



ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENERGY ACTIVITIES
REGION VIII

ENERGY DEVELOPMENT MONITORING SYSTEM

SUBMITTED UNDER
CONTRACT NO.
EPA 68-01-3580

VOLUME III

SEPTEMBER 15, 1976

ARTHUR YOUNG & COMPANY





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I. INTRODUCTION

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This volume is one of six separate volumes of the Level 3 of the Energy Development Monitoring System. The six volumes of Level 3 are organized in the following manner by type of energy resource.

- . Volume II: Coal
- . Volume III: Electricity
- . Volume IV: Geothermal
- . Volume V: Nuclear
- . Volume VI: Oil and Gas
- . Volume VII: Oil Shale.

1. ORGANIZATION OF THE SECTION

Each volume has been organized by energy type, with further divisions by function or activity within that energy type. For example, the volume on coal is further divided into parts concerned with exploration, mining, coal gasification, and coal slurry pipelines. Thus anyone interested in knowing the regulatory process governing exploration for coal in any of the six States in the Region VIII of the Environmental Protection Agency could find all of the requirements in the proper Level 3 volume of this study describing coal. This section has been prepared so that the total description for each energy type and activity within the energy type is independent of all other descriptions. While this leads to duplication within the body of the report, for example the process to obtain approval from the Federal Aviation Administration for a tower built in conjunction with a coal gasification plant is the same process for approval of a tower constructed as part of an electric generating facility, it also results in self-contained modules. Thus, the reader may select those volumes of the report applicable to his needs and not be required to read the entire Level 3 section or an entire energy category to find the portions of interest to him.

Each regulatory agency description presented in this volume contains five parts. They are:

- . Legal authority under which the agency operates. This portion contains the applicable statute, citation, and the regulations of the agency.

- . Description of the process followed by the agency in issuing permits, licenses, or whatever approvals the agency must give to a potential energy developer.
- . Issuables are the documents issued by the agency. These are generally permits or licenses which allow the developer to conduct a specific activity. In some instances, however, the agency may participate in the development of and the approval for a comprehensive plan of activity. For example, a developer may be required to obtain approval for a reclamation plan prior to commencing any mining activity. The agency may assist the developer in planning for such activities as a storage of soil, selecting the growth for replanting, and landscaping the site prior to any approval of the plan.
- . Advisory agencies are the agencies which assist the named agency in reviewing applications or plans. These agencies, generally those whose specific knowledge, such as soil conservation or fish and wildlife habitats, are critical to the regulatory agency's decision making process.
- . Schematic presentation of the process of the regulatory agency. Each agency description is followed by a flowchart which outlines the regulatory process.

In addition to facilitating access to the information, each of these modules may be modified or amended as statutes or regulations are added or changed.

2. MAINTAINING THE MODULES

The regulatory process concerning energy development is one of the most dynamic legislative or regulatory arenas in today's political and legal environment. During the time this section was being prepared, that is, in the time frame from the conduct of the site visits to the development of this draft report, several changes have already occurred which will require changes in some of the modules. For example, the Colorado legislature recently enacted a bill which will alter the mining reclamation activity required by energy developers within Colorado. On April 22, 1976, the Federal Register contained new regulations of the Nuclear Regulatory Commission which affect the Commission's regulation of nuclear development. This was followed by an April 30, 1976 announcement of new U. S. Geological Survey regulations concerning the granting of oil and gas leases.

Several of the States visited operate with bi-annual legislative sessions. While legislatures in these States were not in session during 1976, they will be in session in 1977. Officials within these States feel that legislation will be enacted during the coming sessions which will alter the energy development regulatory processes within their States.

In this dynamic environment, any description of regulatory requirements which is not maintained will rapidly become obsolete. To maintain current modules, the EPA should establish a relationship with one agency in each State to serve as the coordinator for the State. Then, on a semi-annual or annual basis, the EPA could contact their coordinating agencies in each of the States to obtain revisions to the processes. At the Federal level, the EPA could contact each of the agencies directly. After changes have been ascertained, pages can easily be substituted in the loose-leaf binders.

In this fashion the inventory of regulatory requirements would be kept current. Any user having need of the system then would have the corrected data.

The cross index contained herein presents the agencies, by energy category and function within categories, which are involved in the regulatory process.

III. ELECTRICITY

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This section of the report presents the regulatory process for the development of electrical generating facilities and the transmission of power from the site. This section has been divided into four subsections. These subsections are as follows:

- . Electrical Generation: Fossil-Fueled
- . Electrical Generation: Hydro and Pumped-Storage Powered
- . Electrical Generation: Nuclear-Fueled
- . Electric Transmission Lines

Each of these four sections includes the entire regulatory process from project initiation through operation.

1. FOSSIL-FUELED

Fossil-fueled power plants are those plants in which coal, oil, or natural gas are burned to create steam. The steam passes through turbines which transfer the energy from heat to mechanical energy. Giant electric generators transfer the mechanical energy of the spinning turbines to electrical energy. The efficiency of fossil-fueled power plants ranges from 30% to 45%. Stated differently, 30% to 45% of the heat energy is changed to electrical energy. The remainder is lost through escaping heat and unavoidable losses of the thermodynamic process.

(1) Federal Agencies Regulating Fossil Fuel Powered Electric
Generating Facilities

This part of the report presents the Federal agencies which regulate the development of fossil-fueled electric generating facilities.

(a) Army Corps of Engineers

The Army Corps of Engineers is responsible for monitoring the condition of navigable water whether the water is a tidal area, ocean or gulf, from the shore to the continental limit, including rivers, streams or lakes. A single permit is required for all activities including:

- . Work in, or placement of, structures in the water. This encompasses such activities as building intake and outfall structures, transmission lines across waters, and so forth
- . Disposal of dredged or fill material into navigable waters including the transportation of such material on navigable waters for the purpose of disposal
- . Other activities which may have an effect on navigable waters
- . Legal Authority

The Army Corps of Engineers operates under the River and Harbor Act of 1899; the Federal Water Pollution Control Act Amendments of 1972; and the Marine Restriction, Research, and Sanctuaries Act of 1972. The regulations governing actions are in Title 33 of the Code of Federal Regulations.

- . Description of the Process

In the initial step following the receipt of the application, the Army Corps of Engineers prepares an environmental assessment (See Flowchart E-1). This assessment is prepared employing consultation from other parties, both public and private, who may have an interest in the action. Following the evaluation of the assessment, the Corps determines if an Environmental Impact Statement (EIS) is required.

If the Corps determines that the impact is not sufficient to require an EIS, the Corps consults with advisory agencies on the decision to grant the request. As part of this decision-making process the Corps may hold public hearings; however, public hearings are not required.

On the other hand, if an EIS is required, the Corps will prepare the EIS and circulate it among the advisory agencies. The Corps holds public hearings. Using the information gathered in this procedure, the Corps makes a determination on the application.

If the Corps grants the permit, a Federal right-of-way may

be required. If so, the applicant must file with the agency controlling the surface rights for the appropriate right-of-way.

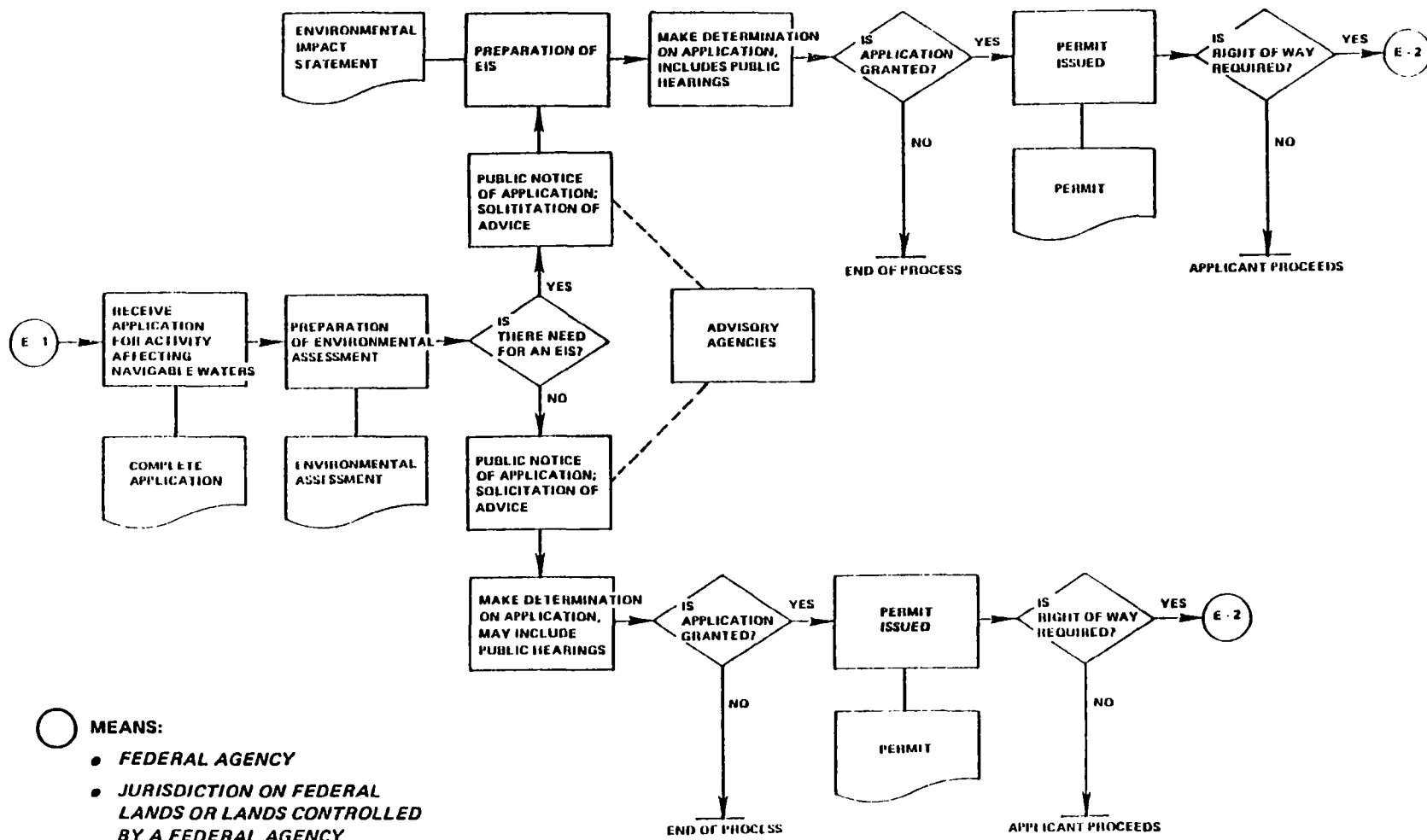
- . Issuables

The Army Corps of Engineers issues a single permit for activities effecting navigable waters.

- . Advisory Agencies

- Fish and Wildlife Service
- Bureau of Reclamation
- National Oceanic and Atmospheric Administration

CORPS OF ENGINEERS



(b) Bureau of Land Management

The location of electric generating facilities may require rights-of-way on Federal lands. The BLM is the principal grantor of rights-of-way on Federal lands. Other agencies, for example the Forest Service and the National Park Service, control surface rights to land. Because of similar processes, the description of the process is being presented here using the BLM as the principal agency.

. Legal Authority

The granting of rights-of-way on Federal lands are governed by Title 43 of the Code of Federal Regulations Subpart 2800.

. Description of the Process

The first step in the consideration of a right-of-way application is the determination of whether the agency has jurisdiction over the land (See Flowchart E-2). If the land is under the control of the BLM an Environmental Assessment Record (EAR) is prepared by the BLM. Based on the findings in the EAR, the BLM determines whether or not the environmental impact is significant enough to require an Environmental Impact Statement (EIS).

If the BLM requires only the EAR, the evaluation of the request is made on the basis of the content of the EAR and the advice provided by other agencies who participate in the review process. If an EIS must be prepared, the lead agency is assigned and the preparation plan, i.e., the plan of action to handle the EIS, is drafted. The Office of Environmental Project Review is responsible for coordinating the BLM's participation in the EIS review. Depending on the complexity of the EIS, the statement takes from nine (9) months to two (2) years to complete the process. A detailed description of the proposal and baseline area studies are important for any EIS. The BLM must wait thirty (30) days after the EIS is submitted to the Council on Environmental Quality (CEQ) before any decision can be given.

The EAR/EIS process is critical to the protection of the environment. Once a permit for exploration or mining has been given, the recipient cannot, by law, be denied access to the site. Consequently, it is crucial that the BLM place stipulations on the rights-of-way granted to ensure the protection of the environment. Compliance checks are conducted during the construction phase to verify the developer's compliance with the stipulations in the right-of-way.

The USGS is responsible for monitoring any stipulations on effluents and any other stipulations in the right-of-way.

On FS land, the FS monitors the rights-of-way and enforces public safety.

