



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

April 16, 2020

MEMORANDUM

SUBJECT: Virtual Public Hearings and Meetings

FROM: Matthew Z. Leopold
General Counsel

TO: Associate Deputy Administrator
Assistant Administrators
Regional Administrators

The U.S. Environmental Protection Agency (EPA) is actively working to combat the spread of the COVID-19 virus during the pandemic, while continuing its mission of protecting public health and the environment under federal environmental statutes. Currently, most of EPA is operating in telework status, consistent with the Presidential *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* and state and local stay-at-home directives. Over the past few weeks, the Office of General Counsel has received questions from various EPA offices as well as from our State partners regarding whether EPA and States may fulfill their obligations to provide for public participation under various federal environmental statutes by conducting virtual public hearings and meetings in lieu of in-person public hearings and meetings.

Virtual public hearings and meetings are a permissible tool under the federal environmental statutes that EPA administers to provide for public participation in permitting, rulemaking, and similar regulatory actions in lieu of in-person public hearings and meetings. Virtual public meetings are also permissible when conducting public engagement at Superfund sites. In addition, virtual consultation with tribal governments is appropriate and consistent with EPA's tribal consultation policy. The Agency has experience holding virtual public hearings and meetings and has used this tool long before the current pandemic to take the place of in-person public hearings and meetings, including in the area of water quality standards where the Agency

has used this tool since at least 2015.¹ The Agency's best practices for conducting virtual public hearings and meetings include documenting the reasons for conducting the public hearing or meeting virtually and providing public notice of procedures, including telephone access instructions or other alternatives for anyone without internet access.

Similarly, virtual public hearings and meetings are a permissible tool for States to use as part of public participation for permitting and similar regulatory actions conducted under federal environmental statutes, where consistent with state law. Like EPA itself, state and local recipients of EPA financial assistance must provide meaningful access for individuals with limited English proficiency and individuals with disabilities.

Please contact the Office of General Counsel or your Office of Regional Counsel with questions on virtual public hearings and meetings generally and to address specific questions or concerns on a case-by-case basis. Please also work with your program or regional Senior Information Official or designee for support using agency-approved virtual collaboration technologies.

cc: Associate Administrators
Deputy Assistant Administrators
Deputy Regional Administrators
Regional Counsels

¹ The Agency has issued guidance on virtual public hearings. *See, e.g., Modernizing Public Hearings for Water Quality Standard Decisions Consistent with 40 CFR 25.5*, EPA Office of Water, EPA 823-F-19-005 (June 2019).