



# Access to Information and Public Participation in the Permitting Context

Environmental Appeals Board  
Nívea R. Berríos  
Senior Counsel

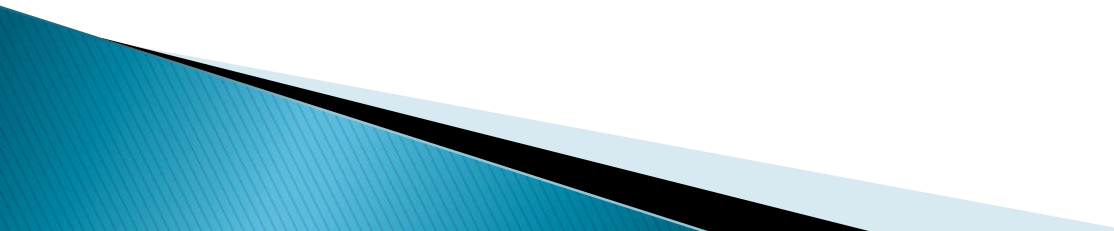
# What are Permits?

Permits = Licenses to Lawfully Emit Pollutants  
within Specified Limits and Conditions


Most Common Permits under U.S. Federal  
Environmental Laws:

- Discharge of pollutants into waters of the U.S.
- Emission of air pollutants
- Underground injection of pollutants

# Why Is Access to Information Necessary in the Permitting Context?

- Those directly affected have a right to know
  - Empowers community to protect themselves
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# Public Participation

- Those that may be affected deserve an opportunity to participate in the decision-making process
  - Community may be in better position to identify problems and propose effective solutions
  - Helps Agency to make better decisions
  - Serves to counterbalance powerful economic interests
  - Could simplify the work of the Agency
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# How Does EPA Provide Access to Information in the Permitting Context?

40 C.F.R. § 124.10 requires the permit issuer to:

- Notify the public of intent to issue a permit
- Make available all documents that form the basis of the permit
  - e.g., application, draft permit, fact sheet/statement of basis
  - Available at physical location and online
- Allow for public comments
  - At least a 30-day comment period
  - Public hearing may be requested

# Notification of Draft Permit and Public Comment Period

## Who Is Notified?

- ▶ Applicant
- ▶ Certain Federal and State regulatory agencies
- ▶ Local pollution control entities
- ▶ Certain groups and members of the public
  - (e.g., those in a “mailing list”)
- ▶ Persons potentially affected

## How Are Interested Parties Notified?

- ▶ By Mail
- ▶ Daily or weekly newspaper
- ▶ Broadcast over local radio (certain RCRA permits)

# Who Can Participate in the Public Comment Period? 40 C.F.R. § 124.11

Any interested person, including:

- Applicant
- Federal, state, local government institutions
- Independent citizens
- Non-governmental organizations (“NGOs”):
  - e.g.,
    - Community groups
    - Environmental interest groups

# Process After Public Comment Period Closes

## 40 C.F.R. § 124.15

- ▶ Draft Permit evaluated/revised
- ▶ Response to Comments issued
- ▶ Final Permit Decision issued
  - Permit Issuer notifies:
    - Applicant
    - Those who submitted written comments
    - Those who requested notice of the final permit
- ▶ Appeal of Permit Decision



# Appeals Process – Another Opportunity for the Public to Be Heard

- ▶ Environmental Appeals Board (EAB) reviews appeals of permit decisions
- ▶ Who Can Appeal a Permit Decision to the EAB?
  - Any person who participated during the public comment period on the draft permit, including;
    - citizens
    - NGOs
    - Permittee
  - Can be pro se or represented by counsel

# How Does the EAB Ensure Access to Information

- ▶ Transparent Decision-Making
  - Ex parte communications on merits of the case are prohibited
  - All hearings are open to the public
  - Requirement for a written record
  - All EAB decisions explain the basis of the decision
  - All EAB decisions, orders and briefs are available to the public online
    - [www.epa.gov/eab](http://www.epa.gov/eab)
- ▶ A guidance for citizens is available online



# Environmental Appeals Board



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## Environmental Appeals Board

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Welcome to the U.S. Environmental Protection Agency's Environmental Appeals Board Homepage. The Appeals Board is the final Agency decisionmaker on administrative appeals under all major environmental statutes that the Agency administers. It is an impartial body independent of all Agency components outside the immediate Office of the Administrator. The Board typically sits in panels of three judges and makes decisions by majority vote. Currently, eight experienced attorneys serve as counsel to the Board.

*The Board has issued [A Citizens' Guide to EPA's Environmental Appeals Board](#), a plain language guide for members of the public participating in matters before the Board.*

**NOTICES:** Pursuant to the Board's [Order Authorizing Electronic Filing in Proceedings Before the Environmental Appeals Board Under 40 C.F.R. Part 22 \(Jan. 28, 2010\)](#) and [Order Authorizing Electronic Filing in Proceedings Before the Environmental Appeals Board Not Governed by 40 C.F.R. Part 22 \(Jan. 28, 2010\)](#), the Board will now accept documents filed electronically in portable document format (PDF) in all cases currently or subsequently filed with the Board. Please consult the aforementioned Orders and the [Frequently Asked Questions](#) and the [Electronic Filing](#) sections of the Board's website for more information on how to file documents electronically and the conditions and requirements that apply.

For all Clean Air Act New Source Review/PSD permit matters, see the Board's [Standing Order](#) issued April 19, 2011.

Recent Additions	EAB Decisions	Standing Orders	Electronic Filing	General Information
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*U. S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board  
Ronald Reagan Building, EPA Mail Room  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004*

All documents that are sent through the U.S. Postal Service (except by Express Mail) **MUST** be addressed to the EPA's mailing address which is: