

# PUBLIC PARTICIPATION PROCESS

## Kentucky Division of Water

The Division of Water (DOW) is responsible for decision making processes that require public input. Those processes include, but are not limited to:

- Issuing an environmental permit for a new facility or source;
- Renewing an existing environmental permit;
- Approving some modifications to an existing facility or source and its current permit;
- Approving activities that impact waterways;
- Approving plans to protect water quality; and
- Making, changing, or eliminating a rule used to carry out environmental laws and requirements.

These activities require DOW to provide notice to the public and allow public input. The notice provides information to interested parties about submitting comments, and upcoming public meetings and hearings. Some permits do not require public participation. For example, permits to construct new drinking water facilities do not require public notice. However, the establishment of drinking water standards (i.e., maximum contaminant levels of pollutants in drinking water) does require public notice per the rulemaking procedures.

### Permit Application

When an individual or business submits a permit application, DOW reviews the document to ensure all required information has been provided and questions have been answered. After a preliminary determination has been made that the permit application is complete, DOW assigns a number to the draft permit and provides notice to the public that the permit is available for a 30 day review and comment period.

The review and comment period may vary depending on the type of permit. DOW's primary means of public notice is through use of an email list, although some public notices are still published in the legal advertisement section of a local newspaper. To receive daily email notifications, please register with DOW by submitting a request to [DOWPublicNotice@ky.gov](mailto:DOWPublicNotice@ky.gov).

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### Public Notification

DOW maintains an interactive searchable website for posting draft and final permits for KPDES, water quality certifications, SPEARs, SDAAs, and general permit coverage's. To access the public notice system, go to the DOW Public Notice page at: <http://water.ky.gov/Pages/PublicNotices.aspx>

Follow the instructions to search for actions within the last 30 days for KPDES permits and Water Quality certifications. The search period may be narrowed or expanded.

The public notice contains the application number, name of the company, type of permit, location of the operation, a brief overview of the permit, and DOW and company contact information.

DOW encourages individuals, community and civic groups, regulated community, and other governmental agencies to review and comment on applications and draft decisions. In order to prepare comments, review the most recent permit application, fact sheet, and permit, and other information that may be a resource.

Review the permit as early in the process as possible. While most of the data is readily available on DOW website, there may be times it is necessary to write a Freedom of Information Act (FOIA) request. A FOIA request is a simple letter or e-mail asking for agency records.

During the comment period the regulated community and the general public can submit comments or questions to DOW by e-mail, fax, or letter. All comments must be received at DOW before the deadline published in the notice.

### Submitting Comments

Submit questions or comments on a proposed permit application to the address in the notice and always include the application number and facility name. Include statements of how the proposed application improves or degrades the environment and complies with or violates state or federal regulations. If possible, include studies and federal guidance about how permits should be written. If quoting studies from a website or research journal, provide the name and author of the study or send a copy of the actual study.

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### Requesting a Public Hearing


Submit questions or comments on a proposed permit application to the address in the notice and always include the application number and facility name. Include statements of how the proposed application improves or degrades the environment and complies with or violates state or federal regulations. If possible, include studies and federal guidance about how permits should be written. If quoting studies from a website or research journal, provide the name and author of the study or send a copy of the actual study.

DOW representatives record the comments of the participants. The purpose of the public hearing is to allow the public to make informed and appropriate comments during the hearing.

### Informal Public Hearing Format

Informal public hearings are held in public places such as schools or government buildings. The hearing has an established agenda, and all comments made during the meeting are audiotaped. Written material and verbal comments will be accepted at the hearing.

- All attendees must register when entering the hearing. Sign-in sheets will be available with a place to indicate if the attendee wants to make a comment. The hearing begins with a summary of the proposed permit. Then attendees wishing to make comments will be called to speak. All verbal comments will be recorded.
- When making comments, be courteous and keep comments concise. The hearing facilitator may limit the time each speaker has to comment, depending on how many participants are present.
- After those who requested to make comments are finished, others in attendance will be allotted time for comments.
- When all oral comments have been presented, the meeting will be adjourned and the public comment period officially closed.
- A tape recording or written transcript of the hearing will be made available upon request for a minimal charge.



DOW will make a final decision after the public comments are received and all relevant comments have been considered and addressed.

Occasionally, significant changes are made to the permit application as a result of public comments, and the permit application will be reopened for public comment. This allows interested parties an additional opportunity for review and comments. “Significant changes” include, but are not limited to:

- Change in the size of facility or change in the activity intended in the original proposal;
- Change in the purpose for or function of the project;
- Change in the location of the site; and
- Change in the environmental impact of the operation

## **Appealing a DOW Decision**


If a member of the public or the regulated community is not satisfied with DOW’s decision regarding a permit either party can file an appeal within 30 days of the decision to the Office of Administrative Hearings (OAH).


An administrative hearing offers the opportunity to have certain problems presented to a neutral hearing officer. The hearing officer is responsible for recommending the final action to be taken by the cabinet secretary.

An administrative hearing is similar to a court hearing. Each side of a dispute is given the opportunity to testify, submit documents or other evidence, cross-examine witnesses, and make arguments in support of the action it believes the agency should take on a particular issue.

## **Administrative Hearing**

Any person who is aggrieved by a final agency determination regarding permitting or enforcement of the laws may request an administrative hearing. The request must be filed within the statutory time limit, usually 30 days after a person becomes aware of or should have known of the agency decision.





The Cabinet can also request a hearing to obtain an order to impose penalties, require corrective action work, or seek other relief allowed by law. Issues typically addressed in administrative hearings are agency decisions to grant or deny a permit to engage in certain activities, or to assess penalties against persons accused of violating environmental laws.

## **Formal Hearing**

The Formal Hearing process begins in all administrative cases by filing an “Administrative Complaint” (by the Cabinet) or a “Petition for Hearing” (by someone other than the Cabinet) with the Office of Administrative Hearings at the following address: Office of Administrative Hearings, 211 Sower Blvd., Frankfort, KY 40601.

If a person disagrees with the result of the hearing officer’s report and recommendation, he or she may urge the cabinet secretary to reject all or part of the hearing officer’s report and recommendation.

If a person disagrees with the result of the secretary’s decision, the law provides for appeal of a secretary’s final order by filing a petition in state Circuit Court within 30 days of “entry” or of “rendition” of the final order, depending on the type of case involved.

