
Chapter 11

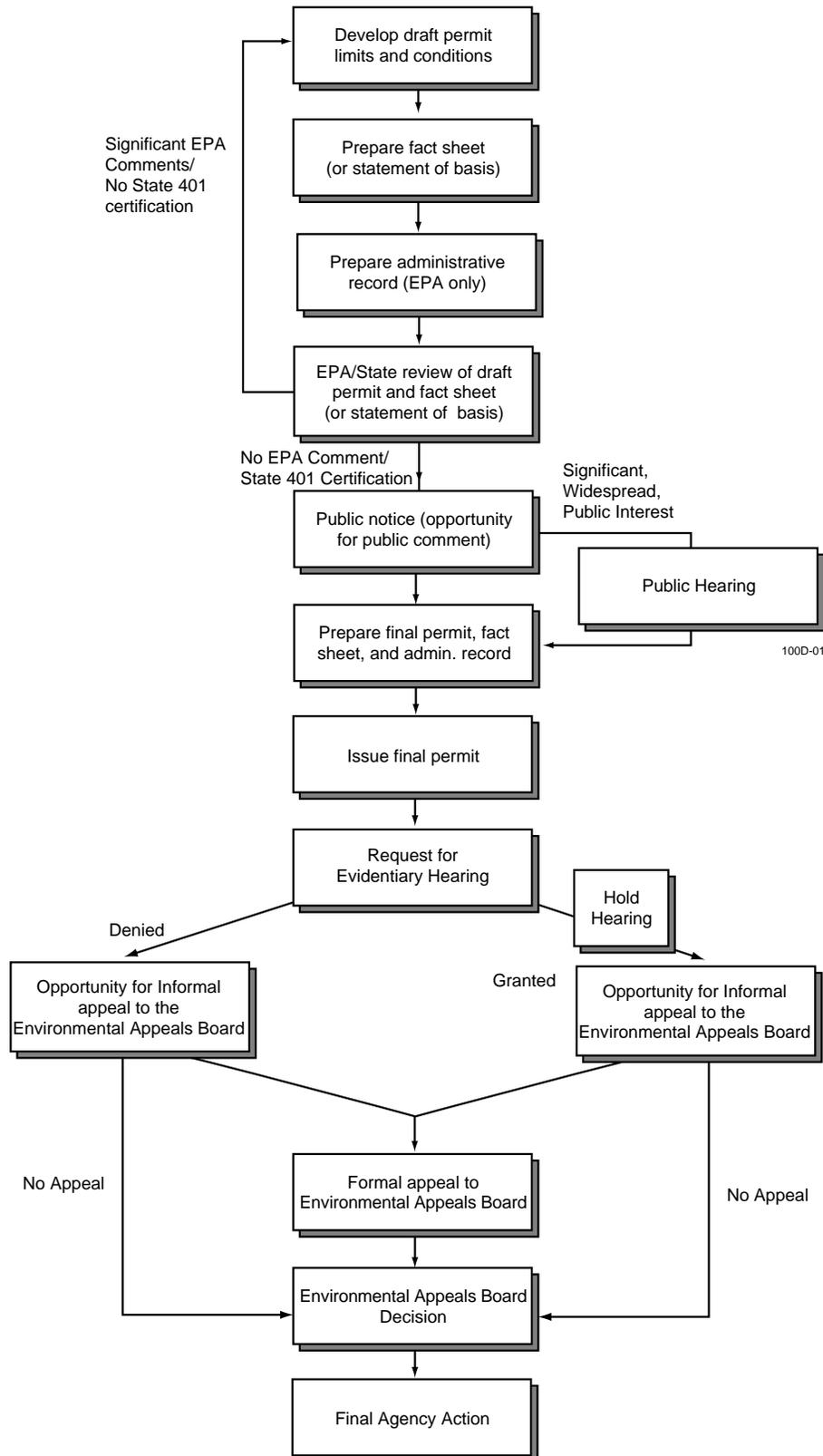
Administrative Process

Previous discussions in this manual focused on the process of developing NPDES permit conditions and effluent limits. This chapter describes the administrative process that is associated with the issuance of a NPDES permit. **Exhibit 11-1** provides a flow diagram of the NPDES permit administrative process. In general, the administrative process includes:

- Documenting all permit decisions
- Coordinating EPA and State review of the draft permit
- Providing public notice, conducting hearings (if appropriate), and responding to comments
- Defending the permit and modifying it (if necessary) after issuance.

