

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
SITE SUITABILITY (REV. G20)**

REGULATORY ADVISORY PANEL MEETING MINUTES

**PIEDMONT REGIONAL OFFICE TRAINING ROOM
4949-A COX ROAD, GLEN ALLEN, VIRGINIA
OCTOBER 6, 2021**

Members Present:

Gustavo Angeles, Sierra Club	Christy Morton for Stephen Moret, VEDP
Stephen Barten for L. Kardell, Waste Mgmt	Mark Sabath, SELC
Cathy Binder, King George County	Peggy Sanner for Patrick Fanning, CBF
Dru Branche, Newport News Shipbuilding	Krupal Shah, VCCA
Steve Fischbach, VPLC	Kyle Shreve, VA Agribusiness Council
Michelle Gowdy, Virginia Municipal League	Mitchell Smiley, VA Municipal League
Jim Guy, Mecklenberg Electric Cooperative	Andrea W. Wortzel, Troutman-Pepper

Members Absent:

Eric Gates, Celanese	S.Z. Ritter, City of Chesapeake
Leigh Mitchell, Upper Mattaponi Tribe	Randy Wingfield, Town of Christiansburg

Department of Environmental Quality:

Michael G. Dowd, Air Division	Tamera M. Thompson, Air Division
Renee Hoyos, Environmental Justice	Karen Sabasteanski, Air Division

Facilitators:

James Burke, VCU	Linda Pierce, VCU
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The meeting began at approximately 9:35.

Meeting Purpose: This regulatory advisory panel (RAP) has been established to advise and assist the department in the development of proposed amendments to provisions of board's regulations to provide greater detail as to how the site suitability requirements of Code of Virginia § 10.1-1307 E are to be met. The purpose of this meeting is for DEQ to coordinate and facilitate discussions of this group in an effort to find common ground and elements that could be included in the regulation amendments.

Introduction of New Attendees, Summary of First Meeting, Charge for Today: Ms. Sabasteanski welcomed the group and introduced Dr. Burke and Ms. Pierce of VCU's Performance Management Group, who are assisting with the process. Ms. Sabasteanski then posted the agenda, and reminded the group to follow Freedom of Information Act (FOIA) requirements. (See Attachment A.) Members who had not attended the previous meeting were introduced.

Dr. Burke and Ms. Pierce provided a brief overview of the first meeting, noting several areas of general agreement: the need to incorporate environmental justice, the need for certainty and simplicity, and the need to compare the views of small affected groups. The group was asked to consider views not at the table, what other potential interests may need to be addressed, and to view the process with fairness and inclusivity.

Small Group Work: Ms. Pierce provided the group with five questions to discuss and, if possible, identify answers:

1. Site suitability determination for air permits should consider what criteria – please be specific.
2. Should these criteria apply to all applications for air permits?
3. When should site suitability be determined in the air permit application process?
4. Who has the knowledge, skills, and objective ability to perform the site suitability determination?
5. What else needs to be considered?

The group was split into three smaller groups, each containing at least one representative from environmental justice, local government, and the regulated community. These small groups were then given about an hour to talk over the five questions.

Small Group Debrief: The group reassembled, and each small group reported their conclusions and major points of discussion, with an eye toward listening for both overlap and divergence. The following reflects the general course of conversation, as there was no polling or voting, and no formal consensus or agreement was sought.

The first group to debrief developed a lengthy list of responses (see Attachment B):

- For question #1, how is a particular demographic population susceptible to adverse impacts beyond those normally expected in other similar populations (how was an area chosen and why, how do you determine what the exposure is, existing pollution loads, proximity).

- For question #2, does this open up more businesses to being subject to permitting (new versus existing facilities, under what circumstances would an existing facility become subject, how tools such as mapping should be updated, what are the environmental and financial costs to communities).

- For question #3, get DEQ involved earlier in the process, especially to help local governments; consider changing local zoning code to add environmental justice criteria; develop a checklist of county responsibilities--add staff to implement as needed, and provide certainty for localities, businesses and communities.

- For question #4, small governments will need assistance in understanding permits, including a comprehensive look at the interaction among air, water, and land protection (waste) permits; additional local staff may be hired and trained to evaluate proposed projects for suitability criteria.

- For question #5, communication with the public as early as practicable is important. Business likes certainty. Need to better identify at what point DEQ needs to be involved.

