

RCRA Public Participation Manual

1996 Edition

United States Environmental Protection Agency
Office of Solid Waste, Permits Branch
Mail Code 5303 W
401 M Street, SW
Washington, DC 20460

Statement

This manual reviews regulatory requirements and provides policy guidance to help implement the RCRA

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What This Manual Can Do For You

A Handbook for All Stakeholders

This document is a user's manual for public participation activities in the permitting process. In the same way that a user's manual explains how a car or an appliance works, this manual explains how public participation works in the RCRA permitting process and how citizens, regulators, and industry can cooperate to make it work better.

EPA teamed up with a diverse group of stakeholders from the environmental community, industry, and government agencies to produce this manual. The manual emphasizes the importance of cooperation and communication, and highlights the public's role in providing valuable input during the permitting process. The manual also furthers EPA's commitments to early and meaningful involvement for communities, open access to information, and the important role of public participation in addressing environmental justice concerns.

EPA wrote this manual to help all stakeholders in the permitting process. Here is how the manual can help you:

If you are a citizen...

This manual provides a clear description of the many public participation activities that are required by federal regulations. The manual also points out steps that agencies, company owners, and public interest groups can take to provide more public input into the process. In this manual, you will also find a list of people and organizations that you can contact to learn more about the permitting process and about community organizing.

If you are a government regulator...

This manual provides specific details about public participation requirements and outlines EPA's current policies. The manual also explains activities that you can conduct to provide better information to the public and to invite more public input into your RCRA permitting work. By reading this manual, you will learn how to open a dialogue with other stakeholders, how to assess communities and be sensitive to their concerns, how to plan for public participation, how to fulfill all the regulatory requirements, and how to go beyond the requirements.

If you are a member of a public interest or environmental group...

Reading this manual will let you know what public participation even regulates and

how to conduct public participation activities. The manual also provides contacts and publications that you can tap into for more information.

If you own or operate a hazardous waste management facility...

This manual describes when and how to conduct the public participation events involved in the permitting process. It points out the events you are responsible for and lets you know how the permitting agency will conduct





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- B: List of State Environmental Agencies
- C: League of Women Voters Contact List
- D: Environmental Justice Public Participation Checklist
- E: Guidance for Community Advisory Groups at Superfund Sites
- F: Public Participation Regulations in 40 CFR Part 25
- G: Public Participation Regulations in 40 CFR 124 Subpart A
- H: Examples of Public Notices
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- J: The Hazardous Waste Facility Permitting Process -- Fact Sheet
- K: RCRA Expanded Public Participation Final Rule and Brochure
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- M: Public Participation Resources Available to the Permitting Agency
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topic during 1996. Contact the RCRA Hotline (see Appendix A for the number) for more information.

- C If you are trying to learn about hazardous substances (other than wastes) stored by facilities or amounts of toxic substances released to the environment, you will want to find out more about the Emergency Planning and Community Right-to-Know Act (EPCRA), or and the Toxics Release Inventory (TRI). Call EPA



facilities in their efforts to inform and involve the public. This manual will guide facility owners and operators as they implement the public participation requirements of the RCRA program, especially those in the RCRA Expanded Public Participation rule. The manual will help facility owners and operators go beyond the regulatory requirements, expand their public participation activities, and build lasting relationships with surrounding communities.

Citizens are an essential component of the RCRA permitting process. The formal public participation activities, required by regulation, aim to provide citizens with both access to information and opportunities to participate in the process. Some citizens and other groups have expressed concerns about barriers to involvement in RCRA permitting. EPA was also concerned --

Some of the most meaningful involvement for citizens may occur outside of the official process.

current agency position on these issues as the corrective action program continues to evolve.

Chapter 5, "Public Participation Activities: How to do Them," provides detailed descriptions for dozens of public participation techniques -- required and optional, formal and informal. The chapter explains all of the public participation methods mentioned in the previous chapters and provides information on additional methods.

The Appendices provide resources that will help any participant in the

existence when new regulations are promulgated that subject them to RCRA Subtitle C may also operate under interim status while they proceed through the permitting process. New facilities are ineligible for interim status and must receive a RCRA permit before construction can commence.

The permit application is divided into two parts: A and B. Part A is a short, standard form that collects general information about a facility. Part B is much more detailed and requires the owner or operator to supply detailed and highly technical information about facility operations. Because there is no standard form for Part B, the owner or operator must rely on the regulations to determine what to include in this part of the application. Existing facilities that received hazardous waste on or after November 19, 1980, or subsequently fell under Subtitle C due to new regulations, submitted their Part As when applying for interim status. Their Part B applications can be either submitted voluntarily or called in by the regulatory agency. Owners or operators of new facilities must submit Parts A and B simultaneously at least 180 days prior to the date on which they expect to begin physical construction; however, construction cannot begin

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operator to continue all or some of the activities under the order, or may incorporate the requirements of the order into the RCRA permit schedule of compliance. Sn

Public Participation in the RCRA Program

Section 7004(b) of RCRA gives EPA broad authority to provide for, encourage, and assist public participation in the development, revision,

Chapter 2

Guidelines for a Successful Public Participation Program

What is Public Participation?

The RCRA permitting process brings government, private industry, public interest groups, and citizens together to make important decisions about hazardous waste management facilities. These groups and individuals have a stake in the facility under consideration, its operations, corrective action, or changes in its design or administration. As “stakeholders” they will communicate and interact throughout the permitting process and possibly throughout the life of the facility.

Public participation plays an integral role in the RCRA permitting process. Officially speaking, EPA uses the term “public participation” to denote the activities where permitting agencies and permittees encourage public input and feedback, conduct a dialogue with the public, provide access to decision-makers, assimilate public viewpoints and preferences, and demonstrate that those viewpoints and preferences have been considered by the decision-makers (see 40 CFR 25.3(b)). “The public” in this case refers not only to private citizens, but also representatives of consumer, environmental, and minority associations; trade, industrial, agricultural, and labor organizations; public health, scientific, and professional societies; civic associations; public officials; and governmental and educational associations (see 40 CFR 25.3(a)). When one considers “the public” in this broad sense, public participation can mean any stakeholder activity carried out to increase public’s ability to understand and influence the RCRA permitting process.

Public participation increases the public’s ability to understand and influence the process.

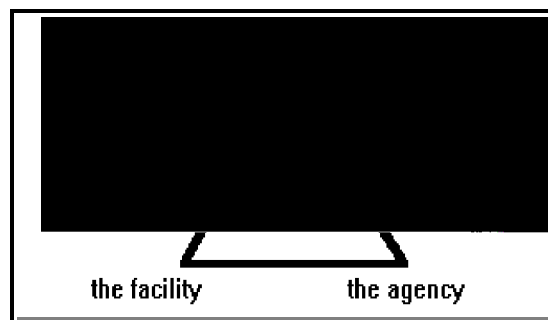


Figure 1 -- The Public Participation Triangle

We can represent the relations between these stakeholders as a triangle with the regulators, the facility owner/operator, and the interested public each forming a corner. Out of each corner runs a

Public participation is a dialogue.

line that represents each group's communication with the other participants in the process.

In the best case, the stakeholders interact well, the lines of communication are strong between all the parties, and information flows in both directions around the triangle. This last point is important: *public participation is a dialogue*. You will read more about this dialogue later in this chapter.

Why Bother With Public Participation?

There are a number of reasons why agencies, facilities, and interest groups should provide for RCRA public participation and why citizens should make an effort to participate in RCRA decision-making. The first, and most obvious reason, is that facilities and permitting agencies are required to conduct public participation activities under the Act and its implementing regulations. Additional activities provided by facilities, agencies, and other organizations in the community can complement the required activities.

The second reason to bother with public participation is "good government." Permitting agencies are charged with making many controversial decisions, which should not be made by technical expertise alone. Public participation in controversial decision-making is an essential element of the good government philosophy. Community members have a right to be heard and to expect government agencies to be open and responsive.

Public input can help the agency and the permittee make better technical decisions.

In addition to providing good government, the third reason for encouraging

resources to addressing serious risks and issues. Many companies have also found that promoting early and meaningful public participation can save resources in the long run by avoiding delays and lawsuits based on public opposition.

What Makes A Successful Public Participation Program?

A successful public participation program is inclusive. It allows members of the community to have an active voice in the RCRA decision-making process. Agency staff, facility personnel, and citizens will be able to talk openly and frankly with one another about RCRA-related issues, and search for mutually-agreeable solutions to differences.

In addition to the paragraph above, a successful public participation program will meet the targets set out in the subsections that make up the remainder of this chapter. The principles in these following subsections are applicable to all public participation activities.

Dialogue and Feedback

A vital and successful public participation program requires a dialogue, not a monologue. In other words, information must flow in loops between any two stakeholder groups. For example, the regulators should not just release information to the facility owner/operator, who passes it to the community, who then contacts the regulators. The regulator should make the information available to everyone and ask for feedback. Each corner of the triangle must keep the two-way conversation going with the two remaining corners.

The address and phone number of a contact person should appear on fact sheets, notices and other outreach materials.

Open communication lines require participants to be accessible to the other stakeholders. An effective way to make your group accessible is to designate a **contact person** for every permitting activity. The contact person should make his or her address and phone number available to the other stakeholders by printing it on any fact sheets or other informational materials produced by the organization. The contact person will field all inquiries on the permitting activity at hand. Other people involved in the process will appreciate this single and accessible point of contact.

Public participation should encourage "feedback loops."

Without an active two-way communications process, no party will benefit from the "feedback loop" that public participation should provide. For example, if the regulatory agency sends out a fact sheet about an upcoming permit action, that fact sheet alone does not constitute public participation. Missing is the "feedback loop," or a way for the agency to hear from those who read the fact sheet. To get feedback, the agency might name a contact person in the fact sheet and encourage telephone or written comments, place calls to civic or neighborhood associations, visit a community group, or hold a meeting or workshop to discuss material in the fact sheet. Feedback loops enable the agency to monitor public interest or concern,

adjust public participation activities, and respond quickly and effectively to changing needs. The feedback loop is a useful tool for all stakeholders in the process.

Members of the public have valid concerns and can often improve the quality of permits and agency decisions.

Even if a feedback loop operates successfully, public participation cannot be successful if the permitting agency or the facility is reluctant or unable to consider changes to a proposed activity or permit action based on public comment or other input. While the decision-makers at the agency or the facility need not incorporate every change recommended by the public,

14. Enlist the help of organizations that have credibility with communities.
15. Avoid secret meetings.

This list was adapted from the manual *Improving Dialogue With Communities* (New Jersey Department of Environmental Protection, 1988). This manual and a number of other sources produced by states, EPA, trade groups, and public interest groups are available for more information on trust and credibility factors.

A Commitment to the Public

Public officials have ethical obligations to the public that have a practical value in building the foundation necessary for successful communication:

- * informing the public of the consequences of taking, or not taking, a proposed action;
- * showing people how to participate so that interested people can;
- * keeping the public informed about significant issues to the degree project changes;
- * providing all segments of the public with equal access to information;
- * ensuring the public's cooperation; and
- *

agencys, EP/530-SW-90-019, March, 1990 and 40 CFR -253(c)(8).

and other concerned stakeholders.

- C To get tips about community organizing, information about how to participate in the regulatory process, or possible referrals to other involved groups in your area, you can contact the local League of Women Voters chapter. If you cannot contact a local chapter, or one does not exist, you can contact the state chapter. Phone numbers and addresses are provided in Appendix C.

EPA encourages citizens to consider these recommendations and follow them where applicable. At the same time, EPA recognizes that the best way to participate will be different in every situation. Citizens should contact other concerned persons, community organizations, and environmental groups to determine how citizens can best influence the permitting process.

Assessing the Situation

Every community is different. What works in one community may



time.

Public interest, environmental, and civic organizations also assess their communities to determine the amount of interest in a permitting activity. These organizations can take steps to encourage public participation in the permitting process. Door-to-door canvassing, public information sessions, flyers, fact sheets, neighborhood bulletins, and mailings are all methods of sharing information with the public and encouraging citizen involvement. Organizations that are attempting to encourage public participation may find the rest of this section useful. In addition, more information for such groups is available by contacting the League of Women Voters (see Appendix C for contacts).

Community Assessment Methods

Facility owners should gather background information about the community before seeking a permit or a permit modification. Regulators should find out about community concerns at the outset of a major project or any project that seems likely to raise significant public interest. Public interest groups may want to perform similar background work. As emphasized in the previous section, understanding a community is essential to creating a successful public participation effort.

The facility owner is responsible for collecting his or her own information

- C Talking to colleagues or anyone who has experience working with members of the particular community.
- C Contacting companies, universities, local governments, civic groups, or public interest organizations that already have experience in the community. These groups may be able to provide useful information about community concerns, demographics, or reactions to other industry in the area. They may be able to point you towards other existing sources of community information.

If it seems like there is a low level of interest in the facility at this point, and things are not likely to change, the agency and the facility owner can begin planning the required public participation activities.

If, however, the facility shows indications of being a moderate- to high-interest level facility, a more detailed analysis of the community might be necessary, and additional public participation activities planned.

- C To get a fuller picture, staff from the agency or the facility should consider contacting community leaders and representatives of major community groups to talk about the facility and the planned RCRA action. These interviews should represent a fair cross-section of viewpoints in the community. The community representatives may have a feel for how much community interest there is in a permitting activity. They also may be able to provide advice on how to handle the situation.

EPA recommends community interviews when there is a high level of public interest.

- C If there are indications of likely high interest from the outset (e.g., a facility that is likely to be controversial is seeking a permit), the agency or the facility owner should consider conducting a broad range of **community interviews** with as many individuals as possible, including the facility's immediate neighbors, representatives from agencies that will participate in the RCRA action, community organizations, and individuals who have expressed interest in the facility (e.g., people on the agency's mailing list, newspaper reporters, local officials). A detailed discussion of how to conduct **community interviews** is provided in Chapter 5.
- C After collecting the necessary information, the agency or the facility may wish to prepare a brief summary of major community concerns and issues (no more than five pages). The summary can be integrated into the public participation plan document or used as the basis for developing a "Question and Answer"-type **fact sheet** to distribute back to the community. See Chapter 5 for additional information on these activities.

Exhibit 2-2 at the end of this Chapter summarizes the steps to take in

determining the level of public interest in facilities and gathering background information.

Targeting Public Participation in Communities

This initial assessment should provide a good idea about the scope and makeup of the "affected community." Pinpointing the affected community can be a difficult process; everyone has a different definition. EPA will not try to define the affected community here because its composition will vary with the particular characteristics of each facility and its surrounding community. *In some cases*, however, it may be appropriate to target a segment of the population that is broader than the "affected community."

The scope of the affected community will vary from facility to facility.



Alternatively, citizens may see fit to create new organizations to discuss issues related to the permitting process or to provide input into the process.

Planning for Participation

A good public participation program avoids misunderstandings by anticipating the needs of the participants. It provides activities and informational materials that meet the needs of, and communicate clearly to, specific community members and groups. The public participation plan is the agency's schedule and strategy for public participation during the initial permitting process, significant corrective actions, and other permitting activities at facilities receiving high levels of public interest.

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The plan should create a structure for information to flow both to and from the public.

community. The agency, facility, civic and public interest groups should coordinate their public participation efforts, emphasizing two-way information exchange and avoiding unnecessary duplication in their activities.

To identify activities for the public participation program, the agency should go through the following steps:

1. list the major community issues and concerns;
2. list the community characteristics that will have a bearing on how you address these issues; and
3. list the activities that will address the community's concerns during the permitting process and, if applicable, corrective action.

Once the agency has outlined activities for the facility at hand, it should put together a strategy for implementing the activities. In general, the following are the areas of responsibility for public participation that the agency should consider:

- C **Interacting with the media, especially on high-profile facilities.** If there is a high degree of interest in the facility, it will be important to have a media contact person who can get information out quickly, accurately, and consistently. The assistance of a public affairs office is often necessary (where applicable).
- C **Interacting with elected officials.** For facilities receiving a moderate to high level of interest, it is often beneficial to work with elected officials to provide them with information they need to answer their constituents' questions. Put together a team of people who can fill the information needs of public officials. This team should include senior people who can answer policy questions when necessary.
- C **Answering telephone and written inquiries.** It is important to follow up on all requests for information that you receive from stakeholders. Designate one person to be responsible for putting together the answers to questions in a form that is understandable to the public. This "contact person" should be named in all fact sheets and public notices. Remember the importance of two-way communication and the public participation triangle.
- C **Coordinating public participation with other stakeholders.** It is crucial that all the people who are working on public participation be aware of what activities are being planned for the facility and any other facilities in the area, so that activities can complement each

other whenever possible. At the least, try to avoid conflicts between

Public participation
activities should
coincide with major
steps in the
permitting process.



regular updates.

There are numerous ways that the community can contribute during the planning stage. Citizens can decide how interested they are in a particular activity by discussing issues with other stakeholders, accessing relevant documents, or calling hotlines or other experts. Those who would like to participate in the formal process can use this time to raise questions or develop their ideas. Some citizens may want to submit comments to the agency on the public participation plan. Moreover, EPA encourages interested citizens to meet together to discuss the potential impact of RCRA actions on their communities. Citizen groups may want to invite experts from the facility, the permitting agency, engineers, environmental contractors, scientists, health experts, and attorneys to speak at their meetings.

Understanding and Interaction Between Stakeholders

While each stakeholder shares the responsibility of providing open and two-way communication, the roles and responsibilities of the different stakeholders differ substantially. Participants in the RCRA permitting process should acknowledge these differences and account for them as they approach the process. We encourage participants to do their best to understand the interests and concerns of the other participants by following the principles below:

- * Strive to respect other stakeholders and their opinions. Avoid personal attacks.
- * Understand that people have different levels of understanding of RCRA. Not everyone is an expert, but everyone should have the chance to know all the facts.
- * Realize that decisions made during the permitting process can have profound economic and social impacts. These decisions are very real and important; people will live and work with them every day.
- * Acknowledge that statutory and regulatory requirements limit what can happen during the permitting process. Remember that everyone - citizens, regulators, facility owners/operators, and public interest workers -- has resource and time constraints
- * Recognize that people have concerns that go beyond the scientific or technical details. These concerns deserve respect.
- * Build your credibility by being fair, open, and respectful.
- * Try to understand the values and interests of other stakeholders before jumping to conclusions.

Promoting Environmental Justice

Environmental justice refers to the fair distribution of environmental risks across socioeconomic and racial groups. Some groups and individuals associated with environmental justice issues have raised the concern that EPA and some State environmental agencies do not provide equal protection under the nation's environmental laws. With regard to the RCRA permitting program, most of the concern surrounds the potential additional risk that hazardous waste facilities may pose when located near low-income or minority communities that already face an environmental burden from multiple sources.

On February 11, 1994, the President issued Executive Order 12898, directing federal agencies to identify and address the environmental concerns and issues of minority and low-income communities. EPA is committed to the principles in this Executive Order. Furthermore, in an effort to make environmental justice an integral part of the way we do

New EPA rules will empower communities by giving them a greater voice in the permitting process.

the community's primary language.

- C **Tailoring your public participation program to the specific needs of the community.** Developing a program that specifically addresses the community's needs will demonstrate to community members your interest in achieving environmental equity and fostering a sense of cooperation.

- C **Identifying internal channels of communication that the community relies upon for its information, especially those**

An L-shaped corner symbol consisting of a horizontal line segment on the left and a vertical line segment on the right, meeting at a right angle.

through pollution prevention and recycling that affect air, water, and waste permit requirements. Several states are embarking on “whole facility” approaches to permitting to take advantage of this approach. Permitting agencies should consider using **fact sheets** and **availability sessions** to explain RCRA’s relationship to other programs. Combining public meetings across program lines could also make the entire environmental picture more clear to stakeholders.

Re-evaluating and Adjusting the Public Participation Program

As RCRA activity increases at a facility and becomes more visible, public interest in a site can increase dramatically. Interest can also fade away without warning. Participants in the permitting process should anticipate and plan for sudden changes in the level of interest in a facility. Periodic communication with key community contacts can help to anticipate changes in the attitude or interest of other stakeholders. All participants should make sure to keep their key contacts informed of all planned activities -- especially activities that are highly visible and tend to raise a lot of interest, such as construction work or excavation related to cleanups.

In addition, at facilities that are receiving high levels of public interest, the agency or the facility may want to conduct follow-up community interviews at a key point (or points) in the decision-making process. These interviews will help predict major shifts in public interest or concern. The agency should also encourage members of the community to submit comments throughout the process and especially during formal comment periods. Agency staff should make clear to the public (e.g., through fact sheets) how the comment and response process works.

Permitting agencies, facility owners, and other involved organizations should evaluate the effectiveness of public participation programs regularly through the process. The permitting process is complex and the best way to measure the success of a public participation plan is not always clear. The following are indicators that a public participation program is working:

- stakeholders are not asking the same questions over and over again;
- stakeholders are not raising concerns about a lack of information;
- the appropriate contact person is handling inquiries in a timely manner;
- most of the public participation time is not devoted to correcting breakdowns in the information-sharing triangle (see above) between the community, the agency, and the facility;
- the channels of communication are well-defined and open;
- interested parties are providing informed comments on the project; and

The best way to evaluate

Chapter Summary

Public participation, defined broadly, is any stakeholder activity carried out to increase public input or understanding of the RCRA permitting process.

The public participation triangle represents the communication between the public, regulators, and the facility.

Public participation is based on a dialogue.

Public participation is required, it can lead to better technical decisions, and it can engender public support for a project.

A successful public participation program allows members of the community to have an active voice in the process and to have free access to important information. Participants in a successful program will also pursue the following benchmarks:

- Creating a dialogue that provides for feedback;
- Establishing trust and credibility in the community through honesty and openness;
- Fostering an informed and active citizenry that follows the process, gives input to other stakeholders, and discusses issues with other concerned groups and people;
- Ensuring that public officials meet their obligations to the public;
- Involving the public early in the process.

Exhibit 2-1 Determining the Likely Level of Public Interest in a RCRA Facility

Level of Interest	Type of RCRA Action	Community Members' Relationships With Facility/Regulatory Agency	Larger Context
Low Level of Public Interest in a Facility	<ul style="list-style-type: none"> C The RCRA activity is unlikely to be controversial (e.g., a routine modification) C There is no contamination at the facility that could come into direct contact with the public 	<ul style="list-style-type: none"> C People do not live near the facility C There is a history of good relations between the facility and members of the community C Members of the community have expressed confidence in the regulatory agency and/or the facility 	<ul style="list-style-type: none"> C The facility receives very little media attention and is not a political issue C Community members have not shown any past interest in hazardous waste issues
Moderate Level of Public Interest in a Facility	<ul style="list-style-type: none"> C The RCRA action may involve activities, such as §3008(h) corrective action activities, that contribute to a public perception that the facility is not operating safely C Examples may include permits for storage and on-site activities and routine corrective actions. C Highly toxic and/or carcinogenic wastes may be involved (e.g., dioxins) 	<ul style="list-style-type: none"> C A relatively large number of people live near the facility C There is a history of mediocre relations between the facility and members of the community C The facility is important to the community economically, and the action may affect facility operations C Members of the community have had little or poor contact with the regulatory agency C Local elected officials have expressed concern about the facility 	<ul style="list-style-type: none"> C Community members have shown concern about hazardous waste issues in the past C The facility receives some media attention and there are organized environmental groups interested in the action C There are other RCRA facilities or CERCLA sites in the area that have raised interest or concern
High Level of Public Interest in a Facility	<ul style="list-style-type: none"> C The RCRA action includes a controversial technology or is high-profile for other reasons (e.g., media attention) C Highly toxic and/or highly carcinogenic wastes are involved (e.g., dioxins) C There is potential for release of hazardous substances or constituents that poses potential harm to the community and the environment C There is direct or potential community contact with contamination from the facility (e.g., contaminated drinking water wells or recreation lake) 	<ul style="list-style-type: none"> C The nearest residential population is within a one-mile radius C A relatively large number of people live near the facility C There is a history of poor relations between the facility and the community C The facility has violated regulations and community members have little confidence in the regulatory agency to prevent future violations C There is organized community opposition to the facility's hazardous waste management practices or to the action C Outside groups, such as national environmental organizations, or state or federal elected officials have expressed concern about the facility or action C The economy of the area is tied to the facility's operations 	<ul style="list-style-type: none"> C Community members have shown concern about hazardous waste issues in the past C Facility activities are an issue covered widely in the media C There is interest in the facility as a political issue, at the local, state, or federal level (e.g., statewide and/or national environmental groups are interested in the regulatory action) C There are other issues of importance to members of the community that could affect the RCRA action (e.g., concern over a cancer cluster near an area where a facility is applying for a permit to operate an incinerator) C There are other RCRA facilities or CERCLA sites nearby that have been controversial

Exhibit 2-2
Steps in Evaluating Facilities and Gathering Information

Step 1: Review the RCRA Action

Is it:

- Likely to be a controversial action (e.g., permitting a commercial waste management facility)
- Unlikely to be a controversial action

Step 2: Talk to colleagues who have worked in this community about their interactions with members of the public

- C Has there been a large degree of public interest or concern about other projects?
- C Have members of the public shown confidence in the regulatory agency?

Step 3: Review regulatory agency (or any other) files on the facility

Are there:

- A lot of inquiries from members of the public
Major concern(s) _____
Any organized groups? _____
- Few inquiries from members of the public
- Clippings from newspapers or other media coverage

Step 4: Formulate your preliminary impression of the community based on the above information

Step 5: Talk with several key community leaders to confirm your impression

People to interview:

1. _____
2. _____
3. _____

Step 6: Determine the anticipated level of community interest based on the above information

- Low (go to Step 7)
- Moderate (next step: conduct additional community interviews with one member of each community subgroup)
- High (next step: conduct a full set of community assessment interviews)

Step 7: Write a brief summary of any major community concerns/issues

Chapter 3

Public Participation During the RCRA Permitting Process

Introduction

The previous chapter examined the importance of public participation and the information-sharing triangle, while reviewing the critical components for building a successful public participation program. Chapter 3 describes the specific public participation activities that EPA requires or recommends during each phase of the RCRA permitting process, beginning before submission of the RCRA part B permit application, continuing through the preparation of draft and final permit decision, and throughout the life of the RCRA permit.

States may have their own public participation requirements in addition to the federal

Section 7004(b) of RCRA and EPA's permitting regulations, found in 40 CFR Parts 124 and 270, form the foundation for mandatory public participation activities during the permitting process for both operating and post-closure permits. The reader should note that the corrective action schedule of compliance and other corrective action provisions are typically part of the RCRA permit under 40 CFR Part 270 (unless carried out under an enforcement order). Changes to these sections of the permit must follow the permit modifications procedures of 40 CFR Part 270.41 or 270.42. We review the corrective action public participation procedures in Chapter 4.

RCRA permitting regulations require an array of public participation procedures during the permitting process and the life of the permit. However, situations often occur where the facility and the agency will need to go beyond the requirements in 40 CFR Parts 124 and 270. Following the assessment and planning guidance we provided in Chapter 2, participants in the permitting process will discover whether a certain permitting activity deserves greater public participation. Regulators, facility staff, or community groups may want to consider expanded public participation activities (described in this chapter and in Chapter 5) -- if resources allow -- at priority facilities, controversial facilities, or at facilities where the affected community has a particular need for greater involvement or access

groups conduct additional activities to supplement required activities and strengthen communication and trust among stakeholders. In addition, EPA encourages the community to suggest additional public participation activities to the permitting agency, the facility, or community and public interest groups.

In December 1995, EPA expanded the public participation requirements in the RCRA program by promulgating new regulations. The new regulations, known as the "RCRA Expanded Public Participation" rule (60 FR 63417, December 11, 1995), require earlier public involvement in the permitting process, expand public notice for significant events, and enhance the exchange of permitting information. The new requirements, which will

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Public participation activities should fit the diversity, character, and culture of the affected community.

encourages their adoption by all participants in the RCRA permitting process. See the section entitled “Promoting Environmental Justice” in Chapter 2 for more information.

Public Participation During the Permit Decision Process

The permit decision process is composed of a number of steps. Each step is accompanied by public participation requirements. As we have mentioned, the regulatory minimum for public participation may not be sufficient in all cases. Permitting agencies and facilities should consider going beyond the regulatory requirements, where necessary, to provide for meaningful and equitable public participation.

For the sake of simplicity, in this manual we will divide the permit decision process into four steps:

- the pre-application stage;
- application submittal, agency notice and review;
- preparation of the draft permit, public comment period, and the public hearing; and
- response to public comments and the final permit decision.

Stakeholders should keep in mind that the permit decision process is lengthy and can be complex and confusing. Keeping the lines of communication open during the process takes effort on the part of all participants. This effort is especially critical during the long periods of time while the agency is reviewing the permit or the facility may be responding to a Notice of Deficiency (which we describe later in this Chapter). The agency, the applicant, and other interested groups should take steps to keep the community involved and informed during these “down” times.

We also encourage stakeholders to learn about the process, ask questions, and discuss it with the other participants. Permitting agencies in particular, should make efforts to disseminate fact sheets and information packages about the permitting process. Agencies, public interest groups, or facilities may want to perform other public information tasks (see chapter 5 for descriptions) to ensure that all stakeholders understand, and are comfortable with, the permitting process.

Step One: The Pre- Application Stage

Required Activities

The RCRA Expanded Public Participation rule requires a new permit

RCRA permitting process.

Early public input can improve the quality of any permitting activity; the public can contribute information and recommendations that will be helpful to agencies as they make permitting decisions and to facilities as they develop their applications and proposals.

The Pre-Application Meeting

The most important goal EPA hopes to achieve from the pre-application meeting requirement is the opening of a dialogue between the permit applicant and the community. We believe that the applicant should open this dialogue at the beginning of the process. The meeting will give the public direct input to facility personnel; at the same time, facility personnel can gain an understanding of public expectations and attempt to address public concerns before submitting a permit application. We hope that this requirement will help address the public concern that public participation occurs too late in the RCRA permitting process.

Conducting the Meeting

The pre-application meeting will allow the facility to hear and respond to public concerns.

The pre-application meeting should provide an open, flexible, and informal occasion for the applicant and the public to discuss the various aspects of a hazardous waste management facility's operations. Discussion at the pre-application meeting need not concern the technical aspects of the permit application in extensive detail; such technical examination is more suited to the draft permit stage (which we describe later in this Chapter). We anticipate that the applicant and the public will use this meeting to share information, learn about each other's concerns, and start building the framework for a solid working relationship. The pre-application stage is also an excellent time to explore the facility's level of expertise in waste minimization and pollution prevention, and the potential for involving the facility's waste minimization experts in the public participation process.

While a formal meeting style (i.e., like a public hearing) may suit some permitting situations, EPA realizes that it will not fit in all cases. With this idea in mind, EPA has written the regulations to allow flexibility in the type of "meeting" held by the permit applicant. For instance, an applicant may decide to hold an availability session or open house (see Chapter 5) in place of a traditional meeting. As long as this approach meets the requirements and the spirit of § 124.31 (as presented in this section), EPA will not preclude applicants from tailoring meeting styles to fit particular situations.

Regardless of the type of meeting that the applicant decides to hold, the applicant (as well as well as well as a forr.rds Tw.m.l0.0Wlpc 0.0784 Tw Tj Oltmit

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Justice” in Chapter 2 and the Introduction to this Chapter).

At the meeting, permit applicants should address, at the level of detail that is practical (based on available information), the following topics: what type of facility the company will operate; the location of the facility; the general processes involved and the types of wastes to be generated and managed at the facility; and the extent to which waste minimization and pollution prevention may supplement or replace waste treatment needs. The discussions should also include the transportation routes to be used by waste transporters and planned procedures and equipment for preventing or responding to accidents or releases.

Addressing community concerns at the start of a project can prevent misunderstanding and opposition in the long run.

These are examples of the types of issues that might be of particular concern to a community and about which the community might be able to provide useful suggestions to the applicant. The applicant might then be able to incorporate that information into the proposed facility design or operations, either as part of the initial application, if time allows, or at subsequent stages in the process (e.g., in submitting revisions to its application, or in responding to a Notice of Deficiency issued by the permitting agency). By learning about and addressing public concerns up front, the applicant may be able to prevent misunderstanding from escalating into community opposition. Moreover, the public will have a clear and open opportunity to interact and communicate with the potential applicant.

The applicant should make a good faith effort to provide the public with sufficient information about the proposed facility operations. While we do not expect applicants to go into extensive detail at the pre-application stage, they should provide the public with enough information to understand the facility operations and the potential impacts on human health and the environment. We encourage applicants to provide **fact sheets**, information packets, or other materials (see Chapter 5) that explain the proposed operations, company policies, waste minimization proposals, or other information that is relevant to the proposed facility.

The permitting agency may choose to make permitting and pollution prevention fact sheets available at the meeting. One such fact sheet is included as Appendix J of this manual. EPA recommends that permit applicants distribute this fact sheet (or a similar one produced by the state agency) at the pre-application meeting, especially in cases where a representative of the permitting agency does not attend. EPA does not expect permit applicants to answer questions about the RCRA permitting process at the pre-application meeting -- particularly where the applicant is not sure of the answer. We advise the applicant to let a representative of the permitting agency answer such questions. If an agency representative is not available at the meeting, then the applicant should provide the name of



e.g., a civic organization, non-profit community group, or a



Finally, the meeting location should have suitable access for all persons; if

translations) to spread the word over all segments of the affected community, taking into account the channels of information that are most useful in reaching diverse groups.

EPA encourages applicants to go beyond the minimum requirements in the regulations when providing notice of the pre-application meeting. The following suggestions will help in providing an effective broadcast notice. In some rural areas, community members may listen to or watch predominantly one radio or television station; in this case, the applicant should use this station as the vehicle for the notice. Some areas are part of a radio market (i.e., defined by services such as Arbitron's Radio Market Definitions) or television market and have competing radio and television

Free papers, existing newsletters, press releases, and word-of-mouth are inexpensive ways to notify the public.

reason, we encourage the applicant to take additional steps, within reasonable means, to announce the meeting. We do not intend for applicants to spend large amounts of additional time and resources; on the contrary, there are many simple and inexpensive mechanisms for distributing information. Free announcements on television or radio, advertisements in free papers, town newsletters, flyers, small signs, and press releases are all ways to disseminate information at little or no cost. We also encourage facilities to pass information through local community groups and Local Emergency Planning Committees (established under section 301 of the Superfund Amendments and Re-Authorization Act (SARA)), professional and trade associations, planning commissions, civic leaders, school organizations, religious organizations, and special interest groups. Other stakeholders involved in the process are also good conduits for spreading news about the pre-application meeting.

The regulations require that the notice contain several pieces of information: (1) the date, time, and location of the meeting; (2) a brief description of the purpose of the meeting; (3) a brief description of the facility and proposed operations, including the address or a map (i.e., a sketched or copied street map) of the facility location; (4) a statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and (5) the name, address, and telephone number of a contact person for the applicant.

The format of the notice is flexible as long as it communicates this information. The description of the purpose of the meeting should explain the facility's intent to submit a permit application and set out other objectives for the meeting. When describing the facility, the owner/operator should briefly cover what sort of facility it is or will be (e.g., a hazardous waste incinerator), what types of wastes it may handle, and what sort of operations will take place at the facility (e.g., types of manufacturing, commercial treatment of waste, etc.). For the facility map, the owner/operator should provide a photocopy of a street map or a sketched map, the purpose of which is to let the public know just where the facility is or will be. Finally, persons needing "special access" would include anyone who may have difficulty with stairs or some entrances, persons who are visually or hearing impaired, or any person who foresees some difficulty in attending the meeting without some help. EPA does not expect facilities to provide transportation to persons who cannot find other means of reaching the meeting.

The telephone contact provided by the applicant in the pre-application notice is an important addition to the public participation resources during this phase. EPA encourages members of the community to contact the facility, the permitting agency (see Appendices A and B for State and Federal contacts) or other interested groups in the community, as necessary,

to become acquainted with the permitting process and the facility plans.

EPA is not requiring the facility to submit proof of the public notice; however, we are requiring the facility to keep proof of the notice. The Agency is concerned that proof of the notices may be needed in the case of a lawsuit. The applicant should establish a simple file containing proofs for the notice. Acceptable forms of proof would include a receipt for the radio or TV broadcast, a photograph of the sign, and a photocopy of the newspaper advertisement or tear sheets.

The Facility Mailing List

The permitting agency is responsible for developing a representative mailing list for public notices under § 124.10. EPA is emphasizing the early development of a thorough mailing list as a critical step in the public participation process. If the mailing list allows the agency to keep important groups and individuals in the community up-to-date on activities at a facility, then the permitting agency and the facility will be better able to gauge community sentiment throughout the permitting process. See the section on “Mailing Lists” in Chapter 5 for additional information.

EPA anticipates that the meeting attendee list required under § 124.31(c) will help the agency generate the mailing list by identifying people or organizations who demonstrate an interest in the facility and the permit process.

The permitting agency should develop the mailing list early.

In the past, mailing lists have not been fully developed, oftentimes, until the agency issued the draft permit or intent to deny the permit. EPA believes that the mailing list is an integral public participation tool which permitting agencies should create as early as possible in the process. Our intent in having the permit applicant submit the list of meeting attendees under § 124.31(c) was to allow the agency to formulate the mailing list at an earlier stage in the permitting process. Aside from the names identified by the permit applicant, we encourage permitting agencies to enhance the mailing list by contacting a wide variety of groups and individuals, such as: civic organizations, religious groups, public interest organizations, recreational groups, professional/trade associations, Local Emergency Planning Committees (LEPCs), emergency response and local health care personnel, environmental justice networks, educational and academic organizations, city hall and elected officials, planning and zoning boards, local development councils, involved State and Federal agencies, newspapers and reporters, immediate neighbors and property holders, other nearby companies or business groups, facility employees, and plant tour attendees. In addition, we encourage the agency to maintain and update the lists regularly. All commenters on permitting documents, attendees at any public meetings or persons using information repositories should be placed on the mailing list, or have the option of putting their names on the list.



An information repository makes information accessible to the public in a convenient location.

can improve the permitting process by making important information accessible to the public in a convenient location. (See Chapter 5 for more detail on information repositories). Of course, EPA encourages facilities or interested community groups to establish their own repositories for public access to information. Chapter 5 provides more guidance on how to establish a repository.

Some permitting information is quite technical and detailed. Members of the public and other stakeholders may find this information difficult to interpret. EPA encourages permitting agencies, facilities, and community groups to provide fact sheets and additional materials to make technical and complicated information more accessible to people who are not RCRA experts. **Workshops** or **availability sessions** may be useful for explaining technical information. Some citizens or community groups may want to consult other sources for help in interpreting scientific and technical data. If you are looking for such help, you may want to contact the permitting agency, facility staff, or other sources such as local colleges, universities, public interest groups, environmental and civic organizations. Additional contacts may be available in the local community. Interested citizens may be able to find out about these contacts by talking to local newspapers and other media who cover environmental issues. People who are interviewed for or quoted in news articles can be an additional source for information.

Getting as much input as possible from the community during these initial phases of the RCRA permitting process and before a draft permit is issued will be very useful during the draft permit stage. The draft permit will be more responsive to the needs and concerns of the community, and the community will be more likely to accept the permit conditions if it sees that its concerns have been heard.

Though the early meeting may reduce public concern that the agency and the facility are making important decisions before the public becomes involved, some concern may still remain. The agency and the facility are likely to have meetings that cannot, for practical purposes, be open to public participation. One State agency found that by making notes from these meetings available through an **information repository**, public trust in the agency increased.

Step Two: Application Submittal and Review

Required Activities

After the permit applicant has met with the public and considered recommendations and input from the community, he or she may choose to pursue a RCRA permit and then submit a RCRA part B permit application

to the permitting agency. Upon receiving the permit application, the permitting agency must, under § 124.32, issue a **public notice** to the facility mailing list and appropriate units of state and local government. The notice will inform recipients that the facility has submitted a permit application for agency review. In addition, the notice will inform the recipients of the location where the application is available for public review.

New EPA rules make permit applications available to the public during agency review.

Both of the provisions mentioned in the previous paragraph are the result of the RCRA Expanded Public Participation rule. EPA composed these regulations as a way to inform the public about the status of a facility's permit application early in the process .

Before issuing the notice at application submittal, the permitting agency should solicit community suggestions and input on the best place to put the application for public review (agency personnel may have gathered this information during an earlier stage in the process). We encourage the agency to issue the notice as soon as is practically possible after receiving the application. The notice must contain the following information: (1) the name and telephone number of the applicant's **contact person**; (2) the name and telephone number of the permitting agency's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process; (3) an address to which people can write in order to be put on the facility mailing list; (4) the location where copies of the permit application and any supporting documents can be viewed and copied; (5) a brief description of the facility and proposed operations, including the address or a map (i.e., a sketched or copied street map) of the facility location on the front page of the notice; and (6) the date that the application was submitted.

Permitting agencies must place the application and any supporting materials somewhere in the vicinity of the facility or at the permitting agency's offices. The permitting agency should be sensitive to the burden on members of the affected community when determining where to place the application. Many communities do not have the resources or the time to travel several hours just to access permitting information. To make information available in these situations, the permitting agency should place the application in a place with public access in the general vicinity of the facility (e.g., a public library or community center). If such placement of the document is impractical, the agency should make sure that the public has other access to permitting information. For instance, the agency could require the facility to establish an information repository under § 124.31. If the community's information needs are on a lower level, the agency may want to make a short summary of the permit application available to the affected community. In some cases, making information available in electronic form (e.g., via diskette or Internet) may be useful.

The application should
be available for review
in the vicinity of the

Step Three: The Draft Permit, Public Comment Period, and Public Hearing

Required Activities

After the permitting agency reviews the permit application, it must notify the applicant in writing. If the application is incomplete, the permitting agency may request that the applicant submit the missing information. This request is known as a Notice of Deficiency (NOD). The permitting agency may issue several NODs before the application is finally complete.

Once an application is complete, the permitting agency will make a decision to issue a draft permit or a notice of intent to deny the permit application (which is a type of draft permit). In either case, the agency must notify the public about the draft permit. In the notice, the permitting agency must announce the opening of a minimum 45-day public comment period on the draft permit. The agency must print the notice in a local paper, broadcast the notice over a local radio station, and send a copy of the notice to the mailing list, relevant agencies, and applicable state and local governments. We encourage agencies to attempt to reach all segments of the affected community, within reasonable means, when issuing the notice of the draft permit (see “Step One: The Pre-Application Stage” above and Chapter 5 for more information on how to notify the public). Although the agency is not required to retain documentation of the notice, we recommend keeping a simple file with proof of the notices. Forms of proof might include a receipt for the radio ad and a photocopy of the newspaper ad.

EPA regulations require the permitting agency to prepare a **fact sheet** or a **statement of basis** to accompany every draft permit. This fact sheet (or statement of basis) is required by regulation and is different than commonly used informational fact sheets. This fact sheet must explain the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The fact sheet must also include, when applicable, the following (see § 124.8(b)):

- a brief description of the type of facility or activity which is the subject of the draft permit;
- the type and quantity of wastes that are proposed to be handled at the facility;
- a brief summary of the basis for the draft permit conditions;
- reasons why any requested variances or alternatives to required standards do or do not appear justified;
- a description of the procedures for reaching a final decision on the draft permit, including (1) the beginning and ending dates of the comment period and an address to which comments can be sent, (2) procedures for requesting a hearing and the nature of

- the hearing, and (3) any other public participation procedures before the final permit decision; and
- the name and telephone number of a person to contact for additional information.

EPA recommends that the permitting agency include the fact sheet with the notice of the draft permit and make the fact sheet available to all interested parties.

Any person may request a **public hearing** during the public comment period. The agency must hold a public hearing if someone submits a written notice of opposition to a draft permit and a request for a hearing, or if the public demonstrates, by the number of requests for a public hearing, a significant degree of public interest in the draft permit. The Director also may hold public hearings at his or her discretion. The agency must notify the public about the hearing at least 30 days prior to the hearing. The agency may choose to combine the hearing notice with the draft permit notice. See Chapter 5 for information on holding a public hearing. Citizens may want to request a public hearing as a forum for airing community concerns. The hearing will be a standard meeting, attended by the agency and other interested parties.

There is more required public participation during the draft permit stage than at any other time during the permitting process. We strongly recommend that permitting agencies prepare public participation plans (see Chapter 5), even for the least controversial facilities, just to keep track of the activities during this stage.

By law, the agency must consider and respond to all significant comments received during the comment period.

The comment period on the draft permit allows anyone to submit their concerns and suggestions to the agency in writing. The permitting agency must, by law, consider all comments (see § 124.11) in making the final permit decision. In addition, the agency must briefly describe and respond to all significant comments raised during the comment period or during the public hearing. EPA encourages participants to submit comments during this period.

Additional Activities

Permitting agencies can keep the process open by sharing all NOD information with the public, whether through the administrative record, an **information repository**, or another activity, such as a **workshop**. If the details of the NOD are too arcane or technical, the agency can provide a short **fact sheet**. The fact sheet should not gloss over any major omissions,

You can use public participation activities to explain technical issues or the permitting process.

but, by the same token, it should point out when an omission is of a less serious nature.

Interested community groups or the permit applicant may decide to provide additional public participation activities during this stage. Some suggestions for useful activities would include explaining the NOD process and discussing technical issues in the application by holding **availability sessions**. Another option is for citizens or other stakeholders to request one-on-one or small **informal meetings** with the permitting agency, the permit applicant, or community groups. Stakeholder groups can improve their communication and interaction by meeting together in an informal forum. An informal meeting may also be more appealing to some participants, who may see activities like public hearings as overly confrontational.

The permitting agency may want to provide a **news release** when issuing the draft permit or intent to deny.

The agency, facility, or a public interest group may want to organize an **availability session**, **facility tours**, or some other activity prior to the comment period so that the public can be better informed about the facility. Some permitting agencies have held **public meetings** prior to a public hearing to provide a better forum to discuss issues. **Telephone hotlines** or voicemail recordings can supplement public notices to inform the community about the dates and locations of public participation events.

Step Four: Response to Comments and Final Permit Decision

Remember that State procedures

If there was high interest during the comment period, the agency or the facility may want to issue a **news release** and **fact sheet** when the decision is finalized to inform a wide audience. The permitting agency may choose to update and release the fact sheet required in § 124.8.

Public Participation During the Life of a Facility

Interim Status Public Participation

When writing RCRA, Congress granted special status to facilities that existed when the statute went into effect and for facilities that would be brought under RCRA by new regulations. EPA refers to these facilities as having “interim status.” According to RCRA, interim status facilities do not need a permit to operate; instead, while they are seeking permits, they follow a category of regulations created specifically for them by EPA. When EPA or a State issues a RCRA operating permit to one of these facilities, the facility loses its interim status.

Because interim status facilities can operate without a permit, many people are concerned that some of these facilities are not as safe as permitted facilities. Interim status facilities are not required to follow -- since they are not permitted -- any standardized public participation procedures or permit modification standards (that is, until the facility owner applies for a permit). Given all these conditions, interim status facilities often pose public participation challenges even though many such facilities have been operating for years.

Regulatory agencies may need to use innovative techniques to communicate with and provide information to communities around interim status facilities. EPA acknowledges that every situation will require a different type and level of community involvement. If interest grows in a certain facility, the agency should consider holding a **workshop** or an **availability session**. Information repositories are another available tool (see Chapter 5). The agency should take steps to explain the special situation of interim status facilities to citizens. Of course, if an interim status facility begins to attract public interest, permitting agencies should consider moving the facility towards getting a permit and undergoing the public participation steps in the permitting process.

Owners and operators of interim status facilities should involve the public even before they formally start to pursue a RCRA permit. One thing the facility owners could do to improve access to information is to make a draft part B application available to the public before submitting it to the

permitting agency. Facility owners who submitted part B applications in the past might make their applications available as well. (Note: any interim status facility that submits its part B application on or after June 11, 1996, will be subject to the standards of the RCRA Expanded Public Participation Rule and, thus, its application will be available for public review upon submission). The facility may also want to set up an **on-site information booth** or provide other background materials to the public. Establishing a **contact person** and making his or her name available to the public can improve communication between the facility and the community. Experience has shown that a good facility-community relationship during interim status will make for a more cooperative permitting process.

Members of the public will often have questions or concerns while a facility is in interim status. Citizens can contact the facility, the regulatory agency, or the RCRA/Superfund Hotline to ask questions or to inquire about other sources of information. Citizens may also want to contact public interest organizations, local government, or other involved citizens for more information. Interim status facilities will eventually need to enter the RCRA permitting process, which citizens can use as an opportunity to air concerns and to encourage the facility to make important changes.

Permit Modifications

Modifications can be initiated by either the agency or the facility.

Over time, a permitted facility may need to modify its permit. Just as public participation is a component of the initial permit process, it is also a part of the permit modification process. This section discusses different kinds of permit modifications and their corresponding public participation requirements. It is important to note that public participation responsibilities and activities vary depending on, first, who initiated the modification (i.e., the regulatory agency or the facility owner or operator) and, second, the degree to which the modification would change substantive provisions of the permit. No matter who initiates the modification, when a modification is proposed, only those permit conditions subject to modification are reopened for public comment.

State permitting agencies may have modifications processes that differ from the federal requirements. Contact your State agency (see Appendix B) for more details.

There are many reasons to modify a permit. In some cases, the regulatory

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addition, the regulatory agency may modify a compliance schedule for corrective action in the permit. Modifications initiated by the regulatory agency are subject to the full 40 CFR Part 124 permitting requirements, as

When a facility initiates a modification, it is responsible for some public participation activities.

and defending its actions to the public. To ensure that the facility's public

Class 2 modifications require a number of activities, including a public notice, comment period, and a public meeting.

request and publish this notice in a major local newspaper of general circulation. The facility must publish the notice and mail the letter within seven days before or after it submits the request to the regulatory agency. The newspaper notice marks the beginning of a **60-day public comment period** and announces the time and place of a public meeting. In addition, the notice must identify a **contact person** for both the facility and the regulatory agency and must contain the statement, "The permittee's compliance history during the life of the permit being modified is available from the regulatory agency contact person." The notice should state that

the public, these procedures can be very confusing. A simple solution that the permitting agency or the facility should consider is to provide a fact sheet or a time table to the public at the meeting.

The procedures for Class 2 modifications include a default provision to ensure that the permitting agency responds promptly to the facility's request. The agency must respond to Class 2 modification requests within 90 days or, if the agency notifies the facility of an extension, 120 days. At any time during this 120-day period, the agency can: (1) approve the

Class 3 modifications are more likely than other modifications to raise concern.

is undergoing the Class 2 review process. A temporary authorization is valid for up to 180 days, and the permitting agency may extend the authorization for an additional 180 days if the facility initiates the appropriate Class 2 modification process for the covered activity. In addition, any extension of the activity approved in the temporary authorization must take place under Class 2 procedures.

Class 3 Modifications

Class 3 modifications address changes that substantially alter a facility or its operations. For example, a request to manage new wastes that require different management practices is a Class 3 modification.

Class 3 modifications usually involve changes that are broader or more detailed than Class 1 or 2 modifications; they are also more likely to raise concern. Though the Class 3 modifications process allows significant opportunity for public participation, additional activities may be helpful in some situations. Permit holders, regulators, and community interest groups may want to consider taking steps to encourage earlier participation. Facilities, in particular, should recognize that some Class 3 modifications will significantly alter their operations. In such cases, and in all cases where public interest may be high, *permittees should consider providing information and public participation activities prior to submitting the modification request.*

When concern is high, it is critical for the facility to consult with the agency to make sure that the facility knows how to conduct the required public participation activities. In some cases, the permitting agency might encourage the facility to go beyond the requirements and hold **workshops** and publish **fact sheets** to explain the proposed change. Public participation activities held by the agency or public interest groups can supplement the regulatory requirements.

As with Class 2 modifications, Class 3 modifications require the facility to submit a modification request and supporting documentation to the permitting agency, and *notify persons on the facility mailing list about the modification request and publish notice in a major local newspaper of general circulation.* The facility must publish the notice and mail the letter within seven days before or after the submitting the modification request to the regulatory agency. The notice must contain the same information as the Class 2 notification (see above), including an announcement of a **public meeting to be held by the facility** at least 15 days after the notice and at least 15 days before the end of the comment period. The newspaper notice marks the beginning of a **60-day public comment period.**

Class 3 modifications are
subject to the same

Facilities seeking permits for post-closure are exempt from the pre-application meeting requirement (§ 124.31) in the RCRA Expanded Public Participation rule. The facility, permitting agency, or community group may decide to hold some type of meeting prior to issuance of the post-closure permit. Refer to Chapter 5 for information on **public meetings**, **availability sessions**, and **workshops**.

The permitting agency or other involved organizations should be aware of closure issues that may concern the public, and they should plan public participation activities accordingly. For example, if the public has reservations about how "clean" the facility will actually be after the facility closes, public interest groups, the agency, or the facility may want to provide **fact sheets** or conduct educational **workshops** and **informational meetings** about the closure plan and the conditions at the facility.

If the facility owner or operator is leaving a facility, and possibly even the community, the public may be very concerned about whether the facility owner or operator will really be vigilant in monitoring the post-closure operations at the facility or will have enough financial resources to do so. Moreover, almost all post-closure permits will contain schedules of compliance for corrective action if a facility closes before all necessary corrective action activities are completed. As a result, public participation events in the post-closure phase need to address community concerns about corrective action. (See Chapter 4 for additional information on corrective action activities.) Note, however, that unless corrective action is required in the post-closure permit, public interest in closure plans is usually limited.

Public participation for the post-closure phase must address public concerns about corrective action.

Closure and Post-Closure at Interim Status Facilities

Facilities may also close under interim status, often under enforcement orders. Facilities that are closing under interim status must submit closure and post-closure plans (if appropriate) under 40 CFR 265.112 and 265.118. Public participation activities for interim status facilities during the closure and post-closure processes are specified in 40 CFR 265.112(d)(4) and 265.118(f). The regulations require that *the permitting agency provide the public and the facility, through a **newspaper notice**, with the opportunity to submit written comments on the closure and post-closure plans and request modifications to the plans no later than 30 days from the date of the notice*. EPA encourages permitting agencies to use other methods of notice, as appropriate, to announce the meeting. In response to a request, or at its own discretion, the agency may hold a **public hearing** on the plan(s), if such a hearing might clarify one or more of the issues concerning the plan(s). The agency must provide **public notice** at least 30 days before the hearing. The agency will approve, modify, or disapprove the plan(s) within 90 days of their receipt.

