

The National Environmental Policy Act

Essay

Introduction

Various necessary environmental approvals are required in the establishment and operation of a manufacturing industry such as a smelter. The statutes issued under the National Environmental Protection Act (NEPA) and enforced by Environmental Protection Agency (EPA), provide the criteria for ensuring environmental quality standards during the construction and operation of such industries.

The Clean Air Act (CAA) contains provisions for emissions of harmful pollutants into the air and sets up compliance standards for new industries. The Clean Water Act (CWA) regulates the discharge of toxic water pollutants into the water bodies including oil and other hazardous substances. The Resource Conservation and Recovery Act (RCRA) provide the legislations for the management of hazardous solid wastes. EPA enforces the regulations and issues permits under the various environmental acts to new industries such as the RRE International that comply with the requirements as stipulated under NEPA.

The Permit Issuance Requirements

In the establishment of a new manufacturing industry, under the CAA, a construction and operating permit is required. RRE international will be required to complete the permit application, which is then reviewed by the commissioner to determine the level of emissions before approving the construction (Bell, & McGillivray, 2002, p.114). In approving the permit, the commissioner considers the potential of the pollutant emissions from the new source to exceed the recommended threshold. However, if the company's operations have no potential to emit any of the regulated air pollutants, then the company is exempted from the registration and permit requirements. A new source with the potential to emit less than ten tons of regulated pollutants annually, under the CAA does not need to obtain an operating permit.

If the company meets the requirements as stipulated under the CAA, the commissioner will issue a construction and operation permit. However, the commissioner may fail to give the permit if the new source would violate the National Ambient Air Quality Standards (NAAQs) provisions and may require the new source to carry out an air quality analysis prior to the issuance of the permit.

The commissioner then provides a notice of the permit application alongside supporting documents to the town council affected by the construction of the new company. The air pollution and control agency or the public health officials from the local council assess the risks associated with the construction of the new industry. The applicant then pays fee that covers the cost of processing or reviewing the permit and the cost of ensuring the company's compliance with the conditions set out in the permit.

The RRE international company would also need a permit to discharge the industrial wastes into the Long Trout River. The CWA statutes aim to restore and protect the natural waters from discharge of industrial wastes. Though discharge of pollutants into the water bodies is unlawful, the CWA offers exceptions that RRE international can use. Under the CWA, the secretary, acting under the advice of chief engineers, may issue a permit to a company to discharge effluent into rivers after allowing public hearings. However, prior to the issuance of the permit, the economic and environmental impacts of the industrial discharge on specific disposal sites of the river or water body are evaluated.

A general permit is then issued to a company to discharge material into the rivers after giving an opportunity for public hearings and ensuring that the discharge causes less or no adverse effects on the environment. However, the secretary can revoke the general permit if the industrial discharge has adverse effects on the environment. A governor of a state intending to offer general permits to companies operating within its jurisdiction, must first submit to the secretary regarding the particulars of the permit program. After submitting an application for the permit, the administrator issues the permit under the advice of the secretary of the interior within one hundred and twenty days of application submission.

The general permit covers the compliance regulations and guidelines expected from the recipient party. The administrator determines the categories of discharges, which have no much impact on the environment prior to the issuance of the general permit (Lazarus, 2004, p.213). A copy of the permit application is made available to the public for purposes of monitoring of compliance.

Under the CWA, the secretary can start a civil action if the recipient of the permit fails to comply with the regulations stipulated in the permit, which may include court litigation to enforce compliance. However, the secretary is required to give a public notice over the commencement of the civil action against the company for failure to adhere to the CWA regulations. Non-compliance to the CWA regulations can also attract a fine of \$25,000 daily for violation of the compliance provisions stipulated in the general permit.

The EPA is the main permit issuance authority for hazardous waste management under the Resource Conservation and Recovery Act (RCRA). Under the RCRA statutes, for new applicants such as RRE International seeking to be issued with the initial permit, the applicant must first hold a public meeting to inform the community on the details of the hazardous waste management of the company. The applicant then submits the application along with the details of the public meeting to the director. Before issuing the permit, director evaluates the need for the waste management in the area by assessing the level of public interest, the other similar facilities, and the type of the facility the company intends to establish. The director allows public access to the permit application by placing it in an information repository centre. Under the RCRA, the company provides information including the nature of its activities to the information repository for public use for a period specified by the director.

The Adjudicative Process

The US environmental appeal board (EAB) is charged with the responsibility of civil petitions requesting for a review of permits issued by EPA under the environmental control laws such as

CWA, CAA, and RCRA. The board also hears petitions from individuals who suffered because of the construction of a new industry in their area. Under the EPA statutes such as the Clean Air Act or the Clean Water Act, the board's adjudication process should be formal (Weinberg, 2006, p.57).

Any environmental body intending to challenge the EPA permits issued to an industry, files a complaint with the EPA stating the nature of the complaint, the specific environmental law violated and the request for corrective measures to the company. During the adjudication process, the EAB officers in charge allow a pre-hearing exchange where EPA presents the evidence and the penalty of noncompliance. The company also gets an opportunity to challenge the accusations and reject the penalty. The officer then presides over the hearing where the evidence for the alleged non-compliance is presented, before the officer arrives at the final decision. The board listens to any appeal that may arise within thirty days after the first judgment and the board's decision is final.

Mediation

Prior to the hearing and determination of the case, EAB gives an opportunity for mediation. Under the EPA environmental laws such as the CWA, CAA, and the RCRA, the parties involved discuss the possibility of reaching for an out-of-court settlement (Mernitz, 1980, p.202). If the settlement is not reached, then the lawsuit litigation takes over. In environmental mediation, the mediator organizes a confidential meeting between the two parties where the settlement options are explored. After the reaching an agreement over the settlement, the mediation process then becomes legally binding. However, mediation is voluntary and an easier way of solving an environmental dispute than the court litigation process.

Environmental mediation can involve an environmental lawyer if the dispute involves penalties, in monetary terms, over noncompliance to the environmental law or review of the permit issued. The environmental lawyers can represent both parties during a mediation process. In mediation, both parties i.e. the environmental regulatory agencies (EPA) and the companies causing pollution, have the opportunity to discuss the issues and resolve the dispute. Environmental mediation involves evaluation of the impact the company projects will have on the environment as a way of resolving the issue. In addition, under environmental mediation, project alternatives are given by an independent authority to encourage dispute resolution.

Conclusion

The environmental protection agency (EPA) gives construction and operating permits under the CWA, CAA, and RCRA laws to new companies such as the RRE international after satisfying certain conditions. EPA also ensures compliance to these environmental laws. Non-compliance to these laws attracts a civil lawsuit handled by the environmental appeal board. However, mediation provides an ideal way of arriving at a resolution compared to the court adjudicative process.

Reference List

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