The next group to debrief provided the following (see Attachment C):

- For question #1, themes from the previous meeting continue to appear through this process, i.e., the "moving parts" continue to be developed, and the determination should be made earlier in the process, which may necessitate a change in the statute. Zoning is the time to reconcile all of the moving parts. The broader issues of certainty, predictability, and what standards must be met need to be looked at. There is a need to understand how health and environmental impacts on an affected community compare to the rest of the state, and what the health impacts are over time.

- For question #2, there are some baseline questions about the permitting process that need to be explained and understood.

- For question #3, during the local government zoning process.

- For question #4, collectively, localities and DEQ have the information needed in order to make a site suitability determination.

For question #5, It is important to keep in mind that in Virginia, Best Available Control Technology (BACT) applies even to minor sources, and that the federal National Ambient Air Quality Standards (NAAQS) trump even BACT. Data should be collected and provided to localities so that they can make an informed decision.

The final group to debrief offered the following (see Attachment D):

- For question #1, identify the type of activity, the type of pollutants, and related health concerns; use a radius analysis to identify affected communities; review existing permits to evaluate additive impacts to communities; and provide an analysis of communities to determine disproportionate impacts.

- For question #2, yes, but depends on the scale of the facility (for example, emissions from a painting facility will likely be volatile organic compounds while those from a foundry will likely include particulate matter).

- For question #3, see the "Air Permitting Process: Basic Steps" flow chart in Attachment A. DEQ should be involved at the DEQ review and approval of the application through the public comment process stages. There needs to be a change in approach for community identification, outreach, engagement, and disproportionate impact analysis.

For question #4, this will likely be no single entity, but a collaboration of DEQ, businesses, communities, and experts; these are the bodies that will inform the air board, which makes the determination.

For question #5, substantive change will be needed for DEQ and business. There is a need for the creation of accessible forums that provide for the consideration of views to allow for the genuine ability to affect outcome.

There was also considerable group discussion about how the Virginia Economic Development Partnership works with localities, how localities choose to zone a site for business purposes, and confidentiality/contractual needs as balanced against the need for transparency. An ongoing interest was shown in what stage of the process is

optimum for the involvement of DEQ and all other parties in the interest such that legal requirements are met while keeping community needs foremost. DEQ also provided a brief description of the various types of permits and the distinction between what is considered to be a new or existing/modified permit.

The group requested for the next meeting that DEQ provide a more detailed description of the permitting process, as well a discussion of environmental justice activities being developed (the mapping project, new staff, etc.). There was also some discussion as to the timing of the regulatory process, and what the group's role will be in the future.

Consolidation of Themes:

- Early involvement is important, but it remains unclear exactly when and how DEQ should be involved.
- Certainty and clarity remain important, perhaps in the form of checklists.
- Outreach and engagement with the locality and its communities is important-- addressing environmental justice issues up front can make a project more desirable or stop an unwanted project before time and effort are expended. Perhaps a draft or preliminary determination would accomplish this.
- Environmental justice communities, local governments, and DEQ need to work collaboratively to assure a successful outcome for all parties.

Next Steps/Future Meetings: Dr. Burke and Ms. Pierce wrapped up the meeting. The meeting adjourned at approximately 12:10 p.m.

Future Meetings: Future meetings are scheduled for October 12 and 14.

Attachments

REG\DEV\G20-RP02-MINUTES



VCU

Performance Management Group

L. Douglas Wilder School of Government and Public Affairs

ATTACHMENT A

Site Suitability for Air Quality

Regulation Revision G20

Regulatory Advisory Panel (RAP)

Second Meeting, October 6, 2021

Site Suitability for Air Quality Permitting RAP Meeting Agenda

Wednesday, October 6, 2021

9:30 – 9:45	Introduction of New Attendees, Summary of First Meeting, Charge for Today
9:45 – 10:45	Small Group Work
10:45 – 11:00	Break
11:00 – 11:30	Small Groups Debrief (to entire group)
11:30 – 11:50	Consolidation of Themes
11:50	Next Steps
12:00	Adjourn