The public can petition the permitting agency to extend or reduce the post-

closure care period applicable to an interim status facility or land disposal unit. Whenever the agency is considering a petition on a post-closure plan, it will *provide the public and the facility, through a **public notice in the newspaper**, with the opportunity to submit written comments within 30 days of the date of the notice*. Again, EPA encourages permitting agencies to go beyond the newspaper notice requirement, as appropriate, to disseminate the notice. In response to a request or at its own discretion, the agency may hold a **public hearing** on the post-closure plan, if such a hearing might clarify one or more of the issues concerning the plan. The agency must provide **public notice of the hearing** at least 30 days before it occurs. If the agency tentatively decides to modify the post-closure plan, 40 CFR 265.118(g)(2) requires that *the agency provide the public and the facility, through a **public notice in the newspaper**, with the opportunity to submit written comments within 30 days of the date of the notice*, as well as the opportunity for a public hearing. After considering the comments, the regulatory agency will issue a final decision.

An interim status facility may amend its closure plan at any time prior to the notification of partial or final closure, and its post-closure plan any time during the active life of the facility or during the post-closure care period. An owner or operator with an approved closure or post-closure plan must submit a written request to the permitting agency to authorize a change. In addition, the agency may request modifications to the closure and post-closure plans. If the amendment to the closure plan would be a Class 2 or Class 3 modification, according to the criteria specified in 40 CFR 270.42, then the modification to the plan will be approved according to the procedures in 40 CFR 265.112(d)(4) detailed above. Similarly, if the amendment to the post-closure plan would be a Class 2 or Class 3 modification, according to the criteria specified in 40 CFR 270.42, the modification will be approved according to the procedures in 40 CFR 265.118(f), also described above.

Chapter Summary

Some permitting situations will call for public participation that goes beyond the regulatory requirements

The "RCRA Expanded Public Participation" rule (60 FR 63417, December 11, 1995), provides for earlier public participation in the permitting process, expands public notice for significant events, and enhances the exchange of permitting information

EPA strongly encourages permitting agencies and facilities to ensure equal access to permitting information and provide an equal opportunity for all citizens to be involved in the RCRA permitting process

The permit decision process and the required public participation activities can be divided into four key steps :

1. The Pre-Application Stage
 - Facility gives public notice and holds an informal public meeting

Regulatory Agency Requirements:

- Allow 60 days for public comment on the modification request
- Issue public notice
- Prepare a fact sheet or statement of basis
- Announce a 45-day public comment period on draft permit decision
- Hold a public hearing, if requested, with 30-day advance notice
- Issue or deny the modification request
- Respond to written and oral comments from the 45-day comment period
- Consider and respond to all significant written comments received during the 60-day comment period

For Class 2 or 3 modifications, the permitting agency may grant a facility temporary authorization to perform certain activities for up to 180 days. The facility must notify the public within seven days of making the request. The agency may grant a temporary authorization without prior public notice and comment.

For facilities seeking permits, the public has the opportunity to comment on closure and post-closure plans and any amendments to the plans as part of the permitting process and permit modification procedures. The public can also comment and request hearings on closure and post-closure plans submitted by interim status facilities. The permitting agency can initiate, and the facility can request, modifications to interim status plans; these requests are also subject to public comment.

Post-closure permits and plans often mandate corrective action.

Exhibit 3-1

Public Participation Requirements for Class 1, 2, and 3 Permit Modifications

Class 1

Type of Changes -- Routine and administrative changes

Required Activities

Within 90 days of implementing a change, facility must notify all parties on mailing list.

Class 2

Type of Changes -- Improvements in technology and management techniques

Required Activities

Day 1: Regulatory agency receives modification request.

Day 7: Facility publishes newspaper notice, notifies mailing list, and places copy of permit modification request and supporting documents in accessible location.

Days 15-45: Facility holds public meeting.

Day 60: Written public comments due to regulatory agency.

Day 90: Regulatory agency response to modification request due, including response to written comments. Deadline may be extended 30 days.

Day 120: If regulatory agency has not responded, requested activity may begin for 180 days under an automatic authorization.

Day 250: If regulatory agency still has not responded, facility notifies public that authorization will become permanent unless regulatory agency responds within 50 days.

Day 300: If regulatory agency has not responded, activity is permanently authorized.

Regulatory agency must notify mailing list within 10 days of any decision to grant or deny modification request, or after an automatic authorization goes into effect.

Class 3

Type of Changes -- Major changes to a facility and its operations

Required Activities

Day 1: Regulatory agency receives modification request.

Day 7: Facility publishes newspaper notice, notifies mailing list, and places copy of the permit modification request and supporting documents in an accessible location.

Days 15-45: Facility holds public meeting.

Day 60: Written public comments due to regulatory agency.

After the conclusion of the 60-day comment period, the regulatory agency must grant or deny the permit modification request according to the permit modification procedures of 40 CFR Part 124. These include:

Ⓒ Issuing public notice of the draft permit modification or intent to deny the modification;

Ⓒ Preparing a fact sheet or statement of basis;

Ⓒ Announcing a 45-day public comment period;

Ⓒ Holding a public hearing, if requested, with a 30-day advance notice;

Ⓒ Considering and responding to all significant written and oral comments received during the 45-day comment period; and

Ⓒ Issuing notice of the final permit modification.

Chapter 4

Public Participation in RCRA

Corrective Action Under Permits and §3008(h) Orders

Introduction

RCRA requires owners and operators of hazardous waste management facilities to clean up contamination resulting from current and past practices. These cleanups, known as corrective actions, reduce risks to human health and the environment.

As with the rest of the RCRA program, state environmental agencies can receive authorization from EPA to implement the corrective action program. The corrective action requirements in authorized states must be at least as stringent as the federal requirements and may be more stringent. Where states implement the program, EPA plays an oversight role; the Agency implements the program in non-authorized states.

This chapter lays out a framework for corrective action public participation that follows the typical approach to facility cleanup (e.g., site investigation, analysis of alternatives, remedy selection). However, alternative approaches may be used provided they achieve the goals of full, fair, and equitable public participation. More than 5,000 facilities are subject to RCRA corrective action. The degree of cleanup necessary to protect human health and the environment varies significantly across these facilities. Few cleanups will follow exactly the same course; therefore, program implementors and facility owners/operators must be allowed significant latitude to structure the corrective action process, develop cleanup objectives, and select remedies appropriate to facility-specific circumstances. Similar latitude must be allowed in determining the best approach to public participation, in order to provide opportunities appropriate for the level of interest and responsive to community concerns.

Corrective action may take place under a permit or an enforcement order.

At the federal level, corrective actions may take place under a RCRA permit or as an enforcement order under §3008 of RCRA. In authorized states, corrective action may take place under a state-issued RCRA permit, a state cleanup order, a state voluntary cleanup program, or another state cleanup authority. Since authorized states may use a variety or combination of state authorities to compel or oversee corrective actions, EPA encourages interested individuals to check with their state agency to gather information on the available public participation opportunities.

The RCRA corrective action program is the counterpart of EPA's other hazardous waste clean-up program, "Superfund," which is formally known as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Unlike most Superfund clean-ups, RCRA corrective actions generally take place at facilities that continue to operate, and the current facility owner or operator is involved in the cleanup. Because cleanups under RCRA and Superfund often involve similar issues, EPA encourages equivalent public participation procedures in the two programs. Thus, parts of this chapter will refer you to the *Community Relations in Superfund* handbook (EPA/540/R-92/009, January 1992), which is available by calling the RCRA/Superfund Hotline at 1-800-424-9346.

Current Status of the Corrective Action Program

The ANPR emphasizes areas of flexibility in corrective action and describes how the program is improving.

Although Subpart S regulations are not final, much of the 1990 proposal is routinely used as guidance by permit writers.

On May 1, 1996, EPA published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register (61 FR 19432). The Notice: (1) presents EPA's strategy for writing final corrective action regulations; (2) describes the current corrective action program and requests information to help EPA identify and implement improvements to the program; and (3) emphasizes areas of flexibility in the current program and describes program improvements already underway.

Public participation during corrective action derives from a combination of regulations and EPA guidance. The regulations set out requirements that facilities and agencies must meet when a permit is issued or modified, under 40 CFR parts 124 and 270, to incorporate corrective action provisions. EPA guidance, on the other hand, suggests additional provisions that the permitting agency may include in the permit. One example of such guidance for corrective action activities is the Proposed Subpart S rule (55 FR 30798, July 27, 1990). The Subpart S regulations are not final, but much of the 1990 proposal is routinely used as guidance by permit writers.¹

Since there are no regulations requiring public participation under §3008(h) orders, any such activities are based on guidance. EPA policy states that the opportunities for public participation should be generally the same as those

¹ Two provisions of the 1990 proposal were promulgated in 1993: the final corrective action management unit (CAMU) and temporary unit regulations on February 16, 1993 (58 FR 8658). Under this final rule, CAMUs and temporary units may be designated by the regulatory agency in the permit prior to or during remedy selection according to the procedures in 40 CFR 270.41; these units may also be implemented through the use of Section 3008(h) orders or order modifications. Conversely, the facility may request a permit modification to implement a CAMU following the Class 3 permit modification process defined in 40 CFR 270.42. If approval of a temporary unit or time extension for a temporary unit is not requested under a Class 3 permit modification or obtained under a regulatory agency-initiated modification, the facility owner or operator may request approval for a temporary unit according to the procedures for a Class 2 permit modification. Chapter 3 (RCRA Permitting) discusses the public participation activities associated with each level of permit modification.

opportunities that accompany corrective action under a permit (see the section called “Special Considerations for Public Participation Activities Under §3008(h) Orders” below).

In the 1996 ANPR, the Agency reaffirmed using portions of the 1990 proposal as guidance.

The May 1, 1996 ANPR reaffirms the Agency’s use of portions of the 1990 proposal as guidance, including many of the portions addressing public participation in corrective action. While much of the 1990 proposal will still be used as guidance, the ANPR emphasizes the need for flexibility in developing site-specific corrective action schedules and requirements, including public participation requirements tailored to meet the needs of the local community.

As described in the ANPR, EPA is actively looking for opportunities to identify and implement improvements to make the corrective action program faster, more efficient, more protective, and more focused on results. In the ANPR, the Agency emphasizes that revisions to the corrective action program should also enhance opportunities for timely and meaningful public participation.

This chapter outlines the public participation activities associated with the corrective action process under both permits and §3008(h) orders. It describes public participation activities currently required under federal regulations and policies, as well as additional activities that EPA recommends. If additional guidance is appropriate upon promulgation and re-proposal of corrective action regulations, EPA will update this chapter and make it available to the public.

The three paragraphs below provide a few guidelines for public participation, in the form of overarching principles, which should be considered throughout the corrective action process.

Early Participation

Public participation should come early in the corrective action process.

As we emphasized in Chapter 2, public participation should begin early in the permitting process. It should also begin early in the corrective action process. Many of the important decisions in a corrective action are made during the site investigation and characterization. Overseeing agencies and facilities should make all reasonable efforts to provide for early public participation during these phases.

Consistency with Superfund

A significant portion of the RCRA corrective action process is analogous to the Superfund process. Due to this similarity, EPA encourages permitting agencies and facilities to make public participation activities under the RCRA system consistent with those activities required under Superfund. For example, RCRA interim actions should provide opportunities for participation that are similar to, or go beyond, Superfund public

participation for removal actions, and similar opportunities for participation should be available under both corrective measures implementation and a Superfund remedial action.

Shared Responsibility for Public Participation Activities

The corrective action process may involve cleanup steps that are initiated by an overseeing agency or a facility owner/operator. Public participation activities will often be more useful for the public if the party who performed the latest cleanup step then conducts the public participation activity. For instance, if the facility owner/operator does a facility investigation, then it would usually be more appropriate for the facility owner/operator to run the public meeting or whatever activity follows the investigation. In addition, EPA recognizes that important forms of public participation take place outside of the formal corrective action process. The Agency encourages public interest, environmental, civic, and other organizations to provide such activities. The Agency also encourages citizens to discuss cleanup and permitting issues with knowledgeable stakeholders in the community.

Special Considerations for Public Participation Activities Under §3008(h) Orders

As we mentioned above, corrective action activities are conducted under an order issued under RCRA Section 3008(h). RCRA 3008(h) orders may be used to get corrective action started in advance of facility permitting or when a facility is closing under interim status. RCRA 3008(h) orders may be issued either on consent or unilaterally. A consent order is issued when the facility and the regulatory agency have come to an agreement about the corrective action; a unilateral order is issued when the regulatory agency and the facility have been unable to agree about the need for, or the scope of, corrective action.

As a matter of EPA policy, the substantive corrective action requirements and public participation requirements imposed under an order are generally the same as those that would occur if corrective action were taking place under a permit (61 FR 19432, May 1, 1996); however, because orders have significant administrative differences from permits there are some special considerations. For example: under a §3008(h) order, there may be limitations on the permitting agency's ability to release or discuss certain information; no public participation activities are statutorily *required* under §3008(h), though EPA policy is that public participation under corrective action orders be generally the same as under permits; and, while facility owner/operators may agree to conduct public participation activities under a consent order, under a unilateral order public participation responsibilities will likely fall to the permitting agency.

Under EPA policy, public participation requirements during corrective action are generally the same under orders and permits.

In addition to ensuring that appropriate public participation activities occur during implementation of a corrective action order, in some cases, it may

be useful to begin public participation prior to the issuance of the order by assessing the community's concerns and identifying the most appropriate means of addressing those concerns. (Assessing a community's concerns and planning for public participation is discussed in greater detail in Chapter 2.) When corrective action will take place under a consent order, care should be taken to explain to the community that corrective action orders on consent are not traditional enforcement actions in that they are simply means to expedite initiation of corrective action activities; they are not typically issued in response to a violation at the facility.

Limitations on Releasing Information: When the agency is negotiating an order with the facility, confidentiality of certain information must be maintained. The aim of these negotiations is to encourage frank discussion of all issues and to resolve differences, thereby allowing the agency to issue an order on consent rather than unilaterally. Agency staff should take notice: public disclosure of some information may be in violation of state and federal statutes, and could jeopardize the success of the negotiations, so be sure to coordinate any public notices with enforcement staff before releasing information.

Not being able to fully disclose information to the public can pose problems, particularly in a community where interest is high and citizens are requesting information. If interest in the facility is high, the project manager, project staff, and the Public Involvement Coordinator should discuss how to address citizens' concerns without breaching confidentiality. At the very least, the public deserves to know why these limitations are necessary and when and if they will be lifted.

Further constraints may be placed upon public participation if discussions with the facility break down, and the case is referred to the Department of Justice (DOJ) to initiate litigation. In this situation, public participation planning should be coordinated with the lead DOJ attorney as well.

Strongly Suggested Versus Required Activities: As discussed earlier in this Chapter, EPA's policy is that the substantive corrective action requirements and public participation requirements imposed under an order should be generally the same as those that would occur if corrective action were taking place under a permit. U.S. EPA's Office of Solid Waste and Emergency Response has issued two directives addressing public participation in §3008(h) orders: Directive 9901.3, *Guidance for Public Involvement in RCRA Section 3008(h) Actions* (May 5, 1987) and Directive 9902.6, *RCRA Corrective Action Decision Documents: The Statement of Basis and Response to Comments* (April 29, 1991). These directives suggest public participation activities in orders, even though such activities are not required by statute. The directives suggest the following activities **after** a proposed remedy has been selected:

C Writing a **statement of basis** discussing the proposed remedy;

should develop site-specific public participation strategies that are consistent with existing requirements and provide for full, fair, and equitable public participation.

The scope and complexity of corrective actions will vary significantly across facilities. For this reason, EPA has created a flexible program that allows regulatory agencies to tailor corrective action requirements to facility-specific conditions and circumstances. While EPA's public participation regulations establish a baseline of requirements, some situations will call for public participation opportunities that go beyond the regulatory baseline. This is particularly true in the corrective action program because many of the specific corrective action regulations, including regulations for public participation, are not yet final and because corrective action activities often occur outside the permitting process (e.g., under a federal or state order). In this chapter, we will discuss times during the process when additional public participation can be critical. We encourage stakeholders to follow the guidance in this chapter and Chapter 2 when planning for public participation in the corrective action process.

Corrective actions, like most site cleanup activities, usually involve several key elements. These elements are:

- C Initial Site Assessment (RCRA Facility Assessment (RFA));
- C Site Characterization (RCRA Facility Investigation (RFI));
- C Interim Actions;
- C Evaluation, public participation, and corrective action orders, and

A successful corrective action program must be procedurally flexible; no one approach will be appropriate for all facilities.

Initial Site Assessment (RFA)

called a RCRA Facility Assessment or RFA. The RFA is conducted either by the overseeing agency or by the facility with subsequent agency approval. The purpose of an RFA is to gather data about a site, including releases and potential releases of hazardous waste and hazardous constituents, to determine whether a cleanup may be necessary. RFAs usually include (1) a file review of available information on the facility; (2) a visual site inspection to confirm available information on solid waste management units (SWMUs) at the facility and to note any visual evidence of releases; and (3) in some cases, a sampling visit to confirm or disprove suspected releases.

The results of an RFA are recorded in an RFA report. The RFA report will describe the facility and the waste management units present at the facility and note any releases or potential releases. It will also describe releases and potential releases from other, non-waste-management-associated sources (e.g., a spill from a product storage tank). Interested individuals may request copies of RFA reports from the appropriate EPA regional office or state agency.

In addition to the information recorded in RFA reports, if corrective action is taking place in the context of a RCRA permit, the permit application will also describe the physical condition of the facility including its subsurface geology, the waste management units present at the facility, and any releases and potential releases.

The RFA report usually serves as the basis for future corrective actions at a facility. If, after completion of the RFA, it appears likely that a release exists, then the overseeing agency will typically develop facility-specific corrective action requirements in a schedule of compliance, which will be included in the facility's permit or in a RCRA Section 3008(h) corrective action order.

In the case of corrective action implemented through a permit, the public may comment on the schedule of compliance for corrective action during permit issuance and subsequent permit modification (see Chapter 3 for more information on the permitting process and permit modifications).

When corrective action is implemented through a 3008(h) order, the public should be given an opportunity to comment on the schedule of compliance when the order is issued; however, it may take many months of discussions between the facility owner/operator and the overseeing agency before an order is issued. In the meantime, the facility owner/operator may develop a **mailing list**, modeled after the mailing list developed under the permitting process, and a **public participation plan**.

On the day the order is issued, the administrative record, containing all information considered by the agency in developing the order, is made available for inspection by the public. The agency may also want to place a copy of the administrative record at a local library close to the facility.

The overseeing agency or facility owner/operator should consider writing a **fact sheet** that gives details of the order and the corrective action process. If there is a high level of interest in the facility, an **open house** or **workshop** should be considered.

Site Characterization (RFI)

A RCRA Facility Investigation or RFI is necessary when a release or potential release is identified and additional information is necessary to determine the nature and scope of corrective action, if any, that is needed. The purpose of an RFI is to characterize the nature and extent of contamination at the facility and to support selection and implementation of a remedy or remedies or, if necessary, interim measures.

Required Activities

If corrective action is being conducted in the context of a RCRA permit, the public has the opportunity to review and comment on the scope of the RFI and RFI schedules and conditions during permit issuance. The RFI is usually conducted by following an agency-approved RFI plan. If the RFI plan is incorporated into a permit by a permit modification, then the public will have an opportunity to comment on the scope and schedule of the RFI during the modification process. See Chapter 3 for more information on public participation during permit modifications.

If corrective action is being conducted under a 3008(h) order, the public should be given the opportunity to review and comment on the scope of the RFI and RFI conditions when the order is issued and/or when the RFI workplan is approved.

RFIs can often involve numerous rounds and under a 300u0.0379 houldvities

In some cases (e.g., where there is a high level of public interest in corrective action activities), the overseeing agency will determine that an **information repository** is needed to ensure adequate public involvement. When corrective action is being conducted under a RCRA permit the agency can require the facility to establish a repository under § 270.30(m). A repository at the RFI stage will provide access to information from an early stage in the process, though the agency has the discretion to use this provision at any stage in the permitting process or at any stage during the corrective action. If the agency decides to require a repository, it will direct the facility to notify the public of the existence of the repository, including the name and phone number of a **contact person**. See Chapter 5 for more detail on information repositories.

Additional Activities

The start of the RFI usually marks the beginning of highly visible, on-going corrective action activities at a facility. Because RFI activities are highly visible and because many of the important decisions regarding the scope of potential corrective actions may be made during the RFI, it will generally be appropriate to reevaluate community concerns and the level of public participation and to revise the **public participation plan** accordingly (see Chapter 5) when RFIs begin. Such efforts early in the process, before community concerns and issues become overwhelming, will be beneficial in the long run.

Developing and distributing **fact sheets** throughout the RFI process is an excellent way to keep in touch with the community. It is a good idea to issue a fact sheet before the RFI begins to explain the investigation's purpose and scope. Another fact sheet should be issued after the RFI is completed to report the investigation results.

EPA encourages all facilities to make the results of the RFI readily available to interested stakeholders. One means of providing access to the information is to send a **summary of the RFI report** to the **facility mailing list**, as proposed in the 1990 Subpart S proposal. The facility may choose other means of distributing the information, such as through a **fact sheet or project newsletter**. The full report should be made available for review in an **information repository**, if one exists, or through some other method that is convenient for the interested public.

The facility owner/operator should provide notice to all adjacent landowners and other persons who may have been affected by releases of contamination, via air or ground water, from the facility. EPA recommends that the owner/operator follow the provisions in the 1990 proposal (proposed § 264.560(a) and (b)) for **notifications for discoveries of contamination** (see 55 FR 30882).

Informal meetings or **workshops** held by the facility, the permitting agency, or public interest groups can provide valuable forums for discussing community concerns.

Interim Actions

Interim actions are activities used to control or abate ongoing risks to human health or the environment in advance of final remedy selection. For example, interim actions may be required in situations where contamination poses an immediate threat to human health or the environment. They also may be required to prevent further environmental degradation or contaminant migration prior to implementing the final remedy. Interim actions may occur at any point in the corrective action process; however, they are often implemented during the RFI or CMS.

Required Activities

When corrective action is proceeding under a RCRA permit, the permit may identify specific interim measures and/or stabilization measures (if they are known at the time of permit issuance) or may have general

It is a good idea to keep the public informed of such activities by issuing **fact sheets** or holding **informal meetings**. Because interim measures can be conducted at any stage in the corrective action process, you should incorporate activities related to interim measures into the rest of your public involvement program.

Evaluation of Remedial Alternatives (CMS)

When the need for corrective measures is verified, the facility may be required to perform a Corrective Measures Study (CMS) to identify and evaluate potential remedial alternatives. In cases where EPA or a state is using performance standards or a similar approach and in cases where the preferred remedial alternative is obvious (e.g., where EPA has issued a presumptive remedy that is appropriate to site-specific conditions), submission of a formal CMS may not be necessary.

Required Activities

When corrective action is proceeding under a permit, the permit schedule of compliance may already include conditions that specify when a CMS is warranted; the public can comment on these draft permit conditions at the time of permit issuance. However, because the RFI and CMS phases may last several years, depending on the complexity of the facility, the community may be frustrated by the length of time involved and the lack of information on results or findings. Significant changes to the scope of CMS requirements, as specified in the permit, may be considered Class 3 permit modifications requiring significant public involvement. Changes to the CMS schedule, or CMS details are typically considered class 1 or 2 permit modifications, as appropriate.

Public participation during corrective action under a 3008(h) order should be consistent with public participation under a permit. The public should have the opportunity to review and comment on the scope of the CMS and CMS conditions when the order is issued and/or when the CMS workplan is approved.

Additional Activities

In the 1996 ANPR, EPA emphasizes that it expects facility owners/operators to recommend a preferred remedy as part of the CMS. While there is no formal requirement for public participation at this time, EPA strongly encourages the facility to present its preferred remedy to the community before formally submitting it to the agency. The facility should seek community input through an **informal meeting**, **availability session**, or another method that encourages dialogue. This early input is likely to improve many preferred remedies and make them more agreeable to communities. Moreover, it will make the facility and the overseeing agency aware of community concerns and ways to address them.

Holding **workshops** and **informal public meetings** about the CMS process, the remedies being considered, and the activities being conducted at the facility will keep the community involved and informed. **Fact sheets** distributed at significant milestones during the CMS can keep the community abreast of the progress that has been made.

The agency and the facility should provide the name and number of a **contact person**. A contact person will accept comments and answer questions from the community, disseminate information, demonstrate the agency's and facility's willingness to talk with the community, and give the facility or the agency an opportunity to respond to public concerns. The agency or the facility may even consider establishing a **hotline** if a large number of people call with questions. The mailing list and local newspapers are good ways to advertise availability of the hotline.

Remedy Selection

Following receipt of a recommendation of a preferred remedy from the facility owner/operator, the overseeing agency will review the preferred remedy and other remedial alternatives and decide to tentatively approve the preferred remedy, tentatively select a different remedy or require additional analysis of remedial alternatives. The tentatively selected remedy will then undergo public review and comment, usually in the form of a proposed modification to the facility's permit or corrective action order. Following public review, the agency will respond to public comments and then modify the facility permit or corrective action order to incorporate the remedy.

Required Activities

When corrective action is proceeding under a permit, public review and comment on the tentatively selected remedy is generally conducted using the procedures of 40 CFR 270.41 for agency-initiated permit modifications. For such a modification, 40 CFR 270.41 requires the same level of public participation as is required for a draft permit. The agency must release the proposed modification for public review and issue a **public notice** announcing that the proposed modification is available for review. The agency must publish this notice in a major local newspaper, broadcast it over local radio stations, and send it to all persons on the mailing list.

In addition, agency staff must prepare a **fact sheet** or **statement of basis** to explain the proposed modification and the significant factual and legal reasons for proposing the remedy. The statement of basis describes the proposed remedy, but does not select the final remedy for a facility. This approach allows for consideration of additional information during the **public comment period**. Following the comment period, public comment and/or additional data may result in changes to the remedy or in another choice of remedy. After the agency has considered all comments from the public, the final decision -- selecting the remedy or determining the need to

develop another option -- is documented in the response to comments. (For

Involvement in RCRA Section 3008(h) Actions (May 5, 1987) and 9902.6
*RCRA Corrective Action Decision Documents: The Statement of Basis and
response to Comments* (April 29, 1991).

Additional Activities

The agency, public interest groups, or the facility should consider holding **workshops** or **informal meetings** during the public comment period to inform the public about the proposed remedy. These discussion sessions can be especially useful when information about corrective measures in a draft permit modification is quite technical or the level of community concern is high.

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Additional Activities

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then the plans should go in the repository; otherwise, the facility should place the plans in a convenient location with public access.

As mentioned earlier, the corrective action process can take years to complete. Additional public participation activities may be appropriate during corrective measures implementation to inform the community of the progress of the remedial action, especially if the public shows concern over the pace and scope of the cleanup operations. In particular, it may be useful to release periodic **fact sheets** to the community that report on progress of the cleanup operations. It may also be helpful to hold an **availability session/open house** near or on the site of the facility to demonstrate or explain the activities involved in the remedy.

Completion of Remedy

Once corrective measures are complete the overseeing agency will either terminate the corrective action order or modify the permit to remove the corrective action schedule of compliance. Decisions regarding completion of corrective measures can be made for an entire facility, for a portion of a facility, or for a specified unit or release. EPA policy is for the public to be given an opportunity to review and comment on all proposals to complete corrective action.

Required Activities

When corrective action is proceeding under a permit, proposals to complete corrective measures should follow the procedures for Class 3 permit modifications. See the section on Class 3 modifications in Chapter 3 for details.

When corrective action is proceeding under a 3008(h) order and a proposal to complete corrective measures is issued, the public should have notice and comment opportunities that are consistent with the opportunities available under the Class 3 permit modification procedures.

Additional Activities

In some cases, hazardous wastes or hazardous constituents will remain in or on the land after completion of corrective measures. When this occurs, the overseeing agency may require the facility to record a notation in the deed to the facility property regarding the types, concentrations, and locations of such waste or constituents.

Chapter Summary

At the federal level, corrective actions may take place under a RCRA permit or as an enforcement order under §3008 of RCRA.

In authorized states, corrective action may take place under a state-issued RCRA permit, a state cleanup order, a state voluntary cleanup program, or another state cleanup authority. Authorized states may use a variety or combination of state authorities to compel or oversee corrective actions.

EPA's recent Advance Notice of Proposed Rulemaking (ANPR) (61 FR 19432, May 1, 1996) for the corrective action program does three things: (1) it presents EPA's strategy for writing final corrective action regulations; (2) it includes a description of the current corrective action program and requests information to help EPA identify and implement improvements to the program; and (3) it emphasizes areas of flexibility in the current program and describes program improvements already underway.

The ANPR also affirmed EPA's use of the 1990 proposal as guidance and emphasized the Agency's commitment to enhanced public participation.

As a matter of EPA policy, the type and timing of public participation activities for §3008(h) orders are generally the same as those for corrective action in permitting.

There are three important distinctions between conducting public participation in corrective action under a §3008(h) order and through permitting:

1. Under a §3008(h) order, there may be limitations on the release or discussion of certain information;
2. No public participation activities are required under §3008(h) but they are strongly encouraged in guidance. In addition, the agency may require the facility to conduct additional activities as a term in the order; and
3. Facilities may agree to conduct public participation activities under a consent order, however, under a unilateral order, the responsibility will likely fall to the agency.

While being flexible, the corrective actions should provide for early public participation, seek consistency with Superfund community involvement standards, and allow facility owner/operators to perform public participation activities where appropriate.

The corrective action process is composed of seven basic elements which are not prescribed steps, but evaluations that are necessary to make good cleanup decisions. Because these elements may not occur in the same order (or at all) in every situation, we encourage planners to use them as general guidelines, while leaving flexibility for changes. A successful corrective action program must be procedurally flexible

The basic elements (with corresponding public participation activities that are currently required or suggested):

1. Initial Site Assessment (RCRA Facility Assessment)
 - Schedule of compliance will go into permit, where public can comment
 - For enforcement orders, the agency will release administrative record and make it available for public review. The agency may provide a fact sheet and hold an open house or workshop.
2. Site Characterization (RCRA Facility Investigation)
 - Update mailing list, if necessary
 - Establish information repository, if required
 - Revise public participation plan
 - Modify permit, if necessary, to reflect changes to schedule of compliance
 - Under an order, provide notice and comment on the planned RFI
 - Develop fact sheets on the investigations
 - Mail summary of RFI Report to facility mailing list and make available to the public
 - Hold informal meetings or workshops
 - Issue notifications for discovery of contamination

Chapter 5

Public Participation Activities: How to Do Them

Introduction

This chapter presents a "how-to" for a broad range of activities that permitting agencies, public interest groups, and facility owners/operators can use to promote public participation. The variety of activities in this chapter should fit any situation: from the formal regulatory process that

The following pages contain summaries of numerous public participation activities, information on how and when to conduct them, an estimate of how much effort they require, and their advantages and limitations. Each summary includes a checklist to help in conducting the activity. Examples



Workshops	5-134
Attending Other Stakeholder Meetings and Functions	5-139
Citizen Advisory Groups	5-141

Public Participation Plans

Regulatory Requirements

None.

Description of Activity

A public participation plan provides a community-specific plan for interacting with a community regarding the permitting or corrective action activities taking place at a RCRA facility. The plan, typically prepared by the permitting agency, assesses the level of community interest as well as the types of concerns identified through a variety of sources (e.g., **community interviews**) and, based on this information, recommends specific activities for involving the community in the RCRA process. See the section on “Planning for Participation” in Chapter 2 and the detailed sample plan in Appendix I for more information. Chapter 3 of *Community Relations in Superfund* also provides useful guidance.

The level of detail in the plan will vary according to the probable level of public interest, the type of permitting activity, the location of the facility, and other applicable factors. The steps described in this section are not all necessary in every plan. Depending on the situation, the public participation plan may vary from a two-page schedule of activities to a comprehensive study of the population, an itinerary of permitting activities, and an analysis of community concerns.

Level of Effort

A Public Participation Plan may take several days to two weeks to complete. Revision of a plan could take a few days to a week. The range of effort depends on the priority of the site and the complexity of the activities performed at that site.

How to Conduct the Activity

A Public Participation Plan should be based on information collected during community interviews (if conducted) and information obtained from other sources, such as file searches, reviews of past media coverage, and community assessments done by third parties (see the section entitled “Planning for Participation” in Chapter 2). This information is analyzed and organized into a community-specific plan. Typical sections of a public participation plan are:

- C Introduction -- several paragraphs clearly explaining the purpose of the document.
- C Facility History -- several paragraphs to several pages providing an overview of the facility, its technical and regulatory history, and a history of past community concerns and involvement in activities at

and assign responsibilities;

- C After community interviews (if conducted).

Public participation plans should be revised:

- C When a significant change in community concerns or activities at the facility occurs (e.g., after a remedy is selected or the facility proposes a significant permit modification); and
- C At least every two years for longer-term projects.

Accompanying Activities

Although they are not necessary in every case, **community interviews** can be very helpful when writing a plan. The plan typically includes the **mailing list** and provides the locations of the **information repositories** and **public hearings**.

Advantages and Limitations

Public participation plans establish a record of community concerns and needs and a set of activities to meet those needs. Because the plans are community-specific, they ensure that the community gets the information they need in a fashion that is most useful and they assist the project staff in making the most efficient use of their time when interacting with the public.

The plan represents the agency's commitment to dedicate significant resources to the activities specified; thus, agency staff should make certain that resources are available to implement all activities identified in the plan. The plan should not schedule activities that the agency will not be able to conduct.

Community concerns can change significantly and may require that the public participation plan be revised periodically. The plans should be seen as "evolving" documents. The agency may need to revise the plan often, conducting new community interviews each time. At the least, the agency should be prepared to revise activities or expand activities as the project proceeds.

Revising the plan will help to ensure that the agency continues to respond to citizens' concerns during long-term projects. Minor changes also can help a public participation planner; for example, the contacts list can incorporate changes in addresses, new telephone numbers, and the names of new officials.

Checklist for Public Participation Plans

As applicable:

- Review facility background file and other information sources
- Review comments gathered during the community interviews
- Coordinate with other key stakeholders to discuss the plan
- Write draft plan
 - Introduction -- explains the purpose of the document
 - Project History -- provides an overview of the project, its technical and regulatory history, and a history of past community concerns and involvement in the project (if available)
 - Community Concerns -- summary of the concerns identified during the community interviews
 - Objectives of the Plan -- explains the major objectives relating to specific concerns outlined in the previous section of the document
 - Public Participation Activities -- describes the specific activities to be conducted to meet the objectives of the plan and schedule
 - Appendices -- provide information on key contacts, media, public meeting and information repository locations.
- Coordinate internal review of plan
- Solicit community input on the plan
- Prepare final plan based on comments
- Distribute plan to information repositories if they exist, or make the plan available to the public in a convenient place

Public Notices

Regulatory Requirements

The permitting agency must give official public notice when issuing the draft permit (§ 124.10(c)), holding a public hearing under § 124.12, or when an appeal is granted under § 124.19. This notice must be sent by the agency to all relevant units of federal and local government, the applicant, and all parties on the facility mailing list. In addition, the notice must be broadcast over local radio stations and published in a daily or weekly major local newspaper of general circulation.

A prospective permit applicant must issue a similar, but broader, public notice to announce the pre-application meeting (§ 124.31). This notice must be published as a display advertisement in a paper of general circulation and must be sent to the permitting agency and appropriate units of local government. The applicant must also post the notice as a sign at or near the facility, and as a broadcast media announcement. The notice must include the name, address, and telephone number of a contact person for the applicant.

The facility owner/operator must provide public notice for permit modifications (including modifications to incorporate corrective action provisions) under § 270.42. For a class 1 modification, the facility must notify the facility mailing list. For a class 2 modification, the facility must notify the mailing list and publish a newspaper notice when requesting the modification. The permitting agency must notify the mailing list within 10 days of granting or denying a modification request. For a class 3 modification, the facility must publish a newspaper notice and notify the mailing list when requesting a modification. The permitting agency must follow the procedures for modifications in part 124 when granting or denying the class 3 permit modification. The permitting agency will also notify people on the mailing list and State and local government within 10

and (d); 270.66(d)(3) and (g)) and when an interim status facility undergoes closure or post-closure (see §§ 265.112(d)(4) and 265.118(f)).

Description of Activity

Public notices provide an official announcement of proposed agency decisions or facility activities. Notices often provide the public with the opportunity to comment on a proposed action.

Most RCRA notices contain essentially the same types of information. Where they differ is in how they are distributed by the agency or the facility. Some go to members of the mailing list, some as legal advertisements in the newspaper, and some others as signs or radio advertisements. In all cases, EPA encourages facilities and permitting agencies to make a good faith effort to reach all segments of the affected community with these notices. As we mention earlier in this manual, any organization that wants to provide public notice has a number of inexpensive and simple options available to it, including: free circulars; existing newsletters or organization bulletins; flyers; bulletin boards; or storefront signs.

There are many effective ways to spread information. However, the job of anyone giving notice is to find out what information pathways will be most effective in a particular community. Public interest groups, the facility, and the permitting agency should seek community input on this topic. The citizens of that community are the most qualified people to explain what methods will work best in their community. **Community interviews** are one way to learn more about how the citizens communicate.

The following are the most common ways to give public notice:

- C Newspaper Advertisements. Traditionally, public notices have often appeared as legal advertisements in the classified section of a newspaper. While this method provides a standard location for the ads, display advertisements (located along with other commercial advertisements) are more likely to reach a larger audience. Display advertisements offer an advantage over legal classified ads since they are larger, easier to read, and are more likely to be seen by the casual reader. A sample is available in Appendix H of this manual.
- C Newspaper Inserts. Inserts stand out from other newspaper advertisements since they come as a “loose” section of the newspaper (a format often used for glossy advertisements or other solicitations). They provide a way to reach beyond the most-involved citizens to inform a broader segment of the community.
- C Free Publications and Existing Newsletters. Placing a notice in a newsletter distributed by a local government, a civic or community organization, or in a free publication (e.g., a paper that highlights local or community activities) is a generally inexpensive way to target a specific audience or segment of the community. Some publications may not be appropriate for communicating information from your

organization. By publishing information through a group that has a specific political interest or bias, your organization may be perceived as endorsing these views. Permitting agencies may want to avoid associations with groups that appear to represent the agency's interests. In any case, the relationship between your organization and the newsletter or publication should be clear to the public.

You may want to consider some of the following options. Local governments sometimes send newsletters or bulletins to their entire population; such newsletters can reach an entire affected community. Planning commissions, zoning boards, or utilities often distribute regular newsletters; they may be willing to include information about permitting activities. Newsletters distributed by civic, trade, agricultural, religious, or community organizations can also disseminate information to interested readers at low cost. Some segments of the affected community may rely on a free local flyer, magazine, independent or commercial newspaper to share information.

- C Public Service Announcements. Radio and television stations often broadcast, without charge, a certain number of announcements on behalf of charities, government agencies, and community groups. In particular, they are likely to run announcements of public meetings, events, or other opportunities for the public to participate. One drawback with a public service announcement is that you have no guarantee that it will go on the air. If it does go on the air, it may come at odd hours when relatively few people are listening.
- C Broadcast Announcements and Advertisements. A number of RCRA notices must be broadcast over radio or another medium. Beyond these requirements (which are further explained below and in the section on “Notice of the Pre-Application Meeting” in Chapter 3), you may consider providing notice via a paid TV advertisement or over a local cable TV station. Paid advertisements can be expensive and may be seen by the public as taking a side. You can avoid this drawback by limiting information to the facts (e.g., time, date, location of the meeting). Some local access cable TV stations run a text-based community bulletin board, which may provide a useful way to distribute information.
- C Signs and Bulletin Boards. The notice requirements for the pre-application meeting (§ 124.31) require posting of a visible and accessible sign. Signs can be a useful means of public notice, especially for residents and neighbors of the facility or planned facility. A sign on the site should be large enough so that passers-by, whether by foot or by vehicle, can read it. If few people are likely to pass by the site, consider posting the sign at the nearest major intersection. Another option is to place posters or bulletins on community bulletin boards (in community centers, town halls, grocery stores, on heavily-travelled streets) where people are likely to see them. The signs should contain the same information as a written or broadcast notice.

Public notices can be more effective, and provide more of a feedback loop, when they are combined with a means of gathering information from the public. Every notice should contain a **contact person** so that the public can direct comments or questions to the agency, the facility, or other stakeholder groups.

See “Description of Activity” above in this section for advantages and limitations of specific notice methods.

Checklist for Public Notices

- Compile information to be included in the public notice:
 - Name of agency overseeing the permit or corrective action
 - Name, address, and phone number of contact person
 - Facility owner/operator and description of facility activities
 - Purpose of public notice
 - If applicable provide the date, time, and location of public hearing (or meeting)
 - Description of the procedures governing the public's participation in the process
- Draft the public notice, announcement, or advertisement
- Coordinate review of the draft announcement, or advertisement, or advertisement

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Checklist for Public Notices (continued)

For distribution to the mailing list:

- Verify that facility mailing list is up-to-date
- Produce mailing labels
- Distribute to the mailing list

For broadcast on local radio/television stations:

- Verify media list
- Prepare procurement request or advertising voucher for public notice spots
-

Translations

Regulatory Requirements

None. EPA strongly recommends using multilingual fact sheets, notices, and other information (as appropriate) to provide equal access to information in the permitting process.

Description of Activity

Translations provide written or oral information in a foreign language to a community with a significant number of residents who do not speak English as a first language. There are two types of translations:

- C A written translation of materials originally written in English;
- C A simultaneous verbal translation (i.e., word by word) of a public meeting or news conference, usually with small headsets and a radio transmitter.

Translations ensure that **all** community members are informed about activities at a facility and have the opportunity to participate in the decision-making process.

Level of Effort

The amount of time needed to translate a document depends on the length of the document and the complexity of the information in the document. You should allow at least several days for translation.

How to Conduct the Activity

To develop a successful translation:

1. **Evaluate the need** for a translation. Evaluate the demographic characteristics of the community as well as the type of public participation activities being planned. Consider whether citizens' ability to take part in an activity is limited by their inability to speak or understand English.
2. **Identify and evaluate translation services** . A successful translation depends on the skill of the translator. More problems may be created than solved if inaccurate or imprecise information is given. Many translators will not be familiar with the technical terms associated with hazardous materials and few, if any, will be familiar with the RCRA permitting and corrective action processes. This problem may be further compounded in the case of oral translations (especially simultaneous translations) as there is no time for review or quality control. Thus, it is necessary to contract someone with experience in translating technical information and check the translator's work to

3. **Avoid the use of jargon or highly technical terms** . As a matter of standard practice, a staff member should go over in advance all technical and RCRA terms that may cause problems with the translator.
4. **For verbal presentations, public meetings, and news conferences, plan what to say ahead of time** . If the translator has a prepared written speech to work with in advance, there is more time to work out any vocabulary "bugs" and thereby reduce the chances of faltering over unfamiliar material or making inaccurate word choices. If possible, practice with the translator before the actual meeting or presentation date.
5. **Anticipate questions from the audience and reporters** , and have at least the technical aspects (e.g., chemical names, statistics) of the answers translated in advance.

When to Use

A translation can be used:

- C When a significant portion of the community does not speak English as a first language. A written translation should be provided for fact sheets or letters, unless a presentation or public meeting would be more appropriate (e.g., the literacy rate among the foreign-speaking community is low).
- C Verbal translations are recommended where there is considerable concern over the facility, extreme hostility, or suspicion of the agency's efforts to communicate with community members.

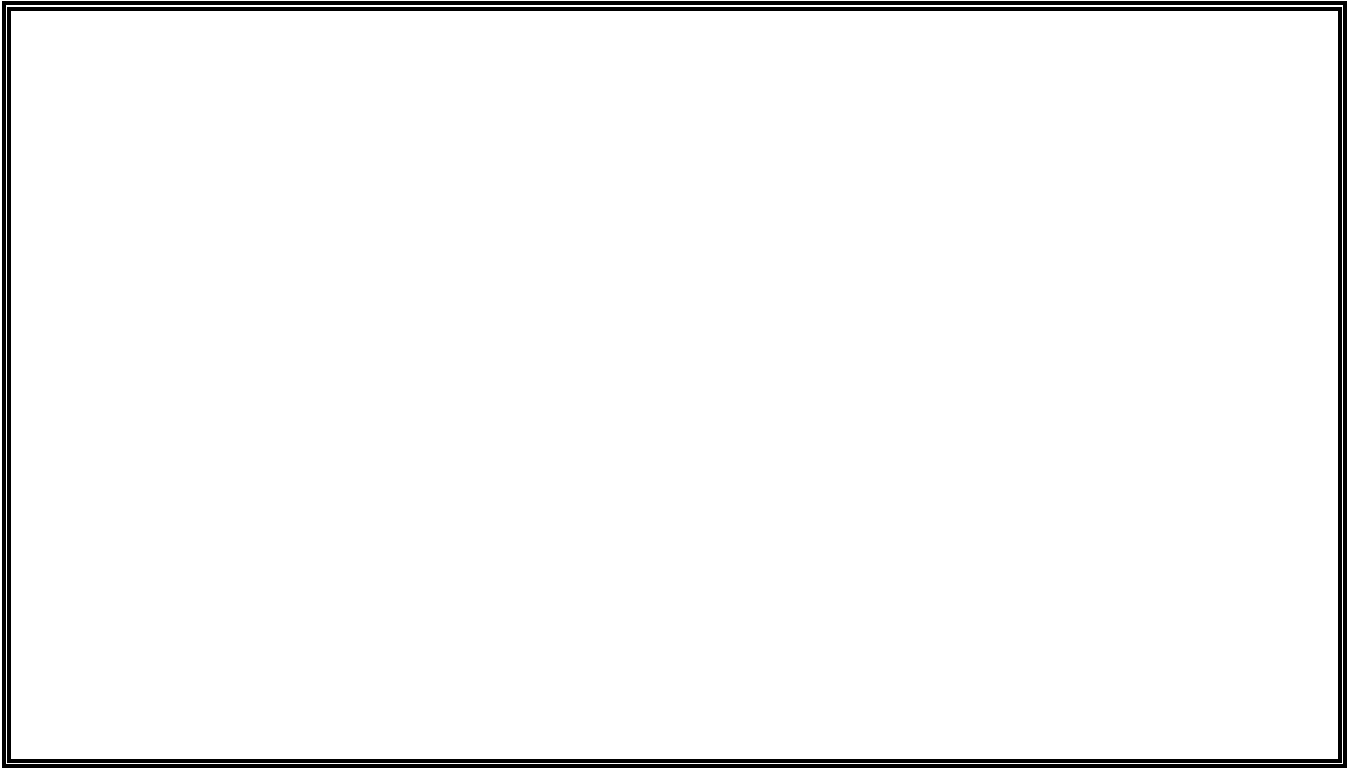
Accompanying Activities

The need for translations is often determined during the community assessment and **community interviews** . Translations are generally used for **fact sheets** , **public notices** , **presentations** , **public meetings** , **public hearings** , and **news conferences** .

Advantages and Limitations

Written translations and use of translators ensure that a greater number of community members can participate effectively in the process and, therefore, provide input to decisions concerning the RCRA-regulated process. This effort assures the community of your organization's sincerity in providing opportunity for public participation.

Translations are very costly, especially simultaneous translations of public meetings. Sentence-by-sentence oral translations frequently double the length of public meetings, and may make information more difficult to present effectively and smoothly. In addition, very few translators are familiar with the RCRA permitting and corrective action processes. For facilities having highly volatile or sensitive problems, it may be difficult to communicate your organization's position and involve community



Mailing Lists

Regulatory Requirements

The permitting agency must establish and maintain the facility mailing list in accordance with § 124.10(c)(1)(ix). The agency must develop the list by: (a) including people who request in writing to be on the list; (b) soliciting persons for “area lists” from participants in past permit proceedings in that area; and (c) notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional- and State-funded newsletters, environmental bulletins, or State law journals.

Description of Activity

Mailing lists are both important databases and essential communication tools. Mailing lists ensure that concerned community members receive relevant information. They allow messages to reach broad or targeted audiences. The better the mailing list, the better the public outreach and delivery of information. Mailing lists typically include concerned residents, elected officials, appropriate federal, state, and local government contacts, local media, organized environmental groups, civic, religious and community organizations, facility employees, and local businesses.

It is recommended that you develop an internal distribution list at the same time you prepare your external mailing list. The distribution list for permitting agencies should include all technical project staff, public involvement staff, legal staff, and staff from other affected programs (Air, Water, etc.), as appropriate. This list will help ensure that all relevant project staff receive the same information about all phases of the project. Facilities and community organizations should follow similar procedures to keep their staffs and members informed.

Level of Effort

- C The people interviewed during community interviews, as well as other names these people recommend;
 - C All nearby residents and owners of land adjacent to the facility;
 - C Representatives of organizations with a potential interest in an agency program or action (e.g., outdoor recreation organizations, commerce and business groups, professional/trade associations, environmental and community organizations, environmental justice networks, health organizations, religious groups, civic and educational organizations, state organizations, universities, local development and planning boards, emergency planning committees and response personnel, facility employees);
 - C Any individual who attends a public meeting, workshop, or informal meeting related to the facility, or who contacts the agency regarding the facility;
 - C Media representatives;
 - C City and county officials;
 - C State and Federal agencies with jurisdiction over wildlife resources;
 - C Key agency officials; and
 - C The facility owner/operator.
2. **Review background files** to ensure all interested individuals are included on the mailing list.
 3. **Input information into a computer system** so that it can be categorized and sorted and printed on mailing labels.
 4. **Send a letter or fact sheet to the preliminary mailing list developed using 1) and 2) above.** Inform key Federal, State, and local officials, citizens, and other potentially interested parties of your activities and the status of upcoming permit applications or corrective actions. Ask whether they wish to receive information about this facility. Ask them for accurate addresses and phone numbers of other people who might be interested in the project.
 5. **Update your mailing list** at least annually to ensure its correctness. Mailing lists can be updated by telephoning each individual on the list, and by using local telephone and city directories as references. The permitting agency can update the official mailing list from time to time by requesting written indication of continued interest from those listed. The agency can then delete any people who do not

Checklist for Mailing Lists

Checklist for Mailing Lists (continued)

- Have list typed
- Prepare mailing list
- Store on computer data base

Mailing List Updates:

- Verify names/addresses by searching telephone directory
- Verify names/addresses by searching city directory
- Verify names/addresses by calling each individual
- Consider issuing a notice asking for written indication of continued interest (§ 124.10(c)(1)(ix)(C))

Notices of Decision

Regulatory Requirements

RCRA requires the permitting agency to issue a notice of decision to accompany the final permit decision (under § 124.15 procedures). The agency must send the notice to the permit applicant and to any person who submitted written comments or requested notice of the final permit decision (§ 124.15). Note that Class 3 modifications and the corrective action final remedy selection also follow § 124.15 procedures and require a Notice of Decision.

Description of Activity

A notice of decision presents the agency's decision regarding permit issuance or denial or modification of the permit to incorporate changes such as the corrective action remedy.

Checklist for Notices of Decision

- Determine contents of the notice of decision
 - Decision made and basis for that decision
 - Information on appeal procedures
- Coordinate writing the notice with technical and legal staff
 - Technically accurate
 - Satisfies statutory requirements
 - Provides the public with all necessary information in a clear and concise manner
- Coordinate internal review of notice of decision
- Prepare final notice of decision based on internal review comments
- Notify the facility owner/operator and anyone who submitted written comments or requested notice of the final decision
- Notify other interested parties of the decision
- Place copy of the notice of decision in the administrative record and the information repository (if one exists)

Introductory Notices

Regulatory Requirements

While EPA regulations do not specifically require an introductory notice, § 124.32 provides for an agency notice at the time of application submittal. Permitting agencies may want to consider the guidance in this section (in addition to the § 124.32 requirements) when preparing the notice at application submittal. Chapter 3 provides guidance specifically for the notice at application submittal.

Description of Activity

An introductory notice explains the agency's permit application review process or the corrective action process and the opportunities for public participation in that process.

Level of Effort

The amount of time needed to prepare an introductory notice is based on whether the notice is prepared as a public notice or a fact sheet. If prepared as a public notice, allow a day or two for writing, review, and placement in newspapers and other media. If prepared as a fact sheet, allow several days to a week to write and review, depending on the layout and graphics used, and several days for printing.

How to Conduct the Activity

To prepare an introductory notice:

1. **Determine the best method to explain the permit application review or corrective action process.** An introductory notice can be presented as a public notice, a fact sheet, or a flier distributed to the facility mailing list.
2. **Prepare and distribute the notice.** Coordinate the writing and distribution of the notice with technical project staff. Take care to write the notice avoiding technical terms and jargon.
3. **Include an information contact.** Provide the name, address, and phone number of a contact person who the public can call if they have questions or need additional information about the facility. You might add a return slip to the notice for people to complete and return to your organization if they would like additional information or to be placed on a mailing list.

When to Use

An Introductory Notice can be used:

- C When you find the community knows little or nothing about the RCRA process; and
- C When you need to notify the public of how they can become involved in the RCRA process.

Accompanying Activities

Informal meetings , availability sessions/open houses , or workshops may be conducted following release of the notice.

Advantages and Disadvantages

An introductory notice informs the public about the agency's permit application review process and how they can be involved in the process. However, the notice is a one-way communication tool. A **contact person** should be identified in the notice so that interested members of the community can call this person if they have questions.

Checklist for Introductory Notices

- Determine how you will distribute the notice.
 - Public notice in newspaper
 - Fact sheet or flier sent to the mailing list
- Prepare draft introductory notice
- Include name and phone number of a contact person
- Coordinate internal review of introductory notice
- Write final introductory notice based on comments received during the internal review
- Verify facility mailing list is up-to-date
- Request mailing labels
- Distribute introductory notice

Fact Sheets/ Statements of Basis

Regulatory Requirements

EPA's regulations require the agency to develop a fact sheet or a statement of basis to accompany the draft permit. The agency will develop a fact sheet for any major hazardous waste management facility or facility that raises significant public interest (§ 124.8). The agency must prepare a statement of basis for every draft permit for which a fact sheet is not prepared (§ 124.7). Note that these requirements also apply to Class 3 modifications and agency-initiated modifications (such as the agency may use at remedy selection), which must follow the part 124 procedures. Specific requirements for these activities are described below under "How to Conduct the Activity."

Description of Activity

RCRA-required fact sheets and statements of basis summarize the current status of a permit application or corrective action. This required fact sheet (or statement of basis) is probably different than the commonly-used informational fact sheets that most people recognize. The required fact sheet must explain the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. They can vary in length and complexity from simple two-page documents to 12-page documents complete with graphic illustrations and glossaries.

