

Environmental Laws and Alternative Dispute Resolution: Tools for Environmental Justice

Environmental Permitting Process

Introduction

The U.S. Environmental Protection Agency (EPA) uses a system of permits and permitting procedures to govern and regulate activities that affect the environment and human health. Permits and permitting procedures are at the core of EPA's authority under most major pollution control statutes. The permit application and review processes offer a very important opportunity for community residents to participate in decisions that affect their health and environment.

Types of Permits

There are several types of permits that a facility can receive. The type of permit can be related to the type of activity being proposed. One type of permit helps determine where industrial and waste disposal facilities may be located, and under what circumstances. Another type, generally known as an "operating permit," translates general environmental standards into specific discharge and emission limitations, incorporates monitoring, reporting, and other related requirements, and provides a basis for subsequent enforcement actions. A third type, "registrations" or "listings" of chemical substances, regulates whether, how, and in what quantities those substances may be manufactured, distributed, and used.

Procedures in Permitting

Due to the importance of the permit, community residents should become familiar with the procedures involved in government's issuance of the permit. The steps involved in the permitting process are summarized below:

1. Any person who requires a permit under the Resource Conservation and Recovery Act (RCRA), the Safe Water Drinking Act's (SDWA) Underground Injection Control (UIC) program, the Clean Water Act's (CWA) National Pollution Discharge Elimination System (NPDES), or the Clean Air Act's (CAA) Prevention of Significant Deterioration program MUST submit an application for each permit required.
2. Once an application is complete, the Director of the permitting agency shall tentatively decide whether to prepare a draft permit or to deny the application.

Procedures, continued

- a. If the Director tentatively decides to deny the permit application, he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit, which follows the same procedures as any draft permit.
 - b. If the Director tentatively decides to issue a permit, he or she shall prepare a draft permit that contains information regarding conditions, schedules, and monitoring reports.
3. EPA shall prepare a statement of basis for every draft permit. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.
4. A fact sheet shall be prepared for certain types of draft permits. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.
5. The Director shall give public notice for any decision made on an application for permits. Public notice involves both:
 - a. Mailing a copy of the notice to the applicant, affected local, state, and federal agencies, and persons on a developed mailing list. Any person may request (in writing) to be placed on the mailing list.
 - b. Publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity. This requirement is only for major permits (e.g. facilities of a certain size), NPDES, and CWA Section 404 general permits.
6. Public notice shall allow at least 30 days for public comment (45 days for RCRA permits). During the public comment period provided, any interested person may submit written comments on the draft permit or the permit application and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All relevant comments shall be considered in making the final decision and shall be answered.
7. The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit. Public notice for the hearing will be given.
8. After the close of the public comment period on a draft permit, the Regional Administrator shall issue a final permit decision. A final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit. The Regional Administrator shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a RCRA, UIC, PSD, or NPDES permit.
9. Within 30 days of the final permit decision, any person who filed comments on that draft permit or participated in the public hearing may appeal the permit decision to the Environmental Appeals Board.

Permit Requirements

A permit translates general requirements of environmental laws into specific provisions tailored to the operations of each person discharging pollutants. A permit is supposed to generally specify an acceptable level of a pollutant or pollutant parameter in a discharge or release into the environment. A permit will contain both general and specific conditions that are used to govern the activity of the facility receiving the permit. General conditions address reporting and recordkeeping, for example. Specific conditions address discharge limits and monitoring parameters, for example.

Public Participation

Community participation is very important in the permitting process. This is because agency staff may not be as familiar with community-specific issues and facts as community residents when they must decide whether or not to issue a permit, or the conditions for the permit.

Timing of community participation is very important. It is not limited to input on permits during the public notice-and-comment period offered by the agency. Generally, it is best to begin to participate long before the permit hearing, because this public comment comes in late in the decision-making process. By the time of the hearing, a draft permit has already been written. Community residents should provide information to the agency soon after a permit application has been submitted, so that the draft permit can be written with all the relevant facts in mind. This information can be provided through meetings and conversations. Yet it is also important that information be submitted in writing.

Examples of Permitting

Permits and permitting procedures are at the core of EPA's authority under the CWA, CAA, and RCRA.

