

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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Guide to Permit Hearings

What Is a Permit Hearing?

A permit hearing offers the public an opportunity to participate in DEC project review. This document gives an overview of the DEC permit hearing process. For more detailed information, read the "Permit Hearing Procedures" in Title 6 of the *Official Compilation of Codes, Rules and Regulations of the State of New York Part 624* Permit Hearing Regulations.

Three Phases. A DEC permit hearing can have three phases:

- A legislative hearing to receive public comments
- An issues conference to define points of dispute
- An adjudicatory hearing to litigate disputed issues

All permit hearings proceed through the first two phases, but an adjudicatory hearing is held only if the points of

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dispute raise substantive and significant issues.

Who Is a Permit Applicant?

Permit applicants may include municipalities, corporations or individuals. Applications are normally submitted to the Regional Permit Administrator of Environmental Permits for the DEC region in which the project is located. DEC's regional offices are listed at the end of this document.

For information on permit applications and how they are processed, please refer to the Uniform Procedures regulations, 6 NYCRR [Part 621](#) .

How Is the Public Notified?

Scoping Meeting. When an Environmental Impact Statement (EIS) is required, DEC staff will sometimes hold a public scoping meeting. The information gathered at the meeting is used to determine which topics need to be addressed in the applicant's draft EIS.

Notice of Complete Application. After an application is submitted to the Regulatory Supervisor, regional staff determine if it is complete. In some cases, DEC staff will ask the applicant to supply additional information. When the application is complete, the public is notified through DEC's weekly Environmental Notice Bulletin (ENB).

The notice describes the nature and location of the proposed project and sets the deadline for filing public comments. The notice is also published in a local newspaper. Projects are considered either major or minor.

Major Projects. For all major projects, the DEC regional staff notify the chief executive officer of the municipality where the project is located. A notice of complete application is then published in the ENB.

Minor Projects. Applications for minor projects are not normally published in the ENB.

Written Statements. In response to a notice of complete application, the public is invited to submit written statements identifying important environmental issues regarding the proposed project. Such statements should include specific bases for opposition, since general opposition to a proposed project is not sufficient grounds to schedule a public hearing.

Copies of Documents. Copies of all applications and supporting documents are available for public review at the DEC regional office. In some cases, these documents are also filed with a local library or the clerk's office of the relevant municipality.

When Is a Hearing Necessary?

In addition to evaluating comments submitted by the public, DEC staff review each application to determine if the proposed project will meet all statutory and regulatory criteria.

If DEC concludes that a project does not meet standards, the agency will impose or modify the draft permit conditions to bring it into compliance.

Sometimes a draft permit is not prepared because DEC has decided to deny it. In that case, DEC staff will prepare a statement explaining the basis for the denial.

The Applicant can ask for a hearing if its application is denied or if it disagrees with the terms of the draft permit.

Whether a hearing is held depends on any disagreements between the applicant and DEC staff or any issues raised by the public that would affect DEC's permitting decision.

Notice of Hearings

Notices are published in the ENB and in a local newspaper. Sometimes the notice will also be published in a foreign language newspaper. The notice contains project information and directions to request party status (i.e., status as a participant in the adjudicatory hearing).

Notices of hearings are sent to:

- The applicant.

- Anyone who previously filed in response to the notice of complete application.
- The chief executive officer of the municipality where the project is located.
- Any other persons or governmental agencies the department believes may be interested in the project.

Since the outcome of the hearing is not determined by the number of persons for or against a proposed project, it is often efficient for groups with similar interests to be represented by a single spokesperson.

Hearing Locations. For the convenience of the public, hearings are generally held in a town or village hall or other public building in the municipality where the project is located. These facilities should be reasonably accessible to persons with a mobility impairment. Interpreter services are available to the hearing impaired, at no charge, upon written request to the administrative law judge listed in the hearing notice. All hearing sessions are open to the public.

What Is a Legislative Hearing?

Members of the public who do not intend to introduce sworn testimony or other evidence can present unsworn written or oral statements at the legislative hearing. These statements may address the

application and the Environmental Impact Statement, if one was prepared.