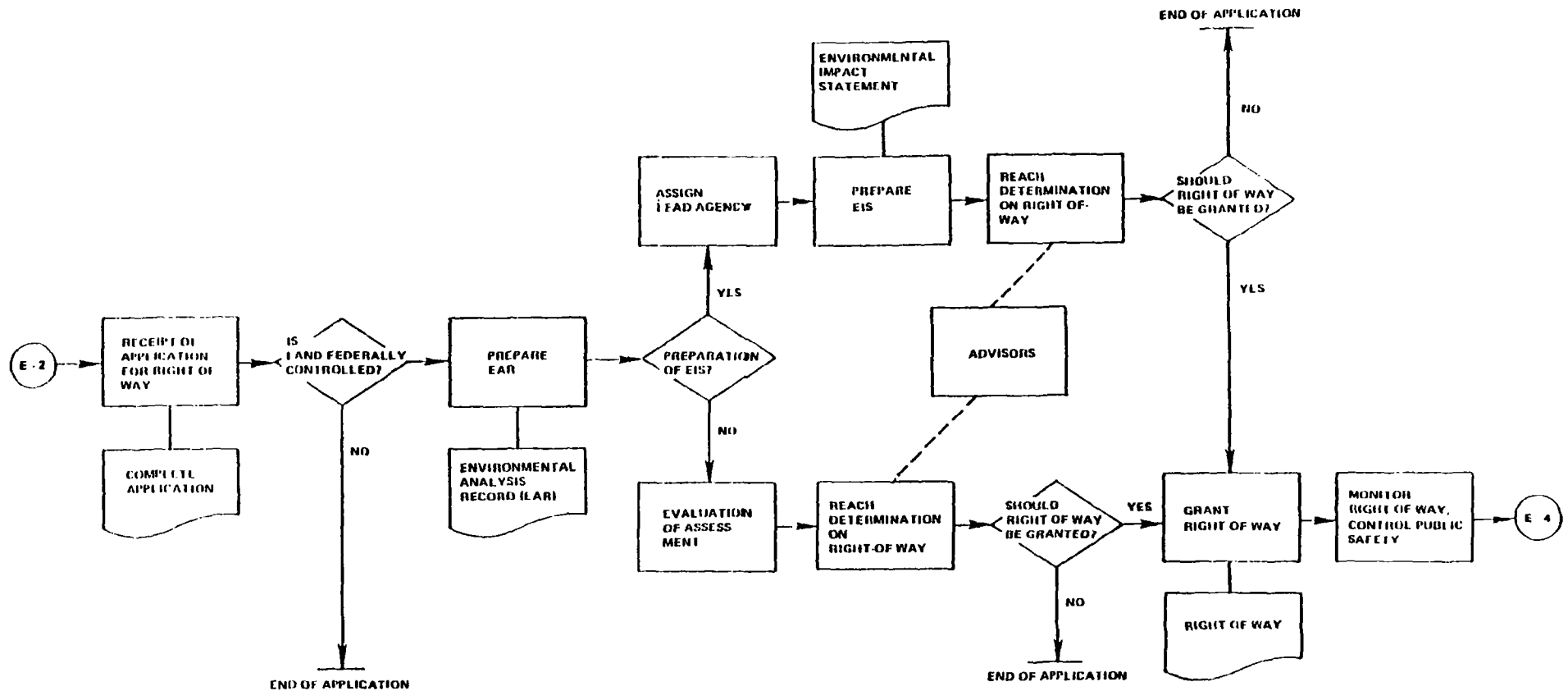
- . Issuables

The BLM issues rights-of-way

- . Advisory Agencies

Fish and Wildlife Service

**BUREAU OF LAND MANAGEMENT
RIGHT-OF-WAY PERMIT**



MEANS:

- FEDERAL AGENCY
- JURISDICTION ON FEDERAL LANDS OR LANDS CONTROLLED BY A FEDERAL AGENCY

(c) Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) is authorized to approve rights-of-way for electric power facilities over Indian lands. No right-of-way is issued over tribal lands, however, without prior consent of the tribe.

- . Legal Authority

The regulations governing applications to the BIA are contained in Title 25 of the Code of Federal Regulations.

- . Description of the Process

The application for a right-of-way is received in the regional office of the BIA (See Flowchart E-3). The application is reviewed by the BIA to determine whether or not an Environmental Impact Statement is necessary. If an EIS is necessary, the BIA prepares a draft copy of the EIS. Advisory agencies and interested persons are invited to comment upon the EIS and public hearings are held. The findings of the comment period and from the advisory agencies' reviews are incorporated into the final EIS.

If the BIA determines that the impact of the requested application is not sufficient to require an EIS, the decision-making process is based on the findings of the environmental assessment.

The results of the EIS or the assessment are forwarded to National for review and comment. The package is then returned to the regional office with any comments. The regional office then makes the determination on granting the right-of-way permit. If the BIA grants the application, the agency issues a permit.

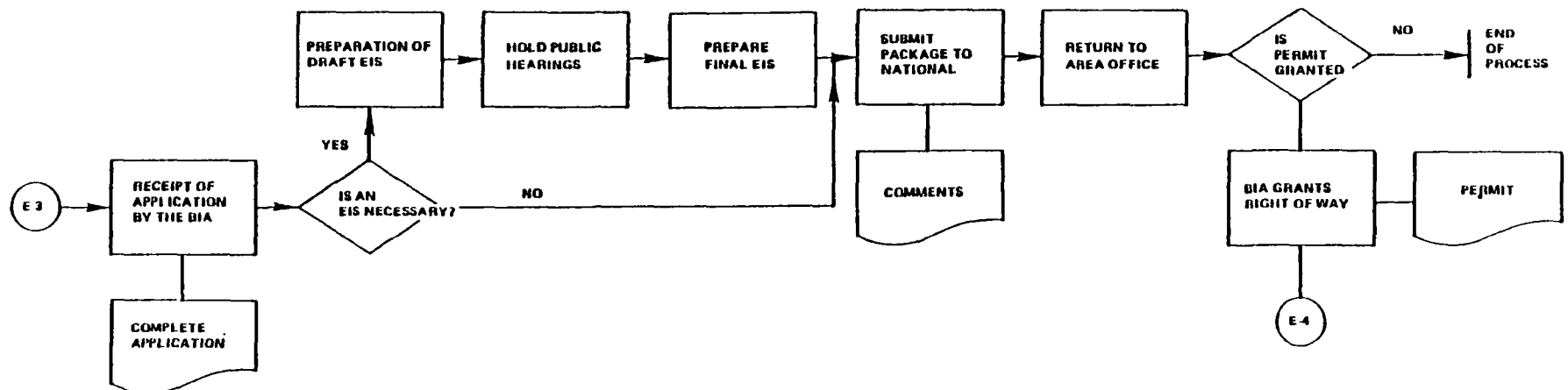
- . Issuables

The BIA issues a right-of-way permit

- . Advisory Agencies

- Fish and Wildlife Service
- Bureau of Land Management

**BUREAU OF INDIAN AFFAIRS
RIGHT-OF-WAY PERMIT**



MEANS:

- **FEDERAL AGENCY**
- **JURISDICTION ON FEDERAL LANDS OR LANDS CONTROLLED BY A FEDERAL AGENCY**

(d) Environmental Protection Agency (EPA)

The Environmental Protection Agency has primary responsibility over issuance of National Pollution Discharge Elimination System (NPDES) permits. This permit regulates the quality and quantity of liquid effluents discharged into rivers and waterways.

- . Legal Authority

Under the 1972 amendments to the Federal Water Pollution Control Act, the discharge of pollutant into the U.S. waters without an NPDES permit is illegal. This is only applicable to new source discharges for which EPA effluent emission guidelines have been developed.

- . Description of the Process

The EPA has primary responsibility for the NPDES program, but it may transfer responsibility over the NPDES program to States which have EPA approved programs (See Flowchart E-13). Where there are approved State programs, it is the State procedure which is followed, provided that the State abides by the same prohibitions against issuing permits that govern the EPA's decision. The EPA does, however, reserve the right to deny a permit when a State may grant it. The EPA may not issue a permit when a State with an approved program denies the permit.

For a State without an approved program, the EPA receives the application and engineer's reports directly (See Flowchart E-13). Other Federal and State agencies that are interested in the proposed project are sent copies of the application and comments solicited. A copy of the application is sent to the State authorities to certify that the project meets any applicable State standards. If the proposed project meets the State standards, the EPA must decide whether it is a major federal action to issue the NPDES permit. If so, an Environmental Impact Statement (EIS) is required and must be prepared.

All information to this point is then analyzed and a preliminary decision reached. This preliminary decision and the application are then posted in a public notice, which is a solicitation for comments from any interested party. If a public hearing is required, it is held and all interested parties heard. This additional input is then weighed in the determination on issuance of the NPDES permit. If the determination is negative, there are appeals processes available through the Administrator of the EPA. If the final

determination is affirmative, than the NPDES permit is issued with a term of up to five years.

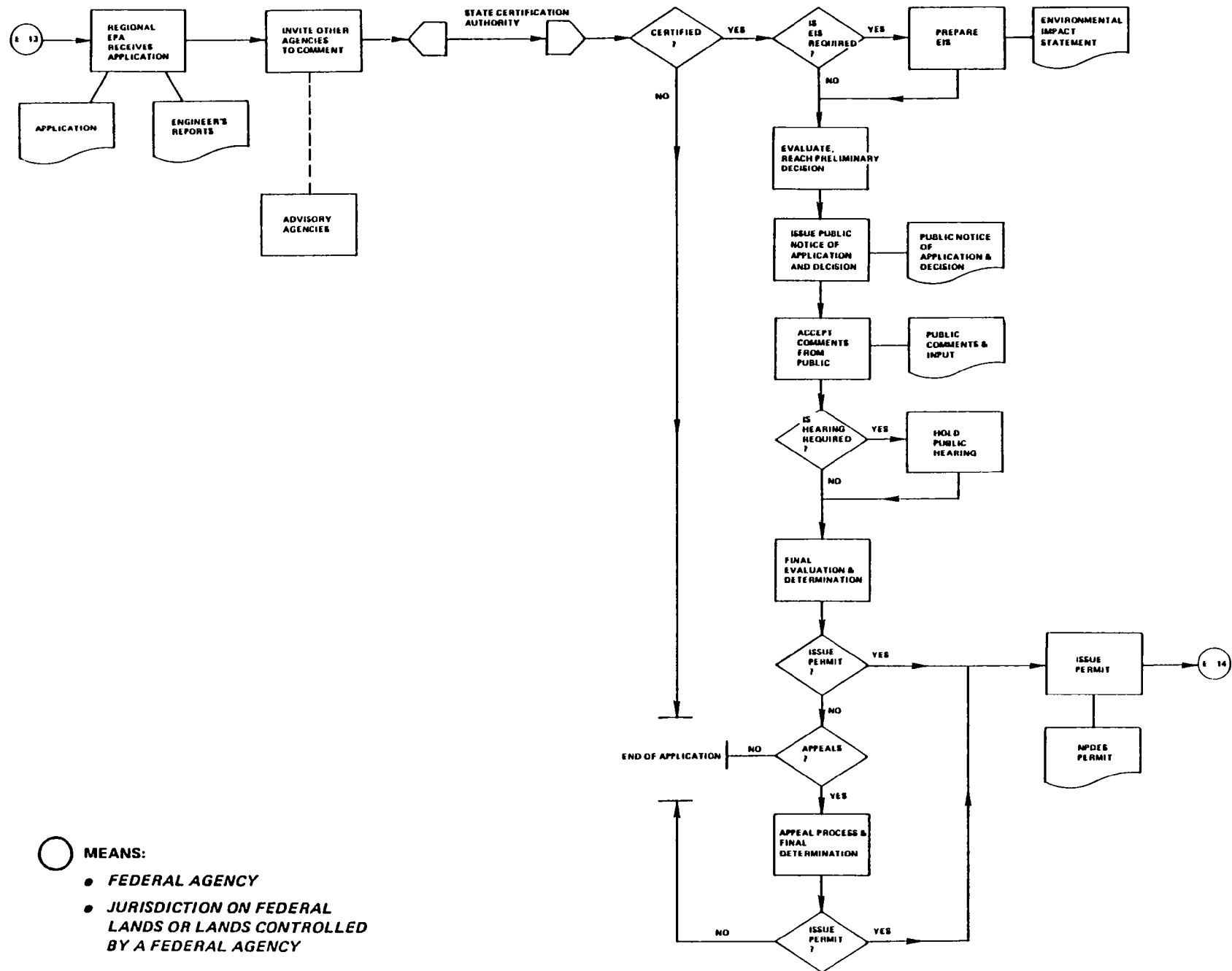
. Issuables

- Environmental Impact Statement
- Public Notice of Application and Preliminary Decision
- National Pollution Discharge Elimination System Permit

. Advisory Agencies

- Corps of Engineers
- U.S. Fish and Wildlife Service
- Bureau of Reclamation
- Other agencies as may be interested in either the EIA preparation or public hearings.

**ENVIRONMENTAL PROTECTION AGENCY
NPDES PERMIT**



(e) Federal Aviation Administration (FAA)

Whenever the erection of a tower may be proposed for a location which may affect air traffic safety, a Notice of Intent to Construct a Tower must be filed with the FAA.

- . Legal Authority

The FAA is charged with the responsibility for air safety by Title 14 of the Code of Federal Regulations.

- . Description of the Process

If an operator suspects a proposed tower to be under FAA jurisdiction, he must file a Notice of Intent to Construct a Tower at least 30 days prior to construction (See Flowchart E-11). The FAA then determines whether the proposed tower would be considered an obstruction to air traffic safety. This usually takes 2 to 3 weeks. If the proposed tower is not an obstruction, then the applicant may proceed with construction.

If it is an obstruction, however, the FAA must decide whether or not to issue a clearance for the tower. The FAA sends out notice of the proposed project to interested parties for comment. This may take up to 8 weeks for a significant clearance. If the FAA deems a public hearing to be needed, one will be held and all interested parties heard. The FAA then reviews the proposal and either issues or denies the clearance.

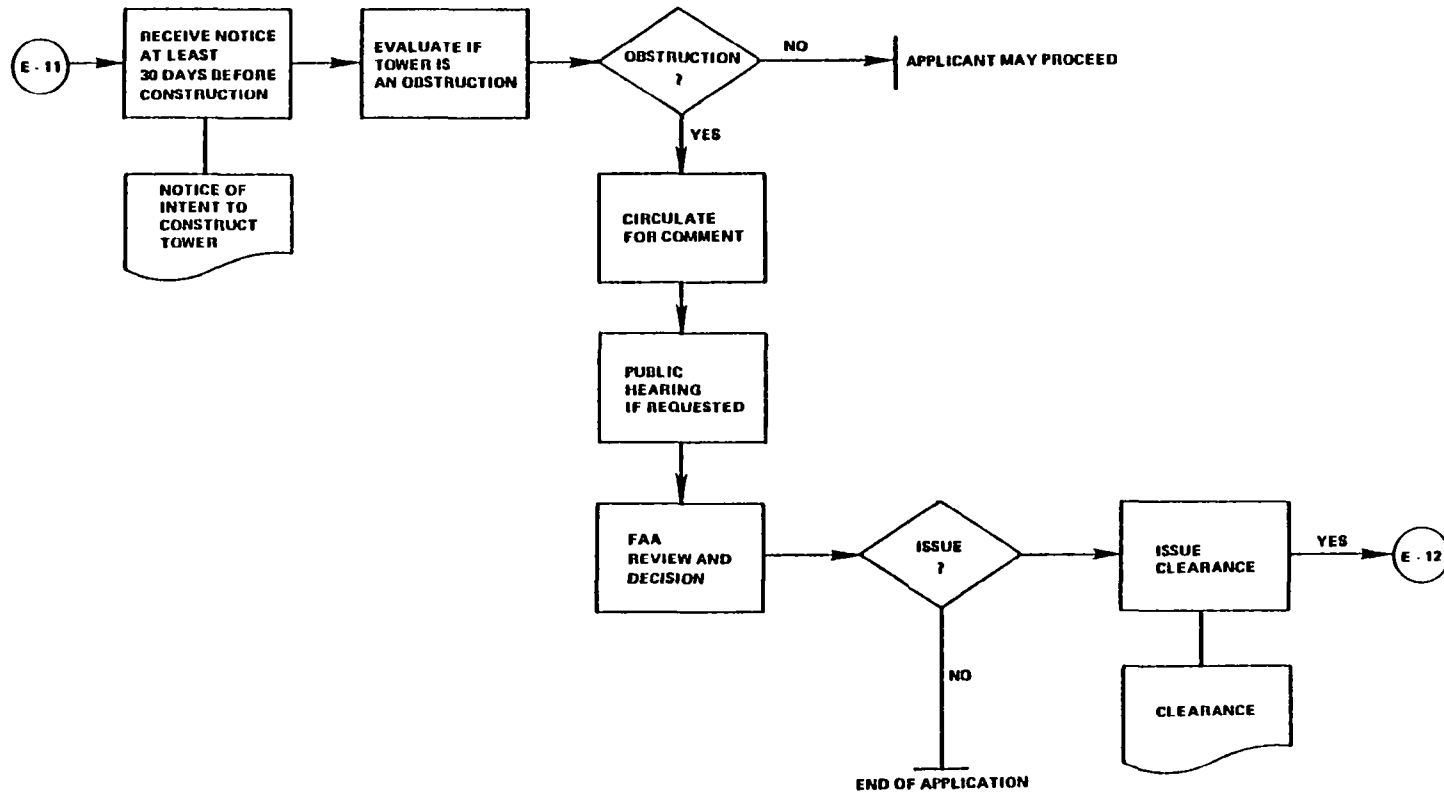
- . Issuables

Clearance for a Tower

- . Advisory Agencies

Undetermined

FEDERAL AVIATION ADMINISTRATION
TOWER CLEARANCE



MEANS:

- **FEDERAL AGENCY**
- **JURISDICTION ON FEDERAL LANDS OR LANDS CONTROLLED BY A FEDERAL AGENCY**

(2) State Agencies Regulating Fossil Fuel Powered Electric
Generating Facilities

This part of the report presents the State agencies which regulate fossil fuel powered electric generating facilities.

