

## Chapter Two

### Preparing to Review a Permit

This chapter provides all the information that you need to get started reviewing a Title V permit. In particular, this chapter explains how to identify the Permitting Authority (see below), select a draft permit to review (p. 6), identify important deadlines (p. 13), and obtain all of the information that you need to review the draft permit (p. 24).

#### Step One in Preparing to Review a Permit: Identify the Permitting Authority

In this handbook, any agency that is authorized to issue Title V permits is referred to as “the Permitting Authority.” The Permitting Authority is usually responsible for air quality in its jurisdiction, not just permits. A state agency may administer an operating permit program for the entire state or a local agency may run its own program upon agreement with the state.

#### **A. How does a state or local government agency obtain U.S. EPA approval to run a permit program?**

Under the Clean Air Act, each state was required to submit a proposed state Title V permitting program to the U.S. EPA for approval by November 15, 1993. The minimum elements of a state Title V program submittal are set out in the United States Code of Federal Regulations (CFR) as 40 CFR Part 70. See Appendix A for a full copy of Part 70. When U.S. EPA approves a Part 70 program, it is approving the relevant state or local laws and regulations, as well as the Permitting Authority’s plan for administering the Title V program in the state or locality.

#### **B. Have many state and local agencies submitted proposed permit programs to U.S. EPA for approval?**

Yes. All states and many local agencies submitted a permit program to U.S. EPA for approval. Most state and local programs submitted to U.S. EPA for approval did not entirely satisfy the minimum federal requirements for a Title V program. As a result, U.S. EPA granted “interim approval” to most state Title V programs. Interim approval means that the state or local agency can go ahead and issue Title V permits, but the agency must correct certain flaws in its program prior to receiving full U.S. EPA approval. For any state

program that is currently operating under interim approval, interim approval extends until December 2001.

**C. Do Indian Tribes run their own Title V permit programs?**

Although Indian Tribes can run Title V programs, no Tribal program has been submitted to U.S. EPA. Until Tribal programs are approved, U.S. EPA is running the Title V program in Indian country. Title V permits for facilities located in Indian country are issued by U.S. EPA's Regional offices. The regulations for EPA-issued permits are found at 40 CFR Part 71 and on the Internet at [www.epa.gov/oar/oaqps/permits](http://www.epa.gov/oar/oaqps/permits).

**D. How can I find out who issues Title V permits in my community?**

Check Appendix A to find out who issues Title V permits in your community. Appendix B provides you with the website address for the state agency and who to contact for more information.

If a state or local agency is approved to issue Title V permits in your state, the program is operated under state and/or local laws and regulations. These laws and regulations must comply with 40 CFR Part 70. You need to obtain a copy of the state permit regulations for the Title V program.

**Step Two in Preparing to Review a Permit:  
Select a Facility**

The second step in getting involved in Title V is to identify a facility that you would like to focus upon. Keep in mind that not every facility is required to apply for a Title V permit. Most Title V applications will be from large industrial facilities like factories or power plants. If your region is failing to meet EPA's air quality standards, however, smaller facilities might be required to apply.

**A. How do I find out which facilities in my community are covered by Title V?**

To identify facilities in your community that are covered by the Title V program, you can get a list of Title V sources from the Permitting Authority. Some permitting authorities maintain a list of Title V facilities on the Internet. Appendix B provides relevant website addresses. If the information you need is

not on a website, or if you lack access to the Internet, then you can request this information from your state agency. A single phone call should work, but you may need to talk to a permit writer or someone at the agency who is familiar with the Title V program.

**B. How does the Permitting Authority decide which facilities need to apply for a Title V permit?**

The Clean Air Act lists the kinds of facilities that must get Title V permits. The criteria are complicated but are based on (1) the type of facility, (2) the facility's capacity to produce pollution, (3) the kind of pollutants produced at the facility, and (4) the severity of the air quality problems in the area where the facility is located. If the facility that you are interested in is already on the list of Title V sources maintained by the Permitting Authority, it is not necessary for you to grapple with the criteria for determining whether or not a facility is covered by the Title V program. If you would like more information about the criteria, refer to Appendix D of this handbook.

**C. How do I decide which facility to focus on?**

There is no formula for selecting a facility to focus on. You might want to consider one of the following approaches:

**1. Start with a facility located near your community.**

The list of Title V facilities you obtain from the Permitting Authority will probably include the address of each Title V applicant. Alternatively, you could make a list of who you think the biggest polluters are in your community, and then check to see if they are included on the Title V list.

**2. Select a facility that causes a particularly large amount of pollution or that releases a pollutant that is of particular concern.**

To determine which facilities cause the largest amount of pollution, try looking at the state emissions inventory. The emissions inventory lists every major air pollution source in the state, and breaks down emissions according to the type of pollutant emitted. Each state is required to put together an emissions inventory under Clean Air Act § 110(a)(2). You might be able to

download your state's emission inventory from the Internet. If not, you can contact the Permitting Authority for this information.

