

# Public participation in the environmental permit processes at regional level

Aino Inkinen

ENVIRONMENTAL  
PROTECTION







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Helsinki 2009

FINNISH ENVIRONMENT INSTITUTE



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THE FINNISH ENVIRONMENT 39 | 2009  
Finnish Environment Institute  
Research Department

Layout: Seija Turunen  
Cover photo: Pirjo Koistinen,  
Photo archive of the environmental administration

The publication is available only on the internet:  
[www.environment.fi/syke/publications](http://www.environment.fi/syke/publications)

ISBN 978-952-11-3609-2 (PDF)  
ISSN 1796-1637 (on-line)

This publication is part 2 of the EMLE project reports (*Effective Environmental Management: law, public participation, and environmental decision-making*): a collaboration between Dr. Jonathan Tritter (SYKE/University of Warwick), PhD. Eeva Furman (SYKE), PhD. Marko Joas (Åbo Akademi), Prof. Anne Kumpula (University of Turku), LL.Lic. Jukka Similä (SYKE), LL.M. Stephen Davies (University of Turku), MSc. Aino Inkinen (SYKE), PM. Åsa Lindström (Åbo Akademi), MA. Tea Nömman (Åbo Akademi). (<http://www.environment.fi/default.asp?contentid=171420&lan=EN>)



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## Introduction and aims

This report is a part of a wider research program titled Effective Environmental Management: law, public participation and environmental decision making (EMLE). EMLE is an innovative exploration of the nature, impact and effectiveness of public participation in environmental decision-making. The research program is funded by the Finnish Academy, the Finnish Ministry of Environment and the Finnish Environment Institute. There are five distinct objectives within EMLE: objective 1: legal analysis, objective 2: regional level decision-making in Finland, objective 3: municipal level decision-making in Finland, objective 4: international case-study comparisons and alternative models, objective 5: evaluating the effectiveness of public participation.

The aim of this report, and simultaneously also the intention of objective 2 within the EMLE research program, concern the dynamics and impacts of participation in the environmental permit process at the regional level in Finland. At a basic level, we wish to develop our understanding of the processes and practices actually taking place in the environmental permit system, and further analyse how participatory processes are implemented, what the effects of participation are and what encourages or inhibits successful participation.

Scholarship on participation lists a number of expected benefits that participation can bring to decision-making. Based on principles of social justice and democracy, it is argued that participation in political decision-making is beneficial in limiting conflict (legitimising decisions and policy-making) as well as facilitating implementation (Balducci and Fareri 1998; Cowie and O'Toole 1998; Appelstrand 2002; Sjöblom, Sahivirta et al. 2003). Verschuuren (2005) gives a concise summary of the existing literature, including the fact that public participation can help further the interests of both the participants themselves as well as matters of public interest.

More recently the importance of participation for problem-solving has also emerged, whereby participatory processes in environmental decision-making are seen as beneficial in contributing to the values and potential solutions associated with a specific environmental issue (Steele, 2001). Participation can lead to better decisions by bringing together different forms of relevant knowledge and experience, and by increasing and improving the communication between decision-makers and non-experts and stakeholders it can lead to greater public understanding and acceptance of decisions. However, there appears to exist a dominance of theoretical discussion relating to the effects and effectiveness of participation, and empirical studies of the effects of participation are fewer (see for example Fischer 2006). In particular, our interest lies in the nature and effects of participation in the tightly regulated setting of pollution permitting, whereas much of the empirical research is concerned with planning, resource management, environmental impact assessment or even disputes surrounding industrial processes and accidents (see for example Wondollock and Jaffee 2000 for planning and natural resource management, Hokkanen 2008 for EIA, O'Rourke and Macey 2003 for industrial processes).

A broadly accepted trait of successful participation is early involvement (Steele 2001, Fischer 2006) in a decision-making process, in part to enable participants to influence plans and decisions but also in order to foster discussion and mutual understanding between parties. In order for participation to influence the outcome of decision-making, a certain degree of flexibility in plans and projects is required to allow the incorporation of local knowledge and concerns or the co-production of plans. Where a process lends itself to development and change through participatory input, the influence that participation has is easier to perceive. Our study differs from much of the research on participation in the scope of possible participatory influence. The environmental permit process is strongly directed by legislation, and the process should be standardised across all administrative bodies managing environmental permits. These features suggest limited opportunities for public participation to impact on the decision-making, despite the fact that allowing public participation is a requirement within the system.

In Finland, the most recent changes to the law regulating environmental permits in 2000 also broadened participatory rights, with the integrated and participatory permit process now intended to act as a framework for enabling mutual tolerance between the polluting activity and its stakeholders (Kuusiniemi, Ekroos et al. 2001). This provides an opportunity to empirically study participatory processes in a regulated context where some aims for participation are given, and practices are becoming established.

The research questions guiding our work are as follows:

- Who is involved in public participation activities in relation to the issuing of environmental permits at Finnish regional level?
- What factors promote and inhibit public participation in relation to the issuing of environmental permits at Finnish regional level?
- What are the effects of participation in the environmental permit process?
- How do you measure the effectiveness of public participation in relation to the issuing of environmental permits managed at Finnish regional level?
- How could public participation in relation to the issuing of environmental permits at regional level be made more effective?

Based on these questions, objective 2 was done in three parts. Part one was a study of the effects of participation in the judicial review of environmental permits, done in conjunction with a governmental programme to simplify the environmental permit system and reduce the administrative burden of judicial review. In the second part, the complaints data gleaned from part 1 was correlated with interviews done with staff from all Regional Environment Authorities and Environmental Permit Authorities to categorise the different authorities as either positively disposed towards public involvement or less positively oriented towards public involvement. This in turn was used to select authorities with differing attitudes towards public participation for case studies of actual permit deliberation procedures involving interviews with affected parties.

The case studies in each region focused prospectively on their public engagement practices. Using interviews with key stakeholders, NGOs, involved individuals and administrators as well as the evidence from documentary analysis we assessed how effective the particular organisation's public participation mechanisms are in relation to the four key domains that are the focus of this research (law, participation, cost, impact).

This report presents the conceptual framework, methods and the results of our objective 2 study as a whole. Although the discussion covers all the parts of the participatory process that affect the effectiveness of the process, we do not seek to fully address the questions of effectiveness or future development options here. This report forms a part of the full reporting of the EMLE study, and therefore conclusions are presented in other formats.

# Conceptual framework

## Participation

Participation can take many forms, and affects a wide variety of actors. When discussing participation, terms such as public participation, stakeholder participation or citizen participation are common depending on the context and preferences of authors. Beierle and Cayford (2002) for example, refer to public participation in their study of participation in environmental decision-making as participation through intentionally instituted means to involve the lay public in administrative decision-making. This encompasses diverse definitions of the public depending on the context of their chosen cases. Other authors, such as Lee (2005) in her discussion of the increasing institutionalisation of participation in EU law, use a broader definition to encompass all intentionally instituted forms of participation but without a restrictive specification of who the public is. On a similar note, Hajer speaks of participation as ‘...the attempt to involve a variety of actors from civil society in a discussion on policy interventions...’ (Hajer 2005b, p625) without specifying who is participating beyond the umbrella of civil society, but the intentionality of involvement is present here also.

Beyond the formal participation referred to in the definitions used above, participation can also include forms not intended by administrations, such as grassroots initiatives, boycotts, public writing and demonstrations. This can be termed informal participation, or ‘independent’ participation (see for example Tendler in Lemos 1998). Often this kind of participation occurs where formal participatory mechanisms are few, but it can also occur where formal mechanisms exist, but are not seen to be the most effective avenue for influence.

In this study we take a broad understanding of participation, focusing on the formal processes as implemented under the auspices of the environmental permit process, but not excluding any informal participation that may be detected as taking place in the same context. In terms of who is participating, we seek to include as broad a range of public participants as is evident in the data we collect, also including parties which may not traditionally be considered ‘public’ such as permit applicants as well as formal bodies such as health boards or other invited commentators in the environmental permit process.

## Effectiveness

Effectiveness of participation and effective participation are terms often mentioned in literature, generally associated with ‘good’ participation although often in different types of settings and circumstances. However, there are few examples of studies where the terms ‘effective participation’, or measures of effectiveness have been defined explicitly. Some exceptions are given here to preface our own use of the term.

Fischer (2006) stresses the importance of design and purpose in implementing participatory processes; the need to consider in advance what is sought by implementing the participatory process. In assessing the effectiveness of participation, the key difficulty is in determining what was sought from the process in the first place as the goals of participatory processes are not always specified. In the absence of a defined goal, what are the constituents of an effective, or a successful process?

Although effective participation is often referred to in literature without a more explicit definition of what effectiveness is, some studies have approached participation with clear criteria for 'successful' participation. Beierle and Cayford (2002) for example use a set of social goals in their evaluation of participation in environmental decision-making in the US. These social goals include: incorporating public values into decisions; improving the substantive quality of decisions; resolving conflict among competing interests; building trust in institutions; and educating and informing the public. These are fairly broad goals and they bring together different aims for participatory processes expressed in scholarly literature as well as in public policy and strategy documents, although focusing on outputs and outcomes of the participatory process.

These social goals do not explicitly cover procedural and democratic aims, such as those listed by Fischer (2006), including process openness, representativeness of participation as well as process fairness. Including such elements can arguably bring a more complete view of participation, and enable some assessment of effectiveness while also providing some scope to identify the components of a process which facilitate participation and participatory success.

Coenen et al (1998) aim to assess participation in environmental decision-making from a functional-analytical perspective. They do not reject normative arguments for participation, but focus on practice, which they claim often lags long behind normative standards. They summarise three main functional purposes for participation: empowerment; legitimacy; and quality of decision-making. Functionality is equated with effectiveness, and these purposes or aims of participation form the basis for criteria to assess participation in environmental decision-making, split according to substantive and procedural criteria.

Rowe and Frewer (2000), aiming to devise means of assessing the quality of participatory methods propose the selection of desirable process aspects followed by a presence/absence assessment and quality evaluation of these aspects. Their approach is based on two types of theoretical considerations: acceptance criteria, concerning features of a method that make it acceptable to the wider public, and process criteria, concerning features of the process that are liable to ensure its effective implementation. However, their approach raises more questions than it answers, identifying problems with measurement of criteria and context-specific assessment. The definition of effective participation is encapsulated in the authors' conception of quality, which is linked strongly with acceptability as well as procedural efficiency. Actual influence in the process and decision-making, quality of decisions and longer-term impacts of decisions are largely left out of this study.

All of these approaches, using different terms such as successful participation, effective participation or functional participation share certain elements. Both procedural and substantive issues are considered important, and the quality of decision-making stands alongside fairness and representativeness. Scholars such as Rowe and Frewer (2000) focus on the participants and consensus, whereas Fischer (2006) takes a more goal-oriented stance and considers the broader implications of the participatory process. Goals identified by different scholars include social, environmental, democratic and cost-effectiveness goals, demonstrating the complexity of the issue and thus no single indicator can give a measure of the effectiveness of participation. Therefore we choose to adapt elements from all of these scholars in order to approach the question of effective participation in the environmental permit process; beginning with an understanding of the participatory process in practice, we follow each procedural step and consider the

goals associated with each actor in the process. From this we can view the process as a whole and identify the outcomes of the process, and the effect that participation has had on the various elements that make up the permit process and its impacts.

## Process

On the basis of the previous section, the question of effectiveness is best approached through the assessment of the whole process of participation and we adapt a classic logic model to the current work. We use this model as a heuristic tool, to enable an overall understanding of the practices and process relevant to participation in the environmental permit process which will help to assess the role than participation plays. The outcomes and outputs are of particular interest in the assessment of the effectiveness of participation, but they should be better understood as a part of the whole, including those elements of process and substance as well as issues of fairness and representativeness. The conceptual model used will also bring coherence to the results as these will be based on a large set of diverse data, covering participatory processes in the different parts of the environmental permit process (see also figure 2).

The input stage is taken to be composed of two main elements. The first is the legal framework which defines both the environmental permit process and sets out minimum prescriptions for participation within the process, and second is the set of resources which enable the process to take place (this includes human resources, knowledge, experience, physical resources). The process itself has been labeled participation, and includes the process and practices involved in the implementation of participation. Output is taken to cover the tangible elements which the process results in, and this refers to the finished permit which will direct the permit applicant's activities, as well as the immediate costs arising from the process. Outcomes are deemed to be less tangible and longer-term, if no less real than the output. Those shown are not necessary, but possible outcomes, and they are not exclusive of other effects. This category includes any potential learning resulting from the process, issues of legitimacy as well as the environmental outcomes of the process. The permit sets out the limits to the activity, but environmental impacts may also arise from changes in behaviour or learning on a longer-term basis. The outcomes differ both in nature and timescale, it is possible that a process results in limited immediate outcomes, but these may have reverberations far into the future.

Side-effects or unintended effects cover such elements that do not naturally fit into the other parts of the model, unexpected effects and other costs. Finally, the dotted arrow indicates the potential for feedback from the outputs and outcomes of the process back to the input and process parts. Law can, and is, affected by practices and the permit process is repeated by permit authorities who learn about activities, participation and the law as they go and thus can modify their own practices relating to participation accordingly.

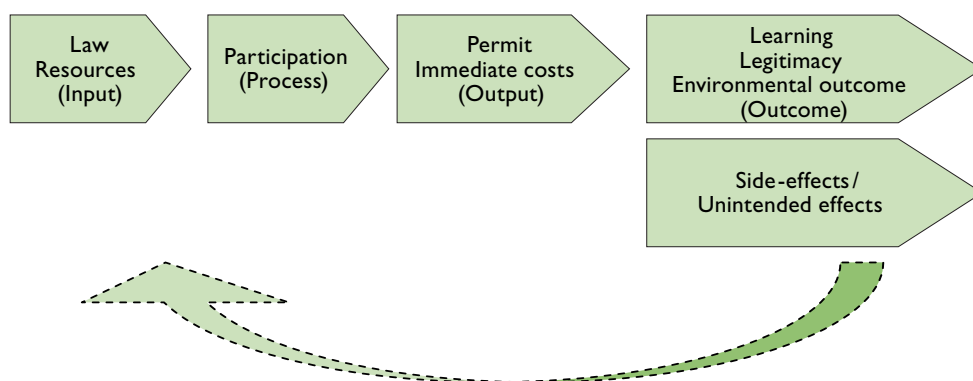


Figure 1. Process diagram for the assessment of participation

## Methods

The setting for this study is the Finnish environmental permit process, a policy instrument used to regulate the emissions and environmental impacts of polluting activities. Despite being based on a traditional command-and-control approach, the environmental permit process requires case-by-case permit deliberation in addition to its standards and norms-based regulation, and the inclusion of hearing rights and judicial review (Figure 1). Decision-making power is delegated to two levels - local and regional environmental administration - and three types of Authority<sup>1</sup>. The 'division of labour' for permit activity is split between the two types of Regional Authorities largely based on their existing expertise. The Environmental Permit Authorities, of which there are three in Finland, are derived from the old Water Courts and are geared towards managing environmental permits relating to water pollution. The Authorities each administer permits in a region covering approximately one third of the country. The Regional Environmental Authorities, of which there are 13, cover smaller areas and have a remit to deal with issues relating to air pollution and waste. Regional Environmental Authorities also have a dual role in the permit process as they are responsible for both processing and monitoring environmental permits. The third category of authority lies with municipal administrations and deals with permits with more limited local impacts, such as petrol stations and small-scale quarrying.

This study was done in three distinct sections, covering all participatory opportunities in the environmental permit process (Figure 2). This includes the hearing of stakeholders during the permit application and processing stage, as well as appeal for judicial review after the permit decision. The different sections were not done in chronological order following the course of the permit process, although they do complement each other and provide a comprehensive view of participation in environmental permit processes, and the impact of this participation.

Case studies are central to this study, complemented by different kinds of qualitative and quantitative material. This includes the documented material relating to the cases in question, such as permit decisions and correspondence – where available – between parties. Appeal documents were obtained for certain cases, and comprehensive interviews have been done with: permit officers; directors of permit authorities; judges at the Courts processing permit decision appeals; and most importantly perhaps, permit applicants and stakeholders participating in the permit process.

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<sup>1</sup> The three permit authorities are: the Environmental Permit Authorities – formerly Water Courts – and the Regional Environmental Authorities, both of which are part of the national environmental administration, and municipal environmental authorities



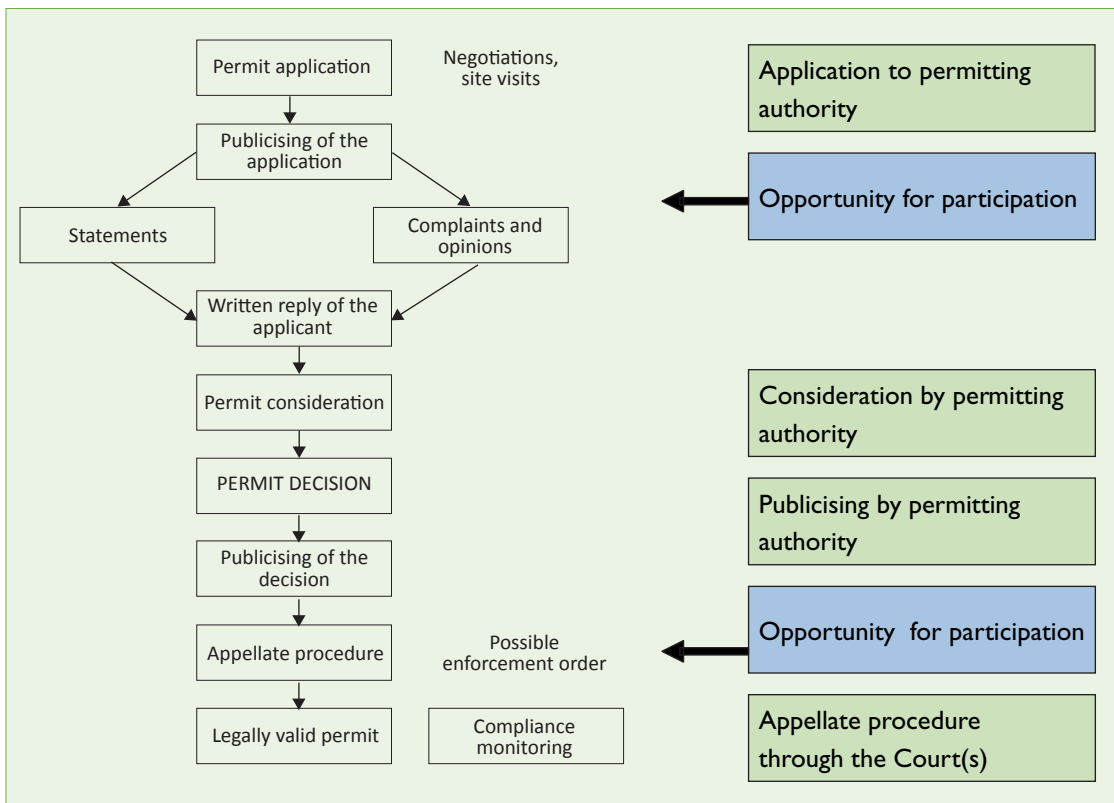


Figure 2. Environmental permit process (adapted from: [www.ymparisto.fi](http://www.ymparisto.fi) - Lupa-asiat - Ympäristölupa)

## Methods - Regional assessment for case selection

In this phase of work, a regional environmental decision-making study was done to explore the differences in permit processing practices between permit authorities in Finland. The primary aim of this was to determine how the attitudes of environmental permit authorities towards public engagement differ in order to classify them on a scale ranging from a positive to a more negative orientation, or from the purely reactive to a pro-active attitude to public participation. This was done in order to provide an understanding of the institutional context of participation, and also to provide a case-study selection tool based partly on authority attitude.

