

Making the Most of Public Hearings

**by Larry Shapiro, Environmental Enforcement Project, Rockefeller Family Fund
(New York, NY)**

A common – but sometimes terrifying – experience for environmentalists is getting what we ask for. We are often in a position in which we ask government decision-makers for an additional opportunity for public input into a critical decision. In the Title V program, this generally takes the form of a request for a public hearing. Yet once the request is granted, we may not be in a position to make the most of the opportunity. If we are not prepared, instead of demonstrating that there is widespread public concern regarding a genuine threat to public health, we may instead allow regulators to view the public hearing as an indication of very limited public interest in the draft permit.

Make sure that the event is an actual public hearing – a formal opportunity for the public to place comments on the official legal record that must be considered by the Permitting Authority when it makes a decision regarding permit issuance. Some permitting authorities hold “informational meetings” and other informal sessions regarding permits. These may be useful, but public comments made at informal gatherings such as these do not have any legal significance. Feel free to attend these meetings. But make sure that you focus your attention on the public hearing itself.

You need to use the public hearing to demonstrate that there is widespread and broadly based public concern about the facility and that many of those who are concerned are knowledgeable regarding the defects in the draft permit. Here’s a brief guide to effective utilization of the opportunity presented by a public hearing.

- **Make sure that the hearing is covered by the news media.** The Permitting Authority has a great deal of discretion in determining what gets included in a Title V permit. The agency is far more likely to respond to your concerns if the general public is aware of them. No matter how many people attend the hearing, it will still be only a tiny percentage of the public. So you need to communicate your point of view through the news media – newspapers, television and radio. Although many environmentalists are shy about contacting reporters and editors, it’s easy to do. And when you contact a journalist to let him know about an event or an issue that concerns you, you are actually helping him do his job, by informing him about a newsworthy event. Moreover, it is likely that the journalist will consider you a credible source. Journalists are used to hearing from public officials and industry representatives. In comparison, you will be like a breath of fresh air. Hold a news conference in front of the local office of the Governor or the Permitting Authority to announce that you have requested a hearing. Send out a news advisory to print and electronic media and call them to make sure they received it and plan to attend the news conference. Distribute a news release at the news conference. Hold another news conference in which you announce when and where the hearing will take place. Make sure the hearing itself is covered and make sure that the hearing is interesting enough to garner substantial media coverage. You should have a variety of speakers so that the news media will be able to cover the hearing as both a substantive event and as a spectacle. This might mean that your speakers should include

a physician, a lawyer, an air quality expert, a child with asthma and a fifteen-foot replica of a power plant. Remember, unless you receive substantial media coverage, your demands are not likely to be met. A sample news advisory and a news release are in this handbook immediately following this article.

- **Ask for the hearing to be held in an easily accessible location in the community in which the facility is located.** The Permitting Authority has broad discretion to decide where to hold the hearing. Often, the office of the Permitting Authority is miles away from the facility. It may be in a neighborhood or in a town that is inaccessible by public transportation. One of your goals is to make sure that a lot of people attend the hearing. That won't happen unless they can get there. Make sure that you arrange to offer rides to people who are unable to provide their own transportation.
- **Ask for the hearing to be held at times when members of the community can attend.** Most people work during the day. That means they are unlikely to be able to attend hearings that are scheduled during normal working hours. It is therefore important to try to make sure that they will have the opportunity to speak at an evening hearing. In some communities, it may also be useful to try to prevail upon the Permitting Authority to schedule a daytime session as well. This is especially true in communities with lots of older people, who may not be comfortable going out at night as well as in communities in which you have an opportunity to bring school children to a hearing if it is held during the day.
- **Don't let the hearing be scheduled while community members are engaged in holiday activities or on vacation.** Although environmentalists may not always appreciate it, most people are far more focused on the activities of family life than on the Clean Air Act. And holiday periods tend to be reserved for family activity. No matter how hard you try, it is unlikely that you will be able to get large numbers of people to attend a public hearing during Thanksgiving week or the second half of December. In a community with a substantial Jewish population, a hearing scheduled for the High Holidays or during Passover will probably be sparsely attended. Public hearings should not be scheduled for August, when many people are on vacation.
- **Demand that the Permitting Authority provide you with at least 30 days to organize for the hearing.** 40 CFR § 70.7(h)(4) requires the Permitting Authority to provide the public with notice at least 30 days in advance of a public hearing. Make sure that this time period is not cut short. You won't be able to get a high turnout at the hearing if you don't have enough time to recruit people to attend. You need as much time as possible to inform civic organizations, public health groups and others who might be interested in the hearing.
- **Fill the room.** If you think you can get 100 people to come to the hearing, try to persuade the Permitting Authority to hold the hearing in a room that seats 120 rather than a room that seats 500. A crowded room looks better than lots of empty seats. Right after you make your formal request for a public hearing, you should informally suggest a location. There is a good chance that the Permitting Authority will take you up on the offer, since agency personnel are not likely to be familiar with local meeting