Note that Exhibit 11-1 provides the general framework for both EPA and State NPDES permit administration. State requirements need not be identical to Federal regulatory requirements, provided they are as stringent. Therefore, some delegated States may have slightly different processes for developing and issuing NPDES permits. In addition, the evidentiary hearing and appeal process presented depicts EPA procedure. State procedures for NPDES permit hearings and appeals may vary according to State law.

EXHIBIT 11-1 NPDES Permitting Administrative Process



11.1 Documentation For Development of the Draft Permit

When the permit is issued, the fact sheet and supporting documentation (administrative record) are the primary support for defending the permit in administrative appeals and evidentiary hearings. The process of documenting the permit requires the permit writer to be organized and logical throughout the permit development process. Some of the content of the fact sheet and administrative record is directed by Federal and State regulation and the rest is dictated by good project management. Permit writers should recognize the importance of:

- Ensuring development of a thorough permit in a logical fashion
- Meeting legal requirements for preparation of an administrative record, fact sheet, and statement of basis
- Helping to substantiate permit decisions and provide a sound basis in case challenges are made to the derivation of permit terms, conditions, and limitations
- Establishing a permanent record of the basis of the permit for use in future permit actions.

The following sections describe the requirements pertaining to the development of permit documentation, particularly the administrative record and the fact sheet.

11.1.1 Administrative Record

The administrative record is the foundation for issuing permits. If EPA is the issuer, the contents of the administrative record are prescribed by regulation (see 40 CFR §§124.9 and 124.18). All supporting materials must be made available to the public, whether a State, Territory, Tribe or EPA issues the permit. The importance of maintaining the permit records in a neat, orderly, complete, and retrievable form cannot be over emphasized. The record allows personnel from the permitting agency to reconstruct the justification for a given permit. It also must be made available to the public at any time and may be examined during the public comment period and any subsequent public hearing.

The administrative record for a draft permit consists, at a minimum, of certain specific documents as shown in **Exhibit 11-2**. Materials that are readily available in the permit issuing office or published material that is generally available, does not

EXHIBIT 11-2

Elements of the Draft NPDES Permit Administrative Record

- Application and supporting data
- Draft permit
- Statement of basis or fact sheet
- All items cited in the statement of basis or fact sheet, including calculations used to derive the permit limits
- All other items in the supporting file
- For new sources, any environmental assessment, the draft/final environmental impact statement (EIS), or other such background information, such as a Findings of No Significant Impact (only applies if EPA issues the permit).

need to be physically included with the record as long as it is specifically referred to in the fact sheet or statement of basis. If EPA issues new source draft permits, the administrative record should include any EIS or environmental assessment performed in accordance with 40 CFR §122.29(c).

The administrative record should include all meeting reports and correspondence with the applicant and correspondence with other regulatory agency personnel. In addition, trip reports and telephone memos should be included in the record. All correspondence, notes, and calculations should indicate the date and the name of the writer, as well as all other persons involved. Since correspondence is subject to public scrutiny, references or comments that do not serve an objective purpose should be avoided. Finally, presentation of calculations and documentation of decisions should be organized in such a way that they can be reconstructed and the logic supporting the calculation or decisions can easily be found. The administrative record for the final permit consists of the items in **Exhibit 11-3**.

11.1.2 Fact Sheets and Statements of Basis

A fact sheet is a document that briefly sets forth the principle facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. When the permit is in the draft stage, the fact sheet and supporting documentation serve to explain to the permittee and the general public the rationale and assumptions used in deriving the limits.

EXHIBIT 11-3

Elements of the Administrative Records for a Final Permit

- All elements for the draft permit administrative record (see Exhibit 11-2)
- All comments received during the comment period
- The tape or transcript of any public hearing
- Any materials submitted at a hearing
- Responses to comments
- For NPDES new source permits, the draft or final EIS
- The final permit.

The NPDES regulations set forth in 40 CFR §124.8(a) require that every EPA and State-issued permit must be accompanied by a fact sheet if the permit:

- Involves a major facility or activity
- Incorporates a variance or requires an explanation under 40 CFR §124.56(b) (toxic pollutants, internal waste stream, and indicator pollutants and for privately owned waste treatment facilities)
- Is a NPDES general permit
- Is subject to widespread public interest (see 40 CFR §124.8)
- Is a Class 1 sludge management facility
- Includes a sewage sludge land application plan.

