

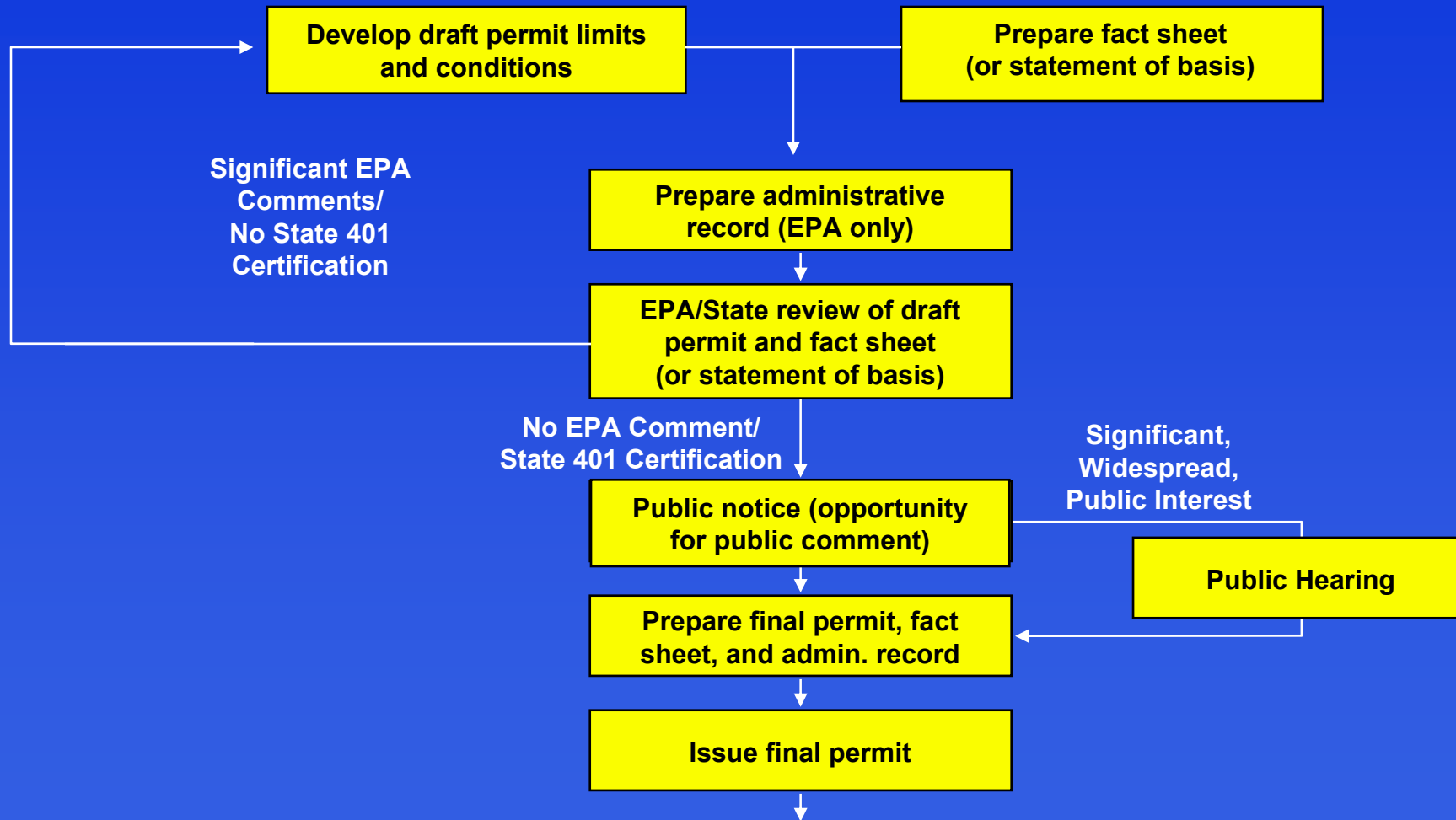
# Administrative Process

# Learning Objectives

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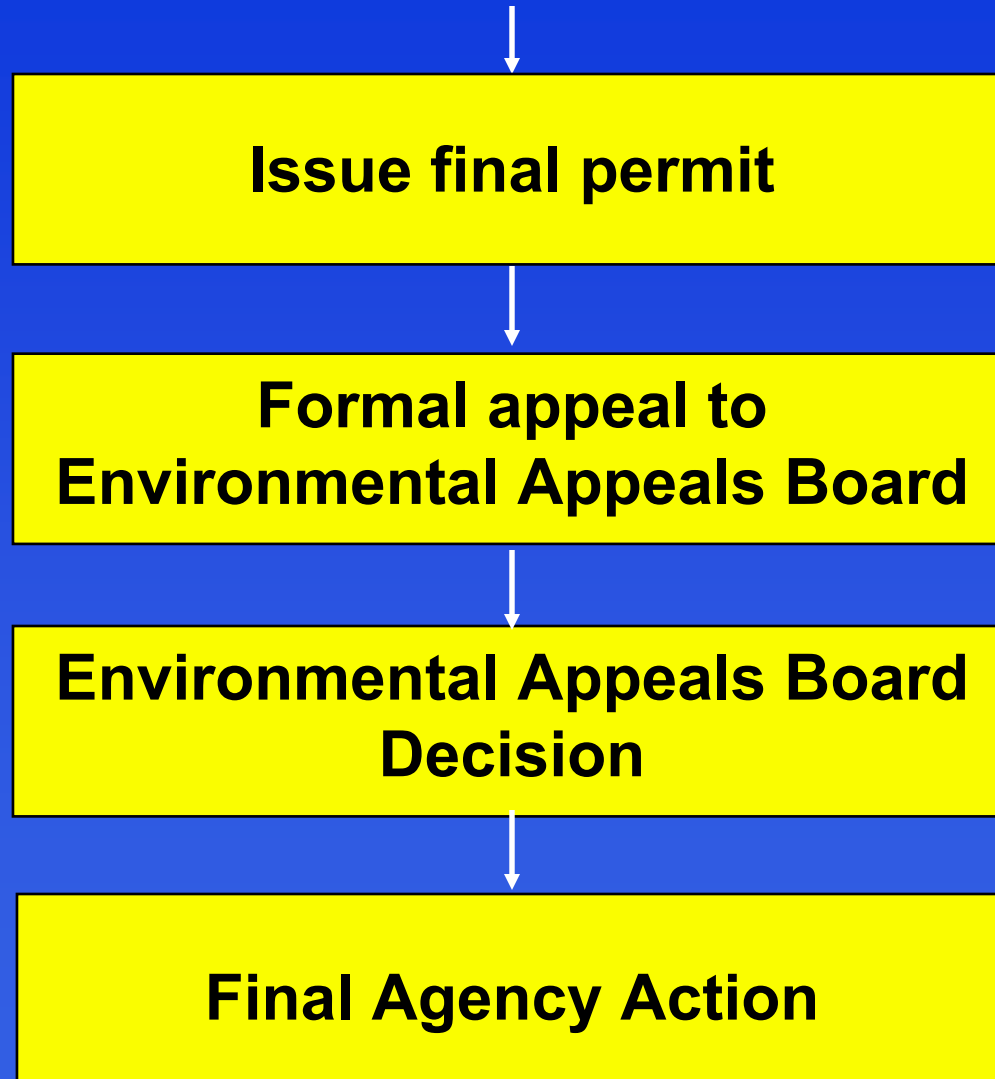
- ◆ Describe NPDES permit administrative procedures
- ◆ Discuss requirements and need for documentation
- ◆ Explain public participation requirements
- ◆ Describe administrative activities after final permit issuance

# NPDES Permitting Process



# NPDES Permitting Process (Continued)

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# NPDES Administrative Process

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- ◆ **The administrative process of developing and issuing a permit involves:**
  - Documenting all permit decisions
  - Coordinating EPA and State review of the draft permit
  - Providing public notice, conducting hearings (if appropriate), and responding to comments
  - Defending the permit and modifying after issuance (if required)



# Reasons for Good Documentation

- ◆ Establishes permanent record of the basis for the permit
- ◆ Explains legal basis of permit
- ◆ Provides sound basis for future modifications and permits
- ◆ Requires permit writer to be organized and logical throughout permit development process