You also may want to examine facilities that release pollutants that are dangerous at low levels—usually classified as “Hazardous Air Pollutants” (“HAPs”). Hazardous air pollutants are usually suspected of causing cancer, and they are also associated with a number of other types of health effects. Facilities that release large amounts of HAPs must produce yearly reports called “Toxic Release Inventory” (TRI) reports. The results of these reports are available on the Internet at [www.epa.gov/enviro/html/toxic\\_releases.html](http://www.epa.gov/enviro/html/toxic_releases.html). Many facilities listed in the TRI database do not emit a large enough quantity of pollution to be eligible for Title V, however, so don't be surprised if many of the facilities that submit TRI data are not required to apply for a Title V permit. Also, some facilities emit hazardous air pollutants that are not reported to the TRI database.

Finally, U.S. EPA maintains a database of source-specific information called the “AIRS” database. AIRS, which stands for “Aerometric Information Retrieval Service,” is maintained by U.S. EPA but relies upon data provided by state and local pollution control agencies. Some AIRS information is available on the Internet at [www.epa.gov/airs/airs2.html](http://www.epa.gov/airs/airs2.html). Sometimes this website will have useful information about air pollution from facilities located in your area. Unfortunately, some states agencies do not update this database regularly. Because of the unreliability of this database, you should not rely upon information available on the AIRS website as your sole source of information on pollution emissions.

### **3. *Select a facility that has a history of violating air quality requirements.***

The best way to find out which facilities have violated air quality requirements in the past is to request records from the Permitting Authority. Technically, state agencies are required to enter enforcement information into the AIRS database for facilities that release large amounts of pollution. You can ask the U.S. EPA Regional Office or your state air pollution control agency whether the AIRS database is a reliable source of information for facilities located in your state. If AIRS is reliable for your state, then you might be able to obtain useful information from U.S. EPA's *AIRSDATA* website, described above. If you have difficulty accessing the Internet, or if the *AIRSDATA* website is not helpful, you should consider requesting the actual AIRS enforcement

reports. In particular, you can ask to see the “FORM 620” reports from the AIRS database for all facilities in your state or community.

If AIRS is not a reliable source in your state, then ask your state agency what they recommend. If all else fails, you can examine individual facility files for inspection reports, community complaints, and notices of violation. You can also ask to see a list of all facilities that are operating under judicial consent decrees or administrative orders in your area.

#### **4. *Select a facility that has been the subject of community complaints.***

There are several ways to go about obtaining information about community complaints. You might search back issues of your local paper for articles about air pollution problems. Or, you could contact environmental groups in your area and ask if they can help you identify potentially troublesome facilities. Finally, you could make a request to the Permitting Authority asking for a copy of any written public complaints submitted to the agency.

#### **D. What do I do if the facility I am interested in does not appear on the Permitting Authority’s list of Title V facilities?**

If a facility that you are concerned about is not listed as a Title V facility, you can contact your Permitting Authority and ask about the facility. The facility might be too small to have to get a Title V permit. Also, the owner of a facility might avoid having to get a Title V permit by agreeing to get an enforceable “cap” that limits the amount of pollution the facility can emit. A “cap” might include a limitation upon the number of hours the facility is allowed to operate each day. A facility that agrees to a “cap” in order to avoid getting a Title V permit is called a “synthetic minor” source. The facility will receive a permit, but this permit is not a Title V permit. Sometimes these permits are called “Federally Enforceable State Operating Permits” (“FESOPs”). You can ask the Permitting Authority for a list of synthetic minor facilities. See Part Two, Chapter Four of this handbook for a more detailed discussion of this topic.

If the facility you are interested in is not listed as a Title V source, or as a synthetic minor facility, there is a chance that the facility failed to file a Title V permit application and is in violation of the law. It is very difficult for the public to figure out whether a facility that is not listed as a Title V source by the

Permitting Authority is covered by the Title V program. If you have access to a technical expert, you may be able to calculate whether the facility's potential emissions would be large enough to require a Title V permit. Before doing so, however, determine whether the Permitting Authority ever sent the facility a written notification that it is required to apply for a Title V permit. To do this, simply request that the Permitting Authority provide you with any notice ever sent to the facility regarding the Title V program. If the facility received such a request and never responded, there is a strong chance that the facility is operating without a permit in violation of the Clean Air Act.

**E. What do I do if a final permit has already been issued to the facility that I am interested in?**

**1. Request a copy of the final permit and any monitoring reports.**

If you discover that a final permit has already been issued to the facility that you are most interested in, the first thing to do is request a copy of the permit. If the permit was issued more than six months ago, the facility was already required to submit reports of any required monitoring to the Permitting Authority. If you are not satisfied with the monitoring reports or if none have been submitted, you can also request access to any monitoring records that the facility is required to maintain under conditions of its permit. Once you file a request, the Permitting Authority must obtain the records from the facility.

