ECOS

GREEN REPORT

Environmental Permitting: Improved Practices and Systems of State Environmental Agencies

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INTRODUCTION

This report highlights state efforts to improve permitting quality and timeliness. It complements an August 2017 ECOS report that compiled examples of streamlined permitting processes and compliance assistance for each state.[2]

Federal and state environmental laws often require issuance of permits, licenses, registrations, or other transactions (hereinafter referred to as "permits") to authorize action by a regulated entity. Permits detail acceptable practices by permittees, and are issued to applicants who demonstrate that they meet the specified requirements and conditions of the governing statute or regulations. To improve a critical and, at times, lengthy process, states are adopting a variety of improved permitting processes. Programs differ among jurisdictions, and some states have advanced farther than others. However, there is widespread acknowledgement that streamlined permitting systems enable states to more effectively maintain environmental and public health protections and foster economic growth.

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[1] Examples and case studies of state permitting practices are drawn from research and interviews compiled by Thomas S. Burack, a consultant to ECOS.

[2] Streamlining Permitting: An Inventory of State Environmental Agency Online Tools and Resources, August 2017, **https://www. ecos.org/documents/state-delegations/**.

FINDINGS

States have adopted a number of practices to increase the efficiency and value of their permitting systems. Streamlined efforts include:

1. *Expediting Application Processing*

2. *Converting Paper Application Forms to Electronic Format via e-Permitting Portals*

3. *Creating Alternatives to Handling Incomplete or Inaccurate Permit Applications*

4. *Publishing Permit Guides, Fact Sheets, and "Wizards"*

5. *Providing Application Assistance: Ombudsman and Meeting Services*

6. *Implementing Additional Improvements*

BACKGROUND

Regulators and the public are increasingly interested in permitting process improvement. Below are examples of federal and state agency-level efforts employed to streamline these practices.

- In a joint 2006 report on improving state agency processes through the application of Lean and Six Sigma, ECOS and the U.S. Environmental Protection Agency (EPA) identified common permitting process "wastes," such as steps, approvals, and activities that accumulate over time.[3] Process improvement approaches aim to increase speed, reduce complexity, and improve quality, and may be manifested in reduced error rates in documents and greater consistency of language. Eliminating non-value added activities, such as processing incomplete applications and eliminating approval bottlenecks, significantly reduces the permitting timeframe. By re-engineering their processes to simplify work flows and develop common work practices, and then applying information technology (IT) services where appropriate, states better accomplish the desired outcomes of their permitting systems.

- On January 18, 2017, the Federal Permitting Improvement Steering Council published recommended best practices for environmental reviews and authorizations for infrastructure projects under Section 41006 of the Fixing America's Surface Transportation Act (FAST-41).

- Executive Order 13807, released in August 2017, supports more efficient and effective federal infrastructure decisions. The order notes that establishing a coordinated, timely, and consistent review of permits allows for more accountability and public transparency.[4]


[3.] Working Smart for Environmental Protection: Improving State Agency Processes with Lean and Six Sigma, U.S. Environmental Protection Agency and Environmental Council of the States, 2006, https://www.epa.gov/sites/production/files/2013-11/documents/leangovtprimer.pdf.

[4.] Presidential Executive Order on Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure, August 15, 2017, https://www.whitehouse.gov/presidential-actions/presidential-executive-order-establishing-discipline-accountability-environmental-review-permitting-process-infrastructure/.

- In December 2017, the E-Enterprise for the Environment Leadership Council (EELC) directed the formation of a permitting modernization initiative. One of the early tasks in this initiative was for states, tribes, and EPA to collaboratively develop a menu of performance measures to determine the effectiveness of permitting systems. In March 2018, the EELC released the document, *A Framework of Sample Metrics for Evaluating the Efficiency and Effectiveness of Environmental Permitting Systems*, pursuant to the EELC directive.[5] This effort built on the work of an E-Enterprise for the Environment (E-Enterprise) team of state and EPA staff that produced a December 2015 scoping report, *Surveying and Assessing State Use of Electronic Permitting Systems*, to describe the transformation of permitting practices from paper-based processes to digitally based systems. See Figure 1, "ePermitting Functionalities and Systems," drawn from the E-Enterprise Permitting Scoping Team Report, December 31, 2015.