Interviews relating to public involvement policies and practices were done with key staff members in all sixteen Regional level environmental regulatory bodies (13 Regional Environment Centres and 3 Environmental Permit Authorities). Interviewees were chosen based on their experience in processing environmental permits, as well as their awareness of the goals and strategies of their particular authority. All interviews followed the same thematic sequence covering practices and requirements of the participatory system, perceived benefits and disadvantages of participation and perceptions of the usefulness of participation in the environmental permit system. Interviews were analysed using NVivo software. The results, together with data on complaints (see section on judicial review) were then used to categorize the sixteen organisations as either positively disposed towards public involvement or less positively oriented towards public involvement.

For this categorisation, seven themes as listed below were chosen from the interview questions which offered the most concrete evidence of both attitude to participation

and the practical implementation of participatory processes in the different permit authorities.

- Perceived usefulness of participation
- Perception of how participation contributes to the permit decision
- Interviewee does more than the law requires for participation
- Interviewee would want to do more but is limited by resources/ time
- Opinion of the adequacy of current system (environmental permit system participatory process)
- Communication practices - allows participant calls/ flexibility in acceptance of participatory input
- Encourages applicant to have contact with stakeholders

In order to obtain a scale of attitudes, each authority's response to these questions was rated positive (=1), neutral (=0) or negative (= -1) to give a total score. This measure for attitude is complemented by some narrative support for the ranking based on quotes from the interviews (see Appendix 1). A range of 0-1 was given when responses were somewhat ambivalent but biased to the positive, or inconsistent through the interview with either neutral to positive or positive to neutral.

## Methods - Permit procedure study

In the case study section of the study, a case was defined as an individual permit deliberation event, covering the process from application to permit decision, and including all parties and material involved from pre-application discussions to the public permit decision. In certain cases, the permit decision was contested and judicial review was initiated, but this process was not completed by the end of the study, so the full spectrum of events could not be included. Nonetheless, as all main case interviews were done at a similar stage during deliberation, most elements are present in all cases.

In order to obtain a diverse and large enough sample of cases, it was decided that each authority should be represented by 2-3 cases, each involving at least 3 interviews with key parties: the permit authority (decision-maker); the permit applicant (polluter); a participant.

Case choice was determined by three criteria:

1. the environmental permit case was to be ongoing at selection (01.02.2007), i.e. the permit application had to be submitted, the process of hearing stakeholders had to be done and the permit decision still to be made
2. the environmental permit case was to have been subject to some participation
3. each region should have – if possible – at least one case concerning animal shelters, one concerning waste processing and a non-specific third case

The first two criteria were clearly necessary in order to select cases at an appropriate stage for assessing the dynamics of permit deliberation and participation, whereas the third criterion was based on evidence from the complaints study stage of objective 2 where both waste processing and animal shelters were found to be both common activities and permit types giving rise to most complaints at judicial review. As the minimum number of cases per authority was two, the third optional case was left unspecified depending on the nature of potential cases available.

A total of 10 cases were finally chosen, with a total of 30 interviews done. Some permit authority interviews concerned more than one permit case, as the

permit authority interviewees were the members of regional environment- or permit centre staff directly responsible for managing the case.

The cases were selected from four regional environment authorities, and one environmental permit authority. Etelä- and Pohjois-Savo were chosen, as although differ slightly in orientation towards participation they do offer a vertical element in the scrutiny of participatory practices in the different permit authorities. The other two authorities were selected based on the two extremes of the attitude range as ranked in the regional assessment. These are also at the extremes of the country, as the most pro-active authority according to this analysis is Uusimaa in the south, and the most passive is Lappi in the north. To complement the regional environmental authorities, one environmental permit authority was also selected. These differed little in the attitudes analysis, and therefore the East of Finland Environmental Permit Authority was chosen to complement the choice of regional authorities and municipality authorities in this region.

It was hoped that the case studies could reflect the range of participation in certain types of permit, and we aimed to select those cases with a relatively high level of participation. However, in limiting the areas from which the cases were selected we did not consider the number of ongoing cases suitable for our study. This proved problematic in later case selection as Pohjois-Savo for example had very few ongoing cases. Of these, a very limited number had any participation at all and therefore we were restricted to these cases where at least some participation had taken place.

The reason for the low number of ongoing cases, and very low level of participation may be circumstantial, but it is also possible that this is evidence of a general apathy in the region. Pohjois-Savo is not a wealthy region, and much of the population is rural. It is an area experiencing population loss towards the west and the south, and very little industry or other economic activity is being developed there. The case studies should enable further analysis of the reasons for low participation in Pohjois-Savo, and the objective 3 study on municipalities may also reveal evidence to support or contradict the apathy hypothesis.

Where possible, the most active participants in the case were invited to be interviewed, based on queries to both permit officers and other participants. This snowballing method narrowed the lists of possible interviewees down to two or three in cases with many participants, and contact was attempted with all of these. A number of possible interviewees refused, and some were not possible to contact, leaving at least one interviewee per case, but rarely more.

Each case has also been given a general conflict rating and a size rating. The size of the permit case is roughly determined according to the legal limits of the activity and its area of environmental influence. Activities rated small have localised effects and are narrowly within permitting limits. Activities rated large have wider-reaching and more varied environmental effects, and fall well within permitting requirements. The conflict rating ranges from high to low, and is intended to be indicative of historical conflict and intensity of participation.

Table 1. List of cases

Identification	Type of activity	Region	Size	Conflict rating
UUS 1	Waste processing, recycling	Uusimaa, Espoo	Large	High
UUS 2	Animal shelters, pig farm	Uusimaa, Porlammi	Large	High
ESA 1	Waste processing, landfill	Etelä-Savo	Large	High
ESA 2	Animal shelters, dairy farm	Etelä-Savo	Small	Intermediate
PSA 1	Soil landfill	Pohjois-Savo	Small	Low
PSA 2	Waste processing, scrap metal	Pohjois-Savo	Small	Low
LAP 1	Animal shelters, dairy farm	Lappi	Small	High
LAP 2	Forestry industry, glulam factory	Lappi	Small	Intermediate
ISY 1	Ore and mineral, copper mine	Eastern Finland, Kylylahti	Large	High
ISY 2	Peat extraction	Eastern Finland, Lakeanrahka	Large	High

Returning to the results from the attitude survey and complaints analysis, cases were considered in light of degree of conflict (see Results section). Although each case has been chosen on the basis of participatory activity, some cases have clearly attracted more attention than others. The Uusimaa cases both have high levels of participation, and both have a history of local disagreement and some degree of conflict between participants and permit applicants. The Uusimaa permit authority was ranked as most positively disposed towards participation, but also had the greatest proportion of complaints made per permit decision. Pohjois-Savo was ranked second in terms of attitude, but had clearly lower levels of complaint, close to the overall mean. The cases from this region were fairly minor, with very little participation. Of note here is also the fact that very few cases were identified in the region overall with any levels of participation, suggesting either a quiet time in terms of permit activity, or a more general passivity.

Etelä-Savo was ranked fourth according to attitude to participation, but with a higher complaint rate than Pohjois-Savo. The cases selected from Etelä-Savo had a fairly high participation rate, and one of the cases was clearly a high conflict situation. The fourth environmental authority from which cases were chosen was Lapland, which was ranked last, as most passive in the attitude survey. The cases identified in Lapland were fairly minor in terms of environmental significance, but both had some participatory activity. The regional permit authority had not been ranked previously, and was chosen for methodological reasons. Nonetheless, the cases selected have a fairly high rate of participation, and concern high interest activities: peat and mining.

All interviews were done in Finnish to facilitate spontaneous responses from the interviewees. Where possible the interviews were conducted face to face and close together, although a few of the interviews had to be conducted by phone at a later time to accommodate interviewees' schedules and commitments. Interviews were transcribed and coded into the NVivo software analysis tool according to the coding framework shown in Appendix 2. The coding frame is in English to facilitate reporting of the cases in English.

In addition to interviews, the granted environmental permits were carefully analysed to assess the formal response of both permit applicant and permit authority to the input from participants and official bodies giving statements on the case. This was in turn correlated with the interview material to get a more comprehensive view of the response to different types of input to the process, and how responses differ between input from experts and non-experts.

For each case study, a short narrative was done to summarise key characteristics of the case and the dynamics of permit processing according to the headings listed:

1. Case description, including applicant, field of activity, region and any characteristics specific to the application (renewal, new activity, expansion etc.)
2. Key events and milestones, including any pre-application information sessions or meetings between applicant and authority
3. Nature of participation, who participated, details from the participant who was interviewed
4. Authority view
5. Applicant view
6. Issues arising, outcomes etc.

Using the narratives, we seek to frame the cases and participation in the permit process according to the four main themes of the overall EMLE project: law, participation, effectiveness and cost

## Methods – Complaints study

As an important participatory opportunity in the environmental permit system is access to justice through judicial review, this instance of participation was included in the study. The research involved the extraction of data relating to all complaints made against environmental permits, including the details of the permit application, litigant, nature of the complaint and court decisions. We included complaint cases adjudicated by the Vaasa and supreme Administrative Courts between the period beginning at the implementation of the Environmental Protection Act in March 2000 until June 2005. Overall, the aim was to build an understanding of the complaints process and what was happening in practice, and to find out what the impacts of participation at this stage of the permitting process are. The data was first analysed to obtain a thorough description of the dataset: e.g. who the litigants are; what the key issues and activities that lead to complaints are; what the courts decide and on what grounds. Further investigation was done to reveal differences between permit authorities in terms of complaint rate, and also what effect the complaints have on the environmental stringency of permits.

Other data used for the study of municipality-issued permit appeals was collected from the regional environment centre of the Uusimaa region, in order to enable some form of comparison between the permitting authorities whose permits are appealed. The same timeframe as above was used in data collection.

Key factors associated with a sample (Table 2) of 862 (713 from VaaHaO, 149 from KHO) cases were extracted from the register to Excel database and these data were then analysed using Excel and SPSS 11.

Table 2. Composition of the sample

Timespan	KHO sample	VaaHaO sample
I March 2000-31 December 2001	100% of all referred cases	100% of all referred cases
I Jan 2002-31 December 2004	100% of all referred cases	70% random sample of all cases referred
I January and 31 May 2005	100% of all referred cases	100% of all referred cases

For each extracted case a set of 43 factors were recorded that related to the nature of the dispute, timing of the process, parties involved in the process as well as the nature of the objection and the grounds for the final court decision.

To complement the quantitative data and to enable a reflection on the process and current situation in relation to the previous regulatory structures, interviews were carried out with members of both courts involved in adjudication. The thematic interviews covered topics such as the effectiveness of participation in judicial review and what the barriers to participation are. All interviews took place at the convenience of the respondents, all but one were conducted in Finnish and all were recorded and fully transcribed. Ten interviews were conducted with key respondents at VaaHaO and KHO. Interviews lasted between 55 and 100 minute and were all audio-recorded and fully transcribed. Finnish is the language used in the administration of the permits and was also the preferred language for most of the interview subjects. One interview was conducted in English as this was acceptable to the respondent and enabled all members of the research team to participate in this phase of the data collection.

Interview subjects were selected to include Councillors to the panel of Justices assessing each case as well as Justices of different expertise working on environmental permit questions. This approach ensured that we incorporated the views of all the different types of professional staff associated with the handling of disputes in both courts. Prior to the interview a brief outline of key topics relevant to the research were sent to respondents, including:

1. What kind of cases are presented to VaHaO and KHO?
2. How and why do VaHaO and KHO judgements modify a permit?
3. Are there patterns in the nature of complaints being presented and the litigants bringing them before the VaHaO and KHO?
4. What are the impacts of the VaHaO and KHO review mechanisms?
5. In what way has participation affected the environmental (credentials) of permits emerging from the judicial review?



# Results

The results are presented according to the structure of our conceptual model, with relevant findings from the different elements of the study combined under the headings of law, participation, output, outcome and side-effects. An additional heading was added as the role of knowledge emerged as a reoccurring theme in the data collected, and this presents some scope for further study.

Case summaries are presented as an appendix (see Appendix 3) including more detailed descriptions of the parties involved, their relationships, some brief background material and context of the permit application.

## Law

### Role of law

*The law provides the framework for the permit process, providing minimum requirements for participation, pollution levels, rights and responsibilities. The law also contains elements requiring some interpretation by permit authorities, providing flexibility but also leading to non-standard practices in terms of participation. Understanding and knowledge of the law is different between actors in the process, causing conflict and misunderstanding.*

The law is the key determinant in the form the permit takes, with some permit officers conceding that the features that participation can affect are very limited. The law establishes what the permit thresholds are, what the responsibilities of the permit applicant are as well as the absolute maximum emissions limits for different activities and pollutants. However, the flexibility of the law is interpreted differently by different authorities. For example, formal participation is mainly taken to mean participation through written comment during a specific space of time during the permit process. However, certain authorities take a more flexible view of what constitutes formal participation, and some accept oral statements as well as written comments to facilitate participation (see also 'Forms of participation').

The law also has deliberately flexible elements in it such as the notion of Best Available Technique (BAT). Where a permit applicant is required to implement BAT, some guidelines exist but essentially it is interpreted on a case by case basis, often by the permit applicant. This means that the permit officer cannot be overly prescriptive in requiring certain types of technology or technique, as the permit applicant can appeal to financial or technological restrictions when arguing for their method of choice. Any argument relating to technique or technology by participants other than the applicant is therefore limited in its potential impact.

The law governing the environmental permit process is integrated to cover a number of types of polluting activity, but it is not exhaustive. The environmental permit process concerns emissions from an activity to air, soil and water. The law also covers neighbour relations, but in environmental terms it is the emissions from the activity, once in place, that are the focus of the deliberation process. This means that certain environmental issues are effectively excluded from the permit – partly at the discretion of the permit officer – such as biodiversity issues relating to the siting of the activity. One NGO representative when participating in a peat extraction case felt that the limited remit of the environmental permit lessened its environmental value.

Similarly, the permit process regulation is concerned only with the emissions from the point of the activity, which can both cause confusion to participants as well as excluding certain polluting activities from the permit process and permit details. Slurry spreading is a good example of this, as cattle shelter permits do not take into account what happens to the slurry once it has left the site of the cattle shelter itself. This means that the spreading of manure and slurry on fields further away are not covered by the permit, although many public participants are not aware of this fact. The fact that other regulation covers the fate of these wastes is not often known by participants who feel that the use of wastes from an activity should be covered by the same regulation as the activity itself. Clarifying this situation to participants, or including some element to the permit covering the spreading of slurry on fields for example could help resolve many conflict situations.

## Approaches beyond the law

*The law sets out minimum requirements for the process, but does not rule out greater participatory activity. Evidence of activities implemented by authorities beyond the minimum are few however, and more proactive approaches to permit cases by participants are also rare.*

Very few initiatives are made by permit authorities to strengthen the participatory process beyond the minimum requirements. Permit officers claim to be stretched for time and in some cases also feel that there is little interest among the public to participate unless they have a particular grievance relating to the activity in question. The more active party in attempting to involve the public is often the permit applicant, with larger organisations following company policy to maintain an open relationship with local inhabitants by organising public meetings and information events. This kind of activity is not required by law, as the primary body responsible for informing the public on permit activities is the permitting authority.

The use by participants of informal participatory avenues are also rare in our data, with one notable exception. Many participants interviewed agreed that the current participatory process was functional and sufficient, and felt that they had enough of an opportunity to affect the decision, and trusted the authority to act correctly, one participant stating for example that ‘.. of course we have to accept that the permit authority will make the right decision based on all the information we have provided ...’. However, one ‘super-activist’<sup>2</sup> had gone to great lengths to contact other local authorities associated with the case in order to involve them and generate support for his arguments. He had also written letters to local media and had been active in trying to rally support from other neighbours to act against a landfill development that he opposed. He did not feel that the participatory process was insufficient in general, but did not have trust in the permit authority or permit

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<sup>2</sup> we return to this category of participant later in the results section

applicant, and felt greater pressure was needed from third parties to add strength to his own arguments.

In the same waste treatment case, a spokesperson for local inhabitants also appealed to the law outwith the permitting process, claiming to the authorities that the permit applicant was acting illegally. Such appeals are rarely successful however, as any crime report is made to the police rather than any environmental authority, and the police rarely has the expertise necessary to pursue cases of environmental crime before they expire.

## Abuse of law

*Most actors behave in line with the law, and instances where the law has been directly abused are rare. However, different parties view the application of the law in different ways; such as the resubmission of comments by participants which is considered to be abuse by applicants but simply an exercise of a right by authorities.*

The law gives some flexibility of interpretation that different parties in the permit process may exploit, but it also contains elements which may be used in an abusive way by a malicious party. An example of an allowance within the law that can be exploited, highlighted by a permit officer and often referred to by permit applicants in interviews, is the right that participants have to complement their input after submission. Submitting additional material means that this must be forwarded to the permit applicant who then needs to respond to the new material, regardless of whether a response to previous participatory input has been submitted to the permit authority. Extensive resubmission on the participants' behalf can significantly extend the permit processing time. However, many permit authorities do not consider this to be an abuse of the law, but an important right that should encourage participation.

Very little evidence of this kind of abuse was found in interviews relating to the cases chosen, although many applicants referred to this as commonly befalling them. Some interviewees conceded that they had made this kind of submission, but their intentions were founded in perceived deficiencies in information provided by the permit applicants, rather than the desire to hamper the decision-making process.

## Participatory process

### Attitudes to participation

*The participatory process in environmental permit processing is regulated by standards established by law, although each case is decided individually by permit officers. Despite the standardised aspect of decision-making, it is therefore likely that the decision-making processes are affected by the preferences, expertise and attitudes of those making the decisions. However, when examining the attitudes of permit officers towards participation, very few differences emerged on an authority basis, and any differences that were found related to the proactiveness or passivity of respondents towards implementing participatory process. Correlating the attitude survey results with permit complaint levels on an authority basis did suggest a positive relationship between the activity of the authority and participatory activity.*

As the environmental permit process is administered by a number of authorities in different geographic locations, with different local economies and cultures, it is conceivable that the attitudes of different authorities institutionally and different

officers personally towards participation could vary considerably. If this were the case, this attitude – proactive or even negative – could affect the way in which participatory processes are implemented and to what level participation is encouraged in the environmental permit process.

In general, the regional environment authorities interviewed recognized both the necessity and value of including participatory processes in the environmental permit system, and were also very clear on their responsibilities to the public vis-à-vis the law. As the current permit system was introduced only five years prior to the interviews, most authorities were still experiencing a settling-in phase where the new system had not quite become routine. The new legislation also brought new industries under permitting requirements and therefore all authorities - with the exception of those with least permitting activity - were still experiencing very heavy workloads and delays caused by lack of resources. For these reasons authorities tended to fulfill the requirements for participation imposed by the law but had a pragmatic view on any further actions they could take to encourage participation, such as public meetings and the development of useful and accessible information channels.

In terms of the minimum legal requirements for participation, the law leaves little space for interpretation in practice. However, where standardization is not possible, flexibility is apparent in the way authorities meet legal requirements in the following:

- the range of stakeholders in each permit application (assessed case-by-case according to activity and geographical conditions)
- the means of informing stakeholders of the application (constrained partly by resources, assessed case-by-case)
- the nature of input permitted from stakeholders (authorities' attitude dependent)

Some flexibility is apparent in the identification of stakeholders potentially affected by the proposed activity, where a first demarcation is made by the permit applicant followed by a review and possible modification by the environmental authority. Most authorities adopted a precautionary approach and preferred extending the range of stakeholders to restricting it.

Of the full interview analysis certain categories were chosen for ranking purposes and the results are displayed in table 3 below (see also Appendix 1 for authority summaries).