EPA permit writers are required to prepare a statement of basis for all permits that do not merit the detail of a fact sheet. Such statements briefly describe the derivation of the effluent limits and the reasons for special conditions (see 40 CFR §124.7). However, a prudent permit writer will develop a fact sheet for any permit that required complex calculations or special conditions. This will be particularly true for permit conditions based on BPJ.

With a well-documented rationale for all decisions, much of the work in reissuing a permit in the future will be done. This will avoid any conjecture and guessing concerning the development of any conditions that are being carried forward from the expired permit to the next permit. This is also true if a modification is initiated during the life of the permit. A permit rationale can be as short as two to three pages for a relatively simple permit or as long as 20 to 100 pages for an

extremely complicated permit (e.g., several discharge points, many BPJ determinations). The required contents of a fact sheet, as specified in 40 CFR §§124.8 and 124.56, include the items listed in **Exhibit 11-4**.

EXHIBIT 11-4 **Required Contents of a Fact Sheet**

- A brief description of the type of facility or activity that is being regulated by the NPDES permit
- The type and quantity of pollutants discharged
- A brief summary of the basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions
- Name and telephone number of person to contact for additional information
- Provisions satisfying the requirements of 40 CFR §124.56:
 - Explanation of derivation of effluent limitations
 - Explanation of any conditions applicable to toxic, internal waste streams, or indicator pollutants
 - A sketch or detailed description of the location of the discharge
 - For EPA issued permits, the requirements of any State certification
- For every permit to be issued to a treatment works owned by a person other than a State or municipality, an explanation of the decision to regulate the users under a separate permit
- For every permit that includes a sewage sludge land application plan, a brief description of how each of the required elements of the land application plan are addressed in the permit
- If applicable, reasons why any requested variances do not appear justified
- A description of the procedures for reaching a final decision on the draft permit, including:
 - The dates of the public comment period and the address
 - Procedures for requesting a hearing
 - Other procedures for public participation.

A detailed discussion of the development of permit limits for each pollutant should be included in the fact sheet. For some permits, a considerable amount of time is spent within the permitting agency debating a permit issue that then becomes an assumption upon which the permit conditions are based. Documenting the

decision process may prevent a repeat of the debate in 5 years when the permit is up for reissuance. For each pollutant the following information is necessary:

- Calculations and assumptions
 - Production
 - Flow
- Type of limitations (i.e., effluent guideline-, water quality-, or BPJ-based)
- Whether the effluent guidelines used were BPT, BCT, or BAT
- The water quality standards or criteria used
- Whether any pollutants were indicators for other pollutants
- Citations to appropriate wasteload allocation studies, guidance documents, other references.

Often, it is as important to keep a record of items that were **not** included in the draft permit, such as the following:

- Why was BPJ or effluent guidelines used instead of water quality-based limitations (i.e., were the limitations checked to see that water quality considerations did not govern the setting of permit limits)?
- Why was biomonitoring not included?
- Why were pollutants that were reported as present in the permit application not specifically limited in the permit?
- Why is a previously limited pollutant no longer limited in the draft permit?

Finally, the fact sheet should address the logistics of the permit issuance process including the comment period begin and end dates, procedures for requesting a hearing, and the public involvement in the final decision.

11.2 Items to Address Prior to Issuance of a Final Permit

This section describes the public participation activities that must be conducted in the permit issuance process. These include providing public notices, collecting and responding to public comments, and holding public hearings as necessary.

11.2.1 Public Notice

The public notice is the vehicle for informing all interested parties and members of the general public of the contents of a draft NPDES permit or of other significant actions with respect to a NPDES permit or permit application. The basic intent of this requirement is to ensure that all interested parties have an opportunity to comment on significant actions of the permitting agency with respect to a permit application or a permit. The exact scope, required contents, and methods for effecting public notices may be found in 40 CFR §124.10.

The NPDES permit-related actions that must receive public notice are shown in **Exhibit 11-5**.