(a) COLORADO

Colorado - Public Utilities Commission

The Public Utilities Commission (PUC) has authority over the construction and operation of electric generating facilities within the State. This jurisdiction extends to all electric generating facilities regardless of whether they are fueled by fossil fuels, nuclear fuel, or hydro power.

One of the concerns of the Public Utilities Commission is with the economic feasibility of the proposed project. That is, what will be the effect of the construction costs of the new facility on the utilities rate structure and, ultimately, on the consumers of the utility.

In addition to the construction and operation of the electric generating facility, the PUC is concerned with the exploration for, and the development of, coal, oil, and gas by the utility or subsidiaries of the utility.

The PUC's involvement is not from a regulatory standpoint over such operations but rather its concern for the effect of exploration and development activities or the purchase of fuel on the rate structure of the utility.

THE PUC is not involved with the granting of rights-of-way. All rights-of-way are obtained by the utility from the owner/controller of the land. The PUC must approve the route for transmission, however. Any deviations from the approved routes which are material to the cost of the project will require a new PUC approval.

- Legal Authority

- Description of the Process

The Public Utilities Commission receives an application from a utility seeking approval for construction and operation of a generating facility and approval for the rights-of-way obtained (see Flowchart E-16). The application is reviewed by the Commission and public hearings are scheduled. At the hearings, the utility, any interested agencies and members of the public are allowed to testify.

Following the hearing, the PUC makes the decision to grant the application and approve the routes for the transmission lines. If approval is granted, the Commission issues a permit which enables the utility to proceed. During the construction of the facility, the utility must submit quarterly reports on construction progress including a comparison of proposed expenditures to the actuals to date.

- Issuables

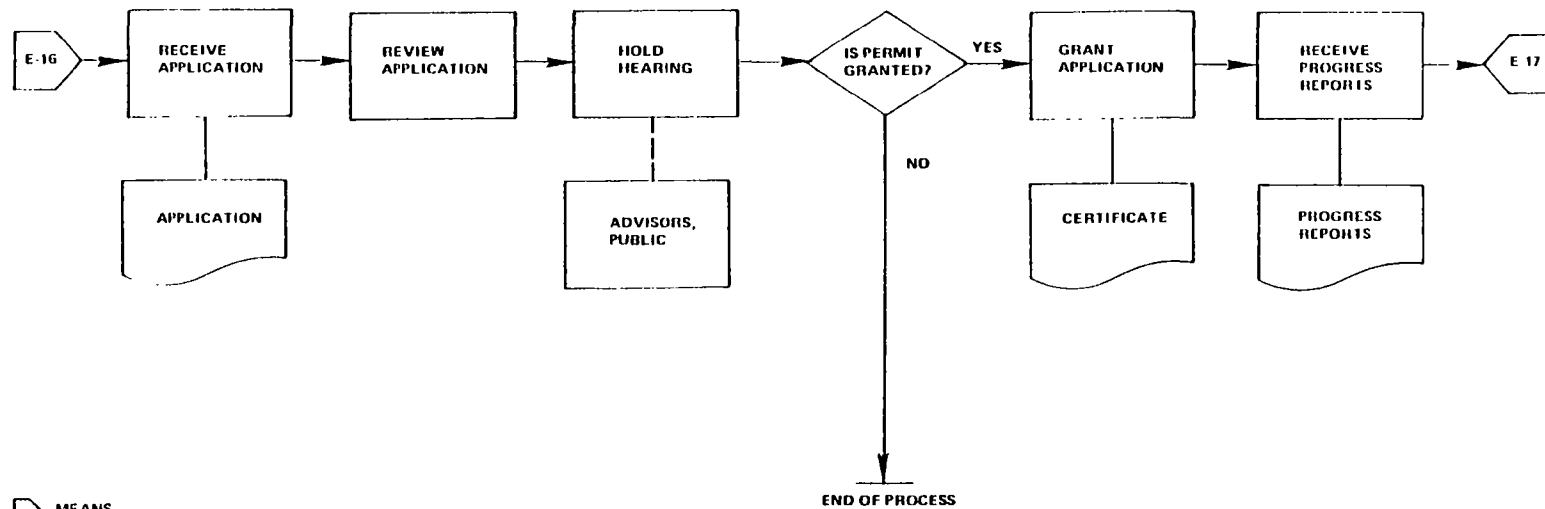
The Commission issues a Certificate of Public Convenience and Necessity.

- Advisory Agencies

- State Land Use Commission

- Department of Health.

COLORADO PUBLIC UTILITIES COMMISSION



- MEANS
- STATE AGENCY
 - AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
 - OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

. Colorado - Department of Health, Air Pollution Control Division

The Air Pollution Control Division is charged with developing and maintaining a comprehensive program for the prevention, control, and abatement of air pollution. The Division develops and promulgates ambient air quality standards and may issue cease and desist orders where emergency pollution exists.

- Legal Authority

The Air Pollution Control Division derives its authority from the Air Pollution Control Act of 1970, State of Colorado, Section 25-7. The rules and regulations governing the administration of this act are contained in the "Statements of Policy by the Division", "Common Provisions Regulations", and Regulations 1 through 9 of the Division.

- Description of the Process

The State does not allow the construction or operation of any new direct air contamination source without first obtaining or possessing a valid emission/permit. Any significant alteration of a source must be filed with the Division. Following the receipt of an application for such a permit, the Division must determine if the application is complete. The application is reviewed to determine the effect of this new source on the air quality of the area. Following this review the preliminary analysis of the effect of the direct source upon the ambient air quality and the extent of emission control are made available to the public. (See flowchart E-18)

If the application warrants public comment, a copy of the preliminary analysis and the application are filed with the appropriate county clerk and published in a local paper. Following the receipt of comments, the Division makes the determination whether or not to approve the application. If the application is denied, the applicant may request a conference with the Division and a hearing. If the application is approved, the permit is granted and the applicant may proceed.

The approval to proceed does not, however, constitute final approval. Prior to the operation of the facility the developer must give notice to the Division.

The Division then conducts an inspection to determine if the operating facility meets the standards projected in the application. If the standards are met, a final approval is granted.

The Division conducts on-going inspection efforts to ensure that standards are maintained during the operation of the project.

- Issuables

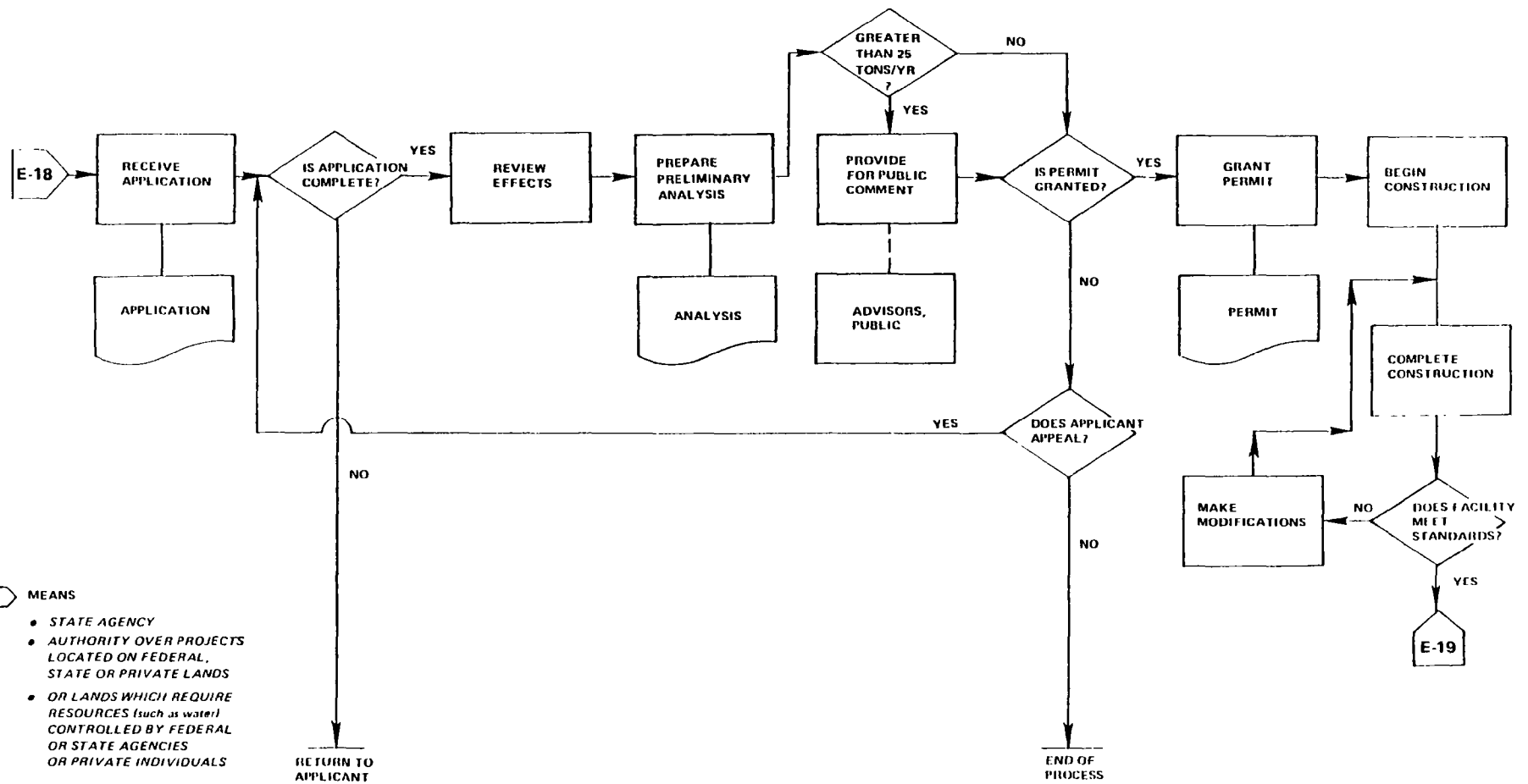
The Air Pollution Control Division issues the following permits which are relevant to a developer of an energy facility:

- .. Stationary Sources Air Emission Permit
- .. Open Burning Permit
- .. Fugitive Dust Permit

. Advisory Agencies

- .. Environmental Protection Agency
- .. Parties who are interested in the impact of fugitive dust or air emissions.

**COLORADO DEPARTMENT OF HEALTH
AIR POLLUTION CONTROL DIVISION**



. Colorado Department of Health: Water Quality Control Division

The Water Quality Control Division is charged with adopting a comprehensive program for the prevention, control and abatement of pollution of the waters of the State. The Water Quality Control Division promulgates rules, regulations, and standards of water quality and waste discharge and may issue cease and desist orders for violations.

- Legal Authority

The Water Quality Control Division operates under the authority of the Colorado Water Quality Control Act (C.R.S., 1963, 66-28-101, et. seq.).

- Description of the Process

No one is allowed to discharge any pollutant into any State water from a point source without first having obtained a permit from the Division for such discharge.

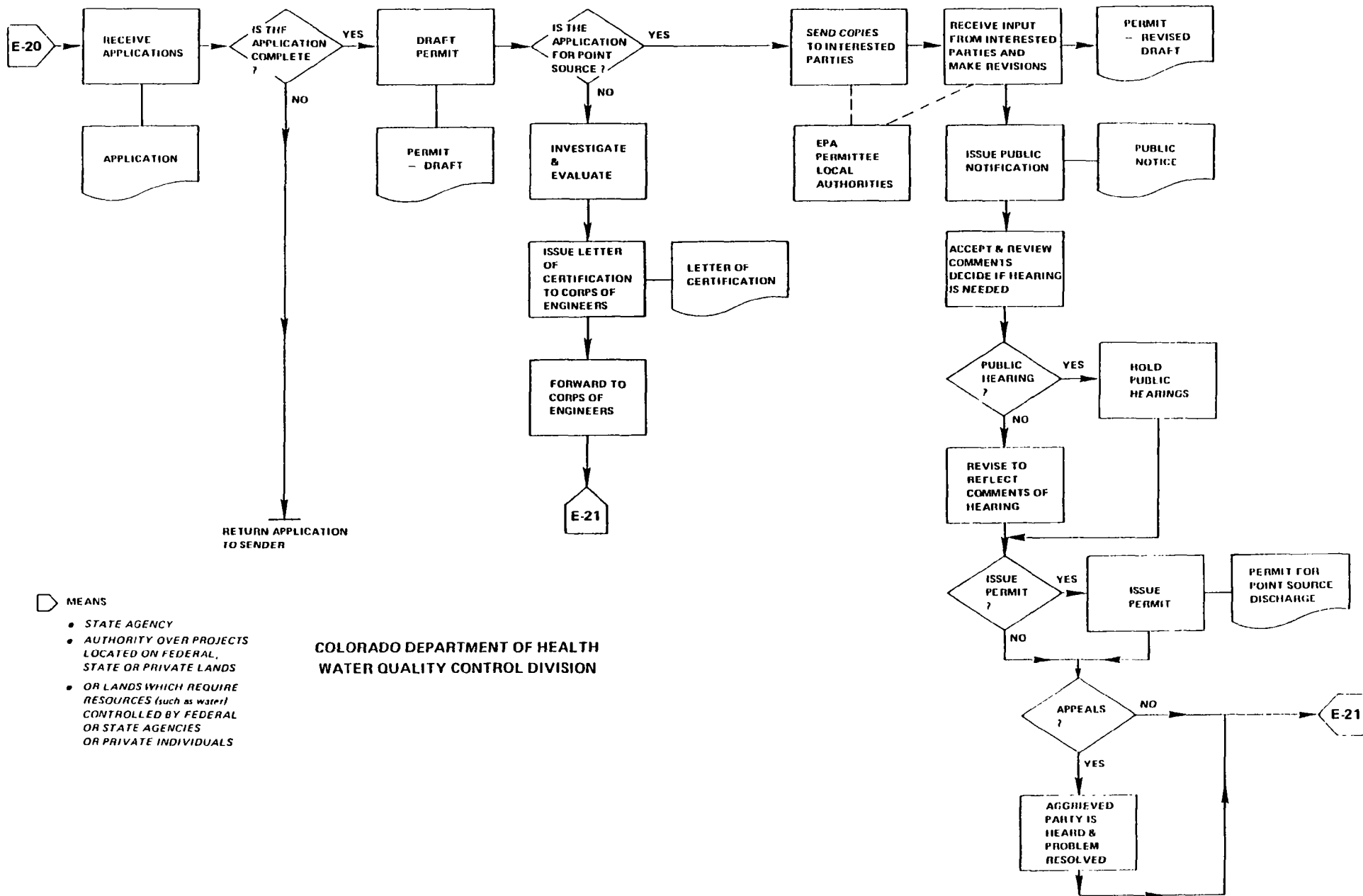
Applications for permits are filed with the Division (See Flowchart E-20). Once the application is received, the Division must determine if the application is complete. If complete, a draft permit is prepared. If the application is not for a point source discharge, the Division investigates and evaluates the application and prepares a letter of Certification to be forwarded with the application to the Corps of Engineers. For a point source, the Division sends copies of the draft permit to interested parties and invites response within 30 days. Public notification of the application is made, and if the response warrants, public hearings are held with all the information at hand. The Division decides whether or not to issue the permit. Either way, the aggrieved party has the right to appeal.