Table 3. Scoring and ranking of regional environment authorities by attitude to participation

Authority	Perceived usefulness of participation	Participation contributes to permit	Does more than law requires	Wants to do more, but for resources/ time	System is adequate in this form	Communication allows input by phone/ flexible	Encourages applicant to be proactive (regarding participation)	Score	Rank
UUS	1	1	0	0 - 1	1	0	1	4 - 5	1
PSA	1	1	0	0 - 1	1	0	0	3 - 4	2
HAM	1	1	1	1	0	-1	0	3	3
ESA	1	0 - 1	0 - 1	0 - 1	0	1	0	2 - 5	4
LSU	0 - 1	1	0	0 - 1	1	-1	1	2 - 4	5
PPO	1	0 - 1	1	0 - 1	1	-1	0	2 - 4	5
KSU	0	0	1	0 - 1	0	1	0	2 - 3	7
PKA	1	0 - 1	0 - 1	0 - 1	0	0	0	1 - 3	8
KAS	1	0 - 1	0	0 - 1	0	0	0	1 - 3	8
PIR	0 - 1	0 - 1	0 - 1	0 - 1	0	0	0	0 - 4	10
KAI	1	0 - 1	0	0	0	-1	0	0 - 2	11
LOS	0 - 1	0 - 1	0	0 - 1	0	-1	0	-1 - 2	12
LAP	0	0 - 1	0 - 1	1	-1	-1	0	-1 - 1	13

According to this ranking, differences in passivity and proactivity can be perceived between authorities, and there appears to be a negative correlation with complaint rate at judicial review stage with this ranking (Figure 3). The complaint rate in the graph shows the percentage of permit decisions that were the object of complaint for each regional environmental authority. To some extent these percentages are linked to the overall amount of permit activity in the authority, with a large amount of permit decisions being correlated with a higher relative complaint rate. Size does not account for all differences however, and other factors – such as the level of proactivity – are likely to be at work.

This apparent correlation presents something of an interpretative challenge as those authorities with a more positive and pro-active orientation towards participation appear to be those whose permit decisions cause most disputes at judicial review. A possible explanation can lie in the more pro-active nature of inhabitants in regions with a pro-active environmental authority, or perhaps the presence of polluting activities which encourage both inhabitants and authorities to action in terms of participation.

Interview data from the outlier authority PSA (Pohjois-Savo) suggests that the low complaint rate is related to both public passivity and the low-risk nature of much of the activity requiring a permit in the region. On the other hand, another outlier PKA (Pohjois-Karjala) suggests that a few large high-profile permit cases can raise untypical levels of complaint, which appeared to be the case in that region.

Permit authority attitude is therefore not a sufficient factor explaining differences in activity at the permit complaint and judicial review level, and the other features of permit cases and permit dynamics must be examined in order to explain participation activity.

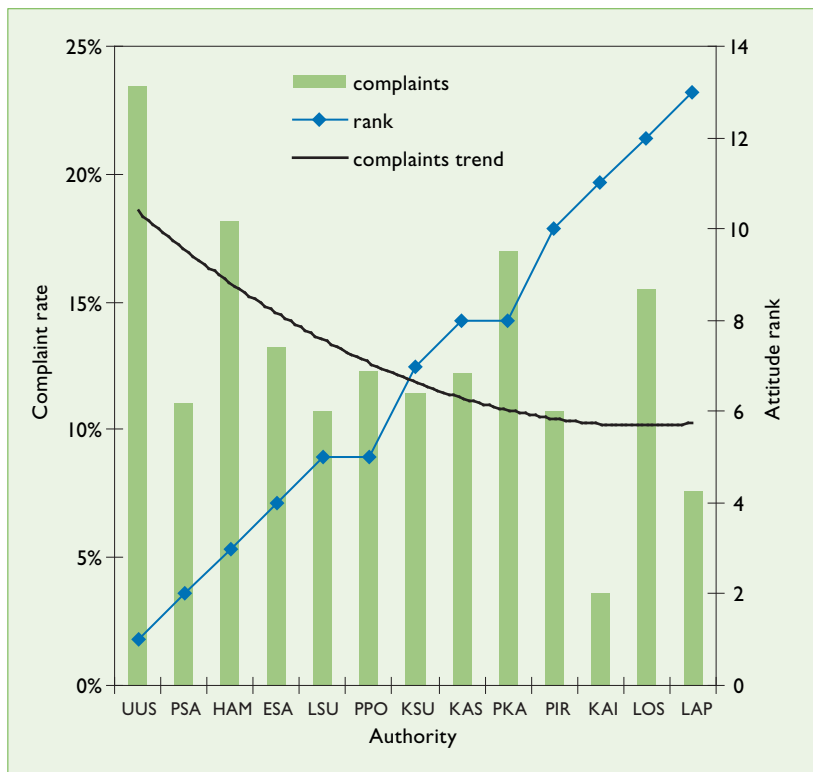


Figure 3. Complaint rate at judicial review with attitude ranking by authority

## Interaction and communication

*Interaction and communication is key to any participatory process, and we sought to assess the extent, nature and impact of communication between parties. The strongest links were found to exist between permit applicants and authorities who interact and communicate extensively and develop routinised communication pathways, whereas participants were required to be far more active in order to interact. Pathways for participation are largely passive and non-discursive, which has a negative effect on levels of participation and successful sharing of knowledge and information.*

The main forms of interaction during permit application and deliberation processes are written communication between the permit applicant and the permit officer. Often these parties also meet, sometimes in order to discuss the formulation of the application, but most often during a site inspection following application. Participants communicate directly with the permit authorities when commenting the application, but may also be in contact to gain more information. Direct contact between applicant and locals is rare, and often limited to participation at an information event where these are held. In practice, few permit applicants host public events, and only two of the permit applicants interviewed had done so in our study. Both of these cases concerned high profile and potentially high conflict activities where the permit applicants could be classified as large organisations. Other applicants did not consider a public event to be necessary, apart from a single cattle shelter applicant who saw an open day as a possibility to liaise with neighbours and other stakeholders. Each of these applicants considered the likelihood of poor attendance to be high, and this was a strong motive for not hosting an event or open day.

Figure 4 shows the main interaction links between parties in the permit process. This simplified diagram attempts to demonstrate the extent of communication that seems to be happening. This restricted communication - as opposed to the possible three-way interaction between authority, applicant and participant - that the permit process can be limited to is particularly evident in a mining case in the east of Finland. In this case the permit applicant considers the environmental permit to be a contract between authority and permit applicant, rather than an issue of public concern, and therefore both the contact with, and importance attributed to participatory input is minimal.

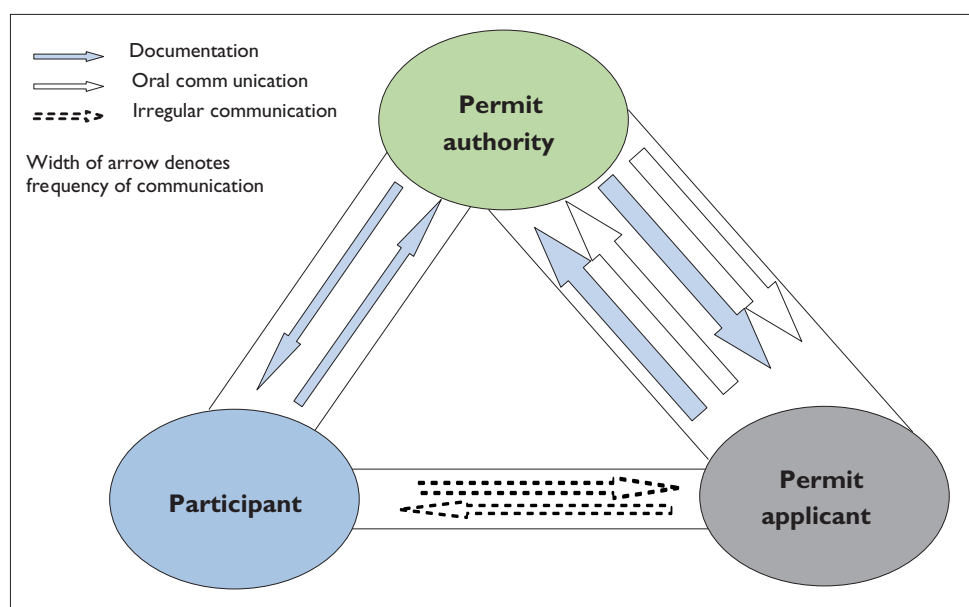


Figure 4. Main communication and information flows in the environmental permit process



Nonetheless, the law requires that potentially affected parties be directly informed of planned activities. The applicant identifies these parties, and at least this many are notified directly by letter of the application. Information relating to the application is posted on a municipal notice-board, on the authority's website and sometimes in local press. Any changes to the application are similarly disseminated. In approximately half of the cases studied, the information made public surrounding permit cases from permit authorities both prior to and during the permit process was deemed to be sufficient by participants. These were, for the most case, permits which were accepted – i.e. not taken to judicial review – by the public.

In other cases however, the participants went to some lengths to obtain additional information about the activity in question as well as about relevant law and technology. In one case for example, the permit application and processing relating to a waste treatment plant was considered by at least one participant to have been done in secret. On a general level, his feelings regarding the relationship between environmental authority and permit applicant were summarised in this statement, that ‘..suddenly this environmental authority has become an interest group representing the permit applicants.’ Too few neighbours had been notified directly, and an aggrieved neighbour found out from the municipality that a permit application had been made and activity was commencing. The hearing time had expired, but this was exceptionally lengthened so broader participation became formally possible. This particular participant also spent considerable amounts of time researching the past of the site the permit was applied for, as well as the latest developments in landfill operation.

In a second case, the most active participant was a permanent resident and had considerable knowledge of the legal and practical details of the site for which an animal shelter permit had been applied for, and had ‘.. a few cubic metres of documents and evidence.’ relating to the site. He had been in contact with the permit applicant, a relative newcomer to the area, but had not attempted to resolve what he felt to be a case of maladministration relating to the site with the permit applicant, but preferred to deal with the permit authorities instead. This stronger interactive link between participant and authority was therefore based purely on the participant's proactivity, and knowledge regarding the case.

Not all permit applicants were satisfied with the degree of communication between themselves and the permit authority. In the same animal shelter case as mentioned above, the permit applicant had met with different representatives from the permit authority and did not deem the communication among officers to be sufficient. She felt that the permit authorities were playing into the hands of participants, and had not taken adequate measures to study the practicalities associated with the demands the permit authority had made to the piggery. This case was an exception however, as in most other cases the permit applicants had few complaints regarding the degree and quality of interaction with the permit authorities. In fact, problems with communication and interaction were only mentioned explicitly in high conflict cases, where the permit decision was not accepted and the decision was taken to judicial review by one or more participants.

## Nature of the conflict

*Participation tended to be driven by some degree of conflict. In many cases, the conflict emerging was more complex and had causes that were far broader than the environmental permit case in question. Family feuds, long histories of malpractice related to a site and personal grudges against permit applicants were at the root of those cases with the strongest participation. The environmental permit process offered a conduit to vent these underlying conflicts, albeit without great hope of solving them.*

For the most part, participants expressed some degree of faith in the permit authority to both conduct the permit process correctly and take environmental and local comfort into account adequately in deliberation. However, in some cases, lack of trust in the permit authority to conduct permit processes adequately that formed at least a part of the basis for conflict. In one case this is explicitly mentioned by a participant as a key motivating factor for participation. The permit was seen to be handled as secretly as possible, to the detriment of local inhabitants and entrepreneurs. The participant felt that both environment and neighbours were effectively excluded from the process, and appealed to have participation time extended in order to open the process up to the public.

In a number of cases the permit process appeared to act as a vehicle for the continuation of a longer lasting conflict among the parties involved. In one of the smaller cases for example, the disputed permit application related to a farm which had been inhabited by a number of the current local inhabitants, and there was some history of dispute between old and new inhabitants and old family tensions. These were made explicit, and the permit process was seen to be a convenient way to express some of the deep-seated feelings about the neighbours and what they were doing. In a second case with some family history, the current permit application was considered by the most active participant to have been made on the basis of a series of legal and administrative errors and problems dating back almost 100 years. His participatory efforts were not concerned with the nature of the activity per se, but the fact that the site had been established and expanded on illegal premises. As a result, he also felt that attempting to resolve the issue with the permit applicant was impossible, as they were relative newcomers having purchased the site only five years earlier.

In other cases, conflict appeared to be closer tied to the environmental impacts of the permit activity. One industrial glulam case was dominated by the activities of one participant whose property was affected by dust from the industrial site, whereas participation in a peat extraction case was dominated by concerns over water quality issues. Nonetheless, it is likely that conflicts over environmental permits cannot be explained by the environmental impacts alone, and often there are other motivations driving participation and potentially leading the case to judicial review.

## Motivation and demands

*Motivation to participate, although driven at both the process and post-decision stage by what can be classed as matters of personal significance, do differ between participants. Formal participation, i.e. the formal comments, link closely to the professional capacity of the commenting body, and are related to the common good. This is also the case with NGO participation where motivation is clearly tied to the public profile of the NGO, be it environment in general, the local waterway or the local residents association. Public participants, where often couching their concerns in environmental terms are motivated by private interests, and their demands are accordingly linked to personal comfort and wishes. Competing investments are sometimes at the root of such participation. On the whole, these participants interviewed did express some trust towards the decision-maker, but were more reluctant to trust the permit applicant, often making demands more extreme than legally possible to meet.*

Most participants claim to have a clear idea of what the proposed activity will be, what its impacts will and what they expect from the permit authority. In at least one case however, the participant felt she had been pulled into a number of

participatory processes ranging from petitions to signing joint complaints without full understanding about what each initiative was about. Overall she opposed the very activity that the permit was applied for, but more in principle than with any detailed demands.

In about a third of the cases, participants were of the explicit opinion that the permit applicant could not be trusted or expected to take environmental impacts into account in their activities, and had little trust environmental claims made in permit applications as these have often been seen to change through the permit process. In this regard, participants saw it to be their role to remind the permit officer about salient issues relating to the activity, in order to ensure that these were accounted for in the permit details.

Most participants framed their comments in environmental terms, but also acknowledging that their concerns are related to both comfort and environmental well-being. These are often referred to as mutually inclusive, although issues such as smell and noise feature more frequently in comments than less tangible pollution. Water quality is of frequent concern, both for aesthetic and environmental reasons. Other participants however, such as the official commentators – municipalities, health boards etc. – have a more distinct focus on the environmental or health effects of activities, rather than elements relating to comfort. NGOs are also distinct in their motivation and demands, as they have greater concern for the public good depending on their focus, such as local environment, water or birds for example. In a sense, those few NGOs that are participating in environmental permit processes speak for those parties without a direct voice in the process.

In many permit processing cases, participants' demands have been extreme. The permit authorities feel that often participants' demands reflect both unreasonable expectations of what their participation can achieve, as well as a lack of understanding regarding the remit of the permit itself. In one example, two participants in an animal shelter case demanded similar restrictions to slurry runoff from fields into local waterways. As the permit concerns the shelter itself, the fate of the resulting slurry once it is spread on fields is not an issue to be covered by the environmental permit, but falls under other regulation such as the EU-wide Nitrates Directive.

Motivation for participating as well as demands made are also linked to the investment a participant has made which is seen to be threatened by the proposed activity. As noted below (see 'Who participates') temporary residents made up a large proportion of those participants interviewed. These residents have holiday homes in the vicinity of proposed (or existing, to be changed/expanded) activities, and are keen to see their place of rest and relaxation kept free of irritants such as noise, smell and pollution from farms and landfill. To them, the permit activity undermines their investment, mainly in terms of comfort but to some also in terms of future retail value. Few permanent residents were interviewed, and although this dominance of temporary residents may be an artefact of our sampling technique it may also be that permanent residents represent a minority group in environmental permit process participation. Their permanent homes in a certain area – although an important investment – do not embody those expectations of quiet and calm that holiday homes do. The cultural setting will also be more familiar, and practices less disturbing than to those whose visits are temporary. Therefore, for the temporary resident, this leisure-time investment can be seen to be threatened by the investment of the permit applicant, and triggers participation with the aim of protecting the holiday residence and the leisure/activities/qualities associated with it

This view is shared by certain applicants, who perceive some participants as having invested in a certain type of cultural landscape without an understanding

of the processes that maintain this landscape. One farmer noted about vacationers that ‘...when they come on holiday [the farmers] should stop living for the summer holidays.’. Many permit applicants make concessions to vacationers, either voluntarily or through permit restrictions, such as avoiding noisy or smelly activities during public holidays or a busy holiday period.

At judicial review level, motivation for participation can follow similar trends as during the permit process on a substantive level. Those participants, or others aware of the process but not active at decision-level who are not satisfied that private or common good has been sufficiently taken into account can lodge an appeal. However, appeals can also be made on procedural grounds. In our data, the most common appeals were based on concerns for a private interest, reflecting the anxieties of the most common litigants; private and groups of individuals and permit applicants. In the interviews with members of both Vaasa and the Supreme Administrative Courts we were told of the low incidence of appeals based on procedural errors. Our analysis supports these claims as procedural errors were the least common grounds for appeal, occurring in about 10% of the cases. This suggests that procedural errors are rare in the environmental permit process, and indeed a majority of Court members stated that the quality of environmental permit decisions made by the two types of regional permit authority were consistently high. Evidence from environmental permit decisions made at municipal level shows a higher occurrence of procedural error appeals. Nonetheless, Finnish Courts are mainly dealing with substantive issues in permit appeal cases.

As the environmental permit system was reformed in part to take into account requirements of the IPPC Directive<sup>3</sup> it now obliges all IPPC industry installations to be covered by an environmental permit. These are the largest installations and arguably the greatest potential sources of pollution. However, IPPC permits make up only 15% of all appeals, which is roughly equivalent to the proportion of IPPC installations of all permitted installations (MoE, 2008). This indicates that these major polluting activities do not necessarily form a greater focus of public concern than other activities. When scrutinising the data, the most likely activities to be brought to court appear to be relatively small-scale projects with relatively limited polluting (See Figure 5). Heavily polluting industries such as metal, chemical and energy production remain at the bottom of the rate of appeal league-table with only around one in ten permits ending up in court.

This figure does not show the full picture as the rate of appeals for relatively small-scale activities such as waste treatment and animal shelters’ permits is low, although these are the most numerous activities and installations for which a permit is applied. Overall, 70 per cent of appeals relate to the following sectors: livestock shelters and fish farming; waste treatment; extraction and processing of ores and minerals; petrol stations. These are also sectors where activity typically involves creating noise and smells clearly discernable in their vicinity, an attribute that all the interviewees identified as the most common basis for appeals by private parties. Conceding that this is partly due to the number of permits granted of this type of activity and installation, the judges we interviewed felt that larger and more complex installations were less accessible to lay members of the public and therefore less likely to provoke litigation.