# Contents of Administrative Record - Draft Permit

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- ◆ **What is it?**
- ◆ **What is in it?**
  - **Application and supporting data**
  - **Draft permit**
  - **Statement of basis or fact sheet**
  - **Documents/items cited in statement of basis or fact sheet**
  - **Other items supporting permit development**
  - **Environmental Impact Statement (EIS) for new source draft permits**



# Fact Sheet vs. Statement of Basis

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## Fact Sheet

- ◆ Permit involves a major facility
- ◆ Permit incorporates a variance
- ◆ Permit is an NPDES general permit
- ◆ Permit is subject to widespread public interest

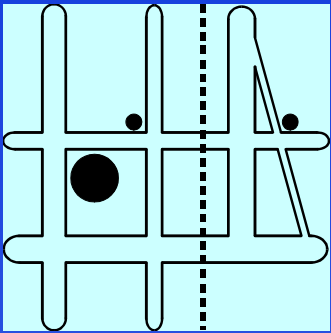
## Statement of Basis

- ◆ Used when fact sheet not required
- ◆ Requires:
  - Description of conditions
  - Reasons for conditions



# Minimum Elements of a Fact Sheet

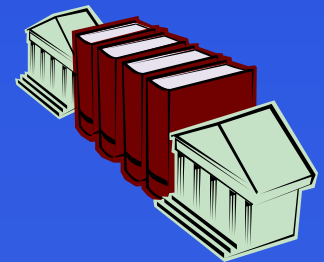
## ◆ General facility information



- Description of facility or activity
- Sketch or description of location
- Type and quantity of waste/pollutants discharged

## ◆ Summary rationale of permit conditions

- Applicable statutory/regulatory citations
- References to administrative record



