

## PUBLIC HEARINGS

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Public hearings provide an opportunity for the public to provide formal comments and oral testimony on proposed agency actions. Occasionally the agency will present introductory information at the public hearing prior to receiving comments. All testimony received becomes part of the public record.

In contrast to a public hearing, a **public meeting** is intended to provide two-way discussion and is not always recorded for the public record.

Permittees and facility staff have no official role during a public hearing. The public hearing is a regulatory requirement of the permitting agency.

The [2016 Edition of the RCRA Public Participation Manual](#) provides more detail on Public Hearings in Chapters 3 and 4, which detail public participation during the permitting processes and RCRA §3008(h) orders. Additionally, the public participation activities table in Chapter 5 describes the relevant RCRA processes, regulatory requirements, and provides recommendations for use for public hearings.

Virtual public hearings and meetings are allowed under RCRA to provide for public participation during the permitting process in lieu of in-person public hearings and meetings (both during and after the COVID-19 public health emergency). View an [April 16, 2020 memo about Virtual Public Hearings and Meetings](#) from the Office of General Council.

### Required activity?

Yes. Public hearings are required if requested ([40 CFR §124.11](#)) by the public during the draft permit stage, during an agency-initiated modification under [§270.41](#), or a Class 3 permit modification under [§270.42\(c\)\(6\)](#). The agency will also hold a public hearing at the draft permit stage when there is a high level of public interest (based on requests), or when the agency believes that the hearing might clarify relevant issues ([§124.12](#)). The agency will also hold a hearing if these conditions apply during closure or post-closure at interim status facilities ([§§265.112\(d\)\(4\)](#) and [265.118\(f\)](#)).

The Agency must provide at least a 30-day advance notice for a public hearing. The public hearing notice may be combined with the draft permit notice.

### Making it Work

#### *When to Use*

Public hearings are typically held in conjunction with a **public comment period**. The permitting agency must hold a public hearing if someone submits a request or a written notice of opposition to a draft permit under the following scenarios:

- When requested by a member of the public during a public comment period on a permit, closure, or corrective action. Once requested, hearings require a minimum 30-day advance notice.
- Public hearings are usually conducted during the public comment period following the issuance of a draft permit, major permit modification, or at the selection of a proposed corrective measure.
- Public hearings may be appropriate at other times during the process, especially if the level of community concern warrants a formal record of communication.

## How to Use

### *Before the Hearing*

Since public hearings are part of the public record, arrange to have someone there who can make a transcription of the meeting. If the hearing is expected to become contentious, it may also be a good idea to bring in a neutral facilitator.

On the day of the meeting, arrive early, and greet residents as they arrive. As people arrive, make sure that they check in and sign the sign-in sheet, and provide them with the agenda. Resist the temptation to retreat to a cluster of EPA people. Mingle with the residents, make them feel comfortable, and make small talk with them while you are waiting to start the meeting.

### *During the Hearing*

Start the hearing on time.

***If the purpose of the hearing is to receive comments for a public comment period***, it should be structured as a listening session. Agency representatives should acknowledge but not respond directly to comments voiced by community members. Make sure that you set the stage clearly at the beginning by communicating that the purpose of the meeting is for EPA to listen to community input and that EPA will respond to comments in a response to comments document at the end of the public comment period.

***If the purpose of the hearing is to convey information***, explain the purpose and review the agenda and ground rules at the beginning of the hearing, including when and how comments and questions from the audience will be addressed. While you should have a well-thought-out agenda, flexibility is essential. In some cases, your discussions may evolve based on questions posed by community members, and a presentation may go a bit differently than anticipated. In rare instances when the situation warrants it, be prepared to adjust your agenda accordingly, as long as the audience agrees. Remember that while this might be EPA's hearing, it is for the public.

Establish the ground rules before you open the floor to questions and comments. Remember the difference between a question and a comment. Questions require answers but comments do not. Avoid the urge to explain the Agency's position or defend a decision in response to a comment. This is good advice for any public meeting, but it is critical advice for hearings held in connection with a comment period. A simple "thank you," and perhaps something like "we have recorded your comment and will be sure to consider it," is the appropriate response to a comment.

When taking questions from the public, remember that you and the other site team members are public servants. Answers such as, "it's not my job" or "that's not our area of responsibility" never sit well with taxpayers. Try to be responsive to all issues raised, even if it means having to explain EPA's role and the need to refer a question to another government agency. If you have to say "I don't know," make sure you add "but I'll find the answer and get back to you" and provide a specific date in the near future. Make sure that you or a team member records the person's name, phone number, and question so that you can get back to them. If you commit to getting back to someone, be sure to do it in a timely fashion.

### *After the Hearing*

A transcript is required for public hearings, particularly if community members offered public comments. The hearing's transcript should be included in the **Response to Comments** document and included in the administrative record for the final permit decision. In addition to a transcript, have someone take detailed notes, including action items and items for follow-up after the hearing. Be sure to review these notes soon after the hearing. Complete action items, and provide whatever feedback or complete follow-up activities that were promised in a timely manner. Consider writing a summary response to comments and send it to every attendee for whom you have an address and those on the mailing list.

### Tips

- Begin with introductory information from the permitting agency.
- Ensure that all testimony given at a public hearing becomes part of the public record.
- Hold public hearings at a time and location (e.g., close to the facility) most convenient to the public.
- Make a recording or written transcript of the hearing publicly available.
- Set reasonable time limits for oral statements. In some circumstances, written statements also may be required.
- Public hearings may become contentious. It is important to keep this in mind and plan properly so the speakers are not caught off guard by a frustrated audience.