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<sup>3</sup> COUNCIL DIRECTIVE (EC) 96/61 of 24 September 1996 concerning integrated pollution prevention and control (OJ L 257, 10.10.1996, p. 26)

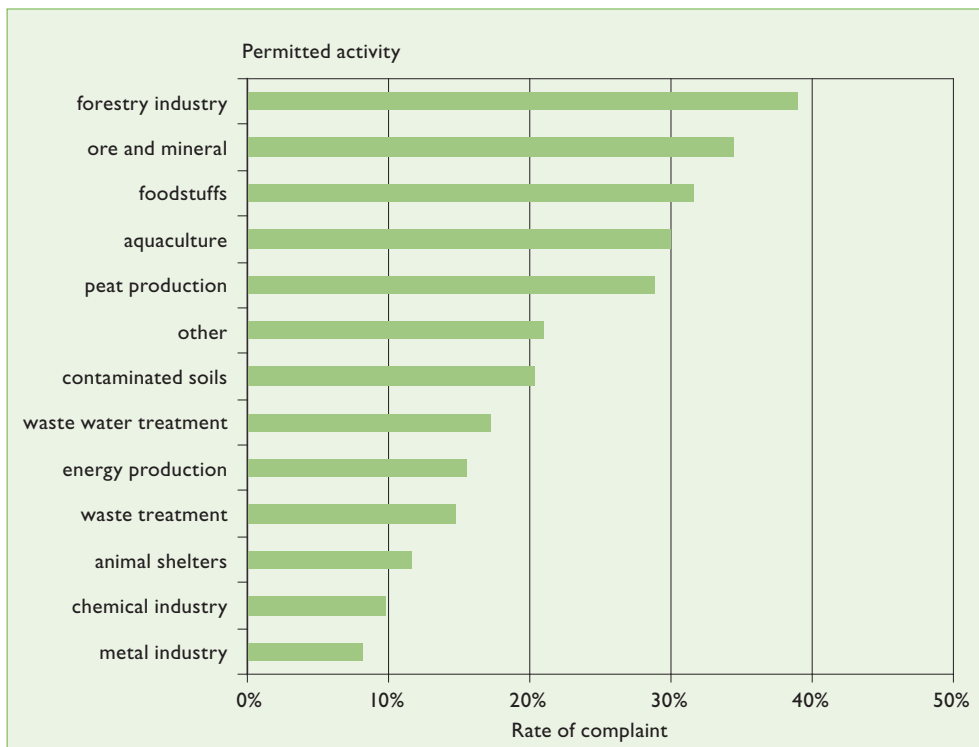


Figure 5. Rate of appeals for different environmental permit activities (Vaasa Administrative Court)

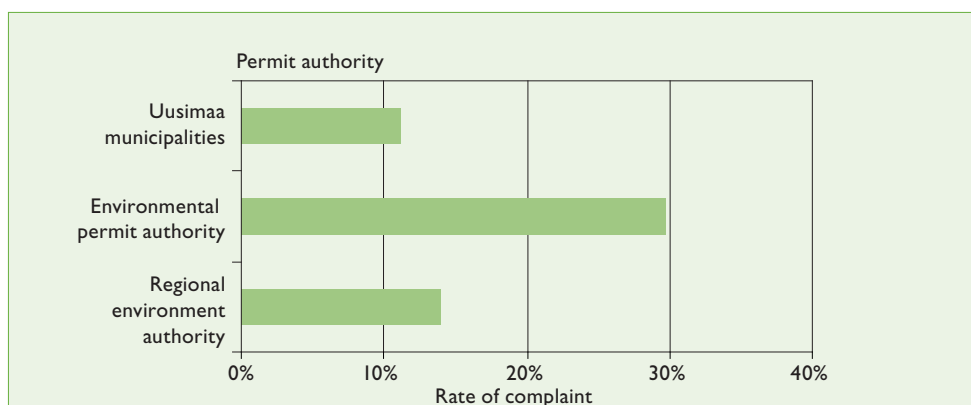


Figure 6. Rate of appeals for permits granted by different permit authorities (Vaasa Administrative Court)

Considering the differences between permits granted by the three different permit authorities, the findings in Figure 6 show that the appeal rates also vary considerably. There is no reliable data for all Finnish municipalities, but the evidence available from the municipalities in the Uusimaa region, which is the most populous part of the country, indicate that municipal permits receive the fewest complaints. Roughly the same number of appeals are lodged relating to decisions made by state and municipal authorities but municipal authorities grant far more environmental permits than state authorities. Overall the highest appeal rate concerns permit decisions made by the environmental permit authorities, which differ significantly from the others. The key reason for this pattern suggested by the Court interviewees is that the nature of the activities covered by the environmental permit authorities; the most contested activities, certain forestry activities, mining, peat production and aquaculture fall mainly under the jurisdiction of the environmental permit authorities.

These results suggest that the size of the activity or project that the permit concerns is not directly related to appeal rate, but rather it is more likely to be affected by the nature of the activity itself. This is evidenced by the fact that IPCC appeal rates are not significantly higher than those of other installations.

## Forms of participation

*Most participation takes place through the formal routes of comment and complaint. Only in few cases was there any evidence of informal participation through media involvement or direct contact between permit applicant and participant. Very few efforts to engage with the public beyond the minimum legal prescriptions were apparent.*

In the environmental permit process there are two key participatory opportunities. The first enables participation before the permit decision is made, and therefore has the potential to affect the decision-making process. The second key participatory opportunity is through judicial review, once the decision has been made. The two processes are rather different in nature as the first is administrative and the second is judicial. For the participant however, the input given to the authorities may not differ much between the permit process and judicial review process. Both instances of participation in the environmental permit process are exploited regularly.

Beyond these formal avenues for participation, stakeholders may choose to try and influence the permit process through informal means. Most participation in the permit process takes place along formal lines with written comments to the permit authority, although in a few cases participants have engaged in a range of participatory actions beyond the formal process. These included direct phonecalls to the permit applicant, talking to neighbours to activate them as well as writing comments for them to sign collectively, talking to the press, making reports to the police about the applicants' alleged criminal activity as well as communicating in a number of ways with the permit authority. This type of participation tended to be seen by both permit authority and permit applicant as excessive, and in the words of one permit officer '...tiresome and harassing...'. In their opinion, this form of participation was not supportive of the participant's case, and could in fact have a negative impact.

In considering the significance of the judicial review mechanism as an avenue for public participation a pivotal question is whether the mechanism is actually used or not. If it is a rarely used mechanism then the regulators would be justified in the assumption that it is not an element of practical use in the permit system and perhaps unnecessary to retain. However, our results show that during the first five years of the reformed environmental permit system a total of 1167 appeals were lodged with the Vaasa Administrative Court relating to 713 granted permits. A further 186 appeals were made to the Supreme Administrative Court regarding 150 permit decisions. As litigants can appeal jointly, the total number of litigants, 5472 at the Vaasa Administrative Court and 1322 at the Supreme Administrative Court was far higher than the total number of appeals.

To illustrate the significance of participation in judicial review, it helps to consider the rate of appeals with reference to the totality of permit decisions. The figures show that on average almost one in five permits of permits granted by the regional authorities are taken to judicial review, and in certain fields of activity this rate rises to one in three (Figure 5). With regard to municipalities the data available do not allow to present figures for the whole country, but only for Uusimaa county surrounding and including the capital city region. The appeal rate here was around 12%.

Judicial review is clearly a well trodden path for public participation in environmental permit decisions. These results are in contrast with the less than



10% of urban planning decisions in Finland which were appealed during a similar timeframe (2001-2005) (Wähä, 2006), despite planning decisions being more frequently associated with conflict and high levels of public participation.

## Who participates

*Few NGOs participate, and those that do tend to have come across the permit process in question by chance. Formal commentators are invited to comment and most often they do, whereas more participation by the public seems to be wanted. A large proportion of the those members of the public participating appear to be temporary residents with holiday homes affected by the polluting activity.*

Most participants have a direct personal interest in the activity the permit is applied for, or rather the effects of that activity. Some however have participated on the behest of other, more active, parties. They agree with the spirit of the comments made, but lack either the time, expertise or the motivation to activate themselves. A small proportion of the participants claimed to have participated in response to the information letter sent by the authority, interpreting this as an invitation to comment.

The most common type of participant interviewed was a neighbour of the site of the proposed activity. These were mostly temporary residents with holiday homes or owners of local businesses, and only one permanent resident was interviewed. Two of the participants were representatives of national NGOs, whereas a third was both a neighbour and representative of a local NGO. These interviewees are not typical, as NGOs tend to be very underrepresented in permit processes and judicial review – a pattern not limited to the environmental permit process as NGO activity in Finland tends to focus on a fairly narrow range of issues (Konttinen 1999) - whereas permanent residents make up a larger proportion of participants than interviewed here both in permit process and judicial review. Local businesses are also somewhat over-represented in our interviewee group as they make up a much smaller proportion of participants in the permit process, and of litigants at judicial review. Nonetheless, this selection enabled us to access a broad range of participant types

At judicial review stage, the vast majority of appellants were private individuals acting either personally, as represented by a spokesman or acting in groups. Figure 7 shows the dominance of private individuals in the body of litigants. In over 400 of the 713 permits appealed to the Vaasa Administrative Court were from private litigants. This category includes neighbours and other residents within the impact area of the proposed activity. The second largest group, the permit applicants, appealed permit decisions in only just over 200 cases while other potential appellants were active in less than 100 permit appeals.

Interestingly NGOs are rarely active in appeals, being involved as often as supervisory authorities, other businesses and other appellants such as citizen groups. Although it is difficult to obtain comparative figures, de Sadeleer and others suggest that NGO activity is far higher in some other European countries (De Sadeleer et al, 2005). Other authorities get involved in appeals in only a handful of cases.

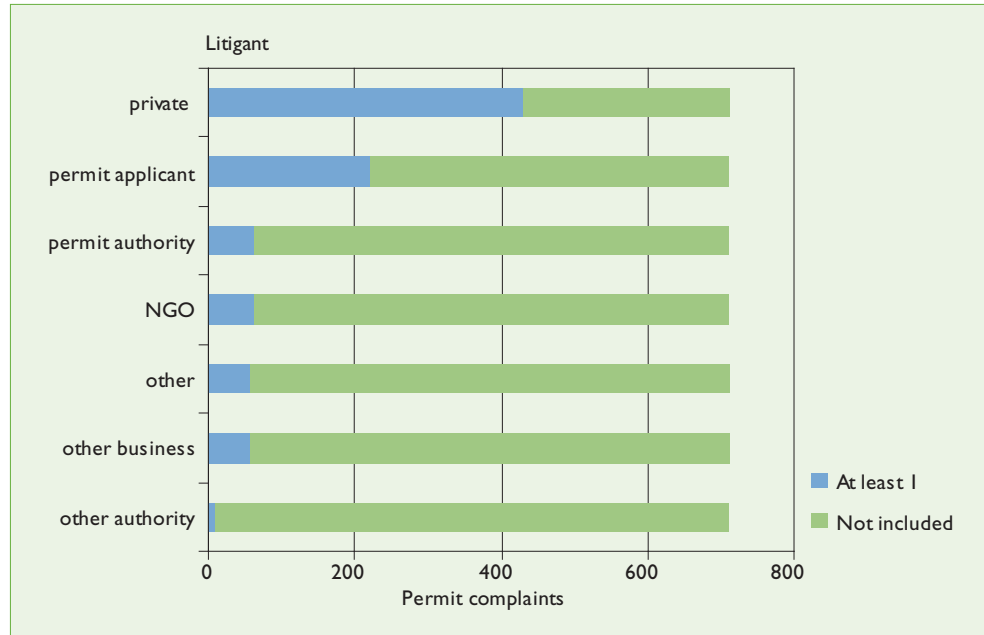


Figure 7. Litigants participating in permit appeals (to the Vaasa Administrative Court)

## The role and meaning of participation

*The role and meaning of participation is interpreted differently by the different parties to the process. Although many public participants feel that the formal participatory avenues available to them are the 'right' way to participate, it is not always clear to them what can be achieved through participation. Authorities expect constructive comments which illustrate the case to help them make decisions, whereas the permit applicants tend to see participation as more of a one-way informing exercise.*

A number of participants expressed the opinion that communication through the authorities, i.e. the permit officer, is the 'right' way to participate. Formal channels offer an opportunity to respond when comments are expected and any comment made should be formally noted/registered. This should enable proper handling of their comments and a good likelihood of having an impact on the process or permit outcome.

Conversely, some applicants felt that formal participation in the permit process through comments made to authorities would not help in solving a situation of conflict or disagreement. Some of the 'smaller' applicants, farmers or small business owners, felt that direct communication with neighbours could help solve issues better than going through the permit authority. Most were surprised at the type of comment that participants had sent, and would have been willing to discuss issues with neighbours first, to clarify any misunderstandings as well as listen to concerns and grievances, rather than reading comments sent to the authority and then responding through the authority. Personal contact was felt to be the better way to work things out.

Larger companies were more likely to view formal participation as the good participation, done on clear terms and in a controlled way. In fact, one of the largest permit applicants tended to consider participation to consist mainly of informing and reassuring neighbours, taking very little participatory input into consideration.

The NGO participants all feel they have a role in emphasizing the environmental risks associated with proposed activities, particularly in highlighting issues that may technically be beyond the remit of the permit itself, but may have serious

consequences. Some of these issues may also be important in terms of local comfort, but may have been overlooked by the permit authorities. In general, NGOs feel that the permit authorities possess sufficient environmental expertise to adequately handle permit process, but may be misled by dishonest applicants.

In terms of effectiveness and effects of participation, around a half of the participants interviewed felt that their input to the process would have little or no effect overall, but felt that when given the opportunity they should at least state their point of view or concern. Two interviewed participants explicitly stated that it was easy to respond when invited to comment by the authorities.

Permit authorities mostly felt that participation is valuable to them, and would like more of it. The main reason stated for this was to gain a better understanding of the local conditions and concerns, to help make each permit application more tangible or ‘..add flesh and bones..’ to the case as one interviewee put it. As most authorities are faced with limited resources to organise meetings and conduct thorough site visits, comments from neighbours and other stakeholders enable access to the details and subtleties of local conditions.

In judicial review, interviewees from the courts considered participation to seek redress to be a necessary and useful element in the environmental permit process. On the one hand the right to access to justice was mentioned by all interviewees to be of prime importance for democratic purposes, but the role of participation was also seen as an important element in a kind of quality control to ensure permit decisions were made adequately. Judges did not consider the role of participation as being to bring new information to the process as such, but rather to highlight problematic issues for review.

## Obstacles and enabling factors to participation

*The participation of the public and NGOs appears to be hampered by a lack of awareness of the process, as well as the lack of resources to be able to participate in what is seen to be an informed way. The environmental impacts of a case do not seem to determine the extent of participation, but often where a permit case is surrounded by other controversy (e.g. conflicts unrelated to the specific application at hand) the threshold to participate is lower.*

As no non-participants were interviewed, reasons for non-participation and critical obstacles to participation were not straightforward to identify. However, when considering the participants interviewed, of 10 only 3 were women and one of these was part of a group that had commented together. Almost all participants were men, middle-aged or older. Most were also well educated and were able to demonstrate a firm understanding of the nature of the case, as well as its potential environmental impacts. To many, the internet had been a key source of information, but many had also consulted with permit officers, colleagues, other experts and so on. Availability of and literacy in a certain type of information could thus be a factor enabling participation.

Certain participants interviewed commented on others who could have been in a position to participate but did not. In one such case, neighbourhood relations were seen to have been pivotal in keeping people from participating; ‘in order to maintain neighbourhood peace’.

An NGO representative claimed that in many cases where they might have participated in some way, either during an EIA process preceding a permit application or a permit process, they simply do not have the resources to spare to adequately comment on an activity, or do not find out about it on time. NGOs are legally treated as any neighbour to an activity, although they do not need to physically have an office

or a field station near it. No particular communication goes out to them beyond the standard local press and municipal noticeboard dissemination.

A number of authority interviewees were unable to explain why certain cases generate a lot of participation and why most do not. They could not link activity size or environmental impact to participation rate, but did recognise that in some cases the activity of a single person or group could increase participant numbers, but not necessarily increase variation in the nature of participatory input.

## Role of information/knowledge

Although the role of information and knowledge has been touched upon in previous sections, it is an important theme to be tackled separately also. The effectiveness of participation must be connected to the ability of the different parties to the process to understand the issue at hand, or at least to reach some common understanding of it.

Knowledge is key to the permit process, as the permit authority needs sufficient knowledge regarding the permit application and local situation in order to set the required permit conditions to keep environmental impacts within legal limits. This information is provided by the applicant in the form of the application, by citizens and NGOs through participation and by formal entities whose statement has been requested regarding the application. In-house expertise also provides a basis for decision making and ultimately the law determines the scope and limits of the permit. Information is key also to the public, first of all to enable any participation, but also to allow the participation to be salient. In applying, the permit applicant provides a template for the permit, and may engage a consultant to do all or part of the application work. Some applicants host information events in order to engage with the public before the application, in order to provide information about the project to neighbours and stakeholders, and possibly to hear local concerns and insights.

## Findings from the study

*Permit applicants in our case studies were almost unanimous in the sentiment that lay participants did not have the expertise required to comment and try to influence the permit decision. Despite many hiring consultants to help in applying, most felt confident in their own expertise in their field and did not need additional input from participation. The expertise of the permit authority was generally trusted. Concurrently, participants felt insufficiently informed about permit applications and the lack of expert knowledge was a hindrance to influential participation. Permit authorities were trusted as experts, but not permit applicants. The permit authorities appeared to be the only actors claiming to welcome participatory input without expertise. This kind of input – well-informed but not expert – was what the authorities wanted from participation, but were not getting enough of.*

### Applicant

The permit application is a key source of knowledge for the permit officer, and applicants are often asked to complement applications – up to 10 times in one case – with details of the proposed activity and its impacts. In a sense, all permit applicants are experts in their field, and are therefore most familiar with their own activities. However, they are rarely experts in the environmental impacts resulting from their activities beyond what they are required to do by law. Half of the applicants in our study outsourced the application process completely or partly to consultants, others used previous permit applications (their own or others' available on the internet) to help in composing the application.

One of the large permit applicants felt that different permit authorities had different requirements regarding the level of detail required in permit applications, and felt frustrated that there was no standard application that would satisfy all authorities but each application had to be tailored according to the authority in question. In addition, this applicant also felt that lay participants were not in a position to provide information to either the permit applicant or the permit authority, and should act purely as the recipients of information – in what Arnstein (1969) labels informing, or consulting at best.

Other applicants were less direct in questioning the validity of participant input into the permit process, although most agreed that lay participants were generally not in possession of sufficient expertise in order to comment and influence the environmental permit decision. Difficulties in communication in conflict situations were attributed to precisely this lack of expertise.

### **Participant**

Knowledge is key to all participants. On one hand, the prospective participants possess a degree of local knowledge that permit authorities cannot have unless they themselves are local to some proposed activity, and therefore they could always bring something new to the permit process. However, many participants feel that their knowledge is not enough to make a difference to the permit process, and here they refer to expert knowledge relating to some emission limit and nutrient load or technological solution. Local knowledge is rarely acknowledged as a valuable and useful resource by the participants themselves, and they feel less able to contribute than experts.

For those participants that had the ability and time to find out more about the permit process, their rights, the activity and its environmental impacts, knowledge was seen to be the justification for participation. They felt able to state their opinions with confidence that they had sufficient expertise on the topic, and offer suggestions or comment on particular issues with reference to

These participants were all educated men, and comprised the ‘superactivist’ group also mentioned elsewhere. In at least two cases these participants with technical knowledge claims had also provided information about the case to others with standing, and in at least one case had provided – through the provision of knowledge – the impetus for others to participate.

### **Authority**

The permit authority is responsible for making the permit decision with the knowledge available. Personal education and experience affects the type of permit officials are given to process, and the environmental authority possesses a range of expertise within its walls that is available for the individual officer to access. This knowledge base is complemented by the permit application itself in terms of specific implementation plans and technological applications; official statements from bodies such as the municipal environmental authority, local health authorities, employment and economic development centres and so on; and finally the input from other stakeholders, neighbours, NGOs, local businesses - those referred to as participants here.

A lot of the knowledge the permit officer has access to is therefore expert knowledge, from the general substantive expertise regarding the activity in question, to increasingly local and detailed knowledge acquired from official statements and the application. Non-expert opinion and input is provided through the participatory process. The permit officers themselves state that one of the key sources of information informing the permit decision is the body of official statements relating to each case,

but also that the local input really substantiates the case and helps in understanding the issues at hand.

In all of the cases the environmental permit authority (as opposed to the regional environment centres) was especially careful with the amount of detail obtained from the permit applicants and often sent requests for more. Permit officers from the regional centres appeared to have lower requirements, although did often request additional details. Some of the larger permit applicants bemoaned the differences in requirements between permit authorities, which suggests considerable differences in practice.

In order to contextualise the permit application, participatory input is sought from official sources, NGOs and local citizens. The permit officers themselves state that one of the key sources of information informing the permit decision is the body of official statements relating to each case, but also that the local input substantiates the case and helps in understanding the issues at hand. The permit officers do not seek additional technical input to the permit process from citizens, but rather opinions and impressions. One officer expressly stated that although sometimes well-informed, the technical points and suggestions made by participants referred to issues that they, the permit authorities, had already taken into account. What the officer really wanted was non-technical knowledge to guide his understanding.