The length of oral statements may be limited by the judge to prevent repetition and to allow everyone an opportunity to speak. These statements do not have the weight of sworn testimony.

Legislative hearings may be scheduled during the day, in the evening, or both, depending on the degree of public interest.

What Is an Issues Conference?

Following the legislative hearing, an issues conference is held. Scheduled during normal business hours, it is designed to identify the parties to the proceeding and the issues to be adjudicated. The judge will ensure that all participants will have a reasonable amount of time to prepare for the hearing.

An issues conferences is used to:

- Hear arguments on whether party status should be granted.
- Narrow or resolve disputed issues of fact.
- Hear argument about whether disputed issues of fact should be adjudicated at a hearing.
- Determine whether legal issues exist that are not fact dependent.
- Decide any pending motions.

At the issues conference, the judge may ask questions of each filer to clarify, consolidate or resolve potential issues. The judge may establish schedules for briefs, prefiled testimony, or discovery procedures. Parties may also be asked to meet to try to resolve their differences.

Party Status. Participation at the issues conference is limited to those who intend to participate as parties in the adjudicatory hearing. Parties must meet the requirements as defined in Part 624 of DEC's regulations, including a written statement of:

- The environmental interest of the person seeking party status.
- Whether that person seeks party status to introduce exhibits, testimony, or written argument on one or more specific issues.
- The names of the witness(es) and the nature of the evidence to be presented.
- The precise grounds of opposition or support.
- All other information relevant to the standards for raising an adjudicable issue.

Amicus Status. Sometimes persons cannot assume party status and its many obligations. Amicus (friend of the court) status is less costly and does not carry as many responsibilities. A friend of the court can assist the judge and Commissioner **by presenting written**

and oral argument on important legal and policy matters.

An issue is adjudicable if:

- It relates to a dispute between the applicant and DEC staff regarding a substantial term or condition of the draft permit.
- It relates to grounds cited by DEC staff as a basis to deny the permit.
- It raises sufficient doubt about whether the applicant can meet all permitting criteria.
- It has the potential to result in a permit denial, major modification of the project, or significant conditions beyond those in the draft permit.

Offer of Proof. To narrow the issues to be addressed at a hearing and to determine those facts which are not in dispute, the judge may require the parties to describe what evidence they would present at a hearing. This presentation is called an offer of proof. Each party should be prepared to identify all documentation or other evidence it intends to present, the names of its witnesses and the nature of their proposed testimony, and all other information required by the judge to clarify what the party wants to address.

Appeals of Rulings. The judge will usually prepare written rulings determining party and amicus status and the issues to be adjudicated. Any ruling may be appealed by writing to the Commissioner. The judge also sets the

appeals schedule. The Commissioner decides appealed matters.

Costs and Fees. There is no fee for participation in a DEC permit hearing. Costs of permit hearings, including hearing facilities, notice publications and a stenographic transcript are paid by the applicant. If a party elects to hire an attorney or expert witnesses, however, it is responsible for all associated costs. Any party introducing documents is responsible for the costs of duplication and distribution to the other parties. Anyone may purchase copies of the stenographic transcript directly from the court reporter.

What Is an Adjudicatory Hearing?

Adjudicatory hearings are like civil court proceedings: They give the public an opportunity to appear as parties, to present evidence and to argue contested issues before an impartial administrative law judge. Evidence can be testimony, documents, photographs or other things presented to the judge.

Hearing Report. The facts regarding a proposed project are evaluated in a hearing report prepared by the judge and then submitted to the Commissioner, who issues a written decision.

What Are a Party's Obligations?

There are a number of obligations that go hand in hand with party status. These

include attending hearing sessions, presenting testimony when called upon, and questioning other parties' witnesses on a schedule determined by the judge.

A party may appear in person or through a representative who can demonstrate that he or she has been chosen by the party. A party may select an attorney as its representative, but this is not necessary.

Participants who do not attend a hearing session will lose the opportunity to cover material addressed at that session, unless otherwise provided by the judge. If a party cannot attend due to circumstances beyond its control, the judge should be contacted as soon as possible before the session so that other arrangements, including hearing adjournments, can be considered.

The adjudicatory hearing may be canceled when no substantive or significant issues have been identified or when stipulations resolve potential issues.

