



**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION**

**OPERATIONAL MEMORANDUM
NO. 19**

**SUBJECT: ISSUE RESOLUTION PROCESS FOR PERMIT TO INSTALL
 APPLICATIONS**

EFFECTIVE DATE: August 26, 2004

PREAMBLE

During the review of a Permit to Install (PTI) Application, instances occur where there is a disagreement between the Applicant and the Air Quality Division (AQD) staff. These disagreements can involve policy issues, technical issues, and/or additional information requests. The Issue Resolution Process was developed to provide an Applicant a mechanism to quickly elevate issues to a higher decision-making level within the AQD if there is still an impasse following the built-in process steps to resolve outstanding issues, either in the Permit Scoping Meeting (PSM) or one of the Formal Progress Check meetings. These process steps usually involve the Permit Engineer, the Applicant, and both of their Supervisors. Thus, invoking this Issue Resolution Process should not occur unless and until the issues are not resolved following the PSM or Formal Process Check meetings.

The use of the Issue Resolution Process does not reflect negatively on any of the parties involved, but rather recognizes that a professional difference of opinion still exists that is unlikely to be resolved by continued discussions at the Applicant, Engineer and Supervisor level. Such differences are to be expected when dealing with confusing regulations and complex technical and regulatory issues. The Issue Resolution Process ensures that the Applicant and the AQD understand each other's position and basis. It is not a win/lose proposition, but rather is a means to reach an informed decision on a particular issue.

This Operational Memorandum outlines the process for resolving specific issues related to current permit applications under review. The levels at which decisions are made in the AQD are consistent with delegations of authority from the Director of the Department of Environmental Quality, as contained in Delegation Letter No. AQD-55-02, as revised May 31, 1996.

Issues generic in nature are not within the purview of the Issue Resolution Process and must be handled separately.

POLICY

The AQD will make available the Issue Resolution Process to all PTI Applicants to ensure the timely resolution of specific application-related policy issues, technical issues, and/or additional information requests. The Issue Resolution Process should only be invoked when it is clear that an impasse has been reached on a particular issue following reasonable attempts to resolve a difference of opinion through discussion between both parties and their Supervisors. It is important to note that the permit review process continues in all areas that are not impacted by the particular issue.

The Issue Resolution Process identifies the decision-making steps within the AQD. It is recommended that a similar process be followed within the Applicant's organization.

DEFINITIONS

The following definitions are for use in this Operational Memorandum:

Information Requests: This issue relates to the type, quantity, or detail of the information requested by the Engineer in order to complete the evaluation of the application.

Look-See: These Formal Progress Checks are specific points in the review process where the Engineer, the Applicant, and their Supervisors meet to evaluate the review process and discuss and resolve outstanding issues.

Permit Scoping Meeting (PSM): The initial meeting, held before the PTI application is submitted, between the Applicant and the AQD staff to 1) discuss the applicable requirements, information needs, questions of the Applicant, and 2) provide the Applicant with possible conditions and a schedule for processing the application. PSMs are not mandatory, but are highly recommended to insure clear communication and issue discussion before applications are completed and submitted.

Policy Issue: This issue relates to how overall requirements or policies are interpreted and applied toward the application under review. Examples include rule or guidance interpretation, process or procedural issues, and other overarching issues.

Technical Issue: This issue relates to the technical interpretation or decision related to a rule, regulation or evaluation. Examples include Best Available Control Technology (BACT) decisions, applicable requirements, and offset provisions.

PROCEDURE

The Issue Resolution Process may be used for policy issues, technical issues, and/or additional information requests, and invoked following efforts to resolve issues as part of the normal permit review process.

For Information Requests:

These issues may arise after the PSM, if held, or after the technical completeness check by the Engineer. If the Applicant does not agree with the information request made by the Engineer, within 5 days of the PSM or 10 days of the technical completeness check, the applicant may invoke the Issue Resolution Process. The Issue Resolution Process is begun with the submittal of a detailed written request to the appropriate Unit Supervisor. Within 3 days of receipt of the written request, the Unit Supervisor will decide to either grant the request in whole or in part, or deny the request. If the request is granted in part or denied, the requested information must be submitted to the AQD within the prescribed time frames of the permit process.

For Technical Issues:

Technical issues may arise after the PSM, if held, or after the technical completeness check by the Engineer. In many cases, the technical issues arise during the Engineer's technical evaluation of the application. The preferred time for technical issues to be raised and resolved is during or following the PSM. If the Applicant still feels a technical issue remains, it should be resolved during Look-See #1 with the Engineer, Applicant and their respective Supervisors. If

the issue remains, the Applicant should immediately invoke the Issue Resolution Process. This is done by submitting a detailed written request to the Section Supervisor within 3 days outlining the specific arguments opposing the Unit Supervisor's decision. The final decision on the technical issue will be made by the Section Supervisor within 3 days of receipt of the written request. The technical decision of the Section Supervisor cannot be appealed under this Issue Resolution Process but can be made part of the public comment period, should one be held, and become part of the final decision-making process.

For Policy Issues:

Policy is continually developed, challenged, and reconstructed over the course of many years. Even though policy issues arise from time to time during the permitting process, the AQD does not anticipate a great number of policy issue determinations being made during the permitting process. The AQD recommends that if an applicant or an industry anticipates a policy issue conflict, the issue be raised outside of the application process.

Policy issues may arise any time during the permit process. The preferred time for policy issues to be raised and resolved is during or following the PSM, if held. At any time during the permit process, if the Applicant believes a policy issue has not been resolved by the Unit Supervisor, then the Applicant may seek the decision of the Section Supervisor. This is done by submitting a detailed written request to the Section Supervisor within 3 days of the Unit Supervisor's decision outlining the specific arguments opposing that decision. The Section Supervisor will make a decision on the policy issue within 3 days of receipt of the Applicant's written request. If the Applicant disagrees, they may appeal the decision to the Division Chief. This is done by submitting a detailed response to the AQD Division Chief within 3 days outlining the specific arguments opposing the Section Supervisor's decision. A final decision on the policy issue will be made by the Division Chief within 3 days of receipt of the request. The decision can not be appealed under this Issue Resolution Process, but can be made part of the public comment period, should one be held, and become part of the final decision making process.

A record of the Issue Resolution Process, any additional associated documents and the final Air Quality Division decision will be maintained. This information will be made available.

This memo is intended to provide guidance to the AQD staff and applicants to foster consistent application of Part 55. This document is not intended to limit or convey any rights or limitations to any parties nor create any limitations, duties or responsibilities under law. This document and matters addressed herein are subject to revision.