## Output

### Permit conditions

*All permit applications were accepted, but some permit decisions differed considerably from the applications. The greatest changes were made to permit applications administered by the environmental permit authority, concerning areas to be exploited or water management plans. In most cases, participant comments and official statements overlapped to such a great extent that it was difficult to discern which had most influence on the permit requirements, and permit officers were generally unable to specify where a participatory comment had had greater effect.*

All permit applications were accepted, some almost as they were presented such as a well prepared animal shelter application, others with significant changes such as a peat extraction application. The greatest changes were made by the environmental permit authority, in response – to some degree – to demands made by both participants and officials giving statements. Overall, demands and concerns by the participants and officials overlapped considerably, with few cases giving rise to ‘original’ comments and concerns, e.g.

UUS1 – participants’ specific demands met, but the activity was not banned overall. The permit conditions are a compromise between participant demands and permit applicant plans e.g. in terms of working time

ESA2 – participants’ concerns were responded to but no significant changes to the permit application were evident

LAP1 – specific participant demands were responded to by appealing to existing regulation which covers those concerns, so as long as the activity is legal and fulfils legal norms it can continue

LAP2 – a specific plan needs to be created by the applicant and approved by the environment centre to deal with airborne dust pollution as per all participant comments,



however, conditions in the permit are vague by simply stating that necessary measures need to be taken to prevent dust from spreading into the environment

ISY2 – rejection of half of the surface area of peat extraction applied for, and stricter conditions on wastewater treatment, compensation, environmental monitoring. The permit was effectively a compromise between the permit applicants plans and participant demands

In one case, participant comments and official statements regarding a mining permit application were instrumental in the applicant reapplying with significant changes to the plan in terms of water management for example. The new application differed significantly from the original one and this second round application drew far fewer participation and was granted permit approval.

Not all permit decisions were accepted however, and five of the ten permits were the subject of appeal by participants. In four cases a complaint was expected by either the permit officer or the applicant, and in three cases the appellants were well-known to the permit authorities, so-called 'super activists'. In these cases there was a history of conflict, with superactivists forcefully opposing the activity that the permit was applied for. Both superactivists were doubtful that the permit applicant would respond in a cooperative way, and viewed litigation as the only means to attempt to block what they perceived to be unlawful activities.

The permit conditions have environmental significance. First of all, the permit conditions set by the permit officer will impose emission limits and other requirements in terms of noise and running time according to local conditions and current legal guidance. This means that in all cases where a permit has been granted, some level of environmental restrictions are applied. However, these may not be additional to the project plans, and may simply reflect the current practice in the industry in question. In those cases where the participatory input did affect the permit conditions, they led to stricter emission and noise limits, as well as often restricting the running time of the permit activity. In permits where there was no obvious change to planned activities, such as in the animal shelter case in Lapland (LAP1) a specific mention of existing regulation not officially related to the permit regulation was made, adding to the elements the farmer would have to consider when implementing the planned activity.

## Output from judicial review

*Judicial review was initiated in half of our study cases, which is a greater proportion than was found in the whole set of permit decisions made between 2000 and mid-2005. During this period approximately 20% of permit decisions led to judicial review, with some deviation between permit authorities. Within this group, we found around half of the judicial review processes to lead to some kind of action, such as the returning of the permit for re-evaluation or direct change in court. The changes made directly were mainly minor in nature, but this means nonetheless that approximately 10% of all permit decisions required some additional consideration.*

The question of what litigation actually achieves is central in determining the significance of judicial review in the environmental permit process. We examined the court decision data to explore the extent of changes to permits, the nature of such changes and also the type of litigant whose appeals were most often successful. The fate of appeals was classified according to court reaction or litigant reaction. The former group include rejection of the appeal, appeal accepted but no change to the issued permit, permit overturned, permit returned to authority (the original permit authority or another authority), and change to permit conditions. The litigant reaction category is limited to the withdrawal or lapsing of the appeal or complaint (combined in the same category of 'complaint lapsed').

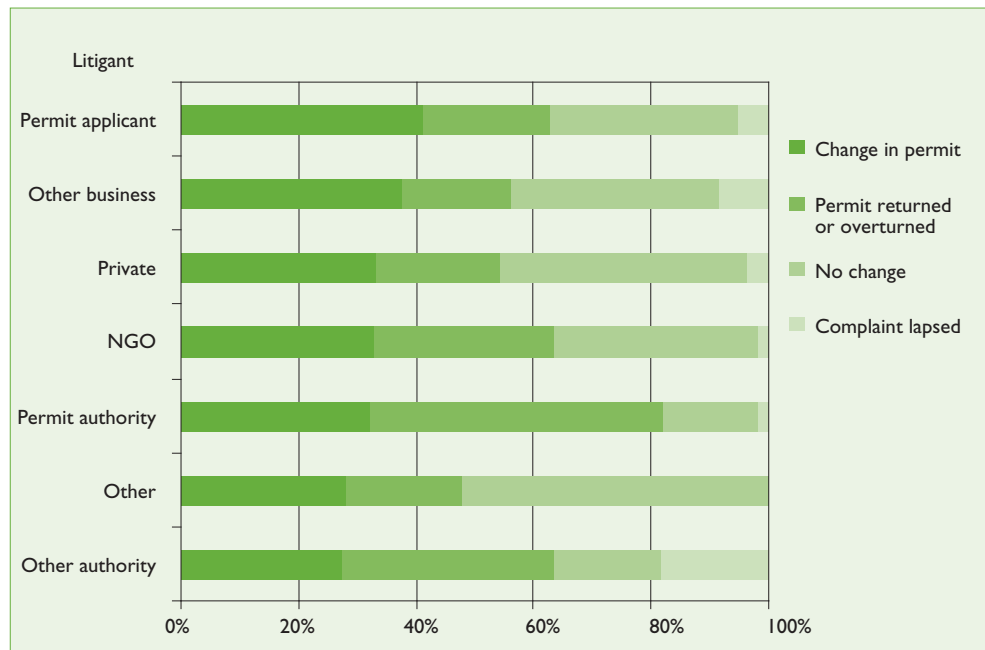


Figure 8. Court decisions on appeals by different litigants (Vaasa Administrative Court)

Overall, clearly over half of all appeals lead to changes or a return of the permit for reconsideration. Some indication of litigant success is shown in Figure 8, where it appears that appeals made by the permit applicants themselves are the most successful in achieving a change in the permit, whereas appeals made by authorities most often leads to the returning or overturning of a permit. NGOs are successful in over 60% of appeals, which compares favourably with NGO appeal success rates in other countries (de Sadeleer et al, 2005). Often appeals made by private individuals or groups, such as a fishing association, leads to the rejection of the complaint or no change in permit conditions. Nonetheless, a significant proportion of appeals made by the different groups result in some change to the permit as it is overturned or returned for reconsideration or reapplication. In total, the 'no change' category contains less than half of all appeals.

There are also differences in whose decisions are changed in court. As mentioned above, interviewees found the permit decisions made by environmental permit authorities and regional permit authorities to be of a generally high standard, whereas municipality decisions were more often found lacking. It follows from this that changes should be made more often on the basis of appeals made about municipality permits, and least often to permits granted by the environmental permit authorities. The low level of appeals relating to municipality decisions is therefore puzzling (see Figure 6) as one might expect poor permit decisions to be subject to more challenges. However, as municipality decisions are also challenged more often on a procedural basis, it is possible that participatory processes are not well implemented at the municipal level. Another explanation could lie in the nature of the activities administered by municipalities, their environmental impact as well as their proximity to habitation, that is who would stand to benefit from judicial review and why.

Although the court decision data shown here disguises the actual numbers of appeals, it does suggest that participation makes a difference as it leads to remedial action for every second case. Regarding the quality of permits and the apparently low level of appeals of municipal permit board decisions, our data is insufficient to enable a thorough assessment of this question.

## Outcomes

The outcomes of the environmental permit process are less tangible than the outputs and more difficult to identify. We categorised our findings according to some common means of assessing the success of participatory processes in environmental matters; increased legitimacy of decisions, changes in behaviour or learning, meeting participant demands and environmental significance.

### Legitimacy

*For many participants, the environmental permit process seems to improve the legitimacy of decision-making. The process is underpinned by a feeling of trust in the environmental authority, and although the fate of participatory input is not always clear, participants feel duly taken into consideration and listened to. Certain superactivists in conflict cases do not conform to this however, and for reasons of mistrust and historical factors feel that the permit decisions cannot be legitimate.*

If one aim of the participatory process is to enhance legitimacy of decisions, the interviews with participants after permit decisions were made suggest that this aspect is partly being realised, although participant responses regarding legitimacy were polarised. More than half of all interviewed participants stated that although they were participating and had concerns about the activity for which the permit was being applied for, they would nonetheless respect the decision made by the permit authority. In addition, although uncertain regarding the influence they might have on the decision, they appreciated the opportunity to express their views. The superactivists in the highest conflict cases responded in an opposite fashion, expressing little faith in the decision-makers. One felt that the whole permit process was illegitimate as the permit activity was based on wrongful building and environmental permits granted in the past, and no single process would solve the situation. Another stated clearly that he felt the permit officer and permit applicant to be playing together and making decisions in secret.

The level of complaints, just under 20%, could seem to suggest that overall there is a lack of perceived legitimacy in decisions made. However, far fewer actors are involved in complaints than in participation during the process; it only takes a single complaint to initiate judicial review. Where this alone is not a strong enough signal to support the claim that the participatory process increases legitimacy of decisions, it lends more credibility to our interview responses which suggest that legitimacy is strengthened.

### Change in behaviour

*Very little change in behaviour was found among participants and permit applicants. Larger permit applicants saw restrictions placed upon them as a result of the deliberation process to be a temporary nuisance, and were not prepared to change plans or behaviour. Smaller applicants were more flexible, and could see the benefits to themselves of responding to participants. Permit officers, with one exception, did not admit to changing attitudes or behaviour as a result of participation.*

Changes in behaviour and attitude were sought from actors as a result of the participatory process. Considering direct replies to participatory and invited comments regarding permit applications, the permit applicants' responses (their own or done by consultants) were rather short and often referred to the law and the sufficiency of meeting existing regulations. In a few cases concessions were made

and compromises offered by the applicant, but in the example of one larger permit application, all participant input was dismissed as groundless by the applicant, and all demands for compensation rejected. In its decision, the permit authority heeded participants' concerns and allowed only half of the proposed expansion in its permit, also requiring some compensation for damages to fisheries as well as additional measures to prevent pollution of local waterways. Despite the permit decision, the grounds for rejection given in the permit - supported by many comments from official bodies and lay participants - were not considered robust by the applicant.

Overall, permit applicants are receptive to participant input and behaviour mainly for purposes of minimising risk. Many applicants stated after the permit decision that the most significant thing participants can do regarding the permit application is to complain about a decision, and that their main intent in responding to participants is to prevent complaint. This suggests changing behaviour in response to participation, though in a very reactive sense. In addition, many applicants – particularly those with smaller businesses and farms – were only involved in a single permit application case, and would therefore not have the benefit of experience regarding participatory processes or the need to consider future processes. Nonetheless, all of the smaller applicants clearly saw the benefit of peaceful co-existence with their neighbours and others affected by their activity. One interviewee moved away from a complaining neighbour, and others hoped to maintain communication with neighbours.

Of the larger applicants, only one had attempted to increase communication with the public in response to complaints about their activity. The others maintained their view that the key partners in the process were they themselves and the permit authority, and changes would follow from the law or direct requirements from the permit officers.

In cases where participation did impact strongly on the permit decision applicants were disappointed, some expressing the suspicion that permit officers and participants were somehow in league against them. Nonetheless, one larger permit applicant remained sanguine about the restriction of their planned peat extraction area, noting that the permit decision was a setback but that this area would be included in future applications and would be exploited eventually. No changes were therefore made to expansion plans despite public opposition.

In some instances change in behaviour as a result of participation was unexpected. For example, one permit officer admitted to letting personal opinions affect permit deliberation practice. In this case, the officer stated that relentless 'pestering' by specific participants could result in their opinions and comments being disregarded in the case at hand as well as in the future. This was not a common feature among permit officers however, as most stated in interview their belief that participant input was always valuable, despite certain difficult cases and that no changes would be made on the basis of participation.

In at least one case involving a large national company applying for a permit, the permit officer's opinion was that participation would not change either the applicant's behaviour or views. Supported by statements from the applicant suggesting they considered the permit to be a contract strictly between permit authority and applicant with only expert participation being worthwhile, the permit officer in question suggested that this particular company would be very unlikely to change its views based on participation.

Among participants, the participatory process appeared to strengthen existing attitudes and reinforce behavioural trends. Those participants with a trusting view of the authority at the onset, maintained this view throughout the process, whereas those more negatively disposed towards the permit decision-makers felt vindicated after what they deemed to be an imperfect process.

## Meeting of participant demands

*In each case studied, participant demands overlapped strongly with those made by invited formal commentators on permit applications. This means that demands are addressed in some way to a large extent, although according to permit officers, the formal comments have greater weight in the deliberation process. Permit applicants also tended to respond in greater detail to formal commentators than participants, whose comments were often deemed unfounded.*

None of the demands for completely rejecting applications were met, but each permit did include elements of compromise clearly taking participatory input into account. Two of the ten cases considered were significant in terms of changes to the original permit application. In one case half of the proposed expansion of an activity was rejected, and thus a lot of the concerns raised by both citizens and officials were removed. In the second case, as a result of extensive participatory input and authority requests for amendment, the permit application was significantly changed and the second round application generated far less participation as many initial concerns were addressed.

In all cases, participant demands have at least some overlap with those made by other parties consulted in the process, such as municipalities' environment boards and health boards for example. It is not possible to differentiate from the permit which comments bear most weight in deliberation. Permit officers state that participatory input is always significant as it leads to more care being taken on the points raised, but also concede that the expert and authority statements are often more useful in a direct sense.

On closer examination, a pattern emerges relating to responses to different types of comment. In most permit cases, the applicants' responses to official statements were longer and more detailed than those to citizens. In a few instances a similar point made by both citizen participant and official were referred to separately in some detail, but this was rare. Citizens' input was often also dismissed as unfounded or irrelevant with very little justification, whereas all official statements were responded to in some detail.

## Environmental significance

*The public and NGOs can affect environmental permit conditions through participation during the deliberation process and by initiating judicial review. Often participant comments overlap with formal comments relating to environmental risks of permit applications, giving these comments (and their own) additional weight in deliberation. Approximately half of those permits taken to court where action is taken lead to increased stringency in permit conditions. How these changes translate in practice has not been determined, but overall the direction of change appears positive for the environment.*

The environmental significance of participation in the environmental permit process is relevant in part because the participatory process has an aim to improve permit decisions, and also because the quality of life and comfort of the public often go hand in hand with environmental quality.

At the permit deliberation level, the environmental significance of participation is not straightforward to assess. Environmental protection is inherent to the law which guides permit restrictions, and in interview the permit officers claim to give environmental protection in accordance with the law the highest priority in decision-making. Nonetheless, the permit officers are restricted by their own field of expertise



and that which is accessible to them, as well as through the permit application which tends to form the template for the decision. The application – done by the applicant or a consultant – will always have the best interests of the applicant in mind, and is likely to be limited in terms of environmental consideration. Permit conditions drawn up accordingly can be generous, allowing similar or even greater emissions than previously for an existing business, or simply standard practice for a new installation. Tighter restrictions can also lead to leakage whereby permit applicants shift polluting activities to different sites where conditions allow it. Permit monitoring is also difficult for permit authorities with limited resources, so whether permit applicants meet permit requirements or not is often unclear to permit authorities.

As mentioned in the previous section, much of the input that participation brings overlaps with statements from formal commentators. This means that the influence the public are having is masked by the influence of the formal commentators. Nonetheless, the overlap shows that comments are salient and supportive of each other. On a concrete level, participation can have numerous effects on the permit application, and decision. In one case, an applicant decided to move his industrial installation to a more remote location as a consequence of one neighbour with numerous comments and complaints regarding dust spreading. His move, although beneficial for the neighbour, means moving the emissions to a location where the applicant's activity will be less actively monitored, and so emissions and pollution may in fact increase. On the other hand, concerns about sensitive environments affected by a proposed peat extraction activity led to a considerable restriction in permitted extraction area, significantly reducing the environmental impacts of the activity.

On a general level, permit officers feel that participatory input tends to support them in requiring more stringent emission levels, although whether these levels may have been chosen regardless of participation is unclear. Most participants associate their own comments and complaints strongly with environmental concerns, which suggests that the direction in which they might influence decisions is more stringent in environmental terms.

In judicial review, courts can either modify permits to benefit the permit applicant, or to the benefit of other appellants. Permit applicants typically request permit conditions to be relaxed, whereas private litigants, NGOs and other parties want permit conditions to be tightened. The appeals lodged by authorities are less straightforward to classify, although generally they are concerned with the public interest. A common justification, an assumption in the Aarhus Convention, is that participation in environmental decision-making improves decisions and outcomes in social and democratic terms, but also relating to environmental protection (Lee & Abbot, 2003). We analysed all the decisions made by the Vaasa Administrative Court where permit conditions were changed in terms of the environmental significance of the change (Figure 9).

The court is limited in what action it can take in modifying permit conditions to what the litigant raises in the appeal, and restricted by its legal powers to modify conditions. The aim of judicial review is to ensure that granted permits are legal and acceptable in their consequences to both inhabitants and the environment. The actual changes made to permits may be fairly insignificant and may concern the length of the permit's validity, or minor modifications to installation operating times. However, even such modifications indicate that the appeal was justified, and may lead to greater care taken by the permit authority in dealing with the same applicant in future as well as potentially creating greater public acceptance of the permit. More significant changes to permits are also made, such as major changes to operating times or operating conditions requiring the relocation of the activity.



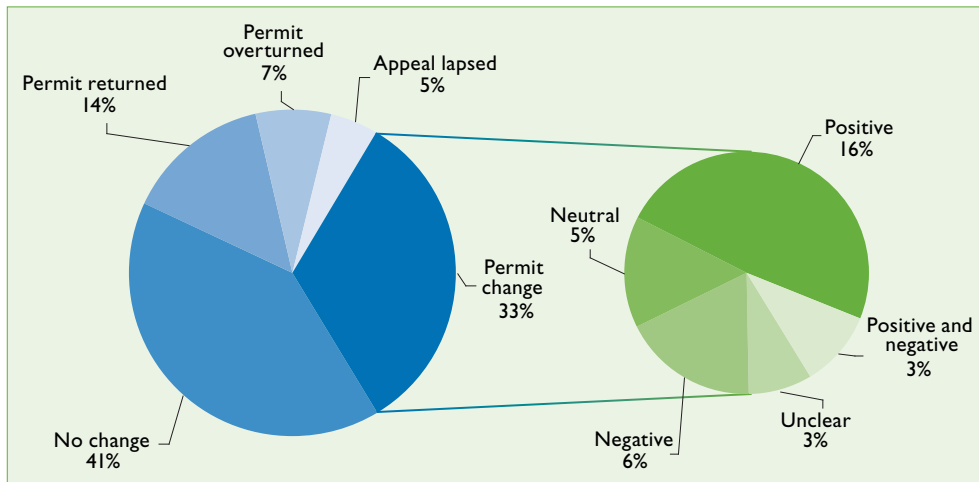


Figure 9. Court decisions on permits, with environmental significance of permit change (Vaasa Administrative Court)

Indeed, these data suggest that the majority of court decisions led to an increase in environmental stringency or no obvious environmentally relevant change (Fig 9). In less than a quarter of the cases where the permit conditions were changed were they made less stringent. In certain cases changes were made that are both positive and negative, where operating times are limited for example, but concessions are made on emissions. In support of the quantitative findings, the Court interviewees were unanimous in the opinion that permits, when they were changed, were made more strict. The purpose of judicial review appears not only to safeguard the rights of stakeholders, but also to provide additional means of protecting the environment. Where stakeholders appeal on the basis of their right to a clean and healthy environment, any changes to benefit the appellants will also yield greater environmental protection.

