
Chapter 3

Public Participation During the RCRA Permitting Process

Introduction

The previous chapter examined the importance of public participation and the information-sharing triangle, while reviewing the critical components for building a successful public participation program. Chapter 3 describes the specific public participation activities that EPA requires or recommends during each phase of the RCRA permitting process, beginning before submission of the RCRA part B permit application, continuing through the preparation of draft and final permit decision, and throughout the life of the RCRA permit.

States may have their own public participation requirements in addition to the federal

Section 7004(b) of RCRA and EPA's permitting regulations, found in 40 CFR Parts 124 and 270, form the foundation for mandatory public participation activities during the permitting process for both operating and post-closure permits. The reader should note that the corrective action schedule of compliance and other corrective action provisions are typically part of the RCRA permit under 40 CFR Part 270 (unless carried out under an enforcement order). Changes to these sections of the permit must follow the permit modifications procedures of 40 CFR Part 270.41 or 270.42. We review the corrective action public participation procedures in Chapter 4.

RCRA permitting regulations require an array of public participation procedures during the permitting process and the life of the permit. However, situations often occur where the facility and the agency will need to go beyond the requirements in 40 CFR Parts 124 and 270. Following the assessment and planning guidance we provided in Chapter 2, participants in the permitting process will discover whether a certain permitting activity deserves greater public participation. Regulators, facility staff, or community groups may want to consider expanded public participation activities (described in this chapter and in Chapter 5) -- if resources allow -- at priority facilities, controversial facilities, or at facilities where the affected community has a particular need for greater involvement or access to information. Participants in the process should seek input from other stakeholders to determine if the public participation activities are adequate. The permitting agency may suggest that the facility or public interest

groups conduct additional activities to supplement required activities and strengthen communication and trust among stakeholders. In addition, EPA encourages the community to suggest additional public participation activities to the permitting agency, the facility, or community and public interest groups.

In December 1995, EPA expanded the public participation requirements in the RCRA program by promulgating new regulations. The new regulations, known as the "RCRA Expanded Public Participation" rule (60 FR 63417, December 11, 1995), require earlier public involvement in the permitting process, expand public notice for significant events, and enhance the exchange of permitting information. The new requirements, which we describe more fully in this chapter, include: (1) a public meeting held by the facility prior to submitting the part B RCRA permit application; (2) expanded notice requirements, including use of a posted sign, a broadcast notice, and a newspaper display advertisement to publicize the meeting; (3) notification of the public when the agency receives a permit application and makes it available for public review; (4) permitting agency discretion to establish an information repository, which will be supplied and maintained by the applicant or permit holder; and, (5) additional notices during the trial burn period for combustion facilities.

In addition to the new regulatory requirements, EPA is taking steps to ensure equitable public participation in the RCRA permitting process. On December 20, 1995 EPA Office of Solid Waste and Emergency Response (OSWER) Assistant Administrator Elliot Laws issued a memorandum to the EPA Regional Administrators stating the Agency's policy to ensure equal access to permitting information and provide an equal opportunity for all citizens to be involved in the RCRA permitting process (see Appendix N). In this manual, we are strongly encouraging facilities to meet the same standard of equitable public participation. EPA is committed to equal protection of our citizens under the nation's environmental laws and urges all participants in the RCRA permitting process to strive for environmental justice, equal opportunity to participate in permitting, and equal access to information.

Public participation activities should fit the diversity, character, and culture of the affected community.

To meet this standard, EPA (when it is the permitting agency) will issue multilingual notices and fact sheets and use translators, where necessary, in areas where the affected community contains significant numbers of people who do not speak English as a first language. In addition, the Agency recommends that facilities make efforts to tailor public participation activities to fit the diversity, character, and culture of the affected community. When communicating with a community, participants in the permitting process should take into account the particular pathways and methods of information transfer that are used by that community. These principles are applicable to all public participation activities, and EPA

encourages their adoption by all participants in the RCRA permitting process. See the section entitled “Promoting Environmental Justice” in Chapter 2 for more information.

Public Participation During the Permit Decision Process

The permit decision process is composed of a number of steps. Each step is accompanied by public participation requirements. As we have mentioned, the regulatory minimum for public participation may not be sufficient in all cases. Permitting agencies and facilities should consider going beyond the regulatory requirements, where necessary, to provide for meaningful and equitable public participation.

For the sake of simplicity, in this manual we will divide the permit decision process into four steps:

- the pre-application stage;
- application submittal, agency notice and review;
- preparation of the draft permit, public comment period, and the public hearing; and
- response to public comments and the final permit decision.

Stakeholders should keep in mind that the permit decision process is lengthy and can be complex and confusing. Keeping the lines of communication open during the process takes effort on the part of all participants. This effort is especially critical during the long periods of time while the agency is reviewing the permit or the facility may be responding to a Notice of Deficiency (which we describe later in this Chapter). The agency, the applicant, and other interested groups should take steps to keep the community involved and informed during these “down” times.

We also encourage stakeholders to learn about the process, ask questions, and discuss it with the other participants. Permitting agencies in particular, should make efforts to disseminate fact sheets and information packages about the permitting process. Agencies, public interest groups, or facilities may want to perform other public information tasks (see chapter 5 for descriptions) to ensure that all stakeholders understand, and are comfortable with, the permitting process.

Step One: The Pre- Application Stage

Required Activities

The RCRA Expanded Public Participation rule requires a new permit applicant (or a facility that is applying to renew a permit while making significant changes) to hold a public meeting prior to submitting the part B RCRA permit application. This meeting is the earliest formal step in the

RCRA permitting process.

Early public input can improve the quality of any permitting activity; the public can contribute information and recommendations that will be helpful to agencies as they make permitting decisions and to facilities as they develop their applications and proposals.

The Pre-Application Meeting

The most important goal EPA hopes to achieve from the pre-application meeting requirement is the opening of a dialogue between the permit applicant and the community. We believe that the applicant should open this dialogue at the beginning of the process. The meeting will give the public direct input to facility personnel; at the same time, facility personnel can gain an understanding of public expectations and attempt to address public concerns before submitting a permit application. We hope that this requirement will help address the public concern that public participation occurs too late in the RCRA permitting process.

Conducting the Meeting

The pre-application meeting will allow the facility to hear and respond to public concerns.

The pre-application meeting should provide an open, flexible, and informal occasion for the applicant and the public to discuss the various aspects of a hazardous waste management facility's operations. Discussion at the pre-application meeting need not concern the technical aspects of the permit application in extensive detail; such technical examination is more suited to the draft permit stage (which we describe later in this Chapter). We anticipate that the applicant and the public will use this meeting to share information, learn about each other's concerns, and start building the framework for a solid working relationship. The pre-application stage is also an excellent time to explore the facility's level of expertise in waste minimization and pollution prevention, and the potential for involving the facility's waste minimization experts in the public participation process.

While a formal meeting style (i.e., like a public hearing) may suit some permitting situations, EPA realizes that it will not fit in all cases. With this idea in mind, EPA has written the regulations to allow flexibility in the type of "meeting" held by the permit applicant. For instance, an applicant may decide to hold an availability session or open house (see Chapter 5) in place of a traditional meeting. As long as this approach meets the requirements and the spirit of § 124.31 (as presented in this section), EPA will not preclude applicants from tailoring meeting styles to fit particular situations.

Regardless of the type of meeting that the applicant decides to hold, the applicant (as well as the other participants in the process) should strive for equitable participation and access to information during the pre-application meeting and the notice of the meeting (see "Promoting Environmental

Justice” in Chapter 2 and the Introduction to this Chapter).

At the meeting, permit applicants should address, at the level of detail that is practical (based on available information), the following topics: what type of facility the company will operate; the location of the facility; the general processes involved and the types of wastes to be generated and managed at the facility; and the extent to which waste minimization and pollution prevention may supplement or replace waste treatment needs. The discussions should also include the transportation routes to be used by waste transporters and planned procedures and equipment for preventing or responding to accidents or releases.

Addressing community concerns at the start of a project can prevent misunderstanding and opposition in the long run.