How Is a Hearing Conducted?

The judge can answer procedural questions only: he or she cannot comment upon the merits of the proposed project or the positions taken by any hearing participants. The judge also cannot communicate to any participant without all parties being notified ("**ex parte**"). The parties,

however, are free to discuss matters in the absence of the judge.

The judge has the authority to:

- Administer oaths or affirmations.
- Rule upon all motions and requests.
- Issue, quash, or modify subpoenas for the appearance of persons or the presentation of documents.
- Admit or exclude evidence.
- Limit the number of witnesses.
- Set and adjourn hearing dates.
- Consolidate parties.
- Examine as many witnesses as necessary to fully develop the hearing record.
- Exclude or limit cross-examination involving minor details.
- Establish rules for disclosure.
- Examine a panel of witnesses, rather than each separately.

Length of Hearings. The length of a hearing depends upon the number of issues to be adjudicated and their complexity. Some are concluded in a single day; a complex project can take several days or more. Hearings generally run from day to day, with up to four sessions per week. During the course of a long hearing, the judge may grant an adjournment to accommodate the parties and their witnesses.

How Is the Case for Each Party Presented?

The applicant is the first to proceed since it bears the burden of proof. The applicant presents its case through witnesses, who may include consulting engineers, biologists, or other technical experts.

Discovery or Disclosure. It may be necessary for one party to get information from another party (this is called discovery or disclosure). The burden to supply the requested information is on the one who has the documents. Generally, there is full disclosure of all relevant evidence. The judge will make rulings on disclosure when objections or motions are filed.

Direct Examination. The applicant's attorney will question each witness within that person's area of expertise and experience. Called direct examination, these questions usually relate to the role the witness had in the design and development of the project. Site plans, the Environmental Impact Statement, and other documentation may be presented as exhibits.

Cross-examination. After direct examination each party is given an opportunity in a sequence established by the judge to inquire further through cross-examination. There are several reasons for the opposing parties to conduct a cross-examination of each witness:

- To bring out information left untouched by the direct examination

- To test the truthfulness and credibility of the witness
- To test the accuracy and reliability of the witness's perception of observed events
- To probe the basis of expert opinion

After the applicant has called all its witnesses, the opposing parties present their cases. Each party has an opportunity to counter the presentations of the others. The applicant, however, retains the burden to demonstrate by a preponderance of relevant evidence that its proposed project will be in compliance with all applicable laws governing permit issuance.

DEC Staff. Depending on the nature of a proposed project, staff from various DEC programs will often participate at a hearing, generally represented by a DEC attorney. DEC staff have the same obligations and opportunities as the other participants.

Compromise Solutions. At any time during the adjudicatory hearing, the applicant, or any party, may recommend a compromise solution on any issue, such as a reduction in the size or operation of a project. If such modifications are acceptable to the parties, a stipulation can be placed on the record and further argument on those issues ended.

Closing Arguments. After all parties have concluded their cases, the judge will entertain oral closing arguments or

set a time period for filing of written closing statements or legal briefs.

Closing the Record. The hearing record will be closed upon the receipt of the briefs or of a complete stenographic record, whichever occurs last. A copy of the stenographic record is normally placed on file for public review in the relevant DEC regional office.

Sometimes, a copy is placed on file in the clerk's office of the appropriate municipality, or in a local library.

How Is a Decision Issued?

Judge's Review. After the record is closed, the judge conducts a careful, impartial review of the stenographic record and all exhibits and briefs, giving appropriate weight to each document and the testimony of each witness.

Judge's Report. All important issues litigated during the hearing are then addressed by the judge in a series of Findings of Fact and Conclusions contained within the judge's hearing report.

Commissioner's Decision. The report and hearing file is then forwarded to the Commissioner, who issues a decision incorporating the report as written or as modified. The decision will be made within sixty calendar days of the close of the record.

Recommended Decision. Sometimes, it may be appropriate to circulate the

judge's report to the parties for comment prior to the Commissioner's decision. Whether this is done is determined by law, in the case of Siting Boards, or by the Commissioner.

In some cases, the Commissioner may defer a final decision and return the matter to a hearing on issues to be further developed.

