

## **Facts Do Matter – The Power of Public Files:**

### **Why public file reviews are important – what can be achieved?**

Having access to actual company documents, reports, and correspondence with the overseeing regulatory agency is an important way to level the playing field. Company documents will reveal specific details about the proposed operation and its location, as well as provide key pieces of information about pollution sources and other factual details. Submitting comments, preparing testimony, or participating in open *Question and Answer* sessions can be made much stronger when facts from actual company documents can be called into question.

By requesting the opportunity to view, copy, and/or scan the public documents, citizens will learn valuable information that will help them better understand what the company is requesting and why. Reading the company's correspondence with the PA DEP, for example, may provide important facts about the permitting procedures and company operations. Having these essential facts can work to level the playing field so citizens and local leaders can better participate in the permit review process as well as work to hold each operator accountable.

With increased frequency, more communities are faced with the onslaught of oil and gas development—increases that are impacting rural and suburban areas throughout Pennsylvania. Highly industrialized operations from well pads, to compressor stations, to processing plants are multiplying throughout the region. For the first time, many community leaders are faced with the daunting task of reviewing complicated permit applications, often without full disclosure of the facts or a previous frame of reference. It is challenging, to say the least.

As the march of the oil and gas operations expands, citizens and local officials often find themselves with more questions than answers, in part because of the seemingly endless moving pieces of the permitting procedures.

Facts are the great leveler – and can provide important balance to the public participation process. Thorough review of public files is the best way to arm yourself with the facts.

**Understanding public files:** <http://www.openrecords.pa.gov/RTKL/CitizensGuide.cfm>

According to the Pennsylvania Office of Open Records (OOR):

- “Agencies are to ensure that citizens are provided access to records to which they are entitled. Equally important, Requesters are to use good judgment in seeking records from the public body and not use this law to harass or overburden a public body from performing its other functions.”
- “Under the Right-To-Know Law, all records are presumed to be public records unless disclosure is barred by: (1) state or federal law or regulation; (2) judicial order; (3), privilege, e.g., attorney-client or doctor-patient; or (4) one of the exceptions in Section 708 of the Right-to-Know Law. The burden is now on the government agency to establish why the record is not available.”

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**Public File Reviews** – In order to fully understand what a company is seeking via permit applications, it is best to request file reviews at the appropriate oversight agency. Those agencies include the local municipality/township, the county health departments, and/or the Pennsylvania Department of Environmental Protection (PA DEP). Company documents provide the details on the type of facility, its operations, and potential pollution emissions. Having the company’s own data can be helpful to those interested in participating in public meetings and public hearings on the proposed operation. In 2009, Pennsylvania adopted a new Open Records law, paving the way for the public to gain access to records kept in local, county, and state offices. By visiting the website for the PA Office of Open Records, the public can easily learn what documents are considered public and exactly how to request access to them. <http://www.openrecords.pa.gov/RTKL/About.cfm>

***Submitting requests for access to public files -  
different procedures for different offices:***

**Local municipality/township offices:**

All governmental offices, including local municipal offices keep public files that citizens can review by filing a Right to Know (RTK) request. It is important to note that offices may have their own specific procedures for requesting the file review, scheduling the review, and requesting or making photocopies of the documents. You should check with each office to inquire as to their individual procedures. However, in general, the following steps will be helpful in requesting access to the public files in a municipal/township office.

- **Initiate your request:** Use the basic form provided at the link to PA Open Records (provided below in the first bullet) – or use the form the local municipal office provides – and attach it to an email and **submit a Right to Know request (RTK)**. This email should have the *subject line of Right to Know Request* and should be sent to the Right to Know officer. You can find out who the Right to Know officer is by visiting the municipality/township website. If that information is not available on the website, you can call the municipality/township and ask for the name and contact information for their Right to Know officer.
  - **Standard Right to Know (RTK) form – this is the one most often used:**  
<http://www.openrecords.pa.gov/Documents/RTKL/RTKRequestForm.pdf>
  - **Individual Townships/Municipalities/Boroughs may request you use their customized form.** In that case, follow the instructions provided.
  - **Other Right to Know forms, entire list:**  
<http://www.openrecords.pa.gov/RTKL/Forms.cfm>

It is important to note that each of the forms will ask you questions about how you’d like to view the files and if you’d like photocopies. It is best to check the box that indicates you would like to review/inspect the files.