These are examples of the types of issues that might be of particular concern to a community and about which the community might be able to provide useful suggestions to the applicant. The applicant might then be able to incorporate that information into the proposed facility design or operations, either as part of the initial application, if time allows, or at subsequent stages in the process (e.g., in submitting revisions to its application, or in responding to a Notice of Deficiency issued by the permitting agency). By learning about and addressing public concerns up front, the applicant may be able to prevent misunderstanding from escalating into community opposition. Moreover, the public will have a clear and open opportunity to interact and communicate with the potential applicant.

The applicant should make a good faith effort to provide the public with sufficient information about the proposed facility operations. While we do not expect applicants to go into extensive detail at the pre-application stage, they should provide the public with enough information to understand the facility operations and the potential impacts on human health and the environment. We encourage applicants to provide **fact sheets**, information packets, or other materials (see Chapter 5) that explain the proposed operations, company policies, waste minimization proposals, or other information that is relevant to the proposed facility.

The permitting agency may choose to make permitting and pollution prevention fact sheets available at the meeting. One such fact sheet is included as Appendix J of this manual. EPA recommends that permit applicants distribute this fact sheet (or a similar one produced by the state agency) at the pre-application meeting, especially in cases where a representative of the permitting agency does not attend. EPA does not expect permit applicants to answer questions about the RCRA permitting process at the pre-application meeting -- particularly where the applicant is not sure of the answer. We advise the applicant to let a representative of the permitting agency answer such questions. If an agency representative is not available at the meeting, then the applicant should provide the name of

an agency contact person and the number of the RCRA Hotline (available in Appendix A) or an applicable State information line.

Some applicants may want to consider inviting or hiring a moderator to conduct the pre-application meeting. The moderator should be a neutral third party (e.g., a civic organization, non-profit community group, or a consultant) that is not a stakeholder in the permitting decision process. A moderator can lend objectivity to the proceedings and help to keep the discussions fair, under control, and on track. Regardless of whether a third party conducts the meeting, facility representatives should be present to answer questions and interact with the community.

EPA regulations are flexible with regard to conducting the pre-application meeting. One of the few requirements is for the applicant to post a sign-in sheet, or a similar mechanism, to allow participants to volunteer their names and addresses for inclusion on the facility mailing list (see § 124.31(b)). The applicant should understand that attendees may not want to put their names on a mailing list; the sign-in sheet always should be voluntary. The applicant should make clear at the meeting that people can contact the permitting agency directly to add their names to the facility mailing list at any time.

The applicant must submit the list of attendees, along with a "summary" of the pre-application meeting, as a component of the part B permit application. We do not intend for the meeting summary to be a verbatim account of the meeting. EPA recognizes how difficult it is to keep a word-for-word record of a public meeting. Applicants should make a good faith effort to provide an accurate summary of the meeting. While the regulations do not indicate a particular format for the meeting summary, we recommend a type-written document that identifies major issues, points made in support of those issues, and any response made by the applicant or other attendees.

As mentioned above, the applicant must submit the summary as a component of the part B application. This component should be a typewritten hard-copy. Since the part B application is available for review by the public, attaching the summary as part of the application assures that people who are unable to attend the meeting will have an opportunity to find out what happened. We encourage applicants to make the summary available in other formats where a community has special needs (e.g., on audio tape for visually impaired residents).

The facility must conduct the pre-application meeting.

The RCRA Expanded Public Participation rule requires the facility to conduct the pre-application meeting. We believe that the applicant should conduct the meeting in an effort to establish a dialogue with the community. EPA encourages permitting agencies to attend pre-application

meetings, in appropriate circumstances, but *the facility must conduct the pre-application meeting*. Agency attendance may, at times, be useful in gaining a better understanding of public perceptions and issues for a particular facility, and for clarifying issues related to the permitting process. However, agency staff should ensure that their attendance does not detract from the main purposes of the meeting, such as opening a dialogue between the facility and the community, and clarifying for the public the role of the applicant in the permitting process.

The regulations do not preclude State agencies and permit applicants from working together to combine State siting meetings with pre-application meetings. EPA encourages them to do so, provided that the combined meetings fulfill the requirements in § 124.31. If meetings are combined, the portion of the meeting that is dedicated to the RCRA facility permit must be run by the applicant; the regulatory agency must give the applicant the floor for a sufficient time period. In notifying the public of the meeting, under § 124.31(d), the applicant must make clear that the RCRA portion of the meeting is separate from the general siting discussion.

The pre-application meeting will provide the community with a clear entry point for participation at an early stage in the permitting process. We encourage members of the community to become involved at the pre-application stage. Public comments and suggestions are easier for the facility to address at this early stage than later on in the process. For this reason, public input can have a greater impact at this stage. Interested citizens should attend the meeting and participate in the informal dialogue.

The public can learn more about the facility and the company seeking a permit before attending the meeting by contacting the facility, or by contacting other stakeholders in the community. Some community members may want to research to learn more about the planned (or already existing) facility. If you are interested in obtaining more information on the facility or the permitting process, you may want to contact the permitting agency or the corporation that owns the facility. Additional information about past and present owners, past waste spills and releases, complaints, and the status of other state, local, and federal permits may be available from the following: the planning board, City Hall or the town council, the county health department, local newspapers, the library, and local fire and rescue departments. These sources will give you access to information such as deeds and environmental testing results.

Meeting attendees can become part of the facility mailing list by adding their names and addresses to the sign-up sheet at the meeting or by sending their names directly to the permitting agency. People on this list will receive any significant information sent out by the agency or the facility regarding the facility.

Citizens should note that not all aspects of the permit application will be clear at the pre-application stage, in part, because EPA is encouraging facilities to meet with the public before making all final decisions on their permit applications. This way, the facility owner/operator will be more flexible and can react more effectively to suggestions and concerns raised in the meeting. Participants at the meeting should note that the facility owner/operator will not know the answer to all questions about the permitting process. The permitting agency and the RCRA/Superfund Hotline will be available to answer questions about the permitting process and other RCRA requirements (remember that States may have different procedures than EPA)..

Date, Time, and Location of the Meeting

The timing of the meeting is flexible. EPA believes that flexibility is necessary because the optimal timing for the meeting will vary depending on a number of factors, including the nature of the facility and the public's familiarity with the proposed project and its owner/operator. The applicant should choose a time for the meeting while considering the following factors: (1) the community must receive adequate notice before the facility submits a permit application; (2) the facility's plans for construction or operation need to be flexible enough to react to significant public concerns and to make changes to the application, if necessary; (3) the meeting should not take place so long before submittal of the application that the community will forget the facility. We encourage applicants to make a good faith effort to choose the best date for the pre-application meeting.

While the final rule requires the facility to hold *only one pre-application meeting*, cases may arise where more than one meeting is preferable. For instance, if a facility holds one public meeting and takes several months to a year to submit the application, then the facility owner/operator should consider holding a second meeting. In other cases, the facility may want to hold a few meetings of different types (e.g., a **public meeting** as well as an **availability session**). Of course, permitting agencies or other stakeholder groups may decide to hold additional public meetings where appropriate.

The permit applicant should encourage full and equitable public participation by holding the pre-application meeting at a time and place that is convenient to the public. The applicant should schedule the meeting at a time when the community is most likely to be available. Many communities, for instance, may prefer a meeting held after normal business hours. Meeting schedulers should avoid holding the meeting at a time that will conflict with important community activities (e.g., social, religious, or political events, other meetings, school activities, or local occasions). The applicant should also make sure that the meeting place has adequate space and is conducive to the type of meeting that the applicant will conduct.

The applicant should avoid scheduling the meeting at a time that conflicts with other important community activities.

Finally, the meeting location should have suitable access for all persons; if such a location cannot be procured, then the applicant should make all reasonable efforts to provide for equitable participation in the meeting (e.g., by responding to written comments).

Some members of the affected community may not feel comfortable with meetings held on facility property. Applicants should address community concerns in this area. EPA encourages applicants to hold the pre-application meeting on neutral public ground, such as a local library, a community center, a fire station, town hall, or school.

Notice of the Pre-Application Meeting

EPA developed the pre-application meeting notice requirements with the goal of encouraging facilities to reach as many members of the public as possible, within reasonable means. The expanded notice requirements are intended to reach a broad audience and to encourage as many people as possible to attend the meeting. Attendance at the meeting may also provide an indication of the level of public interest in the facility, although low attendance does not necessarily equal low interest. Using the list of attendees from the meeting will allow agencies to develop larger mailing lists; these lists, in turn, will help the facility and the agency to update more people more often about the permitting process.

