

Chapter Five

Submitting Comments on a Draft Title V Permit

If possible, try to leave plenty of time to compose your comments. For each problem that you identify in the draft permit, you should discuss the problem by (1) describing the problem, (2) identifying the rule that governs the issue, (3) explaining how the rule applies to the problem, and (4) concluding with how the draft permit must be modified to comply with the rule. In addition, keep the tips provided below in mind when composing your comments.

A. Tips on how to write an effective comment letter

- **Be specific.** For example, rather than making a generic statement that the draft permit lacks adequate periodic monitoring, identify draft permit conditions that need additional periodic monitoring. If possible, provide a periodic monitoring suggestion. The best way to come up with a good periodic monitoring suggestion is to examine a Title V permit for a similar facility located in another state, or even for a similar facility located in another part of your state. If you do not have time to track down such a permit, then be as specific as possible about why the periodic monitoring in the draft permit is inadequate (e.g. “The only periodic monitoring required under Condition 32.1 is a yearly stack test. A yearly stack test is insufficient to assure the facility’s compliance with the applicable requirement. Condition 32.1 must be modified to include regular periodic monitoring in addition to a yearly stack test”).
- **Use “must” whenever appropriate.** If you believe that a requirement mandates a certain change in the draft permit, use “must” rather than “should.” For example, you can say that “[The Permitting Authority] must require periodic monitoring to support this condition.” Only use “should” when you are quite certain that the Permitting Authority has discretion over whether or not to heed your advice.
- **Use declarative sentences rather than questions.** Often, you will lack information that is necessary for determining whether a particular requirement applies to a facility, or whether a certain type of monitoring will assure that the facility is complying with the law. If you need to know the answer to a question in order to make your argument, then argue in the alternative. For example, you might say “If this requirement does apply to

the Midtown Medical Center's medical waste incinerator, it must be supplemented with periodic monitoring. If this requirement does not apply to Midtown Medical Center's medical waste incinerator, it must be deleted from the draft permit."

- **Cite statutes and regulations.** Whenever possible, cite a statute or regulation to support your argument. It also helps to cite to U.S. EPA guidance on an issue. U.S. EPA guidance is not legally enforceable, but it is usually given a lot of weight by permitting authorities and courts. If all else fails, make your argument based upon common sense about what the program is meant to accomplish. It may be that there is a statute, regulation or guidance on the topic, but you have not been able to locate it. Your comments are still valid even if you do not cite to a law that proves your point.
- **Attach supporting documentation, if necessary.** Feel free to attach supporting documentation to your comments. If you want the supporting documentation to be considered part of your comments, you must say so in the body of your comments.
- **Mention any potential problem with the draft permit.** Include everything that you believe might be a problem in the draft permit, even if you haven't had time to develop your argument in any detail. If you later decide to submit a petition to U.S. EPA regarding its decision not to object to the permit, your petition may only cover problems that you identified in your original comments (unless a new issue arises that you could not have known about during the public comment period).
- **Consider requesting a public hearing.** If a public hearing has not been scheduled, consider whether to request one in your written comments. If there is any chance that you might challenge the final permit in state court, you want to take advantage of every opportunity for public comment offered by the Permitting Authority. If you don't at least ask for a public hearing, a state court could determine that you gave up your rights to take the Permitting Authority to court.

B. When is it reasonable to argue that a facility should be denied a Title V permit and shut down?

If it appears that a facility is unable or unwilling to comply with applicable requirements, it is reasonable to argue that a facility should be denied a Title V permit and shut down.

Particularly when reviewing a permit for a facility that has a history of persistent air quality violations, consider whether the Title V permit “assures compliance by the source with all applicable requirements” as mandated by 40 CFR § 70.1(b). Federal law is clear that a Title V permit may be issued only if “[t]he conditions of the permit provide for compliance with all applicable requirements.” 40 CFR § 70.7(a)(iv). If the facility is a long-standing violator and has not made any significant changes to its equipment or operations to solve the problem, you can make a strong argument that a Title V permit cannot be issued to the facility because the permit cannot assure that the facility will comply with the law.

C. What kind of response to my comments should I expect to receive from the Permitting Authority?

Federal regulations do not require the Permitting Authority to provide a written response to your comments, but many state laws require such a response. Ask your Permitting Authority if you aren’t sure whether to expect a written response to your comments.

If your state law does not require the Permitting Authority to provide you with a written response to your comments, the Permitting Authority may forward a proposed permit to U.S. EPA for review without notifying you and without preparing a written response to your comments. Thus, you need to maintain steady contact with your U.S. EPA regional office and the Permitting Authority in order to be certain of when the Permitting Authority forwards a proposed permit to U.S. EPA for review.

D. If the permit is revised following the public comment period, will I get a chance to comment on the revised permit?

Possibly. 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. The best way to know whether the Permitting Authority made substantial changes to the draft permit following the public comment period is to request a copy of the “proposed” permit that the Permitting Authority sent to U.S. EPA for review. You can request a copy of the proposed permit from either U.S. EPA or the Permitting Authority.

E. What do I do if the Permitting Authority does not revise the permit in light of my comments?

Try not to be discouraged if many of the issues you raised in your comments remain unresolved when the proposed permit is forwarded to U.S. EPA. The Permitting Authority might be waiting to see how U.S. EPA responds to your comments. In general, the Permitting Authority can rely upon the fact that if U.S. EPA sees a problem with a proposed permit, U.S. EPA will give the Permitting Authority a chance to resolve the problem before the Administrator formally objects to the permit.

Once you get a response from the Permitting Authority (or once you discover that the proposed permit has been forwarded to the U.S. EPA), you should focus on getting U.S. EPA to object to the proposed permit if you think that the permit does not comply with legal requirements. A petition requesting that U.S. EPA object to a proposed permit must be based on comments filed with the Permitting Authority during the public comment period. U.S. EPA objections are covered in the next chapter.