Clean Air Act (CAA): Under Title V of the CAA, permits are required from states or EPA for new or modified sources of air pollution. A source can be a power plant, factory, or anything that releases pollutants into the air. Cars, trucks, and other motor vehicles are sources, and consumer products and machines used in industry can be sources too. Sources that stay in one place are called stationary sources. Sources that move around, like cars or planes, are called mobile sources.

Air pollution is managed by a national permit system. Information included in a permit addresses:

- Which pollutants are being released;
- How much may be released;
- What kinds of steps the source's owner and operator is taking to reduce pollution; and
- Plans to monitor (measure) the pollution.

Permits must require the facility to use pollution prevention or treatment methods. They also require it to reduce pollution to levels that ensure that air quality standards are met.

- New air pollution sources may request a waiver from new source performance standards for innovative technology or continuous emissions reduction systems.
- Risk management plans are required for owners or operators of stationary air pollution sources to minimize accidental releases and provide prompt emergency response.
- Permits are required for new sources or modification of existing sources of air pollution in attainment areas to protect PSD (prevention of significant deterioration) areas.

Permit applications and permits are available for review by the public. The state or regional air pollution control agency or EPA can provide information on access to these documents.

Examples, continued

Clean Water Act (CWA): Permits are required for new or modified sources of water pollution. The CWA provides for different types of permits. These include National Pollutant Discharge Elimination System (NPDES) permits for discharges to surface waters from point sources. They also include dredge-and-fill permits and stormwater permits. As with air permits, CWA permits must require the facility to use pollution prevention or treatment methods, and to reduce pollution levels to ensure that water quality is met.

The NPDES program under the CWA requires a permit for all point source discharges to navigable waters. CWA prohibits anybody from discharging “pollutants” through a “point source” into a “water of the US” unless they have an NPDES permit. The permit will contain limits on what can be discharged, monitoring and reporting requirements, and other provisions to ensure that the discharge does not hurt water quality or people’s health. NPDES permits will be denied for a new source or a new discharger if the permit application cannot demonstrate that water quality standards will/can be met. EPA has the authority to review and object to state-issued NPDES permits, and to modify existing NPDES permit based on new information.

Dredge-and-fill activity permits are administered by the Army Corps of Engineers. However, EPA retains veto power over dredge-and-fill activity permits, and has the authority to review state-issued dredge-and-fill activity permits.

Stormwater permits are also authorized under the CWA. Stormwater is rainwater that runs across land or through a storm sewer that is discharged into surface waters. It contains biological, chemical and physical pollutants. It can pose a threat to public health, fish, wildlife, and aquatic habitats. Stormwater is addressed under a two-phased national program that relies on an NPDES permit, and involves municipal separate storm sewer systems.

There is a national system that provides certain permitting information, called the Permits Compliance System (PCS). You can also find out more about your local watershed through EPA’s “Surf Your Watershed” site at www.epa.gov/surf. Additional information on these programs can be obtained from EPA’s website, at www.epa.gov.

Resource Conservation and Recovery Act (RCRA): Permits are required for all new facilities that treat, store, or dispose of hazardous wastes. RCRA sets up a system that seeks to track hazardous waste from “cradle-to-grave.” Permits are also required to address solid waste disposal. EPA has broad authority to impose requirements “necessary to protect human health and the environment.” EPA interprets this language as allowing it to consider environmental justice concerns. These include aggregate and cumulative health risks, and effects on sensitive populations. In addition to hazardous waste permits, RCRA also requires land disposal permits, and permits for non-hazardous waste management facilities that receive household and small quantity generator hazardous waste.

Enforcement of Permits

Since the permit can serve as a method for evaluating the facility’s performance, the need for community involvement continues after a permit is issued. If the conditions of a permit are violated, action can be taken. Federal environmental laws provide EPA and the authorized state regulatory agencies with various methods of taking enforcement actions against violators of permit requirements. The methods include:

- Administrative orders that require facilities to correct violations and that assess monetary penalties; and
- Civil and criminal actions that may include mandatory injunctions or penalties, as well as jail sentences for persons who are found willfully violating requirements and endangering the health and welfare of the public or environment.