- Issuables

- .. Permit for point source discharge
- .. Letter of certification to U.S. Army Corps of Engineers.

Advisory Agencies

- .. Environmental Protection Agency
- .. U.S. Army Corps of Engineers



. Colorado Division of Water Resources

The Division of Water Resources is responsible for administering the use of water in the State. This is accomplished directly in the case of surface water and tributary ground water by the State Engineer, who is the Director of the Division; and, by the Ground Water Commission in the case of non-tributary designated ground water areas. The Division staff also serves as the staff for the Ground Water Commission. Water rights are obtained by decrees from the water courts generally following the axiom that the oldest right is the best right. In the designated ground water basins, the Ground Water Commission established priority lists of water users based on dates of initiation of uses.

In conjunction with the administration of water rights, the Division issues permits to drill water wells through an evaluation process which determines: (1) whether water is available for the proposed use, and (2) whether vested water rights will be materially injured.

Reviews are also made by the Division to determine possible adverse effects on vested water rights for proposals to: (1) dispose of mine tailings, (2) operate mine reclamation projects, (3) operate salt water disposal wells from oil and gas operations, and (4) develop geothermal resources.

The State Engineer and the Division of Water Resources, acting through the Board of Examiners for Water Well Drilling Contractors, exercises additional administrative control of water resources by the licensing of water well drillers and through rules and regulations governing water well construction and test hole drilling.

The Division of Water Resources may also review and grant temporary approval for plans of augmentation submitted by water users. Energy development projects typically require large amounts of water, and in the case where this water is tributary ground water, the augmentation plan must detail how the new users will obtain and return a sufficient supply of water to the total system to remedy any injury that may result to any senior water rights from his use.

- Legal Authority

The Division of Water Resources and the Office of the State Engineer operate under the authority granted

by Articles 37-90, 37-91 and 37-92 of the Colorado Revised Statutes, 1973. The first article, 37-90, covers designated ground water areas and the Ground Water Commission's jurisdiction. The second article, 37-91, deals with the Board of Examiners for Water Well Drilling Contractors, and the third article, 37-92, deals with surface and tributary ground waters. The Division's authority to grant temporary approval for plans of augmentation is found in Section 37-92-307, C. R. S., 1973. Responsibilities in the field of geothermal resources are set forth in Article 37-70, C. R. S., 1973. Additional duties and responsibilities of the State Engineer are found in Article 37-80, C. R. S., 1973.

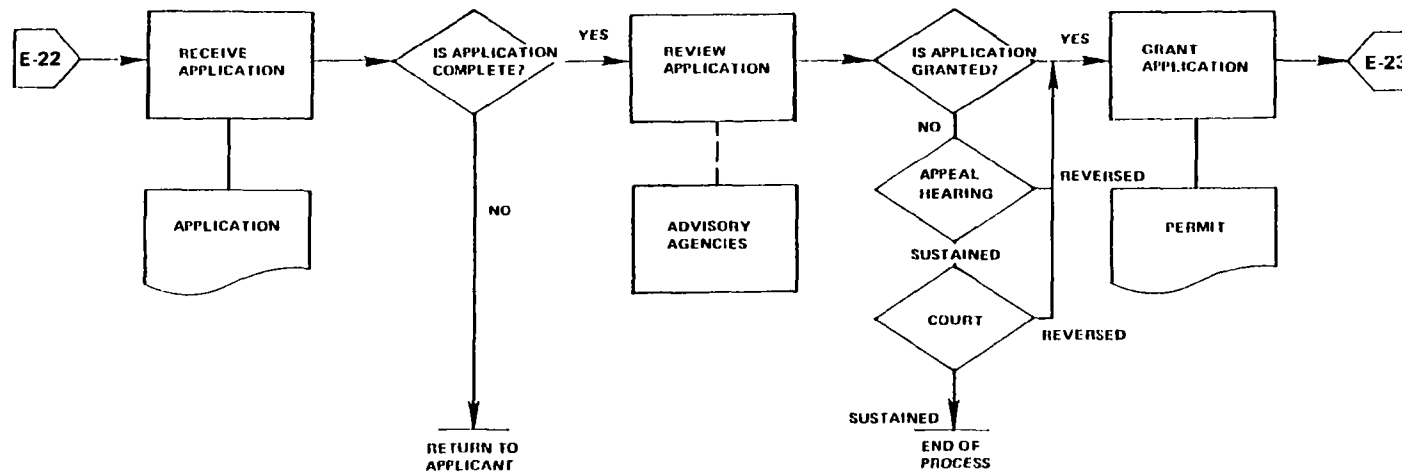
- Description of the Process

Applications for permits to drill water wells are submitted to the Division of Water Resources (see flow chart E-22) or to the Ground Water Commission, through the staff of the State Engineer, in the case of designated basins. The staff reviews the applications for completeness and in the case of complete applications, evaluates the same with consultation, if needed, with advisory agencies to determine whether the application can be approved. The decision is made by the State Engineer. Any applicant whose request has been denied by the State Engineer may request a hearing through an administrative appeal process. Ultimate relief of an appeal of any action by the Division or the State Engineer can be found in the appropriate court. Applications in designated ground water areas, if recommended for approval by the staff, are published so that interested parties may file an objection with the Ground Water Commission.

Plans for augmentation are submitted simultaneously to the Division of Water Resources and to the water court. The Division of Water Resources reviews the plan for completeness and, in conjunction with consultation with advisory agencies, if needed, determines whether or not the plan can be approved. The application made to the court is published so that interested parties are given the opportunity to file an objection with the court. The final decision as to whether or not the plan can be approved rests with the water court.

- Issuables
 - .. Issues a permit to drill a water well,
 - .. Licenses water well drillers,
 - .. Grants temporary approval for plans for augmentation, and
 - .. Acting for the Ground Water Commission, issues a permit to drill a well and to appropriate designated ground water.
- Advisory Agencies
 - .. Water Conservation Board
 - .. Oil and Gas Commission
 - .. Mine Reclamation Board
 - .. Water Quality Control Board
 - .. State and County Health Boards

COLORADO DIVISION OF WATER RESOURCES



MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

(b) MONTANA

. Montana - Department of State Lands

- Legal Authority

The Department of State Lands is responsible for leasing of all State lands under the Revised Codes of Montana, 1947, as amended.

- Description of the Process

There are two methods of obtaining a lease on State land in Montana, either through competitive bidding for a lease or through an award as the first qualified bidder (See Flowchart E-24). Generally, the competitive bid procedure is utilized for lease of lands with known resources and non-competitive award for unknown lands.

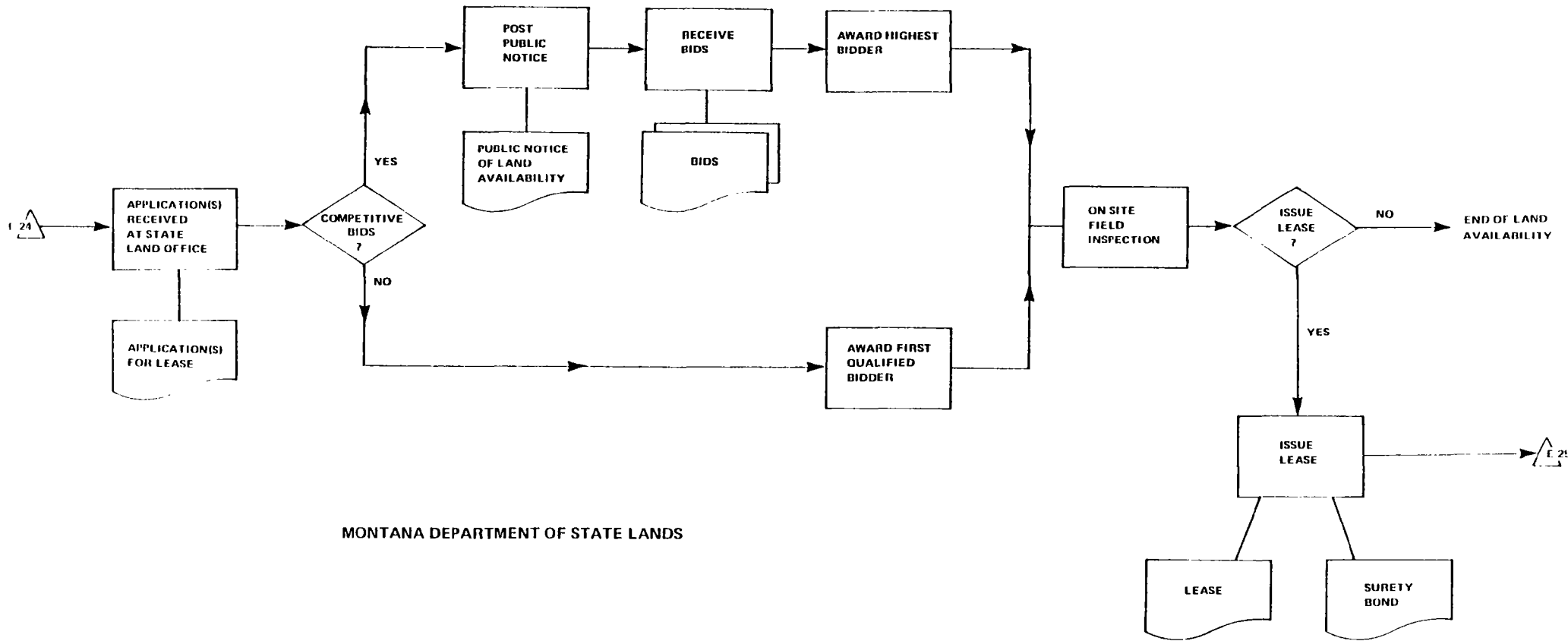
When an application for a State land lease is received, it is first determined whether the land in question is subject to competitive bidding. If so, availability is posted and bids accepted. The lease is then awarded to the highest bidder. In the case of non-competitive land, the award is to the first qualified bidder. Once an award is made, the Department decides whether or not to issue the lease. The land is usually not retracted. An on-site field inspection is required before issuance of the lease. When the lease is issued, the successful applicant must furnish a safety bond to the State.

- Issuables

.. Lease

.. Bond.

- Advisory Agencies



- △ MEANS
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

Montana Department of Health and Environmental Sciences -
Air Quality Bureau

- Legal Authority

Responsibility for, and jurisdiction over control of air pollution sources in Montana are given to the Department of Health and Environmental Sciences by the Clean Air Act of Montana. The Air Quality Bureau (AQB) handles air pollution and discharges for the Department.

- Description of the Process

The applicant must file with the AQB a Notice of Intent to Construct which notifies the AQB that there will be a new contributor of air pollution. Usually plans and specifications are filed with the Notice. The Bureau then reviews and evaluates the proposed project, accepting input from interested agencies. If the project will have a significant impact, an Environmental Impact Statement is required to be prepared.

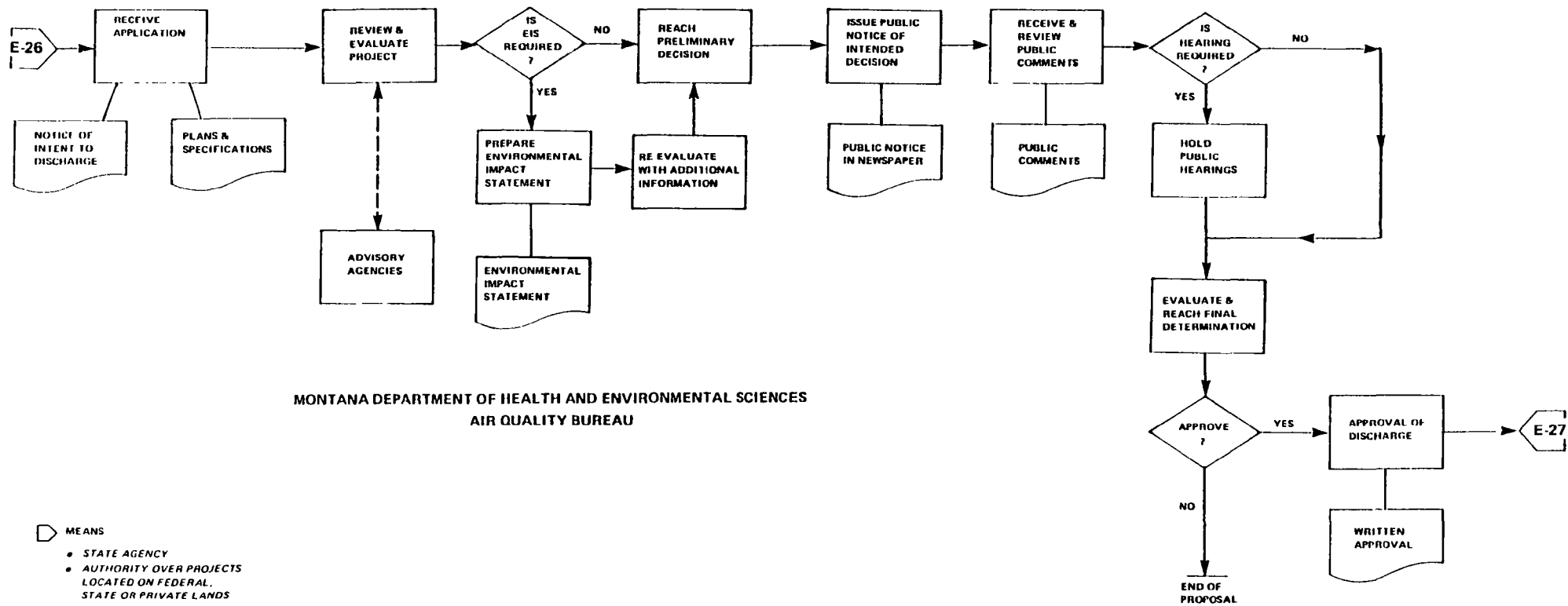
With the analysis prepared as required, the Bureau makes its preliminary decision and issues public notice of the intended decision. Comments are thereby solicited from the public, which are reviewed and evaluated. If public remarks warrant, public hearings may be held in which all interested parties are heard.