The new rule requires the applicant to provide notice of the pre-application meeting to the public in three ways:

- *A newspaper display advertisement.* The applicant must print a display advertisement in a newspaper of general circulation in the community. The display ad should be located at a spot in the paper calculated to give effective notice to the general public (see the example in Appendix H). The ad should be large enough to be seen easily by the reader. In addition to the display ad, we also encourage facilities to place advertisements in free newspapers, community bulletins, newsletters, and other low-cost or free publications. In some cases, potential interest in the facility may extend beyond the host community. Under these circumstances, we encourage the applicant either to publish the display ad so that it reaches neighboring communities or to place additional ads in the newspapers of those communities.
- *A visible and accessible sign.* The applicant must provide notice on a clearly-marked sign at or near the facility (or the proposed facility site). If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass -- on foot or by vehicle -- by the site. EPA anticipates that the signs will be similar in size to zoning notice signs required by local zoning boards (of course, this size will vary according to the prerogative of the

zoning board). If a sign on the facility grounds is not practical or useful -- for instance, if the facility is in a remote area -- then the applicant should choose a suitable alternative, such as placing the sign at a nearby point of significant vehicular or pedestrian traffic (e.g., the closest major intersection). In the case that local zoning restrictions prohibit the use of such a sign in the immediate vicinity of the facility, the facility should pursue other available options, such as placing notices on a community bulletin board or a sign at the town hall or community center. EPA intends the requirement that the sign be posted "at or near" the facility to be interpreted flexibly, in view of local circumstances and our intent to inform the public about the meeting. In addition to the requirements of § 124.31, we encourage the applicant to place additional signs or flyers in nearby commercial, residential, or downtown areas. Supermarkets, hardware or department stores, malls, libraries, or local gathering places may have bulletin boards for posting notices and flyers. EPA encourages facilities to keep track of posted signs and remove them after the meeting.

- *A broadcast media announcement.* The applicant must broadcast the notice at least once on at least one local radio or television station. EPA expects that the applicant will broadcast the notice at a time and on a station that will effectively disseminate the notice. The applicant may employ another medium, aside from television or radio, with prior approval of the permitting agency. Many communities run their own cable channels for local news and activities; this medium may be used to target a local audience, often at no charge. Television spots may be advantageous for delivering pertinent information about a hazardous waste management facility directly to the people at home.

Choose notice methods that will spread the word over all segments of the affected community.

Sample notices are provided in Appendix H and more may be available by contacting the permitting agency.

EPA encourages facilities to pick a mixture of public notice tools that meets the regulations and will allow the affected community to receive equitable, timely, and effective notice of the pre-application meeting. Such a mixture may include a number of different and specialized notices that target specific groups within each community. One example of such a targeted notice would be the use of a translated advertisement on Chinese-speaking local access television station to reach a Chinese-American enclave in an area where the community members are affected by the permitting activity. Specific segments of the affected community can be targeted by strategic placement of the newspaper display ad, the timing and station of a radio spot, the geographic location of signs, use of free newspapers, and multi-lingual notices. EPA does not require that the applicant try to reach the largest audience with each method of public notice (e.g., the radio spot need not be placed on the most popular station). Instead, the applicant should use a combination of methods (including

translations) to spread the word over all segments of the affected community, taking into account the channels of information that are most useful in reaching diverse groups.

EPA encourages applicants to go beyond the minimum requirements in the regulations when providing notice of the pre-application meeting. The following suggestions will help in providing an effective broadcast notice. In some rural areas, community members may listen to or watch predominantly one radio or television station; in this case, the applicant should use this station as the vehicle for the notice. Some areas are part of a radio market (i.e., defined by services such as Arbitron's Radio Market Definitions) or television market and have competing radio and television stations. Where there is more than one station, the facility owner or operator should consider carefully the likely audience of the station in order to ensure that a substantial number of people will see or hear the ad. Areas with many competing stations are more likely to have audiences that may be delineated, for instance, by age, ethnicity, or income. In these situations, broadcasting the notice on several stations, or in more than one language, may be beneficial. In all cases, EPA suggests that the announcement occur at listening or viewing hours with a substantial audience -- hours that will vary for each community as well as for specific groups. The facility may consult with broadcast stations and community members to determine the best times to broadcast the notice.

The regulations also require the applicant to send a copy of the notice to the permitting agency. Applicants must follow this provision, but we encourage facilities to contact the appropriate agencies before this stage. *Applicants should consider informing the agency of their intent to seek a permit before planning the pre-application meeting.* Like other stakeholders in the permitting process, the permitting agency can benefit from receiving information as early as possible in the process. In addition, the permitting agency may be able to provide guidance about how to run the pre-application meeting or what types of public notice work best in a particular community.

EPA also encourages the applicant to send a copy of the notice to all members of the facility mailing list, if one exists. This suggestion applies especially to facility owners who are applying for a permit renewal and must comply with § 124.31 because they are seeking to make a change on the level of a class 3 permit modification. At these facilities, the mailing list will already exist and people on the list will be interested in learning about the most recent activity at the facility. A mailing list will most likely not exist for new applicants.

Getting the word out at this early stage is essential to assuring adequate community participation during the entire permitting process. For this

Free papers, existing newsletters, press releases, and word-of-mouth are inexpensive ways to notify the public.

reason, we encourage the applicant to take additional steps, within reasonable means, to announce the meeting. We do not intend for applicants to spend large amounts of additional time and resources; on the contrary, there are many simple and inexpensive mechanisms for distributing information. Free announcements on television or radio, advertisements in free papers, town newsletters, flyers, small signs, and press releases are all ways to disseminate information at little or no cost. We also encourage facilities to pass information through local community groups and Local Emergency Planning Committees (established under section 301 of the Superfund Amendments and Re-Authorization Act (SARA)), professional and trade associations, planning commissions, civic leaders, school organizations, religious organizations, and special interest groups. Other stakeholders involved in the process are also good conduits for spreading news about the pre-application meeting.

The regulations require that the notice contain several pieces of information: (1) the date, time, and location of the meeting; (2) a brief description of the purpose of the meeting; (3) a brief description of the facility and proposed operations, including the address or a map (i.e., a sketched or copied street map) of the facility location; (4) a statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and (5) the name, address, and telephone number of a contact person for the applicant.

The format of the notice is flexible as long as it communicates this information. The description of the purpose of the meeting should explain the facility's intent to submit a permit application and set out other objectives for the meeting. When describing the facility, the owner/operator should briefly cover what sort of facility it is or will be (e.g., a hazardous waste incinerator), what types of wastes it may handle, and what sort of operations will take place at the facility (e.g., types of manufacturing, commercial treatment of waste, etc.). For the facility map, the owner/operator should provide a photocopy of a street map or a sketched map, the purpose of which is to let the public know just where the facility is or will be. Finally, persons needing "special access" would include anyone who may have difficulty with stairs or some entrances, persons who are visually or hearing impaired, or any person who foresees some difficulty in attending the meeting without some help. EPA does not expect facilities to provide transportation to persons who cannot find other means of reaching the meeting.

The telephone contact provided by the applicant in the pre-application notice is an important addition to the public participation resources during this phase. EPA encourages members of the community to contact the facility, the permitting agency (see Appendices A and B for State and Federal contacts) or other interested groups in the community, as necessary,

to become acquainted with the permitting process and the facility plans.

EPA is not requiring the facility to submit proof of the public notice; however, we are requiring the facility to keep proof of the notice. The Agency is concerned that proof of the notices may be needed in the case of a lawsuit. The applicant should establish a simple file containing proofs for the notice. Acceptable forms of proof would include a receipt for the radio or TV broadcast, a photograph of the sign, and a photocopy of the newspaper advertisement or tear sheets.

The Facility Mailing List

The permitting agency is responsible for developing a representative mailing list for public notices under § 124.10. EPA is emphasizing the early development of a thorough mailing list as a critical step in the public participation process. If the mailing list allows the agency to keep important groups and individuals in the community up-to-date on activities at a facility, then the permitting agency and the facility will be better able to gauge community sentiment throughout the permitting process. See the section on “Mailing Lists” in Chapter 5 for additional information.

