

Public Comment Procedure

August 1, 2004

The decision-making process for air permit decisions in Michigan incorporates both Prevention of Significant Deterioration (PSD) and non PSD permits. Michigan has delegated authority from the United States Environmental Protection Agency (USEPA) to implement the PSD program. 40 CFR, Part 124, Procedures for Decision-Making, must be followed for PSD permits issued within the state. The procedures are very prescriptive on what must occur prior to the public comment period, during the public comment period, at the point of permit decision, and following the decision. The roles and obligations of the permitting agency, the public, and the USEPA are identified. The State of Michigan regulations found in Act 451, Part 55, provide specific requirements with regard to public notice and public hearings for non PSD permit actions. The Air Quality Division (AQD) public participation process is based upon these state and federal requirements. What has not been clear to this point is the timeline associated with the procedure(s) as well as the clear line of authority for assuring tasks are accomplished in a timely manner. The following procedure identifies the public comment process as well as the timeline and responsible party for each step.

Appointing a Decision-maker

A Decision-maker is appointed for each Permit to Install subject to public comment. If a project has a high visibility potential the Office of the Division Chief for the Air Quality Division will assume this role. For all other projects, the Permit Section Chief will assume the role of Decision-maker. The Unit Supervisor, in conjunction with the Permit Section Chief, will recommend appointment of the Decision-maker. The Decision-maker is officially notified of his/her role. The Decision-maker is the point person from the time the project enters public comment until the final agency action. The Decision-maker is present to receive comments at the public hearing, if held, assures a timely response to all comments received during the public comment period, reviews staff recommendations and makes a final decision on the Permit to Install.

Public Comment Period

The public comment period is the opportunity for anyone to present input on a proposed draft permit either in writing during the public comment period or verbally at a public hearing. All comments received during the comment period or at the hearing are considered by the Decision-maker for the permit action. A public comment period lasts a minimum of 30 days. This time-frame may be extended due to the complexity of the source, a request for a hearing, or the timing of the close of the comment period or hearing (i.e., if the 30th day falls on a Saturday, the comment period would end on the following Monday). All comments must be postmarked by the close of the comment period.

Scheduling the Public Comment Period

The Permit Engineer prepares all necessary documents including the draft permit conditions, Fact Sheet, notice of hearing and letter to the company within 5 days of resolving conditions with the applicant and submits to the Unit Supervisor for review. The Unit Supervisor reviews the packet within 2 days and forwards to the Permit Section Chief. The Permit Section Chief reviews the packet within 2 days and submits to the Department Analyst for scheduling. Within the next 6 days, the Department Analyst schedules the public comment period. The Public Comment Scheduling Process includes the following:

- Hearing Location – The location for a public hearing is selected based upon many factors including the proximity to the facility, the size of the auditorium or room, and accessibility. In the case of a controversial project or when there is a high probability for a hearing, the hearing location is the city in which the project is proposed or an easily accessible nearby location. Examples of possible locations include school auditoriums, libraries, community centers, etc. If there is a low probability for a hearing, the hearing will be scheduled for Lansing to be held in a conference room in Constitution Hall.
- Hearing Officer – A presiding officer conducts the hearing. Per state requirements, a presiding officer must be a disinterested and technically qualified person. The presiding officer may be a DEQ employee from another Division or an AQD staff person from another District or Section.
- Audio Provider – Two scenarios exist for providing audio services. A contractor will be used in instances where a hearing is to be held in a local community with anticipated large attendance. In the event a hearing is scheduled for Lansing, the AQD audio equipment is reserved and AQD staff is responsible for operating the equipment.
- Public Notices – Various media are used to public notice a project including newspapers, Department calendar, Internet, and direct mailings.
- Miscellaneous – Notification of all parties, copying of documents and distribution, etc.
- Strategy Meeting - A strategy meeting is scheduled at the same time the public comment period is scheduled and will take place approximately 1-3 days after commencement of the public comment period. The purpose of this meeting is to discuss the project, key issues, and potential concerns. Attendees/invitees include Decision-maker, Permit Engineer, Unit Supervisor, Section Supervisor, District inspector and supervisor, modeler and/or toxicologist, as needed.
- Hearing Follow-up Meeting – A meeting is scheduled with the Decision-maker and appropriate staff to discuss significant comments received, to determine if a “Team” approach is necessary to respond to all comments, to identify time consuming projects and develop a strategy to complete the project on schedule. This meeting is scheduled 1-3 days following the close of the comment period.