The agency and other stakeholder groups may find it useful to develop other fact sheets to be used in public participation activities. These informal/informational fact sheets can explain difficult aspects of the permitting process or provide technical information in language that an

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C Describing other remedies that were considered in detail in the RFI

emergency action, a new technology, or a community-based activity.

Fact sheets and statements of basis can be particularly useful in providing background information prior to a public meeting or public hearing.

Accompanying Activities

Fact sheets and statements of basis are generally used in conjunction with the **mailing list**, **public notices**, **public comment periods**, and **public meetings** and **hearings**. However, as stated above, they can be helpful at almost any stage in the permitting or corrective action processes.

Advantages and Limitations

Fact sheets and statements of basis are effective in summarizing facts and issues involved in permitting and corrective action processes. They communicate a consistent message to the public and the media. Produced throughout the permitting or corrective actions processes, they serve to inform the public about the regulatory process as well as the technical RCRA issues and can aid in creating a general community understanding of the project. They are relatively inexpensive and can be distributed easily and directly to the mailing list. In addition, fact sheets and statements of basis can be tailored to meet specific information needs identified during community assessments.

However, a poorly written fact sheet or statement of basis can be misleading or confusing. Documents of this type that are not written in an objective style can be perceived as being too "persuasive" and considered "propaganda" by mistrusting communities. Remember that fact sheets and statements of basis are a one-way communication tool, and therefore should always provide the name and telephone number of a contact person to encourage comments and questions.

Checklist for Fact Sheets/Statements of Basis

- Determine purpose and focus of fact sheet or statement of basis
- Develop outline
 - Organize contents in a logical manner
 - Determine appropriate graphics
-

Checklist for Project Newsletters and Reports

- Assign a staff person to be in charge of producing the newsletter or reports
- Direct the project staff (e.g., through a memo) to forward all relevant project information to the newsletter director
- Decide on format, style, and frequency of distribution
- Draft the newsletter
- Review the newsletter for content, style, simple language, and visual appeal
- (If applicable) Send the newsletter to an assigned neutral party for review
- If you produce detailed project studies or reports, write a summary in simple language and attach to the report or include the summary in the newsletter
- Distribute the newsletter to the mailing list
- Update the mailing list on a regular basis

Response to Comments

Regulatory Requirements

According to § 124.17, the permitting agency must prepare a response to comments at the time that it issues a final permit decision. The agency will also issue a response to comments when making final decisions on requested Class 2 and 3 permit modifications under § 270.42 and agency-initiated modifications under § 270.41.

Description of Activity

A response to comments identifies all provisions of the draft permit or modification that were changed and the reasons for those changes. It also briefly describes and responds to all significant comments on the draft permit that were received during the public comment period.

The response to comments should be written in a clear and understandable style so that it is easy for the community to understand the reasons for the final decision and how public comments were considered.

Level of Effort

A response to comments can be a time-intensive activity because of the large amount of organization, coordination, and review needed. On average, allow several hours per comment for completion, as some questions may take only a few minutes to answer while others may involve in-depth technical and legal responses. In general, preparing response to comments documents can take from several days for low-interest facilities to several weeks for high-interest facilities.

How to Conduct the Activity

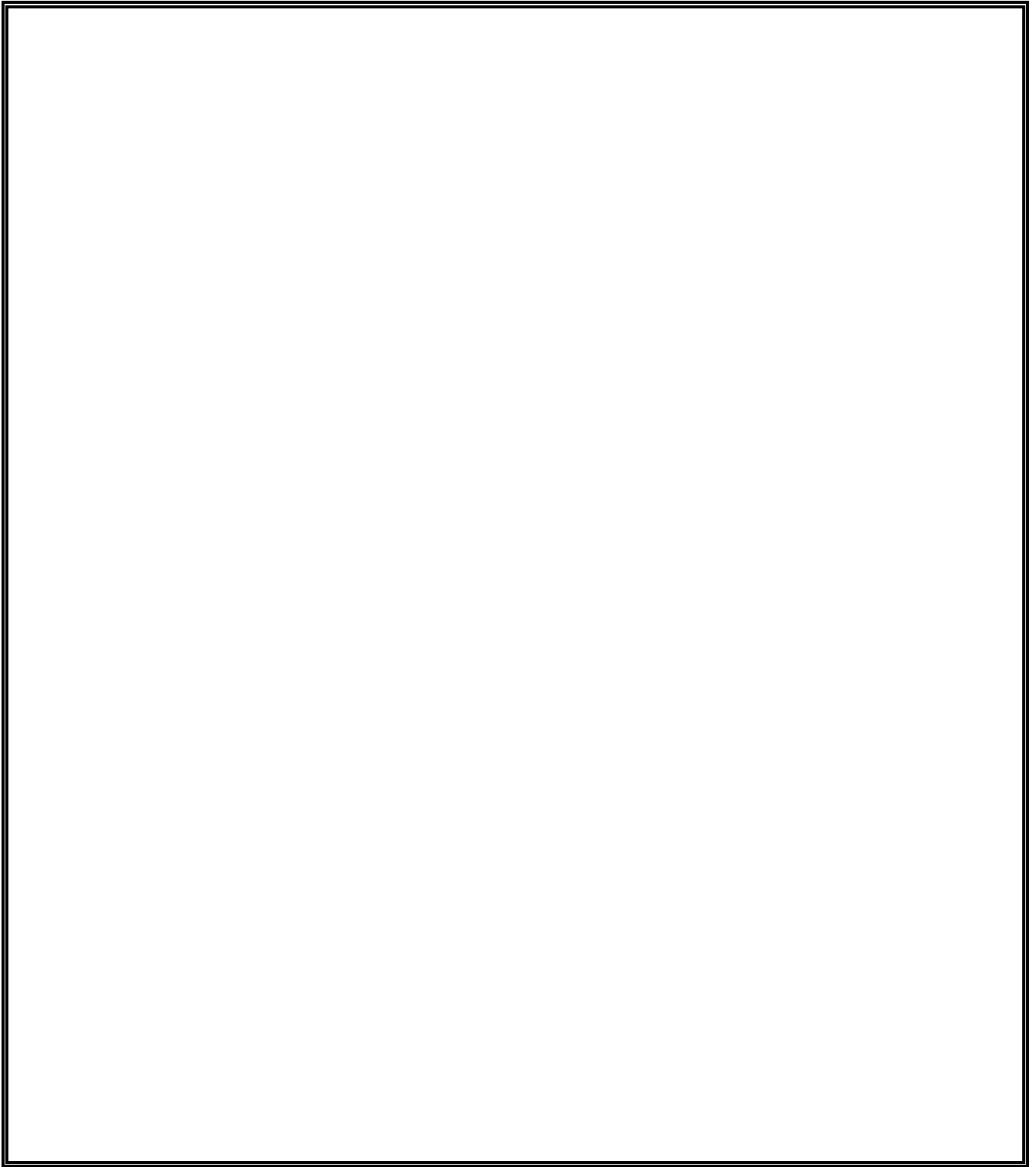
There is no required format for preparing response to comments documents. However, several EPA Regions have adopted a two part approach:

- C Part I is a summary of commenters' major issues and concerns and expressly acknowledges and responds to those issues raised by the local community. "Local community" means those individuals who have identified themselves as living in the immediate vicinity of a facility. These may include local homeowners, businesses, the municipality, and facility employees. Part I should be presented by subject and should be written in a clear, concise, easy to understand manner suitable for the public.

C

Part II. Because both parts deal with similar or overlapping issues, the response to comments should state clearly that any points of conflict or ambiguity between the two parts shall be resolved in favor of the detailed technical and legal presentation in the second part.

In order to effectively address all public comments, closely coordinate the preparation of responses with appropriate legal and technical staff. Also, it is important to be certain that all comments are addressed. A system of numbering all comments as they are received and referring to these numbers in all internal drafts of the response document may help keep track of them. Computer databases are a good way to keep track of and arrange the comments.



Information Repositories

Regulatory Requirements

EPA regulations authorize the permitting agency to require a facility to establish an information repository during the permitting process (§ 124.33) or during the active life of a facility (§ 270.30).

Description of Activity

An information repository is a collection of documents related to a permitting activity or corrective action. A repository can make information readily available to people who are interested in learning about, or keeping abreast of, RCRA activities in or near their community.

Information repositories are not mandatory activities in every situation. As mentioned above, RCRA regulations give the permitting agency the authority to require a facility to set up and maintain an information repository. The agency does not have to require a repository in every case; it should use its discretion. Additionally, a facility or an environmental group may voluntarily set up a repository to make it easier for people in the community to access information.

The size and location of the repository will depend on the type of permitting activity. The regulations allow the permit applicant or permittee to select the location for the repository, as long as it is in a location that is convenient and accessible to the public. If the place chosen by the facility does not have suitable access, then the permitting agency can choose a more suitable location. EPA encourages the facility and the agency to *involve the public when suggesting a location for the repository -- the potential users of the facility are best qualified to tell you if it's suitable.* See #1 under “How to Conduct the Activity” below.

The information that actually goes in the repository can differ from case to case, depending on why the repository was established. If the agency requires a facility to establish the repository, then the agency will set out the documents and other information that the facility must include in the repository. The agency will decide what information will be most useful according to the specifics of the case at hand. For instance, multi-lingual fact sheets and other documents will be most appropriate in situations where there are many non-English-speakers in an affected community. Similarly, if the community needs assistance in understanding a very technical permitting situation, then the agency and the facility should provide fact sheets and other forms of information that are more accessible. The agency and the facility should

suggested by community residents. Typical locations include local public libraries, town halls, or public health offices.

A facility may choose to set up the repository at its own offices. Before doing so, the facility owner or operator should discuss his or her intent with community representatives and/or the agency. It is important to confirm that people are comfortable about coming onto facility property and trust that you will properly maintain the information in the repository.

Facility owners and operators should be sensitive to the concern that some citizens have about repositories that are on facility property. Some people do not feel comfortable when they need to attend a meeting or a function on the facility grounds. If the members of your community may feel uncomfortable at the facility, then you should make all efforts to establish the repository at a suitable off-site location. All repositories should be in a location where its users will feel comfortable when accessing information.

In evaluating potential sites for the repository, there are several factors to consider. The location should have adequate access for disabled users, should be accessible to users of public transportation (where applicable), and should be open after normal working hours at least one night a week or on one weekend day. Repositories should be well lit and secure.

A facility should also ensure that someone in its company and someone at the repository location are identified as the information repository contacts -- to make sure that the information is kept up-to-date, orderly and accessible.

Depending on the level of community concern, or the location of the facility relative to the surrounding communities, more than one repository may be desirable. For example, if a county seat is several miles from the RCRA-regulated facility, and county officials have expressed a strong interest in the facility, two repositories may be advisable: one in the community closest to the facility, and the other in the county seat.

2. **Select and deposit the materials to be included in the repository.** For repositories established under EPA's regulations, the permitting agency will decide, on a case-by-case basis, what documents, reports, data, and information are necessary to help the repository fulfill its intended purposes, and to ensure that people in the community are provided with adequate information. The agency will provide a list of the materials to the facility. The agency has the discretion to limit the contents of repositories established under §§ 124.33 and 270.30. While there is no outright ban on materials, EPA encourages regulators to ensure that repository materials are relevant and

appropriate.

Facilities, permitting agencies, and public interest groups may decide to establish repositories aside from those required by regulation. Whoever establishes a repository should consult the public regarding what materials would be most useful to members of the surrounding community. EPA encourages parties to place substantive and appropriate materials in the repository.

If you are establishing an information repository, you should consider including the following documents:

- C Background information on the company or facility;
- C Fact sheets on the permitting or corrective action process;
- C Meeting summary from the pre-application meeting (if one was conducted);
- C Public involvement plan (if developed);
- C The draft permit;
- C Reports prepared as part of the corrective action investigations, including the RCRA Facility Assessment (RFA), the RCRA Facility Investigation (RFI), and the Corrective Measures Study (CMS);
- C Fact sheets prepared on the draft permit or corrective action plan;
- C Notice of decision;
- C Response to comments;
- C Copies of relevant RCRA guidance and regulations;
- C A copy of the Cooperative Agreement, if the state is the lead agency for the project;
- C Documentation of site sampling results;
- C

facility mailing list. If you establish a repository aside from EPA's regulations, you should be sure to notify local government officials, citizen groups, and the local media of the location of the project file and hours of availability. Newsletters of local community organizations and church groups are another means of notifying the public.

4. **Keep the repository up-to-date by sending new documents to it as they are generated.** If the permitting activity is controversial or raises a lot of community interest, you should consider providing several copies of key documents so that community members can check them out for circulation. For repositories required under RCRA regulations, the facility is responsible for updating the repository with new documents and maintaining the documents in the repository.

When to Use

An information repository is recommended:

- C When the agency requires the facility to establish an information repository. In making its determination, the agency will consider relevant factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record; and
- C When interest in the facility is high and the public needs convenient access to relevant facility documents.

Accompanying Activities

The contact person(s) should be responsible for making sure that all relevant materials have been filed in the repository.

If you establish a repository, you may want to consider setting aside time at the repository to periodically staff a "walk-up" **information table**. An information table would entail having a representative from your organization, the permitting agency, or both, available to answer questions that repository visitors may have. You may decide to establish the information table on a routine basis (for example, once a month) or at key milestones in the permitting or corrective action process (for example, after a draft permit decision or completion of the RFI).

Advantages and Limitations

An information repository provides local officials, citizens, and the media with easy access to accurate, detailed, and current data about the facility. It demonstrates that your organization is responsive to citizens' needs for comprehensive information on the facility.

An information repository is a one-way communication tool and does not allow for interaction between citizens and your organization (unless used in

conjunction with a “walk-up” information table). The information repository may also include technical documents, which may be difficult for citizens to understand.

Checklist for Information Repositories

[Note: this checklist contains all the steps for information repositories required under §§ 124.33 and 270.30. Anyone who is establishing a repository apart from these requirements should check above in this section to find out which steps apply].

- Determine location of Information Repository; check with agency
- Establish contact with the director of the location determined above
- Mail a letter to the permitting agency confirming the location of the Information Repository
- Agency will mail a list of required documents to the facility
- Collect and compile the documents to include in the Information Repository
 - Documents sequentially numbered
 - Index prepared
 - Documents placed in notebooks
- Deliver documents to location determined above
-

When to Use

Exhibits can be used:

- C When level of interest in the facility is moderate to high;
- C When information to be conveyed can be explained graphically;
- C When staff time is limited and the audience is large;
- C When a display can enhance other information being distributed; and
- C When displays will be useful over long periods of time and at different facilities (e.g., generic posterboards on RCRA process).

Accompanying Activities

Exhibits are useful at **public meetings**, **public hearings**, and **availability sessions/open houses**. If an **observation deck** is installed at a site, a nearby exhibit could explain corrective action or compliance activities under way.

Advantages and Limitations

Exhibits tend to stimulate public interest and understanding. While a news clipping may be glanced at and easily forgotten, exhibits have a visual impact and leave a lasting impression. Exhibits also can convey information to a lot of people with a low level of effort.

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Checklist for Exhibits

- Determine purpose, use of exhibit
 - Identify the audience
 - Clarify the message
 - Determine where and how the exhibit will be displayed
 - Free-standing
 - Table-top display
 - Will the exhibit need to be easily transported?
- Coordinate design and construction with public involvement coordinator (and contractors, if available)
 - Write copy
 - Determine graphics
 - Design the exhibit
 - Coordinate review of the design, text, and graphics
 - Complete the exhibit based on review comments

- C When unexpected events or delays occur; and
- C At any point during the permit or corrective action processes. If local officials have expressed concern during the preliminary assessment of the facility, a briefing may be appropriate to explain the RCRA permitting or corrective action program and the technical actions that are scheduled for the facility.

Accompanying Activities

Briefings usually precede **news conferences** , **news releases** , **informal meetings** , or **public meetings** .

Advantages and Limitations

Briefings allow key stakeholders to question you directly about any action prior to public release of information regarding that action. By providing a “heads up,” you can prepare other key stakeholders to answer questions from their constituents when the information becomes public. Briefings also allow for the exchange of information and concerns.

Because briefings are normally offered to a small select group, they are not considered to be general information dissemination to the public. Care must be taken to provide the public with ample opportunity to receive information. At briefing sessions, include the appropriate officials, taking care not to exclude people key to the public participation process. Avoid the perception that you are trying to bury facts or favor special interest groups.

Although briefings can be an effective tool for updating key stakeholders (e.g., state and local officials, community leaders, involved regulators) they always should be complemented by activities to inform the general public, such as **informal meetings** with small groups, **public meetings** , or **news conferences** .

Checklist for Briefings

— Determine date, time, and location of briefing.

Date: _____

Time: _____

Presentations

Regulatory Requirements

None.

Description of Activity

Presentations are speeches, panel discussions, video tapes or slide shows held for local clubs, civic or church organizations, school classes, or concerned groups of citizens to provide a description of current RCRA activities. They help improve public understanding of the issues associated with a permitting or corrective action.

Level of Effort

One to two days may be needed to set up and schedule the presentation, prepare for it, give the presentation, and follow up on any issues raised. Add more time if you need to prepare visual equipment.

How to Conduct the Activity

Develop procedures that can be changed easily to suit different audiences. To conduct presentations:

1. **Contact groups that may be interested in learning about your work.** Announce the program through the media and in your publications. Adjust the tone and technical complexity of any presentation to suit the audience's needs.
2. **Select a standard format** such as the following:
 - C Introduce yourself, your organization, the RCRA permitting or corrective action process, and the facility;
 - C Describe the issues that affect your audience;
 - C Discuss what is being currently done; and
 - C Discuss how citizens can play a part in making decisions about the facility.
3. **Set a time limit of 20 minutes.** Consider having several staff members deliver short segments of the presentation. Allow time for a question-and-answer session.
- 2.

hold the audience's attention but not distract from the speaker's message. Conduct a trial run in front of colleagues and rehearse the presentation as much as possible.

6. **If substantive issues or technical details cannot be handled in the time allowed for the presentation, name a contact for further information.**

When to Use

Presentations may be held:

- C When there is moderate to high interest in a facility;
- C When it is practical to integrate short RCRA presentations into meetings on other subjects; and
- C When a major milestone in the RCRA process is reached.

Accompanying Activities

Fact sheets or handouts should be distributed so that participants have something to refer to after the presentation. Incorporating **exhibits** into your presentation will hold the audience's attention and aid in their understanding of the material. **Question and answer sessions** will help clear up any misunderstanding about the presentation and allow you to address complex issues in more detail

Advantages and Limitations

Because the presentation is delivered in person, the audience has a chance to ask questions, and the presenter can gauge citizens' concerns. Also, many people can be reached at one time, reducing individual inquiries. Making project staff available for community speeches and presentations will signal your organization's interest in the community.

Presentations require substantial effort to be effective. A poorly planned presentation can distort residents' views of the situation.

Because the presentation is rehearsed, accommodating different or unanticipated concerns of the audience can be difficult. Handle these concerns during a **question-and-answer session** after the presentation.

Checklist for Presentations

people. Insurance regulations for the facility and liability, safety and injury considerations may make tours impossible.

Checklist for Facility Tours

- Determine need for facility tours
- Coordinate tours with the facility
 - Tour routes
 - Facility personnel
 - Tour dates
 - Compliance with health and safety
- Determine maximum number of people that can be taken on the tour
- Notify interested citizens on availability of facility tours
 - Call interested citizens
 - Distribute mailing to facility mailing list
 - Have citizens respond and reserve space on the tour
- Determine plant staff or agency staff to conduct tour
- Prepare responses to anticipated questions
- Conduct tours
- Follow-up on any requested information from interested citizens

Observation Decks

Regulatory Requirements

None.

Description of Activity

An observation deck is an elevated deck on the facility property, near the area where corrective or RCRA-regulated activities are in progress. The deck allows interested citizens to observe facility activities or corrective actions directly in order to remove some of the unfamiliarity, and hence fear, that may encompass RCRA-regulated activities.

Level of Effort

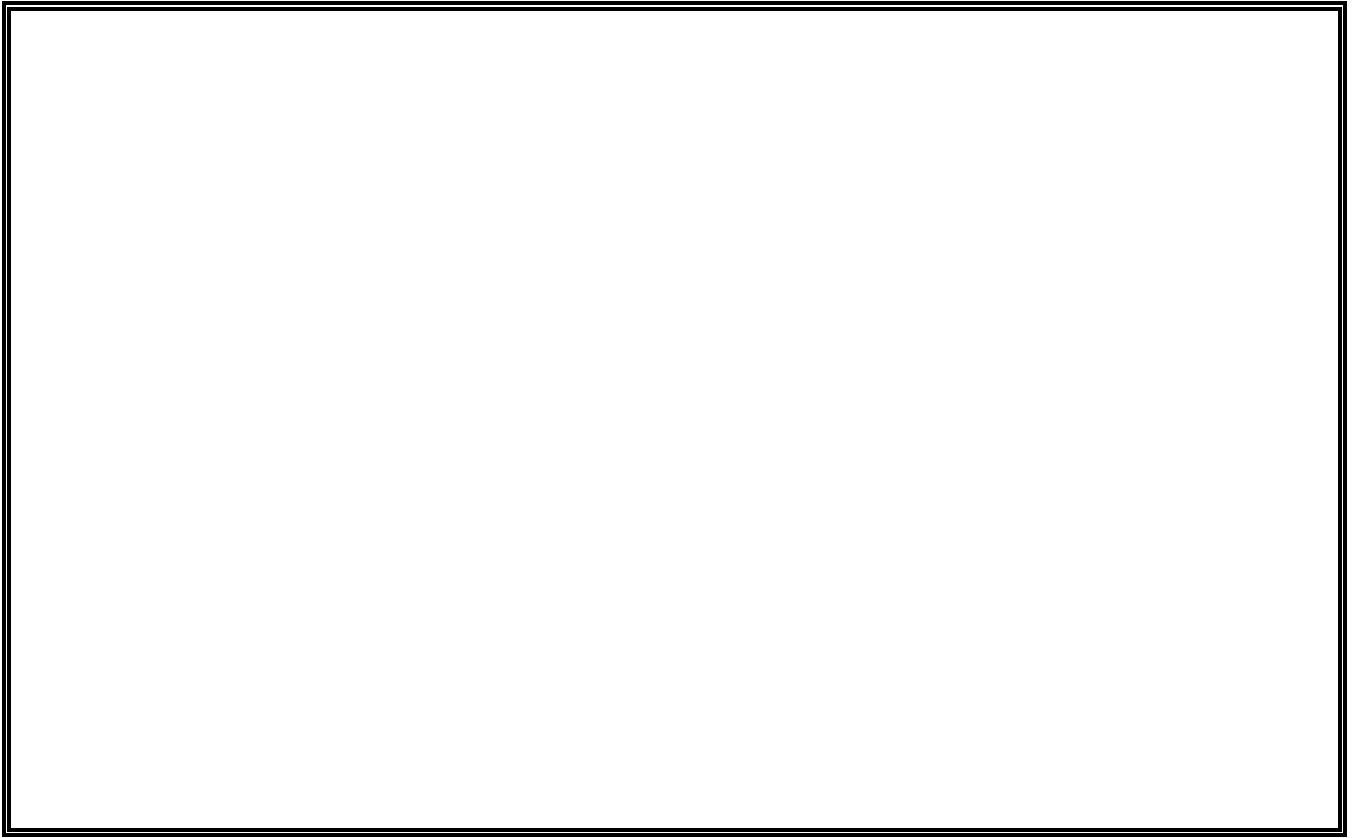
Maintaining an observation deck may be a time-intensive activity depending on the deck's hours of operation. Up to 40 hours a week may be necessary to staff the deck. Short Cut: Consider hiring a contractor to staff the deck, or limit the hours when it is open to the public.

How to Conduct the Activity

To use an observation deck, the agency and the facility should work together to:

1. **Decide whether or not an observation deck is needed or desirable.** Gauge community interest in the facility and whether or not there is a location for a deck that would facilitate observation.

2. **Coordinate deck construction.** Determine the best way to construct the deck. Consider hiring a contractor to construct the deck, or limit the hours when it is open to the public.



News Releases and Press Kits

Regulatory Requirements

None.

Description of Activity

News releases are statements that you or your organization send to the news media. You can use them to publicize progress or key milestones in the RCRA process. News releases can effectively and quickly disseminate information to large numbers of people. They also may be used to announce public meetings, report the results of public meetings or studies, and describe how citizen concerns were considered in the permit decision

or other materials. If your organization is local, you should coordinate with national or state-wide chapters. You may want to consider discussing the news release with other interested stakeholders (e.g., through a **briefing**). However, draft news releases should not be shared -- they are internal documents.

4. **Select the information to be communicated.** For the press release, place the most important and newsworthy elements up front and present additional information in descending order of importance. Use supporting paragraphs to elaborate on other pertinent information. Mention opportunities for public participation (i.e., public meetings, etc.) and contact persons and cite factors that might contribute to earlier implementation or delays in the corrective action or permit processing. Note the location of the information repository (if applicable) or other sources for relevant documents. If you are presenting study findings or other technical information, present it in layman's terms along with any important qualifying information (e.g., reliability of numbers or risk factors).

The press kit should contain materials that elaborate on the information in the press release. Basic summaries of the RCRA program, the permitting process, and public participation activities are helpful materials. Background reports or studies may also be useful. Enclose the name and phone number of a contact person and invite the reporter to call him or her with any questions.

5. **The news release should be brief.** Limit it to essential facts and issues.
6. **Use simple language.** Avoid the use of professional jargon, overly technical words, and acronyms.
7. **Identify who is issuing the news release.** The top of the sheet should include:
 - C Name and address of your organization;
 - C Release time ("For Immediate Release" or "Please Observe Embargo Until") and date;
 - C Name and phone number of the contact person for further information; and
 - C Headline summarizing the activity of interest.
8. **In some cases, send copies of the release and the press kit to other stakeholders** at the same time you give them to the news media. Coordinate with the public affairs office to determine appropriateness.

When to Use

The press kit and the news release can be complementary activities, though you may choose to use either one separately. Some of the occasions when you may want to issue a news release or a press kit include:

- C When significant findings are made at the site, during the process, or after a study;
- C When program milestones are reached or when schedules are delayed;
- C In response to growing public or media interest or after your organization takes a new policy stance;
- C When you are trying to increase public interest in a facility;
- C Before a public meeting to announce subject, time, place; and
- C A news release should not be issued at times when it may be difficult to get in touch with responsible officials (e.g., Friday afternoons, or the day before a holiday).

Accompanying Activities

The press kit is useful as a complement to a news release. News releases and press kits can accompany any formal **public hearings** or **public meetings**. They commonly accompany **news conferences**. They should provide the name of the **contact person** whom interested reporters can contact if they want more information.

Advantages and Limitations

A news release to the local media can reach a large audience quickly and inexpensively. Press kits allow reporters to put the issue in context. If a reporter is trying to meet a deadline and cannot contact you, he or she can turn to the press kit as an authoritative source of information. If the name, address, and phone number of a contact person are included, reporters and possibly interested community members can raise questions about the information in the release.

Because news releases must be brief, they often exclude details in which the public may be interested. A news release should therefore be used in conjunction with other methods of communication that permit more attention to detail. A news release is not an appropriate vi4 Ouded, rand

News releases and press kits cannot be used in lieu of a public notice. Certain activities, such as the preparation of a draft permit, are subject to public notice requirements. See the section on “Public Notices” earlier in this Chapter for more details.

Checklist for News Releases and Press Kits

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News Conferences

Regulatory Requirements

None.

Description of Activity

News conferences are information sessions or briefings held for representatives of the news media and may be open to the general public. News conferences provide all interested local media and members of the public with accurate information concerning important developments during a RCRA-regulated process. If your organization has public outreach personnel, you will probably want to coordinate news conferences with them.

Level of Effort

Allow one to two days to prepare for, rehearse, and conduct a news conference.

How to Conduct the Activity

To conduct news conferences:

1. **Coordinate all media activity through your outreach staff.** Public outreach personnel will assure that you adhere to organization policy

mistakes, so preparation and rehearsal is very important.

Open the conference to questions, to be answered by your staff, local officials, and any other experts present. Have technical staff on hand to answer any technical questions. Decide ahead of time who will answer certain types of questions.

When to Use

News conferences can be used:

- C When time-sensitive information needs to reach the public, and a news release may not be able to address key issues for the community;
- C When staff are well-prepared to answer questions; and
- C During any phase of the permit application or corrective action.

Accompanying Activities

News conferences can be held before or after formal **public hearings** or **public meetings**. They are usually accompanied by **news releases**. **Exhibits, telephone contacts, briefings, and mailing lists** would contribute to the planning and effectiveness of a news conference.

Advantages and Limitations

News conferences provide a large public forum for announcing plans, findings, policies, and other developments. They also are an efficient way to reach a large audience. A written news release can help ensure that the facts are presented accurately to the media. During the question and answer period, your spokesperson(s) can demonstrate knowledge of the facility and may be able to improve media relations by providing thorough, informative answers to all questions.

A news conference can focus considerable attention on the situation, potentially causing unnecessary local concern. Residents may not welcome the increased attention that such media coverage is apt to bring. News releases or lower-profile means of disseminating information should be considered as alternatives.

A risk inherent in news conferences is that the media can take comments out of context and create false impressions. This risk is heightened when staff are unprepared or when the conference is not properly structured or unanticipated questions are asked.

Checklist for News Conferences

- Coordinate news conference with public affairs staff

Community Interviews

Regulatory Requirements

None.

Description of Activity

Community interviews are informal, face-to-face or telephone interviews held with local residents, elected officials, community groups, and other individuals to acquire information on citizen concerns and attitudes about a facility. The interviews may be conducted by facility staff, the permitting agency, or public interest groups as part of the community assessment. Chapter 2 provides more information on community assessments in the section titled “Assessing the Situation.”

Community interviews can play an important role in the community assessment, which usually takes place at the beginning of the permitting process, or before major modifications and significant corrective actions. Community interviews will not be necessary in every community. For instance, in routine or non-controversial situations, there may be no need for community interviews. However, if a facility is controversial or has the potential to receive high levels of public interest, then EPA recommends a broad range of community interviews. Permitting situations that fall between the preceding cases may require some interviews, beginning with a survey of community representatives and group leaders (see “Assessing the Situation” in Chapter 2).

Community interviews allow agencies, facility owners, and public interest groups to tailor regulatory requirements and additional activities to fit the needs of particular communities. Information obtained through these interviews is typically used to assess the community's concerns and information needs and to prepare a **public participation plan**, which outlines a community-specific strategy for responding to the concerns identified in the interview process.

Level of Effort

Community interviews are a time-intensive activity because of the large amount of organization required and time needed for interviews. While level of effort will vary, interviewers should schedule at least one hour per interview for research and preparation, the interview itself, and follow-up activities. If time and/or resources are limited, interviewers may want to conduct interviews by phone and focus on community leaders.

How to Conduct the Activity

Permitting agencies, facility owners, and public interest groups who plan to conduct community interviews should follow the steps below, adjusting them as necessary to suit the situation at hand:

1. **Identify potential people to interview.** If a mailing list is not

regarding the facility. Review any available news clippings, documents, letters, and other sources of information relevant to the facility. Determine whether the community has any particular language, geographic, or economic characteristics that should be addressed. Prepare a list of questions that can serve as a general guide when speaking with residents and local officials. Questions should be asked in a way that stimulates discussion on a variety of topics, including:

- C General knowledge of the facility. Find out what sort of information the community has received about the facility and if what level of involvement the community has had with the facility.
 - C Specific concerns about the technical and regulatory aspects of activities at the facility. Determine what the community's concerns are and what types of information would be most appropriate to address these concerns.
 - C Recommended methods of communicating with the community and receiving community input. Determine which communications tools are likely to be most effective -- e.g., mailings, meetings, broadcast media -- and what public participation events could best serve the community. Learn about special information needs that the community may have (e.g., the level of literacy, the percentage of non-English speakers).
 - C The best public meeting facilities, most relied-upon media outlets, and the best times to schedule activities.
 - C Other groups or individuals to contact for more information.
4. **Arrange the interviews.** Telephone prospective interviewees and arrange a convenient time and place to meet. Ideally, the meeting place should promote candid discussions. While government and media representatives are likely to prefer meeting in their offices during business hours, local residents and community groups may be available only in non-business hours. Meetings at their homes may be most convenient.

During the interviews:

1. **Provide background information.** Briefly describe the permitting activity or corrective action at hand.
2. **Assure interviewees that their specific comments will remain confidential.** At the beginning of each interview, explain the purpose of the interviews -- to gather information to assess community concerns and develop an appropriate public participation strategy.

Explain that while the public participation plan will be part of the administrative record, the plan will not attribute specific statements or information to any individual. Ask interviewees if they would like their names, addresses, and phone numbers on the mailing list.

3. **If community members do not feel comfortable with interviewers from your organization, consider using a third-party.** Some citizens may not be entirely forthcoming with their concerns or issues if they are uncomfortable with the interview. If sufficient resources are available, consider hiring a contractor to perform interviews. Some civic or community organizations may be willing to help in the interview process. If these options are not available, then consider distributing anonymous **surveys** or convening **focus groups**, where a number of citizens can give their input together.
4. **Identify other potential contacts** . During the discussions, ask for names and telephone numbers of other persons who are interested in activities at the facility.
5. **Gather information on past citizen participation activities** . Determine the interviewee's perceptions of past outreach activities by your organization.
6. **Identify citizens' concerns about the facility** . When identifying concerns, consider the following factors:

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information, the community interview also serves as an important public outreach technique.

The major disadvantages of community interviews are that they may be time-consuming and resource-intensive for your staff; they could cause unnecessary fear of the situation among the public; and, they are not very useful if you do not talk with the right people -- the people who have not identified themselves as well as the more vocal ones who have.

Checklist for Community Interviews

- Determine number of interviews to be conducted: _____
- Determine dates for interviews: _____
- _____
- _____

Focus Groups

Regulatory Requirements

None.

Description of Activity

Some organizations use focus groups as a way of gathering information on community opinion. The advertising industry developed focus groups as an alternative to expensive market research (which relies heavily on polling). Focus groups are small discussion groups selected either to be random or to approximate the demographics of the community. The group is usually led by a trained moderator who draws out people's reactions to an issue.

Facility owners may want to consider focus groups as a complement to interviews during the community assessment or at important activities during the life of a facility. The permitting agency may want to consider focus groups to gauge public opinion before controversial permitting activities or corrective actions.

Level of Effort

Focus groups can be resource-intensive, depending on the number of groups you convene. This method will be more expensive if you need to provide for a moderator, meeting space, or transportation.

How to Conduct the Activity

To prepare for focus groups:

1. **Determine whether or not a focus group can help the process.** Community interviews serve much the same purpose as focus groups. Will gathering members of the community together provide more comfort? Will it be a more effective means of gauging public opinion?
2. **Select your focus groups.** Contact other stakeholders and community leaders to get input on who to include in your focus groups.
3. **Use community interview techniques to get input from the focus group.** You can follow the guidance in "Community Interviews" above in this Chapter to learn about the types of questions to ask your focus groups.
4. **Use the information in forming a public participation plan.**

When to Use

Facility owners may want to use focus groups as a complement to community interviews; permitting agencies may want to consider focus groups in situations where there is a high degree of public interest in a

Checklist for Focus Groups

- Determine number of focus groups to be conducted: _____
- Determine dates for focus groups: _____
- Identify moderator to conduct focus groups:

- Identify individuals for focus groups
 - Review facility background files for names of people who have expressed interest
 - Identify community leaders to contact
 - Identify city/state/county officials to contact
- Prepare discussion questions
- Review background information available about the facility and community
- Set up focus groups
 - Confirm participation by mail or phone
- Conduct focus groups
 - Ask for additional people to contact
 - Gather information using prepared interview questions
- Follow-Up
 - Follow-up interview with a thank you letter
 - Notify the interviewee when the public participation plan is available

- C When the area consists of a population whose primary language is not English, but it is important to pass information to the area; and
- C When there is an emergency situation that the community needs to know about.

Accompanying Activities

Telephone contacts and **community interviews** may help to identify appropriate areas for canvassing efforts. Canvassers should add to the **mailing list** names of individuals who either requested additional information or provided particularly useful information.

Advantages and Limitations

This activity involves face-to-face contact, thereby ensuring that citizens'

Checklist for Door-to-Door Canvassing

- Identify area where canvassing will be conducted
 - Prepare maps for each team of canvassers
 - Send a letter to residents announcing canvassing

Public Comment Periods

Regulatory Requirements

Public comment periods are required whenever the permitting agency issues a draft permit or an intent to deny a permit (§ 124.10). Comment periods are also mandatory on requests for Class 2 and 3 permit modifications under § 270.42, for agency-initiated modifications under § 270.41, and during closure and post-closure for interim status facilities under §§ 265.112(d)(4) and 265.118(f).

Description of Activity

A public comment period is a designated time period in which citizens can formally review and comment on the agency's or facility's proposed course of action or decision. Comment periods for RCRA permits must be at least 45 days.

Level of Effort

There is no specific level of effort for a public comment period. Estimates of the time required to conduct activities associated with the public comment period (public notice, public hearing, etc.) are found elsewhere in this chapter. The time required to receive, organize, and determine how to respond to comments will vary depending on the number of comments received and the complexity of the proposed action (see the section on "Response to Comments" earlier in this chapter).

How to Conduct the Activity

Announce the public comment period in a local newspaper of general circulation and on local radio stations. Public notices must provide the beginning and ending dates of the public comment period and specify where interested parties should send their comments and/or requests for a public hearing. Refer to the section about "Public Notices" earlier in this chapter for further information.

When to Use

A minimum 45-day public comment period is required for RCRA permits, including modifications to permits initiated by the agency as well as Class 2 and 3 modifications requested by the facility.

Accompanying Activities

Public comment periods cannot begin until notice of the permitting activity is given. RCRA requires that the agency conduct a **public hearing** if requested by a member of the public during the public comment period. Announce the hearing through a public notice and through a fact sheet, if one is prepared in advance. Public comment periods cannot begin until notice is given.

Comments received during the public comment period must be discussed in a written **response to comments** .

Advantages and Limitations

Public comment periods allow citizens to comment on agency and facility proposals and to have their comments incorporated into the formal public record.

However, public comment periods provide only indirect communication between citizens and agency officials because, in some cases, the formal responses to the comments may not be prepared for some time. Also, in some cases, the agency may not individually respond to every comment. A public participation program should provide other activities that allow dialogue between agency officials and the community.

Checklist for Public Comment Periods

- Determine dates of public comment period (minimum of 45 days)

Dates: _____

- Determine contact person within the agency who will answer citizens' questions regarding the public comment period
- Announce public comment period through a public notice
- If requested by a member of the public during the comment period, schedule a public hearing
- Document with a memo to the file any comments that were not received in written form

Unsolicited Information and Office Visits

Regulatory Requirements

None.

Description of Activity

EPA encourages permitting agencies, public interest groups, and facility owners/operators to seek input from interested citizens and other stakeholders. At times, this information may arrive in the form of phone calls, letters, and meetings. While this type of information is not always asked for, it can be helpful.

Citizens or stakeholders from other groups may want to visit the agency's office or the facility. In this situation, the visiting stakeholders will want to meet with the person who works most directly with their concerns.

Level of Effort

Depends entirely on the type of unsolicited information provided by the public. Office visits will also command varying amounts of time.

How to Conduct the Activity

Members of the public will come to the agency, the facility, or another organization with information and requests. Public outreach staff should be available for discussion and information when visitors come.

Unsolicited information can be very helpful. First, it can provide an idea of the level of public concern over a facility. Second, members of the public often provide information that is essential to making good technical, economic, and policy decisions. Local citizens often have the most knowledge and insight about the conditions of the land and the people surrounding a facility.

If interested people come to the office, they should be received by a staff member who can relate well with the public and knows the overall mission of your organization. If feasible, he or she should introduce the visitors to members of the staff who can discuss specific issues. Staff people should listen to the citizens' concerns and provide feedback where possible. They should be candid when they do not know the answer to a question. They should also be cordial, avoid jargon and overly technical language, and try to solve the visitor's problem. (See the section on "Informal Meetings With Other Stakeholders" in this Chapter for more information).

If citizens send a letter or call by phone, the receiving organization should respond as soon as possible. If the response will be delayed, a representative of the organization should write a letter or call to explain.

The receiving organization should consider all relevant comments as informal input into the permitting process and let citizens know how they can submit formal comments.

When to Use

Checklist for Unsolicited Information and Office Visits

For office visits:

- Appoint a member of your staff to act as a liaison for public visits
- The liaison should answer questions and introduce stakeholders to members of your organization who are involved in the issue
- Invite visitors to put their names on your mailing list
- Follow up quickly on any questions that you could not answer during the visit

For phone calls and written requests:

- Keep a log of calls and letters from other stakeholders
- Respond quickly to questions; inform the questioner if your response will not be timely

2. **Design the survey or poll.** For written surveys, you should leave plenty of room for people to write. Give clear instructions and explain how you will be using the information. Always include the name and number of a contact person. Provide multi-lingual surveys where appropriate. Follow these same guidelines for oral surveys and polls. For oral surveys, you may want to provide a business card to the interviewee when your discussion is over

3. **Distribute the surveys and questionnaires.** As we mentioned earlier, you may distribute written surveys in person or via mail. You may also leave them for people to pick up after a meeting; or you may decide to distribute them by hand to peoples' homes. If people will need to mail the survey, consider including pre-stamped, pre-addressed envelopes.

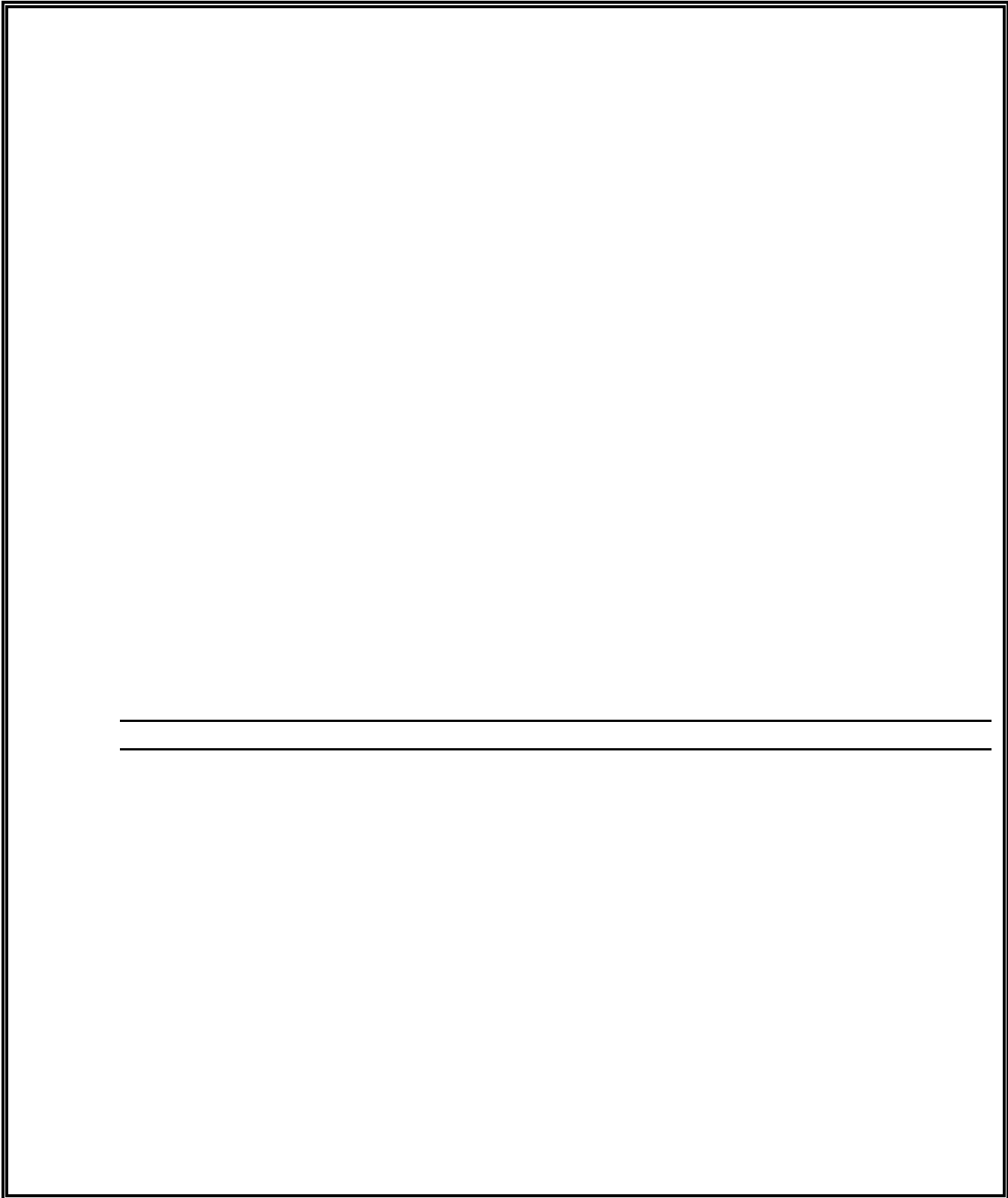
If you are seeking out specific information, you may want to distribute the surveys to a representative sample of the community. In some cases, you may want to do a "blanket" distribution to all homes and businesses within a certain distance of the facility.

If you choose to do an oral survey, follow the information in the section on "Community Interviews" earlier in this Chapter.

For telephone polls, you will have to decide whom to call and whether you will address the poll to a random sample, a representative sample, and bleg

anonymity that written surveys can ensure. Oral surveys and polls allow you to interact directly with members of the public and to solicit their immediate feedback on permitting issues.

Surveys conducted in-person can be very time-consuming and expensive. Written surveys may not present viewpoints that are representative of the community because people who fill out the surveys tend to have stronger feelings in favor, or against, the proposed activity. Surveys conducted by mail have the additional weaknesses of undependable response rates and questionable response quality.



Contact Persons/Offices

Regulatory Requirements

EPA regulations require the permitting agency to designate a contact office in most public notices. This requirement applies to draft permits, notices of intent to deny a permit, and modifications initiated by the permitting agency (§§ 124.10(d) and 270.41), as well as to the notice of application submittal (§ 124.32(b)). In these cases, the permitting agency will also provide a contact for the permit applicant. When a permit applicant holds a pre-application meeting under § 124.31, the applicant must provide public notice that includes a contact person for the facility. Similarly, the facility must provide public notice, including a contact at the agency and the facility, when requesting a Class 2 or 3 permit modification (§ 270.42 (b) and (c)). Permitting agencies must also provide contacts and telephone numbers (for the facility and the agency) during the trial burn stage at permitted and interim status combustion facilities (§ 270.62(b) and (d); 270.66(d)(3) and (g)).

Description of Activity

The contact person is a designated staff member who is responsible for responding to questions and inquiries from the public and the media. Some organizations may want to consider distributing lists of contact persons who are responsible for answering questions in certain topic areas.

Level of Effort

The amount of time that the contact person spends responding to citizen concerns and questions will depend on the level of community interest in a facility's permit or corrective action activities. A contact person may spend a few hours a day responding to citizen inquiries if there is high to moderate interest in the facility's RCRA activities.

How to Conduct the Activity

For each permit or corrective action, designate a contact who will respond to citizens' requests for information, answer their questions, and address their concerns on any aspect of the permit or cleanup process. Although permitting agencies are only required to designate a contact office, specifying a person and keeping the same person as the contact throughout the process may engender more public trust and confidence.

When a contact person is assigned:

1. **Send out a news release** announcing the contact person to all local newspapers, radio stations, and television stations. Include the contact person's telephone number and mailing address in all news releases, fact sheets, and mailings. Include in publications a self-mailer, which can be a separate flyer or a designated cut-a-way section of the fact sheet that is addressed to the contact person and leaves room for interested people to request more information or

write their comments.

2. **Give the name, address, and phone number of the contact person to all involved staff in your organization and other stakeholders.** Let staff members know that the contact person may be approached for information and that your staff should coordinate the release of information with the contact person. Inform other stakeholders that the contact person will be available for questions and information-sharing.
3. **Keep a log book** of all citizen requests and comments received by the contact person, and how each one was handled. This will help to assure that incoming requests are not filed and forgotten. This log book also provides another record of issues and concerns.

When to Use

A contact person should be designated for every facility at the outset of the RCRA process.

Accompanying Activities

Designation of the contact person should be announced in **news releases** and **fact sheets**, and **public notices**. The contact person also should be responsible for making sure that the facility's **information repository**, if required, is kept up-to-date.

Advantages and Limitations

A contact person can assure citizens that your organization is actively listening to their concerns and can provide the community with consistent information from a reliable source.

The contact person may not have the authority to resolve all of the concerns raised by citizens and other stakeholders; his or her role may be limited to providing information and facilitating communication between your staff, , if

Checklist for Contact Persons

- Designate a contact person for the facility:

- Notify media of the name, mailing address, and phone number of the contact person
- Inform your staff and other stakeholders who are involved with the facility
- Have contact person maintain a log book of all stakeholder requests and comments received

Telephone Contacts

Regulatory Requirements

None.

Description of Activity

Telephone contacts can be used to gather information about the community and to update State and local officials and other interested parties on the status of permitting or corrective action activities. See the section on “Surveys and Telephone Polls” earlier in this Chapter for related activities.

Level of Effort

Telephone contacts can be a time-intensive activity, depending on the nature of the call. Allow several hours per call when gathering information.

How to Conduct the Activity

In making telephone contacts:

1. **Know exactly what information to request or give out.** Plan carefully what you want to say or what information you would like to obtain from these individuals. Refer to the section on “Community Interviews” earlier in this chapter for information on how to conduct these interviews.
2. **Conduct telephone calls and take notes for your files.**

When to Use

Telephone contacts may be used:

- C In the early stages of the RCRA actions to identify key officials, citizens, and other stakeholders who have a high interest in the facility;
- C To gather information when face-to-face community interviews are not possible;
- C When new and time-sensitive material becomes available; and
- C When there is a high level of community interest in the facility, and it is important to keep key players informed.

Accompanying Activities

Telephone contacts are usually made to arrange or conduct community interviews, develop **mailing lists** and arrange for other public participation activities such as **news briefings**, **informal meetings**, and **presentations**.

Advantages and

Telephone calls can be an inexpensive and expedient method of acquiring

Limitations

initial information about the facility. Once the initial information has been gathered, telephone contacts are a quick means of informing key people about facility activities and for monitoring any shifts in community concerns.

Residents initially may feel uncomfortable discussing their concerns and perceptions over the telephone with a stranger. Once residents have met your staff in person, however, they may be more open and willing to discuss their concerns during follow-up telephone calls.

Checklist for Telephone Contacts

Initial telephone contacts:

- Identify individuals to contact:
 - State officials
 - Local officials
 - Regulatory agency officials
 - Concerned citizens
 - Media
 - Environmental groups, civic organizations, public interest groups
- Prepare information to discuss on telephone
 - Prepare questions for individuals to answer
 - Prepare information that you can give them
- Keep a log book of information received/given

On-going contacts:

- Maintain up-to-date telephone contact list
- Prepare information to discuss on telephone before each set of calls

Telephone Hotlines

Regulatory Requirements

None.

Description of Activity

A hotline is a toll-free (or local) telephone number people can call to ask questions and obtain information promptly about RCRA activities. Some hotlines allow people to order documents.

Level of Effort

The amount of time spent on the telephone hotline responding to citizen concerns and questions will depend on the level of concern the community has regarding the facility's permit or corrective action activities. You may spend several hours a day responding to inquiries if there is high to moderate interest in the facility's RCRA activities.

How to Conduct the Activity

To install a telephone hotline, either as a semi-permanent fixture (available throughout the permit review or corrective action process) or as a temporary measure (installed at the time of major community feedback, such as the public comment period):

1. **Assign one or more staff members** to handle the hotline calls. Consider installing more than one line to minimize busy signals. If staff are not available throughout the day, install an answering machine directing people to leave their name, number, and brief statement of concern, and informing them that someone in your organization will return their call promptly. If a voice mail system is available, provide information on the answering

Checklist for Telephone Hotlines

- Determine need for telephone hotline
- Identify staff responsible for answering calls
 - Have staff maintain a log of all calls and responses
- Install telephone hotlines/answering machines
- Notify interested people about the hotline
 - Public notice
 - Fact sheet
 - Mailing to facility mailing list
- Coordinate staffing of hotline
- Follow-up on calls to hotline

On-Scene Information Offices

Regulatory Requirements

None.

Description of Activity

An on-scene information office is a trailer, small building, or office space on or near the facility site, depending on what is more convenient and accessible for the affected community. The office is staffed by a full-time or part-time person(s) who responds to inquiries and prepares information releases.

Level of Effort

An on-scene information office is a time-intensive activity. You may have staff in the office up to 40 hours a week. **Short Cut:** Hire a contractor to staff the office; however, always ensure that a representative is there for some specified period during the week.

How to Conduct the Activity

To provide an on-scene information office:

1. **Establish the office.** You may have to rent a trailer, arrange with the owner of the facility to designate space in the facility, or rent office space in a town to be used as an office and launching area. If you will be establishing the office off-site, then you should find an area in the vicinity of the facility or in the nearest town or village.
2. **Install a telephone** and an answering mi29ablishty

staff . (Activi673. Tj 90.96 0 TD /F1 10.82 Tf -0.03715 Tc C

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Checklist for On-Scene Information Offices

- Determine need for an on-scene information office
- Identify staff to work in information office
- Rent a trailer or office space for the information office
- Equip the office with a telephone, office equipment (i.e., copier), and all materials contained in an information repository.
- Notify interested people of availability of on-scene information office
 - Public Notice
 - Fact sheet
 - Mailing to facility mailing list
- Maintain on-scene information office
 - Have staff conduct the following:
 - Maintain the mailing list
 - Review media coverage
 - Respond to calls from citizens and stakeholder groups

Question and Answer Sessions

Regulatory Requirements

None.

Description of Activity

A question and answer session makes knowledgeable staff available to stakeholders to discuss permitting and corrective action issues. Question and answer sessions typically accompany a presentation, briefing, or meeting. Anyone at the event who needs more information will have the opportunity to speak with officials after the event. These sessions can be informal or formal.

Level of Effort

Answering questions will add a small amount of staff time to other public participation activities.