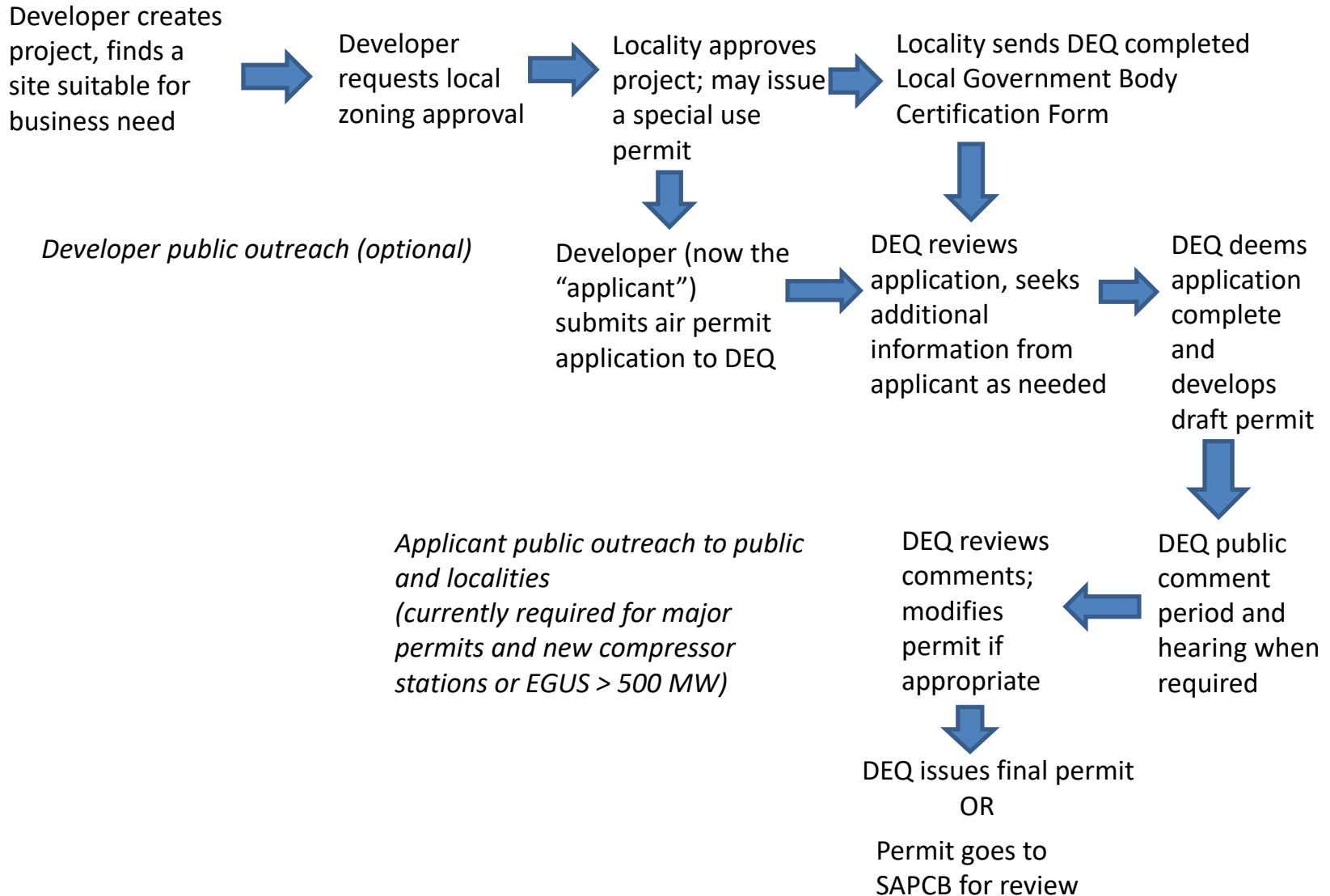
Our Charge

- Develop potential recommendations for the regulations as to how site suitability should be used as a criterion for the issuance of air permits including:
 - Definition of site suitability
 - Situations or criteria for when site suitability should be delegated to local zoning authority
 - Situations or exemptions for when DEQ should use site suitability in its decision-making for air permits

Today's Discussion Questions

1. Site suitability determination for air permits should consider what criteria – please be specific.
2. Should these criteria apply to all applications for air permits?
3. When should site suitability be determined in the air permit application process?
4. Who has the knowledge, skills, and objective ability to perform the site suitability determination?
5. What else needs to be considered?

Air Permitting Process: Basic Steps



Key Texts

Virginia Code § 10.1-1307 E

E. The Board in making regulations and in approving variances, control programs, or permits, and the courts in granting injunctive relief under the provisions of this chapter, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused;
2. The social and economic value of the activity involved;
3. *The suitability of the activity to the area in which it is located;*
and
4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

Regulation for General Administration

9VAC5-170-170. Considerations for approval actions.

Pursuant to the provisions of § 10.1-1307 E of the Virginia Air Pollution Control Law, the board, in making regulations and in approving variances, control programs, or permits, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with safety, health, or the reasonable use of property which is caused or threatened to be caused;
2. The social and economic value of the activity involved;
3. The suitability of the activity to the area in which it is located; and
4. The scientific and economic practicality of reducing or eliminating the discharge resulting from the activity.