EXHIBIT 11-5 Actions That Must Receive Public Notice

- Tentative denial of an NPDES permit application (not necessarily applicable to State programs)
- Preparation of a draft NPDES permit, including a proposal to terminate a permit
- Scheduling of a public hearing
- Granting of an evidentiary appeal of an EPA-issued permit under 40 CFR §124.74
- Formal appeal of permit
- New Source Determinations (EPA only)

The permit writer should be primarily concerned with the first three items in Exhibit 11-5. It is important to note that no public notice is required when a request for a permit modification, revocation, reissuance, or termination is denied.

Public notice of the various NPDES-related activities is provided by the following methods:

- For major permits, publication of a notice in daily or weekly newspaper within the area affected by the facility or activity. In addition, for general permits issued by EPA, publication in the *Federal Register* is required.

- Direct mailing to various interested parties. This mailing list should include the following:
 - The applicant
 - Any interested parties on the mailing list
 - Any other agency that is required to issue a Resource Conservation and Recovery Act, Underground Injection Control, Corps of Engineers, or PSD permit for the same facility
 - All appropriate government authorities (e.g., United States Fish and Wildlife Services, National Marine Fisheries Service, neighboring States)
 - Users identified in the permit application of a POTW.

A public notice must contain the information shown in **Exhibit 11-6**.

EXHIBIT 11-6

Contents of the Public Notice

- Name and address of the office processing the permit action
- Name and address of the permittee or applicant and, if different, of the facility regulated by the permit
- A brief description of the business conducted at the facility
- Name, address, and telephone number of a contact from whom interested persons can obtain additional information
- A brief description of the comment procedures required
- For EPA-issued permits, the location and availability of the administrative record
- Any additional information considered necessary.

Public notice of the preparation of the draft permit (including a notice of intent to deny a permit application) must allow at least 30 days for public comment. The draft permit is usually submitted for public notice after it has undergone internal review by the regulatory agency that is issuing the permit. State/Tribal issued permits will typically undergo public notice after EPA has reviewed and commented on the draft permit. In the special case of those EPA-issued permits that require an environmental impact statement (EIS), public notice is not given until after a draft EIS is issued.

11.2.2 Public Comments

Public notice of a draft permit elicits comments from concerned individuals or agencies. Frequently, such comments are simply requests for additional information. However, some comments are of a substantive nature and suggest modifications to

the draft permit or indicate that the draft permit is inappropriate for various reasons. In such cases, those parties providing comments must submit all reasonable arguments and factual material in support of their positions. If the approach is technically correct and clearly stated in the fact sheet, it will be difficult for commenters to find fault with the permit. Commenters may always suggest alternatives, however. In addition, an interested party may also request a public hearing.

To the extent possible, it is desirable to respond to all public comments as quickly as possible. In some cases it may be possible to diffuse a potentially controversial situation by providing further explanation of permit terms and conditions. It is also good public practice to inform parties who provide public comments that their comments have been received and are being considered.

The permitting agency is obliged to respond to all significant comments (in accordance with 40 CFR §124.17) at the time a final permit decision is reached (in the case of EPA-issued permits) or at the same time a final permit is actually issued (in the case of State-issued permits). The response should incorporate the following elements:

- Changes in any of the provisions of the draft permit and the reasons for the changes
- Description and response to all significant comments on the draft permit raised during the public comment period or during any hearing.

In the event that any information submitted during the public comment period raises substantial new questions about the draft permit, one of the following actions may occur:

- A new draft permit with revised fact sheet or statement of basis is prepared.
- A final permit with necessary changes explained is issued.
- The comment period is reopened but is limited only to new findings.

If any of these actions are taken, a new public notice, as described earlier, must be given.

11.2.3 Public Hearing

A public hearing may be requested in writing by any interested party. The request should state the nature of the issues proposed to be raised during the hearing. However, a request for a hearing does not automatically necessitate that a hearing be held. A public hearing should be held when there is a significant amount of interest expressed during the 30-day public comment period or when it is necessary to clarify the issues involved in the permit decision.

Thus, the decision of whether or not to hold a public hearing is actually a judgment call. Such decisions are usually made by someone other than the permit writer. However, the permit writer will be responsible for ensuring that all of the factual information in support of the draft permit is well documented.

Public notice of a public hearing must be given at least 30 days prior to the public meeting (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). Scheduling a hearing automatically extends the comment period until at least the close of the hearing [40 CFR §124.12(c)].