How to Conduct the Activity

To conduct a question and answer session:

- 1. Announce that someone will be available for questions after the event.** Pick an area where people can meet a knowledgeable staff person for questions and answers.
- 2. Be responsive, candid, and clear.** Ensure that all questions are answered. If staff cannot answer the question on the spot, they should not be afraid to say “I don’t know” and offer to answer the question after getting more information. The staffer should write down the question, discuss it with other staff, and respond -- as soon as possible -- by phone or letter. Try to avoid using jargon that people will not understand.
- 3. Consider brainstorming ahead of time to develop potential questions and to prepare responses.**

When to Use

Question and answer sessions are appropriate whenever people at an event need more information or the presenting organization needs more feedback. Question and answer sessions are also appropriate when people may feel more comfortable asking questions in a one-on-one situation. If a particular issue, raised by one person at a meeting, is preventing other issues from making the floor at a meeting, you may want to offer to discuss the issue one-on-one after the meeting.

Accompanying Activities

Hold question and answer sessions after **exhibits, presentations, meetings, facility tours**, or on **observation decks**. Some events, such as **open**

houses, have built-in question and answer sessions. In responding to inquiries, you may want to provide written information, such as **fact sheets**, or refer the questioner to a **contact person**.

Advantages and Limitations

Question and answer sessions provide direct communication between your organization and citizens. They are a useful, easy, and inexpensive way of providing one-on-one explanations in an informal setting. One-on-one discussions may attract people who are intimidated from raising issues during a meeting. Such interactions may also increase public comfort and trust in your organization.

Citizens may not be pleased if you cannot answer a question on the spot; they will certainly not be pleased if your response is slow. Be sure to respond to all unanswered questions as soon as you can.

Checklist for Question and Answer Sessions

- Brainstorm potential questions and prepare responses
- If you are planning a Q&A session after a meeting or other event, let people know where it will be held by mentioning it during the meeting
- Be candid and avoid jargon in your answers. If you cannot answer a question, take the questioner's phone number or address and respond to the question as soon as you can.

Information Tables

Regulatory
Requirements

None.

Description of Activity

Information tables are simple public participation tools that you can use to interact with interested stakeholders. An information table consists of a table or booth set up at a meeting, hearing, or other event (e.g., a community fair or civic gathering). It is staffed by at least one member of your organization who is available to answer questions. Pamphlets, fact sheets, and brochures are available on the table, along with a sign-up sheet for interested people to add their names to the facility mailing list.

Level of Effort

This activity is time-intensive, with at least one staff person staying at the table during the entire event. The information table is less of a drain on other resources since the materials should already be available.

How to Conduct the
Activity

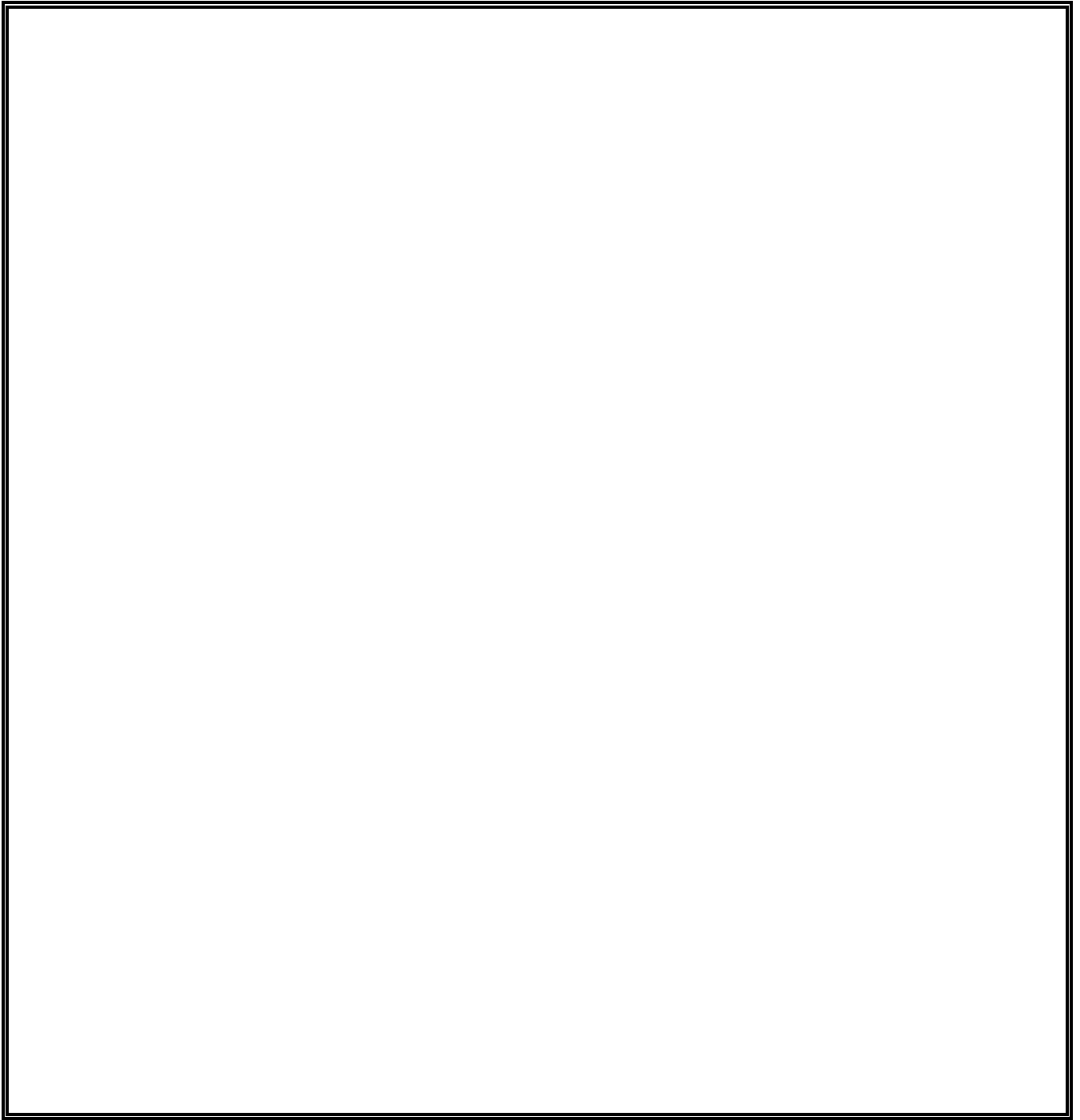
To prepare for an information table:

1. **Learn from community interviews which local events are most frequented by citizens during the year.**
2. **Decide whether the table will be sufficient to address community concerns.** The information table may not be effective in high traffic areas.

Accompanying
Activities

meeting. EPA recommends using information tables as part of **availability sessions** and **open houses**. **Fact sheets**





Informal Meetings with Other Stakeholders

Regulatory
Requirements

None. (This type of informal meeting is distinct from the pre-application meeting required under § 124.31 (and discussed under “Public Meetings” in this Chapter) which EPA has stated should be an informal discussion open to the public).

Description of Activity

Informal meetings are meetings your organization holds with individual

actions are required, schedule the meeting after the agency has accurate information to share with the participants; for a corrective action, determine first when community concerns may be highest and schedule meetings accordingly. For instance, it may be appropriate to hold an informal meeting when the risk assessment report is released. Holding informal meetings early in the permit process can help prevent potentially volatile situations from developing by providing citizens with one-on-one attention.

2. **Limit attendance.** To increase effectiveness, restrict attendance to between five and 20 individuals or specify attendance by invitation only. The larger the group, the less likely it is that some people will candidly express their concerns. It is difficult to establish rapport with individuals in a large group. If a greater number of stakeholders are interested, you should schedule additional small meetings. If a greater number of participants appears than are expected at an informal meeting, divide the group into smaller groups to allow more one-on-one discussion to take place.
3. **Select a meeting date, time, and place convenient to attendants.** The meeting place should have chairs that can be arranged into a circle, or some other informal setting conducive to two-way communication. A private home, public library meeting room, community center, or church hall may be more likely to promote an exchange of ideas than a large or formal public hall. When scheduling the meeting, make sure that the date and time do not conflict with other public meetings that citizens may want to attend, such as town council meetings, or with holidays or other special occasions. Permitting agencies should be sure that the meeting location does not conflict with state "sunshine laws." In selecting a public meeting place, be attentive to the special needs of handicapped individuals (e.g., access ramps or elevators). Be aware that meetings will frequently have to be scheduled during evening hours to accommodate work schedules.
4. **Begin the meeting with a brief overview.** This short presentation should include a summary of the permit review schedule and how stakeholders can be involved in the decision. These opening remarks should be kept brief and informal (no more than a few minutes) to allow maximum opportunity for open discussion with meeting attenders. Cover whatever topics the public is interested in discussing, these may include:
 - C Extent of the activity;
 - C Safety and health implications;
 - C

- C How community concerns are considered in making decisions on permits and corrective actions.
5. **Identify the regulatory decision-makers** (major agencies and individuals responsible for enacting and enforcing RCRA regulations.) Citizens and other stakeholders will then know where to direct further questions or voice new ideas or suggestions.
 6. **Gear the discussion to the audience.** Be sensitive to the level of familiarity that the citizens have with the more technical aspects of the activities discussed.
 7. **Listen and take notes.** Find out what the meeting attendees want done. Some concerns may be addressed by making minor changes in a proposed action. Discuss the possibility for accommodating these concerns or explain the reasons why citizen requests appear to be unworkable or conflict with program or legal requirements.
 8. **Promptly follow-up on any major concerns.** Stay in touch with the groups and contact any new groups that have formed, so that new or increasing concerns can be dealt with before problems develop.
 9. **Write up brief minutes for your files.**

When to Use

Informal meetings can be used:

- C When there is widely varying level of knowledge among community members;
- C When the level of tension is high and large meetings may not be appropriate;
- C When the community needs more personal contact to have trust in your organization or the process;
- C When groups want to discuss specific issues in which the community as a whole isn't interested.

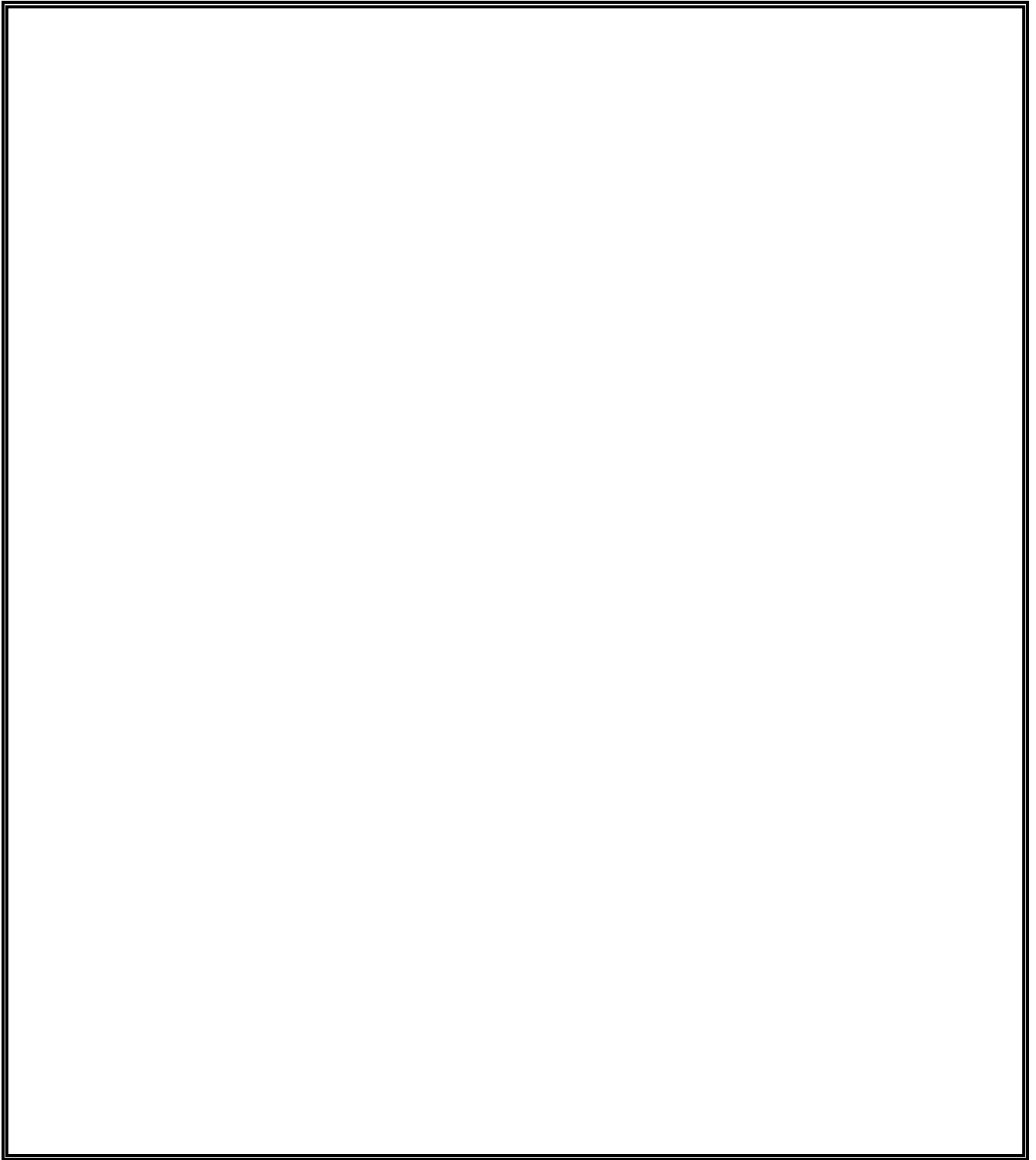
Accompanying Activities

Community interviews or calls to **telephone contacts** usually precede these meetings, since it is during these interviews that concerned citizens groups are identified and contacted. Possible meeting locations also can be identified during the community interviews.

Distributing **fact sheets** at these meetings also may be appropriate, depending on when they are held.

Advantages and

The primary benefit of informal meetings is that they allow two-way interaction between citizens, local officials, the permitting agency, and the



Public Meetings

Regulatory
Requirements

the “Public Notice” section above in this chapter to determine the resources you will need to announce the meeting. Other activities include preparing and copying materials for distribution. You may be able to distribute some of the same materials at the meeting and the public hearing (if applicable).

How to Conduct the Activity

To hold a public meeting, you will follow many of the same steps as for a public hearing (see Chapter 3 for specific guidance regarding pre-application meetings under § 124.31):

- 1. Anticipate the audience and the issues of concern.** Identify the audience's objectives, expectations, and desired results. With this information you will know what topics to spend time on and what materials and exhibits to provide. If a part of your audience does not speak English, arrange for a translator.
- 2. Schedule the meeting location and time** so that citizens (particularly handicapped individuals) have easy access. Ensure the availability of sufficient seating, microphones, lighting, and recorders. Hold the meeting at a time and place that will accommodate the majority of concerned citizens.
- 3. Announce the meeting** at least 30 days before the meeting date. Provide notice of the hearing in local newspapers, broadcast media, signs, and mailings to interested citizens (you can find requirements for pre-application meetings in § 124.31(d)). Choose communication methods that will give all segments of the community an equal opportunity to participate. Use multilingual notices where appropriate. Make follow-up phone calls to interested parties to ensure that the notice has been received. Provide the name of a contact person.
- 4. Make relevant documents available for public review.** If you are a permittee requesting a class 2 or 3 permit modification, you must place a copy of the modification request and supporting documents in a location that is publicly accessible and in the vicinity of the facility (see § 270.42(b)(3) and (c)(3)). Announce the location in the public notice for the meeting. For other public meetings, you should consider making important documents available prior to the meeting.
- 5. Provide an opportunity for people to submit written questions and comments.** Not all individuals will want, or be able, to attend the meeting. Announce in public notices and mailings that written comments and questions can be submitted to the contact person. You may want to raise some of these written comments and questions at the public meeting.
- 6. Post a sign-up sheet** so that attendees can voluntarily provide their names and addresses. If you are a permit applicant holding a pre-application meeting under § 124.31, you can use this sheet to produce

and submit an attendee list as part of your part B application (as required under § 124.31© and § 270.14(b)(22)). The permitting agency will use the attendee list to help generate the facility mailing list.

7. **Take notes** about the major issues of concern and **prepare a summary of all oral and written comments.** If you are a permit applicant holding a pre-application meeting under § 124.31, you must submit a summary of the meeting as part of your part B permit application (as required under § 124.31© and § 270.14(b)(22)). For other public meetings, you should make a summary available for public review and announce where it is available.

When to Use

Some permitting agencies have had success in holding public meetings prior to a public hearing. Public hearings are often “staged” events with little opportunity for new input or discussion. Some participants have criticized them as opportunities for grandstanding. Public meetings, on the other hand, allow interested parties to ask questions and raise issues in an informal setting. A public meeting can provide a useful means of two-way communication at any significant stage during the permitting or corrective action process.

If you are a permit applicant required to hold a pre-application meeting under § 124.31, the public meeting format is one option you can use. Refer to the discussion in Chapter 3 for more information.

Accompanying Activities

Provide **public notice** of the meeting and designate a **contact person**. **Fact sheets** and **exhibits** can inform people about permitting issues at public meetings. You may also consider establishing an **information table** where people who may feel uneasy speaking during the meeting can ask questions and pick up materials. Another option is to make your staff available after in the meeting, in the same manner as an **availability session** or an **open house**. **Information repositories** can complement the meeting by making important documents available for public review.

Advantages and Limitations

A public meeting provides a forum where interested people can ask questions and discuss issues outside of the formality of a public hearing. They are flexible tools that are open to everyone.

Some citizens may be reluctant to speak up at public meetings. You can address this concern by providing one-on-one access to your staff via an information table or an open house, or by scheduling informal meetings. Public meetings, like public hearings, could become adversarial.

Checklist for Public Meetings

(As applicable):

- Determine location for public meeting
 - Facility name, location _____
 - Contact person at location _____
 - Phone number _____
 - Occupancy size _____
 - Handicap accessibility _____
 - Features:
 - Restrooms
 - Public telephones
 - Adequate parking
 - Security
- Determine date, time of public meeting:
 - Date: _____
 - Time: _____
- Confirm availability at location (if location is not available, determine new location or new date)
- Announce the public meeting. (Pre-application meetings under § 124.31 must be announced through a display advertisement in a newspaper of general circulation, over a broadcast medium, and through a sign posted on or near the site of the facility or proposed facility).
 - Contact local officials
 - Notify key agencies and other stakeholder groups
- Provide an opportunity, in the notice, for people to submit written comments
- Determine whether a translator is needed
- Determine presentation requirements (depending upon the specific requirements of your presentation, some of these items may be optional)
 - Electrical outlets
 - Extension cords

Checklist for Public Meetings (continued)

- Accessible lighting control panel
- Podium
- Stage
- Table(s) and chairs for panel
- Table skirt
- Sign-up sheet for the mailing list. (If you are conducting a pre-application meeting under § 124.31, you are required to provide a sign-up sheet or another means for people to add their names to the facility mailing list. You must provide the sheet to the permitting agency as a component of your part B permit application).
- Water pitcher and glasses
- Sound system
- Microphones (stand, tabletop)
- Cables
- Speakers
- Technician/engineers available for hearing
- Visual aids
- Slides
- Slide projector
- Extra projector bulbs
- Flip chart
- Flip chart markers
- Overhead transparencies
- Overhead machine
- VCR and monitor
- Screen
- Table for projection equipment

Checklist for Public Meetings (continued)

- Security personnel (if necessary)
- Table for meeting recorder (who will produce a meeting transcript or summary)
- Registration table
- Registration cards
- Writing pens
- Signs
- Miscellaneous supplies:
 - Scissors
 - Tape (masking, transparent)
 - Thumbtacks
 - Public information materials (fact sheets, etc.)
- Prepa31557.0ing agen -2.

Public Hearings

Regulatory Requirements

Public hearings are required if requested (§ 124.11) by the public during the draft permit stage, during an agency-initiated modification under § 270.41, or a Class 3 permit modification under § 270.42(c)(6). The agency will also hold a public hearing at the draft permit stage when there is a high level of public interest (based on requests), or when the agency thinks that the hearing might clarify relevant issues (§ 124.12). The agency will also hold a hearing if these conditions apply during closure or post-closure at interim status facilities (§§ 265.112(d)(4) and 265.118(f)).

Description of Activity

Public hearings provide an opportunity for the public to provide formal comments and oral testimony on proposed agency actions. Occasionally the agency will present introductory information prior to receiving

the hearing.

4. **Announce the public hearing** at least 30 days before the hearing date. Provide notice of the hearing in local newspapers and mailings to interested citizens. Under § 124.10(b), you may combine the hearing notice with the draft permit notice. Make follow-up phone calls to interested parties to ensure that the notice has been received.
5. **Provide an opportunity for people to submit written comments.** Not all individuals will want to provide oral testimony. Publicize where written comments can be submitted and how they will be reviewed.
6. **Prepare a transcript of all oral and written comments.** Announce where the transcript will be available for public review.

The following are general tips on conducting public hearings:

Be clear and up front with meeting format and logistics. Public hearings are very limited in the amount of information that is exchanged and the extent to which responses are given. Participants should not expect the question and answer format found in public meetings.

Establish meeting format. Public hearings should be managed by a hearings officer or moderator, whose responsibility it is to ensure that all comments are taken for the public record.

- Establish a speakers list. A moderator should develop a list of speakers from the list of respondents to public notices (e.g., those responding to a notice saying, "those wishing to be placed on the list of commenters should contact ...") and/or by asking those wishing to speak to identify themselves on a sign-up list on the way into the hearing. While limiting commenters to a pre-developed list may be inappropriate, such lists serve as valuable management tools in bringing forward commenters in an orderly and expeditious manner.
- Establish time limits for commenters. A moderator should establish a set time limit for an individual to make comments. Typically the limit is five minutes or less. Those wishing to make more detailed comments should be encouraged to submit their comments in writing.
- Establish time limits (if any) for the hearing. Based on your speakers list, and assuming a limited speaking time for individual commenters, the moderator may establish time limits (if any) on the hearing. Most hearings last between two and five hours. However, for very controversial topics, public hearings have been known to extend over a period of days.
- Interacting with commenters. Because comments become part of the public record, the moderator should ask all commenters to give their

names and addresses. If there is doubt about spelling, the moderator should ask the commenters to spell names or street names. In cases where there may be litigation, it is common practice to further request that anyone legally representing any party as part of the permit process or decision identify that fact.

When giving the floor to a commenter, the moderator should also note the person's name, so that he/she can thank the commenters by name at the conclusion of the comment (e.g., "Thank you for those comments, Ms. Smith.").

- Speakers from the permitting agency. There are no set rules for who should participate or speak at a public hearing. In the spirit of the law, the participants from the agency should be those who will be most involved with making the actual decision -- that is, the permit writer, and senior staff who will weigh all information, including these public comments, prior to reaching a final decision. Speakers from the agency should be limited to explaining briefly the decision being made (e.g., "We are here to discuss a proposed modification to the facilities permit to conduct the following activities...").

When to Use

- C When requested by a member of the public during a public comment period on a permit, closure, or corrective action. Once requested, hearings require a minimum 30-day advance notice.
- C Public hearings are usually conducted during the public comment period following the issuance of a draft permit, major permit modification, or at the selection of a proposed corrective measure.
- C Public hearings may be appropriate at other times during the process, especially if the level of community concern warrants a formal record of communication.

Accompanying Activities

Public notices distributed to the **mailing list** and published in local newspapers are used to announce hearings to the public. If a hearing is held to solicit comments on either a draft permit decision or proposed corrective measure, the agency must prepare a **response to comments**. The response to comments documents all submitted public comments and includes the agency's responses. An educational **workshop** or **public meeting** may be useful shortly before the public hearing to explain key issues of the proposed decision or corrective measure and respond to citizen concerns.

Advantages and Limitations

A hearing provides a record of communication so citizens can be sure that their concerns and ideas reach the permitting agency. Public hearings generally should not serve as the only forum for citizen input. They occur at the end of a process that should have provided earlier public access to information and opportunities for involvement. Earlier opportunities

should answer most questions and arguments that are based on curiosity, emotion, sensationalism, or a lack of knowledge about the situation, thereby freeing the hearing for factually-based questions. Meet citizens' needs for information before a formal hearing with techniques such as fact sheets, small-group meetings, and one-on-one briefings.

The formality of a public hearing often creates an atmosphere of "us versus them." There may be little opportunity to interact with citizens. This may be frustrating to some; however, informal gatherings and question and answer sessions are often effective ways to interact with the public on an interpersonal level. A variety of informal techniques, ranging from talking to citizens groups to holding workshops, are discussed throughout this chapter.

Public hearings can easily become adversarial. One way to avoid hostility or confrontation is to make sure the community has had an opportunity to express concerns in a less formal setting prior to the hearing. More frequent contact with concerned citizens before a formal public hearing will reduce the likelihood of a confrontation.

Checklist for Public Hearings

(As appropriate):

- Determine location(s) for public hearing
 - Facility name, location _____
 - Contact person at facility _____
 - Phone number _____
 - Occupancy size _____
 - Handicap accessibility _____
 - Features:
 - Restrooms
 - Public telephones
 - Adequate parking
 - Security
- Determine date, time of public hearing:
 - Date: _____
 - Time: _____
- Confirm hearing facility availability (if facility not available, determine new facility or new hearing date)
- Announce the public hearing through a public notice in at least one newspaper 30 days prior to the hearing
 - Contact local officials
 - Notify key agencies
- Determine presentation requirements (depending upon the specific requirements of your presentation, some of these items may be optional)
 - Electrical outlets
 - Extension cords
 - Accessible lighting control panel

Checklist for Public Hearings (continued)

- Podium
- Stage
- Table(s) and chairs for panel
- Table skirt
- Water pitcher and glasses
- Sound system
- Microphones (stand, tabletop)
- Cables
- Speakers
- Technician/engineers available for hearing
- Visual aids
- Slides
- Slide projector
- Extra projector bulbs
- Flip chart
- Flip chart markers
- Overhead transparencies
- Overhead machine
- VCR and monitor
- Screen
- Table for projection equipment
- Security personnel

Checklist for Public Hearings (continued)

- Table for court reporter
- Registration table
- Registration cards
- Writing pens
- Signs
- Miscellaneous supplies:
 - Scissors
 - Tape (masking, transparent)
 - Thumbtacks
 - Public information materials (fact sheets, etc.)
- Prepare meeting agenda
- Determine hearing participants/speakers
 - _____
 - _____
 - _____
 - _____
- Prepare opening comments for hearing officer
- Arrange contingency planning, decide what to do if:
 - more people show up than capacity
 - the crowd becomes disruptive
- Coordinate with public involvement coordinator on notification of the media
- Set date and time for debriefing following the hearing

3. **Develop or gather together appropriate explanatory materials.** These materials may include poster boards, handouts, or fact sheets.
4. **Publicize the availability session/open house at least two weeks ahead of time, if possible.** Send announcements to newspapers, television and radio stations, citizens on the mailing list, and any interested community organizations that publish newsletters.
5. **Ensure that appropriate staff attend,** so that citizens can meet those who will be responsible for facility activities. The staff present should be able to answer both technical and policy questions.
6. **Meet with and brief staff and rehearse for the session.** Anticipate questions that may be asked during the session and prepare answers.

When to Use

An availability session/open house is most appropriate:

- C When scheduling of meetings is difficult because of community members' schedules;
- C When new information is available on several different technical or regulatory issues that would make explaining it in its entirety would be too long for a more formal meeting;
- C When community members have widely varying interests or levels of knowledge;
- C When an informal setting is appropriate to enhance your credibility with the community;
- C When staff is available;
- C When larger crowds will make it difficult for certain members of the public to raise questions; and
- C In some cases, to fulfill the pre-application meeting requirements in § 124.31 (see “Regulatory Requirements” above in this section).

Accompanying Activities

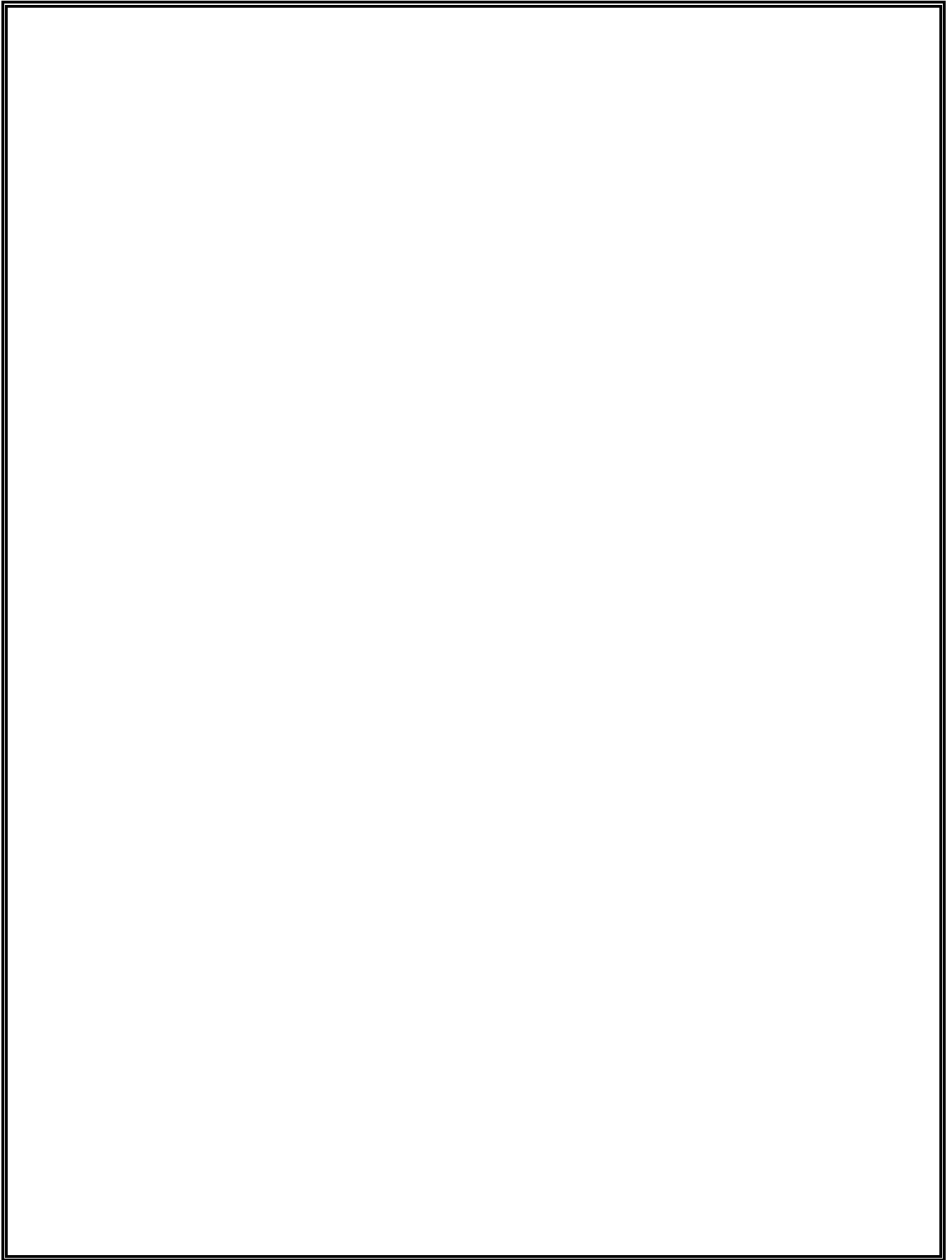
Exhibits and **fact sheets** can provide background information that enables citizens to ask more informed questions about the facility during the availability session/open house.

Advantages and Limitations

The one-to-one conversations during an availability session/open house can help build trust and establish a rapport between citizens and project staff. An informal, neutral setting will keep officials and the public relaxed and make communications smoother. Citizens can find out more about all viewpoints concerning a permitting action if public interest groups, civic

organizations, agency officials, and facility staff are present at the session.

Planning and conducting an availability session/open house can require a significant amount of staff time. A low turnout may not justify the effort. Hence, community interest in the site should be significant before an availability session/open house is planned.



Workshops

Regulatory Requirements

None.

Description of Activity

Workshops are seminars or gatherings of small groups of people (usually between 10 and 30), led by a small number of specialists with technical expertise in a specific area. In workshops, participants typically discuss hazardous waste issues where citizens comment on proposed response actions and receive information on the technical issues associated with the permitting process and the RCRA program in general. Experts may be invited to explain the problems associated with releases of hazardous substances and possible remedies for these problems. Workshops may help to improve public understanding of permit conditions or hazardous waste problems at a facility and to prevent or correct misconceptions. Workshops also may identify citizen concerns and encourage public input.

Level of Effort

A one-day workshop may take about three days to a week to plan and execute. Another day will probably be required to follow up on any issues that arise during the workshop.

How to Conduct the Activity

To conduct a workshop:

1. **Determine the focus of the workshop.** Decide what topic or topics will be covered in either one or more workshops. Suggested topics include: purpose of RCRA; description of the permit process or corrective action program; proposed remedies; risk assessment; identified health or environmental problems; aore wolhore ethod
How tain thi,r9a:

concerned citizens. Provide for multiple registrations on each form to accommodate friends who also might be interested in the workshop. Emphasize that the number of participants is limited, and provide a deadline for registration.

When to Use

Workshops are appropriate:

- C When the RCRA process needs to be explained to community members interested in participating in the process;
- C When specific topics needs to be discussed in detail, especially health or risk assessment issues; and
- C When technical material needs to be explained and feedback from the community is important to make sure that citizens understand the material.

Accompanying Activities

Workshops can be conducted before formal **public hearings** or during **public comment periods** to give citizens some ideas on developing and presenting testimony. **Fact sheets** and **exhibits** can complement the workshop.

Advantages and Limitations

Workshops provide more information to the public than is possible through fact sheets or other written materials. Workshops have proven successful in familiarizing citizens with key technical terms and concepts before a formal public meeting. Workshops also allow two-way communication, making them particularly good for reaching opinion leaders, interest group leaders, and the affected public.

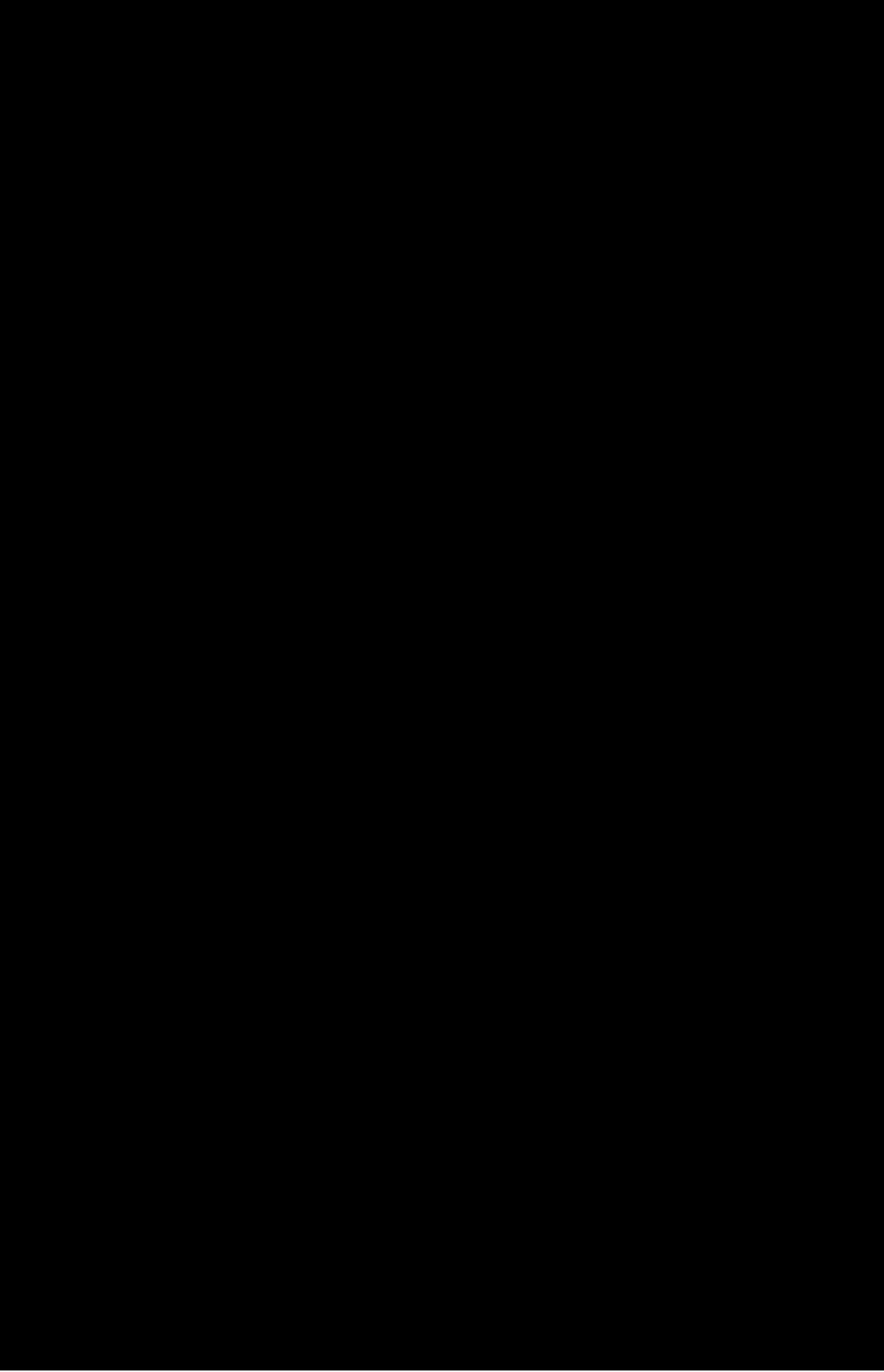
If only a limited number are held, workshops can reach only a small segment of the affected population.

When planning a workshop, you should make sure that it is announced in local newspapers, to help ensure that it will be well-attended. In addition, it may be helpful to specifically invite all residents who have expressed an interest in the site.

Checklist for Workshops

(As appropriate):

- Determine purpose of workshop _____
 - Determine number of attenders _____
 - Plan the workshop
 - Identify topics to be presented
 - Identify agency officials to present topics, handle registration
 - Prepare handouts, other informational materials
 - Determine location(s) for workshop (complete for each available facility)
 - Facility name, location _____
 - Contact person at facility _____
 - Phone number _____
 - Occupancy size _____
 - Handicap accessibility _____
 - Features:
 - Restrooms
 - Public telephones
 - Adequate parking
- _____
- _____



Checklist for Workshops (continued)

- Extra projector bulbs
- Flip chart
- Flip chart markers
- Overhead transparencies
- Overhead machine
- VCR and monitor
- Screen
- Table for projection equipment
- Registration table
- Registration cards
- Writing pens
- Signs
- Miscellaneous supplies:
 - Scissors
 - Tape (masking, transparent)
 - Thumbtacks
 - Public information materials (fact sheets, etc.)
- Arrange and conduct at least one rehearsal

Attending Other Stakeholder Meetings and Functions

Regulatory Requirements

None. (The permitting agency may need to attend public meetings held by the permittee under § 270.42 in order to respond to public comments on the modification request. Agencies may also want to attend the applicant’s pre-application meeting held under § 124.31. See the section on the “Pre-Application meeting” in Chapter 3 for more detail.)

Description of Activity

Permitting agencies, facilities, local governments, environmental organizations, religious and civic groups may all hold meetings or other gatherings during the permitting process. Some may be required by regulation and others may be informational meetings or discussions of important issues. As an involved stakeholder, you can learn more about the views of other stakeholders by attending their meetings. You can join in important discussions and provide information. Some groups may invite you to give a **presentation** or a **briefing**.

Level of Effort

The time you commit to attending other stakeholder meetings or functions will depend on the level of your participation. Meetings can vary in length; your resource commitment will be more substantial if you agree to give a **briefing** or a **presentation** (see those sections of this chapter for more information). You will need a few hours to prepare notes for your file after the meeting.

How to Conduct the Activity

If you decide to attend a meeting, you may want to inform the host organization that you plan to attend the meeting. If you choose to identify yourself at the meeting, be prepared to answer questions. You may want to bring fact sheets or other information you can provide upon request. In any case, be prepared to listen to the discussion and prepare notes for your files.

The host organization may ask you to provide a **briefing** or a **presentation**. See those sections of this chapter for more information.

When to Use

You may want to attend other stakeholders’ meetings when the meetings are open and you want to learn more about the views held by other stakeholders. In some cases, a group may invite your organization to attend a meeting to provide input or answer questions. In such cases, you should be prepared to answer questions or present the views of your organization.

If appropriate, you may want to make **fact sheets** available upon request at

Accompanying Activities

the meeting. Provide the name of a **contact person**. If you are representing the permitting agency, let participants know about how to put their names on the facility **mailing list**.

Advantages and Limitations

Attending meetings or functions held by other stakeholders can provide useful insight to other opinions and concerns. This information can help you plan other public participation events and complement data you gather from community interviews.

This activity should not be used in place of informal meetings or other activities that may be more appropriate. If your attendance has the potential to cause problems, make sure to contact the host before the meeting.

Citizen Advisory Groups

Regulatory Requirements

None.

Description of Activity

A Citizen Advisory Group (CAG) provides a public forum for representatives of diverse community interests to present and discuss their needs and concerns with government and/or the facility. Although CAGs may come in many different forms and have different responsibilities and roles, they are generally composed of a board of stakeholders that meets routinely to discuss issues involving a particular facility. The purpose of a CAG is usually to advise a facility owner/operator or the permitting agency on permitting or corrective action activities.

CAGs can be a good way to increase active community participation in environmental decision-making and provide a voice for affected community members and groups. They promote direct, two-way communication among the community, the permitting agency, and the facility.

The make-up and mission of a CAG may vary -- there is no set formula governing the make-up or responsibilities of the group. The best type of CAG to use will depend on the situation. For instance, a citizen organization may create a CAG of affected community members to provide an official voice from the community. Facility owner/operators may create a CAG of affected community members to provide informal or formal advice. A permitting agency may form a CAG that includes stakeholders from the facility, the community, and the agency.

In establishing a CAG, it is important to bear in mind that the size of a group can often have an impact on its effectiveness -- for example, too large of a group can inhibit how efficiently it can work and come to consensus on issues, and too small of a group may not be adequate to represent diverse community concerns.

Forming a CAG does not necessarily mean that there will be universal agreement about permitting or corrective action issues. Nor does having a CAG mean there will be no controversy during the process. However, when decisions made by the facility or the permitting agency differ from the stated preferences of a CAG, the facility or the agency should accept the responsibility of explaining its decision to CAG members.

RCRA regulations do not require the use of advisory groups; however, EPA regulations do contain standards for advisory groups if EPA decides to require them under 40 CFR. These standards are located in 40 CFR 25.7.

Although these standards may not apply to all types of advisory groups used in conjunction with RCRA permitting, they provide useful guidance for agencies, facilities, and public interest groups who may want to use advisory groups. A copy of the part 25 regulations is available Appendix F.

EPA's Office of Emergency and Remedial Response has issued guidance on the use of CAGs at Superfund sites (see Appendix E). Although there are many differences between the Superfund and RCRA programs (most notably that Superfund often deals with abandoned sites while RCRA typically deals with existing or potential facilities), a large part of the Superfund CAG guidance discusses CAG development, membership, and training that may be applicable to some RCRA CAGs. Superfund terminology and process aside, the guidance contains some very useful, concise advice on various aspects of CAGs.

Although CAGs are a useful tool in many situations, they may not always be appropriate. See the section "When to Use" below for a list of factors you should consider before forming a CAG.

Level of Effort

CAGs can be a time-consuming and expensive endeavor. Membership selection, meeting preparation and follow-up, information dissemination, and training all take a lot of resources. Unlike the Superfund program, agencies that implement RCRA cannot provide Technical Assistance Grants (TAGs) to help defray the costs of CAGs.

How to Conduct the Activity

See EPA's *Guidance for Community Advisory Groups at Superfund Sites* and 40 CFR § 25.7 (in Appendices E and F) for information on how to set up CAGs. Keep in mind that CAGs under the RCRA program will differ from CAGs under Superfund. You may want to obtain a copy of the reference list of public participation and risk communication literature

- C environmental justice issues or concerns regarding the facility;
- C the history of community involvement with the facility, or with environmental issues in general; and
- C the working relationship between the facility, the community, and the permitting agency.

Accompanying Activities

Depending on the make-up and the purpose of the CAG, you may want to provide **public notice**, hold a **public meeting**, and issue a **news release** before forming the CAG. The CAG may choose to provide public participation activities (such as **meetings**, **newsletters**, or **availability sessions**) as part of its mission.

Advantages and Limitations

CAGs can increase active community participation in environmental decision-making and provide a voice for affected community members and groups. They promote direct, two-way communication among the community, the permitting agency, and the facility and can highlight your organization's commitment to inclusive stakeholder input.

APPENDIX A -- LIST OF EPA CONTACTS

EPA Headquarters 401 M Street, SW
Washington, DC 20460

Directory Assistance	(202) 260-2090 (TDD 260-3658)
Office of Solid Waste and Emergency Response	(202) 260-4610
Office of Solid Waste	(202) 260-4627
Office of Enforcement and Compliance Assurance	(202) 260-4134
RCRA Hotline	(800) 424-9346 (TDD 553-7672)
(Washington, DC Metro Area)	(703) 412-9810 (TDD 412-3323)
Hazardous Waste Ombudsman	(800) 262-7937
(Washington, DC Metro Area)	(202) 260-9361
Office of Environmental Justice	(800) 962-6215
(Washington, DC Metro Area)	(202) 260-6359
Pollution Prevention Information Clearinghouse	(202) 260-1023
Public Information Center	(202) 260-2080
RCRA Information Center	(703) 603-9230 (see brochure)

EPA Regional Offices

Region 1 (CT, ME, MA, NH, RI, VT)	JFK Federal Building Boston, MA 02203-0001 (617) 565-3420
Region 2 (NJ, NY, PR, VI)	290 Broadway New York, NY 10007-1866 (212) 637-3000
Region 3 (DE, DC, MD, PA, VA, WV)	841 Chestnut Building Philadelphia, PA 19107 (215) 597-9800
Region 4 (AL, FL, GA, KY, MS, NC, SC, TN)	345 Courtland St., NE Atlanta, GA 30365 (404) 347-4727
Region 5 (IL, IN, MI, MN, OH, WI)	77 West Jackson Blvd. Chicago, IL 60604-3507 (312) 353-2000
Region 6 (AR, LA, NM, OK, TX)	Fountain Place 12th Fl., Suite 1200 1445 Ross Avenue Dallas, TX 75702-2733 (214) 665-6444
Region 7 (IA, KS, MO, NE)	726 Minnesota Avenue Kansas City, KS 66101 (913) 551-7000

Region 8
(CO, MT, ND, SD, UT, WY)

999 18th Street, Suite 500
Denver, CO 80202-2466
(303) 293-1603

Region 9
(AZ, CA, HI, NV, AS, GU)

75 Hawthorne St.
San Francisco, CA 94105
(415) 744-1305

Region 10
(AK, ID, OR, WA)

1200 Sixth Avenue
Seattle, WA 98101
(206) 553-1200

APPENDIX B -- LIST OF STATE RCRA CONTACTS

Alabama Department of Environmental Management
1751 Cong. Wm. L. Dickinson Drive
Montgomery, AL 36130
(205) 271-7730

Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 105
Juneau, AK 99801-1795
(907) 465-5150

For American Samoa, contact:
U.S. EPA Region 9
Hazardous Waste Management Division
75 Hawthorne Street
San Francisco, CA 98101
(415) 744-2098

Arizona Department of Environmental Quality
3303 N. Central Avenue
Phoenix, AZ 85012
(602) 207-4146

Arkansas Department of Pollution Control and Ecology
8001 National Drive
PO Box 8913
Little Rock, AR 72219-8913
(501) 562-7444

California Department of Toxic Substances Control
10151 Croydon Way, Suite 3
Sacramento, CA 95827
(916) 255-3618

Colorado Department of Health
4300 Cherry Creek Drive So.
HMWMD
Denver, CO 80222-1530
(303) 692-3300

Connecticut Department of Environmental Protection
State Office Building
165 Capitol Avenue
Hartford, CT 06106
(203) 566-4869

Delaware Department of Natural Resources and Environmental Control
PO Box 1401, 89 Kings Highway
Dover, DE 19903
(302) 739-3689

District of Columbia Department of Consumer and Regulatory Affairs
Environmental Regulation Administration
2100 Martin Luther King Jr. Ave., SE
Washington, DC 20020
(202) 404-1167

Florida Department of Environmental Regulation
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL 32399-2400
(904) 488-0300

Georgia Department of Natural Resources
1154 East Tower
205 Butler Street, SE
Atlanta, GA 30334
(404) 656-7802

Guam Environmental Protection Agency
Harmon Plaza, Complex Unit B-107
103 Orjas Street
Harmon, Guam 96911

Hawaii Department of Health
Five Waterfront Plaza, Suite 250
500 Ala Moana Boulevard
Honolulu, HI 96813

Idaho Department of Environmental Quality
1410 N. Hilton, Third Floor
Boise, ID 83706
(208) 334-5879

Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, IL 62706
(217) 785-8452

Indiana Department of Environmental Management
105 S. Meridian Street
PO Box 6015
Indianapolis, IN 46225

For Iowa, contact:
U.S. EPA Region 7
RCRA Branch
726 Minnesota Ave.
Kansas City, KS 66101
(913) 551-7646

Kansas Department of Health and Environment

Forbes Field, Building 740
Topeka, KS 66620
(913) 296-1600

Kentucky Department of Environmental Protection
Fort Boone Plaza, Building No. 2
14 Reilly Road
Frankfort, KY 40601
(502) 564-6716

Louisiana Department of Environmental Quality
PO Box 82178
Baton Rouge, LA 70884-2178
(504) 765-0332

Maine Department of Environmental Protection
State House Station #17
Augusta, ME 04333
(207) 289-2651

Maryland Department of the Environment
2500 Broening Highway
Baltimore, MD 21224
(410) 631-3343

Massachusetts Department of Environmental
Protection
One Winter Street, 5th Floor
Boston, MA 02108
(617) 292-5851

Michigan Department of Natural Resources
Box 30241
Lansing, MI 48909
(517) 373-2730

Minnesota Pollution Control Agency
520 Lafayette Road, North
St. Paul, MN 55155
(612) 297-8330

Mississippi Department of Environmental Quality
PO Box 10385
Jackson, MI 39289-0385
(601) 961-5171

Missouri Department of Natural Resources
Jefferson Building
205 Jefferson Street (13/14 Floor)
PO Box 176
Jefferson City, MO 65102
(314) 751-3176

Montana Department of Health and Environmental
Sciences

Cogswell Building
Helena, MT 59620
(406) 444-1430

Nebraska Department of Environmental Quality
State House Station
PO Box 98922
Lincoln, NE 68509-8922
(402) 471-2186

Nevada Division of Environmental Protection
333 West Lye Lane
Carson City, NV 89710
(702) 687-5872

New Hampshire Department of Health and Welfare
Health and Welfare Building
6 Hazen Drive
Concord, NH 03301
(603) 271-2900

New Jersey Department of Environmental Protection
120 South Stockton St.,CN-414
Trenton, NJ 08625
(609) 292-9880

New Mexico Environment Department
Harold Runnels Building
1190 St. Francis Drive
PO Box 26110
Santa Fe, NM 87502
(505) 827-2911

New York Department of Environmental
Conservation
PO Box 7252
Albany, NY 12233-7251
(518) 457-9257

North Carolina Department of Environment, Health,
and Natural Resources
PO Box 27687
Raleigh, NC 27611-7687
(919) 733-4996

North Dakota Department of Health and Consolidated
Laboratories
1200 Missouri Ave.
PO Box 5520
Bismarck, ND 58502-5520
(701) 221-5166

For Northern Mariana Islands, contact:
U.S. EPA Region 9
Hazardous Waste Management Division

75 Hawthorne Street
San Francisco, CA 94105
(415) 744-2098

Ohio Environmental Protection Agency
1800 Watermark Drive
Columbus, OH 43215
(614) 644-2977

Oklahoma Department of Environmental Quality
1000 Northeast 10th Street
Oklahoma City, OK 73117-1212
(405) 271-5338

Oregon Department of Environmental Quality
811 Southwest 6th Avenue
Portland, OR 97204
(503) 229-5356

Pennsylvania Department of Environmental
Resources
400 Market Street, 14th Floor
Harrisburg, PA 17105-8471
(717) 787-6239

For Puerto Rico, contact:
U.S. EPA Region 2
Air and Waste Management Division
26 Federal Plaza, Room 1037
New York, NY 10278
(212) 264-0504

Rhode Island Department of Environmental
Management
204 Canon Building, 75 Davis Street
Providence, RI 02908
(401) 277-2797

South Carolina Department of Health and
Environmental Control
2600 Bull Street
Columbia, SC 29201
(803) 734-4711

South Dakota Department of Environment and
Natural Resources
319 Coteau
c/o 500 E. Capital Avenue
Pierre, SD 57501-5070
(605) 773-3153

Tennessee Department of Public Health
401 Church St.
LNC Tower, 5th Floor
Nashville, TN 37243-1535
(615) 532-0780

Texas Natural Resources Conservation Commission
P.O. Box 13087, Capitol Station
Austin, TX 78711-3087
(512) 908-1000

Utah Department of Environmental Quality
PO Box 144880
Salt Lake City, UT 84114-4880
(801) 538-6170

Vermont Agency of Environmental Conservation
103 South Main Street
Waterbury, VT 05676
(802) 241-3888

For Virgin Islands, contact:
U.S. EPA Region 2
Air and Waste Management Division
26 Federal Plaza, Room 1037
New York, NY 10278
(212) 264-0504

Virginia Department of Waste Management
Monroe Building, 11th Floor
101 North 14th Street
Richmond, VA 23219
(804) 225-2863

Washington Department of Ecology
PO Box 47658
Olympia, WA 98504-7658
(206) 459-6316

West Virginia Department of Commerce, Labor, and
Environmental Protection
1356 Hansford Street
Charleston, WV 25301
(304) 558-5393

Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53707
(608) 266-1327

THE LEAGUE OF WOMEN VOTERS OF THE U.S.
1730 M STREET, NW
WASHINGTON, DC 20036-4587
202-429-1965 - FAX 202-429-0854

DATE: 04/30/96

DIRECTORY OF STATE LEAGUES

PAGE: 1

STATE

PRESIDENT'S NAME
OFFICE ADDRESS

ALABAMA

MS. SARAH M. MCDONALD
LWV OF ALABAMA
3357 CHEROKEE ROAD
BIRMINGHAM, AL 35223-1313
OFFICE PHONE: (205) 970-2389

ALASKA

MS. KAREN CRANE
LWV OF ALASKA
853 BASIN RD.
JUNEAU, AK 99801-1036

ARIZONA

JOYCE FORNEY
LWV OF ARIZONA
7239 EAST VISTA DRIVE
SCOTTSDALE, AZ 85250
OFFICE PHONE: (602) 423-5440

ARKANSAS

MS. BARBARA MARTIN
LWV OF ARKANSAS
THE EXECUTIVE BUILDING
2020 WEST THIRD #501
2506
LITTLE ROCK, AR 72205
OFFICE PHONE: (501) 376-7760

