance of the requested information to the proposed project may be marginal, information sources to honor that request were researched by the Department of Energy, and the requested information was obtained and delivered to the requestor at the public meeting, as desired.

### **Public Notice Printing**

While all information announcing the Public Meeting was correctly published in the media serving the area potentially impacted by the proposed project, you are correct in noting that two of the five provided routes for contacting the Department of Energy were misprinted in the media announcement. Fortunately, those two inaccuracies did not appear in either the Notice of Intent or in the flyer announcement that was provided for posted in the Frackville library and possibly at other public locations. Since you attended the public meeting on May 5, 2003, you (and all attendees) were provided with access to corrected information that would have precluded any inability to properly submit comments and concerns.

While the newspaper misprints are certainly regrettable, I would note that telephone contacts were received between the date of initial media printing of the public meeting notice and the May 5 public meeting. In fact, over 97% of provided comments were submitted outside of that time period, which would not be unusual, with about 90% of comments received following the public scoping meeting, excluding your submittals, provided using methods that were not announced incorrectly in the media prior to the meeting and 10% provided using methods that had previously been incorrectly announced.

Regarding the incorrectly printed fax and e-mail communication methods in the local media, while not acceptable as previously mentioned, I would note that fax communications of comments and concerns are rare, and based on your observation that a large portion of the local community do not have Internet access, the impact of the incorrect printing of the e-mail address may have resulted in little adverse effects, especially considering the availability of other communication routes, including the toll-free number, which was extensively used.

Regarding the specific difficulty that you experienced with transmittal of your comments on May 19, the closing date of the established comment period, I would note that a variety of methods were provided for comment, and you appropriately used one of the alternative method to provide notification that comments were being submitted. I would further note that, of all who commented by telephone, toll-free number, mail, e-mail, or fax, the only difficulty in submitting comments was reported by you, the Clean Air Council, and Supervisors from West Mahanoy Township in separately submitting on May 19 the set of comments subject to communication difficulty.

Furthermore, as I previously noted, those comments were received and will be appropriately considered in formulating plans for preparation of the Environmental Impact Statement. Since the interested Supervisors had previously provided feedback on two separate occasions, and since both you and interested Supervisors attended the Public Scoping meeting and were provided with accurate communication information covering all methods for submitting comments, I am puzzled by the difficulty that you experienced. Nonetheless, as noted, the comments are available and will be considered.

### **Insufficient and Poorly Timed Public Notice**

Contrary to your statements, the media notice announcing the meeting was printed on six occasions during a time period extending over three weeks, beginning on April 17 and ending on May 3, and the specific media outlet was initially recommended by residents of Frackville as appropriate for all communities surrounding the proposed site for the project. I would also note that a once-a-week announcement, as you suggested as preferable, is not considered to be appropriate due to the varieties of home deliveries preferred by individuals; thus, multiple publication days covering weekdays and weekends help to ensure coverage of community members that prefer only weekday or only weekend deliveries.

In addition, a flyer announcing the public meeting was posted, as a minimum, in the Frackville Free Public Library.

Regardless of the communication method that resulted in participation at the public meeting, I would note that attendees from the following communities in areas immediately adjacent to the proposed site for the project were in attendance at the meeting: Frackville, Morea, Mahanoy City, West Mahanoy Township, Shenandoah, Gilberton - Maizeville, and Mahanoy Plane.

### **Proposed Facility Location**

You suggest a flawed NEPA process due to lack of final definition of the exact boundary lines of the facilities proposed for construction. Contrary to your suggestion, the fact is that sufficient information exists to start the NEPA process and to analyze environmental impacts regardless of whether the footprint of the facility resides solely in Mahanoy Township or West Mahanoy Township or extends into both Townships. The limited uncertainty (by tens of feet or a hundred feet) in the facility boundary does not preclude the ability to perform a proper environmental analysis. Furthermore, if that boundary line uncertainty continues for some time into the future, the effects of facility placement within both Townships can be included in the environmental analysis. Despite that limited uncertainty in the boundaries of the proposed facility, which primarily affects political interests, the early start of the NEPA process is entirely consistent with expectations and with guidance for early involvement in, and initiation of, the NEPA process. Thus, rather than a flawed NEPA process, an effective and an efficient NEPA process is anticipated.