Figure 1.

ePermitting Functionalities and Systems
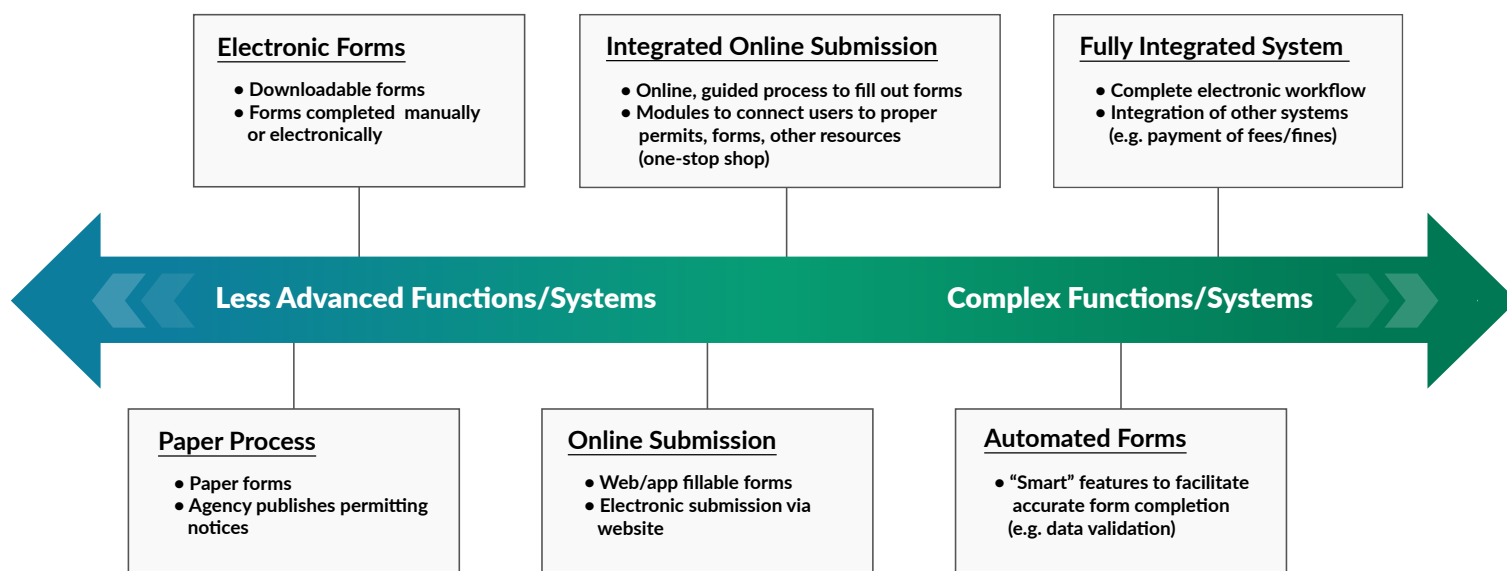
THE ROLE OF STATES IN ENVIRONMENTAL PERMITTING

States issue most permits pursuant to delegation, authorization, or primacy (collectively, "delegation") under key federal environmental laws.[6] This delegation results in a system in which more than 50 different jurisdictions carry out similar permitting functions. Permits also include state-specific environmental requirements that are more stringent than or in addition to federal requirements. While there continues to be a collaborative role with EPA, states are considering potentially more efficient, replicable approaches already employed by other agencies.

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[5] A Framework of Sample Metrics for Evaluating the Efficiency and Effectiveness of Environmental Permitting Systems," E-Enterprise for the Environment Leadership Council, March 2018, **https://e-enterprisefortheenvironment.net/wp-content/uploads/2018/08/E-Enterprise_Framework-of-Sample-Permitting-Metrics_Version-1.0_FINAL-2.pdf**.

[6] More details on federal programs delegated to states are provided in the ECOS Green Report, "State Delegation of Environmental Acts," February 2016, **https://www.ecos.org/documents/state-delegations/**.

STATE PERMITTING PRACTICES

ECOS categorizes state approaches to permitting process improvement according to the type of streamlined practice. Each is detailed and exemplified as follows:

1. Expediting Application Processing

Several states focus efforts on reducing the timeframe needed to review applications. The New Hampshire Department of Environmental Services (NHDES) has both emergency and expedited permitting processes to speed up the review of applications. Applicants can obtain immediate authorization for **emergency wetlands** impacts if a request is made within five days of the threatening event. Emergency authorization is limited to temporary stabilization of the site or mitigation of the immediate threat, but cannot compensate for untimely filing of an application.

While the agency seeks to provide timely and efficient review of permit applications under all of its programs, some applications warrant **expedited evaluation**, a decision made by the NHDES Commissioner in consultation with division and program staff. A party requesting expedited evaluation must demonstrate that such review of its project would further an important public interest, avoid significant hardship, or otherwise demonstrate good cause. If one or more of these criteria is met and expediting the review will not unreasonably disadvantage other applicants already in the queue, the request may be granted.