CALIFORNIA

FRAN PACKARD
LWV OF CALIFORNIA
926 J STREET, #1000
SACRAMENTO, CA 95814
OFFICE PHONE: (916) 442-7215

COLORADO

MARILYN SHUEY
LWV OF COLORADO
1410 GRANT ST. #204-B
DENVER, CO 80203
OFFICE PHONE: (303) 863-0437

STATE

PRESIDENT'S NAME
OFFICE ADDRESS

CONNECTICUT

MRS. ANITA L. SILBERBERG
LWV OF CONNECTICUT
1890 DIXWELL AVE., #113
HAMDEN, CT 06514-3183
OFFICE PHONE: (203) 288-7996

DELAWARE

CATHY DEBOVIS
LWV OF DELAWARE
1800 N. BROOM ST, RM 207
WILMINGTON, DE 19802-3809
OFFICE PHONE: (302) 571-8948

DIST. OF COLUMBIA

JULIA C. GRAVES
LWV OF DISTRICT OF COLUMBIA
2025 EYE ST NW #917
WASHINGTON, DC 20006
OFFICE PHONE: (202) 331-4122

FLORIDA

FAY P. LAW
LWV OF FLORIDA
540 BEVERLY CT.
TALLAHASSEE, FL 32301-
OFFICE PHONE: (904) 224-2545

GEORGIA

DR. MARTHA ANN SAUNDERS
LWV OF GEORGIA
1776 PEACHTREE ST NW, #233N
ATLANTA, GA 30309-2350
OFFICE PHONE: (404) 874-7352

HAWAII

MS. JACQUELINE KIDO
LWV OF HAWAII
49 SOUTH HOTEL ST. #314
HONOLULU, HI 96813
OFFICE PHONE: (808) 531-7448

THE LEAGUE OF WOMEN VOTERS OF THE U.S.
1730 M STREET, NW
WASHINGTON, DC 20036-4587
202-429-1965 - FAX 202-429-0854

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STATE

PRESIDENT'S NAME
OFFICE ADDRESS

IDAHO

MARY MCGOWN
LWV OF IDAHO
1824 N. 19TH ST.
BOISE, ID 83712

ILLINOIS

MS. SUZANNE B. CALDER
LWV OF ILLINOIS
332 SOUTH MICHIGAN AVE. #1142
CHICAGO, IL 60604-4301
OFFICE PHONE: (312) 939-5935

INDIANA

PAULETTE VANDEGRIF
LWV OF INDIANA
2346 S. LYNHURST DR., SUITE 303
INDIANAPOLIS, IN 46241
OFFICE PHONE: (317) 241-8683

IOWA

DR. JANICE A. BERAN
LWV OF IOWA

STATE

PRESIDENT'S NAME
OFFICE ADDRESS

LOUISIANA

ELIZABETH B. FRANKS
LWV OF LOUISIANA
850 NORTH 5TH ST. APT 103
BATON ROUGE, LA 70802-9980
OFFICE PHONE: (504) 344-3326

MAINE

SALLY W. BRYANT
LWV OF MAINE
335 WATER ST.
AUGUSTA, ME 04330
OFFICE PHONE: (207) 622-0256

MARYLAND

JOAN PAIK
LWV OF MARYLAND
200 DUKE OF GLOUCESTER ST
ANNAPOLIS, MD 21401
OFFICE PHONE: (410) 269-0232

MASSACHUSETTS

NANCY CARAPEZZA

THE LEAGUE OF WOMEN VOTERS OF THE U.S.
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OFFICE ADDRESS

MISSISSIPPI

JOAN JEBSON
LWV OF MISSISSIPPI
PO BOX 55505
JACKSON, MS 39296-5505
OFFICE PHONE: (601) 352-4616

NEW JERSEY

MS. KATHERINE BECKER
LWV OF NEW JERSEY
204 W. STATE STREET
TRENTON, NJ 08608
OFFICE PHONE: (609) 394-3303

MISSOURI

LINDA C. MCDANIEL
LWV OF MISSOURI
8706 MANCHESTER RD., SUITE 104
BRENTWOOD, MO 63144-2724
OFFICE PHONE: (314) 961-6869

NEW MEXICO

KATHLEEN TOLMAN
LWV OF NEW MEXICO
621 OLD SANTA FE TRAIL, #10
SANTA FE, NM 87501
OFFICE PHONE: (505) 982-9766

MONTANA

BARBARA SEEKINS
LWV OF MONTANA
401 BEN HOGAN DR.
MISSOULA, MT 59803-2416

NEW YORK

EVELYN STOCK
LWV OF NEW YORK
35 MAIDEN LA
ALBANY, NY 12207-2712
OFFICE PHONE: (518) 465-4162

NEBRASKA

ANDREA M. NELSON
LWV OF NEBRASKA
THE APOTHECARY
140 NORTH 8TH ST, #418
LINCOLN, NE 68508
OFFICE PHONE: (402) 475-1411

NORTH CAROLINA

BERNADETTE PARKER
LWV OF NORTH CAROLINA
505 OBERLIN RD, SUITE 100
RALEIGH, NC 27605
OFFICE PHONE: (919) 839-5532

NEVADA

MS. MARGARET QUINN
LWV OF NEVADA
6 SAVAGE CIRCLE
CARSON CITY, NV 89703

NORTH DAKOTA

MOLLY SPAIN
LWV OF NORTH DAKOTA
714 COTTONWOOD ST.
GRAND FORKS, ND 58201-4824
OFFICE PHONE: (701) 772-7940

NEW HAMPSHIRE

LILLIAN N. NELLIGAN
LWV OF NEW HAMPSHIRE
207 NORTH MAIN STREET #2
CONCORD, NH 03301-5048
OFFICE PHONE: (603) 225-5344

OHIO

MARY LOU JONES
LWV OF OHIO
17 SOUTH HIGH ST, SUITE 650
COLUMBUS, OH 43215-3413
OFFICE PHONE: (614) 469-1505

STATE

PRESIDENT'S NAME

STATE

PRESIDENT'S NAME

THE LEAGUE OF WOMEN VOTERS OF THE U.S.
1730 M STREET, NW
WASHINGTON, DC 20036-4587
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OFFICE ADDRESS

OFFICE ADDRESS

OKLAHOMA

CAROL WOODWARD
LWV OF OKLAHOMA
525 NW 13TH STREET
OKLAHOMA CITY, OK 73103
OFFICE PHONE: (405) 236-5338

TENNESSEE

MS. JUDY POULSON
LWV OF TENNESSEE
1701 21ST AVE., SOUTH #425
NASHVILLE, TN 37212-3797
OFFICE PHONE: (615) 297-7134

OREGON

MARY KRAHN
LWV OF OREGON
2659 COMMERCIAL ST. SE #220
SALEM, OR 97302-4450
OFFICE PHONE: (503) 581-5722

TEXAS

RUTHANN J. GEER
LWV OF TEXAS
1212 GUADALUPE, #107
AUSTIN, TX 78701-1800
OFFICE PHONE: (512) 472-1100

PENNSYLVANIA

MS. ELLEN GRILL
LWV OF PENNSYLVANIA
226 FORSTER ST.
HARRISBURG, PA 17102-3220
OFFICE PHONE: (717) 234-1576

UTAH

MS. NANCY L. COOPER
LWV OF UTAH
3804 HIGHLAND DR., SUITE 8D
SALT LAKE CITY, UT 84106-4209
OFFICE PHONE: (801) 272-8683

RHODE ISLAND

JOYCE MORGENTHALER
LWV OF RHODE ISLAND
PO BOX 28678
PROVIDENCE, RI 02908-0678
OFFICE PHONE: (401) 453-1111

VERMONT

MARY MACEWAN
LWV OF VERMONT
PO BOX 8314
ESSEX, VT 05451

SOUTH CAROLINA

MS. MARY ANN BURTT
LWV OF SOUTH CAROLINA
1314 LINCOLN ST. #212
COLUMBIA, SC 29201-3108
OFFICE PHONE: (803) 771-0063

VIRGIN ISLANDS

CLOVIS E. EMANUEL
LWV OF VIRGIN ISLANDS
PO BOX 638
ST THOMAS, VI 00804

SOUTH DAKOTA

MINA E. HALL
LWV OF SOUTH DAKOTA
601 S. LINCOLN AVE.
SIOUX FALLS, SD 57104-3830
OFFICE PHONE: (605) 334-7966

VIRGINIA

LULU K. MEESE
LWV OF VIRGINIA
27 STONERIDGE DRIVE
WAYNESBORO, VA 22980-9548
OFFICE PHONE: (540) 943-2766

STATE

PRESIDENT'S NAME
OFFICE ADDRESS

STATE

PRESIDENT'S NAME
OFFICE ADDRESS

THE LEAGUE OF WOMEN VOTERS OF THE U.S.
1730 M STREET, NW
WASHINGTON, DC 20036-4587
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DATE: 04/30/96

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WASHINGTON

KAREN E. VERRILL
LWV OF WASHINGTON
1411 4TH AVENUE #803
SEATTLE, WA 98101-2216
OFFICE PHONE: (206) 622-8961

WEST VIRGINIA

MS. HELEN GIBBONS
LWV OF WEST VIRGINIA
6128 GIDEON RD.
HUNTINGTON, WV 25705-2241

WISCONSIN

MS. MARY JO TIETGE
LWV OF WISCONSIN
122 STATE ST. SUITE 405
MADISON, WI 53703-2500
OFFICE PHONE: (608) 256-0827

WYOMING

ROSEMARY SHOCKLEY
LWV OF WYOMING
P.O. BOX 687
POWELL, WY 82435-0687

ENVIRONMENTAL JUSTICE PUBLIC PARTICIPATION CHECKLIST

1. Ensure that Agency's public participation policies are consistent with the requirements of the Freedom of Information Act, the Emergency Planning and Community Right to Know Act and the National Environmental Policy Act.
2. Obtain Senior Management Support to ensure that the Agency's policies and activities are modified to ensure early, effective and meaningful public participation, especially with regard to Environmental Justice stakeholders. Identify internal stakeholders and establish partnering relationships.
3. Use following Guiding Principles in setting up all public meetings:
 - Maintain honesty and integrity throughout the process.
 - Recognize community\indigenous knowledge.
 - Encourage active community participation.
 - Utilize cross-cultural formats and exchanges.
4. Identify external Environmental Justice stakeholders and provide opportunities to offer input into decisions that may impact their health, property values and lifestyles. Consider at a minimum individuals from the following organization as appropriate:

Environmental Organizations
Business and Trade Organizations
Civic / Public Interest Groups
Grassroots \ Community-based Organizations
Congress
Federal Agencies
Homeowner and Resident Organizations
International Organizations
Labor Unions
Local and State Government
Media \ Press
Indigenous People
Tribal Governments
Industry
White House
Religious Groups
Universities and Schools

5. Identify key individuals who can represent various stakeholder interests. Learn as much as

neutral turf. Ensure that facility meets American with Disabilities Act Statements for equal access. Provide assistance for hearing impaired individuals. Whenever practical and appropriate provide translators for limited-English speaking communities. Advertise the meeting and its proposed agenda in a timely manner in the print and electronic media. Provide a phone number and/or address for communities to find out about pending meetings, issues, enter concerns or to seek participation or alter meeting agenda.

Create an atmosphere of equal participation (avoid a "panel of experts" or "head table"). A two day meeting is suggested with the first day reserved for community planning and education. Organize meetings to provide an open exchange of ideas and enough time to consider issues of community concern. Consider the use of a neutral facilitator who is sensitive and trained in environmental justice issues. Ensure that minutes of the meetings are publically available. Develop a mechanism to provide communities with feedback after meetings occur on actions being considered.

14. Consider other vehicles to increase participation of Environmental Justice stakeholders including:

Posters and Exhibits

Participation in Civic and Community Activities

Public Database and Bulletin Boards

Surveys

Telephone Hotlines

Training and Education Programs, Workshops and Materials

19. Educate stakeholders about all aspects of environmental justice (functions, roles, jurisdiction, structure and enforcement).
20. Ensure that research projects identify environmental justice issues and needs in communities, and how to meet those needs through the responsible agencies.
21. Establish interagency working groups (at all levels) to address and coordinate issues of environmental justice.
22. Provide information to communities about the government's role as it pertains to short term and long term economic and environmental needs and health effects.
23. Train staff to support inter and intra agency coordination, and make them aware of the resources needed for such coordination.
25. Provide agency staff who are trained in cultural, linguistic and community outreach techniques.
26. Provide effective outreach, education and communications. Findings should be shared with community members with an emphasis on being sensitive and respectful to race, ethnicity, gender, language, and culture.
27. Design and implement education efforts tailored to specific communities and problems. Increase the involvement of ethnic caucuses, religious groups, the press, and legislative staff in resolution of Environmental Justice issues.
28. Assure active participation of affected communities in the decisionmaking process for outreach, education, training and communities programs -- including representation on advisory councils and review committees.
29. Encourage federal and state governments to "reinvent government" -- overhaul the bureaucratic in favor of community responsive.
30. Link environmental issues to local economic issues to increase level of interest.
31. Use local businesses for environmental cleanup or other related activities.
32. Utilize, as appropriate, historically Black Colleges and Universities (HBCU) and Minority

Institutes (MI), Hispanic Serving Colleges and Universities (HSCU) and Indian Centers to network and form community links that they can provide.

33. Utilize, as appropriate, local expertise for technical and science reviews.

34. Previous to conducting the first agency meeting, form an agenda with the assistance of community and agency representatives.

35. Provide "open microphone" format during meetings to allow community members to ask questions and identify issues from the community.

Bibliography:

"Interim report of the Federal Facilities Environmental Restoration Dialogue Committee,"
February 1993, Environmental Protection Agency and the Keystone Center

"Community Relations in Superfund: A Handbook," January 1992, Environmental Protection

**PART 25—PUBLIC PARTICIPATION
IN PROGRAMS UNDER THE RE-
SOURCE CONSERVATION AND
RECOVERY ACT, THE SAFE
DRINKING WATER ACT, AND THE
CLEAN WATER ACT**

Sec.

25.1 Introduction.

25.2 Scope.

25.3 Policy and objectives.

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§ 25.4 Information, notification, and consultation responsibilities.

(a) *General.* EPA, State, interstate, and substate agencies shall conduct a continuing program for public information and participation in the development and implementation of activities covered by this part. This program shall meet the following requirements:

(b) *Information and assistance requirements.*

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cies involved in activities supported by EPA financial assistance under any of the three Acts.

(b) *Role.* Primary responsibility for decision-making in environmental programs is vested by law in the elected and appointed officials who serve on public bodies and agencies at various levels of government. However, all segments of the public must have the opportunity to participate in environmental quality planning. Accordingly, where EPA identifies a need for continued attention of an informed core group of citizens in relationship to the planning process, the agency shall advise the public of such need and shall provide an opportunity for public participation in the planning process.

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identifying issues for the advisory group's consideration, consulting with the advisory group throughout the project, requesting the advisory group's recommendations prior to major decisions, transmitting advisory group recommendations to decision-making officials, and making written responses to any formal recommendation by the advisory group. The agency shall make any such written responses available to the public. To the maximum extent feasible, the assisted agency shall involve the advisory group in the development of the public participation program.

(3) The assisted agency shall identify professional and clerical staff time which the advisory group may depend upon for assistance, and provide the advisory group with an operating budget which may be used for technical assistance and other purposes agreed upon between the advisory group and the agency.

(4) The assisted agency shall establish a system to make costs of reasonable out-of-pocket expenses of advisory group participation available to group members. Time away from work need not be reimbursed; however, assisted agencies are encouraged to schedule meetings at times and places which will not require members to leave their jobs to attend.

(f) *Advisory group responsibilities and duties.* The advisory group may select its own chairperson, adopt its own rules of order, and schedule and conduct its own meetings. Advisory group meetings shall be announced well in advance and shall be open to the public. At all meetings, the advisory group shall provide opportunity for public comment. Any minutes of advisory group meetings and recommendations to the assisted agency shall be available to the public. The advisory group should monitor the progress of the project and become familiar with issues relevant to project development. In the event the assisted agency and the advisory group agree that the advisory group will assume public participation responsibilities, the group should undertake those responsibilities promptly. The advisory group should make written recommendations directly to the assisted agency and to responsible decision-making officials on major decisions (including approval of the public participation program) and respond to any requests from the agency or decision-making officials for recommendations. The advisory group should remain aware of community attitudes and responses to issues as they arise. As part of this effort, the advisory group may, within the limitations of available resources, conduct public participation activities in conjunction with the assisted agency; solicit outside advice; and establish, in conjunction with the assisted agency, subcommittees, ad hoc groups, or task forces to investigate and develop recommendations on particular issues

as they arise. The advisory group should undertake its responsibilities fully and promptly in accordance with the policies and requirements of this part. Nothing shall preclude the right of the advisory group from requesting EPA to perform an evaluation of the assisted agency's compliance with the requirements of this part.

(g) *Training and assistance.* EPA will promptly provide appropriate written guidance and project information to the newly formed advisory group and may provide advice and assistance to the group throughout the life of the project. EPA will develop and, in conjunction with the State or assisted agency, carry out a program to provide a training session for the advisory group, and appropriate assisted agency representatives, promptly after the advisory group is formed. The assisted agency shall provide additional needed information or assistance to the advisory group.

§ 25.8 Responsiveness summaries.

Each agency which conducts any activities required under this part shall prepare a Responsiveness Summary at specific decision points as specified in program regulations or in the approved public participation work plan. Responsiveness Summaries are also required for rulemaking activities under § 25.10. Each Responsiveness Summary shall identify the public participation activity conducted; describe the matters on which the public was consulted; summarize the public's views, significant comments, criticisms and suggestions; and set forth the agency's specific responses in terms of modifications of the proposed action or an explanation for rejection of proposals made by the public. Responsiveness Summaries prepared by agencies receiving EPA financial assistance shall also include evaluations by the agency of the effectiveness of the public participation program. Assisted agencies shall request such evaluations from any advisory group and provide an opportunity for other participating members of the public to contribute to the evaluation. (In the case of programs with multiple responsiveness summary requirements, these analyses need only be prepared and submitted with the final summary required.) Responsiveness summaries shall be forwarded to the appropriate decision-making official and shall be made available to the public. Responsiveness Summaries shall be used as part of evaluations required under this part or elsewhere in this chapter.

§ 25.9 Permit enforcement.

Each agency administering a permit program shall develop internal procedures for receiving evidence submitted by citizens about permit violations and ensuring that it is properly considered. Public effort in reporting violations shall be encouraged, and the agency shall make available in-

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formation on reporting procedures. The agency shall investigate alleged violations promptly.

§ 25.10 Rulemaking.

(a) EPA shall invite and consider written comments on proposed and interim regulations from any interested or affected persons and organizations. All such comments shall be part of the public record, and a copy of each comment shall be available for public inspection. EPA will maintain a docket of comments received and any Agency responses. Notices of proposed and interim rulemaking, as well as final rules and regulations, shall be distributed in accordance with § 25.4(c) to interested or affected persons promptly after publication. Each notice shall include information as to the availability of the full texts of rules and regulations (where these are not set forth in the notice itself) and places where copying facilities are available at reasonable cost to the public. Under Executive Order 12044 (March 23, 1978), further EPA guidance will be issued concerning public participation in EPA rulemaking. A Responsiveness Summary shall be published as part of the preamble to interim and final regulations. In addition to providing opportunity for written comments on proposed and interim regulations, EPA may choose to hold a public hearing.

(b) State rulemaking specified in § 25.2(a)(1) shall be in accord with the requirements of paragraph (a) of this section or with the State's administrative procedures act, if one exists. However, in the event of conflict between a provision of paragraph (a) of this section and a provision of a State's administrative procedures act, the State's law shall apply.

§ 25.11 Work elements in financial assistance agreements.

(a) This section is applicable to activities under § 25.2(a)(5) except as otherwise provided in parts 30 or 35.

(b) Each applicant for EPA financial assistance shall set forth in the application a public participation work plan or work element which reflects how public participation will be provided for, encouraged, and assisted in accordance with this part. This work plan or element shall cover the project period. At a minimum, the work plan or element shall include:

(1) Staff contacts and budget resources to be devoted to public participation by category;

(2) A proposed schedule for public participation activities to impact major decisions, including consultation points where responsiveness summaries will be prepared;

(3) An identification of consultation and information mechanisms to be used;

(4) The segments of the public targeted for involvement.

(c) All reasonable costs of public participation incurred by assisted agencies which are identified in an approved public participation work plan or element, or which are otherwise approved by EPA, shall be eligible for financial assistance.

(d) The work plan or element may be revised as necessary throughout the project period with approval of the Regional Administrator.

§ 25.12 Assuring compliance with public participation requirements.

(a) *Financial assistance programs*—(1) *Applications*. EPA shall review the public participation work plan (or, if no work plan is required by this chapter for the particular financial assistance agreement, the public participation element) included in the application to determine consistency with all policies and requirements of this part. No financial assistance shall be awarded unless EPA is satisfied that the public participation policies and requirements of this part and, any applicable public participation requirements found elsewhere in this chapter, will be met.

(2) *Compliance*—(i) *Evaluation*. EPA shall evaluate compliance with public participation requirements using the work plan, responsiveness summary, and other available information. EPA will judge the adequacy of the public participation effort in relation to the objectives and requirements of § 25.3 and § 25.4 and other applicable requirements. In conducting this evaluation, EPA may request additional information from the assisted agency, including records of hearings and meetings, and may invite public comment on the agency's performance. The evaluation will be undertaken as part of any mid-project review required in various programs under this chapter; where no such review is required the review shall be conducted at an approximate mid-point in continuing EPA oversight activity. EPA may, however, undertake such evaluation at any point in the project period, and will do so whenever it believes that an assisted agency may have failed to meet public participation requirements.

(ii) *Remedial actions*. Whenever EPA determines that an assisted agency has not fully met public participation requirements, EPA shall take actions which it deems appropriate to mitigate the adverse effects of the failure and assure that the failure is not repeated. For ongoing projects, that action shall include, at a minimum, imposing more stringent requirements on the assisted agency for the next budget period or other period of the project (including such actions as more specific output requirements and milestone schedules for output achievement; interim EPA review of public participation activities and materials prepared by

PART 124—PROCEDURES FOR DECISIONMAKING

Subpart A—General Program Requirements

- Sec.
- 124.1 Purpose and scope.
- 124.2 Definitions.
- 124.3 Application for a permit.
- 124.4 Consolidation of permit processing.
- 124.5 Modification, revocation and reissuance, or termination of permits.
- 124.6 Draft permits.
- 124.7 Statement of basis.
- 124.8 Fact sheet.
- 124.9 Administrative record for draft permits when EPA is the permitting authority.
- 124.10 Public notice of permit actions and public comment period.
- 124.11 Public comments and requests for public hearings.
- 124.12 Public hearings.
- 124.13 Obligation to raise issues and provide information during the public comment period.

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U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

SOURCE: 48 FR 14264, Apr. 1, 1983, unless otherwise noted.

Subpart A—General Program Requirements

§ 124.1 Purpose and scope.

(a) This part contains EPA procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA, UIC, PSD and NPDES “permits” (including “sludge-only” permits issued pursuant to § 122.1(b)(3)), other than RCRA and UIC “emergency permits” (see §§ 270.61 and 144.34) and RCRA “permits by rule” (§ 270.60). The latter kinds of permits are governed by part 270. RCRA interim status and UIC authorization by rule are not “permits” and are covered by specific provisions in parts 144, subpart C, and 270. This part also does not apply to permits issued, modified, revoked and reissued or terminated by the Corps of Engineers. Those procedures are specified in 33 CFR parts 320–327. The procedures of this part also apply to denial of a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29.

(b) Part 124 is organized into six subparts. Subpart A contains general procedural requirements applicable to all permit programs covered by these

regulations. Subparts B through F supplement these general provisions with requirements that apply to only one or more of the programs. Subpart A describes the steps EPA will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits. Subpart A also covers assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decision. Subpart B is reserved for specific procedural requirements for RCRA permits. There are none of these at present but they may be added in the future. Subpart C contains definitions and specific procedural requirements for PSD permits. Subpart D applies to NPDES permits until an evidentiary hearing begins, when subpart E procedures take over for EPA-issued NPDES permits and EPA-terminated RCRA permits. Subpart F, which is based on the “initial licensing” provisions of the Administrative Procedure Act (APA), can be used instead of subparts A through E in appropriate cases.

(c) Part 124 offers an opportunity for three kinds of hearings: A public hearing under subpart A, an evidentiary hearing under subpart E, and a panel hearing under subpart F. This chart describes when these hearings are available for each of the five permit programs.

HEARINGS AVAILABLE UNDER THIS PART

Programs	Subpart
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HEARINGS AVAILABLE UNDER THIS PART—Continued

Programs	Subpart		
	(A)	(E)	(F)
	Public hearing	Evidentiary hearing	Panel hearing
NPDES (general permit).	On draft permit, at Director's discretion or on request (§ 124.12).	Not available (§ 124.71(a))	At RA's discretion in lieu of public hearing (§ 124.111(a)(3)).
404	On draft permit or on application when no draft permit, at Director's discretion or on request (§ 124.12).	Not available (§ 124.71)	Not available (§ 124.111).

(d) This part is designed to allow permits for a given facility under two or more of the listed programs to be processed separately or together at the choice of the Regional Administrator. This allows EPA to combine the processing of permits only when appropriate, and not necessarily in all cases. The Regional Administrator may consolidate permit processing when the permit applications are submitted, when draft permits are prepared, or when final permit decisions are issued. This part also allows consolidated permits to be subject to a single public hearing under § 124.12, a single evidentiary hearing under § 124.75, or a single non-adversary panel hearing under § 124.120. Permit applicants may recommend whether or not their applications should be consolidated in any given case.

(e) Certain procedural requirements set forth in part 124 must be adopted by States in order to gain EPA approval to operate RCRA, UIC, NPDES, and 404 permit programs. These requirements are listed in §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA) and signaled by the following words at the end of the appropriate part 124 section or paragraph heading: (*applicable to State programs see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)*). Part 124 does not apply to PSD permits issued by an approved State.

(f) To coordinate decisionmaking when different permits will be issued by EPA and approved State programs, this part allows applications to be jointly processed, joint comment periods and hearings to be held, and final permits to be issued on a cooperative basis whenever EPA and a State agree to take such steps in general or in individual cases. These joint processing agreements may be provided in the Memorandum of Agreement developed under §§ 123.24 (NPDES), 145.24 (UIC), 233.24 (404), and 271.8 (RCRA).

[48 FR 14264, Apr. 1, 1983, as amended at 54 FR 9607, Mar. 7, 1989; 54 FR 18785, May 2, 1989]

§ 124.2 Definitions.

(a) In addition to the definitions given in §§ 122.2 and 123.2 (NPDES), 501.2 (sludge management), 144.3 and 145.2 (UIC), 233.3 (404), and 270.2 and 271.2 (RCRA), the definitions below apply to this part, except for PSD permits which are governed by the definitions in § 124.41. Terms not defined in this section have the meaning given by the appropriate Act.

Administrator means the Administrator of the U.S. Environmental Protection Agency, or an authorized representative.

Applicable standards and limitj T tal Prncy, or talt T* 0.36,64, e0.0-165(124.41. T*

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proved by the Director. The panel (to be appointed by the Director of the Office of Water Enforcement and Permits) will consist of Headquarters, Regional, and State personnel familiar with the industrial category in question.

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act of Federal Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217 and Public Law 95-576; 33 U.S.C. 1251 *et seq.*

Director means the Regional Administrator, the State director or the Tribal director as the context requires, or an authorized representative. When there is no approved State or Tribal program, and there is an EPA administered program, *Director* means the Regional Administrator. When there is an approved State or Tribal program, “Director” normally means the State or Tribal director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State or Tribal program. (For example, when EPA has issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval; see § 123.1) In such cases, the term “Director” means the Regional Administrator and not the State or Tribal director.

Draft permit means a document prepared under § 124.6 indicating the Director’s tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a “permit.” A notice of intent to terminate a permit and a notice of intent to deny a permit as discussed in § 124.5, are types of “draft permits.” A denial of a request for modification, revocation and reissuance or termination, as discussed in § 124.5, is not a “draft permit.” A “proposal permit” is not a “draft permit.”

Environmental Appeals Board shall mean the Board within the Agency described in § 1.25(e) of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in RCRA, PSD, UIC, or NPDES permit appeals filed under this subpart, including informal appeals of denials of requests for modification, revocation and reissuance, or termination of permits under Section 124.5(b). An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation does not preclude the Environmental Appeals Board from referring an appeal or a motion under this subpart to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and the rules in this subpart referring to the Environmental Appeals Board

shall be interpreted as referring to the Administrator.

EPA (“EPA”) means the United States “Environmental Protection Agency.”

Facility or activity means any “HWM facility,” UIC “injection well,” NPDES “point source” or “treatment works treating domestic sewage” or State 404 dredge or fill activity, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, NPDES, or 404 programs.

Federal Indian reservation (in the case of NPDES) means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

General permit (NPDES and 404) means an NPDES or 404 “permit” authorizing a category of discharges or activities under the CWA within a geographical area. For NPDES, a general permit means a permit issued under § 122.28. For 404, a general permit means a permit issued under § 233.37.

Indian Tribe means (in the case of UIC) any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over a defined area. For the NPDES program, the term “Indian Tribe” means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

Interstate agency means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the “appropriate Act and regulations.”

Major facility means any RCRA, UIC, NPDES, or 404 “facility or activity” classified as such by the Regional Administrator, or, in the case of “approved State programs,” the Regional Administrator in conjunction with the State Director.

NPDES means National Pollutant Discharge Elimination System.

Owner or operator means owner or operator of any “facility or activity” subject to regulation under the RCRA, UIC, NPDES, or 404 programs.

Permit means an authorization, license, or equivalent control document issued by EPA or an “approved State” to implement the requirements of this part and parts 122, 123, 144, 145, 233, 270, and 271. “Permit” includes RCRA “permit by rule” (§ 270.60), UIC area permit (§ 144.33), NPDES or 404 “general permit” (§§ 270.61, 144.34, and 233.38). Permit does not include

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RCRA interim status (§ 270.70), UIC authorization by rule (§ 144.21), or any permit which has not yet been the subject of final agency action, such as a “draft permit” or a “proposed permit.”

Person means an individual, association, partnership, corporation, municipality, State, Federal, or Tribal agency, or an agency or employee thereof.

RCRA means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580, as amended by Pub. L. 95–609, 42 U.S.C. 6901 *et seq.*)

Regional Administrator means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

Schedule of compliance means a schedule of remedial measures included in a “permit,” including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the “appropriate Act and regulations.”

SDWA means the Safe Drinking Water Act (Pub. L. 95–523, as amended by Pub. L. 95–1900; 42 U.S.C. 300f *et seq.*)

Section 404 program or State 404 program or 404 means an “approved State program” to regulate the “discharge of dredged material” and the “discharge of fill material” under section 404 of the Clean Water Act in “State regulated waters.”

Site means the land or water area where any “facility or activity” is physically located or conducted, including adjacent land used in connection with the facility or activity.

State means one of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (except in the case of RCRA), the Commonwealth of the Northern Mariana Islands, or an Indian Tribe that meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State (except in the case of RCRA).

State Director means the chief administrative officer of any State, interstate, or Tribal agency operating an approved program, or the delegated representative of the State director. If the responsibility is divided among two or more States, interstate, or Tribal agencies, “State Director” means the chief administrative officer of the State, interstate, or Tribal agency authorized to perform the particular procedure or function to which reference is made.

State Director means the chief administrative officer of any State or interstate agency operating an “approved program,” or the delegated representative of the state Director. If responsibility is

divided among two or more State or interstate agencies, “State Director” means the chief administrative officer of the State or interstate agency authorized to perform the particular procedure or function to which reference is made.

UIC means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an “approved program.”

Variance

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with the application requirements for that permit. See §§ 270.10, 270.13 (RCRA), 144.31 (UIC), 40 CFR 52.21 (PSD), and 122.21 (NPDES).

(3) Permit applications (except for PSD permits) must comply with the signature and certification requirements of §§ 122.22 (NPDES), 144.32 (UIC), 233.6 (404), and 270.11 (RCRA).

(b) [Reserved]

(c) The Regional Administrator shall review for completeness every application for an EPA-issued permit. Each application for an EPA-issued permit submitted by a new HWM facility, a new UIC injection well, a major PSD stationary source or major PSD modification, or an NPDES new source or NPDES new discharger should be reviewed for completeness by the Regional Administrator within 30 days of its receipt. Each application for an EPA-issued permit submitted by an existing HWM facility (both Parts A and B of the application), existing injection well or existing NPDES source or sludge-only facility should be reviewed for completeness within 60 days of receipt. Upon completing the review, the Regional Administrator shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Regional Administrator shall list the information necessary to make the application complete. When the application is for an existing HWM facility, an existing UIC injection well or an existing NPDES source or "sludge-only facility" the Regional Administrator shall specify in the notice of deficiency a date for submitting the necessary information. The Regional Administrator shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Regional Administrator may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provision including RCRA section 3008, SDWA sections 1423 and 1424, CAA section 167, and CWA sections 308, 309, 402(h), and 402(k).

(e) If the Regional Administrator decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and a date shall be scheduled.

(f) The effective date of an application is the date on which the Regional Administrator notifies the applicant that the application is complete as provided in paragraph (c) of this section.

(g) For each application from a major new HWM facility, major new UIC injection well, major NPDES new source, major NPDES new discharger, or a permit to be issued under provisions of § 122.28(c), the Regional Administrator shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. (This paragraph does not apply to PSD permits.) The schedule shall specify target dates by which the Regional Administrator intends to:

- (1) Prepare a draft permit;
- (2) Give public notice;
- (3) Complete the public comment period, including any public hearing;
- (4) Issue a final permit; and
- (5) In the case of an NPDES permit, complete any formal proceedings under subpart E or F.

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(1) The Director may consolidate permit processing at his or her discretion whenever a facility or activity requires all permits either from EPA or from an approved State.

(2) The Regional Administrator and the State Director(s) may agree to consolidate draft permits whenever a facility or activity requires permits from both EPA and an approved State.

(3) Permit applicants may recommend whether or not the processing of their applications should be consolidated.

(d) Whenever permit processing is consolidated and the Regional Administrator invokes the "initial licensing" provisions of subpart F for an NPDES, RCRA, or UIC permit, any permit(s) with which that NPDES, RCRA or UIC permit was consolidated shall likewise be processed under subpart F.

(e) Except with the written consent of the permit applicant, the Regional Administrator shall not consolidate processing a PSD permit with any other permit under paragraph (a) or (b) of this section or process a PSD permit under subpart F as provided in paragraph (d) of this section when to do so would delay issuance of the PSD permit more than one year from the effective date of the application under § 124.3(f).

§ 124.5 Modification, revocation and reissuance, or termination of permits.

(a) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* Permits (other than PSD permits) may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons

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shall be processed in accordance with all requirements of § 124.3.

(g)(1) (Reserved for PSD Modification Provisions).

(2) PSD permits may be terminated only by rescission under § 52.21(w) or by automatic expiration under § 52.21(r). Applications for rescission shall be processed under § 52.21(w) and are not subject to this part.

[48 FR 14264, Apr. 1, 1983, as amended at 53 FR 37934, Sept. 28, 1988; 54 FR 18785, May 2, 1989; 57 FR 60129, Dec. 18, 1992]

§ 124.6 Draft permits.

(a) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).*) Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit (except in the case of State section 404 permits for which no draft permit is required under § 233.39) or to deny the application.

(b) 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 prepared under this section. See § 124.6(e). If the Director's final decision (§ 124.15) is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (d) of this section.

(c) (*Applicable to State programs, see §§ 123.25 (NPDES) and 233.26 (404).*) If the Director tentatively decides to issue an NPDES or 404 general

§ 124.10

public interest or raises major issues. 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.

(b) The fact sheet shall include, when applicable:

(1) A brief description of the type of facility or activity which is the subject of the draft permit;

(2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

(3) For a PSD permit, the degree of increment consumption expected to result from operation of the facility or activity.

(4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9 (for EPA-issued permits);

(5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(6) A description of the procedures for reaching a final decision on the draft permit including:

(i) The beginning and ending dates of the comment period under § 124.10 and the address where comments will be received;

(ii) Procedures for requesting a hearing and the nature of that hearing; and

(iii) Any other procedures by which the public may participate in the final decision.

(7) Name and telephone number of a person to contact for additional information.

(8) For NPDES permits, provisions satisfying the requirements of § 124.56.

[48 FR 14264, Apr. 1, 1983, as amended at 54 FR 18786, May 2, 1989]

§ 124.9 Administrative record for draft permits when EPA is the permitting authority.

(a) The provisions of a draft permit prepared by EPA under § 124.6 shall be based on the administrative record defined in this section.

(b) For preparing a draft permit under § 124.6, the record shall consist of:

(1) The application, if required, and any supporting data furnished by the applicant;

(2) The draft permit or notice of intent to deny the application or to terminate the permit;

(3) The statement of basis (§ 124.7) or fact sheet (§ 124.8);

(4) All documents cited in the statement of basis or fact sheet; and

(5) Other documents contained in the supporting file for the draft permit.

(6) For NPDES new source draft permits only, any environmental assessment, environmental impact statement (EIS), finding of no significant impact, or environmental information document and any supplement to an EIS that may have been prepared. NPDES permits other than permits to new sources as well as all RCRA, UIC and PSD permits are not subject to the environmental impact statement provisions of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4321.

(c) Material readily available at the issuing Regional Office or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this section, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.

(d) This section applies to all draft permits when public notice was given after the effective date of these regulations.

§ 124.10 Public notice of permit actions and public comment period.

(a) *Scope.* (1) The Director shall give public notice that the following actions have occurred:

(i) A permit application has been tentatively denied under § 124.6(b);

(ii) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).*) A draft permit has been prepared under § 124.6(d);

(iii) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404) and 271.14 (RCRA).*) A hearing has been scheduled under § 124.12, subpart E or subpart F;

(iv) An appeal has been granted under § 124.19(c);

(v) (*Applicable to State programs, see § 233.26 (404).*) A State section 404 application has been received in cases when no draft permit will be prepared (see § 233.39); or

(vi) An NPDES new source determination has been made under § 122.29.

(2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under § 124.5(b). Written notice of that denial shall be given to the requester and to the permittee.

(3) Public notices may describe more than one permit or permit actions.

(b) *Timing (applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* (1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under

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paragraph (a) of this section shall allow at least 30 days for public comment. For RCRA permits only, public notice shall allow at least 45 days for public comment. For EPA-issued permits, if the Regional Administrator determines under 40 CFR part 6, subpart F that an Environmental Impact Statement (EIS) shall be prepared for an NPDES new source, public notice of the draft permit shall not be given until after a draft EIS is issued.

(2) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

(c) *Methods (applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* Public notice of activities described in paragraph (a)(1) of this section shall be given by the following methods:

(1) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits);

(i) The applicant (except for NPDES and 404 general permits when there is no applicant);

(ii) Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), NPDES, 404, sludge management permit, or ocean dumping permit under the Marine Research Protection and Sanctuaries Act for the same facility or activity (including EPA when the draft permit is prepared by the State);

(iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected States (Indian Tribes). (For purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States.)

(iv) For NPDES and 404 permits only, any State agency responsible for plan development under CWA section 208(b)(2), 208(b)(4) or 303(e) and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

(v) For NPDES permits only, any user identified in the permit application of a privately owned treatment works;

(vi) For 404 permits only, any reasonably ascertainable owner of property adjacent to the regulated facility or activity and the Regional Director of the Federal Aviation Administration if the discharge involves the construction of structures which may affect aircraft operations or for purposes associated with seaplane operations;

(vii) For PSD permits only, affected State and local air pollution control agencies, the chief executives of the city and county where the major stationary source or major modification would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the regulated activity;

(viii) For Class I injection well UIC permits only, state and local oil and gas regulatory agencies and state agencies regulating mineral exploration and recovery;

(ix) Persons on a mailing list developed by:

(A) Including those who request in writing to be on the list;

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public notices issued under this part shall contain the following minimum information:

- (i) Name and address of the office processing the permit action for which notice is being given;
- (ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of NPDES and 404 draft general permits under §§ 122.28 and 233.37;
- (iii) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for NPDES or 404 general permits when there is no application.
- (iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application; and
- (v) A brief description of the comment procedures required by §§ 124.11 and 124.12 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been sched-

§ 124.12

§ 124.12 Public hearings.

(a) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* (1) 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(s);

(2) The Director may also hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision;

(3) For RCRA permits only, (i) the Director shall hold a public hearing whenever he or she re-

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(2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of § 124.14(a) shall apply.

(3) On his own motion or on the request of any person, the Regional Administrator may direct that the requirements of paragraph (a)(1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (a)(1) of this section will substantially expedite the decisionmaking process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they shall be granted under § 124.10 to the extent they appear necessary.

(b) If any data information or arguments submitted during the public comment period, including information or arguments required under § 124.13, appear to raise substantial new questions concerning a permit, the Regional Administrator may take one or more of the following actions:

(1) Prepare a new draft permit, appropriately modified, under § 124.6;

(2) Prepare a revised statement of basis under § 124.7, a fact sheet or revised fact sheet under § 124.8 and reopen the comment period under § 124.14; or

(3) Reopen or extend the comment period under § 124.10 to give interested persons an opportunity to comment on the information or arguments submitted.

(c) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under § 124.10 shall define the scope of the reopening.

(d) For RCRA, UIC, or NPDES permits, the Regional Administrator may also, in the circumstances described above, elect to hold further proceedings under subpart F. This decision may be combined with any of the actions enumerated in paragraph (b) of this section.

(e) Public notice of any of the above actions shall be issued under § 124.10.

[48 FR 14264, Apr. 1, 1983, as amended at 49 FR 38051, Sept. 26, 1984]

§ 124.15 Issuance and effective date of permit.

(a) After the close of the public comment period under § 124.10 on a draft permit, the Regional Administrator shall issue a final permit decision (or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or

unit under § 270.29). 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, or PSD permit or for contesting a decision on an NPDES permit or a decision to terminate a RCRA permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(b) A final permit decision (or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29) shall become effective 30 days after the service of notice of the decision unless:

(1) A later effective date is specified in the decision; or

(2) Review is requested under § 124.19 (RCRA, UIC, and PSD permits) or an evidentiary hearing is requested under § 124.74 (NPDES permit and RCRA permit terminations); or

(3) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

[48 FR 14264, Apr. 1, 1983, as amended at 54 FR 9607, Mar. 7, 1989]

§ 124.16 Stays of contested permit conditions.

(a) *Stays.* (1) If a request for review of a RCRA or UIC permit under § 124.19 or an NPDES permit under § 124.74 or § 124.114 is granted or if conditions of a RCRA or UIC permit are consolidated for reconsideration in an evidentiary hearing on an NPDES permit under §§ 124.74, 124.82 or 124.114, the effect of the contested permit condi-

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or a decision to
a RCRA

§ 124.17

been appealed to the Administrator and he or she has accepted each appeal.

(2) No stay of an EPA-issued RCRA, UIC, or NPDES permit shall be granted based on the staying of any State-issued permit except at the discretion of the Regional Administrator and only upon written request from the State Director.

(c) Any facility or activity holding an existing permit must:

(1) Comply with the conditions of that permit during any modification or revocation and reissuance proceeding under § 124.5; and

(2) To the extent conditions of any new permit are stayed under this section, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed.

§ 124.17 Response to comments.

(a) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).*) At the time that any final permit decision is issued under § 124.15, the Director shall issue a response to comments. States are only required to issue a response to comments when a final permit is issued. This response shall:

(1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(2) Briefly describe and respond to all significant comments on the draft permit or the permit application (for section 404 permits only) raised during the public comment period, or during any hearing.

(b) For EPA-issued permits, any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in § 124.18. If new points are raised or new material supplied during the public comment period, EPA may document its response to those matters by adding new materials to the administrative record.

(c) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).*) The response to comments shall be available to the public.

§ 124.18 Administrative record for final permit when EPA is the permitting authority.

(a) The Regional Administrator shall base final permit decisions under § 124.15 on the administrative record defined in this section.

(b) The administrative record for any final permit shall consist of the administrative record for the draft permit and:

(1) All comments received during the public comment period provided under § 124.10 (including any extension or reopening under § 124.14);

(2) The tape or transcript of any hearing(s) held under § 124.12;

(3) Any written materials submitted at such a hearing;

(4) The response to comments required by § 124.17 and any new material placed in the record under that section;

(5) For NPDES new source permits only, final environmental impact statement and any supplement to the final EIS;

(6) Other documents contained in the supporting file for the permit; and

(7) The final permit.

(c) The additional documents required under paragraph (b) of this section should be added to the record as soon as possible after their receipt or publication by the Agency. The record shall be complete on the date the final permit is issued.

(d) This section applies to all final RCRA, UIC, PSD, and NPDES permits when the draft permit was subject to the administrative record requirements of § 124.9 and to all NPDES permits when the draft permit was included in a public notice after October 12, 1979.

(e) Material readily available at the issuing Regional Office, or published materials which are generally available and which are included in the administrative record under the standards of this section or of § 124.17 (“Response to comments”), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments.

§ 124.19 Appeal of RCRA, UIC, and PSD permits.

(a) Within 30 days after a RCRA, UIC, or PSD final permit decision (or a decision under § 270.29 to deny a permit for the active life of a RCRA hazardous waste management facility or unit) has been issued under § 124.15, any person who filed comments on that draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. The 30-day period within which a person may request review under this section begins with the service of notice of the Regional Administrator’s action unless a later date is specified in that notice. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public

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Subpart C—Specific Procedures Applicable to PSD Permits

§ 124.41 Definitions applicable to PSD permits.

Whenever PSD permits are processed under this part, the following terms shall have the following meanings:

Administrator, EPA, and Regional Administrator shall have the meanings set forth in § 124.2, except when EPA has delegated authority to administer those regulations to another agency under the applicable subsection of 40 CFR 52.21, the term *EPA* shall mean the delegate agency and the term *Regional Administrator* shall mean the chief administrative officer of the delegate agency.

Application means an application for a PSD permit.

Appropriate Act and Regulations means the Clean Air Act and applicable regulations promulgated under it.

Approved program means a State implementation plan providing for issuance of PSD permits which has been approved by EPA under the Clean Air Act and 40 CFR part 51. An *approved State* is one administering an *approved program*. *State Director* as used in § 124.4 means the person(s) responsible for issuing PSD permits under an approved program, or that person's delegated representative.

Construction has the meaning given in 40 CFR 52.21.

Director means the Regional Administrator.

Draft permit shall have the meaning set forth in § 124.2.

Facility or activity means a *major PSD stationary source or major PSD modification*.

Federal Land Manager has the meaning given in 40 CFR 52.21.

Indian Governing Body has the meaning given in 40 CFR 52.21.

Major PSD modification means a *major modification* as defined in 40 CFR 52.21.

Major PSD stationary source means a *major stationary source* as defined in 40 CFR 52.21(b)(1).

Owner or operator means the owner or operator of any facility or activity subject to regulation under 40 CFR 52.21 or by an approved State.

Permit or PSD permit means a permit issued under 40 CFR 52.21 or by an approved State.

Person includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent or employee thereof.

Regulated activity or activity subject to regulation means a *major PSD stationary source* or *major PSD modification*.

Site means the land or water area upon which a *major PSD stationary source* or *major PSD modification* is physically located or conducted, including but not limited to adjacent land used for utility systems; as repair, storage, shipping or processing areas; or otherwise in connection with the *major PSD stationary source* or *major PSD modification*.

State means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

§ 124.42 Additional procedures for PSD permits affecting Class I areas.

(a) The Regional Administrator shall provide notice of any permit application for a proposed major PSD stationary source or major PSD modification the emissions from which would affect a Class I area to the Federal Land Manager, and the Federal official charged with direct responsibility for management of any lands within such area. The Regional Administrator shall provide such notice promptly after receiving the application.

(b) Any demonstration which the Federal Land Manager wishes to present under 40 CFR 52.21(q)(3), and any variances sought by an owner or operator under § 52.21(q)(4) shall be submitted in writing, together with any necessary supporting analysis, by the end of the public comment period under § 124.10 or § 124.118. (40 CFR 52.21(q)(3) provides for denial of a PSD permit to a facility

§ 124.53

Subpart D—Specific Procedures Applicable to NPDES Permits

§ 124.51 Purpose and scope.

(a) This subpart sets forth additional requirements and procedures for decisionmaking for the NPDES program.

(b) Decisions on NPDES variance requests ordinarily will be made during the permit issuance process. Variances and other changes in permit conditions ordinarily will be decided through the same notice-and-comment and hearing procedures as the basic permit.

(c) As stated in 40 CFR 131.4, an Indian Tribe that meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State for purposes of the Water Quality Standards program is likewise qualified for such treatment for purposes of State certification of water quality standards pursuant to section 401(a)(1) of the Act and subpart D of this part.

[48 FR 14264, Apr. 1, 1983, as amended at 58 FR 67983, Dec. 22, 1993; 59 FR 64343, Dec. 14, 1994]

§ 124.52 Permits required on a case-by-case basis.

(a) Various sections of part 122, subpart B allow the Director to determine, on a case-by-case basis, that certain concentrated animal feeding operations (§ 122.23), concentrated aquatic animal production facilities (§ 122.24), storm water discharges (§ 122.26), and certain other facilities covered by general permits (§ 122.28) that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(b) Whenever the Regional Administrator decides that an individual permit is required under this section, except as provided in paragraph (c) of this section, the Regional Administrator shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit under § 122.21 within 60 days of notice, unless permission for a later date is granted by the Regional Administrator. The question whether the designation was proper will remain open for consideration during the public comment period under § 124.11 or § 124.118 and in any subsequent hearing.

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section (*see* 40 CFR 122.26 (a)(1)(v), (c)(1)(v), and (g)(1)(i)), the Regional Administrator may require the discharger to submit a permit application or other information regarding the discharge under section 308 of the

CWA. In requiring such information, the Regional Administrator shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under 40 CFR 122.26 (a)(1)(v) and (c)(1)(v) within 60 days of notice or under 40 CFR 122.26(g)(1)(i) within 180 days of notice, unless permission for a later date is granted by the Regional Administrator. The question whether the initial designation was proper will remain open for consideration during the public comment period under § 124.11 or § 124.118 and in any subsequent hearing.

[55 FR 48075, Nov. 16, 1990, as amended at 60 FR 17957, Apr. 7, 1995; 60 FR 19464, Apr. 18, 1995; 60 FR 40235, Aug. 7, 1995]

§ 124.53 State certification.

(a) Under CWA section 401(a)(1), EPA may not issue a permit until a certification is granted or waived in accordance with that section by the State in which the discharge originates or will originate.

(b) Applications received without a State certification shall be forwarded by the Regional Administrator to the certifying State agency with a re-

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more stringent condition, the certifying State agency shall cite the CWA or State law references upon which that condition is based. Failure to provide such a citation waives the right to certify with respect to that condition; and

(3) A statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of State law, including water quality standards. Failure to provide this statement for any condition waives the right to certify or object to any less stringent condition which may be established during the EPA permit issuance process.

§ 124.54 Special provisions for State certification and concurrence on applications for section 301(h) variances.

(a) When an application for a permit incorporating a variance request under CWA section 301(h) is submitted to a State, the appropriate State official shall either:

(1) Deny the request for the CWA section 301(h) variance (and so notify the applicant and EPA) and, if the State is an approved NPDES State and the permit is due for reissuance, process the permit application under normal procedures; or

(2) Forward a certification meeting the requirements of § 124.53 to the Regional Administrator.

(b) When EPA issues a tentative decision on the request for a variance under CWA section 301(h), and no certification has been received under paragraph (a) of this section, the Regional Administrator shall forward the tentative decision to the State in accordance with § 124.53(b) specifying a reasonable time for State certification and concurrence. If the State fails to deny or grant certification and concurrence under paragraph (a) of this section within such reasonable time, certification shall be waived and the State shall be deemed to have concurred in the issuance of a CWA section 301(h) variance.

(c) Any certification provided by a State under paragraph (a)(2) of this section shall constitute the State's concurrence (as required by section 301(h)) in the issuance of the permit incorporating a section 301(h) variance subject to any conditions specified therein by the State. CWA section 301(h) certification and concurrence under this section will not be forwarded to the State by EPA for recertification after the permit issuance process; States must specify any conditions required by State law, including water quality standards, in the initial certification.

§ 124.55 Effect of State certification.

(a) When certification is required under CWA section 401(a)(1) no final permit shall be issued:

(1) If certification is denied, or

(2) Unless the final permit incorporates the requirements specified in the certification under § 124.53(d)(1) and (2).

(b) If there is a change in the State law or regulation upon which a certification is based, or if a court of competent jurisdiction or appropriate State board or agency stays, vacates, or remands a certification, a State which has issued a certification under § 124.53 may issue a modified certification or notice of waiver and forward it to EPA. If the modified certification is received before final agency action on the permit, the permit shall be consistent with the more stringent conditions which are based upon State law identified in such certification. If the certification or notice of waiver is received after final agency action on the permit, the Regional Administrator may modify the permit on request of the permittee only to the extent necessary to delete any conditions based on a condition in a certification invalidated by a court of competent jurisdiction or by an appropriate State board or agency.

(c) A State may not condition or deny a certification on the grounds that State law allows a less stringent permit condition. The Regional Administrator shall disregard any such certification conditions, and shall consider those conditions or denials as waivers of certification.

(d) A condition in a draft permit may be changed during agency review in any manner consistent with a certification meeting the requirements of § 124.53(d). No such changes shall require EPA to submit the permit to the State for recertification.

(e) Review and appeals of limitations and conditions attributable to State certification shall be made through the applicable procedures of the State and may not be made through the procedures in this part.

(f) Nothing in this section shall affect EPA's obligation to comply with § 122.47. See CWA section 301(b)(1)(C).

§ 124.56 Fact sheets.

(Applicable to State programs, see § 123.25 (NPDES).) In addition to meeting the requirements of § 124.8, NPDES fact sheets shall contain the following:

(a) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal as required by § 122.44 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

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(b)(1) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

(i) Limitations to control toxic pollutants under § 122.44(e);

(ii) Limitations on internal waste streams under § 122.45(i); or

(iii) Limitations on indicator pollutants under § 125.3(g).