After all facts are gathered and all parties heard, the Bureau then reaches its final determination to either approve or deny the proposed project. If the project is approved, written notice is sent to the applicant (See Flowchart E-26).

- Issuables

- .. Public Notice of Intended Decision
- .. Written Approval of Proposed Project
- .. Environmental Impact Statement

- Advisory Agencies



. Montana - Department of Natural Resources and
Conservation Water Resource Division

- Legal Authority

The responsibility and authority for jurisdiction over all water in Montana is granted to the Department of Natural Resources by Montana Water Law Chapters 8 and 29. All water, wherever found, is under control of the Department.

- Description of the Process

A permit is required for any new appropriation of water, or construction of any diversion, impoundment, withdrawal or distribution works unless the project is exempted. A project is exempted if it is well outside the boundaries of a controlled ground-water area with a maximum yield of less than 100 gallons per minute. For an exempted well, within 60 days of completion of the well, the Division must receive notice of completion of the well, after which a Certificate of Water Right will be issued.

Unless the project is exempted, an application for permit must be filed with the Division (See Flow-chart E-28). Public notice of the application is published for three consecutive weeks in a newspaper in the area of the proposed water source. After the public notice, 30 to 60 days is allowed for receipt of objections to the project. The Division determines whether the objections warrant public hearings and hold the hearings if needed.

The proposed project is then evaluated and a decision is reached to issue or deny the permit. If the decision is to deny, the applicant may appeal to the Division for reconsideration. If the final decision is to issue the Permit, then the Permit is issued. Notice of completion must be filed within the prescribed time after the permit is issued or any authorized extension thereof. A Certificate of Water Right is issued if the project has been completed in substantial accordance with the permit. A Certificate of Water Right cannot be issued however until a general determination of existing rights in the source has been completed.

- Existing Water Rights

An existing water right is a right to the use of water which would be protected under the law as it existed prior to July 1, 1973. Water use for energy development may require the use of water for which a water right has been established. If a change of place of use, place of diversion, purpose of use, or place of storage is contemplated, pursuant to 89-892, R.C.M. 1947, application must be made and authorization received from the DNR&C. The severance or sale of a water right, pursuant to 89-893, R.C.M. 1947 also requires authorization by the department. Pursuant to the section cited, notice, hearing, etc. are conducted as per applications for water use permits.

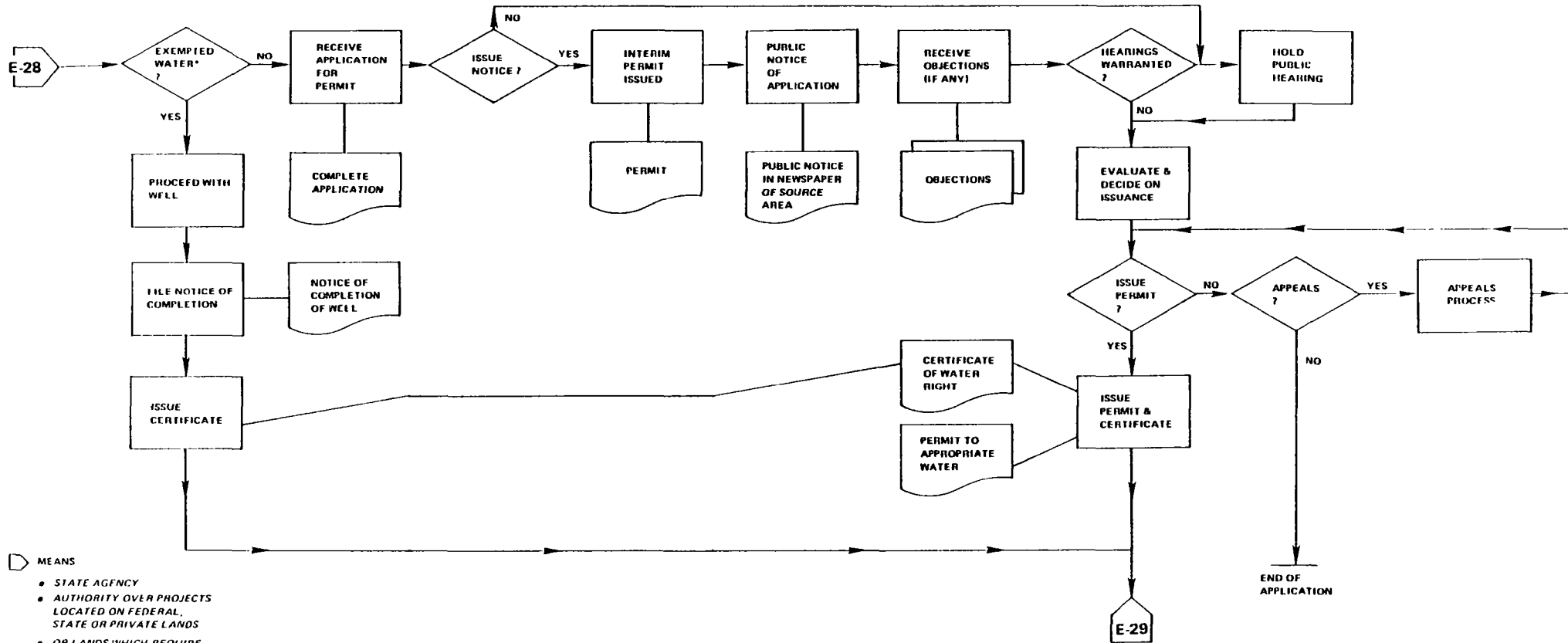
- Issuables

- .. Application for Permit to Appropriate Water
- .. Permit to Appropriate Water
- .. Certificate of Water Right
- .. Completion Report of Water Development
- .. Authorization of Change of Existing Water Right.

- Advisory Agencies

- .. None

**MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
WATER RESOURCES DIVISION**



Montana-Department of Natural Resources and Conservation:
Energy Planning Division

- Legal Authority

The Montana Major Facility Siting Act grants the Department of Natural Resources and Conservation jurisdiction over any facility designed for, or capable of, generating 50 megawatts of electricity or more, or any addition thereto having an estimated cost in excess of \$250,000 and related transmission lines.

- Description of the Process

No facility under this jurisdiction may be built without first applying for and receiving a Certificate of Environmental Compatibility and Public Need. Upon receipt of the application, the Division begins the review, evaluation, and study of the proposed project (See Flowchart E-30). This study is allowed up to two (2) years and encompasses an environmental and economic assessment of the project. After completion of the study, the Division presents its report of all findings and recommendations to the Board of Natural Resources and Conservation. The Board invites input from all interested State advisory agencies.

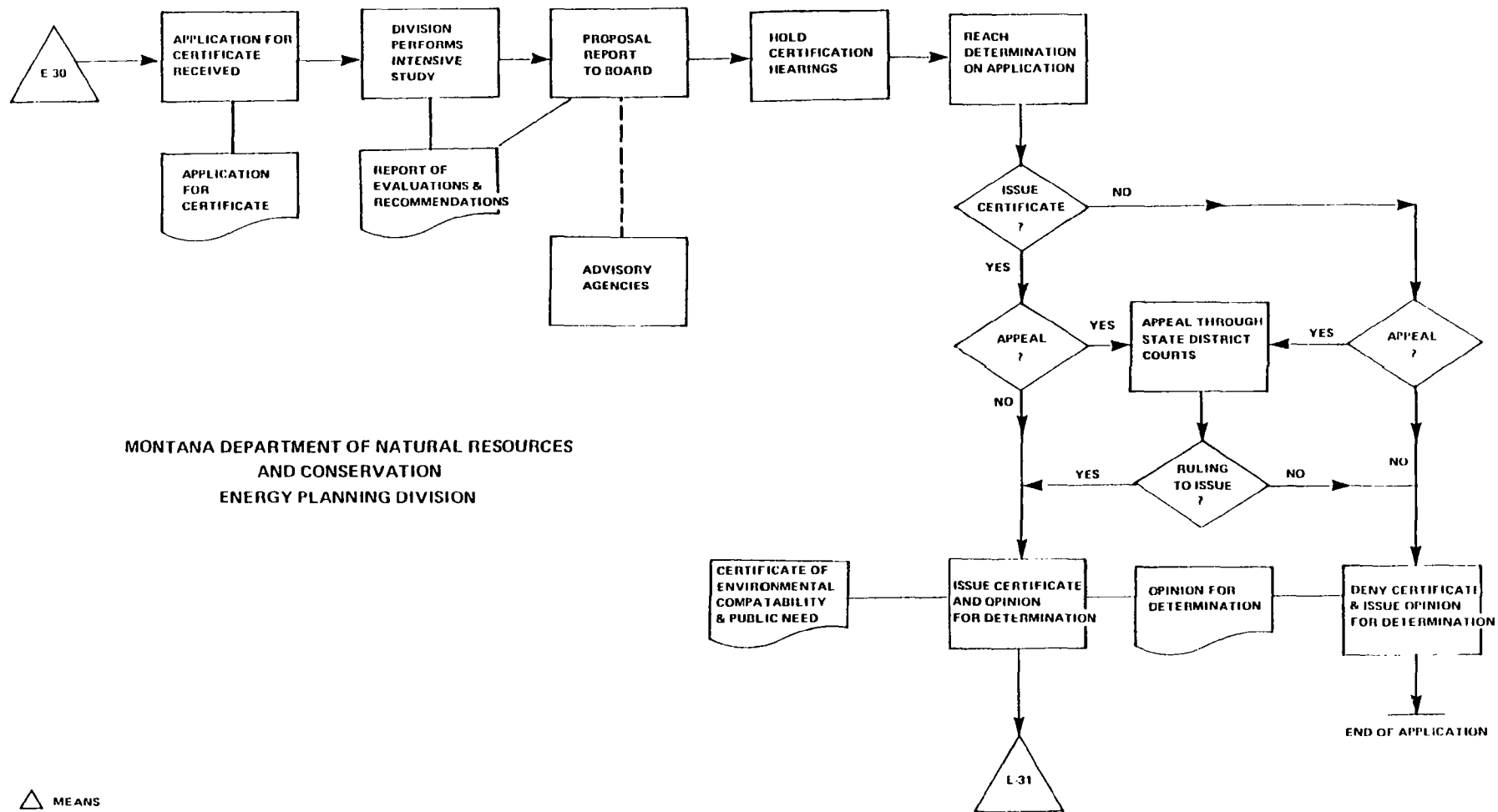
Within four (4) months, the Board holds public certification hearings to accept additional input to the evaluation. Within three (3) months after the end of the hearings, the Board issues its opinion and decision on the issuance of a Certificate for the project. Any aggrieved parties may petition to the State district courts for appeal.

When the final determination is reached, either the project is issued a Certificate of Environmental Compatibility and Public Need and may proceed or it is denied a Certificate and is terminated.

- Issuables

- .. Application for Certificate of Environmental Compatibility and Public Need
- .. Division Report on Project (Environmental and Economic Assessment)
- .. Certification Hearings

- .. Opinion for Determination
- .. Certificate of Environmental Compatability and
Public Need
- Advisory Agencies
 - .. Department of Health and Environmental Sciences
 - .. Department of Highways
 - .. Department of Intergovernmental Relations
 - .. Department of Fish and Game
 - .. Department of Public Service Regulation.



MONTANA DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
ENERGY PLANNING DIVISION

- △ MEANS
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

. Montana-Division of Health: Water Quality Bureau (WQB)

- Legal Authority

Responsibility for, and authority over the control of air pollution sources in Montana is given to the Division of Health by Chapter 69-4800 of the Montana laws.

- Description of the Process

The applicant must file with the WQB a Notice of Intent to Construct which notified the WQB that there will be a new contribution to water pollution. Usually plans and specifications are filed with the Notice. The Water Quality Board notifies the Environmental Protection Agency of the receipt of the application. The Bureau then reviews and evaluates the proposed projects, accepting input from interested agencies, (See Flowchart E-32).

The Bureau makes its preliminary decision and issues public notice of the intended decision. Comments are thereby solicited from the public. These comments are reviewed and evaluated. If public remarks warrant, public hearings may be held in which all interested parties are heard.

After all facts are gathered and all parties heard, the Bureau then reaches its final determination to approve or deny the proposed project. Written notice of the decision is mailed to the applicant and to the EPA.