facilities. They may appreciate any offer of assistance from you regarding a location. See if you can hold the meeting at a facility that is associated with an organization that has an interest in the draft permit. For example, if you have gotten the local PTA interested in a nearby power plant, see if you can get the Permitting Authority to hold the hearing in the auditorium of the school. That way, you can be sure that the PTA members will know just how to get to the hearing.

- **Get lots of people to come to the hearing.** This may seem obvious, but it is a point that is sometimes missed. While you are spending time making sure that your substantive comments are as good as they can be, don't neglect the need to make sure that residents of the affected communities actually attend. Contact local civic organizations, religious groups, PTAs, unions and others to make sure that there is a large turnout. Call up the members of these groups and ask them to attend. Make sure and make reminder calls a day or two before the hearing to all of those who have agreed to come.
- **Get people to speak at the hearing.** Most people hate to speak in public. But the best way to demonstrate to the Permitting Authority that there is widespread public concern with the draft permit is by having a lot of people express these concerns. You can help people overcome their fears by writing and distributing a simple list of talking points for people to discuss during their testimony. Explain to those who attend the hearing that discussing their concerns in ordinary language is legitimate. There is no reason to expect community residents to be technical experts. They can discuss their own observations regarding the facility and their concerns about links between the air emissions from the plant and asthma or other diseases. Try to get some children to speak, especially children with asthma or other respiratory diseases.
- **Be theatrical.** Most official public meetings are boring. Make sure that you're not. This is especially important in gaining attention from television news. You can have people use asthma inhalers as props, dress up in costumes, sing, perform skits and take other actions designed to make the hearing interesting and worthy of media coverage.
- **Make all the necessary legal and technical points.** The hearing is part theater and part law. In order to make sure that you have the opportunity to challenge a defective permit if one is issued, you should make sure that every legal and technical argument that needs to be made is actually made. It is best to prepare written testimony. You can read the entire written testimony, or you can read excerpts, so long as you hand the entire written testimony to a representative of the Permitting Authority who will incorporate the written testimony into the official record of the permit proceeding.

A well-organized public hearing can be a very powerful experience for communities that often may not feel very powerful. Doing a good job in organizing the hearing is an integral part of the job of those who hope to maximize the benefit of Title V.