**2. Examine the monitoring reports to determine whether the facility is complying with its permit.**

By examining the records maintained by the facility you should be able to determine whether the facility is violating its permit. Under the Clean Air Act, a member of the public can bring a lawsuit in federal court against a facility that is violating its permit.

**3. Be alert for when the Permitting Authority renews, reopens, or makes significant changes to the permit.**

When a permitting authority renews, reopens or make a significant change to a permit that has already been issued, you will have the opportunity to receive notice, review a draft, make comments, and request a public hearing, just as you do when a permit is first issued. If you live in a state that has nearly all of its permits issued, then you should already be thinking about how to get

involved with permit revisions, reopenings and renewals. Or, if you are interested in just one facility and it has already gotten its Title V permit, you'll need to understand your rights to participate in these proceedings. You can ask the Permitting Authority to put your name on a mailing list of persons who want to receive notice of permit revisions, reopenings and renewals for one or more facilities. Be aware that you may be the first person to ask your permitting authority to create this type of mailing list.

a. *What kinds of permit revisions will I have a chance to comment on?*

When a facility makes a change in its operations, it will generally need to apply for a revision to its title V permit. You will have a chance to review the most environmentally significant permit changes at a facility. These changes are called significant modifications. Your state's permitting regulations will define the type of revisions that fall into this category. The Permitting Authority must provide public notice of the draft permit revision. You will have a chance to look at the application for the revision and the draft permit plus a chance to comment and request a public hearing. When a facility makes changes that are less environmentally significant, you will not get prior notice of the permit revision or a chance to comment. These less significant changes at a facility are usually called minor modifications or administrative revisions.

When you comment on a draft permit revision, the Permitting Authority will consider your comments on the parts of the permit that are changing, not the parts that remain the same.

U.S. EPA is considering changes to 40 CFR Part 70 that would affect the public's ability to comment on certain types of permit revisions. You will have a chance to comment on these proposed changes to 40 CFR Part 70. The proposed regulation will be published in the Federal Register. If the requirements in Part 70 change, then States will be required to change their program requirements.

b. *When do permitting authorities provide notice of permit renewals?*

Title V permits must expire after 5 years. A few permits expire after a shorter term. Facilities must submit applications for renewal at least 6 months before their permits expire. Once the Permitting Authority has considered the renewal application, it will notify the public that the draft permit is available for public review and comment. Renewal is your chance to let the Permitting Authority know if the permit has not been doing a good job. If you think the

periodic monitoring has been inadequate, that some of the terms are too vague to be enforceable, etc. this is your opportunity to request changes. (You will learn about what to look for in a draft permit later in this handbook).

*c. When and why do permits get reopened?*

Permits get reopened when:

- Additional requirements become applicable to the facility and there are 3 years or more left before the permit expires;
- Additional requirements become applicable to the facility and the facility is an affected source under the acid rain program (this applies primarily to large power plants);
- The Permitting Authority or U.S. EPA finds that there is a material mistake in the permit or that part of the permit is based on inaccurate statements in the permit application; and
- The Permitting Authority or U.S. EPA finds that the permit needs to be changed so that it will assure that the facility is complying with all of the requirements that apply to it.

The most common situation for reopening a permit is when EPA issues a new standard, such as a MACT standard (Part Two, Chapter Five of this handbook), and the facility that is subject to the standard has been issued a permit within the last 2 years. In this case, the permit will be reopened so that the MACT standard can be added to the permit. If there is less than 3 years left before the permit must be renewed, then the MACT standard will get added at renewal. Of course, even before renewal, the facility will have to comply with the MACT standard because once a standard goes into effect, facilities that are subject to the standard must comply with it regardless of whether the standard has been incorporated into the permit.

Before a permit is reopened, the Permitting Authority must notify the facility that it intends to reopen the permit. When you comment on a draft of a reopened permit, the Permitting Authority will consider your comments on the parts of the permit that are being reopened, not the parts that remain the same.

d. *How can I request that a permit be reopened?*

If you believe that there are grounds for reopening a permit, you can bring this to the attention of the Permitting Authority in writing. If you don't get the results you want, you can notify U.S. EPA in writing. If U.S. EPA agrees with you, then the Permitting Authority will have to reopen the permit. If you notice a serious problem with a permit but you missed the public comment period, then consider whether the problem meets one of the four tests discussed on page 12 for when a permit should be reopened. For example, if the permit does not include enough monitoring (p. 32) or a permit term is not practicably enforceable (p. 30), you can make the argument that the permit must be reopened because it does not "assure compliance with the applicable requirements" (which is the fourth test listed above on the bulleted list). Here's another example: If you find that the permit is flawed because the facility did not include a term from its pre-construction permit in its application, you can argue that the permit should be reopened, based on the second test discussed above.