- **What files/documents should I request to see in my municipal Right to Know review?**
  - All permit applications
  - All permits
  - All correspondence, including emails, meeting notes, and meeting logs
  - All Notice of Violations (NOVs) and Consent Order and Agreement documents
  - All Technical Deficiency letters
  - All Inspection Reports

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- All reports, maps, monitoring records, as applicable
  - The complaint file, if the municipality or township has one (note that all personal information about the person filing the complaint will be blocked out or redacted, but you will be able to read about what complaints were filed, on what dates and involving what particular situations)
  - All minutes from Board of Supervisors, Council, Commissioners meetings (specify for how many months/years)
  - All minutes from Planning Commission meetings (specify for how many months/years)
  - Know that some local governmental offices keep their minutes in legal ledgers and those documents cannot be removed from the affixed pages. Ask if separate hard copies are available or you may scan or photograph from your phone or other hand-held device. See more on scanning and photos of documents below.
- **Making copies of public files:**
    - **Photocopies** – procedures vary by office. Ask for details on procedures and fees. As a reference – see fees allowed under the PA Open Records Law: <http://www.openrecords.pa.gov/RTKL/FeeStructure.cfm>
    - **Most municipal offices do not accept cash or credit card payments so you will need to bring a check with you** to pay for any copies you make or request on the day of your file review.
    - Some municipal offices will allow the public to make copies, provide a total, and then assess a per-page fee. Other offices will ask you to indicate what pages you'd like to have copied and they will provide the copies to you, for a fee. Some municipal offices will need time to make copies and send to you, while others may provide copies the same day as your review. Again, **you should confirm the procedure for making and obtaining copies with each individual office.**
    - **Scanners** – if you have access to the necessary equipment, electronic scanning of public documents can be more efficient and cost effective.
    - **Photos of documents - are allowed.** However, if a problem arises, you should know that according to a news article in the Morning Call, photos of public documents are permitted. <http://www.mcall.com/news/local/watchdog/mc-photographing-public-records-watchdog-20150902-column.html>

And, according to the PA Office of Open Records photos of documents are allowed: <http://www.openrecords.pa.gov/RTKL/FeeStructure.cfm>

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### **Pennsylvania Department of Environmental Protection (PA DEP) Public File Reviews:**

There is a wealth of information on permitting and enforcement issues available for public review – you just need to know what's available and how to request it. A good first step to accessing PA DEP public files is to check the following links to explore helpful resources available on-line. Reports, maps and other data is available as you begin your research. Using these links as a starting point can provide the following:

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- The information you are seeking
- Or, the information provided may help frame a more detailed request for document review. In either case, the following can guide you in the process.

#### **Data and Tools:**

- Including eFACTS, PA Oil and Gas Mapping, eMap ... and more can be found here - <http://www.dep.pa.gov/DataandTools/Pages/default.aspx>

**If what you are looking for is not available on-line, requesting the opportunity to view public files, in person, can be made via the following options:**

**Option One, PA DEP files:** Request an **Informal File Review (IFR)** at the specific regional office. This is recommended as the first step if you'd like to review the documents in the PA DEP's public files. Asking for an IFR means the PA DEP staff has more flexibility in granting your request and scheduling a day and time for you to view those documents. **It is best to begin with this type of request, first.** If the documents you are seeking are not included in your request – or a specific document is referenced in one of the files you review and it's not included in your review, you can move to step two of the public review process at the PA DEP. **The official form for submitting a request for an Informal File Review can be found here:**

<http://files.dep.state.pa.us/PublicRecords/PublicRecordsPortalFiles/Informal%20File%20Review.pdf>

Emailing your request for an Informal File Review to the PA DEP – **be sure to attach a complete Informal File Review (IFR) form to your email request:**

- [Southeast](#) (Bucks, Chester, Delaware, Montgomery, Philadelphia Counties)
- [Northeast](#) (Carbon, Lackawanna, Lehigh, Luzerne, Monroe, Northampton, Pike, Schuylkill, Susquehanna, Wayne, Wyoming Counties)
- [South-central](#) (Adams, Bedford, Berks, Blair, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lancaster, Lebanon, Mifflin, Perry, York Counties)
- [North-central](#) (Bradford, Cameron, Centre, Clearfield, Clinton, Columbia, Lycoming, Montour, Northumberland, Potter, Snyder, Sullivan, Tioga, Union Counties)
- [Southwest](#) (Allegheny, Armstrong, Beaver, Cambria, Fayette, Greene, Indiana, Somerset, Washington, Westmoreland Counties)
- [Northwest](#) (Butler, Clarion, Crawford, Elk, Erie, Forest, Jefferson, Lawrence, McKean, Mercer, Venango, Warren Counties)

#### **What information should I include in my Informal File Review request?**

- Name of the company/facility
- Township and County in which the facility is located
- Permit numbers, if you have them
- Type of files you wish to review: air, water, waste, waterways, oil and gas – check all that apply
- Indicate the number of years you'd like to have included in the documents requested. (A good number of file reviews include a request for five years of documents. But, you can tailor your request accordingly)

#### **What files/documents should I request to see in my Informal File Review?**

- All permit applications

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- All permits
- All correspondence, including emails, meeting notes, and meeting logs
- All Notice of Violations (NOVs) and Consent Order and Agreement documents
- All Technical Deficiency letters
- All Inspection Reports
- All reports, maps, monitoring records, as applicable
- The complaint file (note that all personal information about the person filing the complaint will be blocked out or redacted, but you will be able to read about what complaints were filed, on what dates and involving what particular situations)

**How much time should I allow for a public file review:** Depending upon how many documents you've requested, your review can take several hours to all day. It is recommended you plan for a full day for your review to ensure you have ample time to review all the documents of interest to you.

