



## City of Cleveland

Jane L. Campbell, Mayor

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## CLEVELAND LOCAL AIR AGENCY

**SERVING OHIO EPA  
AS AGENCY 13 FOR  
CUYAHOGA COUNTY**

### MEMORANDUM

TO: Engineering Section

FROM: David Hearne, CDAQ Chief of Engineering

DATE: May 17, 2005

SUBJECT: Public Participation in Air Quality Permitting, Public Hearings/Meetings, and Responding to Public Comments.

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The Clean Air Act and the Ohio Administrative Code provide many opportunities for public participation in the development and implementation of air quality permits. As a delegated agent of the U.S. Environmental Protection Agency (US EPA) and the Ohio Environmental Protection Agency (Ohio EPA), the Cleveland Division of Air Quality (CDAQ) is charged with the responsibility of ensuring that any interested party is provided the opportunity to offer comments on pending permitting actions. In addition to the legal aspects of providing individuals, groups, or organizations with such a mechanism for input, the practical result of this process is that better permits addressing multiple perspectives are issued. While there may be some procedural hurdles that must be crossed when public comments are received or a public hearing is held, the resulting information and opinion almost always results in better permits. We therefore, welcome and encourage public participation in the preparation of air quality permits.

The procedures outlined below address our legal responsibilities as well as provide practical approaches to efficiently yet completely address public participation, hearings, and comments. As additional situations and experiences are encountered, these procedures may be amended or expanded.

#### **The Public Participation Process:**

Anyone is encouraged to contact CDAQ staff at any time with questions or concerns about an air permitting issue. We routinely meet with individuals or groups to discuss topics of concern and provide information. This being said, however, there are certain times when we as an agency formally request input from the public. Note that "the public" in this case can mean a single citizen, an environmental group, a neighborhood association, a trade association, a facility representative, a labor union, a government agency, a government body, or any other individual or assemblage of individuals (formal, informal, or ad hoc) who wish to comment on a proposed permitting action.

A proposed permitting action that involves any federally enforceable language or contains federal requirements (e.g., synthetic minor PTI, FESOP, Title V operating permit, or modifications to these permits) must be first issued in draft form. Additionally, minor permits may be issued as draft to provide for public comment in cases where past public concern over a facility or action has been expressed or for permits that we believe may be contentious or have a significant impact on a community. If there is any doubt, it is usually in the best interest of everyone concerned to issue a permit as a draft to afford a public comment period. Anyone may petition the Director of Ohio EPA for review of a permit if that permit was issued without providing an opportunity for public comment (i.e., direct final issuance). In that case, the permit will be reopened for public comment. Alternatively, if a direct final permit is appealed to the Environmental Review Appeals Commission (ERAC) it will likely be reversed on the grounds that no public comment opportunity was provided.

### **Public Notice**

When a draft permit is issued, a public notice advertising the availability of this draft permit is placed in the legal notice section of the predominant local newspaper. In Cuyahoga County, this is the *Plain Dealer*. The placing of these public notices is handled by Ohio EPA's Public Interest Center (PIC). The public is provided at least 30 days after this public notice to comment on the draft permit by submitting written public comments. Written comments must be submitted to the CDAQ Chief of Engineering. Past submittals have ranged from handwritten single pages to complex monologues providing extensive data. Any comments received from the facility that is the subject of the proposed permit are not considered "public comments" and are not addressed by these procedures. Facility comments are considered and addressed, but they are not formally summarized and responded to in a separate document. Note that, however, all correspondence that addresses facility comments should be incorporated into the facility files for the permitting action.

The public notice will also announce that at least one public hearing and/or public information session will be held if requested by a member of the public. If a public hearing is requested, a second public notice must be printed advertising the public hearing/information session. In the interest of time, a public hearing/information session will frequently be advertised in the same public notice as the draft permit. Arrangements for public hearings/information sessions are handled by Ohio EPA's PIC, but CDAQ staff or facility representative may be requested to provide suggestions for a venue near the affected facility. In the past, these sessions have been held in libraries, public auditoriums, union halls, meeting rooms, or churches. Any costs for meeting space are handled by PIC or the affected facility.