### **Step Three in Preparing to Review a Permit: Identify Important Deadlines**

To participate effectively in the Title V program, you should understand what happens at each stage of the permitting process. Deadlines are extremely important in the process. ***If you miss the deadline for submitting comments on a draft, you will lose your right to challenge the final permit.*** This section begins with a brief overview of the various stages in the permitting process. The overview is followed by a detailed explanation of each stage.

#### **A. What are the essential elements of the permitting process?**

First, the facility owner is required to submit a permit application. Based upon information provided in the permit application, the Permitting Authority develops a "draft" permit. The draft permit is then released to the public for a 30-day "public comment period." Any public comments must be submitted to the Permitting Authority by the end of the 30-day period. This handbook is intended to help you develop effective comments during the 30-day public comment period.

During the public comment period, you can request a public hearing in addition to submitting written comments. Written comments must be considered by the Permitting Authority whether or not a public hearing is held. After weighing any public comments, the Permitting Authority will decide whether to make changes in the draft permit. Before a final permit is issued, the Permitting Authority must submit the draft permit to U.S. EPA for a 45-day review period. Note that in some states U.S. EPA's 45-day review period runs at the same time as the 30-day public comment period. You need to find out whether your state's regulations allow these review periods to overlap.

When the draft permit is submitted to U.S. EPA, it becomes a "proposed" permit. A proposed permit becomes final if U.S. EPA does not object to it. If U.S. EPA does nothing, the proposed permit will become final exactly as it was written by the Permitting Authority. If U.S. EPA rejects a proposed permit, the Permitting Authority must either (1) deny the permit, or (2) revise and resubmit the permit to U.S. EPA within 90 days of U.S. EPA's rejection notice. If the Permitting Authority misses the 90-day deadline, the Permitting Authority loses control over the permit. U.S. EPA is then required to either deny or rewrite the permit.

If U.S. EPA fails to reject a proposed permit, any member of the public *who submitted comments during the public comment period* may petition the U.S. EPA Administrator to reject the permit. Such a petition must be submitted within 60 days after U.S. EPA's 45-day review period ends. After receiving a petition, U.S. EPA has 60 days to respond.

If U.S. EPA denies a petition, the petitioner may bring a lawsuit against U.S. EPA challenging the denial in the federal Court of Appeals where the facility is located. Moreover, anyone who participated in the public comment period can challenge a final permit by bringing suit against the Permitting Authority in state court.<sup>1</sup>

## **B. When were Title V permit applications due for existing facilities?**

Title V permit applications were due for existing facilities one year after the effective date of the Title V program approved for your area. The permit application deadline has passed for all but a handful of facilities. Turn to Appendix A to determine the effective date of your state or local Title V program. After the application deadline expires, any Title V facility operating

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<sup>1</sup> If the permit is issued by an Indian Tribe, there may be an alternative way to challenge the permit.

without a permit application on file with the Permitting Authority is violating the Clean Air Act.

**C. When is a new facility required to apply for a Title V permit?**

Any new facility must apply for a Title V permit within 12 months after beginning to operate. Note that a new facility must comply with Clean Air Act requirements during the first 12 months of operation. Also, anyone who proposes to build a new facility is required to obtain a “preconstruction permit” before beginning construction.

**D. What happens if a facility misses the permit application deadline or fails to submit a complete application before the deadline?**

If a Title V permit applicant submits a complete application by the applicable deadline (established under state permit program regulations), the applicant receives a “permit application shield.” This means that while the Permitting Authority is processing the permit application the facility may continue to operate. The permit application shield provides an exception to the general Clean Air Act rule that no facility that is covered by the Title V program may operate without a permit. If a facility owner fails to file a complete application by the application deadline, the facility is not protected by the permit application shield and is operating in violation of the Clean Air Act. But here’s the catch: unless the Permitting Authority determines that an application is incomplete within 60 days after it is submitted by the applicant, the permit application is automatically deemed complete and the facility is protected by the permit application shield. If the Permitting Authority determines that an application is incomplete, it notifies the facility in writing and requests additional information.

Many facilities across the country failed to submit complete permit applications by the applicable deadline. Even though the vast majority of these facilities did submit applications, they are not protected by the permit application shield. In fact, once a facility misses the application deadline, it can never be protected by the permit application shield. As a practical matter, it probably does not matter that a facility is not protected by the permit application shield so long as it has now submitted a permit application. Permitting authorities are more likely to bring enforcement actions against facilities that entirely failed to file an application. Also, while the Clean Air Act authorizes “any person” to bring a lawsuit against a facility that misses the

application deadline, such a lawsuit would probably be unsuccessful against a facility that was simply late filing its application.

