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## Conference Untangles Web of Permit Regulations

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## **ENVIRONMENTAL PRACTICE NEWS**

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### **CONFERENCE UNTANGLES WEB OF PERMIT REGULATIONS**

"Come to the agencies before you start your project, and you and your client will save time and avoid problems in the long run" summarizes the result of two days of intensive study of federal and state environmental laws. The Environmental Law Conference held in Williamsburg October 5 and 6 was sponsored by the Virginia State Bar and the Virginia Bar Association as part of their Continuing Legal Education series. George Walker, visiting professor at the Marshall-Wythe School of Law, was the moderator.

The conference was designed to educate general practice lawyers on the impact of the growing body of environmental law and regulation. Turner T. Smith, Jr., of Hunton and Williams in Richmond, provided an overview of how human activities disrupt natural ecosystems. Unlike natural events such as floods or forest fires, man's activities are continuous and often result in irreversible changes in ecosystems which reduce their productivity of commercially valuable fish and wildlife.

The common law of trespass, nuisance, negligence, strict liability, and riparian rights traditionally governed environmental problems. Today, increasing population, rapidly changing land use, and expanding large scale industrial facilities have resulted in environmental deterioration beyond the capacity of the common law to control adequately. As a result, federal and state agencies have been created to regulate activities which contribute to environmental degradation.

The general practitioner may be asked to advise a client on how to apply various environmental regulations to a proposed business venture. He may be asked to assist in applying for licenses or permits or he may have to defend his client if an agency enforces a regulation against the client. He may represent an individual or group seeking a remedy for polluted water or other environmental damage. Knowledge of the federal and state laws and regulations and how they interact is essential for competently representing a client's interests.

After analyzing Virginia and federal requirements under the Clean Water Act, Clean Air Act, Resource Conservation and Recovery Act, and special requirements to protect Virginia's wetlands and navigable waters, the conference participants broke into individual workshops to analyze the procedures for meeting those requirements.

Each of the laws has regulatory procedures for the issuing of permits that involve describing the proposed activity and the pollutants discharged. The location of the activity may affect the issuance of a permit or may force the activity to obtain additional permits to cover either construction or operation. Also, obtaining a permit may require the addition of pollution control technology to plant processes. Many of the procedures for obtaining permits allow for public hearings on the proposals.

The workshop on environmental litigation focused on four major areas: standing, jurisdiction, scope of judicial review, and remedies. Although standing is no longer an issue in federal litigation, it still poses problems in state courts, participants were advised. Environmental statutes often specify which courts have jurisdiction to review agency action in certain circumstances. Because of the 90-day limit for filing suit set by some statutes, identifying the proper forum early is essential. The scope and standard of review for environmental agency decisions is determined by the statutory authorization and by section 706 of the Administrative Procedures Act, based on whether the statute classifies an agency action as either a formal or informal rulemaking or adjudicatory hearing. Remedies are created both statutorily and judicially; conference speakers emphasized the importance of the relevant statute in defining and limiting the available remedies.

All workshop moderators stressed the importance of contacting federal and state agencies early in the planning process and providing as much detail about the proposed activity as possible. Even then, obtaining the permit may take as long as three- to five-years. A checklist of permit regulations which might be triggered by construction activities was distributed by R. Leonard Vance, Virginia's Assistant Attorney General. (See box.)

S.C.W., J.R.S., J.M.G., B.G., L.L.

<u>INITIAL PERMIT REQUIREMENTS</u>	<u>OPERATING REQUIREMENTS</u>
1. RCRA Solid and Hazardous Waste Permits a. Hazardous waste b. Solid waste	1. RCRA Requirements a. Hazardous waste b. Solid waste c. Manifest system
2. Local Government Permit Requirements a. Zoning b. Soil and erosion c. Building d. Wetlands	2. Water Pollution Requirements
3. NPDES Water Pollution Permit Requirements	3. Air Pollution Requirements
4. Dredging and Pier Construction Permits a. Corps of Engineers b. Virginia agencies 1. Marine Resources Commission 2. State Water Control Board 3. State Health Department c. Local government (wetlands permit)	4. Other Agency Requirements a. Federal 1. TSCA (toxic substances) 2. OSHA (safety/health) b. Virginia c. Local government
5. State Air Pollution Control Board Permits	
6. NEPA Requirements (EIS or FONSI)	
7. Other Agency Requirements a. Virginia 1. Water supply 2. Sewage b. Federal c. Local	