Example VAC text

9VAC5-80-1230. Compliance with local zoning requirements.

No provision of this part or any permit issued thereunder shall relieve any owner from the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the board of its duty under 9VAC5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

Chapter 2 of Title 2.2

Article 12

Virginia Environmental Justice Act

§ 2.2-234. Definitions.

§ 2.2-235. Policy regarding environmental justice.

It is the policy of the Commonwealth to promote environmental justice and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and fenceline communities.

"Community of color" means any geographically distinct area where the population of color, expressed as a percentage of the total population of such area, is higher than the population of color in the Commonwealth expressed as a percentage of the total population of the Commonwealth. However, if a community of color is composed primarily of one of the groups listed in the definition of "population of color," the percentage population of such group in the Commonwealth shall be used instead of the percentage population of color in the Commonwealth.

- "Environment" means the natural, cultural, social, economic, and political assets or components of a community.
- "Environmental justice" means the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, income, faith, or disability, regarding the development, implementation, or enforcement of any environmental law, regulation, or policy.
- "Environmental justice community" means any low-income community or community of color.

- "Fair treatment" means the equitable consideration of all people whereby no group of people bears a disproportionate share of any negative environmental consequence resulting from an industrial, governmental, or commercial operation, program, or policy.
- "Fenceline community" means an area that contains all or part of a low-income community or community of color and that presents an increased health risk to its residents due to its proximity to a major source of pollution.

- "Low income" means having an annual household income equal to or less than the greater of (i) an amount equal to 80% of the median income of the area in which the household is located, as reported by the Department of Housing and Urban Development, and (ii) 200% of the Federal Poverty Level.
- "Low-income community" means any census block group in which 30% or more of the population is composed of people with low income.

- "Meaningful involvement" means the requirements that (i) affected and vulnerable community residents have access and opportunities to participate in the full cycle of the decision-making process about a proposed activity that will affect their environment or health and (ii) decision makers will seek out and consider such participation, allowing the views and perspectives of community residents to shape and influence the decision.

- "Population of color" means a population of individuals who identify as belonging to one or more of the following groups: Black, African American, Asian, Pacific Islander, Native American, other non-white race, mixed race, Hispanic, Latino, or linguistically isolated.
- "State agency" means any agency, authority, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch of government.

SMALL GROUP ONE, MEETING NOTES

The notes for this small group's discussion were written on an oversized note pad, and could not be legibly reproduced; a typed version of those notes is provided here.

1. How is the particular demographic population susceptible to adverse impacts beyond those normally expected in other similar populations.

Suitability of the area - how was it chosen and why?

- appropriateness of the area
- property involved
- community surrounding property
 - existing exposures
 - define exposed area -how far
 - impact of emissions
- how determine what exposure is
 - distance
 - affected airshed
- existing air pollution loads
 - attainment/nonattainment zones
 - other pollutants in airshed
- proximity of proposed facility to surrounding communities

2. Does this open up to more businesses being affected to have to go through air permit process?

- new permits
- existing/renewals - criteria that would trigger evaluation of site suitability with new rules
 - when new information becomes available (Superfund site, new info on community surrounding)
 - pollution load community experiences on cumulative basis
 - cumulative addition - who dictates that or counts this
 - environmental mapping of communities could change based on factors like changing demographics
 - constantly defending permits - a cost
 - what are communities at risk

Map is just a tool - demands of justice - who defines it
criteria and potential sources of information

don't impose new standards on or revalue old business without cause

Open question site suitability at time of permit renewal

- needs to be rare
- significant change in business model or use
- deemed suitable at time - grandfathered in

3. Get DEQ involved earlier - especially to help EDAs - impacts sooner in process
 - who does analysis
 - what to consider
 - mandates to change local zoning code to add environmental justice criteria
 - how effects counties' need to hire new staff to evaluate
 - checklist would need to do

Permit help for small governments for evaluation. What do inquiries look like when local EDA has a potential business.

- 4 and 5. No database or map for at-risk communities
 - need to hire expert survey community
 - look at demographics
 - against criteria established

At start of process need all permits evaluated
water/land (waste)/air permits

How to maintain confidentiality for negotiations for business acquiring land? Info early.