**E. If a facility's permit application is deemed "complete," can the Permitting Authority still request additional information?**

Yes. Even after an application is deemed complete, the Permitting Authority may request additional information if it is needed to process the application. The Permitting Authority must request such information in writing and set a reasonable deadline for the applicant to respond. If the applicant misses the deadline, the facility is no longer protected by the permit application shield.

**F. How much time does the Permitting Authority have to consider a permit application?**

Once the Title V program is in full swing (after the first 3 years of operation in your area), permitting authorities will be required to take final action on each permit application within 18 months after its submittal. (Final action refers to the Permitting Authority's decision to issue or deny a permit). The Clean Air Act makes an exception for the first three years of the program. To obtain U.S. EPA approval to administer a state or local permitting program, each Permitting Authority was required to submit a transition plan for processing permit applications submitted by existing facilities. Under the transition plan, most permitting authorities were required to take final action on all permit applications for existing facilities within three years after the effective date of the approved permitting program. Nearly every Permitting Authority has already missed the three year deadline.

**G. How do I know when the public comment period begins for a permit that I am interested in?**

Once the Permitting Authority develops a draft permit, the permit must be released for public comment. The Permitting Authority must give the public at least 30 days to submit comments on a draft permit.

The public comment period begins when the Permitting Authority publishes a public notice announcing that the draft permit is available for public review. According to federal regulation, the notice must be published in "a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice." 40 CFR § 70.7(h)(1).

Some permitting authorities publish a newspaper notice (usually in the legal notice section) *and* a notice in a state publication. The notice must include:

- name of the facility;
- name and address of the Permittee;
- name and address of the Permitting Authority;
- activities covered by the draft permit;
- any emissions change involved in the permit action;
- who to contact for more information;
- how to get a copy of the draft permit and supporting materials;
- how to submit comments;
- time/place of any hearing already scheduled, and
- how to request a hearing if a hearing isn't already scheduled.

See 40 CFR § 70.7(h)(2). A sample public notice is on the next page.

**PUBLIC NOTICE**  
**STATE OF WYOMING**  
**Department of Environmental Quality/Division of Air Quality**  
**Air Pollution Source**  
**Proposed Operating Permit**

Section 30(d)(ix) of the Wyoming Air Quality Standards and Regulations provides that, prior to final determination on an application for a Section 30 operating permit, opportunity be given for public comment and public hearing on the information submitted by the owner or operator and on the proposed draft permit. The regulation further requires that such information be made available to the public and that the public be allowed a period of thirty (30) days in which to submit comments. A public hearing will be conducted only if, in the opinion of the Administrator, sufficient interest is generated or if an aggrieved party requests a hearing within the 30 day public comment period.

Notice is hereby given that the State of Wyoming, Department of Environmental Quality, Division of Air Quality, proposes to issue an initial Section 30 operating permit to the following applicant for the Echo Springs Gas Plant in Carbon County, Wyoming:

Williams Field Services Company  
P.O. Box 58900  
Salt Lake City, Utah 84158

The Echo Springs Gas Plant is located in the South ½ of Section 1, Township 19 North, Range 93 West, Carbon County, Wyoming (approximately eight miles southeast of Wamsutter, Wyoming). The facility is involved in the extraction of natural gas liquids from gas received by pipeline and recompression of the residue gas for further transportation by pipeline. The pollutants of primary concern from this facility are nitrogen oxides (NOx), carbon monoxide (CO) and volatile organic compounds (VOCs). A copy of the permit draft, the application, all relevant supporting materials, and all other materials available to the Division that are relevant to the permit decision may be obtained by contacting Michael Stoll, Operating Permit Program Manager, Division of Air Quality, Department of Environmental Quality, 122 West 25<sup>th</sup> Street, Cheyenne, Wyoming 82002 at (307) 777-3784. Interested parties may examine these materials in the Division's Cheyenne office. Arrangements can be made with the Division to copy relevant materials, if necessary (a fee will be assessed for reproduction). In accordance with the Americans with Disabilities Act, special assistance or alternate formats will be made available upon request for individuals with disabilities.

Public comments must be received no later than March 2, 1998. Comments or requests for a hearing should be directed to Dan Olson, Administrator, Division of Air Quality, Department of Environmental Quality, 122 West 25<sup>th</sup> Street, Cheyenne, Wyoming, 82002. All comments received by the close of business on March 2, 1998 will be considered in arriving at a final determination on the issuance of this permit and will be retained on file in the Cheyenne office.

Each Permitting Authority creates its own format for public notices. Regardless of the format, all information listed on page 17 must be included in the notice. If the public notice for a draft permit that you are reviewing does not include all required information, make a note of the missing information.

You can identify and comment on problems with the public notice in any comments you submit during the public comment period on the draft permit.

