



PERMITS AND OFF-PERMIT REQUIREMENTS: WHAT DO THEY LOOK LIKE AND HOW CAN YOU MANAGE THEM?

Over the past 25 plus years we have helped numerous companies and individuals deal with environmental and health and safety regulation and requirements. The number and complexity of regulatory requirements has increased steadily over that time, and there is no sign of it slowing or stopping. In fact, with the activity we have seen in the past couple of months, and that which is expected in the next couple of months, the pace has quickened substantially.

SMG's job has always been to help the regulated community deal with the issues and requirements facing them in as efficient and comprehensive a way as possible. That is just getting harder and harder. This article is designed to help the regulated community best manage permitting.

So let's begin at the beginning: how does a facility determine which permits are needed and other applicable requirements?

In Kentucky, the primary state agencies within the [Energy and Environment Cabinet](#) are the Divisions for [Air](#), [Water](#) and [Waste](#). Within each of the Divisions there are several programs that may impact a facility's operations. Air may actually be the simplest organization with responsibility for permitting, for odors, and for asbestos issues. Despite the organizational simplicity of the Division of Air Quality, the air permitting application, review process and implementation are usually the most complex of the standard permitting programs.

The Division of Water regulates a number of issues faced by facilities. Almost all facilities need a construction stormwater permit at some point – usually a [general permit](#). Facilities may need a general or individual [discharge permit](#). In addition, facilities may need a [water withdrawal permit](#), [stream construction permit](#), and/or [water quality certification](#) (not a permit but often required).

The Division of Waste has a number of comprehensive programs that pertain to many industries and businesses. Certain facilities need a [solid waste permit](#) to construct a landfill, a registered permit by rule for the placement of waste, or a permit addressing the generation of hazardous waste or its treatment or disposal. Facilities may also deal with the underground tank branch.

Don't forget to look to the other side of the Cabinet to the [Department of Natural Resources](#). Does your facility need [permits for oil and gas development](#)? What about [mining](#), whether for coal or non-coal materials? Off in other cabinets are offices like [Kentucky Fish and Wildlife](#) and the [Historic Resources](#) folks who may need to opine on your planned use of property and its potential impact on cultural or historic resources.

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This is not a comprehensive list and it only represents the Kentucky state level agencies and permits that may apply facilities. Keep in mind that you have to look to federal agencies and to local rules and programs to be sure you have touched all the bases.

On the federal level, you may be dealing with [EPA](#), either independently or in conjunction with a state permitting action. The [U.S. Army Corps of Engineers](#) has permitting authority over waters of the US, a subject that has just gotten a lot more complex and comprehensive. The Corps deals with both individual permits and nationwide permits. While nationwide permits may seem a bit like a general permit, the application process and review time can be very extensive and it is very much not an automatic process. [U.S. Fish and Wildlife](#) is where you may find yourself addressing any impact on threatened or endangered species.

We are not even going near [OSHA](#) and its many standards and programs. Just keep in mind that the techniques that help you manage the environmental requirements that you deal with can also help keep you organized on worker safety issues. And don't forget where those programs – OSHA and EPA – intermingle and cross – like process safety management and hazard assessment and risk management.

Many of these agencies house the permitting function where you get permission to operate your business, and the rules and requirements by which you must operate. But there are a number of legal requirements that you must address that are not permits. For example, record keeping and notification are part of [EPCRA](#) requirements. There is no permit associated with EPCRA, just requirements and penalties if you are not in compliance. Your facility may be required to have a [Spill Prevention Control and Countermeasure plan](#) (a SPCC plan) and possibly a [Facility Response Plan](#). You may need a [groundwater protection plan](#). These are not permitting functions but their requirements are very real and they come with penalties for non-compliance.

So how do you know what permits you need? How do you know what non-permit requirements apply to your facility? There are a lot of resources to answer that question – some of the most helpful resources are conferences and the Cabinet's [Division of Compliance Assistance](#) which has publications that can help you get started. But nothing takes the place of reading the source material, the [statutes and regulations](#) that codify the requirements. If you need assistance, SMG would also be glad to help you develop a common sense plan to continue compliance with applicable regulations.

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