EPA anticipates that the meeting attendee list required under § 124.31(c) will help the agency generate the mailing list by identifying people or organizations who demonstrate an interest in the facility and the permit process.

The permitting agency should develop the mailing list early.

In the past, mailing lists have not been fully developed, oftentimes, until the agency issued the draft permit or intent to deny the permit. EPA believes that the mailing list is an integral public participation tool which permitting agencies should create as early as possible in the process. Our intent in having the permit applicant submit the list of meeting attendees under § 124.31(c) was to allow the agency to formulate the mailing list at an earlier stage in the permitting process. Aside from the names identified by the permit applicant, we encourage permitting agencies to enhance the mailing list by contacting a wide variety of groups and individuals, such as: civic organizations, religious groups, public interest organizations, recreational groups, professional/trade associations, Local Emergency Planning Committees (LEPCs), emergency response and local health care personnel, environmental justice networks, educational and academic organizations, city hall and elected officials, planning and zoning boards, local development councils, involved State and Federal agencies, newspapers and reporters, immediate neighbors and property holders, other nearby companies or business groups, facility employees, and plant tour attendees. In addition, we encourage the agency to maintain and update the lists regularly. All commenters on permitting documents, attendees at any public meetings or persons using information repositories should be placed on the mailing list, or have the option of putting their names on the list.

Members of the community and other interested groups or individuals can contact the permitting agency to have their names put on the facility mailing list. Community and public interest organizations may want to provide the permitting agency with names for the mailing list. Refer to Appendices A and B if you would like to find the addresses and phone numbers of EPA's Regional offices and the state environmental agencies.

Additional Activities

Public participation activities should be geared to the potential level of community interest.

The level of public participation activities should correspond to the potential level of community interest in the permitting process. To determine the need for additional activities, participants should consider conducting a **community assessment** (see Chapters 2 and 5). If the level of interest is high, participants will want to do a more thorough needs assessment and prepare a formal **public participation plan** (see Chapters 2 and 5).

EPA encourages applicants to provide **fact sheets**, information packets, or other materials (see Chapter 5) at the pre-application meeting. The permitting agency may also choose to make permitting fact sheets available at the meeting. One such fact sheet is included as Appendix J of this manual. EPA recommends that permit applicants distribute this fact sheet at the pre-application meeting, especially in cases where a representative of the permitting agency does not attend.

To provide widespread notice of the pre-application meeting, the applicant may want to use notice methods that go beyond the requirements. Some of these methods, such as **public service announcements**, **existing newsletters and publications**, and **newspaper inserts** are described in Chapter 5.

In some cases, the agency, facility, or a community group may find it appropriate to hold an additional meeting during the pre-application stage. **Availability sessions** or **open houses** can provide the public with an opportunity to discuss issues face-to-face with officials or other interested people.

The "RCRA Expanded Public Participation" rule gives the permitting agency the authority to require the facility owner or operator to establish an **information repository** at any point in the permitting process or during the life of a facility. The agency should assess the need for the repository by considering a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. The information repository

An information repository makes information accessible to the public in a convenient location.

can improve the permitting process by making important information accessible to the public in a convenient location. (See Chapter 5 for more detail on information repositories). Of course, EPA encourages facilities or interested community groups to establish their own repositories for public access to information. Chapter 5 provides more guidance on how to establish a repository.

Some permitting information is quite technical and detailed. Members of the public and other stakeholders may find this information difficult to interpret. EPA encourages permitting agencies, facilities, and community groups to provide fact sheets and additional materials to make technical and complicated information more accessible to people who are not RCRA experts. **Workshops** or **availability sessions** may be useful for explaining technical information. Some citizens or community groups may want to consult other sources for help in interpreting scientific and technical data. If you are looking for such help, you may want to contact the permitting agency, facility staff, or other sources such as local colleges, universities, public interest groups, environmental and civic organizations. Additional contacts may be available in the local community. Interested citizens may be able to find out about these contacts by talking to local newspapers and other media who cover environmental issues. People who are interviewed for or quoted in news articles can be an additional source for information.

Getting as much input as possible from the community during these initial phases of the RCRA permitting process and before a draft permit is issued will be very useful during the draft permit stage. The draft permit will be more responsive to the needs and concerns of the community, and the community will be more likely to accept the permit conditions if it sees that its concerns have been heard.

Though the early meeting may reduce public concern that the agency and the facility are making important decisions before the public becomes involved, some concern may still remain. The agency and the facility are likely to have meetings that cannot, for practical purposes, be open to public participation. One State agency found that by making notes from these meetings available through an **information repository**, public trust in the agency increased.

Step Two: Application Submittal and Review

Required Activities

After the permit applicant has met with the public and considered recommendations and input from the community, he or she may choose to pursue a RCRA permit and then submit a RCRA part B permit application

to the permitting agency. Upon receiving the permit application, the permitting agency must, under § 124.32, issue a **public notice** to the facility mailing list and appropriate units of state and local government. The notice will inform recipients that the facility has submitted a permit application for agency review. In addition, the notice will inform the recipients of the location where the application is available for public review.

New EPA rules make permit applications available to the public during agency review.

Both of the provisions mentioned in the previous paragraph are the result of the RCRA Expanded Public Participation rule. EPA composed these regulations as a way to inform the public about the status of a facility's permit application early in the process .

Before issuing the notice at application submittal, the permitting agency should solicit community suggestions and input on the best place to put the application for public review (agency personnel may have gathered this information during an earlier stage in the process). We encourage the agency to issue the notice as soon as is practically possible after receiving the application. The notice must contain the following information: (1) the name and telephone number of the applicant's **contact person**; (2) the name and telephone number of the permitting agency's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process; (3) an address to which people can write in order to be put on the facility mailing list; (4) the location where copies of the permit application and any supporting documents can be viewed and copied; (5) a brief description of the facility and proposed operations, including the address or a map (i.e., a sketched or copied street map) of the facility location on the front page of the notice; and (6) the date that the application was submitted.

Permitting agencies must place the application and any supporting materials somewhere in the vicinity of the facility or at the permitting agency's offices. The permitting agency should be sensitive to the burden on members of the affected community when determining where to place the application. Many communities do not have the resources or the time to travel several hours just to access permitting information. To make information available in these situations, the permitting agency should place the application in a place with public access in the general vicinity of the facility (e.g., a public library or community center). If such placement of the document is impractical, the agency should make sure that the public has other access to permitting information. For instance, the agency could require the facility to establish an information repository under § 124.31. If the community's information needs are on a lower level, the agency may want to make a short summary of the permit application available to the affected community. In some cases, making information available in electronic form (e.g., via diskette or Internet) may be useful.

The application should be available for review in the vicinity of the facility.

We recommend that, where feasible, the agency place the application in a location where copying facilities are available and the public has adequate access to the documents. EPA also recommends that the application be in a locale where the documents will be secure and readily available. The application should go in the information repository, if one exists. If not, a public library or other building in the vicinity of the facility may provide a suitable choice. The permitting agency's headquarters or satellite office may be adequate if not too far from the facility.

Additional Activities

The permit application review process is often lengthy. It may take anywhere from one to five years to issue a permit, depending on the facility type and level of facility owner or operator cooperation. Permit applicants and regulators should recognize that members of the public have pointed out that they often feel "in the dark" during this phase. We encourage agencies and facilities to maintain a good flow of information during application review. If resources are available, permitting agencies and facilities should plan activities during this time period to keep citizens informed about the status of the process. Holding **workshops**, conducting **informal meetings**, and providing periodic **fact sheets** and **press releases** about the facility, opportunities for pollution prevention, and the RCRA permit process can spread information and keep the community involved. Identifying a **contact person** to accept comments and answer questions will also enhance communication. A (toll-free) **telephone hotline** with recorded status reports can reduce the potential for rumors.

EPA encourages permitting agencies to respond (e.g., in writing, by phone, by holding a meeting) to comments and requests from the public during the application review process. Agencies should make good faith efforts to address public concerns and issues.

In situations where a community wants more information about potential operations at a facility and the health and environmental risks of those operations, citizens or the agency can work with the facility to set up **facility tours** and **observation decks** during the public comment period. These activities will give the community a first-hand look at a facility and the operations and activities happening on-site. (Note that safety and liability issues need to be considered before a decision is made to include these activities.) These activities may be particularly useful for a new facility or when a facility proposes a new or different technology. Facility tours also may be particularly effective for explaining pollution prevention accomplishments and opportunities. Similarly, facility owners or operators may wish to coordinate with community leaders to tour the community. This may be useful for understanding potential community concerns.