(iv) Limitations set on a case-by-case basis under § 125.3 (c)(2) or (c)(3), or pursuant to Section 405(d)(4) of the CWA.

(2) For every permit to be issued to a treatment works owned by a person other than a State or municipality, an explanation of the Director's decision on regulation of users under § 122.44(m).

(c) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application; and

(d) For EPA-issued NPDES permits, the requirements of any State certification under § 124.53.

(e) For permits that include a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix), a brief description of how each of the required elements of the land application plan are addressed in the permit.

[48 FR 14264, Apr. 1, 1983, as amended at 49 FR 38051, Sept. 26, 1984; 54 FR 18786, May 2, 1989]

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mit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this part. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the NPDES permit for the duration of that stay.

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the Administrator's decision on the appeal if the denial is affirmed, or shall be stayed, in accordance with this section, if the Administrator reverses the denial and grants the evidentiary hearing.

(6) Uncontested conditions shall include:

(i) Preliminary design and engineering studies or other requirements necessary to achieve the final permit conditions which do not entail substantial expenditures;

(ii) Permit conditions which will have to be met regardless of which party prevails at the evidentiary hearing;

(iii) When the discharger proposed a less stringent level of treatment than that contained in the final permit, any permit conditions appropriate to meet the levels proposed by the discharger, if the measures required to attain that less stringent level of treatment are consistent with the measures required to attain the limits proposed by any other party; and

(iv) Construction activities, such as segregation of waste streams or installation of equipment, which would partially meet the final permit conditions and could also be used to achieve the discharger's proposed alternative conditions.

(7) If for any offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig which has never received a finally effective permit to discharge at a "site," but which is not a "new discharger" or a "new source," the Regional Administrator finds that compliance with certain permit conditions may be necessary to avoid irreparable environmental harm during the administrative review, he may specify in the statement of basis or fact sheet that those conditions, even if contested, shall remain enforceable obligations of the discharger during administrative review unless otherwise modified by the Presiding Officer under paragraph (a)(2) of this section.

(d) If at any time after a hearing is granted and after the Regional Administrator's notice under paragraph (c)(1) of this section it becomes clear that a permit requirement is no longer contested, any party may request the Presiding Officer to issue an order identifying the requirements as uncontested. The requirement identified in such order shall become enforceable 30 days after the issuance of the order.

(e) When a formal hearing is granted under § 124.75 on an application for a renewal of an existing permit, all provisions of the existing permit as well as uncontested provisions of the new permit, shall continue fully enforceable and effective until final agency action under § 124.91. (See § 122.6) Upon written request from the applicant, the Regional Administrator may delete requirements from the existing permit which unneces-

sarily duplicate uncontested provisions of the new permit.

(f) When issuing a finally effective NPDES permit the conditions of which were the subject of a formal hearing under subpart E or F, the Regional Administrator shall extend the permit compliance schedule to the extent required by a stay under this section provided that no such extension shall be granted which would:

(1) Result in the violation of an applicable statutory deadline; or

(2) Cause the permit to expire more than 5 years after issuance under § 124.15(a).

NOTE: Extensions of compliance schedules under § 124.60(f)(2) will not automatically be granted for a period equal to the period the stay is in effect for an effluent limitation. For example, if both the Agency and the discharger agree that a certain treatment technology is required by the CWA where guidelines do not apply, but a hearing is granted to consider the effluent limitations which the technology will achieve, requirements regarding installation of the underlying technology will not be stayed during the hearing. Thus, unless the hearing extends beyond the final compliance date in the permit, it will not ordinarily be necessary to extend the compliance schedule. However, when application of an underlying technology is challenged, the stay for installation requirements relating to that technology would extend for the duration of the hearing.

(g) For purposes of judicial review under CWA section 509(b), final agency action on a permit does not occur unless and until a party has exhausted its administrative remedies under subparts E and F and § 124.91. Any party which neglects or fails to seek review under § 124.91 thereby waives its opportunity to exhaust available agency remedies.

(Clean Water Act (33 U.S.C. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*))

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(2) After consultation with the Regional Administrator, extensions under CWA section 301(k) based on the use of innovative technology; or

(3) Variances under CWA section 316(a) for thermal pollution.

(b) The State Director may deny, or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

(1) A variance based on the economic capability of the applicant under CWA section 301(c); or

(2) A variance based on water quality related effluent limitations under CWA section 302(b)(2).

(c) The Regional Administrator may deny, forward, or submit to the EPA Office Director for Water Enforcement and Permits with a recommendation for approval, a request for a variance listed in paragraph (b) of this section that is forwarded by the State Director, or that is submitted to the Regional Administrator by the requester where EPA is the permitting authority.

(d) The EPA Office Director for Water Enforcement and Permits may approve or deny any variance request submitted under paragraph (c) of this section. If the Office Director approves the variance, the Director may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under § 124.64.

(e) The State Director may deny or forward to the Administrator (or his delegate) with a written concurrence a completed request for:

(1) A variance based on the presence of “fundamentally different factors” from those on which an effluent limitations guideline was based;

(2) A variance based upon certain water quality factors under CWA section 301(g).

(f) The Administrator (or his delegate) may grant or deny a request for a variance listed in paragraph (e) of this section that is forwarded by the State Director, or that is submitted to EPA by the requester where EPA is the permitting authority. If the Administrator (or his delegate) approves the variance, the State Director or Regional Administrator may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under § 124.64.

[48 FR 14264, Apr. 1, 1983; 50 FR 6941, Feb. 19, 1985, as amended at 51 FR 16030, Apr. 30, 1986; 54 FR 256, 258, Jan. 4, 1989]

§ 124.63 Procedures for variances when EPA is the permitting authority.

(a) In States where EPA is the permit issuing authority and a request for a variance is filed as required by § 122.21, the request shall be processed as follows:

(1)(i) If, at the time, that a request for a variance based on the presence of fundamentally different factors or on section 301(g) of the CWA is submitted, the Regional Administrator has received an application under § 124.3 for issuance or renewal of that permit, but has not yet prepared a draft permit under § 124.6 covering the discharge in question, the Administrator (or his delegate) shall give notice of a tentative decision on the request at the time the notice of the draft permit is prepared as specified in § 124.10, unless this would significantly delay the processing of the permit. In that case the processing of the variance request may be separated from the permit in accordance with paragraph (a)(3) of this section, and the processing of the permit shall proceed without delay.

(ii) If, at the time, that a request for a variance under sections 301(c) or 302(b)(2) of the CWA is submitted, the Regional Administrator has received an application under § 124.3 for issuance or renewal of that permit, but has not yet prepared a draft permit under § 124.6 covering the discharge in question, the Regional Administrator, after obtaining any necessary concurrence of the EPA Deputy Assistant Administrator for Water Enforcement under § 124.62, shall give notice of a tentative decision on the request at the time the notice of the draft permit is prepared as specified in § 124.10, unless this would significantly delay the processing of the permit. In that case the processing of the variance request may be separated from the permit in accordance with paragraph (a)(3) of this section, and the processing of the permit shall proceed without delay.

(2) If, at the time that a request for a variance is filed the Regional Administrator has given notice under § 124.10 of a draft permit covering the discharge in question, but that permit has not yet become final, administrative proceedings concerning that permit may be stayed and the Regional Administrator shall prepare a new draft permit including a tentative decision on the request, and the fact sheet required by § 124.8. However, if this will significantly delay the processing of the existing draft permit or the Regional Administrator, for other reasons, considers combining the variance request and the existing draft permit inadvisable, the request may be separated from the permit in accordance with paragraph (a)(3) of this section, and the administrative disposition of the existing draft permit shall proceed without delay.

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(3) If the permit has become final and no application under § 124.3 concerning it is pending or if the variance request has been separated from a draft permit as described in paragraphs (a) (1) and (2) of this section, the Regional Administrator may prepare a new draft permit and give notice of it under § 124.10. This draft permit shall be accompanied by the fact sheet required by § 124.8 except that the only matters considered shall relate to the requested variance.

[48 FR 14264, Apr. 1, 1983, as amended at 51 FR 16030, Apr. 30, 1986]

§ 124.64 Appeals of variances.

(a) When a State issues a permit on which EPA has made a variance decision, separate appeals of the State permit and of the EPA variance decision are possible. If the owner or operator is challenging the same issues in both proceedings, the Regional Administrator will decide, in consultation with State officials, which case will be heard first.

(b) Variance decisions made by EPA may be appealed under either subpart E or F, provided the requirements of the applicable subpart are met. However, whenever the basic permit decision is eligible only for an evidentiary hearing under subpart E while the variance decision is eligible only for a panel hearing under subpart F, the issues relating to both the basic permit decision and the variance decision shall be considered in the subpart E proceeding. No subpart F hearing may be held if a subpart E hearing would be held in addition. See § 124.111(b).

(c) *Stays for section 301(g) variances.* If a request for an evidentiary hearing is granted on a variance requested under CWA section 301(g), or if a petition for review of the denial of a request for the hearing is filed under § 124.91, any otherwise applicable standards and limitations under CWA section 301 shall not be stayed unless:

(1) In the judgment of the Regional Administrator, the stay or the variance sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity, or synergistic propensities; and

(2) In the judgment of the Regional Administrator, there is a substantial likelihood that the discharger will succeed on the merits of its appeal; and

(3) The discharger files a bond or other appropriate security which is required by the Regional Administrator to assure timely compliance with the requirements from which a variance is sought in the event that the appeal is unsuccessful.

(d) Stays for variances other than section 301(g) are governed by § 124.60.

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Subpart E—Evidentiary Hearings for EPA-Issued NPDES Permits and EPA-Terminated RCRA Permits

§ 124.71 Applicability.

(a) The regulations in this subpart govern all formal hearings conducted by EPA under CWA sections 402 and 405(f), except those conducted under subpart F. They also govern all evidentiary hearings conducted under RCRA section 3008 in connection with the termination of a RCRA permit. This includes termination of interim status for failure to furnish information needed to make a final decision. A formal hearing is available to challenge any NPDES permit issued under § 124.15 except for a general permit. Persons affected by a general permit may not challenge the conditions of a general permit as of right in further agency proceedings. They may instead either challenge the general permit in court, or apply for an individual NPDES permit under § 122.21 as authorized in § 122.28 and then request a formal hearing on the issuance or denial of an individual permit. (The Regional Administrator also has the discretion to use the procedures of subpart F for general permits. See § 124.111).

(b) In certain cases, evidentiary hearings under this subpart may also be held on the conditions of UIC permits, or of RCRA permits which are being issued, modified, or revoked and reissued, rather than terminated or suspended. This will occur when the conditions of the UIC or RCRA permit in question are closely linked with the conditions of an NPDES permit as to which an evidentiary hearing has been granted. See § 124.74(b)(2). Any interested person may challenge the Regional Administrator's initial new source determination by requesting an evidentiary hearing under this part. See § 122.29.

(c) PSD permits may never be subject to an evidentiary hearing under this subpart. Section 124.74(b)(2)(iv) provides only for consolidation of PSD permits with other permits subject to a panel hearing under subpart F.

[48 FR 14264, Apr. 1, 1983, as amended at 54 FR 18786, May 2, 1989]

§ 124.72 Definitions.

For the purpose of this subpart, the following definitions are applicable:

Environmental Appeals Board shall mean the Board within the Agency described in § 1.25 of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in NPDES appeals filed under this subpart. An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will

not be considered. This delegation does not preclude the Environmental Appeals Board from referring an appeal or a motion to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and the rules in this subpart referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

Hearing Clerk means The Hearing Clerk, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Party means the EPA trial staff under § 124.78 and any person whose request for a hearing under § 124.74 or whose request to be admitted as a party or to intervene under § 124.79 or § 124.117 has been granted.

Presiding Officer for the purposes of this subpart means an Administrative Law Judge appointed under 5 U.S.C. 3105 and designated to preside at the hearing. Under subpart F other persons may also serve as hearing officers. See § 124.119.

Regional Hearing Clerk means an employee of the Agency designated by a Regional Administrator to establish a repository for all books, records, documents, and other materials relating to hearings under this subpart.

[48 FR 14264, Apr. 1, 1983, as amended at 57 FR 5335, Feb. 13, 1992]

§ 124.73 Filing and submission of documents.

(a) All submissions authorized or required to be filed with the Agency under this subpart shall be filed with the Regional Hearing Clerk, unless otherwise provided by regulation. Submissions shall be considered filed on the date on which they are mailed or delivered in person to the Regional Hearing Clerk.

(b) All submissions shall be signed by the person making the submission, or by an attorney or other authorized agent or representative.

(c)(1) All data and information referred to or in any way relied upon in any submission shall be included in full and may not be incorporated by reference, unless previously submitted as part of the administrative record in the same proceeding. This requirement does not apply to State or Federal statutes and regulations, judicial decisions published in a national reporter system, officially issued EPA documents of general applicability, and any other generally available reference material which may be incorporated by reference. Any party incorporating materials by reference shall provide copies upon request by the Regional Administrator or the Presiding Officer.

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(2) If any part of the material submitted is in a foreign language, it shall be accompanied by an English translation verified under oath to be complete and accurate, together with the name, address, and a brief statement of the qualifications of the person making the translation. Translations of literature or other material in a foreign language shall be accompanied by copies of the original publication.

(3) Where relevant data or information is contained in a document also containing irrelevant matter, either the irrelevant matter shall be deleted or the relevant portions shall be indicated.

(4) Failure to comply with the requirements of this section or any other requirement in this subpart may result in the noncomplying portions of the submission being excluded from consideration. If the Regional Administrator or the Presiding Officer, on motion by any party or *sua sponte*, determines that a submission fails to meet any requirement of this subpart, the Regional Administrator or Presiding Officer shall direct the Regional Hearing Clerk to return the submission, together with a reference to the applicable regulations. A party whose materials have been rejected has 14 days to correct the errors and resubmit, unless the Regional Administrator or the Presiding Officer finds good cause to allow a longer time.

(d) The filing of a submission shall not mean or imply that it in fact meets all applicable requirements or that it contains reasonable grounds for the action requested or that the action requested is in accordance with law.

(e) The original of all statements and documents containing factual material, data, or other information shall be signed in ink and shall state the name, address, and the representative capacity of the person making the submission.

§ 124.74 Requests for evidentiary hearing.

(a) Within 30 days following the service of notice of the Regional Administrator's final permit decision under § 124.15, any interested person may submit a request to the Regional Administrator under paragraph (b) of this section for an evidentiary hearing to reconsider or contest that decision. If such a request is submitted by a person other than the permittee, the person shall simultaneously serve a copy of the request on the permittee.

(b)(1) In accordance with § 124.76, such requests shall state each legal or factual question alleged to be at issue, and their relevance to the permit decision, together with a designation of the specific factual areas to be adjudicated and the hearing time estimated to be necessary for adjudication. Information supporting the request or other written documents relied upon to support the

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(5) Specific references to the contested permit conditions, as well as suggested revised or alternative permit conditions (including permit denials) which, in the judgment of the requester, would be required to implement the purposes and policies of the CWA.

(6) In the case of challenges to the application of control or treatment technologies identified in the statement of basis or fact sheet, identification of the basis for the objection, and the alternative technologies or combination of technologies which the requester believes are necessary to meet the requirements of the CWA.

(7) Identification of the permit obligations that are contested or are inseverable from contested conditions and should be stayed if the request is granted by reference to the particular contested conditions warranting the stay.

(8) Hearing requests also may ask that a formal hearing be held under the procedures set forth in subpart F. An applicant may make such a request even if the proceeding does not constitute "initial licensing" as defined in § 124.111.

(d) If the Regional Administrator grants an evidentiary hearing request, in whole or in part, the Regional Administrator shall identify the permit conditions which have been contested by the requester and for which the evidentiary hearing has been granted. Permit conditions which are not contested or for which the Regional Administrator has denied the hearing request shall not be affected by, or considered at, the evidentiary hearing. The Regional Administrator shall specify these conditions in writing in accordance with § 124.60(c).

(e) The Regional Administrator must grant or deny all requests for 1.125 5T h5 TD 0n-

denials

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for the introduction of data available on operation authorized under § 124.60(a)(2).

[49 FR 38051, Sept. 26, 1984]

§ 124.77 Notice of hearing.

Public notice of the grant of an evidentiary hearing regarding a permit shall be given as provided in § 124.57(b) and by mailing a copy to all persons who commented on the draft permit, testified at the public hearing, or submitted a request for a hearing. Before the issuance of the notice, the Regional Administrator shall designate the Agency trial staff and the members of the decisional body (as defined in § 124.78).

§ 124.78 Ex parte communications.

(a) For purposes of this section, the following definitions shall apply:

(1) *Agency trial staff* means those Agency employees, whether temporary or permanent, who have been designated by the Agency under § 124.77 or § 124.116 as available to investigate, litigate, and present the evidence, arguments, and position of the Agency in the evidentiary hearing or nonadversary panel hearing. Any EPA employee, consultant, or contractor who is called as a witness by EPA trial staff, or who assisted in the formulation of the draft permit which is the subject of the hearing, shall be designated as a member of the Agency trial staff;

(2) *Decisional body* means any Agency employee who is or may reasonably be expected to be involved in the decisional process of the proceeding including the Administrator, the members of the Environmental Appeals Board, the Presiding Officer, the Regional Administrator (if he or she does not designate himself or herself as a member of the Agency trial staff), and any of their staff participating in the decisional process. In the case of a nonadversary panel hearing, the decisional body shall also include the panel members, whether or not permanently employed by the Agency;

(3) *Ex parte communication* means any communication, written or oral, relating to the merits of the proceeding between the decisional body and an interested person outside the Agency or the Agency trial staff which was not originally filed or stated in the administrative record or in the hearing. *Ex parte* communications do not include:

(i) Communications between Agency employees other than between the Agency trial staff and the members of the decisional body;

(ii) Discussions between the decisional body and either:

(A) Interested persons outside the Agency, or

(B) The Agency trial staff, if all parties have received prior written notice of the proposed com-

munications and have been given the opportunity to be present and participate therein.

(4) *Interested person outside the Agency* includes the permit applicant, any person who filed written comments in the proceeding, any person who requested the hearing, any person who requested to participate or intervene in the hearing, any participant in the hearing and any other interested person not employed by the Agency at the time of the communications, and any attorney of record for those persons.

(b)(1) No interested person outside the Agency or member of the Agency trial staff shall make or knowingly cause to be made to any members of the decisional body, an *ex parte* communication on the merits of the proceedings.

(2) No member of the decisional body shall make or knowingly cause to be made to any interested person outside the Agency or member of the Agency trial staff, an *ex parte* communication on the merits of the proceedings.

(3) A member of the decisional body who receives or who makes or who knowingly causes to be made a communication prohibited by this subsection shall file with the Regional Hearing Clerk all written communications or memoranda stating the substance of all oral communications together with all written responses and memoranda stating the substance of all oral responses.

(c) Whenever any member of the decisionmaking body receives an *ex parte* communication knowingly made or knowingly caused to be made by a party or representative of a party in violation of this section, the person presiding at the stage of the hearing then in progress may, to the extent consistent with justice and the policy of the CWA, require the party to show cause why its claim or interest in the proceedings should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(d) The prohibitions of this section begin to apply upon issuance of the notice of the grant of a hearing under § 124.77 or § 124.116. This prohibition terminates at the date of final agency action.

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the proposed intervention. No factual or legal issues, besides those raised by timely hearing requests, may be proposed except for good cause. A motion for leave to intervene must also contain a verified statement showing good cause for the failure to file a timely request to be admitted as a party. The Presiding Officer shall grant the motion only upon an express finding on the record that:

- (1) Extraordinary circumstances justify granting the motion;
- (2) The intervener has consented to be bound by:
 - (i) Prior written agreements and stipulations by and between the existing parties; and
 - (ii) All orders previously entered in the proceedings; and
- (3) Intervention will not cause undue delay or prejudice the rights of the existing parties.

§ 124.80 Filing and service.

- (a) An original and one (1) copy of all written submissions relating to an evidentiary hearing filed after the notice is published shall be filed with the Regional Hearing Clerk.
- (b) The party filing any submission shall also serve a copy of each submission upon the Presiding Officer and each party of record. Service shall be by mail or personal delivery.
- (c) Every submission shall be accompanied by an acknowledgment of service by the person served or a certificate of service citing the date, place, time, and manner of service and the names of the persons served.
- (d) The Regional Hearing Clerk shall maintain and furnish a list containing the name, service address, and telephone number of all parties and their attorneys or duly authorized representatives to any person upon request.

(iii) Requests by any party for the production of additional documentation, data, or other information relevant and material to the facts in issue.

(6) Grouping participants with substantially similar interests to eliminate redundant evidence, motions, and objections.

(7) Such other matters that may expedite the hearing or aid in the disposition of the matter.

(d) At a prehearing conference or at some other reasonable time set by the Presiding Officer, each party shall make available to all other parties the names of the expert and other witnesses it expects to call. At its discretion or at the request of the Presiding Officer, a party may include a brief narrative summary of any witness's anticipated testimony. Copies of any written testimony, documents, papers, exhibits, or materials which a party expects to introduce into evidence, and the administrative record required by § 124.18 shall be marked for identification as ordered by the Presiding Officer. Witnesses, proposed written testimony, and other evidence may be added or amended upon order of the Presiding Officer for good cause shown. Agency employees and consultants shall be made available as witnesses by the Agency to the same extent that production of such witnesses is required of other parties under § 124.74(c)(4). (See also § 124.85(b)(16).)

(e) The Presiding Officer shall prepare a written prehearing order reciting the actions taken at each prehearing conference and setting forth the schedule for the hearing, unless a transcript has been taken and accurately reflects these matters. The order shall include a written statement of the areas of factual agreement and disagreement and of the methods and procedures to be used in developing the evidence and the respective duties of the parties in connection therewith. This order shall control the subsequent course of the hearing unless modified by the Presiding Officer for good cause shown.

§ 124.84 Summary determination.

(a) Any party to an evidentiary hearing may move with or without supporting affidavits and briefs for a summary determination in its favor upon any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. This motion shall be filed at

§ 124.85

den of going forward to present an affirmative case at the conclusion of the Agency case on the challenged requirement.

(b) The Presiding Officer shall conduct a fair and impartial hearing, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order. For these purposes, the Presiding Officer may:

- (1) Arrange and issue notice of the date, time, and place of hearings and conferences;
- (2) Establish the methods and procedures to be used in the development of the evidence;
- (3) Prepare, after considering the views of the participants, written statements of areas of factual disagreement among the participants;
- (4) Hold conferences to settle, simplify, determine, or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;
- (5) Administer oaths and affirmations;
- (6) Regulate the course of the hearing and govern the conduct of participants;
- (7) Examine witnesses;
- (8) Identify and refer issues for interlocutory decision under § 124.90;
- (9) Rule on, admit, exclude, or limit evidence;
- (10) Establish the time for filing motions, testimony, and other written evidence, briefs, findings, and other submissions;
- (11) Rule on motions and other procedural matters pending before him, including but not limited to motions for summary determination in accordance with § 124.84;
- (12) Order that the hearing be conducted in stages whenever the number of parties is large or the issues are numerous and complex;
- (13) Take any action not inconsistent with the provisions of this subpart for the maintenance of order at the hearing and for the expeditious, fair, and impartial conduct of the proceeding;
- (14) Provide for the testimony of opposing witnesses to be heard simultaneously or for such witnesses to meet outside the hearing to resolve or isolate issues or conflicts;
- (15) Order that trade secrets be treated as confidential business information in accordance with

of cross-examination, and other procedural matters shall appear in the record and shall control further proceedings, unless reversed as a result of an interlocutory appeal taken under § 124.90.

(6) All objections shall be made promptly or be deemed waived. Parties shall be presumed to have taken exception to an adverse ruling. No objection shall be deemed waived by further participation in the hearing.

(e) *Admission of evidence on environmental impacts.* If a hearing is granted under this subpart for a new source subject to NEPA, the Presiding Officer may admit evidence relevant to any environmental impacts of the permitted facility if the evidence would be relevant to the Agency's obligation under § 122.29(c)(3). If the source holds a final EPA-issued RCRA, PSD, or UIC permit, or an ocean dumping permit under the Marine Protection, Research, and Sanctuaries Act (MPRSA), no such evidence shall be admitted nor shall cross-examination be allowed relating to:

(1) Effects on air quality, (2) effects attributable to underground injection or hazardous waste management practices, or (3) effects of ocean dumping subject to the MPRSA, which were considered or could have been considered in the PSD, RCRA, UIC, or MPRSA permit issuance proceedings. However, the presiding officer may admit without cross-examination or any supporting witness relevant portions of the record of PSD, RCRA, UIC, or MPRSA permit issuance proceedings.

[48 FR 14264, Apr. 1, 1983, as amended at 49 FR 38052, Sept. 26, 1984]

§ 124.86 Motions.

(a) Any party may file a motion (including a motion to dismiss a particular claim on a contested issue) with the Presiding Officer on any matter relating to the proceeding. All motions shall be in writing and served as provided in § 124.80 except those made on the record during an oral hearing before the Presiding Officer.

(b) Within 10 days after service of any written motion, any part to the proceeding may file a response to the motion. The time for response may be shortened to 3 days or extended for an additional 10 days by the Presiding Officer for good cause shown.

(c) Notwithstanding § 122.4, any party may file with the Presiding Officer a motion seeking to apply to the permit any regulatory or statutory provision issued or made available after the issuance of the permit under § 124.15. The Presiding Officer shall grant any motion to apply a new statutory provision unless he or she finds it contrary to legislative intent. The Presiding Officer may grant a motion to apply a new regulatory requirement when appropriate to carry out the purpose of

CWA, and when no party would be unduly prejudiced thereby.

§ 124.87 Record of hearings.

(a) All orders issued by the Presiding Officer, transcripts of oral hearings or arguments, written statements of position, written direct and rebuttal testimony, and any other data, studies, reports, documentation, information and other written material of any kind submitted in the proceeding shall be a part of the hearing record and shall be available to the public except as provided in §§ 122.7 (NPDES) and 270.12 (RCRA), in the Office of the Regional Hearing Clerk, as soon as it is received in that office.

(b) Evidentiary hearings shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed. After the hearing, the reporter shall certify and file with the Regional Hearing Clerk:

- (1) The original of the transcript, and
- (2) The exhibits received or offered into evidence at the hearing.

(c) The Regional Hearing Clerk shall promptly notify each of the parties of the filing of the certified transcript of proceedings. Any party who desires a copy of the transcript of the hearing may obtain a copy of the hearing transcript from the Regional Hearing Clerk upon payment of costs.

(d) The Presiding Officer shall allow witnesses, parties, and their counsel an opportunity to submit such written proposed corrections of the transcript of any oral testimony taken at the hearing, pointing out errors that may have been made in transcribing the testimony, as are required to make the transcript conform to the testimony. Except in unusual cases, no more than 30 days shall be allowed for submitting such corrections from the day a complete transcript of the hearing becomes available.

§ 124.88 Proposed findings of fact and conclusions; brief.

Within 45 days after the certified transcript is filed, any party may file with the Regional Hearing Clerk proposed findings of fact and conclusions of law and a brief in support thereof. Briefs shall contain appropriate references to the record. A copy of these findings, conclusions, and brief shall be served upon all the other parties and the Presiding Officer. The Presiding Officer, for good cause shown, may extend the time for filing the proposed findings and conclusions and/or the brief. The Presiding Officer may allow reply briefs.

§ 124.89 Decisions.

(a) The Presiding Officer shall review and evaluate the record, including the proposed findings and conclusions, any briefs filed by the par-

§ 124.90

ties, and any interlocutory decisions under § 124.90 and shall issue and file his initial decision with the Regional Hearing Clerk. The Regional Hearing Clerk shall immediately serve copies of the initial decision upon all parties (or their counsel of record) and the Administrator.

(b) The initial decision of the Presiding Officer shall automatically become the final decision 30 days after its service unless within that time:

(1) A party files a petition for review by the Environmental Appeals Board pursuant to § 124.91; or

(2) The Environmental Appeals Board *sua sponte* files a notice that it will review the decision pursuant to § 124.91.

[48 FR 14264, Apr. 1, 1983, as amended at 57 FR 5336, Feb. 13, 1992]

§ 124.90 Interlocutory appeal.

(a) Except as provided in this section, appeals to the Environmental Appeals Board may be taken only under § 124.91. Appeals from orders or rulings may be taken under this section only if the Presiding Officer, upon motion of a party, certifies those orders or rulings to the Environmental Appeals Board for appeal on the record. Requests to the Presiding Officer for certification must be filed in writing within 10 days of service of notice of the order, ruling, or decision and shall state briefly the grounds relied on.

(b) The Presiding Officer may certify an order or ruling for appeal to the Environmental Appeals Board if:

(1) The order or ruling involves an important question on which there is substantial ground for difference of opinion, and

(2) *Either*: (i) An immediate appeal of the order or ruling will materially advance the ultimate completion of the proceeding; or

(ii) A review after the final order is issued will be inadequate or ineffective.

(c) If the Environmental Appeals Board decides that certification was improperly granted, it shall decline to hear the appeal. The Environmental Appeals Board shall accept or decline all interlocutory appeals within 30 days of their submission; if the Environmental Appeals Board takes no action within that time, the appeal shall be automatically dismissed. When the Presiding Officer declines to certify an order or ruling to the Environmental Appeals Board for an interlocutory appeal, it may be reviewed by the Environmental Appeals Board only upon appeal from the initial decision of the Presiding Officer, except when the Environmental Appeals Board determines, upon motion of a party and in exceptional circumstances, that to delay review would not be in the public interest. Such motion shall be made within 5 days after receipt of notification that the Presiding Officer has refused

to certify an order or ruling for interlocutory appeal to the Environmental Appeals Board. Ordinarily, the interlocutory appeal will be decided on the basis of the submissions made to the Presiding Officer. The Environmental Appeals Board may, however, allow briefs and oral argument.

(d) In exceptional circumstances, the Presiding Officer may stay the proceeding pending a decision by the Environmental Appeals Board upon an order or ruling certified by the Presiding Officer for an interlocutory appeal, or upon the denial of such certification by the Presiding Officer.

(e) The failure to request an interlocutory appeal shall not prevent taking exception to an order or ruling in an appeal under § 124.91.

[48 FR 14264, Apr. 1, 1983, as amended at 57 FR 5336, Feb. 13, 1992]

§ 124.91 Appeal to the Administrator.

(a)(1) Within 30 days after service of an initial decision, or a denial in whole or in part of a request for an evidentiary hearing, any party or requester, as the case may be, may appeal any matter set forth in the initial decision or denial, or any adverse order or ruling to which the party objected during the hearing, by filing with the Environmental Appeals Board notice of appeal and petition for review. The petition shall include a statement of the supporting reasons and, when appropriate, a showing that the initial decision contains:

(i) A finding of fact or conclusion of law which is clearly erroneous, or

(ii) An exercise of discretion or policy which is important and which the Environmental Appeals Board should review.

(2) Within 15 days after service of a petition for review under paragraph (c)(1) of this section, any other party to the proceeding may file a responsive petition.

(3) Policy decisions made or legal conclusions drawn in the course of denying a request for an evidentiary hearing may be reviewed and changed by the Environmental Appeals Board in an appeal under this section.

(b) Within 30 days of an initial decision or denial of a request for an evidentiary hearing, the Environmental Appeals Board may, *sua sponte*, review such decision. Within 7 days after the Environmental Appeals Board has decided under this section to review an initial decision or the denial of a request for an evidentiary hearing, notice of that decision shall be served by mail upon all affected parties and the Regional Administrator.

(c)(1) Within a reasonable time following the filing of the petition for review, the Environmental Appeals Board shall issue an order either granting or denying the petition for review. When the Environmental Appeals Board grants a petition for review or determines under paragraph (b) of this

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section to review a decision, the Environmental Appeals Board may notify the parties that only certain issues shall be briefed.

(2) Upon granting a petition for review, the Regional Hearing Clerk shall promptly forward a copy of the record to the Environmental Appeals Board and shall retain a complete duplicate copy of the record in the Regional Office.

(d) Notwithstanding the grant of a petition for review or a determination under paragraph (b) of this section to review a decision, the Environmental Appeals Board may summarily affirm without opinion an initial decision or the denial of a request for an evidentiary hearing.

(e) A petition to the Environmental Appeals Board under paragraph (a) of this section for review of any initial decision or the denial of an evidentiary hearing is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final decision of the Agency.

(f) If a party timely files a petition for review or if the Environmental Appeals Board *sua sponte* orders review, then, for purposes of judicial review, final Agency action on an issue occurs as follows:

(1) If the Environmental Appeals Board denies review or summarily affirms without opinion as provided in § 124.91(d), then the initial decision or denial becomes the final Agency action and occurs upon the service of notice of the Environmental Appeals Board's action.

(2) If the Environmental Appeals Board issues a decision without remanding the proceeding then the final permit, redrafted as required by the Environmental Appeals Board's original decision, shall be reissued and served upon all parties to the appeal.

(3) If the Environmental Appeals Board issues a decision remanding the proceeding, then final Agency action occurs upon completion of the remanded proceeding, including any appeals to the Environmental Appeals Board from the results of the remanded proceeding.

(g) The petitioner may file a brief in support of the petition within 21 days after the Environmental Appeals Board has granted a petition for review. Any other party may file a responsive brief within 21 days of service of the petitioner's brief. The petitioner then may file a reply brief within 14 days of service of the responsive brief. Any person may file an *amicus brief* for the consideration of the Environmental Appeals Board within the same time periods that govern reply briefs. If the Environmental Appeals Board determines, *sua sponte*, to review an initial Regional Administrator's decision or the denial of a request for an evidentiary hearing, the Environmental Appeals Board shall notify the parties of the schedule for filing briefs.

(h) Review by the Environmental Appeals Board of an initial decision or the denial of an evidentiary hearing shall be limited to the issues specified under paragraph (a) of this section, except that after notice to all the parties, the Environmental Appeals Board may raise and decide other matters which it considers material on the basis of the record.

(i) Motions to reconsider a final order shall be filed within ten (10) days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to § 124.72 and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless specifically so ordered by the Environmental Appeals Board.

[48 FR 14264, Apr. 1, 1983, as amended at 57 FR 5336, Feb. 13, 1992]

Subpart F—Non-Adversary Panel Procedures

§ 124.111 Applicability.

(a) Except as set forth in this subpart, this subpart applies in lieu of, and to complete exclusion of, subparts A through E in the following cases:

(1)(i) In any proceedings for the issuance of any NPDES permit under CWA sections 402 and 405(f) which constitute "initial licensing" under the Administrative Procedure Act, when the Regional Administrator elects to apply this subpart and explicitly so states in the public notice of the draft permit under § 124.10 or in a supplemental notice under § 124.14. If an NPDES draft permit is processed under this subpart, any other draft permits which have been consolidated with the NPDES draft permit under § 124.4 shall likewise be processed under this subpart, except for PSD permits when the Regional Administrator makes a finding under § 124.4(e) that consolidation would be likely to result in missing the one year statutory deadline for issuing a final PSD permit under the CAA.

(ii) "Initial licensing" includes both the first decision on an NPDES permit applied for by a discharger that has not previously held one and the first decision on any variance requested by a discharger.

(iii) To the extent this subpart is used to process a request for a variance under CWA section

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301(h), the term “Administrator or a person des-

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promptly publish a notice of the hearing as required under § 124.57(c). The mailed notice shall include a statement which indicates whether the Presiding Officer or the Regional Administrator will issue the Recommended decision. The mailed notice shall also allow the participants at least 30 days to submit written comments as provided under § 124.118.

(b) The Regional Administrator may also give notice of a hearing under this section at the same time as notice of a draft permit under § 124.113. In that case the comment periods under §§ 124.113 and 124.118 shall be merged and held as a single public comment period.

(c) The Regional Administrator may also give notice of hearing under this section in response to a hearing request under § 124.74 as provided in § 124.75.

§ 124.117 Request to participate in hearing.

(a) Persons desiring to participate in any hearing noticed under this section, shall file a request to participate with the Regional Hearing Clerk before the deadline set forth in the notice of the grant of the hearing. Any person filing such a request becomes a party to the proceedings within the meaning of the Administrative Procedure Act. The request shall include:

- (1) A brief statement of the interest of the person in the proceeding;
 - (2) A brief outline of the points to be addressed;
 - (3) An estimate of the time required; and
 - (4) The requirements of § 124.74(c)(1)–(5).
- (5) If the request is submitted by an organization, a nonbinding list of the persons to take part in the presentation.

(b) As soon as practicable, but in no event later than 2 weeks before the scheduled date of the hearing, the Presiding Officer shall make a hearing schedule available to the public and shall mail it to each person who requested to participate in the hearing.

§ 124.118 Submission of written comments on draft permit.

(a) No later than 30 days before the scheduled start of the hearing (or such other date as may be set forth in the notice of hearing), each party shall file all of its comments on the draft permit, based on information in the administrative record and any other information which is or reasonably could have been available to that party. All comments shall include any affidavits, studies, data, tests, or other materials relied upon for making any factual statements in the comments.

(b)(1) Written comments filed under paragraph (a) of this section shall constitute the bulk of the evidence submitted at the hearing. Oral statements

at the hearing should be brief and in the nature of argument. They shall be restricted either to points that could not have been made in written comments, or to emphasize points which are made in the comments, but which the party believes can more effectively be argued in the hearing context.

(2) Notwithstanding the foregoing, within two weeks prior to the deadline specified in paragraph (a) of this section for the filing of comments, any party may move to submit all or part of its comments orally at the hearing in lieu of submitting written comments and the Presiding Officer shall, within one week, grant such motion if the Presiding Officer finds that the party will be prejudiced if required to submit the comments in written form.

(c) Parties to any hearing may submit written material in response to the comments filed by other parties under paragraph (a) of this section at the time they appear at the panel stage of the hearing under § 124.120.

§ 124.119 Presiding Officer.

(a)(1)(i) Before giving notice of a hearing under this subpart in a proceeding involving an NPDES permit, the Regional Administrator shall request that the Chief Administrative Law Judge assign an Administrative Law Judge as the Presiding Officer. The Chief Administrative Law Judge shall then make the assignment.

(ii) If all parties to such a hearing waive in writing their statutory right to have an Administrative Law Judge named as the Presiding Officer in a hearing subject to this subparagraph the Regional Administrator may name a Presiding Officer under paragraph (a)(2)(ii) of this section.

(2) Before giving notice of a hearing under this subpart in a proceeding which does not involve an NPDES permit or a RCRA permit termination, the Regional Administrator shall either:

(i) Request that the Chief Administrative Law Judge assign an Administrative Law Judge as the Presiding Officer. The Chief Administrative Law Judge may thereupon make such an assignment if he concludes that the other duties of his office allow, or

(ii) Name a lawyer permanently or temporarily employed by the Agency and without prior connection with the proceeding to serve as Presiding Officer;

(iii) If the Chief Administrative Law Judge declines to name an Administrative Law Judge as Presiding Officer upon receiving a request under paragraph (a)(2)(i) of this section, the Regional Administrator shall name a Presiding Officer under paragraph (a)(2)(ii) of this section.

(b) It shall be the duty of the Presiding Officer to conduct a fair and impartial hearing. The Presiding Officer shall have the authority:

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(1) Conferred by § 124.85(b)(1)–(15), § 124.83 (b) and (c), and;

(2) To receive relevant evidence, provided that all comments under §§ 124.113 and 124.118, the record of the panel hearing under § 124.120, and the administrative record, as defined in § 124.9 or in § 124.18 as the case may be shall be received in evidence, and

(3) Either upon motion or *sua sponte*, to change the date of the hearing under § 124.120, or to recess such a hearing until a future date. In any such case the notice required by § 124.10 shall be given.

(c) Whenever a panel hearing will be held on an individual draft NPDES permit for a source which does not have an existing permit, the Presiding Officer, on motion by the source, may issue an order authorizing it to begin discharging if it complies with all conditions of the draft permit or such other conditions as may be imposed by the Presiding Officer in consultation with the panel. The motion shall be granted if no party opposes it, or if the source demonstrates that:

(1) It is likely to receive a permit to discharge at that site;

(2) The environment will not be irreparably harmed if the source is allowed to begin discharging in compliance with the conditions of the Presiding Officer's order pending final agency action; and

(3) Its discharge pending final agency action is in the public interest.

(d) If for any offshore or coastal mobile explor-

§ 124.122

terial fact. The motion shall be submitted to the Presiding Officer within 15 days after a full transcript of the panel hearing is filed with the Regional Hearing Clerk and shall specify:

(1) The disputed issue(s) of material fact. This shall include an explanation of why the questions at issue are factual, the extent to which they are in dispute in light of the then existing record, and the extent to which they are material to the decision on the application; and

(2) The person(s) to be cross-examined, and an estimate of the time necessary to conduct the cross-examination. This shall include a statement explaining how the cross-examination will resolve the disputed issues of material fact.

(b) After receipt of all motions for cross-examination under paragraph (a) of this section, the Presiding Officer, after consultation with the hearing panel, shall promptly issue an order either granting or denying each request. No cross-examination shall be allowed on questions of policy except to the extent required to disclose the factual basis for permit requirements, or on questions of law, or regarding matters (such as the validity of effluent limitations guidelines) that are not subject to challenge in permit issuance proceedings. Orders granting requests for cross-examination shall be served on all parties and shall specify:

(1) The issues on which cross-examination is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons allowed to conduct cross-examination;

(4) Time limits for the examination of witnesses by each cross-examiner; and

(5) The date, time, and place of the supplementary hearing at which cross-examination shall take place.

(6) In issuing this order, the Presiding Officer may determine that two or more parties have the same or similar interests and that to prevent unduly repetitious cross-examination, they should be required to choose a single representative for purposes of cross-examination. In that case, the order shall simply assign time for cross-examination without further identifying the representative. If the designated parties fail to choose a single representative, the Presiding Officer may divide the assigned time among the representatives or issue any other order which justice may require.

(c) [Reserved]

(d) The Presiding Officer and, to the extent possible, the members of the hearing panel shall be present at the supplementary hearing. During the course of the hearing, the Presiding Officer shall have authority to modify any order issued under paragraph (b) of this section. A record will be made under § 124.87.

(e)(1) No later than the time set for requesting cross-examination, a party may request that alternative methods of clarifying the record (such as the submission of additional written information) be used in lieu of or in addition to cross-examination. The Presiding Officer shall issue an order granting or denying this request at the time he or she issues (or would have issued) an order granting or denying a request for cross-examination, under paragraph (b) of this section. If the request for an alternative method is granted, the order shall specify the alternative and any other relevant information (such as the due date for submitting written information).

(2) In passing on any request for cross-examination submitted under paragraph (a) of this section, the Presiding Officer may, as a precondition to ruling on the merits of the request, require alternative means of clarifying the record to be used whether or not a request to do so has been made. The party requesting cross-examination shall have one week to comment on the results of using the alternative method. After considering these comments the Presiding Officer shall issue an order granting or denying the request for cross-examination.

(f) The provisions of §§ 124.85(d)(2) and 124.84(e) apply to proceedings under this subpart.

[48 FR 14264, Apr. 1, 1983, as amended at 49 FR 38052, Sept. 26, 1984]

§ 124.122 Record for final permit.

The record on which the final permit shall be based in any proceeding under this subpart consists of:

(a) The administrative record compiled under § 124.9 or § 124.18 as the case may be;

(b) Any material submitted under § 124.78 relating to *ex parte* contacts;

(c) All notices issued under § 124.113;

(d) All requests for hearings, and rulings on those requests, received or issued under § 124.114;

(e) Any notice of hearing issued under § 124.116;

(f) Any request to participate in the hearing received under § 124.117;

(g) All comments submitted under § 124.118, any motions made under that section and the rulings on them, and any comments filed under § 124.113;

(h) The full transcript and other material received into the record of the panel hearing under § 124.120;

(i) Any motions for, or rulings on, cross-examination filed or issued under § 124.121;

(j) Any motions for, orders for, and the results of, any alternatives to cross-examination under § 124.121; and

the Presiding Officer, as the case may be, may grant that party such relief of a procedural nature (including extension of any time for compliance or other action) as may be appropriate.

[57 FR 5337, Feb. 13, 1992]

APPENDIX A TO PART 124—GUIDE TO
DECISIONMAKING UNDER PART 124

This appendix is designed to assist in reading the procedural requirements set out in part 124. It consists of two flow charts.

Figure 1 diagrams the more conventional sequence of procedures EPA expects to follow in processing permits under this part. It outlines how a permit will be applied for, how a draft permit will be prepared and publicly noticed for comment, and how a final permit will be issued under the procedures in subpart A.

This permit may then be appealed to the Administrator, as specified both in subpart A (for RCRA, UIC, or PSD permits), or subpart E or F (for NPDES permits). The first flow chart also briefly outlines which permit decisions are eligible for which types of appeal.

Part 124 also contains special “non-adversary panel hearing” procedures based on the “initial licensing” provisions of the Administrative Procedure Act. These procedures are set forth in subpart F. In some cases, EPA may only decide to make those procedures applicable after it has gone through the normal subpart A procedures on a draft permit. This process is also diagrammed in Figure 1.

Figure 2 sets forth the general procedure to be followed where these subpart F procedures have been made applicable to a permit from the beginning.

Both flow charts outline a sequence of events directed by arrows. The boxes set forth elements of the permit process; and the diamonds indicate key decisionmaking points in the permit process.

The charts are discussed in more detail below.

Figure 1—Conventional EPA Permitting Procedures

This chart outlines the procedures for issuing permits whenever EPA does not make use of the special “panel hearing” procedures in subpart F. The major steps depicted on this chart are as follows:

1. The permit process can begin in any one of the following ways:
 - a. Normally, the process will begin when a person applies for a permit under §§ 122.21 (NPDES), 144.31 (UIC), 233.4 (404), and 270.10 (RCRA) and 124.3.
 - b. In other cases, EPA may decide to take action on its own initiative to change a permit or to issue a general permit. This leads directly to preparation of a draft permit under § 124.6.
 - c. In addition, the permittee or any interested person (other than for PSD permits) may request modification, revocation and reissuance or termination of a permit under §§ 122.62, 122.64 (NPDES), 144.39, 144.40 (UIC), 233.14, 233.15, (404), 270.41, 270.43 (RCRA), and 124.5.
 - i. EPA may tentatively decide to grant the request and issue a new draft permit for public comment, either with or without requiring a new application.
 - ii. If the request is denied, an informal appeal to the Environmental Appeals Board is available.

2. The next major step in the permit process is the preparation of a draft permit. As the chart indicates, preparing a draft permit also requires preparation of either a statement of basis (§ 124.7), a fact sheet (§ 124.5) or, compilation of an “administrative record” (§ 124.9), and public notice (§ 124.10).

3. The next stage is the public comment period (§ 124.11). A public hearing under § 124.12 may be requested before the close of the public comment period.

EPA has the discretion to hold a public hearing, even if there were no requests during the public comment period. If EPA decides to schedule one, the public comment period will be extended through the close of the hearing. EPA also has the discretion to conduct the public hearing under subpart F panel procedures. (See Figure 2.)

The regulations provide that all arguments and factual materials that a person wishes EPA to consider in connection with a particular permit must be placed in the record by the close of the public comment period (§ 124.13).

4. Section 124.14 states that EPA, at any time before issuing a final permit decision may decide to either reopen or extend the comment period, prepare a new draft permit and begin the process again from that point, or for RCRA and UIC permits, or for NPDES permits that constitute “initial licensing”, to begin “panel hearing” proceedings under subpart F. These various results are shown schematically.

5. The public comment period and any public hearing will be followed by issuance of a final permit decision (§ 124.15). As the chart shows, the final permit must be accompanied by a response to comments (§ 124.17) and be based on the administrative record (§ 124.18).

6. After the final permit is issued, it may be appealed to higher agency authority. The exact form of the appeal depends on the type of permit involved.

- a. RCRA, UIC, or PSD permits standing alone will be appealed directly to the Environmental Appeals Board under § 124.9.

- b. NPDES permits which do not involve “initial licensing” may be appealed in an evidentiary hearing under subpart E. The regulations provide (§ 124.74) that if such a hearing is granted for an NPDES permit and if RCRA or UIC permits have been consolidated with that permit under § 124.4 then closely related conditions of those RCRA or UIC permits may be reexamined in an evidentiary hearing. PSD permits, however, may never be reexamined in a subpart E hearing.

- c. NPDES permits which do involve “initial licensing” may be appealed in a panel hearing under subpart F. The regulations provide that if such a hearing is granted for an NPDES permit, consolidated RCRA, UIC, or PSD permits may also be reexamined in the same proceeding.

As discussed below, this is only one of several ways the panel hearing procedures may be used under these regulations.

7. This chart does not show EPA appeal procedures in detail. Procedures for appeal to the Environmental Appeals Board under § 124.19 are self-explanatory; subpart F procedures are diagrammed in Figure 2; and subpart E procedures are basically the same that would apply in any evidentiary hearing.

However, the chart at this stage does reflect the provisions of § 124.60(b), which allows EPA, even after a formal hearing has begun, to “recycle” a permit back to the draft permit stage at any time before that hearing has resulted in an initial decision.

Pt. 124, App. A

Figure 2—Non-Adversary Panel Procedures

This chart outlines the procedures for processing permits under the special “panel hearing” procedures of subpart F. These procedures were designed for making decisions that involve “initial licensing” NPDES permits. Those permits include the first decisions on an NPDES permit applied for by any discharger that has not previously held one, and the first decision on any statutory variance. In addition, these procedures will be used for any RCRA, UIC, or PSD permit which has been consolidated with such an NPDES permit, and may be used, if the Regional Administrator so chooses, for the issuance of individual RCRA or UIC permits. The steps depicted on this chart are as follows:

1. *Application for a permit.* These proceedings will generally begin with an application, since NPDES initial licensing always will begin with an application.

2. *Preparation of a draft permit.* This is identical to the similar step in Figure 1.

3. *Public comment period.* This again is identical to the similar step in Figure 1. The Regional Administrator has the opportunity to schedule an informal public hearing under § 124.12 during this period.

4. Requests for a panel hearing must be received by the end of the public comment period under § 124.113. The recommended decision may then be appealed to the Environmental Appeals Board. See § 124.115.

If a hearing request is denied, or if no hearing requests are received, a recommended decision will be issued

based on the comments received. The recommended decision may then be appealed to the Administrator. See § 124.115.

5. If a hearing is granted, notice of the hearing will be published in accordance with § 124.116 and will be followed by a second comment period during which requests to participate and the bulk of the remaining evidence for the final decision will be received (§§ 124.117 and 124.118).

The regulations also allow EPA to move directly to this stage by scheduling a hearing when the draft permit is prepared. In such cases the comment period on the draft permit under § 124.113 and the prehearing comment period under § 124.118 would occur at the same time. EPA anticipates that this will be the more frequent practice when permits are processed under panel procedures.

This is also a stage at which EPA can switch from the conventional procedures diagramed in Figure 1 to the panel hearing procedures. As the chart indicates, EPA would do this by scheduling a panel hearing either through use of the “recycle” provision in § 124.14 or in response to a request for a formal hearing under § 124.74.

6. After the close of the comment period, a panel hearing will be held under § 124.120, followed by any cross-examination granted under § 124.121. The recommended decision will then be prepared (§ 124.124) and an opportunity for appeal provided under § 124.125. A final decision will be issued after appeal proceedings, if any, are concluded.

Pt. 124, App. A

EC01MR92.017

Pt. 124, App. A

EC01MR92.018

Pt. 124, App. A

EC01MR92.019

[48 FR 14264, Apr. 1, 1983, as amended at 57 FR 5337, 5338, Feb. 13, 1992]

APPENDIX H -- EXAMPLES OF RCRA NOTICES

March 4, 1996 Washington Post (page B5)

Example of a public notice placed as a display advertisement

**INFORMAL PUBLIC MEETING
and FORMAL PUBLIC HEARING
on PROPOSED DISTRICT
DRINKING WATER ORDER**



- WHO:** The United States Environmental Protection Agency, Region III
- WHAT:** EPA will conduct both an informal public meeting and a formal public hearing to discuss the District of Columbia's drinking water supply.
- WHEN:** **Tuesday, April 9, 1996** Informal Public Meeting: 5-9 pm
Wednesday, April 17, 1996 Formal Public Hearing: 6:30-9 pm
- WHERE:** National Guard Association of the United States
"Hall of States" (first floor)
One Massachusetts Avenue, NW
Washington, DC 20001
- WHY:** On November 13, 1995, EPA issues a Proposed Administrative Order (PAO) to the water system of the District of Columbia for violations of section 1414(g) of the Safe Drinking Water Act [42 USC §3000-3(g)]. These sessions are authorized under 40 CFR §25.5, §25.6 and §142.205.
- The **meeting** will focus on concerns about drinking water produced by the US Army Corps of Engineers' Washington Aqueduct and distributed by the District of Columbia Water Systems. Representatives of the Washington Aqueduct and DC Drinking Water System will attend the meeting.
- The **hearing** is to determine if the PAO: correctly states the nature and extent of the District's SDWA violations, and if the PAO provides, where appropriate, a reasonable time for the District to comply with the SDWA and applicable rules. EPA will transcribe the hearing.
- HOW:** For further information and/or to obtain copies of the proposed Administrative Order, call Joyce Baker at 1-800-438-2474 or 215-597-2460. The PAO is also available for review at the Martin Luther King, Jr. Library, Southeast Branch, 403 7th Street, SE, Washington, DC 20003.

ROLLINS

ENVIRONMENTAL SERVICES (NJ) INC.

P.O. Box 337, Bridgeport, NJ 08014, 609/467-3100 General Offices, 609/467-3105 Sales Office

PUBLIC NOTICE OF HSWA PERMIT MODIFICATION REQUEST

Rollins Environmental Services (NJ) Inc. [RES(NJ)] submitted a request on January 25, 1996 to the U.S. Environmental Protection Agency (EPA) for modification of its Hazardous and Solid Waste Amendments of 1984 (HSWA) Permit. The facility, located in Logan Township, New Jersey includes hazardous waste storage, transfer and treatment units. In this modification request, RES(NJ) is seeking authorization to continue to receive sixty-four newly listed wastes designed as hazardous wastes by EPA on August 9, 1995.

The public is invited to submit written comments on this request to the following Agency contact through the 60-day period ending March 25, 1996:

Ms. Ellen Stein
U.S. Environmental Protection Agency
Air & Waste Management Division
290 Broadway, 22nd Floor
New York, NY 10007-1866
(212) 637-4114

The permittee's compliance history during the life of the permit being modified is available from the Agency contact person.