The public notice of the hearing should contain the following information:

- Brief description of the nature and purpose of the hearing, including the applicable rules and procedures
- Reference to the dates of any other public notices relating to the permit
- Date, time, and place of the hearing.

A presiding officer is responsible for the hearing's scheduling and orderly conduct. Anyone may submit written or oral comments concerning the draft permit at the hearing. The presiding officer should set reasonable time limits for oral statements. The public comment period may be extended by so stating during the hearing. It should be noted that a transcript or recording of the hearing must be available to interested persons.

11.2.4 State/Tribal Roles in Reviewing Draft Permit

State/Tribal issued draft permits must be submitted to EPA for review if they relate to:

- Discharges into the territorial seas
- Discharges that may affect waters of a State other than the one in which the discharge originates
- General permits
- Discharges from a POTW with a daily average discharge exceeding 1 million gallons per day
- Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons per day
- Discharges from any major discharger or from any NPDES primary industrial category
- Discharges of from other sources with a daily average discharge exceeding 500,000 gallons per day (however, EPA may waive review for non-process wastewater), and
- Class I sludge management facilities.

Permits issued by EPA require State/Tribal review and certification under Section 401 of the CWA. Such certification ensures that the permit will comply with applicable Federal CWA standards as well as with State or Tribal water quality standards. This State/Tribal certification also ensures that State and Tribal initiatives or policies are addressed in EPA-issued NPDES permits, and functions to promote consistency between State- and EPA-issued permits.

Under CWA Section 401(a)(1), EPA may not issue a permit until a certification is granted or waived. If EPA is preparing the draft permit, State certification is usually accomplished by allowing States to review and certify the application prior to draft permit preparation. Regulations in 40 CFR §124.53 [State Certification] and §124.54 [Special provisions for State certification and concurrence on applications for section CWA 301(h) variances] describe procedures a permit writer should follow to obtain State or Tribal certification. Under 40 CFR §124.53, when a draft permit is prepared by EPA, but State certification has not yet been granted, EPA must send the State a copy of the draft permit along with a notice requesting State certification. If the State does not respond within 60 days, the State is deemed to have waived its right to

certify. If the State chooses to certify the draft permit, the State may only require changes to the draft permit to incorporate more stringent State laws. If the State requires such changes, the State must send EPA a letter justifying the changes and citing State regulations that support the changes. When a permit applicant requests a CWA Section 301(h) variance, the State certification process is very similar to the process just described for permit applications and draft permits (refer to Section 40 CFR §124.54).

11.2.5 Schedule for Final Permit Issuance

The final permit may be issued after the close of the public notice period and after State/Tribal certification has been received (for permits issued by EPA). The public notice period includes:

- A 30-day period that gives notice of intent to issue or deny the permit
- A 30-day period advertising a public hearing (if applicable)
- Any extensions or reopening of the comment period.

Final EPA permit decisions are effective immediately upon issuance unless comments request changes in the draft permit, in which case the effective date of the permit is 30 days after issuance (or a later date if specified in the permit). As discussed earlier, any comments that are received must be answered at the time of final permit issuance (in the case of NPDES States or Tribes) or after a final decision is reached (in the case of EPA).

11.3 Administrative Actions After Final Permit Issuance

Once the final permit has been issued, the issuing authority should integrate the permit limitations and any special conditions into the NPDES tracking system (i.e., the permit compliance system (PCS)). This will ensure that the facility's performance will be tracked and the permitting agency will be alerted to the need for corrective action in the event of violations of permit limitations, terms, or conditions.

After final permit issuance, interested parties have other opportunities to change the permit through permit appeals, major/minor permit modifications, permit termination or permit transfer. These administrative procedures are described below.

11.3.1 Permit Appeals

In the process of developing a draft permit and during the public notice period, the permit writer should carefully consider the legitimate concerns of the permittee as well as the concerns of any third party who may have an interest in the permit terms and conditions. However, there will inevitably be situations in which a permit is issued in spite of the objections of the permittee or a third party. In such instances, the permittee or an interested party may choose to legally contest or appeal the NPDES permit.