Step Three: The Draft Permit, Public Comment Period, and Public Hearing

Required Activities

After the permitting agency reviews the permit application, it must notify the applicant in writing. If the application is incomplete, the permitting agency may request that the applicant submit the missing information. This request is known as a Notice of Deficiency (NOD). The permitting agency may issue several NODs before the application is finally complete.

Once an application is complete, the permitting agency will make a decision to issue a draft permit or a notice of intent to deny the permit application (which is a type of draft permit). In either case, the agency must notify the public about the draft permit. In the notice, the permitting agency must announce the opening of a minimum 45-day public comment period on the draft permit. The agency must print the notice in a local paper, broadcast the notice over a local radio station, and send a copy of the notice to the mailing list, relevant agencies, and applicable state and local governments. We encourage agencies to attempt to reach all segments of the affected community, within reasonable means, when issuing the notice of the draft permit (see “Step One: The Pre-Application Stage” above and Chapter 5 for more information on how to notify the public). Although the agency is not required to retain documentation of the notice, we recommend keeping a simple file with proof of the notices. Forms of proof might include a receipt for the radio ad and a photocopy of the newspaper ad.

EPA regulations require the permitting agency to prepare a **fact sheet** or a **statement of basis** to accompany every draft permit. This fact sheet (or statement of basis) is required by regulation and is different than commonly used informational fact sheets. This fact sheet must explain the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The fact sheet must also include, when applicable, the following (see § 124.8(b)):

- a brief description of the type of facility or activity which is the subject of the draft permit;
- the type and quantity of wastes that are proposed to be handled at the facility;
- a brief summary of the basis for the draft permit conditions;
- reasons why any requested variances or alternatives to required standards do or do not appear justified;
- a description of the procedures for reaching a final decision on the draft permit, including (1) the beginning and ending dates of the comment period and an address to which comments can be sent, (2) procedures for requesting a hearing and the nature of

- the hearing, and (3) any other public participation procedures before the final permit decision; and
- the name and telephone number of a person to contact for additional information.

EPA recommends that the permitting agency include the fact sheet with the notice of the draft permit and make the fact sheet available to all interested parties.

Any person may request a **public hearing** during the public comment period. The agency must hold a public hearing if someone submits a written notice of opposition to a draft permit and a request for a hearing, or if the public demonstrates, by the number of requests for a public hearing, a significant degree of public interest in the draft permit. The Director also may hold public hearings at his or her discretion. The agency must notify the public about the hearing at least 30 days prior to the hearing. The agency may choose to combine the hearing notice with the draft permit notice. See Chapter 5 for information on holding a public hearing. Citizens may want to request a public hearing as a forum for airing community concerns. The hearing will be a standard meeting, attended by the agency and other interested parties.

There is more required public participation during the draft permit stage than at any other time during the permitting process. We strongly recommend that permitting agencies prepare public participation plans (see Chapter 5), even for the least controversial facilities, just to keep track of the activities during this stage.

By law, the agency must consider and respond to all significant comments received during the comment period.

The comment period on the draft permit allows anyone to submit their concerns and suggestions to the agency in writing. The permitting agency must, by law, consider all comments (see § 124.11) in making the final permit decision. In addition, the agency must briefly describe and respond to all significant comments raised during the comment period or during the public hearing. EPA encourages participants to submit comments during this period.

Additional Activities

Permitting agencies can keep the process open by sharing all NOD information with the public, whether through the administrative record, an **information repository**, or another activity, such as a **workshop**. If the details of the NOD are too arcane or technical, the agency can provide a short **fact sheet**. The fact sheet should not gloss over any major omissions,

You can use public participation activities to explain technical issues or the permitting process.

but, by the same token, it should point out when an omission is of a less serious nature.

Interested community groups or the permit applicant may decide to provide additional public participation activities during this stage. Some suggestions for useful activities would include explaining the NOD process and discussing technical issues in the application by holding **availability sessions**. Another option is for citizens or other stakeholders to request one-on-one or small **informal meetings** with the permitting agency, the permit applicant, or community groups. Stakeholder groups can improve their communication and interaction by meeting together in an informal forum. An informal meeting may also be more appealing to some participants, who may see activities like public hearings as overly confrontational.

The permitting agency may want to provide a **news release** when issuing the draft permit or intent to deny.

The agency, facility, or a public interest group may want to organize an **availability session, facility tours**, or some other activity prior to the comment period so that the public can be better informed about the facility. Some permitting agencies have held **public meetings** prior to a public hearing to provide a better forum to discuss issues. **Telephone hotlines** or voicemail recordings can supplement public notices to inform the community about the dates and locations of public participation events.

Step Four: Response to Comments and Final Permit Decision

Remember that State procedures may be different.

Required Activities

After the public comment period closes, the regulatory agency reviews and evaluates all written and oral comments and issues a final permit decision. The agency must send a **notice of decision** (not to be confused with a “notice of deficiency,” see above) to the facility owner or operator and any persons who submitted public comments or requested notice of the final permit decision. The agency must also prepare a written response to comments that includes a summary of all significant comments submitted during the public comment period and an explanation of how, in making the final permit decision, the agency addressed or rejected the comments. This summary shows the community that the agency considered the community's concerns when making the final permit decisions. The agency must make the response to comments document available as part of the administrative record.

Additional Activities

If there was high interest during the comment period, the agency or the facility may want to issue a **news release** and **fact sheet** when the decision is finalized to inform a wide audience. The permitting agency may choose to update and release the fact sheet required in § 124.8.

Public Participation During the Life of a Facility

Interim Status Public Participation

When writing RCRA, Congress granted special status to facilities that existed when the statute went into effect and for facilities that would be brought under RCRA by new regulations. EPA refers to these facilities as having “interim status.” According to RCRA, interim status facilities do not need a permit to operate; instead, while they are seeking permits, they follow a category of regulations created specifically for them by EPA. When EPA or a State issues a RCRA operating permit to one of these facilities, the facility loses its interim status.

Because interim status facilities can operate without a permit, many people are concerned that some of these facilities are not as safe as permitted facilities. Interim status facilities are not required to follow -- since they are not permitted -- any standardized public participation procedures or permit modification standards (that is, until the facility owner applies for a permit). Given all these conditions, interim status facilities often pose public participation challenges even though many such facilities have been operating for years.

Regulatory agencies may need to use innovative techniques to communicate with and provide information to communities around interim status facilities. EPA acknowledges that every situation will require a different type and level of community involvement. If interest grows in a certain facility, the agency should consider holding a **workshop** or an **availability session**. Information repositories are another available tool (see Chapter 5). The agency should take steps to explain the special situation of interim status facilities to citizens. Of course, if an interim status facility begins to attract public interest, permitting agencies should consider moving the facility towards getting a permit and undergoing the public participation steps in the permitting process.

Owners and operators of interim status facilities should involve the public even before they formally start to pursue a RCRA permit. One thing the facility owners could do to improve access to information is to make a draft part B application available to the public before submitting it to the

permitting agency. Facility owners who submitted part B applications in the past might make their applications available as well. (Note: any interim status facility that submits its part B application on or after June 11, 1996, will be subject to the standards of the RCRA Expanded Public Participation Rule and, thus, its application will be available for public review upon submission). The facility may also want to set up an **on-site information booth** or provide other background materials to the public. Establishing a **contact person** and making his or her name available to the public can improve communication between the facility and the community. Experience has shown that a good facility-community relationship during interim status will make for a more cooperative permitting process.

Members of the public will often have questions or concerns while a facility is in interim status. Citizens can contact the facility, the regulatory agency, or the RCRA/Superfund Hotline to ask questions or to inquire about other sources of information. Citizens may also want to contact public interest organizations, local government, or other involved citizens for more information. Interim status facilities will eventually need to enter the RCRA permitting process, which citizens can use as an opportunity to air concerns and to encourage the facility to make important changes.

Permit Modifications

Modifications can be initiated by either the agency or the facility.