In addition to publishing a notice as described above, federal regulations require the Permitting Authority to mail the public notice to any person who requests to be on a mailing list. If you already know which draft permits you wish to review, then you can request to be on a mailing list for notification when those draft permits are released for public comment. If you have not yet decided which draft permits you wish to review, or if you plan to review a large number of draft permits, then you can find out where your Permitting Authority publishes public notices. If the Permitting Authority publishes a weekly bulletin that notifies the public of permit actions, you should find out how to get a copy of the bulletin. You can also request to be placed on the mailing list for every Title V facility in your area.

Make sure that you know exactly when the deadline is for submitting public comments. Except in rare circumstances, if you miss the deadline for submitting comments you lose your right to petition U.S. EPA to veto the permit. In addition, you lose your right to challenge issuance of the permit in state and federal court. Because of the importance of the deadline, you should get proof when you submit your comments that they are submitted on time. If you hand deliver your comments, ask the person who accepts the comments to sign and date a statement that says that they received the comments prior to the end of the public comment period. If you send the comments by overnight mail, save the dated receipt. If you send your comments by regular mail, there is no guarantee that the Permitting Authority will receive them before the end of the comment period, and you will not have a record to rely upon.

**Except in rare circumstances, if you miss the deadline for submitting comments you lose your right to petition U.S. EPA to object to the permit. You also lose your right to challenge a bad permit in state or federal court.**

#### **H. Will the Permitting Authority respond to my comments?**

While federal regulations do not require the Permitting Authority to provide a written response to your comments, many state laws do require such a response. Even if the Permitting Authority does not modify the draft permit in response to your comments, your comments will form the basis for your petition to U.S. EPA requesting that the agency veto the permit.

If the Permitting Authority makes substantial changes to the draft permit after the public comment period and does not release the revised permit for a

new public comment period, you can argue that the public must be given a new opportunity to review the draft permit before the permit is submitted to U.S. EPA for review. Be aware that Part 70 does not explicitly require that the public or commenters be given a copy of or even notice of the proposed permit that is sent to U.S. EPA for review. You may be tipped off to substantial changes to the draft permit if the Permitting Authority provides you with a written response to your comments. Otherwise, you may want to ask U.S. EPA or the Permitting Authority for a copy of the proposed permit that was submitted to U.S. EPA for review.

### **I. If I want a public hearing on a draft permit, when and how do I request one?**

If you want a public hearing, you must request it during the applicable public comment period. The procedure for requesting a public hearing varies according to state law. The Permitting Authority must provide information about how to request a public hearing in the public notice announcing the availability of the draft permit for public review.

40 CFR Part 70 says that the Permitting Authority must provide an “opportunity for public comment and a hearing on draft permits.” Some states interpret this phrase as requiring the Permitting Authority to hold a public hearing whenever one is properly requested during a public comment period. Other states interpret this phrase more narrowly.

If you want a public hearing, your best strategy is to determine the relevant standard under state law. If state law requires you to satisfy a particular standard, make sure your request includes whatever facts, concerns, and arguments you have that show how you have met the standard. Be sure to assert that the Permitting Authority is required to hold a hearing because your comments satisfy the state law standard for when a public hearing is required. If the Permitting Authority denies your request for a public hearing, consider raising this issue with U.S. EPA. Under 40 CFR § 70.8(c)(3), the U.S. EPA Administrator has the authority to reject a proposed Title V permit if the Permitting Authority does not provide adequate procedures for public participation.

The deadline for requesting a hearing is usually the same as the deadline for submitting written comments. This information should be included in the public notice. If it is not, you can call the contact person listed in the public

notice and ask. The Permitting Authority must give notice of any public hearing at least 30 days in advance of the hearing.

#### **J. When does U.S. EPA's review period begin and what does it involve?**

When the Permitting Authority is satisfied with a draft permit, it must submit the draft permit to the regional U.S. EPA office for a 45-day review period. At the time the draft permit is submitted to U.S. EPA, it becomes a "proposed permit." Note that in some states U.S. EPA agreed to allow its 45-day review period to run at the same time as the 30-day public comment period. You need to find out whether your state's regulations allow these review periods to overlap.

During the 45-day review period, U.S. EPA must object to a proposed permit if the agency determines that the proposed permit does not comply with federal laws or regulations. In addition, U.S. EPA can choose to object to a proposed permit if the Permitting Authority does not provide U.S. EPA with sufficient supporting information to allow for meaningful U.S. EPA review or if the permitting authority fails to follow the right procedures for public participation. If U.S. EPA does not object to a permit, the Permitting Authority may issue it as a final permit.

While every permit must be submitted to U.S. EPA for the 45-day review period, U.S. EPA is not required to review every proposed permit. In fact, even if the U.S. EPA decides not to review a proposed permit, the Permitting Authority can issue it as a final permit at the end of the 45-day U.S. EPA review period. Each regional U.S. EPA office has its own policy on selecting permits to review, but U.S. EPA suggested a target of reviewing at least ten percent of all permits proposed for facilities in each of U.S. EPA's ten regions. U.S. EPA is most likely to review proposed permits for very large or controversial facilities. If you are interested, you can ask for a copy of the permit review policy from the U.S. EPA Regional Office in your area.