Content of a Public Notice

The AQD combines the notice of the proposed action, the public comment period, and the public hearing. This is an efficient way of distributing the necessary information as

well as being more cost effective than separate notices. The public notice must include the following information:

- name and address of the office processing the permit action;
- name and address of the permit applicant and location of the facility;
- a brief description of the activity described in the permit application;
- name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, Fact Sheet, and application;
- a brief description of the comment procedures 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 scheduled) and other procedures by which the public may participate in the final permit decision; and
- a brief description of the nature and purpose of the hearing.

Notification

Effectively notifying all interested parties of a public comment period and the opportunity for a hearing is a key component of public participation. The specific federal and state requirements are followed. In addition, other methods are used to contact interested parties. The AQD is required to provide legal notice of the proposed permit action in a local paper of general circulation. Typically, the AQD will publish in a local daily as well as a local weekly paper to assure the greatest area of coverage. In addition, electronic communication is used. Copies of all the public participation documents are placed on the AQD web page. A notice of the pending permit action is placed in the DEQ calendar, which is sent to a large distribution list on a bi-weekly basis.

A list of all applications under review at any given time is available by electronic query at the AQD web site <http://www.deq.state.mi.us/aps/PendApps.asp>. In addition, the list is sent monthly to each Board of County Commissioners. Direct mail continues to be the most effective way of contacting known interested parties. The public participation documents are sent to persons on general and area mailing lists. These mailing lists include those who have been involved in previous public comment periods for sources in the area, local and state officials, the Environmental Protection Agency, and depending upon the location of the facility, officials of Canada, Illinois, Indiana, Ohio, and/or Wisconsin.

Informational Meetings

Often for complicated permits, an Informational Meeting will be held. This meeting is designed to provide all interested parties with the opportunity to ask questions of the AQD staff and to provide pertinent information to the public and concerned citizens. Questions can range from the toxicological effects of the emissions to how often the company will be required to submit records to the AQD. The Informational Meeting may be held immediately preceding the hearing or a separate evening prior to the hearing, depending upon the interest of the local community. The format can be a panel question and answer session or an open house format where the AQD staff is readily available. Whenever possible, notice of the Informational Meeting is provided when the public comment period is announced. This is especially true when the Informational Meeting is

to be held on a separate evening from the hearing. Also, if the Informational Meeting is to be held immediately preceding the formal hearing, the notice will reflect this. A decision on whether to hold an Informational Meeting will be made by the Permit Section Chief in consultation with the Decision-maker prior to commencement of the public comment period. Further discussion regarding the Informational Meeting will take place at the Strategy Meeting including the need to prepare a Question and Answer Document.

Public Comments

The federal procedures for decision-making state that “[a]ll persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director’s tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonable ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period.” All interested parties are encouraged to provide their comments during the comment period. It is vitally important that the Decision-maker be presented with all the facts in order to make an informed decision.

In accordance with 40 CFR Part 124, after the close of the public comment period, the Decision-maker reviews all written and verbal comments received. All significant air quality-related comments must be considered. The comments may generate additional questions for the applicant, technical review by staff, and/or additional requirements. For non PSD actions, comments will also be addressed in an appropriate format. The Decision-maker makes a decision to deny the permit, approve the permit, or approve the permit with modifications. The decision must specify which provisions, if any, of the draft permit have been changed in the final permit and the reason(s) for the change. The Response to Comments document or similar document must briefly describe and respond to all significant comments raised during the public comment period and any hearing.

Public Hearings

A hearing may be held for two reasons depending on the type of application. Some hearings are mandatory and will automatically be held on the last day of the comment period. Other hearings are scheduled, but only held if a written request is made to AQD for this hearing. Public hearings provide the opportunity to submit verbal testimony directly to the Decision-maker. 40 CFR, Part 124, requires that a public hearing on a proposed permit action be held whenever the AQD finds “on the basis of requests, a significant degree of public interest in a draft permit” or “such a hearing might clarify one or more issues involved in the permit decision.” In practice, the AQD will hold a public hearing whenever a written request for a hearing is provided or there exists a known public controversy.

A minimum of 30 days notice is required for a public hearing. Whenever there is a known public controversy, the AQD will announce the date and time of the public hearing at the same time the comment period is announced. However, for the majority of the draft permits requiring public participation, the public hearing is announced with the phrase “if requested by [specific date]” and is held only if a written request is received. In these cases, the hearing date is typically two days after the noticed close of the public

comment period (excluding Fridays, weekends and holidays). This extension allows all interested parties to learn if a hearing request is received and if a hearing will be held. In instances where a hearing is held, the public comment period is automatically extended to the close of the public hearing.