# Minimum Elements of a Fact Sheet (Continued)

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- ◆ Detailed rationale of permit conditions
  - Explanation and calculation of effluent limitations and conditions
  - Specific explanation of:
    - Toxic pollutant limits
    - Limits on internal wastestreams
    - Case-by-case requirements
    - Limits on indicator pollutants
    - Regulation of users (non-POTWs only)
  - Sewage sludge land application plan
  - Inappropriateness of requested variances



# Minimum Elements of a Fact Sheet (Continued)

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- ◆ **Administrative Requirements**
  - **Permit procedures**
    - Comment period begin and end dates
    - Procedures for requesting a hearing
    - Public involvement in final decision
  - **Permitting authority contact name and telephone number**

# EPA and State/Tribal Roles

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- ◆ **State/Tribal-issued permits**
  - **EPA retains the right to review:**
    - Major municipal and industrial permits
    - General permits
    - Class I sludge facility permits
    - Others (see 40 CFR § 123.24(d))
  - **EPA reviews other significant permits (minor)**
  
- ◆ **EPA-issued permits**
  - **State/Tribal Section 401 certification required**
    - Certifies that permit will achieve water quality standard



# Public Notice

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- ◆ Purpose of public notice
- ◆ Types of actions requiring public notice
  - Tentative denial of application
  - Draft NPDES permit
  - Public hearing
  - Formal appeal of permit (after issuance)
  - Major permit modifications (after issuance)



# Public Notice (Continued)

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- ◆ **Methods applicable to public notice process**
  - Publication in newspaper
  - Direct mailing
- ◆ **Contents of public notice**
  - Name and address of regulatory authority
  - Name and address of permittee
  - Brief description of facility
  - Name, address, and telephone number of contact
  - Additional information (EPA-issued permits)



# Public Notice (Continued)

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- ◆ **Timing of public notice**
  - Must allow at least 30 days for public comments
  - EPA/State MOA may specify EPA review of either draft or proposed permit
- ◆ **Responding to comments**
  - Significant comments must be responded to in writing

# Public Hearings

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- ◆ Public hearings may be requested by any party
- ◆ Hearings are optional
- ◆ Scheduling the hearing automatically extends the comment period until the close of the hearing [40 CFR 124.12(c)]
- ◆ A transcript of the hearing must be available to interested persons



# Contents of Administrative Record - Final Permit

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- ◆ Administrative record of draft permit
- ◆ All comments received
- ◆ Public hearing tape or transcript
- ◆ Response to comments
- ◆ Final EIS for new sources
- ◆ Final permit

# After Final Permit Issuance

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- ◆ **Permit appeals**
- ◆ **Minor/major permit modifications**
- ◆ **Permit termination**
- ◆ **Permit transfer**

# Permit Appeal (40 CFR 124.19)

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- ◆ Used by permittee to contest final permit limits and conditions
- ◆ Must be requested within 30 days following final permit issuance
  - Challenges limited to issues raised during public comment on draft permit (unless good cause is shown)
- ◆ EAB decides to grant/deny request
- ◆ Public notice of appeal required
- ◆ Only contested permit conditions are stayed



# Permit Appeal (Continued)

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- ◆ **Permit writers' role during appeal**
  - **Source of technical knowledge for attorney**

# Minor Modifications

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- ◆ **Used to make corrections to permit conditions with consent of the permittee**
- ◆ **Exempt from administrative procedures (e.g., draft permit, public notice, etc.)**
- ◆ **Actions considered minor:**
  1. **Typographical errors**
  2. **More frequent monitoring**
  3. **Change in interim compliance date (<120 days)**
  4. **Change in ownership**
  5. **Change in construction schedule for new source**
  6. **Deletion of point source outfall**
  7. **Incorporate approved local pretreatment program**



# Major Modifications

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- ◆ **Required to address new information that may impact permit conditions**
- ◆ **Administrative procedures must be followed (e.g., draft permit, public notice, etc.)**
- ◆ **Causes for modification:**
  1. **Reopener condition**
  2. **Correct technical and legal mistakes**
  3. **Failure to notify interested State**
  4. **New information**
  5. **Alterations justifying new/different conditions**

# Major Modifications (Continued)

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## ◆ Causes for modification:

6. New regulations
7. Modification of a compliance schedule (>120 days)
8. Require POTW to develop pretreatment program
9. Unsuccessful BPJ treatment installed
10. Address non-limited pollutants
11. Variance request
12. Adjust limits to reflect net pollutant treatment
13. Insert §307(a) toxic or Part 503 sludge use/disposal
14. Establish notification levels



# Permit Terminations

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- ◆ **Used to retract privilege to discharge during permit term**
- ◆ **Causes for termination:**
  - Suspend effectiveness in emergency
  - Terminate for falsifications, recalcitrants, or changed conditions (e.g., plant closure)
- ◆ **Administrative procedures must be followed (i.e., public notice)**
  - No public notice is required for termination due to plant closure

# Permit Transfer

- ◆ **Necessary to address change in owner or operator**
- ◆ **Transfer Options**
  - **Transfer by modification or by revocation and reissuance**
  - **Automatic transfer**
    - **Prior 30-day notice**
    - **Written agreement between new and old owners**
    - **Permit will not be modified or revoked**