A copy of the permit modification request and supporting documentation may be viewed and copied at the following location:

Logan Township Municipal Building
73 Main Street
Bridgeport, New Jersey 08014

Please call Ms. Elizabeth Bullock, Township Clerk, at 467-3424 to schedule your visit to the Municipal Building.

RES(NJ) will hold a meeting open to the public on Tuesday, February 13, 1996 at 4:00 pm for the purpose of describing the request and to address comments on the request. The meeting will be held at the Bridgeport Holiday Inn at Exit 10 of Interstate 295.

The RES(NJ) contact person is:

Mr. Gerard V. Hartig
Rollins Environmental Services (NJ) Inc.
P.O. Box 337
Bridgeport, New Jersey 08014
(609) 467-3100

Annex 2

Correspondence dated January 26, 1995.

Leaflet distributed among residents of El Junquito inviting them to a community meeting to be held on January 31, 1995, to discuss environmental issues including the RCRA Permit Renewal Application. (A similar meeting was held at the request of Villa Humacao residents during December, 1994).

Annex 3

Copy of a January 25, 1995 newspaper article in Humacao's El Oriental, related to our application and inviting the Humacao community to request any desired information pertaining to the application maintained in the Public Library and the Plant.

Additionally, we advised the community of a meeting to be held at El Junquito and the planned EPA Public Meeting.

Annex 4

(Not included)

Annex 5

Copy of correspondence dated January 30, 1995. SMI requests WALO radio station to notify the Humacao community of the forthcoming January 31, 1995 meeting at El Junquito and the February 8, 1995 Public Meeting.

Annex 6

Copy of public notice published on February 1, 1995 in Humacao's El Oriental regarding EPA's February 8, 1995 Public Meeting.

Annex 7

Copy of a February 8, 1995 newspaper article published in Humacao's EL Oriental, related to our waste management activities and the particulars of the permit renewal process.

Annex 8

Copies of correspondence addressed to Humacao community leaders and government

SQUIBB MANUFACTURING, INC.

15 de enero de 1995

Estimados vecinos:

Squibb Manufacturing, Inc., en su compromiso con la comunidad de Humacao, desea por este medio informarles que ha radicado su solicitud de renovación de permiso como facilidad de manejo de desperdicios sólidos peligrosos ante la Agencia de Protección Ambiental Federal (EPA pos sus siglas en inglés).

Próximamente la EPA anunciara el día y el lugar donde se celebrara una reunión pública con el propósito de informar sobre la renovación de Squibb y las oportunidades que tiene el publico en general de revisar la solicitud de renovación de permiso y posteriormente someter sus comentarios de conformidad con la reglamentaciones federal. Copia de la solicitud de renovación ya está disponible para el público en la Biblioteca Municipal de Humacao, Puerto Rico (Te. 850-6446) y en nuestras facilidades en la Carretera #3 Km., 77.5 en Humacao.

Squibb invita a la comunidad en general a participar en el proceso y está en la mejor disposición de proveer cualquier información u orientación sobre este asunto, en cuyo caso pueden comunicarse con el Ing. Julio Ortiz-Torres, Gerente de Asuntos del Ambiente, al teléfono 850-6731.

Héctor J. Totti
Gerente General

Annex 1

Squibb Manufacturing, Inc.

P.O. Box 609 Humacao Puerto Rico 00792-0609
Tel. (809) 852-1255 Fax (809) 852-3800

25 de enero de 1995

Estimados vecinos:

Cordialmente los invitamos a nuestra próxima reunión de comunicación con la comunidad a llevarse a cabo martes, 31 de enero de 1995, comenzando a las 7:00 de la noche en el Centro de Reuniones del Comité de Seguridad Vecinal en Junquito. Esa noche compartiremos con ustedes información rep0uridad Viunadari 1pc910.3

En defensa del Incinerado

“Las facilidades para el manejo de los desperdicios peligrosos que opera Squibb Manufacturing Inc. en Humacao, complen con los estrictos controles reglamentarios e lay ley federal”, sostuvo el gerente general de esta planta, Héctor Totti, en un comunicado de prensá enviado a El Oriental.

Sobre las mencionadas (n84 0081t71(6(92228 Tc 3.94520.4 0 829Tj -644.16 -10ai0sp 3.be1Tw (y) Tn c3aTc 0 Tu8 Tc 2..085 44.perdi40.56 0 TD -0.0606 Tcdeaj 2.4 0 TD -0Bjedac 0 7i 171.12 0 T

el ejecutivo de la plana aseguró que fueron diseñadas y construídas, “y se operan y se mantienen”, en conformidad con las estrictas disposiciones reglamentarias que impone la Ley Federal de Desperdicios Peligrosos.

Totti descartó la percepción de que la operación es una nueva; señalando que

Agencia Federal de Protección Ambiental (EPA pos sus siglas en inglés). “Esta facilidad lleva operando desde los años 60”, puntualizó.

Según el ejecutivo, el único efecto que tendría la renovación del permiso sería el de permitirle a la Squibb continuar disponiendo en su planta de los desperdicios peligrosos que resultan

En diciembre pasado se realizó una de estes reuniones en la urbanización Villa Humacao y próximamente, según anunció, se estará realizando otra en al comunidad del Junquito.

“Además la EPA tiene programado una reunión sobre este asunto, para principios de febrero próximo, reveló.

Totti extendió una invitación a la

Squibb Manufacturing, Inc.

**GOVERNMENT OF PUERTO RICO/
OFFICE OF THE GOVERNOR
PUBLIC NOTICE**

U.S. ENVIRONMENTAL PROTECTION AGENCY
26 FEDERAL PLAZA- REGION II
NEW YORK, NEW YORK 10278

PUBLIC NOTICE: PN #:

DATE: JANUARY 27, 1995

EPA I.D. NUMBER: PRD090021056

NOTICE OF RECEIPT OF RCRA PART B PERMIT RENEWAL APPLICATION
AND HAZARDOUS WASTE INCINERATOR RISK ASSESSMENT REPORT

Notice is hereby given that the U.S. Environmental Protection Agency(EPA) Region II, is in receipt of the Resource

may have regarding the RCRA permit renewal application. This notice also provides the citizens interested in receiving relevant permitting information and future public notices on the draft and final permit determination an opportunity to be included in the facility or EPA's mailing list.

Finally, this notice also services the initial notification that Squibb may request a temporary emergency permit to treat hazardous waste in the existing non-permitted caloric 1 incinerator. If issued, the emergency permit would authorize

PUBLIC NOTICE

U.S. ENVIRONMENTAL PROTECTION AGENCY - REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278
DATE: January 27, 1995

PUBLIC NOTICE: PN # _____
EPA I.D. NUMBER: PRD090021056

NOTICE OF RECEIPT OF RCRA PART B PERMIT RENEWAL APPLICATION
AND HAZARDOUS WASTE INCINERATOR RISK ASSESSMENT REPORT

NOTICE IS HEREBY GIVEN THAT THE U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA) REGION II, IS IN RECEIPT OF THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) PART B PERMIT RENEWAL APPLICATION DATED SEPTEMBER 1, 1994, AND THE HAZARDOUS WASTE INCINERATOR RISK ASSESSMENT REPORT DATED OCTOBER 7, 1994, SUBMITTED BY:

THE SQUIBB MANUFACTURING INCORPORATED
STATE ROAD NO. 3, KM 77.5
P.O. BOX 609
HUMACAO, PUERTO RICO 00792
ATTENTION: MR. HECTOR J. TOTTI, VICE PRESIDENT

AVISO PUBLICO

AGENCIA DE PROTECCION AMBIENTAL DE LOS ESTADOS UNIDOS
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10275

EPA ID. NO. PRDO90021056

27 DE ENERO DE 1995

Por este medio, la Agencia de Protección Ambiental de los Estados Unidos (EPA, por sus siglas en inglés), Región II, da aviso de haber recibida la Solicitud de Renovación de Permiso Parte B de la Ley de Conservación y Recuperación de Recursos (RCRA) el día 1ro de septiembre de 1994, y el Reporte de Estudio de Riesgo de Incinerador de Desperdicios Peligrosos el día 7 de octubre de 1994, sometido por:

Squibb Manufacturing, Incorporated
Carr. Num. 3, Km. 77.5
P.O.Box 609
Humacao, Puerto Rico 00792
ATTN: Sr. Héctor J. Totti, Vice-Presidente

Squibb Manufacturing Incorporated ("Squibb") opera una facilidad que manufactura productos farmacéuticos, el cual produce drogas para consumo humano. La facilidad ha estado en operación desde 1970. Un permiso fue emitido a Squibb efectiva el 1 de marzo de 1990 por EPA bajo la autoridad de RCRA, (42 U.S.C. §6801 et seq.), según revisada por las Enmiendas a los Desperdicios Sólidos y Peligrosos de 1984 (HSWA, por sus siglas en inglés), para el manejo de seis (6) tanques de almacenaje de desperdicios peligrosos sobre el terreno, y la operación de dos (2) unidades de incinerador (el "TRANE" y "BRULE"). En la unidad "TRANE" lo es permitido incinerar desperdicios peligrosos, mientras en la unidad "BRULE" lo es permitido incinerar solo desperdicios ignitivos ("ignitables"). La unidad "BRULE" está programada para cerrarse en 1995. El permiso de RCRA actual expira el 1 de marzo de 1995.

Squibb ha solicitado renovar su permiso para el manejo de desperdicios peligrosos en la facilidad de Humacao. Bajo la solicitud de renovación de permiso RCRA, Squibb propone continuar con la operación del incinerador "TRANE" tratando desperdicios peligrosos. En adición, Squibb propone el tratar desperdicios peligrosos en el incinerador existente Caloric 1 y en el nuevo incinerador Caloric 2 el cual está actualmente en construcción.

Los tres incineradores de desperdicios peligrosos que están incluidos en la solicitud de renovación de permiso (TRANE, Caloric 1 y Caloric 2) quemará desperdicios peligrosos generados únicamente de la facilidad de Squibb. Con respecto al almacenaje de desperdicios peligrosos en el

HSW06cturing, despeAmbNE istTc x 609Los dis T*iermi64 \$.2 permip (LoginauesP Tchc -r(Squi995.38.1e renovación de pe15, Vice-Pre En adeacilipde Rsit1994,tr gena

Insisten en defensa del Incinerador

Por: Magaly Monserrate Cerpa

Varios ejecutivos de la Squibb Manufacturing, entre los que se encontraba el gerente general de la planta de Humacao, insistieron en la seguridad y confiabilidad de sus incineradores y reiteraron que la compañía cumple con los estrictos controles reglamentarios de la Ley Federal de Desperdicios Peligrosos, durante una entrevista realizada por este rotativo en sus facilidades.

En la reunión que se produjo por invitación de la Squibb, el gerente de Asuntos Ambientales, Ing. Julio

Rivera también descartó de plano el comentario de que

de Humacao los desperdicios de las plantas de Barceloneta y Mayaguez, para ser procesados en los incineradores de acá.

Sobre la interrogante más neurálgica relacionada con el nuevo incinerador, el impacto al ambiente ya la salud de los vecinos de la zona que tendrá esta nueva operación, aseguró que no se produciría aumento alguno en las emisiones.

e

solicitaron a la EPA la inclusión de este último

esta agencia se dilató en su respuesta. Esa es la razón, por la que actualmente cuando se tramita nuevamente la renovación del referido permiso (que por ley tiene que hacerse cada cuatro años) se aprovecha para solicitar nuevamente la inclusión de este incinerador y el nuevo Caloric-2. Por instrucciones de la EPA, en lugar de hacer dos documentos, ambas cosas se incluyen en uno.

Agregó que estos dos incineradores, el Caloric-1 y el

Squibb Manufacturing, Inc.

P.O. Box 609 Humacao Puerto Rico 0092-0609
Tel. (809) 852-1255 Fax (809) 852-3800

20 de enero de 1995

Hon. Joel Rosario Hernández
Representante
Cámara de Representantes
Apartado 2228
San Juan, PR 00902

Señor Representante:

Squibb, en su compromiso de mantener a la comunidad informada, por este medio le entregamos una copia de la solicitud de renovación de permiso para sus unidades de manejo de desperdicios líquidos peligrosos y del análisis de riesgo realizado como parte de la misma. Esta solicitud fue radicada ante la Agencia Federal de Protección Ambiental (por sus siglas en inglés "EPA") y Junta de Calidad ambiental ("JCA").

Squibb es una farmacéutica dedicada a la manufactura de productos para el consumo humano. Entre ellos se producen Mycolog, Corgard, Capoten, y Zerit- un producto para el tratamiento del SIDA. La planta ha estado en operación desde los años setenta. Esta consiste de varios edificios de producción, y facilidades de apoyo tales como laboratorios de control de calidad y de desarrollo e investigación, utilidades, área de recobro y reuso de solventes, área de tratamiento de aguas usadas, área de manejo de desperdicios líquidos peligrosos, y otras.

En los procesos de manufactura se utilizan compuestos orgánicos, incluyendo solventes, como es usual en este tipo de industria. Se generan residuos líquidos en los diferentes procesos de manufactura, los cuales son reciclados en nuestra planta de forma óptima para minimizar su impacto en el ambiente. Aquellos residuos que no son reutilizables se clasifican como desperdicios líquidos peligrosos para su disposición mediante incineración, la mejor tecnología para disponer de éstos. Los mismos consisten principalmente de una mezcla de agua (85% a 98%) y pequeñas cantidades de solventes.

Desde sus comienzos en la década de 1970, Squibb opera unidades de incineración dentro de sus predios para el manejo de estos desperdicios. Estas unidades han sido autorizadas por la EPA y la JCA. Respondiendo al desarrollo de la tecnología cada vez más avanzada, a través de los años Squibb ha mejorado los incineradores incorporando unidades más modernas.

En estos momentos, Squibb está renovando el permiso para sus unidades de manejo de desperdicios líquidos peligrosos. Estas incluyen tanques de almacenamiento e incineradores. Se incorporan dos modernos incineradores, que sustituirán uno que ya fue cerrado y otro programado para cierre durante este año.

Pruebas de eficiencia demuestran que estos nuevos incineradores cumplen tanto con toda la reglamentación aplicable como con políticas establecidas recientemente por la EPA para unidades de incineración.

Más aún, como parte del proceso se realizó un análisis de riesgo. Este establece que la operación de los incineradores, presumiendo condiciones de exposición extremas e improbables, no afecta la salud ni el ambiente del área.

En agosto de 1994 Squibb comenzó un proceso de comunicación pública con el propósito de divulgar información sobre los nuevos incineradores, para así promover la participación ciudadana en el proceso de permiso. A tales efectos, se celebró una reunión pública el 14 de septiembre de 1994, y otra en Villa Humacao el 1 de diciembre de 1994. Próximamente se celebrará otra en Junquito, similar a la ya celebrada en Villa Humacao. Además, EPA tiene otra reunión pública programada durante el mes de febrero.

Nos reiteramos a su disposición para proveer información adicional o aclarar cualquier duda con respecto a estos particulares. Puede comunicarse conmigo o con el Ing. Julio Ortiz-Torres, Gerente de Asuntos del Ambiente, al teléfono 850-6731.

Cordialmente,

Héctor J. Totti
Gerente General

wwin/data/environ.123
Anejo

**APPENDIX I -- EXAMPLES OF ADDITIONAL RCRA PUBLIC
PARTICIPATION TOOLS (FACT SHEETS, PUBLIC
INVOLVEMENT PLANS, NEWS RELEASES)**

A



PUBLIC INVOLVEMENT PLAN
OHIO TECHNOLOGY CORPORATION
PROPOSED INCINERATION FACILITY
NOVA, OHIO
APRIL 1989

EPA WORK ASSIGNMENT NUMBER 96-5Q00.0

Prepared for: U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Illinois 6064

Prepared by: ICF Technology, Inc.
35 East Wacker Drive
Suite 800
Chicago, Illinois 60601
Associates Firm, REM IV Contract No. 68-01-7251



I. Introduction
TABLE OF CONTENTS

II. Description of the Proposed Facility

 A. Location and Description of Facility

 B. Owner/Operator Information

 C. Regulatory Agencies

III. Community Information

I. INTRODUCTION

In 1976, Congress passed the Resource Conservation and Recovery Act (RCRA) to regulate the generation, treatment, storage, and disposal of municipal and industrial solid wastes that are generated across the country. The RCRA law requires that before a facility can treat, store, or dispose of any hazardous waste, it must obtain a permit from either the United States Environmental Protection Agency (U.S. EPA) or an authorized state government agency.¹ In addition to reviewing technical information, federal and state agencies encourage public involvement during the permitting process to ensure that residents understand proposed plans for handling hazardous wastes in their communities, and to provide an opportunity for residents to voice any concerns they may have.

This public involvement plan identifies some community concerns regarding Ohio Technology Corporation's application to build and operate a hazardous waste incinerator facility in Nova, Ohio. The plan details specific activities that U.S. EPA will engage in to disseminate information to the Nova community and to encourage public involvement as the Ohio Technology Corporation application is reviewed. The plan consists of the following sections:

- € Description of the proposed facility;
- € Community information;
- € Community concerns;
- € Objectives of the public involvement program;
- € Public involvement activities; and an
- € Implementation schedule.

The objectives and activities discussed in this plan are based on an assessment of community concerns collected during interviews with local officials, several residents, and local community opposition

¹ In many instances, authority for implementing RCRA has been given to the states by U.S. EPA. The State of Ohio, however, does not have such authority and all RCRA laws are currently enforced in Ohio by U.S. EPA.

groups conducted by U.S. EPA and contractor personnel in August 1988.

II. DESCRIPTION OF THE PROPOSED ACTIVITY

A. Location and Description of Facility

Ohio Technology Corporation (OTC) proposed to construct and operate a hazardous waste and toxic substance treatment facility in Nova, Ohio, located in Troy Township, Ashland County. The property purchased by OTC in 1987 consists of approximately 280 acres of rural farm land along Township Road 791, one mile east of Nova and approximately 12 miles northeast of the City of Ashland (see Figures 1 and 2). The Nova Reservoir is located on the southwest portion of the property. Of the 280 acres, approximately 40 acres would be used for the facility.

The proposed facility includes construction of an incinerator called a Hybrid Thermal Treatment System developed by IT Corporation. The system involves a modularly designed rotary kiln incinerator for the destruction of a wide variety of organic wastes. As designed, fumes resulting from the kiln are burned in a secondary combustion chamber. In Nova, the proposed incinerator would be operated to burn both general

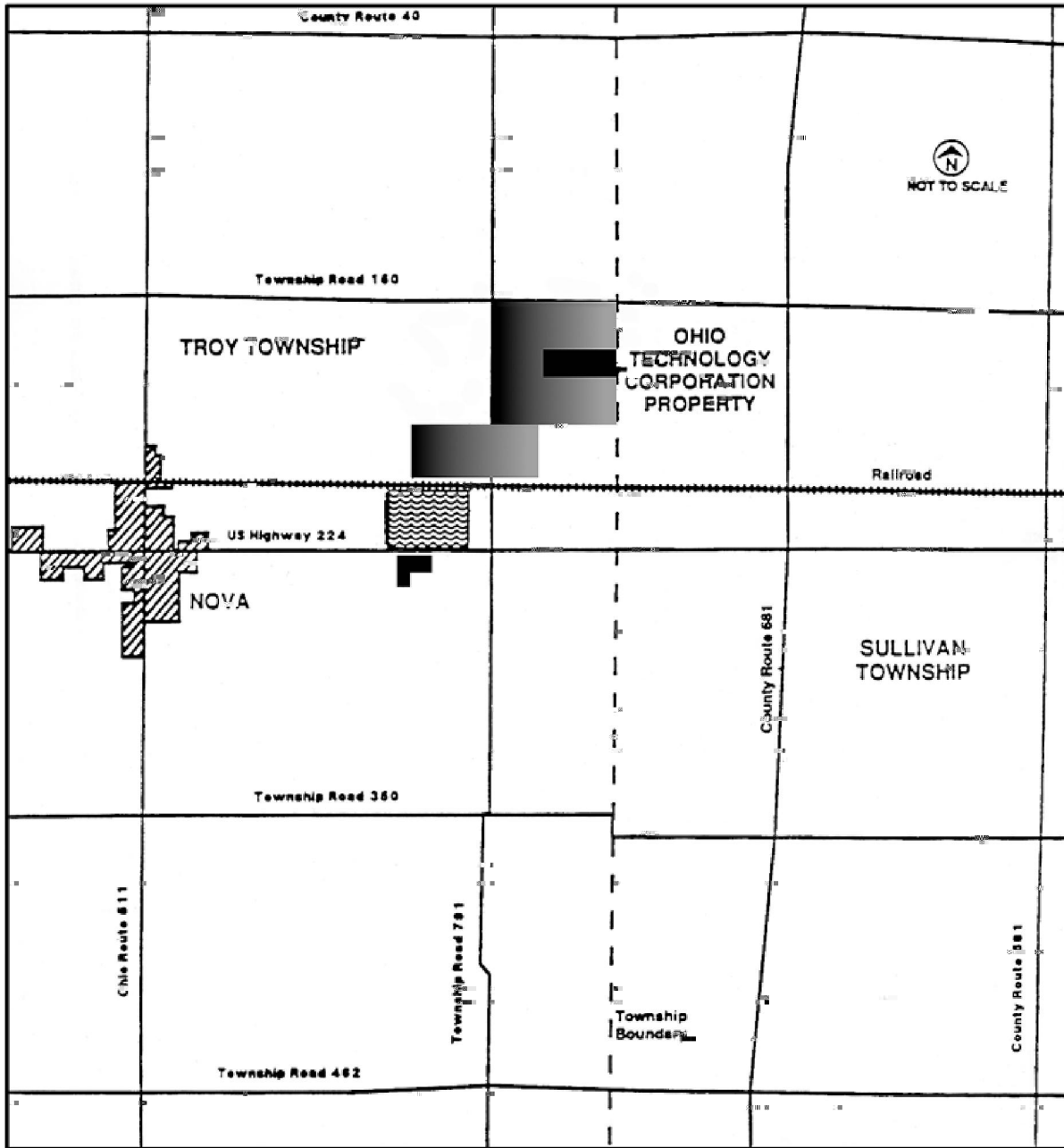


Figure 2
Proposed Facility Area Map

B. Owner/Operator Information

The current owner of the property is OTC which is also named as the proposed owner of the incineration facility in the RARA permit application. IT Corporation would operate the facility. OTC's headquarter offices are located in Cleveland, Ohio and IT Corporation's regional offices are located in Monroeville, Pennsylvania. According to an OTC official, the facility as proposed could reach its capacity by accepting wastes from within Ohio, although the facility is designed to be a regional hazardous waste treatment facility.

C. Regulatory Agencies

In order to obtain the required permits to construct and operate the incineration facility, OTC must submit permit applications to the Ohio Environmental Protection Agency (OEPA) and the U.S. EPA. Because OTC desires to build a facility that will burn both hazardous waste and PCBs, U.S. EPA permits are required from under both RARA and the Toxic Substance Control Act (TSCA). The RCRA permit is required for incineration of hazardous wastes, and the TSCA permit is required for incineration of wastes containing PCBs.

In addition, OTC must apply for and be issued permits from the State of Ohio. The primary permits required are a permit to install and a permit to operate a hazardous waste facility, both of which would be issued by the Ohio Hazardous Waste Facility Board. All proposed facilities in Ohio must receive these permits before any construction can begin. The application for the permits must be submitted for review to OEPA's Division of Solid and Hazardous Waste Management before a ruling on the applications is approved or denied by the Hazardous Waste Facility Board. In addition, OTC must receive an Air Permit to Install from OEPA's Division of Air Pollution, and a National Pollutant Discharge Elimination System (NPDES) permit -- a provision of the Clean Water Act -- from the Division of Water Pollution control. The air permit addresses the potential air emissions that could result from operations from the proposed incinerator, and the NPDES permit addresses potential discharges to water.

Currently, OTC has submitted permit applications to both OEPA and U.S. EPA. By law, permit applications must be reviewed for completeness and technical adequacy before the permits are either granted or denied.

III. COMMUNITY INFORMATION

A. Community Profile

Located in Troy Township, Nova is a rural, unincorporated town with a population of approximately 200 people. According to several

B. Public Involvement to Date

In the Nova community, public involvement in issues surrounding the proposed facility has to date been primarily channeled through community groups. The next few paragraphs characterize the major community groups involved.

1. STOP IT

According to residents interviewed, community interest and concern over the proposed facility began when OTC purchased its property at an auction in 1987. Soon after the property was purchased, the community learned that OTC planned to install and operate a hazardous waste incinerator on the property. Concerned over the potential impact of the incinerator on the Nova community, Nova residents formed a citizens group called Nova's Right to Know in July 1987. The intent of the group was to collect information about the proposed project from Ohio Technology, International Technology, and local, state, and federal government agencies. In September 1987, the group change its name to STOP IT ("IT" stands for IT Corporation, the proposed operator of the facility) because the group's constituency broadened beyond the Nova community. STOP IT is managed by a director, three co-chairpersons, and an executive committee. Currently, membership in the group consists of approximately 400 people.

STOP IT activities have included establishing an information center in Nova, holding public meetings working with the state of legislature, coordinating with national and international environmental groups, and disseminating information to its membership and other interested parties. The goal of STOP IT is to prevent the proposed incinerator from being built. According to group members, STOP IT does not want to negotiate a permit; the organization does not want any permits issued to OTC at all. STOP IT is a highly organized group whose leadership possesses a strong commitment to its position. STOP IT has conducted various activities to heighten awareness of the proposed incinerator, and has worked to increase support for its position in Ashland County and other surrounding counties. According to an August

support from STOP IT. The purpose of the conference was to present over 4,000 petition signatures from the Amish community in opposition to the proposed facility. Invited to the press conference were OEPA, U.S. EPA, the Ohio Hazardous Waste Facility Board, and state and federal government representatives. In a written statement, the Amish contingency voiced their concerns:

We are meeting here today because of a concern. The old Order Amish are thankful to God for the privilege to live in a country where we can live, work and share our lives with our neighbors and fellowman.

We still adhere to and believe in the Golden Rule: Do unto others as you would that others do unto you.

It is with this in mind that we have over 4,000 signatures protesting a proposed toxic waste incinerator site in Ashland County.

Living close to this site is an Amish community of over 100 families that would be severely disrupted and handicapped if this site was approved. Without any doubt these people would have to relocate.

Also from information we have received we would be subject to toxic emissions in our area.

So we plead with meekness to please accept our protests with an open mind and sincere concern.

The involvement of the Amish in this manner -- a people not known for their political activism -- generated significant media attention and was reported by the Chicago Tribune , U.S.A. Today , and the New York Times

support for OTC's project within the region. Newspaper reports indicate, however, that although there may be support for the facility, the strength of the opposition to the facility has caused proponents to keep their views to themselves.

Political interest in the proposed project has also grown over the last year. Responding to letters of concern from their constituents, U.S. Senator Howard Metzenbaum, U.S. Senator John Glenn, Congressman Don Pease, State Representative Ron Amstutz, and State Senator Dick Schafrath have all taken positions in opposition to the proposed facility. In addition, Cleveland's mayor, George Voinovich, has opposed the project. Many residents have written their concerns to both U.S. EPA and OEPA.

IV. COMMUNITY CONCERNS

The following community concerns were expressed by Nova area residents and local officials during interviews conducted in August 1988.

A) Lack of trust in the proposed operator of the facility . Residents interviewed expressed concern regarding IT Corporation's involvement in the proposed project. Nova area residents and members of STOP IT and CAP feel strongly that IT Corporation is not a reliable company to be operating the proposed facility. The citizens groups have distributed information about IT Corporation, including a list of violations of State of California environmental regulations and the Louisiana State Ethics Code. Members of STOP IT cite a recent Forbes article which discusses management and financial problems of IT Corporation, and the fact that the company insures itself against environmental liabilities as proof of IT Corporation's instability (see "Warning -- Hazardous Management," Forbes , Volume 142, Number 2, July 25, 1988, Page 60). Residents also are concerned that IT Corporation will purchase OTC and that OTC is merely acting as a "front" for IT Corporation.

B) Effects of proposed facility on quality of life . Residents interviewed stressed their concern regarding the impact of the proposed facility on the quality of life in the area. Residents said that the major reason why people move into rural areas and stay in these areas is the clean air, and non-urbanized, undeveloped characteristics of these regions. These residents feel that construction and operation of an incinerator in the area would destroy the appeal of the area, negatively impact property values, and drive people away. Moreover, residents and members of the Amish community pointed out that siting an incinerator in the Nova area is counter-culture to the Amish way of life. CAP stressed the fact that the Amish communities increase the tourist appeal of the area. According to newspapers reports, the Amish community has hinted to the possibility that the Amish settlements in the area may relocate if the incinerator is licensed and built. Community interviews with

Amish representatives, however, indicated that this would be a last resort.

C) Effects of proposed facility on environmental quality in the region. All residents interviewed expressed the greatest concern about the impacts of the proposed facility on the environment. The community is very concerned about air emissions from the proposed incinerator and feels strongly that there would be a threat of toxic air contamination. CAP and STOP IT also spoke about the fact that the facility would be located near the headwaters of the Black and Vermilion rivers. The groups feel that these rivers would be endangered by contamination resulting from operation of the incinerator. The Amish leaders voiced their concern that air emissions would contaminate rainwater which is a primary water source through cisterns and wells on many of the Amish properties. The Amish are concerned about how their livestock and crops may be affected by the proposed incinerator. Such a concern is echoed by other farmers in the area who view the proposed incinerator as a threat to their livelihoods.

D) Inappropriateness of site selection. Most people interviewed questioned why Nova was chosen as the site for OTC's project. These people feel that it is inappropriate for an incinerator to be located in a rural community where natural resources are a significant aspect of the economy. Two residents interviewed, one that breeds Navajo Churro sheep (an endangered species) and another that propagates native American seeds, were particularly concerned that an incinerator in the area could endanger their projects. The Amish leaders expressed similar concerns and asked why incinerators had to be sited in places where people lived. They suggested that a better location would be in a desert, or some other unpopulated area.

E) Waste management in Ohio . Both CAP and STOP IT said that

G) Emergency response capabilities in the area . Several concerned residents and local officials felt that siting the facility in the Nova area places the region in peril should an accident occur. Nova itself has no emergency response capabilities and relies on the City of Ashland and other communities for such assistance. The community is concerned that should an accident occur, there would be no efficient and comprehensive way of responding. Moreover, the Amish representatives expressed concern that should an accident occur, emergency communication with the settlements and evacuation would be impossible due to their lack of telephone, electricity, and modern transportation systems.

H) Confusion regarding the permitting process . Most of all the residents and local officials agreed that the permitting process is confusing. Many expressed frustration about the many levels of government involved and wanted clarification on the authorities of the federal, state, and local governments. In March 1988, OEPA held an informational session for Nova area residents. At the session, several division representatives from OEPA and U.S. EPA answered questions and provided information on the permitting process. Community members and OEPA officials indicated that the session was informative, although residents said that some confusion still remains about the permitting process.

I) Poor response from government officials . While many residents appeared satisfied with the information provided by government officials, several residents and the citizens groups felt that both the state and federal government officials should provide more information regarding the permitting process and should be more accessible. STOP IT complained about being "hung up on" by U.S. EPA officials, and said they were frustrated that U.S. EPA had not acknowledged much of the information sent to them by STOP IT. CAP representatives expressed the same concerns.

J) Frustration over limited opportunities for public involvement . Most people interviewed did not understand the extent to which formal opportunities for public involvement exist during the permitting process. Those residents and local officials that are more

aware of public opportunities feel that they are limited and that they do not serve the interests of the communities. Most people interviewed, including the Amish leaders, asked about effective ways of becoming involved in the process so that their concerns can be officially considered before the agencies make any final decisions.

V. OBJECTIVES OF THE PUBLIC INVOLVEMENT PROGRAM

Based on the concerns voiced by area residents and local officials, the following are the objectives of the public involvement program during the permitting process:

A) Establish accessibility among U.S. EPA personnel to the community . As the Nova community works toward becoming informed about the issues surrounding the proposed facility, it will be very important for U.S. EPA personnel to be available to answer questions and provide information. Both STOP IT and CAP already are frustrated with the difficulty they have in contacting U.S. EPA personnel. Maintaining good positive contact with concerned citizens in the Nova community will strengthen U.S. EPA's credibility and allow people to become more involved in the process.

B) Coordinate with OEPA to make sure the community understands the permitting process and opportunities for public involvement . Community interviews reflected the confusion that residents and local officials have about the permitting process and opportunities for public involvement. A crucial component of the public involvement program is to make certain that interested residents and local officials have adequate opportunities to understand and be involved in the permitting process and the opportunities for their involvement. Because so many levels of government are involved in the process, U.S. EPA should work closely with OEPA to provide the community with adequate information and opportunities to ask questions of appropriate government officials.

C) Provide specific information on issues of interest to ensure a strong level of understanding by the community . Both STOP IT and CAP are working hard to acquire information that will put many of the issues of concern into perspective. Much of CAP and STOP IT's activities will involve disseminating information to all interested parties. U.S. EPA and OEPA should work together to provide the community with accurate information on subjects such as incineration technology, alternative waste management practices, emergency response procedures, monitoring

practices, and environmental impacts of waste management practices.

VI. PUBLIC INVOLVEMENT ACTIVITIES

Specific public involvement activities related to the OTC RCRA permit application are required by Title 40 of the Code of Federal Regulations, Part 124 and RCRA Section 7004. The public involvement activities describe below include required activities (indicated by an asterisk), as well as other activities intended to address community concerns and to carry out the objectives established for the public involvement program.

A) Designate U.S. EPA contact to respond to questions from the
community

will be distributed to provide information on other topics of concern expressed by the community. These fact sheets will cover incineration technology, monitoring practices of the U.S. EPA and OEPA, alternative waste management practices, and current information on environmental impacts of incinerators. The fact sheets will be printed and distributed to individuals on U.S. EPA's current mailing list.

D) Conduct availability sessions to answer specific questions .
After the fact sheets are prepared and distributed, U.S. EPA in cooperation with OEPA will hold at least three availability sessions in the community. The availability sessions will be designed to accommodate small groups and will consist of representatives of OEPA and U.S. EPA who will be available to answer specific questions of the community. The sessions will be held in different geographic areas of the region and will accommodate members of the Amish community. Notices announcing the availability sessions will be published in local newspapers.

E) Notify the community about progress made on application review . As progress is made on processing of the permit application, or if the schedule for reviewing the application alters significantly, U.S. EPA will notify the community by providing a written update to individuals on the mailing list and media representatives.

*F) Develop and distribute fact sheet on draft permit or denial .
It is required by RCRA regulations that one fact sheet, or "Statement of Basis," be distributed that describes both the facility and the permit

press release to local media and a notice to the mailing list announcing

VI. TIME LINE FOR IMPLEMENTING PUBLIC INVOLVEMENT ACTIVITIES

The following is a time line for public involvement activities through issuance of a final decision on the Ohio Technology Corporation's RCRA permit application. Should a permit be issued, U.S. EPA would continue the public involvement program.

Activity	Approval of the Public Involvement Plan	Completion of Technical Review	Issuance of Draft Permit (if applicable)	Issuance of Final Permit (if applicable)
1. Designate Contact	X			
2. Establish Information Repositories	X			
3. Fact Sheets	-----X	X-----	X	
4. Availability Sessions	-----X	X-----		X-----
5. Updates	-----	X-----		-----As needed-----
6. Public Comment Period				X----- -----X
7. Public Hearing				X
8. Responsiveness Summary				X

APPENDIX A

LOCAL GOVERNMENTS AND ORGANIZATIONS ISSUING
WRITTEN STATEMENTS OF OPPOSITION TO THE PROPOSED INCINERATOR
[obtained from state and federal files]

<u>Government Body</u>	<u>Date resolution adopted</u>
Village of Savannah	December 15, 1987
City of Avon Lake	December 14, 1987
Troy Township	September 28, 1987
Village of Lodi	October 19, 1987
Ashland County Soil and Water Conservation District	April 26, 1988
Russia Township	March 22, 1988
City of Allure	March 21, 1988
<u>Local Organization</u>	<u>Date of written position</u>
Cinnamon Lake Association, Inc.	December 16, 198
Ashland County Farm Bureau, Inc.	May 16, 1988
Episcopal Diocese of Ohio	July 12, 1988
Lodi Rotary Club	January 20, 1988
Lodi Chamber of Commerce	January 20, 1988
Ruritan Club of Lodi	January 20, 1988

APPENDIX B

LIST OF CONTACTS, INTERESTED PARTIES, AND MEDIA

1. Federal Elected Officials

Senator John Glenn (202) 224-3353
503 Senate Hart Office Building
Washington, DC 20510-3501

District Office (216) 522-7095

Federal Courthouse
201 Superior Avenue
Cleveland, OH 44114

Senator Howard Metzenbaum (202) 224-2315
140 Senate Russell Office Building
Washington, DC 20510-3502

District Office (216) 522-7272

Celebreeze Federal Building
Room 2915
1240 East Ninth Street
Cleveland, OH 44199

Congressman Donald Pease (202) 225-3401
2410 Rayburn House Office Building
Washington, DC 20515

District Office (419) 325-4184

The Centre
Suite 101
42 East Main Street
Ashland, OH 44805-2336

2. State Elected Officials

Governor Richard Celeste (614) 466-3555
Office of the Governor
Statehouse
Columbus, OH 43216

State Senator Richard Schafrath (614) 466-8086
Ohio Senate
Statehouse
Columbus, OH 43216

Local Address (419) 994-4161
424 West Main Street
Loudonville, OH 44842

State Representative Ronald Amstutz (614) 466-1474
Ohio House of Representatives
Statehouse
Columbus, OH 43216

Local Address (216) 262-7371
2243 Friar Tuck Circle
Wooster, OH 44691

3. Local Government Officials

Ashland County Commissioners (419) 289-0000

~~01114~~ 00 Tw (S9doo.92 Se9/6lntgnLl1stlf059) 289-0000) Tj -2Marilyn By6 , Poluid /F TD (Ohio Sena

Ashland County Disaster Services (419) 289-6511
c/o Ashland City Fire Department
274 Cleveland Avenue
Ashland, OH 44805

John Augustine, Director

Troy Township Trustees
Donald Biddinger, Chairman (419) 652-3462
Ralph Smith, Vice Chairman (419) 652-3258
Richard Robertson (419) 652-3361
Mary Judith Fox, Clerk (419) 652-3187

Troy Township Zoning Inspector
Willard Smith (419) 652-3362

Troy Township Zoning Commission
Leslie White (419) 652-3842
Richard Hawley (419) 652-3021
Delmar Rife (419) 625-3851
Janet Cleugh (419) 652-3760
John M. Gorman (419) 652-3354

Troy Township Zoning Board of Appeals
James R. Callihan (419) 652-2225
Dean Sheppard (419) 652-3838
Tod Crumrine (419) 652-3194
Janice Schneiter (419) 652-3181
Eugene Fowler (419) 652-3808

4. Federal Government Agencies

U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, IL 60604

Valdas Adamkus, Regional Administrator (312) 353-2000
Anne Rowan, Public Participation Coordinator (312) 886-7857
Office of Public Affairs
Wen Huang, Environmental Engineer (312) 886-6191
RCRA Permit Branch

Charles Slaustas, Supervisor (312) 886-6190
 RCRA Permit Branch

Lisa Pierard , Ohio Section Chief (312) 353-4789
 RCRA Permit Branch

Sheldon Simon, Regional PCB Coordinator (312) 886-6087
 Pesticides and Toxic Substances Branch

John Connell, Chief (312) 886-6832
 PCB Compliance Section
 Office of the Environmental Sciences Division

5. State Government Agencies

Ohio Environmental Protection Agency

P.O. Box 1049
 1800 Water Mark Drive
 Columbus, OH 43266-0149

Richard Shank, Director (614) 644-2782

Linda Whitmore, Public Involvement Coordinator (614) 644-2160
 Public Interest Center

Robert Babik, Environmental Engineer (614) 644-2949
 Division of Solid and Hazardous Waste
 Management

Ohio Hazardous Waste Facility Board (614) 644-2742

P.O. Box 1049
 1700 Water Mark Drive
 Columbus, OH 43266-0149
 James Adair III, Executive Director

Board members :

Richard C. Sahli, Deputy Director
 Legal and Governmental Affairs
 Ohio Environmental Protection Agency

Warren W. Tyler, Chairman
 Ohio Water Development Authority

Charles E. Mauger, Assistant Director
 Ohio Department of Natural Resources

Thomas Sweeney, Ph.D., Assistant Vice
 President of Research and Graduate Studies
 The Ohio State University

W.B. Clapham Jr., Ph.D., Associate Professor of Geology

Cleveland State University

6. **Citizens Groups**

STOP IT (419) 652-3000

P.O. Box 134
Nova, OH 44859

Dave Schlaufman, Director (419) 652-3862
Vern Hurst, Co-chairperson
Diana Schlaufman, Co-chairperson

Citizens Against Pollution (216) 647-6127
P.O. Box 122 (Mon.,Wed., Fri.)
Sullivan, OH 44880
Ardith Jordan, Trustee

7. **Media**

Newspapers

Ashland Times Gazette
40 East Second Street
Ashland, OH 44805
(419) 281-0581

New London Record
P.O. Box 110
New London, OH 44851
(419) 929-3411

Akron Beacon-Journal
44 East Exchange Street
Akron, OH 44328

Mansfield News Journal
P.O. Box 25
70 West Fourth Street

WAKC-TV
853 Copley Road
Akron, OH 44320
(216) 525-7831

WBNX-TV
P.O. Box 2091
Akron, OH 44309
(216) 928-5711

WEAO-TV
275 Martinel Drive
Kent, OH 44240
(216) 678-1656

WQHS-TV
2681 West Ridgewood
Parma, OH 44134
(216) 888-0061

WEWS-TV
3001 Euclid Avenue
Cleveland, OH 44115
(216) 431-5555

WJW-TV
5800 South Marginal Road
Cleveland, OH 44102
(216) 431-8888

WKYC-TV
1403 East Sixth Street
Cleveland, OH 44114
(216) 344-3333

WUAB-TV
8443 Day Drive
Cleveland, OH 44129
(216) 845-6043

WVIZ-TV
4300 Brockpart Road
Cleveland, OH 44134
(216) 398-2800

Radio

WNCO-Radio
P.O. Box 311
Ashland, OH 44805
(419) 289-2605

WRDL-Radio
Ashland College
401 College Avenue
Ashland, OH 44805
(419) 289-2480

WLKR-Radio
P.O. Box 547
Norwalk, OH 44857
(419) 668-8151

WCLS-Radio
711 McPherson Street
Mansfield, OH 44906
(419) 525-2331

WMAN-Radio
P.O. Box 8
Mansfield, OH 44901
(419) 524-2211

WVNO-Radio
2900 Park Avenue West
Mansfield, OH 44906
(419) 529-5900

WCWS-Radio
College of Wooster
Wooster, OH 44691
(216) 263-2240

WWST-WQKT Radio
South Hillcrest Drive
Wooster, OH 44691
(216) 264-5122

8. Owner/Operator

Ohio Technology Corporation (owner)
3350 Lander Road
Cleveland, OH 44124
John Tracy, Principal Manager

(216) 464-2121

International Technology Corporation (operator)
Regional Office
William Penn Plaza
2790 Mosside Boulevard
Monroeville, PA 15146-2792
Brian Borofka, Site Assessment Group Leader

(412) 243-3230

Headquarters

23456 Hawthorne Boulevard
Torrence, CA 90509

(213) 378-9933

APPENDIX C
LIST OF INFORMATION REPOSITORY LOCATIONS
AND PUBLIC MEETING FACILITIES

1) Information Repository Locations

Ashland Public Library
224 Claremont Avenue
Ashland, OH 44805

New London Public Library
67 South Main Street

APPENDIX D
LIST OF PERSONS CONTACTED FOR PREPARATION
OF THE PUBLIC INVOLVEMENT PLAN
(for U.S. EPA and Ohio EPA use only)

Ashland County Board of Commissioners (419) 289-0000
Court House
West Second Street
Ashland, OH 44805

J. Myron Leininger
Marilyn Byers
C. Jay Welsh

Troy Township Trustees
Donald Biddinger (419) 652-3463
Ralph Smith (419) 652-3258
Richard Robertson (419) 652-3361

Ohio Environmental Protection Agency
P.O. Box 1049
1800 WaterMark Drive
Columbus, OH 43266-0149

Linda Whitmore, Public Involvement Coordinator (614) 644-2160
Public Interest Center
Michael Greenberg, Public Information Specialist (614) 644-2160
Public Interest Center
Robert Babik, Environmental Engineer (614) 644-2949
Division of Solid and Hazardous Waste
Management

U.S. Environmental Protection Agency

Region V
230 South Dearborn Street
Chicago, IL 60604

Anne Rowan, Public Participation Coordinator/RCRA Office of Public Affairs	(312) 886-7857
Nancy Sullivan, Public Affairs Specialist/TSCA Office of Public Affairs	(312) 886-6687
Margaret McCue, RCRA Public Participation Manager Office of Public Affairs	(312) 886-6694
George Harper, Ohio Section Chief RARA Permit Branch	(312) 353-4789
Wen Huang, Environmental Engineer RCRA Permit Branch	(312) 886-6191
Charles Slaustas, Supervisor RCRA Permit Branch	(312) 886-6190
Sheldon Simon, Regional PCB Coordinator Pesticides and Toxic Substances Branch	(312) 886-6087

Local Residents and Interested Individuals

Mike Stanfield
962 County Route 40
Nova, OH 44859
(419) 652-3133

Gladys Thomas
838 U.S. Highway 224
Nova, OH 44859
(419) 652-3818

Elaine Drotliff
836 Township Road 150
Nova, OH 44859
(419) 652-3122

Diana Schlaufman
946 Township Road 150
Nova, OH 44859
(419) 652-3862

David Schlaufman
946 Township Road 150
Nova, OH 44859
(419) 652-3862

Frank Rickett
402 Township Road 791
Sullivan, OH 44880
(419) 652-3238

Lois Kinter
Box 15
U.S. Highway 224 West
Nova, OH 44859
(419) 652-3892

Judith Casteel
7730 Firestone Road
Homerville, OH 44235
(419) 625-2141

Joanne Slorgie
129 Broadway Street
Lodi, OH 44254
(216) 948-2482

Vern Hurst
995 Township Road 150
Nova, OH 44859
(419) 652-3337

Tod Crumrine
173 State Route 511
Nova, OH 44859
(419) 652-3194

Bob Janca
12595 New London E Road
Homerville, OH 44235
(419) 648-2853

John Nethers, Ph.D.
Professor of History
Department of Social Sciences
Bixler Hall -- Ashland College
Ashland, OH 44805
(419) 289-5381

Anne Slorgie
129 Broadway Street
Lodi, OH 44254
(216) 948-2482

Linda Martz
Mansfield News-Journal
P.O. Box 25
40 West Fourth Street
Mansfield, OH 44901
(419) 522-3311

Phil Dague
210 Township Road 2150
Jeromesville, OH 44840
(419) 368-3281

Sue Grycza
Ashland Times - Gazette
40 East Second Street
Ashland, OH 44805
(419) 281-0581

Leroy J. Keim
Lodi, OH

David Yoder
Firestone Road
Homerville, OH

Ardith Jordan
Mary Beth Derekito
Mary Warner
Eli Troyer



The Hazardous Waste Facility Permitting Process

What Are Hazardous Wastes?

Hazardous wastes can be liquids, solids, or sludges. They can be by-products of manufacturing processes or discarded commercial products. If hazardous wastes are not handled properly, they pose a potential hazard to people and the environment. To ensure that companies handle waste safely and responsibly, EPA has written regulations that track hazardous wastes from the moment they are produced until their ultimate disposal. The regulations set standards for the hazardous waste management facilities that treat, store, and dispose of hazardous wastes.

What Is a Hazardous Waste Management Facility?

Hazardous waste management facilities receive hazardous wastes for treatment, storage, or disposal. These facilities are often referred to as treatment, storage, and disposal facilities, or TSDFs.

- © *Treatment* facilities use various processes (such as incineration or oxidation) to alter the character or composition of hazardous wastes. Some treatment processes enable waste to be recovered and reused in manufacturing settings, while other treatment processes dramatically reduce the amount of hazardous waste.
- © *Storage* facilities temporarily hold hazardous wastes until they are treated or disposed of.
- © *Disposal* facilities permanently contain hazardous wastes. The most common type of disposal facility is a landfill, where hazardous wastes are disposed of in carefully constructed units designed to protect ground-water and surface-water resources.

What Laws and Regulations Govern TSDFs?

EPA has written detailed regulations to make sure that TSDFs operate safely and protect people and the environment. EPA wrote these regulations to implement the Resource Conservation and Recovery Act (RCRA) of 1976 and the Hazardous and Solid Waste Amendments of 1984. The U.S. Congress passed these laws to address public concerns about the management of hazardous waste.

EPA can authorize states to carry out the RCRA program. To receive autho-



What Is a RCRA Permit?

A RCRA permit is a legally binding document that establishes the waste management activities that a facility can conduct and the conditions under which it can conduct them. The permit outlines facility design and operation, lays out safety standards, and describes activities that the facility must perform, such as monitoring and reporting. Permits typically require facilities to develop emergency plans, find insurance and financial backing, and train employees to handle hazards. Permits also can include facility-specific requirements such as ground-water monitoring. The permitting agency has the authority to issue or deny permits and is responsible for monitoring the facility to ensure that it is complying with the conditions in the permit. According to RCRA and its regulations, a TSDF cannot operate without a permit, with a few exceptions.

Who Needs a RCRA Permit?

All facilities that currently or plan to treat, store, or dispose of hazardous wastes must obtain a RCRA permit.

- © *New TSDFs* must receive a permit before they even begin construction. They must prove that they can manage hazardous waste safely and responsibly. The permitting agency reviews the permit application and decides whether the facility is qualified to receive a RCRA permit. Once issued, a permit may last up to 10 years.
- © *Operating TSDFs* with expiring permits must submit new permit applications six months before their existing permits run out.
- © *TSDFs operating under Interim Status* must also apply for a permit. Congress granted “interim status” to facilities that already existed when RCRA was enacted. Interim status allows existing facilities to continue operating while their permit applications are being reviewed.

Who Does Not Need a RCRA Permit?

There are certain situations where a company is not required to obtain a RCRA a permit.

- © *Businesses that generate hazardous waste* and transport it off site without storing it for long periods of time do not need a RCRA permit.
- © *Businesses that transport hazardous waste* do not need a RCRA permit.
- © *Businesses that store hazardous waste* for short periods of time without treating it do not need a permit.

What Are the Steps in the Permitting Process?

Step 1 Starting the Process

Before a business even submits a permit application, it must hold an informal meeting with the public. The business must announce the “preapplication” meeting by putting up a sign on or near the proposed facility property, running an advertisement on radio or television, and placing a display advertisement in a newspaper. At the meeting, the business explains the plans for the facility, including information about the proposed processes it will use and wastes it will handle. The public has the opportunity to ask questions and make suggestions. The business may choose to incorporate the public’s suggestions into its application. The permitting agency uses the attendance list from the meeting to help set up a mailing list for the facility.



Step 2 Applying for a Permit

After considering input from the preapplication meeting, the business may decide to submit a permit application. Permit applications are often lengthy. They must include a description of the facility and address the following:

- © How the facility will be designed, constructed, maintained, and operated to be protective of public health and the environment.
- © How any emergencies and spills will be handled, should they occur.
- © How the facility will clean up and finance any environmental contamination that occurs.
- © How the facility will close and clean up once it is no longer operating.

FINAL REISSUED DENIED

Step 3 Receipt and Review of the Application

When the permitting agency receives a permit application, it sends a notice to everyone on the mailing list. The notice indicates that the agency has received the application and will make it available for public review. The permitting agency must then place a copy of the application in a public area for review.

Simultaneously, the permitting agency begins to review the application to make sure it contains all the information required by the regulations. The proposed design and operation of the facility are also evaluated by the permitting agency to determine if the facility can be built and operated safely.

Step 4 Revisions, Revisions, Revisions

After reviewing the application, the permitting agency may issue a Notice of Deficiency (NOD) to the applicant. NODs identify and request that the applicant provide any missing information. During the application review and revision process, the permitting agency may issue several NODs. Each time the permitting agency receives a response from the applicant, it reviews the information and, if necessary, issues another NOD until the application is complete. Given the complex and technical nature of the information, the review and revision process may take several years.

Step 5 Drafting the Permit for Public Review

When the revisions are complete, the agency makes a preliminary decision about whether to issue or deny the permit. If the agency decides that the application is complete and meets appropriate standards, the agency issues a draft permit containing the conditions under which the facility can operate if the permit receives final approval. If the permitting agency determines that an applicant cannot provide an application that meets the standards, the agency tentatively denies the permit and prepares a “notice of intent to deny.”

The permitting agency announces its decision by sending a letter to everyone on the mailing list, placing a notice in a local paper, and broadcasting it over the radio. It also issues a fact sheet to explain the decision. Once the notice is issued, the

public has 45 days to comment on the decision. Citizens also may request a public hearing by contacting the permitting agency. The permitting agency may also hold a hearing at its own discretion. The agency must give 30-day public notice before the hearing.

Step 6 The End Result: A Final Permit Decision

After carefully considering public comments, the permitting agency reconsiders the draft permit or the notice of intent to deny the permit. The agency must issue a “response to public comments,” specifying any changes made to the draft permit. The agency then issues the final permit or denies the permit.

Even after issuing a permit, the permitting agency continues to monitor the construction and operation of the facility to make sure they are consistent with state and federal rules and with the application.

Several additional steps can also take place after the original permit is issued:

- © **Permit Appeals.** Facility owners and the public both have a right to appeal the final permit decision. The appeal is usually decided upon by administrative law judges.
- © **Permit Modifications.** If a facility changes its management procedures, mechanical operations, or the wastes it handles, then it must secure a permit modification. For modifications that significantly change facility operations, the public must receive early notice and have a chance to participate and comment. For minor modifications, the facility must notify the public within a week of making the change.
- © **Permit Renewals.** The permitting agency can renew permits that are due to expire. Permit holders that are seeking a permit renewal must follow the same procedures as a facility seeking a new permit.
- © **Permit Terminations.** If a facility violates the terms of its permit, the permitting agency can terminate the permit.



FINAL REISSUED DENIED

How Can the Public Participate?

Members of the public have valid concerns about hazardous waste management. They and other interested parties can contribute valuable information and ideas that improve the quality of both agency decisions and permit applications. EPA believes that public participation is a vital component of the permitting process. Accordingly, EPA has written regulations that create opportunities for the public to learn about RCRA activities and give input during the permitting process. The preapplication meeting, public comment and response periods, and public hearings are all instances where citizens can engage companies and regulators in a dialogue. Furthermore, EPA encourages permitting agencies, permit holders or applicants, and other interested parties to provide additional public participation activities where they will be helpful.