Our analysis suggests that successful litigation is more often beneficial for the environment than not but these results should be treated with some caution as they do not take in to account any long term effects of the permit such as leakage of activities to another site, or changes in activity with more severe consequences for the environment. However, limiting our analysis to the judicial review and its direct outcomes, what can be concluded is that many permits that were changed by the court resulted in tighter control and environmental benefit.

## Side effects

### Delayed projects/investments

*Participation sometimes results in longer permit deliberation processes, either as a result of participants exercising their right to amend a comment or request further information, or by initiating judicial review. Most of the permit applicants interviewed considered participation to be a necessary but time consuming process, and felt that the costs of implementing participatory processes were sometimes unnecessarily high because of delays to projects. One applicant felt that the negative influence of one participant was so high that it was more worthwhile to move to a different location than stay and address participant demands. Permit authorities suggest that the greatest cause of delay to the process results from the necessary exchange of documents between parties, and acknowledged that a highly active participant can thus delay the process.*

A common grievance expressed by the permit applicants regarding the form participation is allowed to take in the current process, is that any additional comment made by participants to complement or change previous comments needs to be addressed separately. This can mean lengthened processing and therefore delayed project commencement and possible lost investments.

In one case, an applicant saw the differences between permit authorities as leading to higher permit application costs. It is a large company with activities across Finland the activities of which fall under the authority of different permitting bodies. Although bound by the same regulation and law, these authorities process applications differently, and the applicant feels that the same standard should be implemented across the board with regards to participatory requirements and application content.

Judicial review as a result of public participation is an element of the environmental permit process that permit applicants and permit officers alike would wish to avoid, as it requires time and additional work. This can delay investments and increase costs, and may result in a change in permit conditions or even the overturning of the permit in a worst case scenario for the permit applicant.

However, permit applicants are also able to complain about permit decisions, typically in order to get the permit conditions eased. What public participation through judicial review does result in is a lengthier environmental permit procedure. Our analysis demonstrates that the Vaasa Administrative Court took on average 11 months to make its appeal decisions although there were variations between industrial sectors and individual cases. The Supreme Administrative Court reached its decision on average 29 months after the date of the initial decision issued by the permit authority; it needs to be stressed that this includes the processing time at both courts. In the Supreme Administrative Court the variation between sectors was greater than at the Vaasa Administrative Court; for animal husbandry and cattle shelters the average duration of the process in the Supreme Administrative Court was 16 months and for ore and mineral extraction and processing it was 30 months. Compared to many other countries these proceedings are relatively rapid, as according to Prieur the average duration of judicial proceedings against the administration is 1-2 years at first instance and 2-3 at the second instance (Prieur, 1998).

Our findings do not directly show the extent of negative effects in terms of delays on investments. We do not believe, however that this delay occurs often. First, a large number of appeals relate to permit renewals for existing activities, and in these cases an appeal does not prevent operation under the auspices of the previous permit. Secondly, the permit authority or a Court may on specific grounds allow an activity to take place before the permit becomes legally binding. Hence, there is a mechanism to avoid unnecessary delay of activities. Thirdly, court personnel we interviewed told us that this was not an effect that they observed. Although court personnel is not necessary perfect source for this kind of information, they should be aware about dispute related to the date of commencement of an activity.

Among the concerns expressed at the time of environmental permit reform in 2000 was the potential misuse of the right to appeal by the broadened range of stakeholders. It was suggested that adding regulatory features that allowed an easier means of appealing permit decisions to a broader group of people increased the risk of deliberate disruption to the process in order to delay permit implementation and further that this would increase the costs of running the whole permit process. Environmental NGOs were seen to be the greatest source of potential disruption and our research explored whether there was evidence of such a pattern..

Our results show that NGO activity in the judicial review of environmental permits is very low in Finland (Figure 7). In fact, NGOs make up less than ten per cent of either the litigants or the number of permits appealed against. In a study of access to justice

EU countries, NGO activity in litigation was observed to vary considerably between countries. However, no correlation was found between the legal opportunities offered to NGO to participate and actual participation levels (de Sadeleer et al, 2005). To gain some indication of the number of ungrounded complaints we also chose to ask judges directly whether they had ever encountered an appeal that lacked any grounds and appeared to be specious. Although some judges we interviewed reported that they had indeed seen such complaints, a clear majority stressed that these are very rare. Comments regarding this issue ranged from the fact that all concerns expressed in the appeals were legitimate to the appellant even in cases where the Court was unable to intervene and change the permit conditions, to observations regarding the frequency of action taken on the basis of appeals. The main problem observed by the judges was not the intent behind appeals, but rather their quality and clarity.

Overall, negative effects of appeals appear to be limited, as abuse of the system is not common and mechanisms exist to protect permit applicants from the negative effects of delays to investments. The quality of appeals remains problematic for the Court process, but ungrounded appeals are not an issue.

### Administrative costs

*Costs to participants are kept to a minimum, although the perceived costs of research or judicial services were potentially a barrier to some prospective participants. However, the costs of certain participatory forms were seen by applicants to incur unnecessary costs, through additional research and investigation.*

In order to make participation as accessible as possible to any stakeholder to the permit process, direct costs for participants are kept to a minimum. No expert or legal consultation is required and in the case of most authorities, participants can send comments and complaints by email. Some costs may be incurred from research, but overall participation should be possible at low or no cost to participants. On the other hand, participation may bring some costs in money or time to the permit applicant and permit authority. Participants may add to a previously made comment, and each addition should be addressed in the same way as comments.

Permit applicants had the most to say about the costs of the process, and felt that participation incurred unnecessary costs to them. The right to amend comments and request further information were considered the greatest burdens. Judicial review was also seen as a financial risk by the permit applicants, particularly by the smaller permit applicants to whom delayed investments have a greater significance than to the larger applicants.

However, despite the low financial input required from participants, many participants perceive the effort required to participate to be far higher than reality. Many believe that they would need to consult with experts or lawyers in order to successfully participate in the permit process.

### Conflict escalation or mitigation

*Half of the cases considered in our study resulted in judicial review. This means that in these cases, at least one party was dissatisfied with the process or the output from the process. Although the aims of the environmental permit process do not expressly include conflict resolution, one of the purposes of increased participation was to improve the acceptability of decisions made in the process. The cases where the permit decisions did not lead to judicial review – and were therefore acceptable – were some of the less contentious in our study. Only one of the higher conflict cases was not taken to court after the permit decision was made.*

Although one of the aims of implementing participatory processes in the permit process is to find solutions that are acceptable to all parties, one side effect can paradoxically be conflict escalation. In the case of one waste treatment permit for example, the 'super-activist' stated before the process had come to a close that unless all of his demands were met, he would complain about the case and demand judicial review. In such a scenario conflict mitigation through the participatory process seems unlikely to happen, as permit officers cannot meet all participant demands if a proposed activity meets the requirements of the law.

In at least one other case where the motivation for participation seemed to be related to a family feud, rather than the activity per se, the permit process will have enabled some relief of tension as opinions were encouraged to be voiced, but as the permit was granted against the will of the neighbours none of the causes of conflict will have been removed. Here as well the permit decision was taken to judicial review, and it is unclear what the outcome of this process will be.

In fact, half of the cases we considered resulted in judicial review. This means on one hand that half of the permit decisions were accepted by the public and to some extent concerns about the activity in question were quelled through the process. However, it also signifies continued discontent among certain participants and to some degree the expectation that a court process will solve the conflict. The cases where judicial review was initiated had high participation levels and often had a history of disagreement among parties, and in all cases the complaint was made by citizens or local authorities. Judicial review in these cases was not surprising to either the permit officers or permit applicants. However, although expected, the judicial review was not accepted as necessary by permit applicants who felt that the complaints were unfounded.

Judicial review takes the case away from a party who is engaged on a relatively local level, having had contact with both applicant and participants for a number of months. The courts are expected to take the role of the objective third party where environmental permit authorities are seen to have failed to process the permit application adequately, either in the opinion of the permit applicant or a participant. This should remove any bias from the process, and result in a decision based solidly in the law. What judicial review does not entail is greater communication between parties. In practice, the initiation of judicial review results in a greater distancing between parties, as the conflict is taken from a regional or local level to a more abstract judicial level.

## Discussion

To bring the results of this study together, this discussion covers the elements of the environmental permit process as described in the methods section. In order to understand the dynamics of the process

### Law

Law is central to participation in the environmental permit process, in determining how participation is done and who has standing in the process. The minimum requirements for involvement are set in law, and in practice this is often the extent of what is implemented. For some it is a question of accepting the sufficiency of the law, for a few others it is a question of doing what resources available allow for them to do. Considering results from both authority survey and case studies, it becomes apparent that authorities view the law to be largely adequate in both securing involvement in terms of democracy and social justice, as well as obtaining sufficient input from neighbours to ensure the permit conditions set are environmentally satisfactory. Broader participation would be desirable, but it is seen to be more a question of participant activity than any failing of the law.

The aims of the environmental permit process with regards to participation are in part to inform locals of potentially polluting activities taking place in their locality, but also to increase the tolerance for such activities through involvement in the permitting system (Kuusiniemi, Ekroos et al. 2001; Sjöblom, Sahivirta et al. 2003). In a sense, this reflects the common aim of conflict resolution that is sought through implementing participatory processes (Verschuuren 2005). A sense of being included and ownership, it is said, increases acceptance of activities that are potentially disturbing and/or polluting. The environmental permit legislation is in practice permissive of polluting activities, within restricting limits to emissions, extent and siting of activities. Therefore the element of compromise sought through participation is potentially the only place for participation to have an impact. This presents an area of possible disappointment and conflict, where participants, authorities and permit applicants do not have the same understanding of the role of participation, the role of the process and the potential impact that participation can have.

Where authorities accept the law and consider it sufficient, permit applicants often consider many aspects of the law superfluous. Where some degree of participation is accepted by all permit applicants as necessary, many of the rights granted to participants beyond simple hearing are deemed wasteful and introduce the potential for misuse. At one end of the spectrum is the applicant who considers the permit process to be merely a legal formality, including dissemination of information to the public as the only form of involvement necessary, to the other end of the spectrum where applicants would genuinely appreciate greater contact with participants to facilitate and inform the process, but prior to or external to the formal hearing and

participatory process. What is common among applicants is frustration with the bureaucracy that legislation brings, in particular the right for applicants to supplement previously made comments which is seen to be used to deliberately delay the process.

Of all parties to the process, participants tend to be least aware of their rights with regards to environmental permits as well as the restrictions imposed by the law. To many, trust in the institution of environmental permitting is strong, and the authorities are generally seen as competent in both environmental and social terms. In addition, few complaints leading to judicial review concern matters of procedure, suggesting that permit application and deliberation processes are considered in general to be lawfully executed. Exceptions to this are cases where the applicant and authority are seen to work tightly together excluding outside influences, as in the high conflict landfill case in our study.

## Participation

As stated above, the form participation in the environmental permit process takes is largely informed by the word of the law. Close neighbours of proposed activities are notified directly by personal letter, and others may find out about ongoing processes on the web, municipal boards and sometimes through local press. In addition, some permit applicants also hold public meetings relating to the project in question, others have been required to do an EIA process prior to permit application and feel this process to be sufficient information dissemination. The right to participate has been made broad through the most recent legislation which granted NGOs standing and removed some of the restrictions on opportunities to participate at various stages of the process.

Participation does not require expertise or funds, the only requirement is that opinions and comments are submitted in writing. Occasionally oral communication is also taken into account. Nonetheless, of the potential range of participants it seems overall that participation in environmental permit processes is limited. First of all, from the general interviews conducted with the environmental permit authorities it seems that there is no coherent pattern determining extent of participation, and most often participation is lower than expected. Participatory intensity is not singly linked to environmental risk for example, nor is it always related to the physical size of the activity or the disturbance it creates. Other factors are also significant.

From the cases, a certain type of participant emerges as the most active party: a summer or holiday resident in the vicinity of the permit activity, who is an older, educated male with time and effort to spare to investigate the case. These participants felt that they were in a privileged position in terms of information and awareness about the case in relation to other potential participants, but also that their level of understanding was necessary in order to have any impact on the process. Despite this, these participants did not feel confident that their participation would have an impact on the process, at least not as far as achieving their demands. This sentiment was echoed by most participants, some feeling that a single opinion would not bear much weight in the process, others wanting to state their view but trusting the permit authority to make adequate decisions.

A certain level of knowledge and understanding of the process and the case are therefore elements enabling participation, where a certain threshold of interest has been crossed. All 'lay' participants had personal interests in the case which were high enough to trigger their activity, whereas NGO participants felt compelled to stress the environmental impacts of proposed activities. Even for the NGO participants, a timely awareness of the case was necessary for participation, due mainly to restricted resources.



Most participants interviewed were also temporary residents of the area concerned, so it is feasible that social constraints may be an obstacle to participation in some cases. This was the clear opinion of one temporary resident who felt that others in the neighbourhood had as much reason to comment on the case as he did, but did not for fear of social repercussions. Social conditions can also prove favourable to participation, where local solidarity leads neighbours to participate in support of each others' claims and demands. Where an active party is able to contact many people and argue a case, others join in. This had happened through the activity of one interviewee, and in several of the permits reviewed there was evidence of comments with very similar if not exactly the same content having been delivered by many different participants.

Another finding is that participation only happens when there is conflict of some degree relating to the permit activity, or the parties to the process. None of the cases displayed evidence of participation that was purely encouraging or constructive, and no court or authority interviews suggested otherwise. The nature of participation as it is designed in the environmental permit process is such that the opportunity is given for parties to comment if they disagree on some point, rather than being involved in developing the plans, joint fact-finding or joint decision-making that would be an indication of a more deliberative participation process (Fischer 2003). An exception to the above is where participatory input relates to a perceived deficiency in the application, and the input is more constructive than negative. Many official statements were of this nature, as was some other participatory input, but only rarely. So in terms of citizen participation, activity is spurred by disagreement.

## Communication

A clear finding emerging from the interview results is the tendency for communication to focus around the applicant-authority axis. Here, there are usually several points of contact prior to and during the permit process, and communication can take various forms. Often applicants and the permit officer meet, or at least have an exchange of letters or phonecalls before application. Once the application has been submitted there is often communication between applicant and authority relating to the content of the application, and a site visit is also customary where the permit officer meets the applicant and looks around the project site. All of this communication is allowed by the law, and unsurprising given the complexity of many permit applications and the number of environmental impacts that may need to be taken into account.

Contact is far less frequent between other parties. There are no legal restrictions to how stakeholders could contact either applicant or authority, but apart from the basic information regarding the case, there are no legal requirements for contact either. Although some participants perceive the personal notification of an ongoing application as an invitation to participate, all other participation relies on the activity of the participant. In certain cases the applicants host information meetings regarding their application, but this is purely voluntary and is usually a consequence of standard company policy rather than a wish to seek greater involvement in that particular case. Other than these voluntary – and infrequent – information events it is mostly the case that participants and applicants never meet, and never communicate directly in any form.

In a process in which the permit authority is the conduit for all information and the point of decision-making can be formal and proper, this can also lead to a less transparent process where the authority and their dealings with the third party are effectively a black box. This is to some degree contrary to the aims of the environmental permit process which was partly designed to increase openness (Sjöblom, Sahivirta et al. 2003). On one hand, many participants appreciated the ability to communicate

their opinions to the permit authority where they are appropriately registered and if all goes well, appropriately dealt with. These participants viewed the authority as a more or less objective adjudicator in the permit case, and accepted that the formal process as stated in law was the best way to go about resolving issues relating to the permit application.

This can lead to a limited process which effectively excludes participation either through the dismissive attitude of the authority or applicant, or the perception by the public that there is no room to participate. Sceptical attitudes from expert parties on the ability of non-experts to contribute are common in decision-making relating to technical matters (Rask 2003) and although the environmental permit process is meant to be more than a simple contract, it is often seen as such by any one or more of the parties to the process. This difference in attitudes towards the role of the process, and the role of participation can be problematic for participation, as the different parties will not be communicating on clear terms and expectations of what can be achieved and by whom will not be the same for all parties.

There appears to be a difference between smaller and larger applicants when it comes to attitude and communication. Where the formal contract position is adopted by larger players, smaller applicants such as farmers would in fact prefer more direct contact with the participants, preferably before the permit application process begins. On one hand this may be due to social issues, as neighbourhood relations are probably more important to smallholders who live and work on site, whereas large companies with widespread activities and many offices where permit applications are routinely done have less regard or interest for the personal relations of workers and neighbours. These may also feel less vulnerable to the impact of participation, and therefore pay less heed to the details raised by participants.

### **Mismatched expectation**

As mentioned above, the permit authorities tend to perceive the permit process as adequate in delivering opportunities for participation, and although there could be scope for increasing involvement it is not necessary or possible at this point. 'Good' and 'bad' participation also features in their dialogue, generally meaning constructive and relevant, and complaining or impossible input respectively, they have certain expectations from participatory input and have a clear impression of the potential impact that participation can have. Most importantly, participatory input serves to illustrate the case for the decision-makers, and more care is taken to address those parts of the permit which have raised most concern. In addition, many permit officers appreciate the informative role that participation can have for stakeholders, and the need to address the basic democratic rights to be informed and heard. What is also clear to the permit authority is that ultimately the decision to accept or reject a permit application is based on the legality of the activity, and the ability of the applicant to meet permit conditions. Participants are unlikely to bring about any radical change in this regard to what the permit officer would decide without the participation.

Conversely, participants' input is often extreme, and demanding an unconditional rejection of the permit application is common. This occurred in all but two of the cases included in this study. Constructive comments were given in half of the cases, but most related to either closure of the project site, considerably increasing monitoring effort or transferring the activity to another site. Comments and demands which relate to other legislation, particularly in the case of animal shelter applications, are also frequent. So although many comments from participants do include details of local conditions, they are also presented with demands for total rejection or at least significant changes.

Between objective, reasoned and relevant expectations for participatory input and very emotive and extreme realised input there is a mismatch in expectation of what participation can achieve. The result of this is clash is most often an effort on behalf of the authority to respond to participant demands with some compromise in permit conditions deemed feasible and legal, with a rationale for the decision noted in the permit. This compromise may then lead to participant disappointment, as ultimately no participants – with the exception of the PSA cases where very few demands were made – achieved their full demands. Permit officers also point to irrelevant comments or demands, where participants refer to issues not covered by the environmental permit. In some cases the permit officer will examine the validity of the participants' arguments and mention the relevant legislation and the projects' status in relation to this in the permit, but just as often these comments are dismissed as irrelevant by the applicant and left without reaction by the permit officer.

### Side-effects and costs

Disappointment in the process or in some other party to the process can lead to unwanted and unexpected side-effects after the permit decision has been made. Four of the ten cases included were not resolved to the satisfaction of participants and have been taken to judicial review following publication of the permit decision, suggesting that conflict escalation has taken place. Where judicial review is initiated, it is possible that permit applicants are unable to realise planned investments or lose valuable processing time. This kind of loss can also be the result of an extended permit process where applicants have to supplement their application on several occasions, or if participants supplement their own comments with details that require additional responses from the permit applicant. Investment delays are often avoided by the addition of a clause in the permit allowing an activity to begin despite judicial review for example, but beginning an activity before a permit decision is made is less common, unless an existing previous permit exists.

Overall, costs to the different parties have been kept minimal on a formal level, in order to facilitate access to the process. However, demands from participants or permit officers regarding analyses and studies from the applicant can mean additional, unforeseen costs for applicants not well acquainted with the requirements of the process or the salient environmental impacts to be assessed. Additional work also means additional resource use, and many applicants do feel that aspects of the process could be standardised and certain allowances for participation could be restricted in order to reduce resource costs.

For the participant, despite the opportunity to participate with no access to expert knowledge or financial resources, the effort to compose something deemed suitable for the process can be considerable. Many perceive the requirements in terms of knowledge and expertise to be high, and therefore spend time and energy finding out about the applicant, the project proposed, the technology and so on. One stated that he felt himself to be something of an expert now, after all the research he had felt it necessary to do.