Various mechanisms are available to resolve legal challenges to NPDES permits. In the case of EPA-issued permits, the administrative procedure involved is called an evidentiary hearing. Many NPDES States and Tribes have similar administrative procedures designed to resolve challenges to the conditions of a permit. These procedures involve hearings presided over by an administrative law judge. For the sake of convenience, these hearings will hereafter be referred to as evidentiary hearings. They will naturally be known by different names in different State or Tribe jurisdictions. However, permit writers will, from time-to-time, be involved in permit appeals and will need to address the types of issues discussed below.

Aside from preparation of the administrative record and notices, the permit writer may not be concerned with procedural matters relating to evidentiary hearings. All requests for evidentiary hearings are coordinated through the office of the EPA Regional Counsel or the appropriate State legal personnel. The permit writer's first involvement with the hearing process will come as a result of designation of the trial staff and his/her role will be limited to that of a witness and technical advisor to legal counsel.

A permit writer may be required to give a deposition during which the appellant attorney conducts the questioning that would otherwise occur in the hearing. The deposition is transcribed and presented as evidence. The appellant attorney may ask some of the same questions at the hearing.

To prepare for a deposition and testimony, the permit writer should be familiar with those laws, regulations, and policies that may affect the permit. The permit writer should be thoroughly familiar with the technical basis for the permit conditions. For

example, if the effluent limits are based on water quality requirements, the permit writer should thoroughly study any applicable basin plan or water quality simulation used to develop the effluent limits and be prepared to defend any assumptions inherent in the plan or simulation. If BPJ limits are based on proposed effluent guidelines, it will be necessary to carefully review not only the guidelines themselves but all applicable data, including the development document for the specific guidelines. The technical defense of other BPJ requirements is much more difficult. The permit writer should be sure that (1) the information on which BPJ limits are based are unimpeachable, (2) the limits were derived from the data in a logical manner, in accordance with established procedures, and (3) the BPJ limits so derived are technically sound and meet BCT or BAT standards for economic reasonableness.

As technical advisor to legal counsel, the permit writer's most important function is to develop direct testimony in support of contested permit conditions. No attempt should be made to support technically indefensible conditions. Contested permit conditions that are not technically defensible and are not based on any legal requirement should be brought to counsel's attention, with advice that EPA or the State agency withdraw those conditions.

The second most important advisory function of the permit writer is assisting counsel in the development of questions for cross-examination of the opposing witnesses. Questions should be restricted to the subject material covered by the witness' direct testimony and should be designed to elicit an affirmative or negative response, rather than an essay-type response. If a question must be phrased in such a way that the witness could attempt lengthy explanations, counsel should be forewarned.

Finally, the permit writer should remember that in requesting an evidentiary hearing, the permittee has declared an adversary relationship with the regulatory agency, and the permit writer must therefore refrain from discussions about the case without prior consultation with legal counsel. In the role of witness and/or technical advisor, the permit writer should:

- Cultivate credibility
- Never imply or admit weakness in his or her area of expertise

- Never attempt to testify about subjects outside his or her area of expertise
- Always maintain good communication with counsel.

Where the permittee is granted relief at the evidentiary hearing, the Administrative Law Judge generally will order appropriate relief. Where a request for an evidentiary hearing is denied, the permittee may file a notice of appeal and petition for review with the Environmental Appeals Board (EAB), which may or may not grant an evidentiary hearing based on the factual and legal issues alleged. Similarly, where a permittee is denied relief at an evidentiary hearing, the permittee may appeal to the EAB to overturn the hearing decision. Finally, under certain circumstances decisions of the EAB against the permittee may be appealed in Federal court.

11.3.2 Permit Modification, Revocation, Termination, and Transfer

After the final permit is issued, the permit may still need to be modified or revoked prior to the expiration date. Modifications differ from revocations and reissuance. In a permit modification, only the conditions subject to change are reconsidered while all other permit conditions remain in effect. Conversely, the entire permit may be reconsidered when it is revoked and reissued. A permit modification may be triggered in several ways. For example, a representative of the regulatory agency may conduct an inspection of the facility that indicated a need for the modification (i.e., the improper classification of an industry), or information submitted by the permittee may suggest the need for a change. Of course, any interested person may request that a permit modification be made.

There are two classifications of modifications: major and minor. From a procedural standpoint, they differ primarily with respect to the public notice requirement. Major modifications require public notice; minor modifications do not.