### **Public Comments, Public Information Sessions, and Public Hearings**

Usually, both a public meeting and a public hearing will be held. A **public information session** provides the agency staff with the opportunity to present a briefing of the proposed action and a synopsis of the events leading up to the draft permit. An information session usually take the form of a panel forum where CDAQ and Ohio EPA technical staff as well as PIC staff present information about the draft permit and answer citizens' questions. The presentations include an explanation of the permitting process, the design and siting criteria and an overview of the permit application. In many cases, there is no statutory or regulatory requirement to have such a meeting. However, experience has shown that information sessions are an effective way to prepare citizens to comment on relevant issues at the public hearing. The two-way communication at a public information session is an important distinction from the public hearing which typically follows an information session. At the **public hearing**, the public may offer comments and ask questions, but all statements and questions are entered into the record for the hearing and addressed during the response to comments actions. The public hearing is reserved as a formal time when the public presents information or questions to the agency for the administrative record. This record is included in the information Ohio EPA considers in deciding to issue or deny a permit. At the hearing, a court reporter records everything that is said. Citizens who choose not to offer oral testimony are encouraged to submit

their comments in writing. Written comments also become part of the official record. PIC arranges for the court reporter, however, in cases where a facility wishes to expedite the final issuance of a permit, the facility may pay for an expedited transcript (usually prepared by the next business day). PIC will also provide a hearing officer (a PIC representative) to preside over the public information session and public hearing. The hearing officer will also ask that all attendees register their attendance for the public record.

The assigned CDAQ Permit Writer, Permit Review Manager, and Chief of Engineering will typically attend all public meetings/hearings concerning permits that we have prepared. Depending on the draft action and anticipated level of interest, CDAQ may prepare a formal presentation summarizing the permit development process and the impacts of the proposed permit. If possible, it is a good idea for staff who have never attended a public hearing/meeting to attend one before they are called upon to represent CDAQ for one of “their” permits. Before the public hearing/information session, the respective CDAQ staff will meet or conference call with the Ohio EPA Central Office permit reviewer(s) and the PIC hearing officer to plan any presentation and discuss likely concerns or comments. Other central office staff may participate if their expertise is anticipated. In cases where we are aware of some public interest in a permit, the Ohio EPA Central Office permit reviewer(s) will usually attend the public hearing. If the interest is expected to be significant, managers from CDAQ as well as Ohio EPA will likely attend. In cases where a permit is of concern to Cleveland citizens, the Director of the Cleveland Department of Public Health or a designee may attend.

### **Response to Public Comments**

After the close of the public comment period, all written comments as well as any transcript(s) are reviewed by the CDAQ Permit Writer, Permit Review Manager and Chief of Engineering. Copies of comments and transcripts are sent to Ohio EPA Central Office contacts for their consideration as well. All comments are considered objectively and receive the same thorough review. Some comments may be extremely technical in nature, while others may point out suggested grammatical corrections. Some comments may express frustration over a situation or simply note that the commenter opposes the issuance of a permit. In reviewing any comment it is important to remember that Ohio EPA and CDAQ do not have unlimited authority to address all public concerns relating to a permit. Some concerns may be regulated by other state, federal or local agencies. CDAQ and Ohio EPA consider citizen concerns in areas our respective agencies regulate and refer other concerns to the appropriate agency.

Comments from any parties other than the facility that is the subject of the draft permit are to be formally responded to. If there is a single letter or comment, the response can take the form of a letter addressed to the commenter that summarizes their comment(s), provides the agency response(s), and discusses any changes precipitated by each comment and response. If comments are more substantive, then a separate document providing a summary of all comments, responses, and changes is prepared. When preparing a separate summary document, it is important that all comments be addressed. However, similar comments may be grouped together and, if appropriate, a single response may be prepared. In cases where there are several commenters, it is useful to provide an initial listing of the commenters and assign a sequential number to each. When the summarized comments are presented later in the document, they are typically identified by the commenter number. Thereafter, in the comment summary, an individual commenter is referenced by that number. This makes it much easier to refer to multiple commenters yet still allow the comment summary to be readable.

When summarizing comments be sure to capture all of the comment. A given sentence or paragraph may touch on several items and may therefore need to be summarized in different summaries. Depending on the complexity and number of comments, the comment summary may need to be organized into multiple sections by subject. In given comment summary, it is also possible to have both “pro” and “con” positions presented. It is important to note that we are neutral parties to the comment process. Our

position should be that we will make the requested changes unless there is a prohibition in the applicable regulations or policies that preclude making the change.

After each summarized comment, the agency response is provided. When crafting responses, it is important to clearly agree or disagree with the commenter and also clearly indicate if a change has been made to the final permit. In cases where we disagree with a commenter, we need to provide the factual basis why we disagree. This can be a rule citation or statement that we do not have the statutory authority to make the requested change. We may also be placed in a position that a statement made by a commenter is not supported by the information (data) that we have available. If no additional information is provided by the commenter, we may elect to disagree with the commenter. If data are provided or alluded to, we can request clarifying information from a commenter. Any subsequent information must also be treated a comment submittal.

In some cases, the comment offered may be non sequitur. In such cases, it is not possible to agree or disagree with the commenter. Rather, the agency acknowledges the comment. An example of such a comment and response might be if a commenter states their support for a proposed permitting action because of the positive economic impact of the action. In this case, our response might acknowledge the impact noted by the commenter, but state that such impacts are beyond our purview under the applicable state and federal regulations.