It is possible that the participatory process can generate new conflicts as well as escalate, or resolve, old ones. Participation can be done anonymously, so details of the participant are known only to the permit officer, but in most cases names are given and cursory study of the permit content will show who has said what. This may create disagreement between neighbours, and generate mistrust.

## Learning

Learning is increasingly seen as an important outcome from participatory processes (Tuler and Webler 2006) and it is also in evidence in the cases that we have examined.

The permit applicants, depending on their past experience with environmental permits learn about the process, and although some expressed frustration with the excessive bureaucracy involved in applying for permits to make fairly small changes, most first-time applicants conceded that through the application process they had learned something about the legislation and current practices associated with their activities. To some degree the permit applicants also learn what participants worry about, even if this is not necessarily acknowledged as learning, or is dismissed as irrational fears based on ignorance. As applicants have to respond to participant comments, some of the smaller permit applicants saw this as a mutual exchange of information where both could learn, although they were a minority.

For the authorities, participation was a clear means to learn about each case, as one officer stated, ‘..the participatory input helps put flesh and blood on the case..’. Many felt that without participation they were not able to gain a comprehensive impression of the case, and preferred broad participation from many actors to gain as comprehensive an understanding about the case as possible. Although participants rarely brought entirely new information to the process, they nonetheless helped focus the attention of the permit officers on salient elements in each case. In addition, through processing a number of permit applications permit officers gained an understanding of the nature of the communities affected by permit activities and felt in some way more able to anticipate participant reactions to future permit applications.

The potential for learning was also important for participants. On one hand, participants learned about the activity in question through the information provided by permit authorities, and often those who chose to be active in the process made some effort to find out more information about the activity. Learning about the process and their rights was also something certain participants mentioned indirectly, although many still felt that the process was not as transparent as they might have wished.

This learning, although it may not become substantiated in immediate behavioural change in permit applicants for example, may form a more fertile base for future change, or acceptance of more stringent regulation or increased direct contact with stakeholders. The same applies for the other actors in the process, to whom learning may be more significant in a cumulative and gradual process, and therefore both evidence of the learning and the outcomes of the learning may be difficult to perceive. However, it may lead to changes in behaviour that may translate into changes in regulation for example. One aspect of the permit process is its role in anticipating local environmental and social needs, and learning by each permit officer and collectively in each permit authority may contribute to a better process and permit conditions in this sense.

As a permit officer mentioned in an interview in relation to judicial review, the legal machine is a ship that turns slowly and behaviour often changes before the law does.

## Effectiveness

Considering the question of effectiveness then, it seems appropriate to think about the different angles of effectiveness of participation; what were the aims of the process and outcome and what were the aims of the authority, applicant and participant and outcome?

In terms of law, a key aim of involvement in the environmental permit process is informing stakeholders and nurturing cooperation and local acceptance of polluting

activities that are authorised and controlled by permit conditions. To a degree, these aims are achieved by the current permit process in the cases considered. Of the ten cases studied here, five permit decisions were not accepted and have been taken to judicial review following complaints by participants. In three of these cases, the appellants were so-called 'super activists' and two of them had already at the permit processing stage suggested that they would take their case further if their demands were not met. In the other five cases, participants were either satisfied that the process had been appropriately done and either approved of or simply accepted the permit authorities' decisions.

Considering the fairness and representativeness of participation in the process, the law goes some way to ensure that participation is broad. Many different parties have standing in the process, and we saw little evidence for attempted participation by actors who did not have standing in the cases. However, there was some indication that participation was not evenly distributed, and there was an overrepresentation of older men with access to resources – either in terms of time or expertise/knowledge – in our study. It is possible that this was due to sampling rather than showing a real trend, but some of our interviewees (from all three categories) noted that potential participants were not participating for a variety of reasons. One such reason was social, in cases where participation may have been seen to 'rock the boat' of neighbourhood relations. In these cases we found temporary residents to be have been active, whereas permanent residents who were certainly entitled to participate, and may have had reason to, did not.

Another reason for non-participation according to interviewed participants was the lack of proper understanding. By this they meant that lay members of the public did not fully understand the consequences of the proposed activities, or did not know how to participate. At the same time, the more active parties stated to have better than average knowledge and this was seen to be a prerequisite for even potentially effective participation.

Finally, a key to access to the participatory process was the timing of notices and the availability of information. NGOs participating noted that often they were not aware of cases where they could have participated, as they were not directly notified and public notices remained unseen. In one case a permit officer admitted to timing certain notices in such a way as to minimise the chance of a certain participant – a temporary resident – taking part, to reduce nuisance. This can be a more common, and less deliberate, situation in cases where activities are proposed near temporary residences. One problem for permit authorities as well as permit applicants is the identification of potentially affected parties if they are not permanent residents of the area, as well as making sure notices are delivered to them in time for them to react within the permitted time. Another, closely related problem here concerns the residents' ability to either attend events or react in time if they are not present at the time.

As only a single non-participant was interviewed, it is difficult to say with certainty how representative or fair the processes studied were. The law certainly provides the right and requires authorities to create the opportunities for participation in environmental permit processes, but in practice it may be difficult to ensure fairness and representativeness. The internet has facilitated information exchange, and through proposed developments of the permit process this could become a more frequent means of communication. This could remove some of the obstacles mentioned, in particular for the temporary residents with whom communication can be difficult for practical reasons. Social obstacles may be less straightforward to address, with the exception of allowing a greater amount of anonymity in participation.

Relating this data to the judicial review findings, many more permits in our study sample were taken to judicial review than on average in Finland. This is likely to be



linked to our case study choice, as we actively sought those cases where participants were actively involved. In four cases the appellants were private individuals, as is most common in judicial review, and the fifth appellant was the local municipality. For the permit authorities, participation that was not extended to a complaint following the decision was often considered 'good' participation. On one hand this indicates that their decisions have been accepted, or at least do not cross a conflict boundary, and on the other it also indicates a job done adequately.

Applicants' views of participation were often couched in company policy or standard phrases relating to the importance of democracy and human rights. Most applicants did question the necessity of such an onerous participatory process, suggesting that many participants were ill-informed and seeking to limit economic activity rather than protect the environment. Permit applicants hoped for a process that would not lead to judicial review of the permit decision, something requiring the public to accept the decision made by the permit authorities. In this sense they accepted that informing stakeholders was paramount, but few applicants saw participatory processes to be necessary for any other purpose. Those permit applicants whose permits were accepted were as a rule surprised by the lack of complaints and were ultimately satisfied with the process.

For participants, all hoped to have an impact in the decision-making, but only around half of those interviewed believed that their comments would have any significant impact. Underlying most of the participant interviews was a feeling of trust towards the environmental authority and the permit officers. They were seen to be legally oriented and competent enough to make environmentally and legally sound permit decisions. Where mistrust towards permit authorities was evident, participants felt strongly that applicant needs were prioritised, at the expense of the public, the environment and even legality.

In the higher conflict cases, many participant comments included the demand for a complete rejection of the permit application. These participants were also those less likely to accept a positive permit decision, even if the requirements within were tough on the applicant and addressed many participant demands. These participants were inevitably disappointed in the outcome of the process, and most went on to complain about the decision, and initiated judicial review. To these participants, even significant influence in the permit deliberation process which did not meet all of their expectations was deemed insufficient. Further on this point, the actual influence a comment has had on the process is difficult for participants to perceive. Their input will be addressed in some fashion in the permit text, but issues and comments are often grouped and detail is lacking. This disappointment entrenched their initial opinions of mistrust, and will be likely to affect their participatory behaviour in future. To them, effective participation means fulfilling their aims.

Effectiveness of the participatory process is linked to the nature and degree of conflict; learning potential; procedural detail and perhaps most importantly, information flow and communication. The different actors have different aims and expectations with regards to participation, and often these are mismatched. Although we have not defined an effective process per se, we have identified a number of factors which can inhibit effective participation from taking place. Misinformation, misunderstanding and mistrust feature high on this list, and a step forward for developing the participatory process lies in enabling clearer communication between actors.



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## Appendix I

### Authority attitude survey summaries:

#### **Uusimaa (UUS)**

Concerned with the fears and worries of locals regarding polluting activities, and recognizes that the aim of participation is to enable the public to effectively contribute to the permit process. Actively engage with the public and permit applicants, and encourage applicants to communicate with the local population.

'..in some cases we have had to cajole the applicant into [holding a public meeting], the applicant hasn't necessarily seen the value of such a thing but with a bit of pushing we've managed to get all stakeholders involved..'

UUS feel that the system does currently work, and is continually improving thanks to the increased use of internet for information.

#### **Länsi-Suomi (LSU)**

Somewhat disparaging attitude towards role that local knowledge can have in the permit process, with a more procedural view of the role of participation. Acknowledges that the locals can bring information that the authorities have missed or misunderstood, but only sometimes.

'Sometimes [participation] even provides knowledge..'

Still struggling with the largest permit workload in the country, LÄN is pragmatic about what can realistically be done to encourage participation. The current system does work, but doesn't really activate locals, but then the authority would not have time to implement anything additional.

#### **Lounais-Suomi (LOS)**

Recognises the benefits of participatory activities for the acceptability of polluting activity, but also clearly states the potential negative impacts from system abuse resulting from the subjective attitude of participants. '..there are benefits for applicants for those who want to adapt to their environment and take into consideration [the inhabitants'] circumstances...then there is the detrimental side where in some cases [locals] have wanted to delay the arrival of some activity and have created a huge popular movement about something which really was not worthwhile... [the reaction] becomes very emotional and subjective'.

Generally the system works, but the key is to grant permits according to the law. Participation within the system is useful for clarifying minor details, but informal channels of participation are not really considered.

#### **Häme (HAM)**

Positive regarding participation with the opinion that it is important to both gain information about local conditions from participants but also to allow them to feel included in the process. 'From to our experience it has been beneficial for the whole permit consideration process from our perspective as well as the applicant's that we involve as many as possible [at the application stage], it reduces complaints later'

Sees authorities as having a duty to inform the locals as well as possible, and provide stakeholders with a summary of the proposed activity but without the resources to do more. The system works in its current form but enables parties to make complaints on principle which can take up a lot of time.

### **Pirkanmaa (PIR)**

Generally positively disposed towards participation but find complaints and protests problematic.

'Well of course it's good that when the inhabitants come in from the start they're told the right things so they don't up with false impressions and usually we notice it when comments are submitted when there are misgivings like – terrible and you can't allow this thing here – but usually at that stage the most active ones will call or visit with questions and we can tell them, and usually when we grant the permit and the restrictions and the activity is described then the inhabitants are reassured.. but it is problematic when the locals get together and complain about decisions.'

Of the opinion that participation can bring useful details into the picture but most of the permit process is strictly regulated without much space for adjustment. Many locals do not understand what the authorities can and cannot do.

### **Pohjois-Karjala (PKA)**

Fairly positively disposed towards participation, and acknowledges that the authorities cannot always know the exact circumstances affecting proposed activities.

'..so I must admit that it's often that the neighbours have that knowledge and understanding that we here behind the desk, even if we do go on site, cannot see.'

Public meetings do not always add value in the permit system but information received from public is generally a good thing and at best, public participation can have crucial significance. However, more disposed to following the letter of the law than seeking new ways to activate people.

### **Kaakkois-Suomi (KAS)**

Accept that participation can contribute to the permit process but in a fairly small way and also recognise the problems that can come from participatory rights if abused or when conflicts arise. Participation is mainly considered in its legal requirement sense, with little additional effort put into the process.

Int. 1 'As long as people stick to the issue at hand, all perspectives get taken into account when permit applications are processed. But then if something becomes some kind of popular movement just to oppose some project, then there are not really any benefits to participation, it becomes some kind of yes-no argument'.

Int. 2 'And of course we are seeking to make good permit decisions, and then of course we inform the locals. But of course for pollution, for small damage we really do get information about previous effects from the locals and then also their opinions and what they think of something and what they are prepared to accept. That's the function of participation, we don't really think about it in practice as it's here in the [legislation] this involvement so it's self-evident.'

### **Keski-Suomi (KSU)**

Overall, participation can give valuable additional information for the authorities to use in permit processing, but often people don't understand the nature of the process or the details involved and try to bring too many (and often irrelevant) issues to the table.

'In terms of benefits we get those local perspectives and issues and so on...but with old activities [having to reapply for a permit] the stakeholders complain about it, for example things like why was this rubbish dump established here 40 years ago in the first place? And they don't see it, that now we are living in 2006 and their bad feelings are coming from those old past things and it really puts pressure on us needlessly... and then when one aspect of a larger installation changes...then the locals they can't see that it only applies to a part of the whole, this new decision, and they submit their opinions on all the other things too that bother them.'

In terms of system function the means are there; the public needs to activate itself in order to participate. KSU follow the word of law and try to do more, but for example organised a public meeting but no-one came. However, they do make an effort to improve the process and have a quality handbook for the whole process.

#### **Etelä-Savo (ESA)**

Participation is beneficial to stakeholders as they can voice opinions and affect the final decision, whereas the authorities gain insights into the local conditions and circumstances. A strong element is the necessity to adhere to the legislation and meet Århus requirements.

'Of course [participation has an impact], first of all legislation requires us, permits have to contain a response to comments and statements and at that stage we need to think of how this affects permit conditions, often it does. Comments are seldom unfounded and there are always real reasons behind them.'

ESA does not see the applicant gaining from the participatory process, but go some way to improve information channels and are flexible in the means by which stakeholders can comment.

Participation in the environmental permit process can be used to try to achieve some personal aims with the permit application used as a cover, which hinders the smooth running of the process.

#### **Pohjois-Savo (PSA)**

The participatory process in the environmental permit system increases transparency and can reduce conflicts related to permits. PSA have a positive attitude towards the knowledge that participants can provide and accept it as necessary in the system.

'The benefits of participation are transparency of the permit process and the obtaining of local and specialised knowledge...this way I see it that we avoid complaints made due to ignorance. I can't really see the participatory process as having any downsides, perhaps it can delay the process but I don't see that as a problem.'

The system works well but could be improved in terms of greater comprehensibility of the language used. PSA actively try to improve the information channels between parties involved.

#### **Pohjois-Pohjanmaa (PPO)**

Participatory processes are worthwhile for the authorities to implement and stakeholders should participate for the sake of better environmental permits and lower levels of conflict, but people also abuse the system.

'By participating in the permit process one can be sure that one's environmental concerns are taken into account and decisions are made through which environmental damage can be avoided or at least decreased. It is always worth participating and it doesn't cost anything. Of course the participant might be a disgruntled citizen or has some kind of fight with the applicant in which case they can delay the process on purpose by several years by complaining on false grounds hidden behind some environmental issue.'

The system works well in its current form but communication between parties can and should be improved for greater efficiency and decreased conflict. PPO does not really go beyond the legal requirement for participation.

#### **Kainuu (KAI)**

Early participation is beneficial to all, but the right to participate is also abused which is problematic.

'Well, [the main aim of the participatory process] is to let the stakeholders give their opinion as soon as possible and that they can still be taken into account [in the

## Appendix I/4

process]...so they can defend their rights at the start so there is no subsequent action.. but it can also lead to chicanery in complaints without any sense where someone complains to get some project delayed for personal reasons.'

Avoidance of conflict is an important aspect of participation, and it is good that participatory rights are formalised in law. Limited interest or ability in going beyond the legal requirement.

The current participatory processes have the intended effects, and the system works in its current form. KAI assumes that information travels naturally through small communities without the need for authorities to push it.

### **Lappi (LAP)**

LAP saw other authorities as the main source of useful input, but can also appreciate the usefulness of local knowledge and the need to inform locals of activities in their area. Problems arise when people do not understand the nature of the process and the limits to what the authorities can do.

'Well, at least it brings that benefit that we get the locals' experiences, things that the applicant won't necessarily tell us, and things other authorities may not know. That's what we're usually after with these. Then there is the bad side that there are these clients who get enthusiastic and make trouble for years. They won't believe us when we say that this is how it is and won't change, regardless of what we say, and then they make complaints everywhere. And do things that can cost financially. And people don't always see the big picture.'

Suggests that there should be a complaint fee so participants think twice before making claims and complaints. LAP officials sometimes visit inhabitants on demand to clarify issues, but otherwise feel that the system is enough, and opportunities exist for stakeholders if they want to take them.



## Appendix 2

### Coding framework – case study interviews

- **Barriers to participation** (communication, apathy, information access, deprivation)
- **Enabling factors** (local agitator, information, events example from elsewhere)
- **Effects of participation** (on process, on permit, on parties, on attitudes, what level)
  - General
  - Intended
  - Unintended
  - Direct
  - Indirect
  - 'improvement'
- **Evaluation of effectiveness/ 'quality' of participation** (who is effective, why, what is good ppn?)
  - Number of people who participate
  - Spread or diversity of participants
- **Demands from participants**
- **Factors in granted permit – what affects the final content?** (hierarchy of influence, expertise, law, flexibility of decision-makers)
  - General
  - Sought
  - Submitted
- **Forms of participation, how and when** (timing, locals vs. outsiders, direct ppn, informal vs. formal etc)
- **Motivation for participation** (or not participating, hidden or open etc.)
- **Interaction between parties, behaviour** (information flows, openness, relationships etc.)
  - Advisory
  - Barriers
  - Formal requirements for ppn
  - General
  - Practices and modes
- **Role of participation, what is participation** (what is for whom, on whose terms, what can it achieve?)
  - Ideal
  - In practice
  - General
- **Role and influence of parties** (hierarchy of influence, who represents what interests?)
  - Applicants
  - Authority
  - General
  - Individual decision-maker
  - NGOs
  - Other participants
- **Opinions of other parties** (trust in institution, credibility, past negative experiences etc.)
- **Perceptions of the system** (does it give adequate opp.s for ppn, who does it serve, quality vs quantity of ppn?)
  - Development needs
  - Current function
  - General
  - Media involvement
  - Misc. interesting comments

## Appendix 3

## Case summaries

Identification	Type of activity	Region	Size	Conflict rating
UUS 1	Waste processing, recycling	Uusimaa, Espoo	Large	High
UUS 2	Animal shelters, pig farm	Uusimaa, Porlammi	Large	High
ESA 1	Waste processing, landfill	Etelä-Savo	Large	High
ESA 2	Animal shelters, dairy farm	Etelä-Savo	Small	Intermediate
PSA 1	Soil landfill	Pohjois-Savo	Small	Low
PSA 2	Waste processing, scrap metal	Pohjois-Savo	Small	Low
LAP 1	Animal shelters, dairy farm	Lappi	Small	High
LAP 2	Forestry industry, glulam factory	Lappi	Small	Intermediate
ISY 1	Ore and mineral, copper mine	Eastern Finland, Kylylahti	Large	High
ISY 2	Peat extraction	Eastern Finland, Lakeanrahka	Large	High

**UUS1 – Case summary**

The applicant is a company recovering and processing construction waste located next to a large landfill area in the vicinity of nature protection sites but far from concentrated urbanisation. The landfill area itself has been the centre of local conflict for some decades, and a specific social movement has emerged around it (officially a registered NGO). The applicant itself has been on site for a shorter period of time, beginning proceedings for permit application in 2005. This permit process concerns extending current activities (recovery of construction waste and chipping of wood) and introducing new activities such as receiving, storing and processing of tyres, scrap vehicles, electric and electronics waste and metals.

The permit process was preceded by a fairly well-attended EIA process, and the environmental permit application was publicised in a newspaper as well as through direct letter to neighbouring properties. No residents received direct notice of the application as they were deemed to live too far away. Participation in this case was high nonetheless with over 20 comments sent to the permit authority. Comments concerned the size of the plot, previous issues with uncontrolled burning on site and potential impact of waste storage on local waterways.

The interviewed participant was a representative of the local NGO who supported the recycling efforts of the applicant in principle, but felt that the permit should not be granted until greater care was taken to avoid emissions to air and water from the site. No specific communication took place between applicant and authority, everything was handled through formal channels.