Other examples of expediting application processing include:

a. Louisiana's 2006 Regular Legislative Session **Acts 586 and 779** that require applicants to reimburse the state for Department of Environmental Quality (LADEQ) staff pay incurred when employees work overtime to expedite a permit. The statutes also allow LADEQ to hire contractors to perform this work as necessary.

b. The Massachusetts Department of Environmental Protection (MassDEP) **Fast Track Permitting** program that guarantees expedited administrative and technical reviews for all eligible projects, negotiated permit schedules and fees, and a single point of contact throughout the process. The program is available for project proposals that are consistent with sustainable development principles, are deemed of interest to the state, or have multi-permit complexity.

c. The Nebraska Department of Environmental Quality (NDEQ) **categorical decision-making** program that enables the majority of applicants to apply for and receive a permit in one day. As of December 2017, NDEQ had used this program in air and water permitting instances. The state plans to deploy an electronic application for agricultural permits that will reject incomplete work and ease other time-consuming aspects of permits work including corporation verification and land application site reviews.

d. The North Carolina Department of Environmental Quality (NCDEQ) **Express-Permitting** program that offers timely review of stormwater, Clean Water Act 401 and buffer, erosion and sedimentation, and coastal and wetlands development permits. Higher fees are charged to support additional staff that review and process the applications, provide consultation to identify necessary environmental requirements, and assist with concurrent reviews.

e. The Utah Department of Environmental Quality **Energy Development, Single-Point Review** process

that uses enhanced interagency communication, permit tracking, and robust public input to fast-track regulatory processes.

2. Converting Paper Application Forms to Electronic Format via e-Permitting Portals

Electronic technologies provide efficiencies that can streamline and modernize the permitting process. The Arizona Department of Environmental Quality (ADEQ) combined process improvement, consolidation, and digitization to transform numerous paper-based application processes into an integrated online, electronic permitting system. Improvement efforts occur on a program-by-program basis, and ADEQ establishes priorities by considering a number of factors including surveys of the public, the regulated community, and agency personnel on desired outputs. ADEQ first conducts a discovery phase in which it reviews pertinent documents and meets with content staff to explore how the information requested on an application complies with the provisions of the applicable laws. During the mapping phase, ADEQ staff conduct a Kaizen event to map out the existing paper process and identify possible solutions. The subsequent combination and blueprint phases reduce duplication of effort and build "wire frames" of the product, considering the "voice of the customer." ADEQ aims to create a user-friendly interface that can be completed online by an applicant in ten minutes or less.[7]

Many states also use e-Permitting portals to create applicant submission queues and online payment options. For example, the Hawaii Environmental Health Administration uses an **e-Permitting Portal** of resources that directs applicants to information about available environmental permits and associated fees, contacts of permitting engineers, and a directory of permit applications. Similarly, the Minnesota Pollution Control Agency's **e-Services** website offers options to apply for permits, submit regulatory data and information for compliance requirements, and pay invoices. Also, NCDEQ's **Environmental Application Tracker** allows the public to search by location, application type, permit type, facility name, permit number, and other criteria to check the status of pending environmental permit applications from the date of receipt of the application until a final decision is made.

While some states use e-portals to streamline parts of the process, other states rely on technology management platforms to aid in permitting and compliance requests. For example, the Colorado Department of Public Health and Environment (CDPHE) integrated technology system-wide through its **Colorado Environmental Online Services** platform—a secure, integrated, and interactive gateway for environmental permitting and finance needs. This online platform helps applicants submit applications, monitor submittal progress, receive notifications, and update requests with revisions. This universal, all-encompassing system helps CDPHE staff track data flow and program-specific requests.

Likewise, Massachusetts has an online data information and public access system, called the Energy and Environmental Information and Public Access System (EIPAS). EIPAS provides online permitting services for three Massachusetts agencies: **MassDEP**; Department of Agricultural Resources (for **Pesticide Applicator Licenses**); and Department of Conservation and Recreation (for **Special Use Permits**). MassDEP also has two public-facing online portals. The **Public Comment Portal** allows citizens to access information about permit applications and decisions, as well as to submit and view public comments pertaining to permit applications. The **Information Data Portal** includes 20 years of MassDEP's permit, inspection, facility, and enforcement data, providing both data query and analytical dashboard capabilities.

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[7] Based on Burack interview with Christine Wilson, ADEQ, May 2017.