Over time, a permitted facility may need to modify its permit. Just as public participation is a component of the initial permit process, it is also a part of the permit modification process. This section discusses different kinds of permit modifications and their corresponding public participation requirements. It is important to note that public participation responsibilities and activities vary depending on, first, who initiated the modification (i.e., the regulatory agency or the facility owner or operator) and, second, the degree to which the modification would change substantive provisions of the permit. No matter who initiates the modification, when a modification is proposed, only those permit conditions subject to modification are reopened for public comment.

State permitting agencies may have modifications processes that differ from the federal requirements. Contact your State agency (see Appendix B) for more details.

There are many reasons to modify a permit. In some cases, the regulatory agency may initiate a permit modification under 40 CFR 270.41. This section of the regulations identifies three causes for which the regulatory agency may require a permit modification: (1) alterations or additions to the permitted facility or activity; (2) new information received by the regulatory agency; or (3) new standards, regulations, or judicial decisions affecting the human health or environmental basis of a facility permit. In

addition, the regulatory agency may modify a compliance schedule for corrective action in the permit. Modifications initiated by the regulatory agency are subject to the full 40 CFR Part 124 permitting requirements, as described earlier in this chapter. Specifically, the permitting agency must

- C Issue public notice of the draft modification;
- C Prepare a fact sheet or statement of basis;
- C Announce a 45-day public comment period;
- C Hold a public hearing, if requested, with 30-day advance notice;
- C Issue notice of the final modification decision; and
- C Consider and respond to all significant comments.

More often, however, the facility owner or operator requests a permit modification to improve facility operations or make changes in response to new standards. Facility-initiated modifications are categorized under 40 CFR 270.42 as Class 1, 2, or 3 according to how substantively they change the original permit. Class 1 modifications require the least public involvement; Class 3, the most. Like agency-initiated modifications, a decision to grant or deny a Class 3 permit modification request is subject to the public participation procedures of 40 CFR Part 124.

Since facility owners or operators initiate modifications more often than the regulatory agency, the remainder of this chapter lays out the requirements for facility-initiated modifications. The permitting agency is also encouraged to follow these public participation activities, even if not required under an agency-initiated modification. Appendix L consists of an EPA fact sheet entitled "Modifying RCRA Permits," which provides more detail on permit modifications and associated public participation activities. Exhibit 3-1 at the end of this Chapter presents an easy-to-read synopsis of modification requirements and timelines.

When the Facility Owner or Operator Initiates a Modification

When a facility owner or operator wants to change a RCRA permit, he or she informs the regulatory agency and interested members of the public, either before making the change if it is substantive (Class 2 or 3), or soon after (with a few exceptions), if the change is minor (Class 1). In any case, this is relatively *early* notification for members of the public, who often perceive that RCRA actions are "done deals" by the time public comment is solicited.

The *facility owner or operator* is responsible for conducting most of the public participation for modifications he or she initiates. In addition, the facility, rather than the regulatory agency, bears the burden of explaining

When a facility initiates a modification, it is responsible for some public participation activities.

and defending its actions to the public. To ensure that the facility's public participation efforts are successful, staff from the facility and the agency should discuss how to conduct the required activities; the agency should provide guidance and assistance where necessary. Moreover, EPA encourages facilities to consult with communities to determine what activities will best promote public participation.

Class 1 Modifications

Class 1 modifications address routine and administrative changes, including updating, replacing, or relocating emergency equipment; updating certain types of schedules identified in the permit; improving monitoring, inspection, recordkeeping, or reporting procedures; and updating sampling and analytical methods to conform with revised regulatory agency guidance or regulations. They do not substantively alter the conditions in the permit or reduce the facility's ability to protect human health and the environment. With a few exceptions, most Class 1 modifications do not require approval from the regulatory agency before they are implemented. (The exceptions are listed in Appendix I to 40 CFR 270.42.)

The only public involvement requirement for Class 1 modifications is that *within 90 days of implementing a change, a facility must send a **public notice** to all parties on the mailing list compiled by the permitting agency.* The facility is responsible for obtaining a complete facility mailing list from the agency. (For more information on **mailing lists** see Chapter 5.) Any member of the public may ask the agency to review a Class 1 modification.

Class 2 Modifications

Class 2 modifications address facility-initiated changes in the types and quantities of wastes managed, technological advances, and new regulatory requirements, where such changes can be implemented without substantively altering the facility's design or the management practices prescribed by the permit. Class 2 modifications do not reduce, and, in most cases should enhance, the facility's ability to protect human health and the environment. During a Class 2 modification, there may be good opportunities to explore “low tech” pollution prevention opportunities that reduce waste generation but do not require major process changes (e.g., segregating waste streams, modifying maintenance procedures, or installing closed loop recycling).

Class 2 modifications require the facility to submit a modification request and supporting documentation to the regulatory agency. In addition, *the facility must notify the people on its mailing list about the modification*

Class 2 modifications require a number of activities, including a public notice, comment period, and a public meeting.

request and publish this notice in a major local newspaper of general circulation. The facility must publish the notice and mail the letter within seven days before or after it submits the request to the regulatory agency. The newspaper notice marks the beginning of a **60-day public comment period** and announces the time and place of a public meeting. In addition, the notice must identify a **contact person** for both the facility and the regulatory agency and must contain the statement, "The permittee's compliance history during the life of the permit being modified is available from the regulatory agency contact person." The notice should state that public comments must be submitted to the permitting agency's contact person.

The public comment period provides an opportunity for the public to review the modification request at the same time as the permitting agency. The facility must place the request for modification and supporting documentation in a location accessible to the public in the vicinity of the facility (see guidance on **information repositories** in Chapter 5 for suitable locations). *The facility must conduct the public meeting* no earlier than 15 days after the start of the 60-day comment period and no later than 15 days before it ends. The meeting, which tends to be less formal than a public hearing held by the regulatory agency in the draft permit stage, provides for an exchange of views between the public and the owner or operator and a chance for them to resolve conflicts concerning the permit modification. The meeting must be held, to the extent practicable, in the vicinity of the permitted facility (*the guidance on the pre-application meeting, earlier in this chapter, is applicable to this public meeting*).

The requirements for this meeting, like the pre-application meeting, are flexible. The facility is not required to provide an official transcript of the meeting, though we encourage owners/operators to consult the community and find out if this information would be useful. The permitting agency is not required to attend the meeting or respond to comments made there; however, EPA recommends that agency staff attend the meeting to clarify questions about the permitting process and to find out about any public concerns and how the owner or operator plans to address them.

The permitting agency is required to consider all written comments submitted during the public comment period and must respond in writing to all significant comments in its decision. EPA expects that the meeting will provide information to the public and improve the written comments submitted to the permitting agency. EPA anticipates that community input at the meeting may also result in voluntary revisions in the facility's modification request.

As the following paragraphs explain, the Class 2 modification procedures were written to ensure quick action by the agency. However, when seen by

the public, these procedures can be very confusing. A simple solution that the permitting agency or the facility should consider is to provide a fact sheet or a time table to the public at the meeting.

The procedures for Class 2 modifications include a default provision to ensure that the permitting agency responds promptly to the facility's request. The agency must respond to Class 2 modification requests within 90 days or, if the agency notifies the facility of an extension, 120 days. At any time during this 120-day period, the agency can: (1) approve the request, with or without changes, and modify the permit accordingly; (2) approve the request, with or without changes, as a temporary authorization having a term of up to 180 days; or (3) deny the request. If the permitting agency does not reach a final decision on the request within this period, the facility is granted an automatic authorization that permits it to conduct the requested activities for 180 days. Activities performed under this authorization must comply with all applicable federal and state hazardous waste management regulations. If the agency still has not acted within 250 days of the receipt of the modification request, *the facility must notify persons on the facility mailing list within seven days, and make a reasonable effort to notify other persons who submitted written comments*, that the automatic authorization will become permanent unless the regulatory agency approves or denies the request by day 300. The public must always have a 50-day notice before an automatic authorization becomes permanent. The agency must notify persons on the facility mailing list within 10 days of any decision to grant or deny a Class 2 modification request. The agency must also notify persons on the facility mailing list within 10 days after an automatic authorization for a Class 2 modification goes into effect.