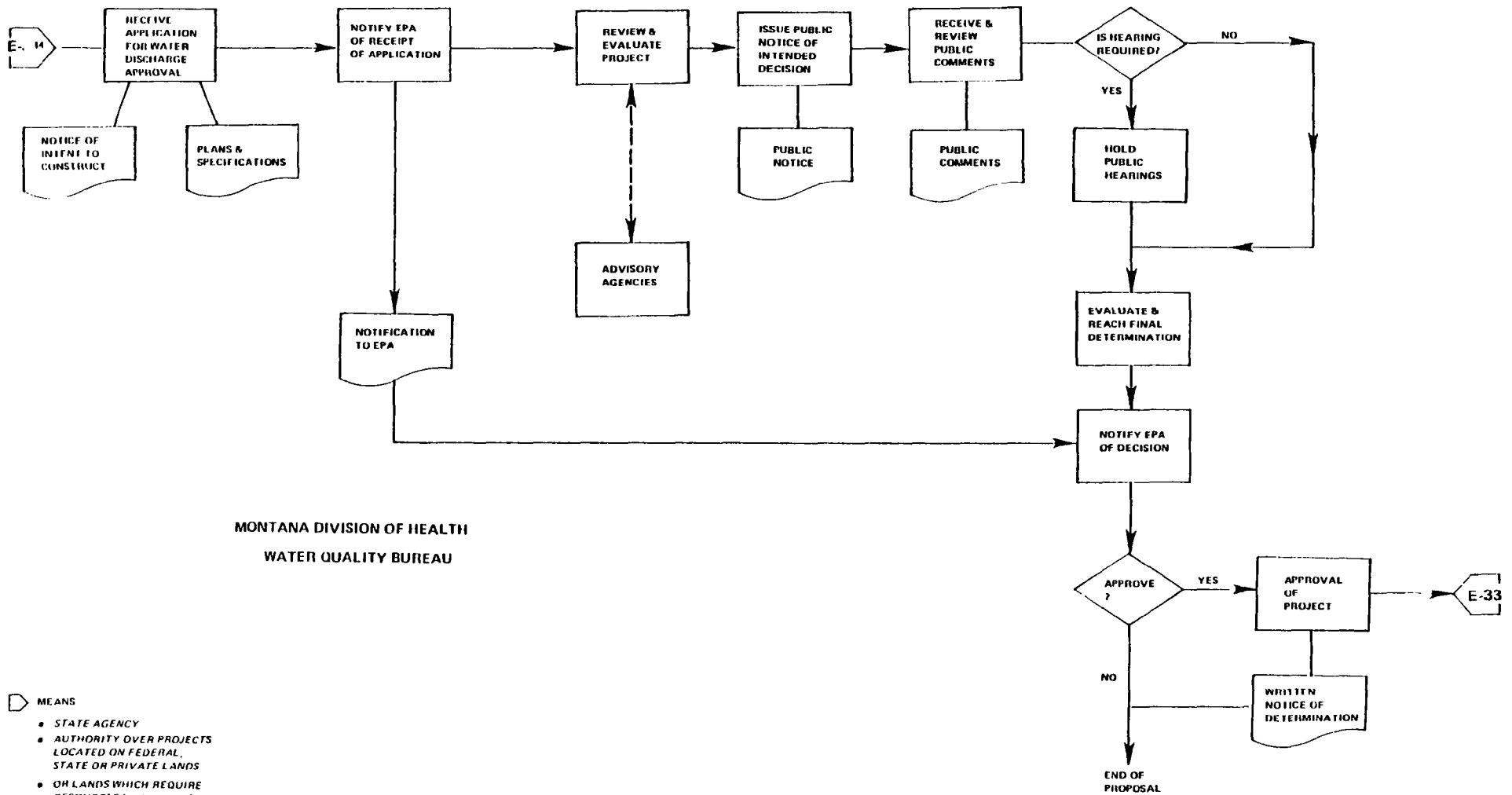
- Issuables

.. Public Notice of Intended Decision

.. Written Approval or Disapproval of Proposed Project

- Advisory Agencies

Environmental Protection Agency



(c) NORTH DAKOTA

. North Dakota - Public Service Commission

The Public Service Commission in North Dakota has responsibility for regulating several energy development categories within the State. The Commission issues permits for the mining of coal and for the reclamation which must follow. In addition, the Commission is responsible for the administration and enforcement of the North Dakota Energy Conversion and Transmission Facility Siting Act. In this capacity, the Commission must grant certificates of site compatability for energy conversion facilities, energy transmission facilities, and route permits for facilities in transmission corridors.

- Legal Authority

The authority for the Commission to regulate the siting of energy facilities is granted by the North Dakota Energy Conversion and Transmission Facility Siting Act, Chapter 49-22 of the North Dakota Century Code. The regulations governing the Commission's actions under this legislation are continued in "Rules and Regulations of the North Dakota Public Service Commission Governing the Siting of Energy Conversion and Transmission Facilities" which were adopted December 23, 1975.

- Description of the Process

Following the recent application for site compatability, the Commission must make two determinations as to completeness (See Flowchart E-34). Along with an examination to determine if all of the requirements of the Commission have been met, the Commission must determine if all other required permits have been obtained by the developer and if the developer has filed a letter of intent. Any developer seeking a site compatability permit must file a letter of intent with the Commission one (1) year prior to the filing of an application, unless a shorter time is approved by the Commission.

If the determination is made that the application is complete, the application is reviewed by the Commission. One of the purposes of this review is to ascertain whether the proposed site for the facility is in a constraint area. If the site is in a constraint area, the next determination is whether the site is an exclusion area or an avoidance area. If the area has

been designated as an exclusion area, the developer is prohibited from building his facility. If the area has been designated as an avoidance area, the developer may build the facility only if he is able to demonstrate a compelling reason for locating on that site.

Should the application process continue, the next step is for the Commission to schedule and hold a public hearing. At this hearing, both advisory agencies and members of the public may be heard. Following the hearings, the Commission assembles the results and evaluates its findings. If the Commission decides to grant the application, the permit is issued and development may proceed. Appeals to decisions of the Commission may be filed in the district court.

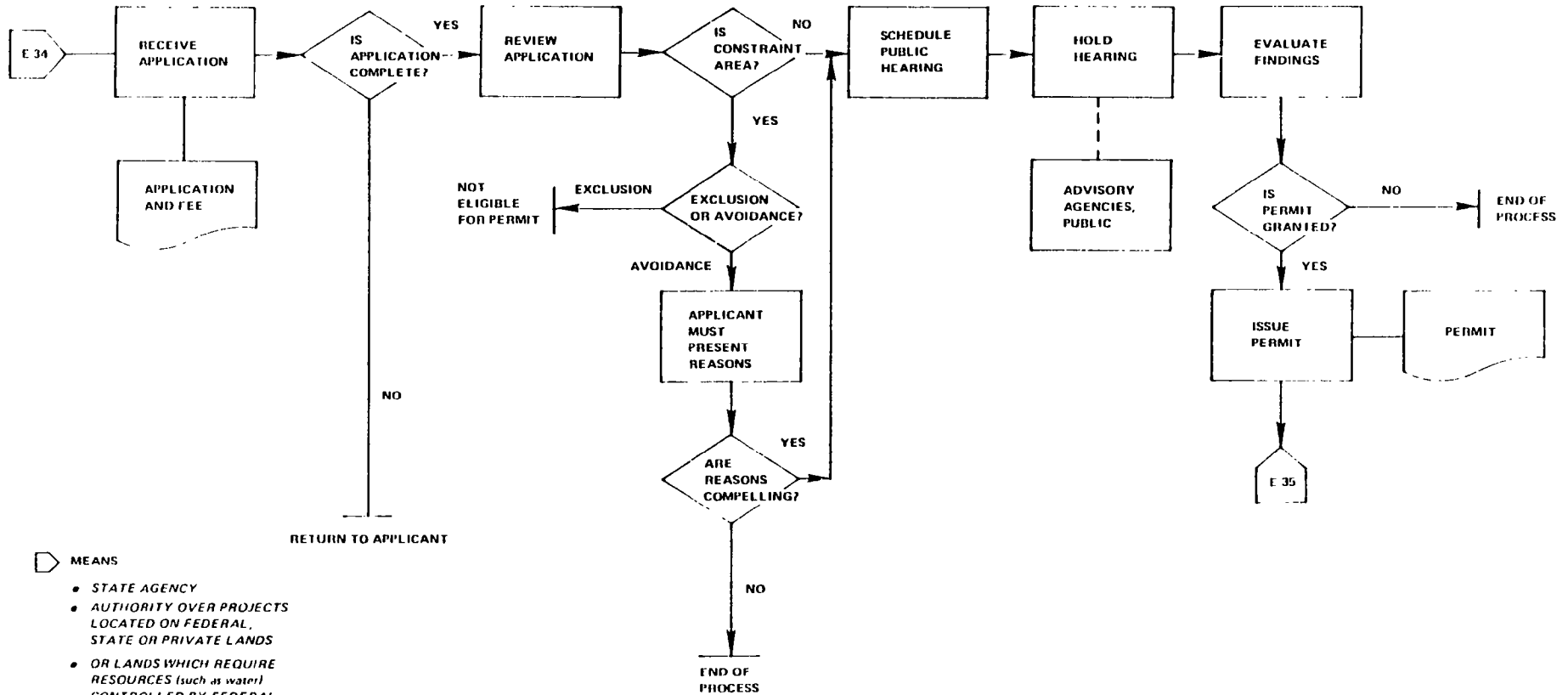
- Issuables

The Commission issues a Certificate of Site Compatability.

- Advisory Agencies

- .. Water Commission
- .. Soil Conservation Committee
- .. State Game and Fish Department
- .. Natural Resources Council
- .. Planning Division
- .. Regional Environmental Assessment Program
- .. Business and Industrial Development Commission

NORTH DAKOTA PUBLIC SERVICE COMMISSION



. North Dakota - Water Commission

The State Engineer administers the Water Rights Program for the State Water Commission. The State Engineer issues permits for the appropriation and use of water within North Dakota. The authority of the Commission covers all water in the State, whether it is associated with the Federal Government, the State, or private land owners. If the water in question is, for example, under the control of a Federal agency, the developer must obtain a permit from the Federal agency and the Engineer. Along with the permit to appropriate and use water, any energy developer who plans to construct a dam or a storage reservoir which is capable of impounding more than 12.5 acre-feet of water must obtain a permit from the Commission prior to construction.

- Legal Authority

The authority of the Commission and State Engineer over water resources within the State is granted by Chapter 61-02 and 61-04 of the North Dakota Century Code. The regulations governing the activity of the Commission are stated in "Circular of Instructions Relative to Appropriation and Use of Water" published in June, 1974.

- Description of the Process

Following the receipt of the application, the Engineer assigns a priority date to the application (See Flowchart E-36). State law recognizes the concept of prior appropriation of water, consequently the date of the application becomes important should a conflict develop. Once the priority date has been assigned, the Engineer reviews the application for completeness. If the application is complete, the Engineer reviews the application to determine if there is unappropriated water available and if the application is in the public interest. If the Engineer determines that the answer to both of these questions is "yes", the Engineer schedules a hearing. While a hearing is required for all water applications, now that the siting legislation requires a hearing, hearings for water use related to a facility which requires a siting permit are held jointly with the Public Service Commission. Once a hearing has been scheduled, the applicant must give notice of the

hearing to owners of land within a mile radius of the location and publish a notice in a newspaper of general circulation within the area.

At the hearing, testimony is heard from any agency or member of the public wishing to speak. Following the hearing, the Engineer evaluates the evidence and makes a determination on the application. If the application for water is granted, the applicant receives a Conditional Water Permit. Once the water is applied to a beneficial use, the applicant receives a Perfected Water Permit. For a dam, the applicant receives a construction permit and a permit to appropriate water.

Any action of the Engineer or Commission may be appealed through the District Court.

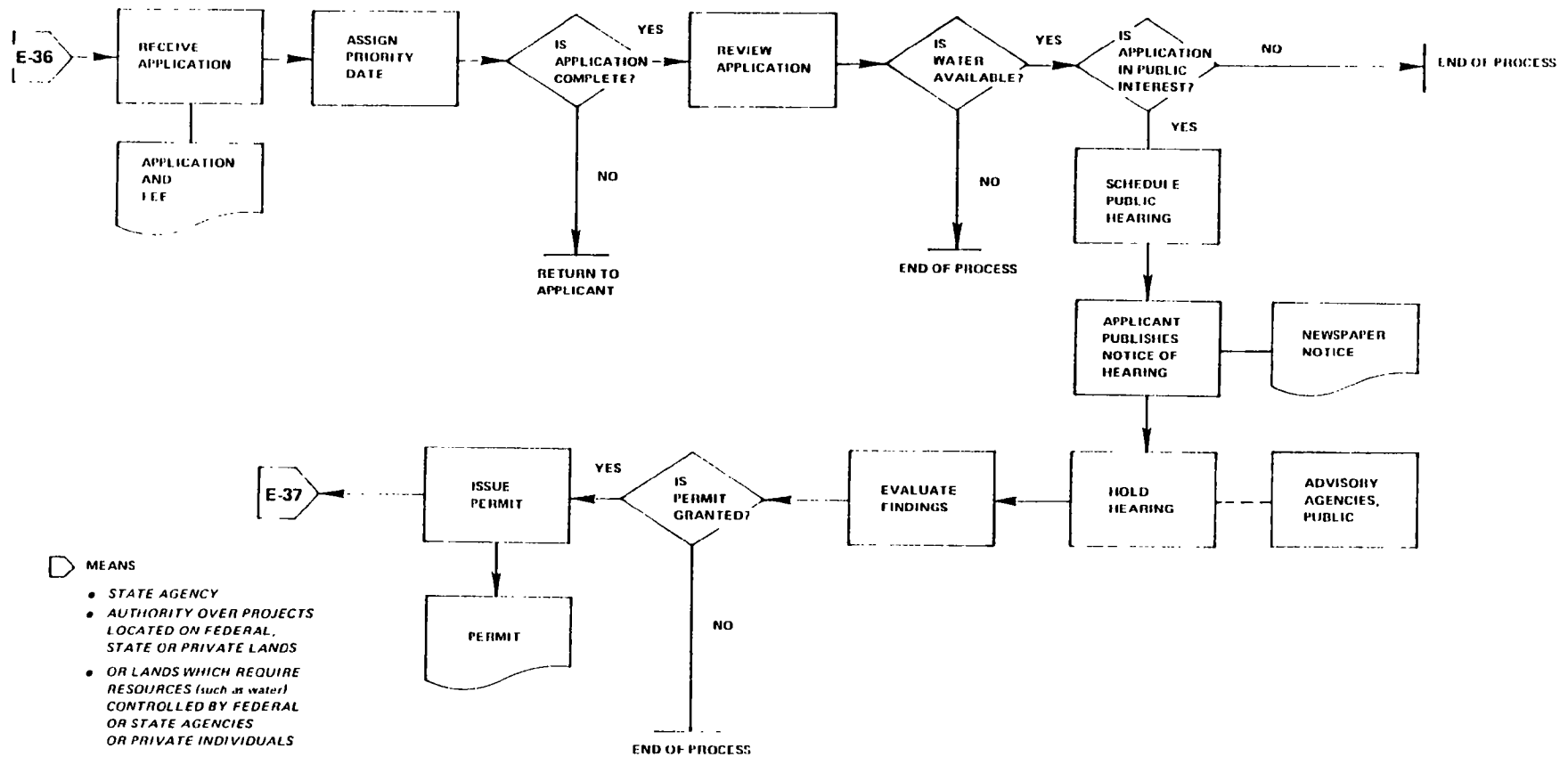
- Issuables

The Engineer and/or Commission issues:

- .. Conditional Water Permit
- .. Perfected Water Permit
- .. Dam Construction Permit

- Advisory Agencies

NORTH DAKOTA WATER COMMISSION



. North Dakota - Department of Health: Air Quality Division

The Air Quality Division of the Department of Health plays three important regulatory roles in energy development within the State. The Division:

- Regulates air pollution in the State and is responsible for maintaining air quality
- Functions as the nuclear regulatory agency in the State and is responsible for monitoring radioactive materials. This is done under an agreement with the Nuclear Regulatory Commission. Consequently, the Division functions as the NRC in North Dakota
- Regulates solid waste disposal. In this capacity, the Division is responsible for monitoring such problems as oil spills at production sites.