#### **K. What happens if U.S. EPA objects to a permit?**

If U.S. EPA chooses to object to a permit, it must give the Permitting Authority a written explanation for the objection, and give the Permitting Authority 90 days to submit a revised version of the proposed permit to U.S. EPA. If the Permitting Authority misses the 90-day deadline, U.S. EPA will either deny the permit, or develop a new permit for the facility independent of the state or local Permitting Authority.

## **L. When does a permit become final?**

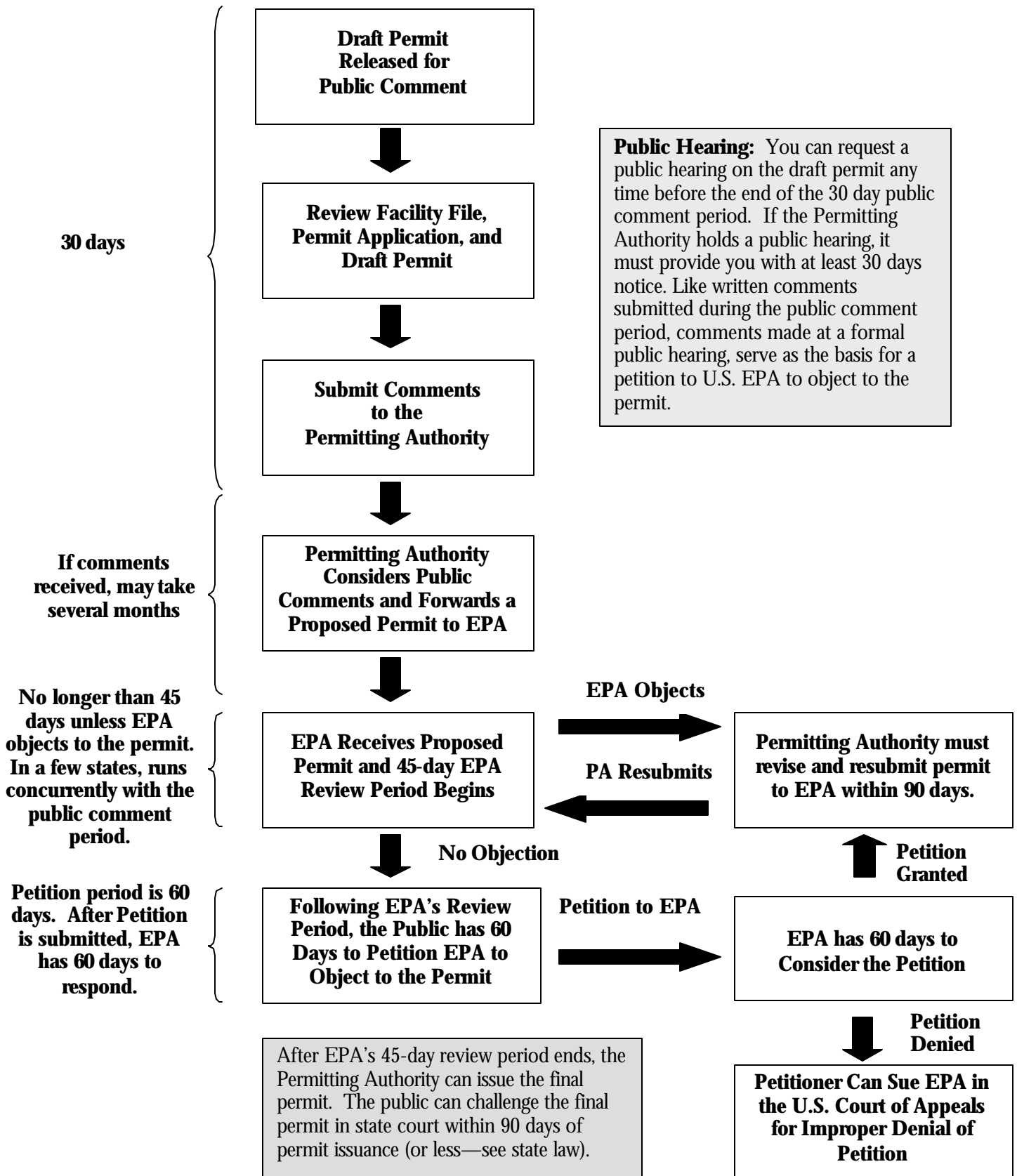
If U.S. EPA does not object to the proposed permit, the Permitting Authority may issue it as a final permit at the conclusion of U.S. EPA's 45-day review period. In some cases, U.S. EPA will waive its right to a full 45-day review period.