At any time during the Class 2 procedures the agency may also reclassify the request as a Class 3 modification if there is significant public concern about the proposed modification or if the agency determines that the facility's proposal is too complex for the Class 2 procedures. This reclassification would remove the possibility of a default decision.

As previously indicated, the permitting agency may approve a temporary authorization under 40 CFR 270.42(b) for 180 days for a Class 2 modification. In addition, the agency may grant a facility temporary authorization under 40 CFR 270.42(e), which would allow the facility, without prior public notice and comment, to conduct certain activities necessary to respond promptly to changing conditions. *The facility must notify all persons on the facility mailing list about the temporary authorization request within seven days of the request.* Temporary authorizations are useful for allowing a facility owner or operator to perform a one-time or short-term activity for which the full permit modification process is inappropriate, or for allowing a facility owner or operator to initiate a necessary activity while his or her permit modification

Class 3 modifications are more likely than other modifications to raise concern.

is undergoing the Class 2 review process. A temporary authorization is valid for up to 180 days, and the permitting agency may extend the authorization for an additional 180 days if the facility initiates the appropriate Class 2 modification process for the covered activity. In addition, any extension of the activity approved in the temporary authorization must take place under Class 2 procedures.

Class 3 Modifications

Class 3 modifications address changes that substantially alter a facility or its operations. For example, a request to manage new wastes that require different management practices is a Class 3 modification.

Class 3 modifications usually involve changes that are broader or more detailed than Class 1 or 2 modifications; they are also more likely to raise concern. Though the Class 3 modifications process allows significant opportunity for public participation, additional activities may be helpful in some situations. Permit holders, regulators, and community interest groups may want to consider taking steps to encourage earlier participation. Facilities, in particular, should recognize that some Class 3 modifications will significantly alter their operations. In such cases, and in all cases where public interest may be high, *permittees should consider providing information and public participation activities prior to submitting the modification request.*

When concern is high, it is critical for the facility to consult with the agency to make sure that the facility knows how to conduct the required public participation activities. In some cases, the permitting agency might encourage the facility to go beyond the requirements and hold **workshops** and publish **fact sheets** to explain the proposed change. Public participation activities held by the agency or public interest groups can supplement the regulatory requirements.

As with Class 2 modifications, Class 3 modifications require the facility to submit a modification request and supporting documentation to the permitting agency, and *notify persons on the facility mailing list about the modification request and publish notice in a major local newspaper of general circulation.* The facility must publish the notice and mail the letter within seven days before or after the submitting the modification request to the regulatory agency. The notice must contain the same information as the Class 2 notification (see above), including an announcement of a **public meeting to be held by the facility** at least 15 days after the notice and at least 15 days before the end of the comment period. The newspaper notice marks the beginning of a **60-day public comment period.**

In holding a public meeting during the comment period, the facility owner or operator should follow the guidance for the pre-application meeting above. The requirements for this meeting are flexible. The facility is not required to provide an official transcript, though we encourage owners/operators to consult the community and find out if this information would be useful. As with Class 2 modifications, the agency is not required to attend the meeting or to respond to comments made at the meeting. However, it is important that the permitting agency attend the facility's public meeting in order to gauge concern about the proposed change and prepare appropriately for a public hearing, if one is requested. By attending the public meeting, the agency may learn whether it needs to conduct additional public participation activities (e.g., hold a **workshop** or **informal meetings**) after preparing the draft modification. The agency can also clarify questions about the permitting process. The agency should consider responding to issues raised at the meeting as part of the response to comments for the 60-day comment period. Of course, people who attend the meeting have the opportunity to submit formal comments to the permitting agency during the comment period.

At the conclusion of the 60-day comment period, the agency must consider and *respond to all significant written comments received during the comment period*. The agency must then either grant or deny the Class 3 permit modification request according to the permit modification procedures of 40 CFR Part 124.

Class 3 modifications are subject to the same public participation procedures as permit applications.

Class 3 modifications are subject to the same review and public participation procedures as permit applications, as specified in 40 CFR 270.42(c). The agency is required to perform the following tasks:

- C Preparation of draft permit modification conditions or notice of intent to deny the modification;
- C Publication of a **notice** of the agency's draft permit decision, which establishes a 45-day **public comment period** on the draft permit modification;
- C Development of a **fact sheet** or **statement of basis**;
- C Holding a **public hearing**, if requested, with **30-day advance notice**;
- C Issuance of the **notice of decision** to grant or deny the permit modification; and
- C Consideration and response to all significant written and oral comments received during the 45-day public comment period.

With Class 3 permit modifications, the public has 60 days to comment on the facility's requested modification and another 45 days to comment on the agency's draft permit modification or proposed notice of intent to deny the modification. And, in addition to the public meeting held by the facility owner or operator, the public may also request a **public hearing** with the

agency.

The permitting agency must notify persons on the facility mailing list within 10 days of any decision to grant or deny a Class 3 modification request. As with Class 2 modifications, the regulatory agency may grant a facility a temporary authorization to perform certain activities requested in the Class 3 modification for up to 180 days without prior public notice and comment. For example, the agency may grant temporary authorizations to ensure that corrective action and closure activities can be undertaken quickly and that sudden changes in operations not covered under a facility's permit can be addressed promptly. Activities performed under a temporary authorization must comply with all applicable federal and state hazardous waste management regulations. *The facility must issue a public notice to all persons on the facility mailing list within seven days of submitting the temporary authorization request.* The agency may grant a temporary authorization without notifying the public. The permitting agency may reissue a temporary authorization for an additional 180 days provided that the facility has initiated the appropriate Class 3 modification process for the activity covered in the temporary authorization and the agency determines that the extension is warranted to allow the facility to continue the activity while Class 3 procedures are completed. See Appendix L for an EPA fact sheet on modifying RCRA permits.

Public Participation in Closure and Post- Closure

Facilities may discontinue operations at one or more units for a number of reasons. For example, units may have reached capacity, the facility owner or operator may no longer wish to accept wastes, or the facility may have lost interim status and be required to close by the permitting agency. During closure, facility owners or operators complete treatment, storage, and disposal operations; apply final covers or caps to landfills; and dispose of or decontaminate equipment, structures, and soil. Post-closure, which applies only to land disposal facilities that do not "clean close" (i.e., remove all contaminants from the unit), is normally a 30-year period after closure during which owners or operators of disposal facilities conduct monitoring and maintenance activities to preserve the integrity of the disposal system.

Closure and Post- Closure at Permitted Facilities

EPA regulations (40 CFR 264.112 and 264.118) require facilities seeking operating permits to submit closure and post-closure plans (if appropriate) with their Part B applications in accordance with 40 CFR 270.14(b)(13). Furthermore, land disposal facilities that leave wastes in place when they close must obtain a post-closure permit, which specifies the requirements for proper post-closure care. Consequently, *the public has the opportunity to comment on a facility's closure and post-closure plans and any amendments made to the plans as part of the permitting process and permit modification procedures*, as described earlier in this chapter.

Facilities seeking permits for post-closure are exempt from the pre-application meeting requirement (§ 124.31) in the RCRA Expanded Public Participation rule. The facility, permitting agency, or community group may decide to hold some type of meeting prior to issuance of the post-closure permit. Refer to Chapter 5 for information on **public meetings**, **availability sessions**, and **workshops**.

The permitting agency or other involved organizations should be aware of closure issues that may concern the public, and they should plan public participation activities accordingly. For example, if the public has reservations about how "clean" the facility will actually be after the facility closes, public interest groups, the agency, or the facility may want to provide **fact sheets** or conduct educational **workshops** and **informational meetings** about the closure plan and the conditions at the facility.

If the facility owner or operator is leaving a facility, and possibly even the community, the public may be very concerned about whether the facility owner or operator will really be vigilant in monitoring the post-closure operations at the facility or will have enough financial resources to do so. Moreover, almost all post-closure permits will contain schedules of compliance for corrective action if a facility closes before all necessary corrective action activities are completed. As a result, public participation events in the post-closure phase need to address community concerns about corrective action. (See Chapter 4 for additional information on corrective action activities.) Note, however, that unless corrective action is required in the post-closure permit, public interest in closure plans is usually limited.

Public participation for the post-closure phase must address public concerns about corrective action.