These are two Air Quality Maintenance Areas (AQMA's) which have been designated within the State.

- Legal Authority

- Description of the Process

Upon receipt of the application, the Division makes a determination as to completeness of the application (See Flowchart E-38). If the application is complete, the Division conducts a preliminary review. Following the review, the Commission conducts an inspection of the proposed site for construction. This inspection is conducted to determine the additive effect of the new source of air pollution on the site. If the site is found to be unacceptable, the developer must either improve his controls to reduce the emissions or find a new site. If the developer chooses to find a new site, the application is resubmitted.

If the site is found acceptable, the Division evaluates its findings. Based on this evaluation, the Division publishes a public notice of its intent to approve or disapprove the applications. This public notification is given to provide the public with the opportunity

to give comments to the Division. Following the receipt of the public comments, the Division assesses all the material received and makes its decision. If the decision is affirmative, the Division issues a permit to construct. This permit is generally issued with conditions or standards which the developer must meet.

Following construction, the developer is allowed a trial operation period. During the trial operation period, the Division conducts a test to ensure that standards are met. These tests are done during a one year pre-operation period and a two year post-operation period. If the facility meets the standards, a three year operating permit is issued. Each permit must be renewed every three years. The Division conducts compliance inspections during the operation of the facility.

- Issuables

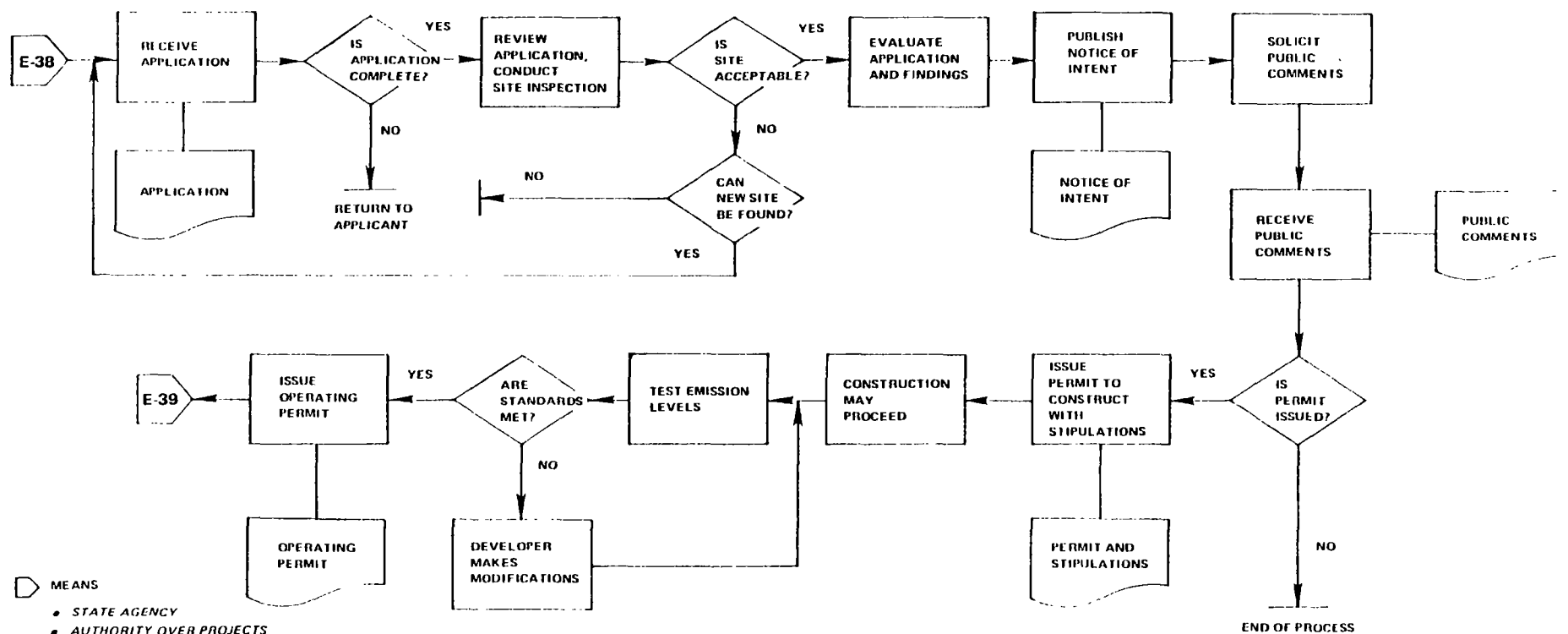
The Division issues:

- .. Construction Permit
- .. Fugitive Dust Permit
- .. Operation Permit
- .. Radioactive Material Permit
- .. Solid Waste Disposal Permit

- Advisory Agencies

- .. Environmental Protection Agency
- .. Nuclear Regulatory Commission
- .. State Planning Agency
- .. Regional Environmental Assessment Program

**NORTH DAKOTA DEPARTMENT OF HEALTH
AIR QUALITY DIVISION**



. North Dakota - Department of Health: State Water Pollution Prevention Agency

The State Water Pollution Prevention Agency is charged with the responsibility to protect, maintain, and improve the quality of water in North Dakota. In this capacity the Agency must monitor all water emissions from any energy development activity and ensure that all waste water treatment facilities meet the standards of the Agency prior to construction.

- Legal Authority

The Agency operates under the authority of Chapter 479, Sections 61-28-01 through 61-28-08, of the North Dakota Century Code effective July 1973 and Amendments 61-28-02, 61-28-04, and 61-28-06 effective January 1975. The regulations governing the actions of the Agency are contained in "Standards of Surface Water Quality for the State of North Dakota," published by the Department of Health.

- Description of the Process

Following the receipt of the application, the Agency makes a determination as to its completeness (See Flowchart E-40). If the application is complete, the Agency reviews the plans and specifications for the project to determine if the effluents from the project will meet the State standards. If a retention pond is employed in the energy development project, the pond must be sealed to prevent contamination of ground water.

After an analysis of the specifications for the project are made, the Agency determines if the State standards are met. The State generally employs the water quality standards employed by the Environmental Protection Agency. However, there are some instances where the State standards are more strict. If the State standards are met, the Agency issues a permit. Following the commencement of operation, the developer must monitor his waste water. This self-monitoring with regular reporting to the Agency is done to insure that the standards continue to be met.

The Agency issues no permit for longer than five (5) years. Currently, however, no permits are being issued for a time period beyond 1980.

- Issuables

The Agency issues:

.. Construction permit

.. Operation permit

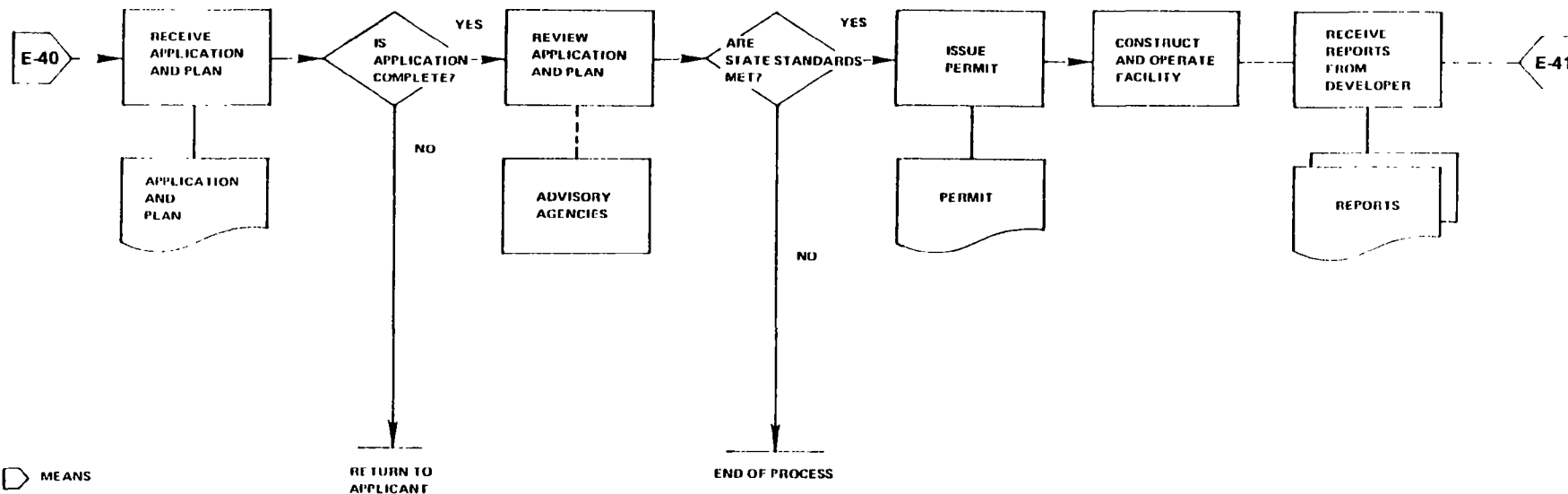
- Advisory Agencies

.. Environmental Protection Agency

.. Water Commission

.. State Game and Fish Department

**NORTH DAKOTA DEPARTMENT OF HEALTH
STATE WATER POLLUTION PREVENTION AGENCY**



MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

(d) SOUTH DAKOTA

South Dakota - Office of Cultural Preservation

The Office of Cultural Preservation operates to mitigate the damages of any energy development activity which may have an effect on archaeological sites or areas of historical significance. Any project which is Federally funded, assisted, licensed, or approved must report to the Office. The State Legislature has extended the authority of the Office to State land and, if the owner has registered with the State, to private lands within the State.

- Legal Authority

The Office of Cultural Preservation is authorized by the National Historic Preservation Act (P. L. 89-665), Executive Order 11593, and the South Dakota State Antiquities Law (SDCL 1-20-17 through SDCL 1-20-37), in conjunction with the National Environmental Policy Act.

- Description of the Process

Any project in the State which is Federally funded, assisted, licensed, or approved must have a plan filed with the State Office of Cultural Preservation (See Flowchart E42). The Office reviews the proposed plan and makes a determination. The project may either have no effect on the significance of the area, have a positive effect on the area, or have an adverse effect. If the Office concludes there will be no adverse effect, documentation of such is sent to the President's Advisory Council for concurrence. If the Council does not concur, the same procedure as for an adverse effect is followed. If the project will have an adverse effect, the Office will advise the developer that a study must be conducted to detail the effects. The Office will conduct the study for the developer; however, the developer is free to have his study conducted by a qualified party of his own choosing. In either case, the developer must pay the costs of the study.

The object of this entire effort is to preserve areas or items of historical or archaeological significance. When the project is site specific, for example a coal mine, the Office attempts to prohibit all development from proceeding until any area, building, and so forth have been moved or had their significant articles salvaged before development proceeds. Where it is possible to shift the location of the facility, for example a generating plant, the Office will encourage such action.

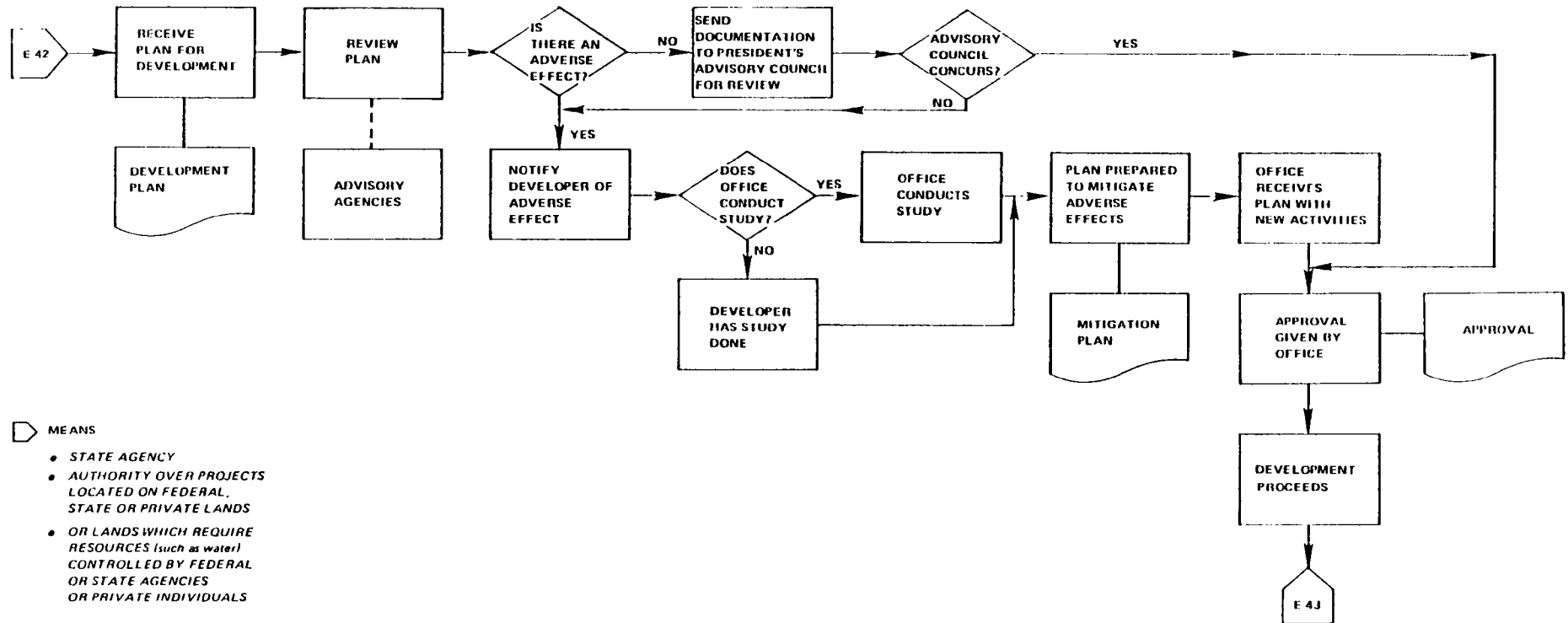
- Issuables

The Office issues approval for the compatability of the development project with the archaeological or historical heritage of the State.

- Advisory Agencies

- .. State Planning Bureau
- .. Department of Natural Resource Development
- .. Energy Policy Office
- .. Department of Environmental Protection
- .. President's Advisory Council

SOUTH DAKOTA OFFICE OF CULTURAL PRESERVATION



. South Dakota - Public Utilities Commission

The State of South Dakota has no siting legislation, consequently the Commission has no authority over the siting of facilities or transmission lines. The Commission has recently received authority to determine public convenience and necessity. This authority, however, is so new that the Commission is somewhat uncertain as to the scope of its authority.