**UUS2 – Case summary**

The environmental permit was applied for the extension of an existing piggery in a sparsely populated rural area with a long local history. The new owners saw the old piggery as an opportunity for expansion, and since acquiring the site have invested heavily in increasing its capacity. The permit application relates mainly to expanding the capacity of the piggery, but also a disagreement over the necessity to build a new

sludge tank as was required by the permit obtained by previous owners (and not fulfilled).

Four parties participated during the permit deliberation process, all neighbours (permanent or temporary residents). The main concerns expressed relate to the vicinity of waterways and the risks to groundwater, the treatment of sludge (the owners have no fields of their own), issues of smell and the legality of applying for new permits when previous permit conditions have not been met. The main local activist had been involved in disputes with earlier owners of the piggery as well as local authorities regarding unmet environmental permit conditions, building and planning offences and common land disagreements. Many underlying issues affect communication in this case, and all parties are in some ways in conflict with each other.

#### **ESA1 – Case summary**

The environmental permit application relates to the expansion in area and activity of a landfill and waste processing site near a larger city in an otherwise rural part of Finland. The site is near a lake and there is both permanent and temporary accommodation nearby. The site has been in existence for decades and is the main collection point for waste arising from the municipality. However, as a result of expansion and new activities undertaken on site such as composting, the installation has become the focus of some local disputes.

Participation in the permit application was high, with both temporary and permanent local inhabitants and local businesses participating in the deliberation process. The main concerns relating to the permit application were on issues of smells, noise and potential waterway contamination (and the ensuing losses to business and amenity). The permit authority and applicant maintain a good working relationship, but relations between participants and both applicant and authority are strained.

#### **ESA2 – Case summary**

A dairy farm applied for an environmental permit for the first time and encountered local resistance to the expansion of cattle capacity. The dairy farm is located in a traditionally agrarian landscape with some inactive farms (with permanent residents) and holiday accommodation nearby. The farm is situated on a hill, on a small peninsula surrounded by fairly shallow water. The permit application was well received by the authorities and only the participants had concerns about environmental and comfort-related impacts following from the expansion.

The farm has existed for at least three generations and the farmers are well-known in the local community. The main participants in this case are temporary residents concerned with the spreading of sludge, and the potential effects of runoff in local wells and the surrounding waterway.

#### **PSA1 – Case summary**

This permit concerns a dumping ground for used soils. The site is not near habitation, but right next to a cultivated field. The permit applicant is the municipality, and the participants in the case were the local roads authority and the farmer whose field was neighbouring the site. The permit authority had a good working relationship with all parties and did not consider this case to be problematic. Both the applicant and interviewed participant questioned the need for a permit when such a minor site was in question.

#### **PSA2 – Case summary**

This permit application concerned the expansion and diversification of a metal scrapping site on an industrial estate. The site was operating under an existing

permit granted by the municipality, but had to reapply to the regional environmental centre for a new permit upon expansion. All parties maintained good working relationships throughout, and only one participant had a comment relating to the outward appearance of the site. The applicant did not question the need for a permit, but considered it a marketing asset.

### **LAP1 – Case summary**

An old dairy farm sought a first-time permit for expansion of cattle capacity in a small village in Lapland. The area is flat with few surrounding fields, but with a sizeable lake nearby. The village is small but a handful of neighbours live within sight of the farm. The permit authority and applicant have a good working relationship and the case did not present great environmental problems. The local participants however are strongly opposed to expansion due to concerns regarding sludge spreading and the risks of contaminating the local lake.

The participants are all related, and have had strained relationships with the previous owners of the dairy farm.

### **LAP2 – Case summary**

The environmental permit application concerned an existing glulam and furniture factory which had previously operated without an environmental permit. The permit process was initiated by a neighbour who had alerted authorities to dust pollution coming from the site (through both the police and environmental authorities), and upon inspection the permit authority deemed the site requiring of a permit. The applicant did not feel the permit was necessary and objected to the additional cost and trouble, and the permit authority admitted to this being an unusual case.

The site of the activity is in a business park, with few inhabitants nearby, and the only participants in the case were the initiating neighbour and a neighbouring business. The business participant only expressed some concern about dust spreading, but was confused about the need for a permit process.

### **ISY1 – Case summary**

The permit application relates to a mining operation near a lake in eastern Finland. The surrounding area is sparsely populated, but many properties and parties use and live near local waterways. The mining company is foreign, but with some Finnish staff. The mining activity required an EIA to be implemented, which attracted a lot of local attention. Participation at the EIA stage led to changes to the application. The permit application was largely based on EIA documentation, and little direct contact took place after EIA between applicant and neighbours. The applicant maintains a tight relationship with the local municipality however, and deems the permit authority to be competent.

The main participant concerns related to impacts to local waterways, both through potential pollution as well as water extraction. These impacts were not deemed important by the applicant, as the technology used in mining operations is advanced and the company admits to few harmful environmental impacts. After the EIA, participation was lower than expected by the permit authority, although those who did participate raised valid concerns.

### **ISY2 – Case summary**

The permit applicant is a peat extraction and processing company with many peat extraction sites around Finland. This application concerns an existing extraction site in eastern Finland planned for expansion. The site has been in use since the 1980's without a permit, and this application was preceded by a well-attended EIA process. The initial application was rejected for incompleteness, and the applicant feels that

standardisation is lacking within the implementation of permit processes by different permit authorities in the country. The peat bog in question is near an important groundwater area, and there are several sensitive waterways nearby that would be affected by extraction activities.

Participation was fairly high, including an NGO, fishermen and local inhabitants (both permanent and temporary). The key concerns surround water quality. The applicant did not feel there were significant environmental risks in the project, and would proceed with expansion plans even if this particular permit application was not successful.

## DOCUMENTATION PAGE

<i>Publisher</i>	Finnish Environment Institute SYKE			<i>Date</i> November 2009
<i>Author(s)</i>	Aino Inkinen			
<i>Title of publication</i>	<b>Public participation in the environmental permit processes at regional level</b>			
<i>Publication series and number</i>	The Finnish Environment 39/2009			
<i>Theme of publication</i>	Environment protection			
<i>Parts of publication/ other project publications</i>	The publication is available only on the internet: <a href="http://www.environment.fi/syke/publications">www.environment.fi/syke/publications</a>			
<i>Abstract</i>	<p>This report is a part of a wider research program titled Effective Environmental Management: law, public participation and environmental decision making (EMLE). EMLE is an innovative exploration of the nature, impact and effectiveness of public participation in environmental decision-making. The research program is founded by the Finnish Academy, the Finnish Ministry of Environment and the Finnish Environment Institute.</p> <p>The aim of this report is to explore the nature of public participation in environmental permit processes on the regional level in Finland. This process involves environmental permit authorities, permit applicants and (potentially) a broad spectrum of participants, and the research was designed to include all of these parties. Both quantitative and qualitative approaches were utilized in the research, including a statistical survey of judicial review of environmental permit decisions, interviews with members of the administrative courts involved in judicial review, interviews with environmental permit officers from each of the 13 environment centres and 3 environmental permit authorities as well as case studies covering 10 environmental permit processes from application to permit decision from 3 regions in Finland.</p> <p>The key findings of the study were that participation in the environmental permit process at regional level is both understood and experienced in a different way by the different parties to the process, and that this disparity can limit the effectiveness or, more importantly perhaps from a participant point of view, the perceived effectiveness of participation in the permit process. Overall, participation in the permit process was relatively low, with the exception of a few conflict-laden cases. The potential for being involved and affecting the permit process and outcome is not fully exploited by individuals and groups entitled to participate, and in certain cases participation is dominated by a few 'super-activists' who limit the heterogeneity in participatory input wanted by permit administrators. All permit officers considered public participation to be important because public participation enables better informed decisions to be made, and goes some way in building mutual acceptance between the parties involved.</p> <p>Nonetheless, permit applicants tended to have a rather negative opinion of participation and its impacts on the permit process and resulting decision, although this varied with the size of the applicant and the proposed activity with larger organisations showing less enthusiasm for public participation. Participants themselves were often disappointed in the permit outcomes and when their expectations of what could be achieved were not fully realised, often as a result of the legal framework that the permit process is bounded by. Despite this, most participants trusted that permit officers were competent to make environmentally and legally sound permit decisions.</p> <p>Several strong themes arose in the study that could prove fruitful for further research. Communication in the process was deemed by all parties to be crucial for a good process, although it was also often cited as being insufficient or somehow lacking. The channels and forms of contact that foster or inhibit communication between parties should be examined further, as well as the scope for developing this aspect of the permit process in future administrative changes. The participatory process as an instrument of learning was also discussed, although learning was not among the research questions and was not addressed specifically in the research. Learning as an outcome of participation, and a means to mitigate conflict could be explored further. Finally, the question of assessing the effectiveness of participation remains somewhat unresolved, demanding deeper examination of associated theory. As a result of the broadness of this study, no concrete conclusions are drawn in this report. However, this report is referred to in a number of more focused articles which attempt to address at least some of the themes arising in discussion of the research results, and therefore should be seen as a part of the full output arising from this research project.</p>			
<i>Keywords</i>	Civic activity, participation, environmental policy			
<i>Financier / commissioner</i>	Academy of Finland, Finnish Environment Institute SYKE			
	ISBN	ISBN 978-952-11-3609-2 (PDF)	ISSN	ISSN 1796-1637 (online)
	No. of pages 68	Language English	Restrictions Public	Price (incl. tax 8 %) - €
<i>For sale at/ distributor</i>	Finnish Environment Institute SYKE			
<i>Financier of publication</i>	Finnish Environment Institute SYKE P.O.Box 140, FI-00251 Helsinki, Finland Tel. +358 20 610 123, fax +358 20 490 2190 Email: <a href="mailto:neuvonta.syke@ymparisto.fi">neuvonta.syke@ymparisto.fi</a> , <a href="http://www.environment.fi/syke">www.environment.fi/syke</a>			
<i>Printing place and year</i>				



## KUVAILELEHTI

Julkaisija	Suomen ympäristökeskus SYKE			Julkaisu-aika Marraskuu 2009
Tekijä(t)	Aino Inkinen			
Julkaisun nimi	<b>Public participation in the environmental permit processes at regional level</b> (Kansalaisosallistumisen luonne aluetason ympäristölupamenettelyssä)			
Julkaisusarjan nimi ja numero	Suomen ympäristö 39/2009			
Julkaisun teema	Ympäristönsuojelu			
Julkaisun osat/ muut saman projektin tuottamat julkaisut	Julkaisu on saatavana myös internetissä: <a href="http://www.environment.fi/syke/publications">www.environment.fi/syke/publications</a>			
Tiivistelmä	<p>Tämä raportti on osa laajempaa tutkimusohjelmaa ”Ympäristöpolitiikan tehokkuus: oikeus, kansalaisten osallistuminen ja päätöksenteko (EMLE)”. EMLE:ssä tarkastellaan innovatiivisesti kansalaisten osallistumista ympäristöä koskevaan päätöksentekoon, sen luonnetta, vaikutuksia ja vaikuttavuutta. Hanketta rahoittavat Suomen Akatemia ja Suomen Ympäristökeskus.</p> <p>Tässä tutkimusraportissa tarkastellaan kansalaisosallistumista ympäristölupaprosesseihin alueellisella tasolla. Prosessiin kuuluu ympäristölupaviranomainen, luvan hakija sekä suuri joukko mahdollisia osallistujia, joten kaikki nämä tahot on pyritty ottamaan tutkimuksessa huomioon. Tutkimuksessa hyödynnettiin sekä kvantitatiivista että kvalitatiivista tutkimusta. Aineistoon kuuluu tilastollinen analyysi ympäristölupiin liittyvästä muutoksenhausta, haastatteluja tuomareiden ja ympäristölupaviranomaisten kanssa sekä 10 tapaustutkimuskohdetta eri alueilta Suomessa jossa seurattiin ympäristölupaprosessia hausta päätökseen.</p> <p>Keskeisimpiä tuloksia oli että osallistuminen ympäristölupaprosessissa näyttäytyy eri tavalla eri osapuolille, ja se rajoittaa osallistumisen mahdollista vaikuttavuutta. Konkreettisesti osallistumistaso ympäristölupaprosessissa on melko alhainen, lukuun ottamatta tiettyjä erityisen konflikti-alttiita tapauksia. Asianosaiset käyttävät oikeuttaan osallistua vähän, ja tietyissä tapauksissa havaittiin 'super-aktiivisteja' joiden vaikutus tapaukseen häivytti muun osallistumisen kirjon jota varsinkin lupaviranomaiset kaipasivat. Kaikki viranomaiset pitivät osallistumista tärkeänä, varsinkin tapausten ymmärtämisen, lupaehtojen perustelujen sekä toiminnan hyväksyttävyyden kannalta. Luvan hakijat kokivat osallistumisen ja sen vaikutuksen lupapäätöksiin negatiivisemmin, vaikkakin tämä vaihteli hakijan koon mukaan. Pienemmät hakijat olivat positiivisemmin suhtautuvia kun suuret. Osallistujat sen sijaan kokivat omat mahdollisuudet vaikuttaa heikoiksi ja olivat usein pettyneitä lupapäätökseen. Luottamus lupaviranomaiseen oli kuitenkin mittava, ja osallistujat uskoivat viranomaisten pätevyyyteen sekä ympäristön että lain-tuntumuksen kannalta.</p> <p>Tietyt vahvat teemat nousivat tutkimuksesta jotka voisivat avautua paremmin jatkotutkimuksien kautta. Kommunikaatio ja vuorovaikutus oli selkeä aihe johon kaikki osapuolet viittasivat kokien näiden olevan erityisen tärkeitä tekijöitä ympäristölupaprosessin toteutumisessa. Puutteita havaittiin kommunikaation muodoissa ja tasoissa, ja kommunikaation parantaminen olisi tärkeää myös järjestelmän kehitysmielessä. Oppiminen osallistumisen kautta on myös teema johon huomioita tulisi kiinnittää tulevassa tutkimuksessa, sillä oppiminen voi parantaa paikallisia suhteita, lisätä hyväksyttävyyttä sekä vähentää konflikteja. Vaikuttavuuskysymys jäi lopulta myös hieman auki, ja vaikuttavuuden tekijöitä tulisi tutkia syvällisemmin sekä teorian että arvioinnin kannalta. Tämä tutkimusraportti on osa koko EMLE hankkeen tuloksien raportointia, ja siihen viitataan myös muissa artikkeleissa jossa aiheita käsitellään syvällisemmin. Siksi tässä raportissa ei ole varsinaisia johtopäätöksiä, vaan ne löytyvät artikkelien puitteissa.</p>			
Asiasanat	kansalaistoiminta, osallistuminen, ympäristöpolitiikka			
Rahoittaja/ toimeksiantaja	Suomen Akatemia, Suomen ympäristökeskus SYKE			
	ISBN	ISBN 978-952-11-3609-2 (PDF)	ISSN	ISSN 1796-1637 (verkkoi.)
	Sivuja 68	Kieli Suomi	Luottamuksellisuus julkinen	Hinta (sis.alv 8 %) - €
Julkaisun myynti/ jakaja	Suomen ympäristökeskus SYKE			
Julkaisun kustantaja	Suomen ympäristökeskus SYKE PL 140,00251 HELSINKI Puh.020 610 123 Sähköposti: <a href="mailto:neuvonta.syke@ymparisto.fi">neuvonta.syke@ymparisto.fi</a> , <a href="http://www.ymparisto.fi/syke">www.ymparisto.fi/syke</a>			
Painopaikka ja -aika				

## PRESENTATIONSBLAD

Utgivare	Finlands miljöcentral SYKE			Datum November 2009
Författare	Aino Inkinen			
Publikationens titel	<b>Public participation in the environmental permit processes at regional level</b> (Medborgardeltagande i regionala miljötillståndsprocesser)			
Publikationsserie och nummer	Miljön i Finland 39/2009			
Publikationens tema	Miljövård			
Publikationens delar/ andra publikationer inom samma projekt	Publikationen finns tillgänglig endast på Internet <a href="http://www.environment.fi/syke/publications">www.environment.fi/syke/publications</a> .			
Sammandrag	<p>Denna rapport utgör en del av forskningsprogrammet Miljöpolitikens effektivitet: lagstiftning, medborgardeltagande och beslutsfattande (EMLE). EMLE är ett innovativt forskningsprogram som granskar karaktären hos, påverkan och effekterna av medborgardeltagande i beslutsfattandet gällande miljöfrågor. Projektet finansieras gemensamt av Finlands Akademi, Miljöministeriet och Finlands Miljöcentral.</p> <p>Syftet med denna rapport är att undersöka medborgardeltagandets karaktär inom miljötillståndsprocessen på en regional nivå i Finland. I processen deltar alltid en miljötillståndsansvarig från en av två regionala miljömyndighetstyper, samt ansökande och medborgare som har rätt att delta i processen. Undersökningen inkluderade alla dessa medparter, och forskningsdata till rapporten insamlades både genom kvantitativa (statistisk analys av överklagande av tillståndsbeslut) och kvalitativa metoder (intervjuer med domare, miljötillståndsansvariga samt fallstudier omfattande 10 tillståndsprocesser).</p> <p>De huvudsakliga resultaten av undersökningen påvisar att miljötillståndsprocessen uppfattas och upplevs på olika sätt av de olika medparterna, och detta påverkar hur medborgardeltagandet kan påverka beslutsfattandet. Rätten att delta används också relativt sällan, och kan ibland domineras av vissa 'superaktiva' då miljötillståndsansvarige skulle helst vilja få större mängd och mångfald inom deltagandet. De upplever medborgardeltagande som betydelsefullt, som kan bidra till att reducera den allmänna konfliktnivån i samband med fallet i fråga och möjliggör beslut baserat på bättre information.</p> <p>De ansökande upplever däremot att deltagandet har en större effekt än vad den borde, och är mer negativt inställda mot rätten att delta. Detta varierar dock med storleken av den ansökande parten, och mindre industrier och företagare reagerar mer positivt mot medborgardeltagande. De som deltar är ofta besvikna med tillståndsbesluten och tycker själv att deras påverkan har varit liten. Däremot finns det en stor tillit inom medborgarna gentemot myndigheten, som anses kompetent i lagstiftnings- och miljöfrågor.</p> <p>Flera starka teman kom fram i undersökningen som borde utvecklas i framtida forskning. Kommunikation ansågs av alla medparter att vara väldigt viktigt, och flera problem kunde identifieras som hindrade effektiv kommunikation mellan parterna. Deltagandets effektivitet borde också undersökas med mer grundläggande teoretisk analys, med syfte att utveckla sätt att mäta deltagandets effektivitet i dessa och andra sammanhang.</p> <p>Denna rapport och sammanfattar en stor mängd undersökningsresultat, och som sådan har inte avslutats med konkreta slutsatser. Dessa kommer dock fram i andra artiklar som har klarare fokus och behandlar en mindre bredd av teman än de som framförts här.</p>			
Nyckelord	Medborgaraktivitet, deltagande, miljöpolitik			
Finansiär/ uppdragsgivare	Finlands Akademi, Finlands miljöcentral SYKE			
	ISBN	ISBN 978-952-11-3609-2 (PDF)	ISSN	ISSN 1796-1637 (online)
	Sidantal 68	Språk Finska	Offentlighet Offentlig	Pris (inneh. moms 8 %) - €
Beställningar/ distribution	Finlands miljöcentral SYKE			
Förläggare	Finlands miljöcentral SYKE PB 140, 00251 Helsingfors Tfn. +358 20 610 123 Epost: <a href="mailto:neuvonta.syke@ymparisto.fi">neuvonta.syke@ymparisto.fi</a> , <a href="http://www.miljo.fi/syke">www.miljo.fi/syke</a>			
Tryckeri/tryckningsort och -år				



ISBN 978-952-11-3609/2 (PDF)

ISSN 1796-1637 (on-line)