The Commissioner's decision will:

- Approve the permit in a form accepted by the applicant,
- Approve the permit with modified conditions, or
- Deny the permit.

Distribution. Copies of the Commissioner's final decision are mailed to the applicant, to all hearing parties and to any other persons known to be interested in the outcome.

Can a Decision Be Appealed?

All the Commissioner decisions may be reviewed in State Supreme Court by proceedings brought under Article 78 of the Civil Practice Law and Rules. These proceedings may be brought by the applicant, a party to the hearing, or other persons affected by the decision.

Additional Permits. Following the approval of any project, the applicant must comply with all conditions of approval attached to the DEC permits. The applicant may also need permits

from the federal government or from other units of state, county or local government. Whether or not to grant these additional permits is for other levels of government to decide. These issues are not addressed or resolved as part of the DEC permit hearing.

Copies of Decisions. Copies of the judges' hearing reports and the Commissioner's decisions are posted on the Department's website ([Hearings and Decisions](#)), and are available at cost through the Freedom of Information Law (FOIL) by contacting the Office of Hearings and Mediation Services, NYSDEC, 625 Broadway, First Floor, Albany, NY 12233-1550 (Telephone: 518-402-9003). In addition, copies of the judge's hearing reports and the Commissioner's decisions are available through legal reporting services such as Westlaw and Lexis.

Regulatory Services. Information regarding the status of any proposed project can be obtained by contacting the appropriate DEC Regional Permit Administrator of Environmental Services. That unit is responsible for processing applications for projects proposed in the counties covered by the DEC region. The counties encompassed by each DEC region are listed below.

General Information. General information about the hearing process or the status of any application that has been forwarded to the Office of Hearings

and Mediation Services can also be
obtained by contacting:

Louis A. Alexander, Assistant
Commissioner

or

James T. McClymonds, Chief
Administrative Law Judge

or

DEC's Division of Legal Affairs
NYS Department of Environmental
Conservation
625 Broadway, Albany, NY 12233-1500
Phone (518) 402-2794

REGION 1--SUNY at Stony Brook, 50
Circle Road, Stony Brook, NY 11790-
3409

Phone (613) 444-0260

Fax (613) 444-0373

(Nassau and Suffolk Counties)

REGION 2--Hunters Point Plaza, 47-40
21st St., Long Island City, NY 11101

Phone (718) 482-4965

Fax (718) 482-4962

(New York City)

REGION 3--21 S. Putt Corners Road,
New Paltz, NY 12561

Phone (845) 255-5453

Fax (845) 255-3042

(Dutchess, Orange, Putnam, Rockland,
Sullivan, Ulster, Westchester)

REGION 4--1130 North Westcott Road,
Schenectady, NY 12306

Phone (518) 357-2048

Fax (518) 357-2087

(Albany, Columbia, Greene, Delaware,

Montgomery, Otsego, Rensselaer,
Schenectady, Schoharie)

REGION 5--Route 86, Ray Brook, NY
12977

Phone (518) 897-1200

Fax (518) 897-1394

(Clinton, Essex, Franklin, Fulton,
Hamilton, Saratoga, Warren,
Washington)

REGION 6--State Office Building, 317
Washington St., Watertown, NY 13601

Phone (315) 785-2238

Fax (315) 785-2242

(Herkimer, Jefferson, Lewis, Oneida, St.
Lawrence)

REGION 7--615 Erie Boulevard West,
Syracuse, NY 13204-2400

Phone (315) 426-7405

Fax (315) 426-7408

(Broome, Cayuga, Chenango, Cortland,
Madison, Onondaga, Oswego, Tioga,
Tompkins)

REGION 8--6274 E. Avon-Lima Road,
Avon, NY 14414

Phone (585) 226-5363

Fax (585) 226-9485

(Chemung, Genesee, Livingston,
Monroe, Ontario, Orleans, Schuyler,
Seneca, Steuben, Wayne, Yates)

REGION 9--270 Michigan Ave., Buffalo,
NY 14203-2999

Phone (716) 851-7190

Fax (716) 851-7296

(Allegany, Cattaraugus, Chautauqua,
Erie, Niagara, Wyoming)

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