Closure and Post-Closure at Interim Status Facilities

Facilities may also close under interim status, often under enforcement orders. Facilities that are closing under interim status must submit closure and post-closure plans (if appropriate) under 40 CFR 265.112 and 265.118. Public participation activities for interim status facilities during the closure and post-closure processes are specified in 40 CFR 265.112(d)(4) and 265.118(f). The regulations require that *the permitting agency provide the public and the facility, through a **newspaper notice**, with the opportunity to submit written comments on the closure and post-closure plans and request modifications to the plans no later than 30 days from the date of the notice.* EPA encourages permitting agencies to use other methods of notice, as appropriate, to announce the meeting. In response to a request, or at its own discretion, the agency may hold a **public hearing** on the plan(s), if such a hearing might clarify one or more of the issues concerning the plan(s). The agency must provide **public notice** at least 30 days before the hearing. The agency will approve, modify, or disapprove the plan(s) within 90 days of their receipt.

The public can petition the permitting agency to extend or reduce the post-

closure care period applicable to an interim status facility or land disposal unit. Whenever the agency is considering a petition on a post-closure plan, it will *provide the public and the facility, through a **public notice in the newspaper**, with the opportunity to submit written comments within 30 days of the date of the notice.* Again, EPA encourages permitting agencies to go beyond the newspaper notice requirement, as appropriate, to disseminate the notice. In response to a request or at its own discretion, the agency may hold a **public hearing** on the post-closure plan, if such a hearing might clarify one or more of the issues concerning the plan. The agency must provide **public notice of the hearing** at least 30 days before it occurs. If the agency tentatively decides to modify the post-closure plan, 40 CFR 265.118(g)(2) requires that *the agency provide the public and the facility, through a **public notice in the newspaper**, with the opportunity to submit written comments within 30 days of the date of the notice,* as well as the opportunity for a public hearing. After considering the comments, the regulatory agency will issue a final decision.

An interim status facility may amend its closure plan at any time prior to the notification of partial or final closure, and its post-closure plan any time during the active life of the facility or during the post-closure care period. An owner or operator with an approved closure or post-closure plan must submit a written request to the permitting agency to authorize a change. In addition, the agency may request modifications to the closure and post-closure plans. If the amendment to the closure plan would be a Class 2 or Class 3 modification, according to the criteria specified in 40 CFR 270.42, then the modification to the plan will be approved according to the procedures in 40 CFR 265.112(d)(4) detailed above. Similarly, if the amendment to the post-closure plan would be a Class 2 or Class 3 modification, according to the criteria specified in 40 CFR 270.42, the modification will be approved according to the procedures in 40 CFR 265.118(f), also described above.

Chapter Summary

Some permitting situations will call for public participation that goes beyond the regulatory requirements

The "RCRA Expanded Public Participation" rule (60 FR 63417, December 11, 1995), provides for earlier public participation in the permitting process, expands public notice for significant events, and enhances the exchange of permitting information

EPA strongly encourages permitting agencies and facilities to ensure equal access to permitting information and provide an equal opportunity for all citizens to be involved in the RCRA permitting process

The permit decision process and the required public participation activities can be divided into four key steps :

1. The Pre-Application Stage
 - Facility gives public notice and holds an informal public meeting

- Agency develops a mailing list
 - Additional activities that may apply include: community assessments, public participation plans, information repositories, and fact sheets
2. Application Submittal, Notice, and Review
 - Agency issues a notice to the facility mailing list and state and local governments
 - Agency makes application available for public review
 - Additional activities that may apply include: observation decks, facility tours, community tours, workshops, and news conferences.
 3. Preparation of Draft Permit, Public Comment Period, and the Public Hearing
 - Agency issues public notice of draft permit (or intent to deny)
 - Agency prepares a fact sheet or statement of basis
 - Agency announces a 45-day public comment period
 - Hold a public hearing, if requested or at the agency's discretion, with 30-day advance notice
 - Additional activities that may apply include: information sessions, workshops, news releases, and fact sheets.
 4. Response to Public Comments and the Final Permit Decision
 - Agency responds to all significant comments raised during the public comment period, or during any hearing
 - Agency issues notice of final permit decision

The regulatory agency can initiate a permit modification under 40 CFR 270.41 following the full permitting procedures of 40 CFR Part 124. A facility may also initiate a Class 1, 2, or 3 permit modification under 40 CFR 270.42. For facility-initiated modifications, public participation activities are required of both the facility and the regulatory agency, as described below:

1. Class 1

Facility Requirements:

- Notify mailing list within 90 days

2. Class 2

Facility Requirements:

- Notify mailing list and public newspaper notice
- Announce 60-day public comment period
- Place modification request and supporting documentation in an accessible location in the vicinity of the facility
- Hold public meeting
- If the regulatory agency does not act within 250 days of the modification request, notify mailing list that automatic authorization will become permanent in 50 days

Regulatory Agency Requirements

- Allow 60 days for public comment on the modification request
- Consider all written comments and respond in writing to all significant comments
- Issue notice to the mailing list within 10 days of any decision to grant or deny a modification request
- Issue notice to the mailing list within 10 days after an automatic authorization goes into effect

3. Class 3

Facility Requirements:

- Notify mailing list and publish newspaper notice
- Announce 60-day public comment period
- Place modification request and supporting documentation in an accessible location in the vicinity of the facility
- Hold public meeting

Regulatory Agency Requirements

- Allow 60 days for public comment on the modification request
- Issue public notice
- Prepare a fact sheet or statement of basis
- Announce a 45-day public comment period on draft permit decision
- Hold a public hearing, if requested, with 30-day advance notice
- Issue or deny the modification request
- Respond to written and oral comments from the 45-day comment period
- Consider and respond to all significant written comments received during the 60-day comment period

For Class 2 or 3 modifications, the permitting agency may grant a facility temporary authorization to perform certain activities for up to 180 days. The facility must notify the public within seven days of making the request. The agency may grant a temporary authorization without prior public notice and comment.

For facilities seeking permits, the public has the opportunity to comment on closure and post-closure plans and any amendments to the plans as part of the permitting process and permit modification procedures. The public can also comment and request hearings on closure and post-closure plans submitted by interim status facilities. The permitting agency can initiate, and the facility can request, modifications to interim status plans; these requests are also subject to public comment.

Post-closure permits and plans often mandate corrective action.

Exhibit 3-1

Public Participation Requirements for Class 1, 2, and 3 Permit Modifications

Class 1

Type of Changes -- Routine and administrative changes

Required Activities

Within 90 days of implementing a change, facility must notify all parties on mailing list.

Class 2

Type of Changes -- Improvements in technology and management techniques

Required Activities

Day 1: Regulatory agency receives modification request.

Day 7: Facility publishes newspaper notice, notifies mailing list, and places copy of permit modification request and supporting documents in accessible location.

Days 15-45: Facility holds public meeting.

Day 60: Written public comments due to regulatory agency.

Day 90: Regulatory agency response to modification request due, including response to written comments. Deadline may be extended 30 days.

Day 120: If regulatory agency has not responded, requested activity may begin for 180 days under an automatic authorization.

Day 250: If regulatory agency still has not responded, facility notifies public that authorization will become permanent unless regulatory agency responds within 50 days.

Day 300: If regulatory agency has not responded, activity is permanently authorized.

Regulatory agency must notify mailing list within 10 days of any decision to grant or deny modification request, or after an automatic authorization goes into effect.

Class 3

Type of Changes -- Major changes to a facility and its operations

Required Activities

Day 1: Regulatory agency receives modification request.

Day 7: Facility publishes newspaper notice, notifies mailing list, and places copy of the permit modification request and supporting documents in an accessible location.

Days 15-45: Facility holds public meeting.

Day 60: Written public comments due to regulatory agency.

After the conclusion of the 60-day comment period, the regulatory agency must grant or deny the permit modification request according to the permit modification procedures of 40 CFR Part 124. These include:

Ⓒ Issuing public notice of the draft permit modification or intent to deny the modification;

Ⓒ Preparing a fact sheet or statement of basis;

Ⓒ Announcing a 45-day public comment period;

Ⓒ Holding a public hearing, if requested, with a 30-day advance notice;

Ⓒ Considering and responding to all significant written and oral comments received during the 45-day comment period; and

Ⓒ Issuing notice of the final permit modification.

In addition, the regulatory agency must consider and respond to all significant written comments received during the 60-day comment period.