3. Creating Alternatives to Handling Incomplete or Inaccurate Permit Applications

Agencies that use electronic application systems reduce incomplete applications by developing fillable forms that reject applications that are missing required elements. However, agencies that do not have fully electronic application processing systems employ a range of alternatives for handling incomplete or inaccurate permit applications. For example, the Texas Commission on Environmental Quality (TCEQ) uses an **Enhanced Administrative Review** process to notify applicants of problems with their information or materials. If errors are found during initial application review, commission staff send a deficiency request to the applicant to request an update of administrative or technical information that is missing or incorrect. The applicant has ten days to adequately respond to the deficiency letter before the application is voided. The purpose of this process is to get better quality applications on the desk of the permit reviewers so the reviewers do not lose time requesting missing application materials.

4. Publishing Permit Guides, Fact Sheets, and "Wizards"

Permit guides and fact sheets are among the permitting system improvements used to inform applicants about emissions calculations, and the permits required by different businesses, operations, or Standard Industrial Classification codes. The Maryland Department of Environment (MDE) uses a **Four Easy Steps** guide to help applicants find the right permit type and application. The first step is for applicants to read about the approval process and consider the turnaround times. They then answer "yes" or "no" to the **Twenty Questions**, which help determine which categories of permit approvals an applicant needs. The answers direct applicants to descriptions or fact sheets of the pertinent permit approvals, followed by links to program contacts within the agency or pages to download MDE permit forms.

The South Carolina Department of Health and Environmental Control (SCDHEC) employs permit "wizards," which are questionnaires and logic chains used to identify potentially applicable permitting, licensing, and regulatory requirements. The SCDHEC **Permit Central** wizard asks questions to pinpoint legal and compliance obligations, necessary permits, and the estimated timeframe for process completion.

5. Providing Application Assistance: Ombudsman and Meeting Services

After applicants determine what permits are needed, they usually seek information on program requirements and the application process. States agencies like the Delaware Department of Natural Resources and Environmental Control provide free assistance and regulatory advisory services through **Small Business Ombudsman and Small Business Assistance programs**. Others like the Idaho Department of Environmental Quality (IDEQ) offer **pre-application meetings**, which in Idaho is with its Air Quality Permit Program Coordinator and related air program staff. Meetings highlight IDEQ responsibilities, applicant responsibilities, and application package contents to ensure complete and timely submissions.

6. Implementing Additional Improvements

Other examples of mechanisms states use to improve permitting systems include:

- Codes of ethics for private environmental consultants to identify the expectations for quality of submittals and the nature of interactions between consultants and agencies, like **those outlined** in the New Hampshire Association of Natural Resource Scientists' 2016 Bylaws.

- Lists of environmental permit types and categories by program. For example, the NCDEQ's **Permit Directory** provides an A to Z list of permits with their environmental categories and descriptions.

- Rights of permit applicants, including privacy, confidentiality, and electronic signature agreements, like **that of** the California Air Resources Board.

- Lists of environmental portal functions for regulated parties. Such lists are exemplified by the Ohio Environmental Protection Agency's **eBusiness Center** and ensure secure, electronic, and efficient reports and permit applications.

- Compliance assurance mechanisms for reports and submittals, deadline reminders, enforcement coordination, and field inspections. For example, SCDHEC's **Permit Central** portal directs permittees who are out of compliance to voluntary disclosure and violation reduction information.

- Interactive flowcharts. For example, the Wisconsin Department of Natural Resources (WDNR) has an **11-step air permit** process in which the shape of each step identifies key participants throughout the process; an oval represents the facility, a rectangle represents the WDNR Bureau of Air Management, and a star represents the public.

- Descriptions of the appeals process. For example, SCDHEC's website details the steps to file a **request for final review**, as well as criteria on how decisions are made.

- Online permitting dashboards to show how actual permit processing times compare with their respective goals. For example, the WDNR's **Permit Dashboard** outlines the processing time for different types of permit decisions, and notes trends and milestones for when goals are met, are not met, or are in progress.

- Shared Services. For example, MassDEP increases efficiency by developing shared services to support ten common permitting system functions across its EIPAS applications. The services cover 30 permit types in the topic areas of air quality, hazardous waste, solid waste, toxic use reduction, water supply, special use, and pesticides. This type of shared service has the potential for expansion across states that have similar permitting programs.

CONCLUSION

These examples illustrate states' extensive interest in pursuing timelier, more streamlined permitting systems nationwide. When considering efforts to improve permit quality, states may find it valuable to draw from other states' practices. ECOS encourages states to send additional or updated information to **ecos@ ecos.org**.