

# PERMITTING: EJ Hook Fact Sheet

## Summary of the Law

Permits and permitting procedures govern activities that affect the environment and human health. These can include discharges to the water, releases to the air, and disposal on the land. Permits can address both the construction and operation of a facility.

Community residents should become familiar with the procedures involved in permitting. The first step is the filing of a permit application by a regulated facility. The second step is the issuance of a draft permit or permit denial by the regulatory agency. The agency must also prepare a “Statement of Basis” explaining its decision. The third step is most important: public participation, including notice, commenting, and a hearing. The fourth step is the final permit decision by the regulatory agency. The fifth step is an appeal by either the facility applying for the permit or a person who filed comments or participated in the hearing on the draft permit.

The permit serves as the means for evaluating the facility’s performance. If the conditions of a permit are violated, action can be taken. Methods of enforcement include administrative orders, civil actions (injunctions and/or penalties), and criminal actions.

## Environmental Justice Hooks

Environmental justice issues most often arise during the permitting or re-permitting process. The review of site-specific operations can include consideration of cumulative impacts, sensitive populations, and unique exposure pathways, among other factors. Several outcomes are possible, ranging from denials of permits to bans on particular substances to improved information disclosure:

- 1) Assessments: Section 404 permits under the Clean Water Act for dredge and fill require consideration of important factors, including whether the project would contribute unacceptably to cumulative impacts on the surrounding area (40 C.F.R. 230.10, 230.11).
- 2) Information Requirements: Applications for RCRA land disposal permits must include detailed information about potential releases and exposure pathways at the proposed site—information EPA can use to require a comprehensive health assessment (42 U.S.C. §6939a).
- 3) Ambient Pollution: Under the Clean Air Act (CAA), national ambient air quality standards are met through state or federal implementation plans that allocate total pollutant loadings among permitted sources. EPA has authority to examine these allocations for their environmental justice implications for federally administered programs, and has limited ability to do so for state programs. (42 U.S.C. §7410(a)(2)(E)).
- 4) Siting: The general rule is that location of a facility is not usually considered under federal law because land-use decisions are made by state and local government. However, specific provisions in federal environmental laws allow consideration of siting as part of the permitting process. For example, under the CAA, new source permits may be issued in areas where air quality standards are already violated, only after the regulatory agency considers special factors relating to alternative sites, production methods and pollution-control techniques.