#### **Issuance of the Summary of Public Comments and Agency Responses (Responsiveness Summary)**

When the comments have been summarized and responded to, a copy of the document should be reviewed by Central Office of Ohio EPA. This review can take place electronically via email, but may also be accompanied by conference calls with the principle reviewers or experts at Central Office. When any changes are agreed to, CDAQ will revise the permit and submit the final action request (FAR) to Central Office along with the final version of the comment/response document. When the final permit is issued, a copy of the final permit along with the responsiveness summary is sent to all commenters (written comments and public hearing comments).

A sample transmittal letter, and responsiveness summary outline is attached to this procedure.

Once the responsiveness summary has been finalized, the final action request is prepared and submitted for Central Office review. Upon their concurrence, a final permit or denial is issued. It is important to make sure that the responsiveness summary or response letters are issued to the interested parties as the final permit or denial is issued. The CDAQ Permit Writer should consult with the Ohio EPA Permit Reviewer and PIC contact to make sure that this takes place.

**Attachment 1**

Sample Transmittal Letter

Serving OEPA as Agency 13  
for Cuyahoga County

[Date]

\_\_\_\_\_

Re: Responses to comments about the draft \_\_\_\_\_ permit, Ohio EPA Facility ID:  
13-18-\_\_-\_\_\_\_\_.

Dear \_\_\_\_\_:

Thank you for your comments offered on the draft [Title V or installation] permit for the \_\_\_\_\_ facility. The Cleveland Division of Air Quality (CDAQ) has reviewed all of the public comments submitted regarding this draft permit, and has prepared the attached summary of public comments and CDAQ responses.

Please feel free to contact the environmental compliance specialist assigned to this facility, \_\_\_\_\_ at \_\_\_\_\_, or me at 216-664-2178 with further questions regarding this permit.

Sincerely,

David G. Hearne  
Chief of Engineering  
Cleveland Division of Air Quality

cc: Facility file

**Attachment 2**

Sample Responsiveness Summary

## **BACKGROUND**

On \_\_\_\_\_ [date], the Ohio Environmental Protection Agency (Ohio EPA) issued a draft permit under Chapter 3745.\_\_\_\_ [31, 35, or 77] of the Ohio Administrative Code. Public comments were requested on the draft permit in a public notice that appeared on \_\_\_\_\_ [date] in the *Cleveland Plain Dealer*. This public notice also advertised a public information session and public hearing that was held on \_\_\_\_\_ [date] at \_\_\_\_\_ [location] in \_\_\_\_\_ [city], Ohio.

There were \_\_\_\_\_ [number] written comment submittals composed mainly of [private citizens, environmental associations, neighborhood associations, industry, or trade associations, etc.]. Also commenting were [State and local agencies, consultants and engineers, environmental groups, and other interested parties, whoever submitted comments]. Additionally, \_\_\_\_\_ [number] individuals offered testimony at the public hearing.

The written comments as well as testimony provided at the public hearing are summarized in this document. Agency responses to the comments and testimony follow each summary. The summary of comments and responses serves as the basis for the revisions made to the standard between proposal and promulgation.

## **SUMMARY OF SIGNIFICANT CHANGES SINCE PROPOSAL**

In response to comments received on the proposed permit, several changes have been made to the final permit. A summary of the substantive changes made since the proposal in response to comments is provided in the following sections.

[Outline and summarize any significant changes to the final permit.]

## **LISTING OF COMMENTERS**

The following table references all commenters who submitted written comments during the public comment period, or who offered testimony during the public hearing.

Commenter Number <sup>1</sup>	Commenter Name, Affiliation, and Address
1	
2	
3	
1h	
2h	
3h	

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<sup>1</sup> Commenter Numbers followed by the letter “h” indicates that this commenter presented testimony at a public hearing.

## **SUMMARY OF PUBLIC COMMENTS AND CDAQ RESPONSES**

Comment: Commenters 1, 2, 3, and 3h stated that ..... [summarize what the written and hearing comments stated combining similar lines of thought under the same summary.]

Response: CDAQ agrees with the commenters regarding [briefly summarized issue] and has revised the final permit to [briefly describe change].

OR

Response: CDAQ acknowledges the comments on [briefly summarize the issue] however, the applicable regulations under [rule citation] do not provide for such a restriction in a final permit. [There are many ways to phrase an instance where we are not going to make the changes proposed by a commenter. While we always review the comments and may very well make changes where appropriate, there will also be cases where a suggested course of action is not supported by the applicable regulations. We can also simply disagree with the commenter, but such a disagreement should be discussed in advance with Central Office to make sure we are all on the same page.]

### **ANOTHER COMMON RESPONSE**

Response: CDAQ acknowledges the commenters opinion regarding [very brief summary of the comment], however, the commenter did not provide any [or sufficient] justification [or information] with their comment to support a change to the final permit. [This is a common response when a commenter simply states that they oppose the issuance of the permit and does not provide justification that is based on applicable laws or regulations.]