sample news advisory

GROUP AGAINST SMOKE AND POLLUTION

NEWS ADVISORY

For Immediate Release
March 19, 2001

Contact:
Joe Blow (999) 999-9999

**PUBLIC HEALTH ADVOCATES TO CALL ON GOVERNOR TO HOLD
HEARING ON POLLUTION PERMIT FOR CHESTER A. ARTHUR POWER
PLANT**

The Group Against Smoke and Pollution (GASP) will hold a news conference to call on Governor John. J. Johnson to direct the state Department of Environmental Protection (DEP) to hold a hearing a draft "permit to pollute" that DEP has prepared for the Chester A. Arthur power plant. GASP has submitted formal comments to DEP in which the organization outlines the reasons why the draft permit issued by DEP is defective. GASP has requested that a hearing be scheduled to enable members of the public to express their concerns about the draft permit. The Arthur power plant emits 1,500 tons of nitrogen oxides (NOx) every year. NOx combines with volatile organic compounds to produce smog, which greatly exacerbates asthma and other respiratory diseases. GASP and its allies contend that Federal rules require substantial reductions in NOx emissions from the plant, but that DEP has illegally failed to include these requirements in the draft permit. DEP Commissioner Jack J. Jackson was appointed by Governor Johnson and serves at his pleasure.

WHEN: TUESDAY, MARCH 20, 11:00

**WHERE: OUTSIDE THE STATE OFFICE BUILDING
100 MAIN STREET, AT THE CORNER OF ELM STREET**

**WHO: JOE BLOW, GASP
DR. SONIA SANTANA, MEMORIAL HOSPITAL
SARAH SMITH, NINE YEARS OLD, ASTHMA SUFFERER**

GASP members and elementary school students, many of whom use inhalers, will attend. Visuals will include a fifteen-foot replica of a power plant.

sample news release

GROUP AGAINST SMOKE AND POLLUTION

NEWS RELEASE

For Immediate Release
March 20, 2001

Contact:
Joe Blow (999) 999-9999

PUBLIC HEALTH ADVOCATES CALL ON GOVERNOR TO HOLD HEARING ON POLLUTION PERMIT FOR CHESTER A. ARTHUR POWER PLANT

Joined by a nine-year-old with asthma and a physician who specializes in respiratory illnesses, the Group Against Smoke and Pollution (GASP) today called on Governor John J. Johnson to direct the state Department of Environmental Protection (DEP) to hold a hearing on draft "permit to pollute" that DEP has prepared for the Chester A. Arthur power plant. GASP has submitted formal comments to DEP in which the organization outlines the reasons why the draft permit issued by DEP is defective.

"It's bad enough that air pollution from the Arthur power plant fouls our air and contributes to our health problems," said GASP executive director Joe Blow at a news conference in front of the State Office Building on Main Street. "But now the Johnson administration wants to give them a permit to pollute. We're calling on Governor Johnson to direct DEP to hold a public hearing so they can hear our side of the story." According to Blow, the Federal Clean Air Act provides citizens with an opportunity to express their concerns with draft air pollution permits.

GASP has requested that a hearing be scheduled to enable members of the public to comment on the draft permit. The Arthur power plant emits 1,500 tons of nitrogen oxides (NOx) every year. NOx combines with volatile organic compounds to produce smog, which greatly exacerbates asthma and other respiratory diseases. GASP and its allies contend that Federal rules require substantial reductions in NOx emissions from the plant, but that DEP has illegally failed to include these requirements in the draft permit. DEP Commissioner Jack J. Jackson was appointed by Governor Johnson and serves at his pleasure.

"Every day, I see little children come into the hospital wheezing and gasping for breath," said Dr. Sonia Santana, a specialist in respiratory disease at Memorial Hospital. "We know that ozone, much of which is created by pollution from power plants, aggravates the childhood asthma crisis that we face today. The draft permit issued by DEP would illegally allow the Arthur plant to emit more pollution that is permitted by the Federal government. We're calling on Governor Johnson to let us have our say."

"Lots of the kids in my class have asthma," said Sarah Smith, a nine-year-old third grader at Jefferson Elementary School who demonstrated the use of an inhaler. "On bad air days, we can't even go out and play during recess. Governor Johnson needs to make sure DEP has to listen to us."

Two dozen GASP members and elementary school students, many of whom held inhalers, also attended the news conference. They stood in front of a fifteen-foot replica of a power plant.

“Every day that Governor Johnson’s DEP lets the Arthur plant continue to operate with out-dated pollution controls is another day that that he damages our health,” said Blow. “The least he can do is tell DEP to listen to us.”

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