Virtually all modifications that result in less stringent conditions must be treated as major modifications, with provisions for public notice and comment. Generally speaking, a permit will not need to be modified during the term of the permit if the facility can fully comply with permit conditions. Conditions that would necessitate a major modification of a permit are described in 40 CFR §122.62 and shown in **Exhibit 11-7**.

EXHIBIT 11-7

Conditions Requiring Major Modification

- Reopener—Conditions in the permit that required it to be reopened under certain circumstances.
- Technical Mistakes—To correct technical mistakes or mistaken interpretations of law made in developing the permit conditions.
- Failure to Notify—Upon failure of an approved State to notify another State whose waters may be affected by a discharge from the approved State.
- Alterations—When alterations or changes in operations occur that justify new conditions that are different from the existing permit.
- New Information—When information is received that was not available at the time of permit issuance.
- New Regulations—When standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision.
- Compliance Schedules for Innovative or Alternative Facilities—To modify the compliance schedule in light of the additional time that may be required to construct this type of facility; or when good cause for modification of a compliance schedule exists, such as an Act of God, strike, or flood.
- Pretreatment—To require that an approved program be implemented or to change the schedule for program development.
- Failed BPJ Compliance—When BPJ technology is installed and properly operated and maintained but the permittee is unable to meet its limits, the limits may be reduced to reflect actual removal; but in no case may they be less than the guideline limits. If BPJ operation and maintenance costs are totally disproportionate to the costs considered in a subsequent guideline, the permittee may be allowed to backslide to the guideline limits.
- Non-Limited Pollutants—When the level of discharge of any pollutant that is not limited in the permit exceeds the level that can be achieved by the technology-based treatment requirements appropriate to the permit.
- Variance Requests—When requests for variances, net effluent limitations, pretreatment, etc., are filed within the specified time but not granted until after permit issuance.
- Adjust limits to reflect net pollutant treatment—Upon request of a permittee who qualifies for effluent limitations on a net basis under 40 CFR §§122.45(g) and (h).
- Insert CWA §307(a) toxic or 40 CFR Part 503 sludge use/disposal requirements.
- Notification Levels—To establish notification levels for toxic pollutants that are not limited in the permit but must be reported if concentrations in the discharge exceed these levels.

Minor modifications are generally non-substantive changes (e.g., typographical errors that require more stringent permit conditions). The conditions for minor modifications, described in 40 CFR §122.63, are shown in **Exhibit 11-8**.

EXHIBIT 11-8

Conditions Requiring Minor Modification

- Typographical errors must be corrected.
- More frequent monitoring or reporting is necessary.
- An interim compliance date in the schedule of compliance needs revision, provided the new date is not more than 120 days after the date specified in the permit and does not interfere with attainment of the final compliance date requirement.
- Ownership has changed but no other change is necessary.
- The construction schedule for a new source discharger needs revision.
- A point source outfall that does not result in the discharge of pollutants from other outfalls must be deleted from the permit.
- An approved local pretreatment program must be incorporated into the permit.

11.3.3 Termination of Permits

Situations may arise during the life of the permit that are cause for termination (i.e., cancellation, revocation) of the permit. Such circumstances include the following (see 40 CFR §122.62(b)):

- Noncompliance by the permittee with any condition of the permit
- Misrepresentation or omission of relevant facts by the permittee
- A determination that the permitted activity endangers human health or the environment, either in an emergency or other situation
- A temporary or permanent reduction or elimination of a discharge (e.g., plant closure).

Once the permit is terminated, it can be placed into effect again only by the reissuance process, which requires a new permit application. All of the above situations may also be addressed through the permit modification process on a case-by-case determination.

11.3.4 Transfer of Permits

Regulatory agencies will occasionally receive notification of a change in ownership of a facility covered by a NPDES permit. Such changes require that a permit be transferred by one of two provisions:

- **Transfer by Modification or Revocation**—The transfer may be made during the process of modification, either major or minor. It may also be addressed by revoking and subsequently reissuing the permit.
- **Automatic Transfer**—A permit may be automatically transferred to a new permittee if three conditions are met:
 - The current permittee notifies the Director 30 days in advance of the transfer date.
 - The notice includes a written agreement between the old and new owner on the terms of the transfer.
 - The Director of the regulatory agency does not indicate that the subject permit will be modified or revoked.