**Lunch during a file review:** Because file reviews can take the better part of a day, it is important to know if you should bring a bagged lunch or if there are restaurants nearby. This is a question you can ask when finalizing your file review – the clerk helping you is likely to know whether you should plan to bring a lunch or if there are eating establishments near the agency offices.

- **Food/beverages are not permitting in the file rooms.** You should ask agency officials where you can eat your lunch. Some offices allow the public to use their employee lunchrooms, while other may require you to eat outside or in your vehicle. You should ask as protocols vary with each office.

**Making copies of public files:**

- **Photocopies** – procedures vary by office. Ask for details on procedures and fees. Most PA DEP offices charge \$0.15 per page copied. You should confirm this with each individual office. More information on fees allowed under the PA Open Records Law can be found here: <http://www.openrecords.pa.gov/RTKL/FeeStructure.cfm>
- **The PA DEP does not accept cash or credit card payments so you will need to bring a check with you** to pay for any copies you make or request on the day of your file review.
- Some PA DEP offices will allow the public to make copies, provide a total, and then assess a per-page fee. Other offices will ask you to indicate what pages you'd like to have copied and they will provide the copies to you, for a fee. Some PA DEP offices will need time to make copies and send to you, while others may provide copies the same day as your review. Again, you should confirm the procedure for making and obtaining copies with each individual office.
- **Scanners** – if you have access to the necessary equipment, electronic scanning of public documents can be more efficient and cost effective.
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And, according to the PA Office of Open Records in Harrisburg, photos of documents are allowed: <http://www.openrecords.pa.gov/RTKL/FeeStructure.cfm>

**Option Two, PA DEP files – a different type of request: Right to Know (RTK) request** for specific documents at the state level (PA DEP) is very different from a RTK request at the local/municipal or county level. It's important to understand the difference:

- Asking for a Right to Know (RTK) request at the PA DEP takes on a more legal process within the Department. A RTK request of the PA DEP could add time to your waiting period and means the documents are not as readily available because they must undergo a separate review in the Harrisburg, Central PA DEP office before you view the files. This is a normal process for the PA DEP but not always the most helpful if you are seeking to see lots of documents as part of your file review.
- A RTK request of the PA DEP should not be used to request a broad number of documents, but rather to request a limited number of specific documents you are interested in reviewing. For example: if you have conducted an Informal File Review and see that one of the emails you've reviewed has referenced a specific report or other document, you should submit a Right to Know (RTK) request for those specific documents. A RTK request should be more precise.
- **An official form for submitting a RTK request of the PA DEP can be found here:** <http://www.dep.pa.gov/About/PublicRecords/Pages/RightToKnow.aspx>

**Option Three, PA DEP files – requesting Certified copies (rarely used)** – this can be a seldom used but effective way to ensure the document(s) you are obtaining – and perhaps using at a public hearing – can be assured of their authenticity. By requesting certified documents, the PA DEP will begin a process that involves extra time to have the documents copied, signed and sealed by an official of the PA DEP. Because the fee per page is expensive, it is important to use this option in very limited circumstances. **A fee of \$2.50 per page will be assessed so choose carefully only those documents that are essential to your needs.**

Additional details on PA DEP public files can be found here:

<http://www.dep.pa.gov/Citizens/PublicRecords/Pages/default.aspx>

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### **United States, Environmental Protection Agency (US EPA) - Federal, Freedom of Information Act (FOIA) Requests:**

To obtain federal public documents you must submit a Freedom of Information Act request (FOIA) to the United States Environmental Protection Agency (US EPA). More detailed instructions are available here: <https://www.epa.gov/foia>.

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### **Additional helpful tips:**

**How to label scanned files:** When scanning files it can be helpful to keep a consistent file title system. Because files can include many individual documents it is best to use dates in labeling your files so you can see the timeline progression of the permitting, technical document review, correspondence and/or development and enforcement events. A suggested labeling system is as follows:

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- **Year, month, date followed by short description of the document, for example:**
  - 2015\_ABC Company Title V Emails
  - 2016 10 15\_ABC Company Title V Application
  - 2017 12 01\_ABC Company Title V Permit
  - Using this nomenclature will allow all the documents you scan to be kept in chronological order, by date

**Questions/Problems during file reviews:** If you encounter a problem during a file review (e.g. agency will not allow scanning or photos of documents) you can contact the **Office of Open Records in Harrisburg:** <http://openrecords.pa.gov/ContactOOR.cfm>

- **Phone:** 717-346-9903  
**Fax:** 717-425-5343  
**Email:** [openrecords@pa.gov](mailto:openrecords@pa.gov) Please note: This email address should only be used for appeal submissions and general questions. It should NOT be used to submit a request for records.

**Additional resources to fact-check and follow developments of proposed and issued permits:**

- PA DEP issued permits: The PA Bulletin will post permit updates, proposed modifications, and issuances via weekly postings (usually on Saturdays). <https://www.pabulletin.com/index.asp>
- US EPA issued permits: The Federal Registry will provide updates, proposed modifications and issuances of permits as well as federal rulemaking procedures.  
<https://www.federalregister.gov/agencies/environmental-protection-agency>

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