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Overcoming Permitting Obstacles and Legal Challenges to Biofuel Production Facilities

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I. Land Use

- Be aware of EFU zone restrictions, as they may prohibit off-site ag processing facilities
- May need conditional use permit
- May need to create a new local zoning ordinance; zoning to allow ag processing plant
- Host of issues likely to come up in local process:
 - Urban uses in rural areas; loss of ag land; use compatibility with existing surrounding uses; site alternatives analysis; impacts on wildlife; impacts on natural resources/scenic values; traffic; noise; impacts on cultural resources

II. Federal Connection?

- Siting on federal lands, funding from federal sources, permits issued by federal agencies
- If so, then potential need to comply with NEPA and/or ESA

III. Wetlands

- Wetland delineation can help avoid wetland impacts and wetland permitting
- If wetland fill activity is unavoidable, then permits may include 404 permit under Clean Water Act, state fill and removal permit, and possibly local requirements

IV. Intake Water

- 40 mmgy ethanol production plant will require approximately 1 acre-foot of water/day
- May need connection to municipal supply, or a new water right
- Because surface and ground water sources are often overappropriated, a water right transfer may be the preferred option

V. Discharge Water

- Discharge of pollutants to waters of the U.S. from point sources requires NPDES permit
- Even a zero-discharge plant may require ponds, which may require WPCF permits
- Possible need for stormwater permit; septic system approval

VI. Noise

- Concern is often rail car loading and unloading, and truck traffic
- Regulations are often contained in state rule and enforced through local ordinance

VII. Air/Odor

- Minnesota dry mill ethanol plants: violated air permits by emitting > 100 tons/yr VOCs
- Most VOCs are from drying distillers grain in the dryer; use of thermal oxidizers
- State air permit; avoid non-attainment areas; beware of offset requirements; tax credits
- Oregon's unique odor requirements