At the public hearing, any person may submit oral or written statements and data concerning the draft permit. The AQD asks each person attending the hearing to fill out an attendance card. The purpose of the card is two-fold; it is used to develop the mailing list of interested parties and to identify anyone who wishes to make a verbal statement on the record. Before the hearing, AQD staff is available to answer questions regarding the proposed permit, the facility, air impacts, etc. Depending on the proposal, representatives from other divisions within the DEQ or other state and local agencies may also be in attendance. During the hearing, individuals are called by name and initially limited to five minutes for public comment. The time limit is used to ensure everyone who wishes to speak has the opportunity. Once all the individuals have had the opportunity to place public comments on the record, the individuals who need more than the five minutes are allowed to continue their testimony. The public hearing is not closed until all individuals in attendance who wish to place public comment on the record have done so.

All public hearings are recorded. The tape is kept on file and a copy may be made if requested. There are instances when a written transcript of the hearing is obtained. An example would be for a complicated or lengthy hearing to assure that all significant comments are identified.

End of Comment Period Responsibilities, No Hearing Requested

The Department Analyst will cancel all arrangements for the hearing that was not held and will make all appropriate notifications. A Follow-up Meeting is held 1-2 days after the close of the comment period. The Permit Engineer will be responsible for the preparation of final conditions, the final letter(s) for appropriate signature, the Response to Comments Document (if required) and providing all final documents to the Permit Section Chief within 18 days of the close of the public comment period. If no comments are received, the final documents will not include a Response to Comments document. The Permit Section Chief will review and provide all final documents to the Department Analyst within 2 days of receipt of the package. The Department Analyst will finalize the paperwork, prepare final mailing, and complete the hearing file within 2 days of receipt of the package from the Permit Section Chief and present the package to the Decision-maker. The Decision-maker will approve the permit within 2 days of receipt of the paperwork.

End of Comment Period Responsibilities, Hearing Requested

If a hearing is requested, the Department Analyst and Permit Engineer will assume responsibility for preparing and copying the documentation regarding the NSR Permit. The Permit Engineer will assume responsibility for preparation of the opening statement. The Department Analyst will make the necessary arrangements for preparation of the room. The Permit Engineer will assume responsibility for taking the necessary materials to the hearing (eg. attendance cards, etc.). The Permit Engineer as well as other

appropriate staff will be available to answer questions at the hearing. Within 1-2 days after the close of the comment period, a Hearing Follow-up meeting is held. The Department Analyst will make the necessary arrangements to have the hearing tape transcribed. The Permit Engineer will be responsible for the preparation of final conditions, the final letter(s) for appropriate signature, the Response to Comments Document (if required) and providing the final documents to the Permit Section Chief within 18 days of the close of the public comment period. The Permit Section Chief will review and provide all final documents to the Department Analyst within 2 days of receipt of the package. The Department Analyst will finalize the paperwork, prepare final mailing, and complete the hearing file within 2 days of receipt of the package from the Permit Section Chief and present the package to the Decision-maker. The Decision-maker will approve the permit within 2 days of receipt of the paperwork.

Permit Action and the Effective Date

Within 25 days after the close of the public comment period and public hearing, if applicable, a final permit decision is made by the Decision-maker. As stated earlier, the Decision-maker may deny the permit, approve as drafted, or approve with amendments. In all three scenarios, all interested parties, including everyone who was on the original mailing list, anyone who provided comments during the public comment period, and anyone who attended the public hearing, are directly notified of the decision. Included in the mailing is a letter from the Decision-maker regarding the decision, the Response to Comments document, and if applicable, the approved permit. The letter from the Decision-maker must include reference to the procedures for appealing the decision.

For approvals where no comments were submitted, the final permit decision is effective immediately for both PSD and non PSD decisions. In instances where comments were received and the permit being issued is a PSD permit, the permit is issued, but is not effective for at least 33 days after the issuance/ mailing date. The delay in the effective date provides the opportunity for an appeal of the final permit action. For non PSD permits where comments were received and the permit is being issued, the decision is effective immediately. State requirements (R336.1207) make permit denials effective immediately.

Appeals

Michigan implements the federal PSD program as a delegated state. As such, a decision on a PSD permit to install may be appealed to the United States Environmental Protection Agency's (USEPA) Environmental Appeals Board (EAB). The EAB, created in 1992 by the USEPA, is the final Agency Decision-maker on administrative appeals under all major environmental statutes that the Agency or a delegated state administers, including PSD.

Appeals of non-PSD permits to install are addressed in Michigan's Natural Resources and Environmental Protection Act, Act 451 of 1994, Section 324.5505.