Business side needs to address timing, needs of community to hear

business - narrative - rumors

community support - opposition

definable - business has a burden into coming into a community - explaining to

Business/developers do not court risks

community/excitement

more can get lined up before announcement important

Talk to public at front end of projects for transparency would not always work

Businesses like certainty

When does DEQ come into process?

can have all three permits go together at beginning

Additional notes:

10/6/2021 9:30am to 12:30pm Site Suitability for Air Quality

- Well-functioning group brings other views to the table.
- Word Smithing needed for air permit criteria.
- How do we make sure it's a fair process for all communities.
- Environmental Justice a big topic in the meeting.
 - Air Shed's defined by Modeling and DEQ.
 - DEQ to hire 5 to 7 members for Environmental; Justice—new Department.
 - Lots of moving parts that need to be hammered out.
 - Determination that need to be at the start of the process.
- Amending legislation to allow DEQ to chime in earlier on environmental impacts.
 - Certainty and predictability to standards need to meet. How are air emission standards set for the state.
 - DEQ and localities each have specific sets of expertise.

- DEQ permitting backlogged at moment due to staffing.
- Impact to air quality easiest standard to look at. But air pollution can go up and down.
- Pollution does not respect boundaries.
- Air Quality Standards keep getting stricter overtime. Over 275 regulations involved in a permit. Disincentive for Investment—too much regulation.
- Zoning Laws came about in 1950. Site Suitability Provisions came in 1966.
- Criteria
 - Type of activity/pollution/health consequences of pollutants/radius around site of impacted communities and demographics of community.
 - When does DEQ come into zoning process?
 - Conversations earlier.
 - Then come back in process later.
 - Disproportional impact analysis.
 - Need for cultural changes. Business engage communities in the process.
- Environmental Justice Act is made to change the culture by statutes.
- Economic Departments—Market to Businesses. Has to have community involvement and environmental justice. Outreach and engagement. How do we reach community up front earlier in process?
- Where is development welcome and what type? Be a good neighbor up front.
- Environmental Justice act to change way siting decisions are made and community involvement up front. Discussions up front on effected communities.
- Different projects have different impacts. Broad ranges.
- Business needs certainty. Need to know how many stakeholders they need to address overall.
- Confidentiality for businesses. Especially in the grant world.
- Coordinate with local government on what it is willing to bring as a business.
- Understanding types of development.
- Comment on people of color not having a seat at the table. Environmental Justice act does.
- Site suitability done later in the permitting process and needs to change.
- Make too restrictive or costly to businesses.
- Confidentiality a tool in development projects. Not always nefarious.
- Clarity what community do we need to protect? What are the standards to evaluate environmental justice communities? What is the criteria?
- Devise map and create the structure.
- How is DEQ building out the EJ staff? What rules or job responsibilities? What kind of expertise or certification.

SMALL GROUP TWO, MEETING NOTES

275 reqs
BACT (even for minor sources)
NAAQS (which trump BACT).

Andrea

RAP Meeting: October 6, 2021

- 1. Site suitability determination for air permits should consider what criteria – please be specific.
 - local zoning
 - application
 - health impacts over time
 - effects in last 10 years
- 2. Should these criteria apply to all applications for air permits?
- 3. When should site suitability be determined in the air permit application process? → local government zoning?
- 4. Who has the knowledge, skills, and objective ability to perform the site suitability determination?

- 5. What else needs to be considered?
 - revision of standards for state? what do other states do?
 - more outreach considerations during zoning process
 - impacts on affected community as compared to the rest of the state [health + env't impacts]

Collect + provide data to localities so they can make more informed decision

- update to statute
- need for DED air permitting overview
- certainty
- predictability
- DED/board inform the local decision

SMALL GROUP THREE, MEETING NOTES

1. Type of Activity
Type of Pollutants
Relevant Health Concerns
Radius Analysis to Identify Impacted Communities
Analysis of Communities to Determine Disproportionate Impact
Review of Existing Permits to Evaluate Additive Impact to Communities

2. YES - BUT SCALED FOR ACTIVITY

3. IN THE CIRCUIT OF APPLICATION, DRAFT PREPARATION, COMMENT PERIOD AND REVIEW / MODIFICATION
CHANGE NECESSARY FOR COMMUNITY IDENTIFICATION, OUTREACH, ENGAGEMENT & DISPROPORTIONATE IMPACT ANALYSIS

4. LIKELY NO SINGLE ENTITY - BUT A
COLLABORATION OF DEQ, BUSINESS,
COMMUNITY AND EXPERTS

TO INFORM THE AIR BOARD WHO MAKES
THE DETERMINATION.

5. SUBSTANTIVE (CULTURAL?) CHANGE FOR DEQ
(OR BUSINESS?)

CREATION ^F OF ACCESSIBLE FORUMS
THAT PROVIDE CONSIDERATION OF VIEWS
TO ALLOW GENUINE ABILITY TO
AFFECT OUTCOME.