APPENDIX L -- PERMIT MODIFICATIONS FACT SHEET



The New Process

The new process establishes three classes of permit modifications and sets administrative procedures for approving modifications in each class.

Class One addresses routine and administrative changes. Lowest range of permit modifications.

Class Two primarily addresses improvements in technology and management techniques. Middle range of modifications.

Class Three deals with major changes to a facility and its operations. Highest range of modifications.

Class One Modifications

Class One modifications do not substantially alter the conditions in the permit or reduce the facility's ability to protect human health and the environment. Such changes may include

Improving administrative and routine functions.

Upgrading plans and records maintained by the facility.

Replacing some equipment with functionally equivalent equipment.

Most Class One changes do not require approval by the authorized permitting agency -- either EPA or a state -- before they are implemented. There are several types of changes, however, that may require such approval. EPA may deny any Class One modification.

Notifying the Public. Within 90 days of implementing a change, a facility making a Class One modification must notify the public by sending a notice to all parties on its mailing list. This mailing list includes people and organizations who have asked to be notified of the facility's activities. The list is maintained by the permitting agency. Citizens may be added to the mailing list by sending a written request to the agency. Any member of the public may ask EPA to review a Class One modification.

Class Two Modifications

Class Two modifications include those changes that enable a facility to respond to variations in the types and quantities of wastes that it manages, technological advancements, and new regulatory requirements. Class Two changes do not substantially alter the facility's design or the management practices prescribed by the permit. They do not reduce -- and in most cases should enhance -- the facility's ability to protect human health and the environment. Under some circumstances, the permitting agency may determine that the modification request should follow the more restrictive Class Three procedures.

Class Two modifications address change like

Increases of 25 percent or less in a facility's tank treatment or storage capacity.

Authorization to treat or store new wastes that do not require different management practices.

Modifications to improve the design of regulated units or improve management practices.

The new procedures require the facility to submit a request for approval of the change to the permitting agency. The request describes the change, explains why it is needed, and provides information showing that the change complies with EPA's technical standards for the facility. For Class Two modification, a facility may begin construction 60 days after submitting a request, although the permitting agency may delay all or part of the construction.

Involving the Public. The permit holder must notify people and organizations on the facility mailing list about the modification request by sending them a letter and publishing a notice in a major local newspaper. The notice must appear within seven days before or after the facility submits the request to the permitting agency. The newspaper notice marks the beginning of a 60-day comment period and announces the time and

place of an informal public meeting.

This public comment period is an opportunity for the public to review the facility's permit modification plans at the same time as the permitting agency -- early in the process. All written comments submitted during the 60-day comment period will be considered by the agency before a final decision is made on the modification request.

The public meeting is conducted by the permittee and is held no fewer than 15 days after the start of the comment period and no less than 15 days before it ends. The purpose of this meeting is to provide for an exchange of views between the public and the facility's owner or operator and if possible, to resolve any issues concerning the permit modification. The meeting is less formal than the public hearings held when a new RCRA permit is under development. Because the meeting is intended to be a dialogue between the facility owner or operator and its neighbors, the permitting agency is not required to attend the meeting. EPA believes that the meeting will result in more public comments being submitted to the agency and perhaps voluntary revisions to the permitted facility's notification request.

To inform citizens about how the facility has met the conditions of the permit the permitting agency must make the facility's compliance history available to the public. A compliance history may include many of any permit violations, when violations have occurred, and how the violations have been corrected.

Default Provision. The procedures for Class Two modifications include a default provision to ensure that the permitting agency responds promptly to the facility's request. The agency must respond to a request within 90 days or, if the agency calls for an extension, 120 days. If the agency does not reach a final decision on the request within 120 days, the facility is automatically allowed to conduct the requested activities for 180 days. During this period, the facility must comply with all federal and state regulations governing hazardous

waste facilities. If the permitting agency still has not acted by day 250, the facility then must let the public know that the facility will become permanently authorized to conduct the proposed activities unless the agency approves or denies the request by day 300. At any time during the Class Two procedures, the agency may reclassify the request as Class Three if there is significant public concern or if the permitting agency determines that the facility's proposal is too complex for the Class Two procedures. This reclassification would remove the possibility of an automatic decision by default.

25 percent.
Major changes to the facility's groundwater monitoring program.

quickly and that sudden changes in operations not covered under a facility's permit can be addressed promptly. Activities performed under a temporary authorization must comply with the applicable waste management regulations. The facility must notify the public within seven days of making the request. The permitting agency may grant a temporary authorization without notifying the public. A facility may renew a temporary authorization only by requesting permit modification and initiating public participation.

Involving the Public. For Class Three modifications, the facility must initially follow the same public notice, comment, and meeting procedures as for Class Two modifications. This allows for early public review and comment on proposed changes. Then the permitting agency must prepare a draft permit modification, allow 45 days for public comment on the draft, hold a public hearing if requested, and then issue or deny the permit modification request.

Class Two Modification Schedule

Day 1 Modification request received by agency.
Day 5 Newspaper notice published and mailing list notified.
Days 15-45 Informal public meeting held.
Day 60 Written public comments due to agency.
Day 90 Agency response to Class Two modification request due. Deadline may be extended 30 days.
Day 120 If no response, requested activity may begin for 180 days.
Day 250 If still no response, public notified.
Day 300 If still no response, activity permanently authorized.

Public Involvement Steps for Class Three Modifications:

The facility representative

Class Three Modifications

Class Three modifications address changes that substantially alter a facility or its operation. For example, the following modification requests fall under Class Three:

Requests to manage new wastes that require different management practices.

Major changes to landfill, surface impoundment, and waste pile liner, leachate collection, and detection systems.

Increases in tank, container, or incinerator capacity of more than

request to be put on the mailing list to receive notices of permit modification requests.

Review modification requests.

State your support for, or objection to, the requested modification during the public comment period by providing written comments.

Participate in the public meetings. These informal meetings allow facility representatives to explain their permit modification requests and answer your questions.

For a copy of the new regulations governing the permit modification process and more information on the new permit modification process or other RCRA programs,

call EPA's RCRA Hotline: 800-424-9346; in Washington, DC., the number is 382-3000. Or contact EPA Regional Offices:

Region I

JFK Federal Building
Boston, MA 02203
(617) 573-9644

Region II

26 Federal Plaza
New York, NY 10278
(212) 264-8683

Region III

841 Chestnut Building
Philadelphia, PA 19107
(215) 597-7940

Region IV

345 Courtland Street, N.E.
Atlanta, GA 30365
(404) 347-3433

Region V

230 S Dearborn Street
13th Floor (HR-11)
Chicago, IL 60604
(312) 353-0398

Region VI

First International Bldg.,
1445 Ross Avenue
Dallas, TX 75202
(214) 655-6785

Region VII

726 Minnesota Avenue
Kansas City, KS 66101
(913) 236-2888

Region VIII

999 18th Street
One Denver Pl., Suite 1300
Denver, CO 80202-2413
(303) 293-1676

Region IX

215 Fremont Street
San Francisco, CA 94105
(415) 974-8026

Region X

1200 Sixth Avenue
Seattle, WA 98101
(206) 442-1099

United States
Environmental Protection
Agency
Office of Solid Waste
Washington, DC 20460

APPENDIX M --

PUBLIC PARTICIPATION RESOURCES AVAILABLE TO THE PERMITTING AGENCY

Two keys to developing an effective public participation program are knowing who within your agency or elsewhere can provide support on public participation activities and knowing where to obtain information. Most Regions have one person assigned as the **public involvement coordinator** (PIC). The PIC serves as a liaison between community members and permit writers, enforcement personnel (both EPA and state), facility owners and operators, and other individuals or groups. The PIC oversees the implementation of the overall public participation program. He or she may handle logistics for public meetings, develop and maintain mailing lists, and review and/or help prepare news releases, fact sheets, and informational materials.

Other individuals who may be able to assist with public participation activities include:

Other EPA Staff - Other members of the EPA Regional technical, legal, public affairs, project officer, or permit writer staffs are also valuable resources. It is essential that these staff coordinate their efforts. They can provide technical assessments of the facility for release to the public or provide information relative to permitting issues and aspects of enforcement, compliance, and corrective action activities developed for the facility. Graphic designers, typesetters, and other support staff can help you with your program. In addition, CERCLA community relations coordinators in your office who have sites in the same community could take care of some of your activities, or at least provide you with valuable advice.

State Personnel - In authorized states, most of the public participation responsibilities listed for EPA staff will be assumed by state personnel. Regardless of authorization status, state agencies should play an active role in the development and implementation of public participation programs. For example, agencies in unauthorized states can provide information such as names for inclusion on a mailing list, background information on a facility's history, and knowledge of community attitudes toward the facility.

Facility Staff - While oversight of the permitting and enforcement processes is the sole responsibility of the regulatory agency, facility owners or operators are responsible for conducting a number of activities. In addition, facilities resources and staff can provide for public participation activities that go beyond the regulatory requirements.

Public Interest Groups - C 9.84 Tf33 Tc 0.0tionCientat Grr clatus, sment m Regii4 T llonCientatrdiicalupartiy11 Tc

1990) is a repository of materials from which readers can gather ideas and information concerning the RCRA program and RCRA public participation. You may also want to research materials from other EPA programs, such as Superfund, or outside sources to gather ideas that may be useful in dealing with particular permitting situations.

Training - Training is generally available for staff in a variety of areas, including public participation, community relations, risk communication, and community outreach. If training specific to the RCRA program is not available, you can easily adapt community outreach activities used in other programs to your RCRA situation. The techniques and methods used for RCRA public participation programs -- such as public meetings, fact sheets, and information repositories -- are also used in other programs.

Other Materials - There also are ready-made resources available for you to use in your program. EPA has developed fact sheet templates for RCRA actions, storyboards that describe the permitting process, and other information materials to save you time in developing public involvement information. The Regional PIC can provide more information on these materials.

MEMORANDUM

SUBJECT: Implementation of the RCRA Expanded Public Participation Rule

FROM: Elliott Laws, Assistant Administrator

TO: Regional Administrators
Regions I - X

The Agency will soon take a major step forward in its effort to promote public involvement and environmental justice by promulgating the “RCRA Expanded Public Participation Rule.”

The final rule will improve the RCRA permitting process by: (1) providing earlier opportunities for public involvement in the process and (2) expanding public access to information throughout the permitting process and the operational lives of facilities. The rule's requirements include: a facility-led pre-application meeting; agency notice at application submittal; agency notice of impending trial burns; and a provision for information repositories.

Immediate Implementation

While the effective date of the rule will not arrive until six months after promulgation, I am recommending that all EPA Regions start meeting the goals of the final rule as soon as possible. The Regions, in turn, should encourage the States and individual RCRA facilities to meet these goals even as States are pursuing authorization for components (e.g., this rule, BIF permitting, and corrective action) of the RCRA program.

Early implementation of the final rule will allow the public to benefit immediately from the rule's new and important procedures. This early implementation will be useful for the entire program and help the Agency fulfill its commitment to meaningful public involvement in RCRA permitting.

I would like to express my appreciation to the Regions for working to achieve these goals since the Agency proposed the rule in June 1994. We are encouraged by the positive reception these new standards have received, and look forward to full implementation.

Guidance on Equitable and Flexible Public Participation

The development of the final rule involved a balance between broader, more equitable public participation and flexibility for individual permit writers, facilities, and communities to adopt the most appropriate, site-specific approaches. Some of the principles underlying the final rule would have been difficult to prescribe through regulation. We decided that, instead of trying to achieve these goals through regulatory language, the public interest would be served best by encouraging permitting agencies and permit applicants to adopt these principles through guidance.

Consistent with this approach, you should abide by the following principles in your permitting efforts:

- Using all reasonable means to ensure that all segments of the population have an equal opportunity to participate in the permitting process and have equal access to information in the process. These means may include, but are not limited to, multilingual notices and fact sheets, as well as translators, in areas where the affected community contains significant numbers of people who do not speak English as a first language;
- Addressing environmental justice concerns, in part, by expanding access to information (particularly in a multilingual format) and opportunities for public input (through tools such as information repositories); and
- Going beyond the regulatory requirements, where appropriate, to provide for a level of public involvement that is commensurate with public interest in the permitting issue.

If you need any additional information about the rule, the policies in this memorandum, or the upcoming guidance manual please contact Patricia Buzzell of my staff at (703) 308-8632.

cc: Michael Shapiro
Linda Garczynski, OSPS
Matt Hale
Frank McAlister
Patricia Buzzell
Fred Chanania
Paul Bangser, OGC
Hazardous Waste Management Division Directors, Regions I - X
Hazardous Waste Management Division Branch Chiefs, Regions I - X
RCRA Public Involvement Network
Lance Miller, Permits Improvement Team

**APPENDIX 0 -- OVERVIEW OF PUBLIC PARTICIPATION IN THE
ENTIRE RCRA PROGRAM (EXCERPT FROM 1990
RCRA ORIENTATION MANUAL)**

SECTION VII

PUBLIC PARTICIPATION

OVERVIEW

GENERAL EPA PUBLIC PARTICIPATION REQUIREMENTS

- FREEDOM OF INFORMATION ACT

RCRA PUBLIC PARTICIPATION REQUIREMENTS

- STATUTORY REQUIREMENTS
- PROGRAM IMPLEMENTATION
- ENFORCEMENT
- REGULATIONS
- CONFIDENTIAL BUSINESS INFORMATION
- GUIDANCE

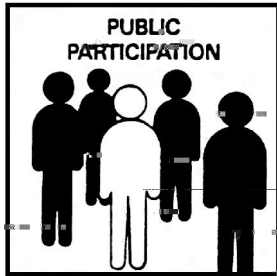
OUTREACH AND PUBLIC ASSISTANCE

- RCRA/SUPERFUND HOTLINE
- OFFICE OF OMBUDSMAN

SUMMARY

SECTION VII

PUBLIC PARTICIPATION



OVERVIEW

The right of the public to participate in government decisions is basic to our democratic system. In few places is this right exercised more than

State employees should consult State administrative regulations for further guidance on public participation requirements. The participation requirements in the Federal APA assure the public a voice in EPA decision making.

Freedom of Information Act

The Freedom of Information Act (FOIA) -- which serves as the government's primary mechanism for handling information requests -- guarantees that the public will have access to government records, including those of the EPA. Specifically, it requires each Federal agency to establish pr

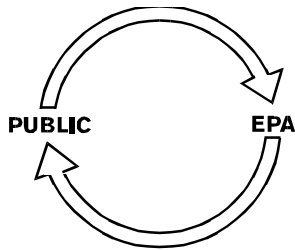


Statutory Requirements

When it implements the RCRA program within a State, EPA gives the public access to facility and site information relating to permitting, compliance, enforcement, and inspections. RCRA Section 3006 requires authorized States to make this information available to the public in a manner substantially similar in method and degree to EPA-implemented RCRA programs. In certain cases, however, the information may be confidential and unavailable to the public, e.g., when company trade secrets are involved. The following section discusses the specific requirements for dealing with confidential business information which are principally regulatory requirements.

Program Implementation

Section 3006 of RCRA requires that public comments be solicited before:



A State submits an application for Subtitle C final authorization

EPA decides to grant or deny a State authorization

EPA withdraws a State's authorization, and

EPA suspends or revokes a hazardous waste facility permit.

Enforcement

Section 7002 of RCRA gives fairly broad legal authority to ensure that the entire RCRA program is properly implemented. It allows a citizen to bring a civil suit against any person or government agency alleged to be in violation of any permit, standard, regulation, condition, requirement, or order that has become effective under the Act.

HSWA expanded citizen rights to bring suit against RCRA violators by allowing private individuals to initiate suits against any past or present generator, transporter, owner, or operator of a facility who has contributed to or is contributing to a condition that may present an imminent and substantial endangerment to human health and the environment.

FEDE AL

AS



operating permit.

In addition, 40 CFR Parts 264 and 265 require public notice and comments on RCRA closure plans.

Confidential Business Information

In the course of administering EPA programs, agency officials have access to material containing CBI, e.g. trade secrets and proprietary information. Because EPA must protect the rights of those who submit privileged information, employees are required to take all reasonable measures to prevent unauthorized disclosure of CBI. Regulations regarding confidentiality are contained in 40 CFR Part 2, Subpart B. These apply to RCRA as well as other EPA programs.

These regulations identify the proper procedures businesses must employ to claim confidentiality. In addition, these regulations establish the guidelines EPA must use to determine the validity of the claim, and impose rules for handling CBI.

When EPA notifies a business that it must submit confidential information for review, EPA also must notify the business of its right to assert a claim of confidentiality. Businesses responding to EPA's queries must clearly identify all confidential documents, materials, and information. EPA then determines the validity of the CBI claim. Businesses can claim information as confidential if it meets certain criteria, e.g., it has been previously protected as confidential, or it is not reasonably obtainable by others.

Employees authorized to use CBI are responsible for the control of such information and they may discuss CBI only with other authorized persons. Any violations should be reported immediately. In addition, employees must not discuss CBI over the telephone and when holding confidential information, they must store the confidential materials in an approved container when not in use. Finally, when working with representatives of businesses that have submitted CBI, employees must verify the representatives' identities before discussing any of the confidential information.

Guidance

To supplement its statutory and regulatory requirements, EPA developed guidance documents regarding public participation in RCRA permitting. The guidance stresses the importance of:

Identifying public concerns early in the permitting process

Encouraging the exchange of information among EPA, the State, the permittee, and the community

Creating open and equal access to the permitting process, and

Anticipating conflicts and providing an efficient method of resolution.

In some cases, EPA or the State may develop a Public Involvement Plan. This plan outlines the steps and actions EPA will take to communicate with the public during the facility permitting process.

OUTREACH AND PUBLIC ASSISTANCE

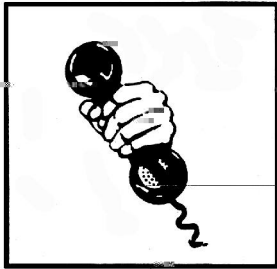
A number of opportunities exist for the public to obtain RCRA program information and assistance, including fact sheets and pamphlets. Two particularly noteworthy programs include:

The RCRA/Superfund Hotline
The Office of Ombudsman.

RCRA/Superfund Hotline

Hazardous waste regulations often seem complex even to those familiar with EPA's programs. To assist the public in understanding the RCRA and Superfund programs, EPA created the RCRA/Superfund Hotline. Anyone may call the Hotline staff and ask them questions related to the RCRA and Superfund programs. The Hotline is staffed by professionals who are completely familiar with the latest issues and regulations affecting EPA's hazardous waste programs. The Hotline is open Monday through Friday from 8:30 AM-5:00 PM (800) 424-9346/3616 Tc 0.181 Tw (OUhe Hotline11s open MTj

-36 -25.92 TD



Office of Ombudsman
U.S. Environmental Protection
Agency
Office of Solid Waste and
Emergency Response
Mail Code OS-130
401 M Street, SE
Washington, DC 20460
(202) 475-9361

To assist citizens with the RCRA program, EPA created a number of public outreach programs, the most noteworthy of these are the RCRA/Superfund Hotline and the Office of the Ombudsman.

SUMMARY

The public participation
framework developed under

**APPENDIX P -- PUBLIC PARTICIPATION IN ENFORCEMENT AND
COMPLIANCE**

WASHINGTON, D.C. 20460

UNITED STATES

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



MINIMUM PUBLIC INVOLVEMENT REQUIREMENTS

Although there will be many situations where much additional public involvement will be necessary, I would like to emphasize that there are minimum requirements for all 3008(h) orders, whether on consent or unilateral. Following the respondent's submission of its report on the RCRA Facility Investigation and Corrective Measures Study, the Agency will develop a proposed plan for corrective measures, or make the decision that no corrective measures are necessary. The Agency shall then (1) publish a notice and brief analysis of the proposed plan for corrective measures, or of its decision that no corrective measures are necessary, and make such information available to the public, and (2) provide a reasonable opportunity (ordinarily 30-45 days) for submission of written comments and, if the Regional Administrator deems it appropriate, a public meeting on the plan. If the Regional Administrator denies a request for a public meeting, he shall explain his decision in writing.

The Agency shall, as necessary, modify its proposed plan for corrective measures on the basis of written and oral comments received. Prior to issuance of the initial order for corrective measures the Agency shall prepare a responsiveness summary

technical issues at the site. There will be occasions where affected citizens can make valuable contributions to remedy selection through participation in technical discussions with owners or operators and government representatives.

We strongly urge the use of a public involvement plan for sites in which there is likely to be significant public interest. At appropriate points during the process, fact sheets can be developed that should both inform the public and allay fears that could surface if no substantive knowledge were made available. A public involvement plan tailored to each site can also be very helpful. You may refer to Community Relations in Superfund: A Handbook March 1986, and Public Involvement Guidance in the Permitting Program, March 1986, Directive 9500.01, for further information on public involvement techniques and process. The regional RCRA public involvement coordinator can also offer valuable information and assistance.

There are limitations on the release or discussion of certain information during the §3008(h) enforcement process. This is especially true during negotiations. The confidentiality of statements made during the course of negotiations must be maintained. Our goal during negotiations is to encourage frank discussion of all issues, and try to resolve differences. Public disclosure of this information would jeopardize the success of the negotiations. Disclosures of strengths and weaknesses of a case, information that is privileged and protected under the law, enforcement strategy and timing would also jeopardize the government's enforcement position. If a case is referred to the Department of Justice to initiate litigation, further constraints may be placed upon public involvement. In this situation, the scope of public involvement should be discussed with the lead DOJ attorney.

Coordination among EPA and/or State personnel is very important. At some sites, RCRA Permits and Enforcement Personnel and Superfund will be involved, and a coordinated approach will serve the Agency and the public best. In order to establish a network whereby information can be exchanged, I would like each region to appoint a coordinator for public involvement in §3008(h) orders. This person may be from either your public involvement or enforcement staffs. Please call Jackie Tenusak of my staff at FTS 475-8729 with the name of your contact.

Thank you for your attention to this matter. Please do not hesitate to call me, or any of our public involvement staff, if you have questions.

ADDRESSEES

Regional Hazardous Waste Management Division Directors,
Regions I-X

RCRA Enforcement Section Chiefs
Regions I-X

RCRA Enforcement Branch Chiefs
Regions I-X

Public Involvement/Community Relations Coordinators
Regions I-X

cc: Pamela Garrow, OWPE
Olga Corey, OWPE
Vanessa Musgrave, OSW
Melissa Friedland, OERR

United States
Environmental Protection
Agency

Office of
Enforcement
(LE-133)

March 1990



The Public's Role In Environmental Enforcement



1. Introduction

What can the public do to stop pollution? This question is asked EPA every day by citizens who have seen a pollution problem in their community and want to solve it.

This leaflet presents the first basic steps any member of the public can take to help correct a pollution problem. It describes approaches that can help the reader deal with the type of violations most often encountered by the public. Unfortunately, space does not permit coverage of every possible rare case situation.

Section 2 tells you how to determine whether enforcement techniques can help in dealing with your particular pollution problem, and how to make observations that can be used effectively. It describes the basic steps you can use in any pollution case.

Sections 3 through 6 address the violations most often encountered by the public in the major categories of water pollution, air pollution, hazardous waste pollution, and toxic substances pollution. It describes some specialized steps that may be useful for each of those environmental media.

2. The First Steps

The two most important things to do when you see a potential pollution problem are: (1) make careful observations of the problem and (2) report it to the proper authorities.

You should fully record your observations. Write down when you observed the problem (both date and time), where you observed the pollution, and how you came to notice the pollution. If the pollution problem has occurred more than once or is continuing, write that down. If possible, try to identify the person or source responsible. If it is a truck dumping wastewater or garbage, write down the license plate of the truck, the type of truck if possible, and note any signs or emblems on the truck. If you have noticed a particular type of smell, write down your best description of the smell or odor. If the pollution is visible and you have a camera, take a picture. If possible, you may want a friend, neighbor, or family member to confirm your observations.

Once you have carefully observed the problem and written down your observations, you should call the appropriate local or state authorities to inform them of your observations. Look in your local telephone book in the government pages for the county or city office that might handle the problem. Typically, such offices will be listed as environmental, public health, public works, water pollution, air pollution, or hazardous waste agencies. If you cannot find a county or city office, look for a state government environmental office. It may require a few calls to find the correct offices, but hang in there!

Once you reach the appropriate office, give the official all the

information on what you observed and ask him or her to look into the problem. You should ask the official whether the problem you have identified is likely to be illegal, how common it is, and how and when the office will investigate. Make sure you get the person's name and telephone number. If the person does not call back or respond promptly, call the person back and ask what is going on.

If the city or county environmental agency does not respond adequately to your telephone call, you may call back

pollution problem yourself. You may wish to contact your own attorney or a public interest environmental group. A listing of national and state environmental

Unfortunately, it is often difficult to tell with the naked eye if a person is complying with the terms of a NPDES permit. However, some reliable

migratory birds; they help control flooding and erosion; and they filter out harmful chemicals that might otherwise enter nearby water bodies.

In general, there is usually no way to know if a wetland is being filled legally or illegally without knowing whether the person has a Section 404 permit and knowing the terms of that permit. However, if you notice fill activity going on in a suspicious manner, e.g., late at night, this may suggest that the wetland is being filled illegally. If you see a wetland being filled and are curious whether there is a permit authorizing such filling, you may call the local Army Corps of

when citizens become aware of a water pollution problem, there are actions that they can take to begin the process of correcting the problem and forcing the violator to comply with the law. The first step is always to make careful observations of the pollution event that you are observing. It is best to make a written record of the time and place of the sighting. As many details as possible should be recorded concerning the nature of the pollution, for instance its color, smell, location, and its "oiliness". It is extremely important, if possible, that the source of the pollution be identified, including the name and

corrected. Confrontation of the polluter is most practically achieved by contacting the local, state, or federal environmental protection agency. In general, the state environmental agency is responsible for making a preliminary assessment of the legality of the pollution event observed, for investigating the vent, and, if necessary, for initiating an enforcement action to bring the polluter into compliance with the law. The citizen may also contact the U.S. EPA regional office that covers your state for assistance. A listing of all the U.S. EPA regional offices, with telephone numb .

environmental groups is contained in the *Conservation Directory*, 1987, 32nd Edition, published by the National Wildlife Federation, Washington, DC) If you win such a lawsuit, the polluter will likely be required to correct the problem

you have difficulty in getting a

EPA personnel can then check their records to see if they have received notice of the demolition or renovation, and can do an inspection if it seems likely that asbestos is involved.

Auto Warranties - The Clean Air Act requires that motor vehicles sold in the United States meet prescribed emissions standards. In order to ensure that vehicle emissions remain low for the useful life of the vehicle, manufacturers are required to provide broad emission warranty coverage for vehicles that are less than five years old and have been operated for less than 50,000 miles. This warranty applies to defects in any part whose primary purpose is to control emissions, such as the catalytic converter, and in any part that has an effect on emissions, such as the carburetor (except parts that have annual replacement intervals,

vehicles which require unleaded gasoline, and gasoline that is sold as unleaded must not contain excess lead or alcohol. If you know of a violation of the anti-tampering or motor vehicle fuel

emissions from a hazardous waste treatment, storage or disposal (TSD) facility, they should contact their state hazardous waste office or the local EPA Regional office to determine if the facility has a Resource Conservation and Recovery Act (RCRA) permit or has been granted interim status to operate while it applies for a RCRA permit. Any citizen may obtain copies of a TSD facility's permit and monitoring reports, which would document any violations, from the state agency or EPA Regional office.

A citizen may bring a civil judicial enforcement action against a RCRA violator provided he gives the violator, EPA, and the state sixty days notice of the intent to sue, during which time the state or EPA may pursue an enforcement action. With certain limitations, a citizen may also bring an action against any person who has contributed to or who is contributing to the past or present handling of any solid waste, including hazardous waste, that may present an imminent and substantial endangerment to human health or to the environment.

Transportation Spills

If you see a spill from a truck, train, barge or other vehicle, you should report it immediately to the local fire and police. If it is possible to read any labels on the vehicle, without getting too close, then you should report this information as well.

If you see a spill from a barge, ship, or other vessel into navigable waters or the ocean, such as an oil spill from a tanker, you should report the spill and location to the United States Guard, or call the hazardous waste hotline (1-800-424-8802) or (202) 267-2675).

Citizens who provide information leading to the arrest and conviction of persons who commit certain criminal violations under CERCLA may be eligible for a reward of up to \$10,000. These awards are often offered in connection with a violator's failure to make a required report on a release of a hazardous substance or the destruction or concealment of required records.

6. Pesticides and Toxic Substances

When citizens encounter instances of pollution involving pesticides or toxic substances, the law that was actually violated will most often be the Clean Water Act, the Clean Air Act, or the Resource Conservation and Recovery Act. Most violations of the Toxic Substance Control Act or the Federal Insecticide, Fungicide and Rodenticide Act will be discovered only by persons with special training or with access to information that is not generally available to the public.

TSCA

Violations of the Toxic Substances Control Act (TSCA) that the public might observe include:

- Demolition of a building containing asbestos without proper measures to keep the asbestos contained.
- Improper storage or disposal of transformers containing PCBs (polychlorinated biphenyls).
- Improper storage of asbestos.

If you think you are seeing such a violation, you should contact: Office of Compliance Monitoring (EN-342), U.S. Environmental Protection Agency, Washington, D.C. 20460, or call the National Response Center for Oil and Hazardous Material Spills at (800-424-8802).

Citizens suits are authorized under TSCA (15 U.S.C. section 2619). Citizens may sue violators of provisions concerning PCBs, asbestos, required testing of chemical substances, notification to EPA

before manufacturing or importing new chemicals, or beginning a significant new use of chemicals.

The Emergency Planning and Community Right-to-Know Law

FIFRA

Citizens may encounter violations of the provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) that govern the use of pesticides.

chemicals to report certain information to federal, state and local governments. For example, these businesses are required to

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Region 1:	Boston (617) 835-3424	CT, MA, ME NH, RI, VT
Region 2:	New York City (212) 264-2515	NY, NJ, PR, VI
Region 3:	Philadelphia (215) 597-9370	DE , DC, MD, PA, VA
Region 4:	Atlanta (404) 257-3004	AL, FL, GA, KY, MS, NC, SC, TN
Region 5:	Chicago (312) 353-2073	IL, IN, MI, MN, OH, WI
Region 6:	Dallas (214) 255-2200	AR, LA, NM, OK, TX
Region 7:	Kansas City (913) 757-2803	IS, KS, MO, NE
Region 8:	Denver (303) 564-7666	CO, MT, AND, SD, UT, WY
Region 9:	San Francisco (415) 484-1050	CA, HI, NV, Guam, American Samoa
Region 10:	Seattle (206) 399-1466	AK, ID, OR, WA

APPENDIX Q --

PUBLIC PARTICIPATION MANUAL REVISIONS -- TASK GROUP PARTICIPANTS

Ken Amaditz
US EPA, Office of Solid Waste
401 M Street, SW
Mail Code 5303W
Washington, DC 20460

Dale Armstrong
US EPA, Region 7
726 Minnesota Ave.
Kansas City, KS 66101

Patricia Buzzell
US EPA, Office of Solid Waste
401 M Street, SW
Mail Code 5303W
Washington, DC 20460
HNel Coamat

Marion Galant
Community Relations Manager
Colorado Dept. of Public Health and
Environment
HMWMD-ADM-B2

Denver, Colorado 80222-1530

Anne Hedges
Montana Environmental Information

PO Box 114
Helena, MT 59624

Margaret Kelch
Ross D 0.0217 Tc -7wnrvce s,Infc
MGrafon, DOH 44044 Tj 163.2 0 TD 0.0075 Tc -0.1424 Tw (CRle ght, NC 27611-7687 Tj -326.4

Brenda Richardson
Anacostia Congress Heights
Partnership
2301 Martin Luther King Ave., SE
Washington, DC 20020

Vicki Semones
US EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Jill Burton
North Carolina Dept. of Environment,

State Pollution Prevention Programs

Source: National Pollution Prevention Roundtable, November 1995

Region 1

Connecticut Technical Assistance Program
(ConnTAP)
50 Columbus Blvd. 4th Floor
Hartford, CT 06106
Phone: 203/241-0777
Fax: 203/244-2017
Contact: Rita Lomasney

83 Park Street
Providence, RI 02903
Phone: 401/277-3434
Fax: 401/277-2591
Contact: Richard Girasole, Jr.

Vermont Department of Environmental

Maine Department of Environmental Protection

Region 3

Pennsylvania Dept of Environmental Resources
Pollution Prevention Program
PO Box 8472
Harrisburg, PA 17105-8472
Phone: 717/787-7382
Fax: 717/787-1904
Contact: Meredith Hill

Pennsylvania Technical Assistance Program
Penn State University
117 Tech Center
University Park, PA 16802
Phone: 814/865-0427
Fax: 814/865--5909
Contact: Jack Gido

Delaware Department of Natural Resources and
Environmental Conservation
Pollution Prevention Program
P.O. Box 1401, 89 Kings Highway
Dover, DE 19903
Phone: 302/739-2411
Fax: 302/739-6242
Contact: Andrea Farrell

Virginia Department of Environmental Quality
Office of Pollution Prevention
PO Box 10009
Richmond, VA 23240-0009
Phone: 804/762-4344
Fax: 804/762-4346
Contact: Sharon K. Baxter

West Virginia Division of Environmental
Protection, Office of Water Resources
Pollution Prevention Services
2006 Robert C. Byrd Drive
Beckley, WV 25801-8320
Phone: 304/256-6850
Fax: 304/256-6948
Contact: Barbara Taylor

Region 4

Alabama Department of Environmental
Management
Special Projects, P2 Unit
PO Box 301463
Montgomery, AL 36130-1463
Phone: 334/213-4303
Fax: 334/213-4399
Contact: Gary Ellis

Florida Dept of Environmental Resource Mgmt
Pollution Prevention Program
33 SW Second Avenue, Suite 800
Miami, FL 33130
Phone: 305/372-6804
Fax: 305/372-6729
Contact: Lori Cunniff

Georgia Department of Natural Resources
Pollution Prevention Assistance Division
7 Martin Luther King, Jr. Drive, Suite 450
Atlanta, GA 30334
Phone: 404/651-5120
Fax: 404/651-5130
Contact: G. Robert Kerr

Kentucky P2 Center
Rm 312 Ernest Hall, University of Louisville
Louisville, KY 40292
Phone: 502/852-7260
Fax: 502/852-0964
Contact: Cam Metcalf

Mississippi Dept of Environmental Quality
PO Box 10385
Jackson, MS 39289-0385
Phone: 601/961-5241
Fax: 601/961-5376
Contact: Thomas E. Whiten

North Carolina Department of Environment,
Health and Natural Resources
Office of Waste Reduction
PO Box 29569
Raleigh, NC 27626-9569
Phone: 919/715-6500
Contact: Gary Hunt

South Carolina Dept of Health & Env Control
Center for Waste Minimization
2600 Bull Street
Columbia, SC 29201
Phone: 803/734-4761
Fax: 803/734-9934
Contact: Robert E. Burgess

Univ of South Carolina Inst of Public Affairs
Hazardous Waste Management Research Fund
937 Assembly Street
Columbia, SC 29208
Phone: 803/777-8157
Fax: 803/777-4575
Contact: Doug Dobson

Region 5

Illinois Environmental Protection Agency
Office of Pollution Prevention
2200 Churchill Road PO Box 19276
Springfield, IL 62794-9276
Phone: 217/782-8700
Fax: 217/782-9142
Contact: Michael J. Hayes

Illinois Hazardous Waste Research and
Information Center
One East Hazelwood Drive
Champaign, IL 61820
Phone: 217/333-8940
Fax: 217/333-8944
Contact: David Thomas

Indiana P2 7 Safe Materials Institute
1291 Cumberland Avenue, Suite C1
West Lafayette, IN 47906
Phone: 317/494-6450
Fax: 317/494-6422
Contacts: Lynn A. Corson, Ph.D or James R.
Nooman

Indiana Dept of Environmental Management
Office of P2 & Technical Assistance
100 North Senate Avenue P.O. Box 6015
Indianapolis, IN 46206-6015
Phone: 317/232-8172
Fax: 317/233-5627
Contact: Tom Netner

Michigan Department of Natural Resources
Assistance
PO Box 30457
Lansing, MI 48909-7957
Phone: 517/335-7310
Fax: 517/335-4729
Contact: Karl Zollner, Jr.

Minnesota Office of Environmental Assistance
520 Lafayette Road, 2nd Floor
St. Paul, MN 55155
Phone: 612/215-0242
Fax: 612/215-0246
Contact: Kevin McDonald

Minnesota Pollution Control Agency
Pollution Prevention Program
520 Lafayette Road
Phone: 612/296-8643
Fax: 612/297-8676
Contact: Eric Kilberg

Ohio Environmental Protection Agency

Office of Pollution Prevention
PO Box 1049
Columbus, OH 43216-1049
Phone: 614/644-3469
Fax: 614/728-1245
Contact: Michael W. Kelley, Anthony Sasson,
Roger Hannahs

Wisconsin Department of Natural Resources
Hazardous Waste Minimization Program
PO Box 7921
Madison, WI 53707
Phone: 608/267-3763
Fax: 608/267-2768
Contact: Lynn Persson

Wisconsin Department of Natural Resources
Pollution Prevention Program
PO Box 7921
101 S. Webster
Madison, WI 53707
Phone: 608/267-9700
Fax: 608/267-5231
Contact: Tom Eggert

Region 6

Oklahoma Department of Environmental Quality
Pollution Prevention Program
1000 NE 10th Street
Oklahoma City, OK 73117-1212
Phone: 405/271-1400
Fax: 405/271-1317
Contact: Dianne Wilkins

Texas Natural Resource Conservation Commission
Office of Pollution Prevention and Recycling
P.O. Box 13087
Austin, TX 78711-3087
Phone: 512/239-3100
Fax: 512/239-3165
Contact: Andrew C. Neblett

University of Texas at Arlington
Environmental Institute for Technology Transfer
PO Box 19050
Arlington, TX 76019
Phone: 817/273-2300
Fax: 817/794-5653
Contact: Gerald Nehman

Region 7

Iowa Department of Natural Resources
Waste Reduction Assistance Program

Wallace State Office Building
Des Moines, IA 50319-0034
Phone: 515/281-8941
Fax: 515/281-8895
Contact: Larry Gibson

Iowa Waste Reduction Center
University of Northern Iowa
Cedar Falls, IA 50614-0185
Phone: 319/273-2079
Fax: 319/273-2926
Contact: John L. Konefes

Kansas Department of Health and Environment
Office of Pollution Prevention
Building 283, Forbes Field
Topeka, KS 66620
Phone: 913/296-6603
Fax: 913/296-3266
Contact: Theresa Hodges

Missouri Department of Natural Resources
Technical Assistance Program
Pollution Prevention Program
P.O. Box 176
Jefferson City, MO 65102
Phone: 314-526-6627
Fax: 314/526-5808
Contact: Becky Shannon

Region 8

Colorado Dept of Public Health & Environment
Pollution Prevention Unit
4300 Cherry Creek Drive South
Denver, CO 80222
Phone: 303/692-3003
Fax: 303/782-4969
Contact: Parry Burnap

Montana Pollution Prevention Program
Montana State University Extension Service
109 Taylor Hall
Bozeman, MT 59717
Phone: 406/994-3451
Fax: 406/994-5417
Contact: Dr. Michael P. Vogel

State of Montana Water Quality Division
PO Box 200901
Helena, MT 59620
Phone: 406/444-7343
Fax: 406/444-1374
Contact: Patrick Burke

Energy and Environmental Research Center
University of North Dakota
PO Box 9018
Grand Forks, ND 58202-9018
Phone: 701/777-5000
Fax: 701/777-5181
Contact: Gerald Groenewold

North Dakota Department of Health
Environmental Health Section
P.O. Box 5520
Bismarck, ND 58506-5520
Phone: 701/328-5153
Fax: 701/328-5200
Contact: Jeffrey L. Burgess

South Dakota Department of Environment &
Natural Resources
Pollution Prevention Program
Joe Foss Building
523 E. Capitol Avenue
Pierre, SD 57501-3181
Phone: 605/773-4216
Fax: 605/773-4068
Contact: Dr. Dennis Clarke

Utah Department of Environmental Quality
Office of Planning and Public Affairs
168 N 1950 W. P.O. Box 144810
Salt Lake City, UT 84114-4810
Phone: 801/536-4477
Fax: 801/536-4401
Contact: Stephanie Bernkopf or Sonia Wallace

Wyoming Department of Environmental Quality
Solid and Hazardous Waste Division
122 West 25th Street
Cheyenne, WY 82002
Phone: 307/777-6105
Fax: 307/777-5973
Contact: Patricia Gallagher

Region 9

Arizona Department of Environmental Quality
3033 N Central Avenue
Phoenix, AZ 85012
Phone: 602/207-4337
Fax: 602/207-4872
Contact: Linda Allen

California State Department Toxic Substances
Control
Office of Pollution Prevention and Technology
Development

PO Box 806
Sacramento, CA 95812-0806
Phone: 916/322-3670
Fax: 916/327-4494
Contact: David Hartley, Kim Wilhelm,
Kathy Barwick, Alan Ingham

Phone: 360/407-6086
Fax: 360/407-6989
Contact: Thomas Eaton

State of Hawaii Department of Health
Waste Minimization Division
919 Ala Moana Blvd., Room 212
Honolulu, HI 96814
Phone: 808/586-4373
Fax: 808/586-7509
Contact: Jane Dewell, Waste Minimization
Coordinator

Nevada Small Business Development Center
Business Environmental Program
MS-032 University of Nevada at Reno
Reno, NV 89557-0100
Phone: 702/784-1717
Fax: 702/784-1375
Contact: Kevin Dick

Guam Environmental Protection Agency
PO Box 22439
Guam Main Facility
Barrigada, Guam 96921
Phone: 671-472-8863
Fax: 671/477-9402
Contact: Joseph C. Cruz

Region 10

Idaho Division of Environmental Quality
Prevention and Certification Bureau
1410 North Hilton
Boise, ID 83706
Phone: 208/334-5860
Fax: 208/334-0576
Contact: Katie Sewell

Oregon Department of Environmental Quality
Toxics Use and Hazardous Waste Reduction
Program
811 SW 6th Avenue
Portland, OR 97204
Phone: 503/229-5918
Fax: 503/229-6977
Contact: Sandy Gurkewitz

Washington State Department of Ecology
Hazardous Waste and Toxics Reduction Program
PO Box 47600
Olympia, WA 98504

Local, County and Regional Pollution Prevention Programs

Source: National Pollution Prevention Roundtable, November 1995

Region 1

Northeast Waste Management Officials'
Association (NEWMOA)
129 Portland Street
Boston, MA 02114
Phone: 617/367-8558
Fax: 617/367-0449
Contact: Terri Goldberg

Pittsburgh, PA 15238
Phone: 412/826-5320
Fax: 412/826-5552
Contact: Roger L. Price, P.E./Stephen T. Ostheim

Pennsylvania Technical Assistance Program
Penn State University

New Hampshire WasteCap
122 North Main Street
Concord, NH 03301

University Park, PA 16802
Phone: 814/865-0427
Fax: 814/865-5909

Lincoln/Lancaster County Health Department
Environmental Health Division
3140 N Street
Lincoln, NE 68510
Phone: 402/441-8040
Fax: 402/441-8323
Contact: Richard Yoder

Fax: 310/692-5103
Contact: Mischelle Mische/Ann Heil

Monterey County Health Department
Division of Environmental Health
Hazardous Materials/Solid Waste Branch
1270 Natividad Rd

Region 9

City of Phoenix
Water Services Department Pollution Control
Division
2303 W. Durango
Phoenix, AZ 85009
Phone: 602/262-6997
Fax: 602/534-7151
Contact: Jenee Gavette

Contact: Jon Jennings

Nevada County Hazardous Waste Task Force
950 Maidu
Nevada City, CA 95959
Phone: 916/265-1768
Fax: 916/265-7056
Contact: Daryl Kent/Traci LoBianco

Department of Commerce: Manufacturing Extension Program Centers

Region 1

Connecticut State Technology Extension Program
170 Middle Turnpike
Storrs, CT 06269-2041
Phone: 203/486-2585
Fax: 203/486-3049
Contact: Peter Laplaca

Massachusetts Manufacturing Partnership (MMP)
Bay State Skills Corp.
101 Summer Street 4th Floor
Boston, MA 02110
Phone: 617/292-5100
Fax: 617/292-5105
Contact: Jan Pounds

Region 2

Hudson Valley Manufacturing Outreach Center
Hudson Valley Technology Development Center
300 Westgate Business Center Suite 210
Fishkill, NY 12524
Phone: 914/896-6934
Contact: Douglas Koop

Manufacturing Outreach Center of New York -
Southern Tier
UniPEG
61 Court St., 6th Floor
Binghamton, NY 13901
Phone: 607/774-0022
Fax: 607/774-0026
Contact: E. Kay Adams

New York City Manufacturing Outreach Center
NY ITAC
253 Broadway Room 302
New York, NY 10007
Phone: 212/240-6920
Fax: 212/240-6879
Contact: Jeffrey Potent

New York Manufacturing Extension Partnership
(NYMEP)
385 Jordan Road
Troy, NY 12180-8347
Phone: 518/283-1010
Fax: 518/283-1212
Contact: John F. Crews

Western New York Tech Development Center
1576 Sweet Home Road
Amherst, NY 14228
Phone: 716/636-3626
Fax: 716/636-3630
Contact: William Welisevich

Region 3

Delaware Manufacturing Alliance
Delaware Technology Park
One Innovation Way, Suite 301
Newark, DE 19711
Phone: 302/452-2522
Fax: 302/452-1101
Contact: John J. Shwed

Maryland Manufacturing Modernization Network
Maryland Department of Economic Development
Division of Business
217 East Redwood Street
Baltimore, MD 21202
Phone: 410/333-0206
Fax: 410/333-1836
Contact: Edwin Gregg, Jr.

Northeast Pennsylvania Manufacturing Extension
Program
Manufacturers Resource Center
125 Goodman Drive
Bethlehem, PA 18015
Phone: 610/758-5599
Contact: Edith Ritter

Western PA Manufacturing Extension Program
4516 Henry Street
Pittsburgh, PA 15213
Phone: 412/687-0200 ext. 234
Contact: Ray Cristman

A.I. Philpott Manufacturing Center
231 East Church Street
Martinsville, VA 24112
Phone: 703/666-8890
Contact: John D. Hudson, Jr.

Region 4

Georgia Manufacturing Extension Alliance
Georgia Institute of Technology
223 O'Keefe Building
Atlanta, GA 30332
Phone: 404/894-8989
Fax: 404/853-9172
Contact: Charles Estes

Kentucky Technology Service
P.O. Box 1125
Lexington, KY 40589
Phone: 606/252-7801
Fax: 606/252-7900
Contact: Donald L. Smith

Region 5

Chicago Manufacturing Center
HWRIC-Clean Manufacturing Program
Homan Square
3333 West Arthington
Chicago, IL 60624
Phone: 312/265-2180
Fax: 312/265-8336
Contact: Malcolm Boyle

Industrial Technology Institute
Midwest Manufacturing Technology Center
(MMTC)
Energy and Environmental Program
PO Box 1485 2901 Hubbard Road
Ann Arbor, MI 48106
Phone: 313/769-4234
Fax: 313/769-4021
Contact: Kenneth J. Saulter, Christine A. Branson

Minnesota Technology Inc.
Upper Midwest Manufacturing Technology Center
(UMMTC)
111 Third Avenue South, Suite 400
Minneapolis, MN 55401
Phone: 612/654-5201
Contact: Sandy Voight

Great Lakes Manufacturing Technology Center
(GLMTC)
Prospect Park Building, 4600 Prospect Avenue
Cleveland, OH 44103-4314
Phone: 216/432-5350

Plastics Technology Deployment Center
Prospect Park Building
4600 Prospect Avenue
Cleveland, OH 44103
Phone: 216/432-5340
Fax: 216/361-2088
Contact: David Thomas-Greaves

Region 6

New Mexico Industry Network Corporations
1601 Randolph Road SE, Suite 210
Albuquerque, NM 87106
Phone: 505/272-7800
Fax: 505/272-7810
Contact: Randy W. Grissom

OK Alliance for Manufacturing Excellence, Inc.
252 South Main, Suite 500
Tulsa, OK 74103
Phone: 918/592-0722
Fax: 918/592-1417
Contact: Edmund J. Farrell

Region 7

Iowa Manufacturing Technology Center
2006 South Ankeny Blvd. ATC Building, 3E
Ankeny, IA 50021
Phone: 515/965-7040
Fax: 515/965-7050
Contact: Dr. Del Sheppard

Mid-American Manufacturing Technology Center
(MAMTC)
10561 Barkley, Suite 602
Overland Park, KS 66208
Phone: 913/649-4333
Fax: 913/649-4498
Contact: Paul Clay

Region 8

MAMTC Colorado Regional Office
Rockwell Hall
Colorado State University
Fort Collins, CO 80523
Phone: 303/224-3744
Contact: Craig Carlile

Region 9

California Manufacturing Technology Center
(CMTC)
13430 Hawthorne Blvd.
Hawthorne, CA 90250
Phone: 310/355-3060
Fax: 310/676-8630
Contact: Larry Godby

Pollution Prevention Center
Institute for Research and Technical Assistance
2800 Olympic Blvd. Suite 101
Santa Monica, CA 90404
Phone: 310/453-0450
Fax: 310/453-2660
Contact: Katy Wolf

Under Development

MAMTEC Southern Regional Office
Rolla, MO

Nebraska Industrial Competitiveness Service
Lincoln, NE

Defense Enterprise Empowerment Center
Kettering, OH

Tennessee Manufacturing Extension Program
Nashville, TN

VA Alliance for Manufacturing Competitiveness
Richmond, VA

Northwest WI Manufacturing Outreach Center
Menomonie, WI

State Small Business Assistance Programs

Source: National Pollution Prevention Roundtable, November 1995

Region 1

Connecticut Dept. Of Environmental Protection
Small Business Assistance Program
79 Elm Street
Hartford, CT 06106-5127
Phone: 203/424-3382
Fax: 203/424-4063
Contact: Tracy R. Babbidge, Kirsten Cohen

New Hampshire Small Business Technical &
Environmental Compliance Assistance Program
64 North Main Street, 2nd floor
Concord, NH 03302-2033
Phone: 603/271-1370
Fax: 603/271-1381
Contact: Rudolph A. Cartier, Jr., P.E.

Region 2

New York State Dept of Economic Development
Environmental Ombudsman Unit
Division for Small Business
1515 Broadway 51st floor
New York, NY 10036
Phone: 212/827-6157 or 800/STAT-ENY ext. 157
Fax: 212/827-6158
Contact: Doreen Monteleone, Ph.D.

Region 3

Maryland Department of Environment
Air and Radiation Management Administration
Small Business Assistance Program
2500 Broening Hwy.
Baltimore, MD 21224
Phone: 800/433-1AIR or 413/631-3165
Fax: 410/631-3896
Contact: Linda Moran

Region 4

Alabama Dept. of Environmental Management
Ombudsman
PO Box 301463
Montgomery, AL 36130-1463
Phone: 800/533-2336
Fax: 334/271-7950
Contact: Blake Roper

Florida Department of Environmental Protection
Small Business Assistance Program
2600 Blair Stone Rd.
Tallahassee, FL 32399-2400
Phone: 904/488-1344
Fax: 904/922-6979
Contact: Joe Schlessel

Tennessee Clean Air Assistance Program
Clean Air Small Business Assistance Program
401 Church St., 8th Floor, L&C Annex
Nashville, TN 37243-1551
Phone: 615/532-0760
Fax: 615/532-0231
Contact: Linda F. Sadler

Region 5

Minnesota Pollution Control Agency
Small Business Assistance Program
520 Lafayette Road
St. Paul, MN 55155
Phone: 612/297-2316
Fax: 612/297-7709
Contact: Leo Raudys

Wisconsin Department of Natural Resources
Small Business Assistance Program
PO Box 7921 AM/7
Madison, WI 53707-7921
Phone: 608/267-3136
Fax: 608/267-0560
Contact: Robert Baggot

Region 6

Arkansas Industrial Development Commission
Industrial Waste Minimization Program
One State Capital Mall
Little Rock, AR 72201
Phone: 501/682-7322
Fax: 501/682-7341
Contact: Ed Davis

Louisiana Department of Environmental Quality

Region 9

California Air Resources Board
Small Business Assistance Program
PO Box 2815
Sacramento, CA 95812
Phone: 916/322-3976
Fax: 916/445-5745
Contact: Victor Espinosa

Nevada Small Business Development Center
Business Environmental Program
MS-032 University of Nevada at Reno
Reno, NV 89557-0100
Phone: 702/784-1717
Fax: 702/784-1395
Contact: Kevin Dick

Region 10

Alaska Dept of Environmental Conservation
Air Quality Small Business Assistance Program
555 Cordova Street
Anchorage, AK 99501
Phone: 907/269-7500
Fax: 907/273-9652
Contact: Marianne See

Oregon Department of Environmental Quality
Air Quality Small Business Assistance Program
811 SW 6th Avenue
Portland, OR 97204-13909
Phone: 503/229-5946
Fax: 503/229-5675
Contact: Terry Obteshka

Washington State Department of Ecology
Air Quality Division Business Assistance Program
PO Box 47600
Olympia, WA 98504-7600
Phone: 206/407-6805
Fax: 206/407-6802
Contact: Jerry Jewett

APPENDIX T -- GLOSSARY OF ACRONYMS

ANPR	Advance Notice of Proposed Rulemaking
CAG	Community Advisory Group
CAMU	Corrective Action Management Unit
CBEP	Community Based Environmental Protection
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CFR	Code of Federal Regulations
CMI	Corrective Measures Implementation
CMS	Corrective Measures Study
EPA	Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act
FR	Federal Register
HQ	EPA Headquarters
HSWA	Hazardous and Solid Waste Amendments
LEPC	Local Emergency Planning Committee
NOD	Notice of Deficiency
OSW	EPA Office of Solid Waste
OSWER	EPA Office of Solid Waste and Emergency Response
RCRA	Resource Conservation and Recovery Act
RFA	RCRA Facility Assessment
RFI	RCRA Facility Investigation
SWDA	Solid Waste Disposal Act
SWMU	Solid Waste Management Unit
TAG	Technical Assistance Grant
TRI	Toxics Release Inventory
TSD	Treatment, Storage, and Disposal Facility