## **M. How can the public challenge a permit after it becomes final?**

Even though a permit is final, opportunities to challenge the permit still remain. A low-cost option that does not require a lawyer is to petition the U.S. EPA Administrator to object to the permit. A petition to the Administrator must be submitted within 60 days after the end of U.S. EPA's review period. After you submit a petition, the Administrator has 60 days to respond. A detailed discussion of how to petition the Administrator to object to a permit begins on page 90 of this handbook.

In addition to petitioning the Administrator to object, once a permit becomes final any person who participated in the public comment period may sue the Permitting Authority in state court on the basis that the Permitting Authority issued a permit that violates the law. The deadline for challenging a permit in state court varies from state to state, but can be no later than 90 days after final action on the permit. Refer to Box 6.1 on page 93 for more information about state court remedies.

**Chart 2.1: Public Participation in the Title V Permit Process**



## **Step Four in Preparing to Review a Permit: Obtain All Necessary Information**

As soon as possible after you select a draft permit to review, you should begin gathering information about the facility. Even before the release of the draft permit for public comment, you can ask the Permitting Authority for a copy of the facility's permit application as well as access to information about the facility that the Permitting Authority maintains in its files.

Once the public comment period begins, you should request a copy of the draft permit immediately. In some states, you can get draft permits on the Internet. If you do not already have the permit application when the comment period begins, don't forget to request it along with a copy of the draft permit. You should not be required to file a formal open records request for either the draft permit or the permit application once the public comment period begins. A phone call should be sufficient.

### **A. Why should I get a copy of a Title V permit application for a facility that I am interested in?**

Information provided in a facility's permit application will help you develop effective comments on the facility's draft permit. Getting the application prior to the start of the public comment period will give you a head start in developing your comments on the draft permit. A discussion of helpful information that can be obtained from the permit application can be found on page 45.

### **B. What information should I look for when I review a facility file?**

Agency files typically contain enforcement history—including records of inspections, official notices of violations, and administrative consent orders. In addition, they may contain reports that the facility has submitted, letters exchanged between the facility and the Permitting Authority, monitoring protocols and stack test results. By reviewing the file, you might discover that the facility has a pre-construction permit or that the facility has had trouble complying with a certain regulation. This will most certainly be relevant to your review of the draft permit. Don't be discouraged if you have a difficult time understanding the more technical reports and monitoring data.

The most important aspect of file review is to identify:

- the type of monitoring information that the facility is already submitting on a regular basis (for example: monthly reports of how much fuel is burned at the facility);
- any compliance schedules or consent orders (these mean that the facility has not been complying with its requirements and they will usually contain a list of milestones or remedial steps the facility must take);
- any permits issued to the facility other than the Title V permit, such as a construction permit (most prior permits are a source of requirements that must be incorporated into the Title V permit);
- any disputes over conditions included in the draft Title V permit (for example, you might find letters exchanged between the Permitting Authority and the applicant discussing permit conditions);
- any evidence that the facility is violating a legal requirement (monitoring reports might demonstrate a violation, or letters from the Permitting Authority to the applicant might discuss ways that the facility could bring the facility into compliance with the law).

The file might include letters and memoranda that identify problems at the facility and/or with the draft permit for you.

### **C. What do I do if I want to see lots of files?**

If you plan to review a large number of Title V permits, you should go ahead and request access to all facility files that you might be interested in, including permit applications, inspection and monitoring reports, compliance plans and enforcement actions. In your request, explain that you will not be able to review all of these files at once, but would like to establish a schedule so that you can review the information at a reasonable pace. Make sure that you request “access” rather than “copies” of these documents! Typically, the agency will allow you to review the documents in permit files at their office. As you review the files, obtain a copy of any document that seems relevant.

**D. How much will it cost to copy what I need?**

Many permitting authorities require you to pay for the cost of photocopying draft permits and permit applications.<sup>2</sup> These fees range from \$0.10 to \$0.50 per page, with most states charging \$0.25 per page. Many permitting authorities will waive fees for individuals or organizations that wish to use the information to benefit the public. See the sample open records request on page 99 for language that asks for a fee waiver.

**E. What should I do if I run into problems with getting to see or copy files?**

Document any problems that you have in obtaining a draft permit, a permit application, or any other supporting documentation necessary for you to effectively review a draft permit. A permit cannot be issued if the public is not provided a reasonable opportunity to review the draft permit. You can describe any problems that you encounter in the comments you submit during the public comment period.

If you are unable to resolve a problem with the Permitting Authority, ask your Regional U.S. EPA office for assistance.

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<sup>2</sup> The Clean Air Act requires that permit fees be set at a level that covers the cost of running the Title V program. There is an open question as to whether the cost of photocopies are included under the cost of running the program. You may want to raise this issue with your state or local permitting authority.