The focus of the Commission's authority is on the rate structure of utilities. For any utility which derives twenty-five percent (25%) or more of its revenue from South Dakota, the Commission must approve the financing mix for any new facilities.

- Legal Authority

The authority of the Commission is granted by Chapter 49-34A of the SDCL. The regulations governing the activities of the Commission are contained in "Public Utilities Commission of the State of South Dakota Procedure Rules of the Public Utilities."

- Description of the Process

Following the receipt of the financing description of any new construction by a utility, the Commission must make two determinations. First, does the utility derive twenty-five percent (25%) or more of its revenue from South Dakota. If the answer to this question is "no," the Commission has no jurisdiction.

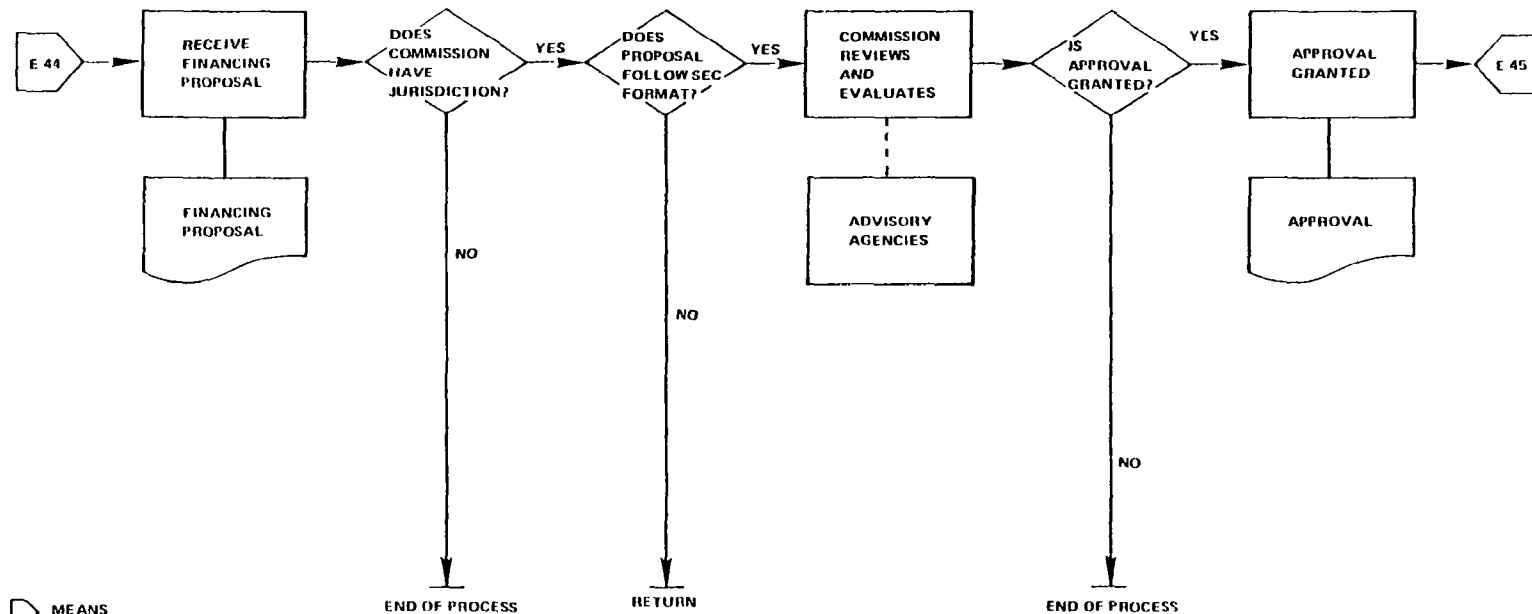
If the answer is "yes," the Commission must determine if the financing proposal follows the regulations of the Securities and Exchange Commission. If this determination is affirmative, the Commission reviews the proposal. Should the financing of the new facility not adversely effect the utility's rate structure, the Commission will approve the proposal. (See flowchart E-44)

- Issuables

.. Approval of the financing plan.

- Advisory Agencies

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION



MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

South Dakota - Department of Environmental Protection

The South Dakota Department of Environmental Protection is responsible for maintaining the quality of the air and water within the State and for monitoring hazardous and solid waste discharges. For air emissions and solid waste, the Department must issue a permit. The Department has not concluded an agreement with EPA at this time which will enable the Department to issue wastewater discharge permits under the National Pollutant Discharge Elimination System. Currently the Department cooperates with the EPA on the issuance of all such permits. On October 1, 1976, however, the Department will certify the federally-issued permits.

In addition, the State now requires that any State agency which takes a significant action must file an environmental impact statement with the Department. Actions of State agencies such as the issuances of licenses and permits may be considered significant State actions. The final statement of any agency must be filed with the Department at least thirty (30) days prior to the beginning of any activity resulting from the State action.

- Legal Authority

The Department operates under authority granted by several State statutes. The South Dakota Compiled Laws (SDCL) 34-16A provide air pollution control authority; SDCL 46-25 provide water pollution control authority; and SDCL 11-1A is the Environmental Policy Act.

- Description of the Process

Following the receipt of the application, the Department examines the application to determine if it is complete (See Flowchart E-46). If the application is complete, the Department determines if the emissions from the facility meet the standards of the State. If the State standards are met, the Department will issue a permit.

- Issuables

The Department issues:

- .. A permit to construct under the air quality program
- .. A permit to operate under the air quality program

.. A permit to operate a solid waste disposal facility

- Advisory Agencies

.. Environmental Protection Agency

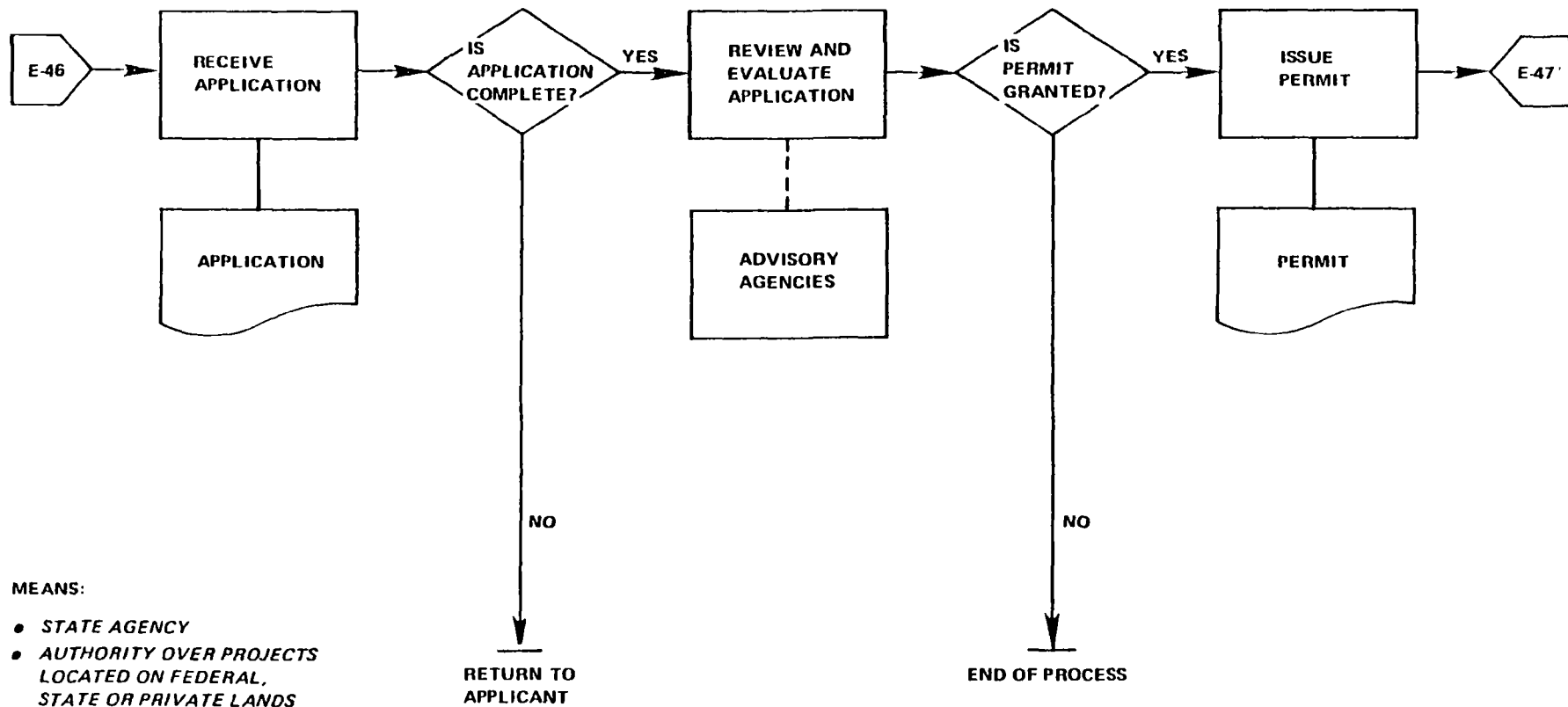
.. Department of Natural Resource Development

.. Conservation Division (Department of Agriculture)

.. State Planning Bureau

.. Department of Game, Fish and Parks

SOUTH DAKOTA DEPARTMENT OF ENVIRONMENTAL PROTECTION



MEANS:

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

. South Dakota - Department of Natural Resource Development

The Department of Natural Resource Development has two divisions which play an important role in regulating energy development in South Dakota. The Water Rights Division has the authority over water appropriation and use within the State. The Geological Survey regulates the production and transportation of oil and gas.

The Water Rights Division must approve any use of water other than domestic. In addition, the Division must approve any reservoir. A developer which drills a water well must notify the Division.

The authority for these components of the Department extends to Federal, State, and private lands.

- Legal Authority

The authority for the Water Rights Division is granted by Chapters SDLC 46-1 through SDLC 46-32, the South Dakota Water Laws. The regulations governing the activities of the Division are contained in "Rules of Water Rights Commission."

- Description of the Process

Following the receipt of the application by the Division, the Division makes a determination of completeness (See Flowchart E-48). If the application is complete, the Division plans an advertisement of the application in newspapers local to the affected area for a two (2) week period. The application is then brought to the Water Rights Commission. The Water Rights Commission is an eight member, lay commission from across the State appointed by the governor.

After evaluating the application and the testimony, the Commission makes a determination. Any request for water rights for more than ten thousand (10,000) acre-feet per year must be approved by the State legislature.

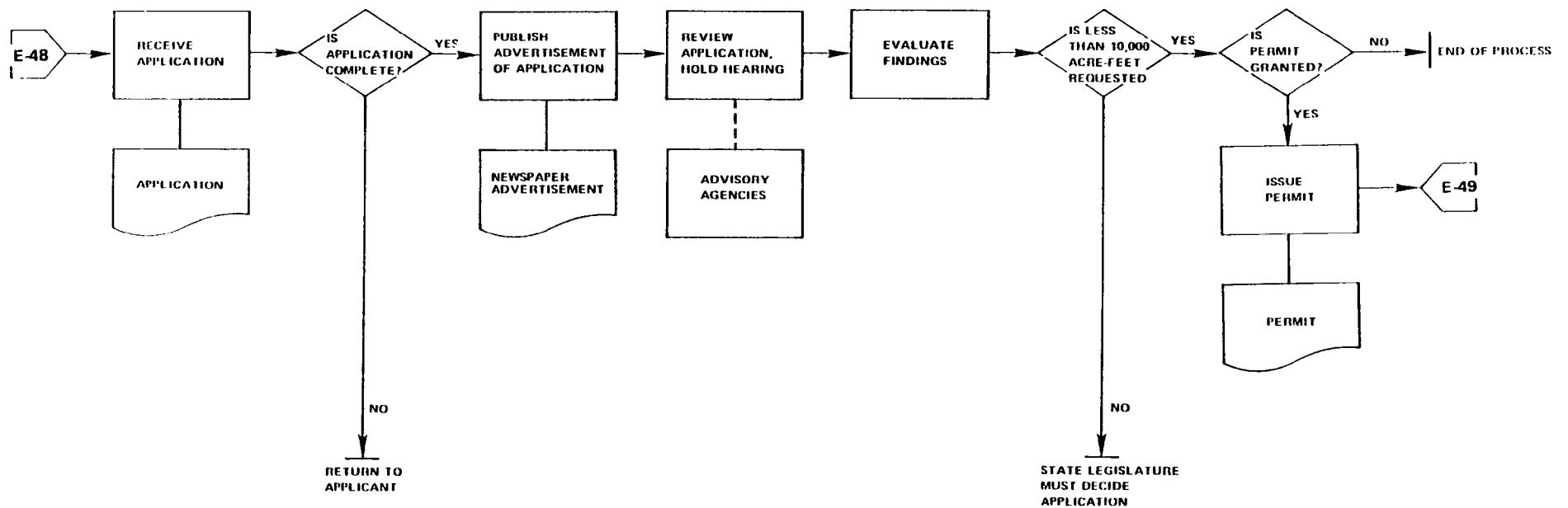
- Issuables

.. Water Rights Permit

Advisory Agencies

- .. Bureau of Reclamation
- .. Army Corps of Engineers
- .. Environmental Protection Agency
- .. Department of Environmental Quality
- .. Department of Game, Fish and Parks

**SOUTH DAKOTA DEPARTMENT OF NATURAL RESOURCE DEVELOPMENT
WATER RIGHTS DIVISION**



MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

(e) UTAH

. Utah-State planning Coordinator

- Legal Authority

The Office of the State planning Coordinator is charged with the responsibility of implementing the Executive Order on Environmental Quality of 1974. This same Executive Order also grants the Coordinator the authority for implementation of the order.

- Description of the Process

The State planning Coordinator is notified of a proposed project either by an agency with jurisdiction over the project or by the party proposing the project (See Flowchart E-50). If the project is Federally assisted or in other ways falls under the National Environmental Policy Act or OMB Circular A-95 or A-102 procedures, then compliance with these procedures is sufficient and no further review is required by the Coordinator. A project not so exempted must have an environmental assessment prepared by the agency responsible for the proposed activity.

Information obtained through coordination with other agencies, together with information obtained from other appropriate investigation and study, is used in making an environmental assessment of the proposed action. This assessment allows the initial determination of whether or not the project will have a significant environmental impact. If not, the environmental assessment is forwarded directly to the Environmental Coordinating Committee (ECC) for review. If the action is deemed to have a significant impact, the responsible agency must first prepare an Environmental Impact Statement (EIS) prior to forwarding the EIS and the environmental assessment to the ECC for review.

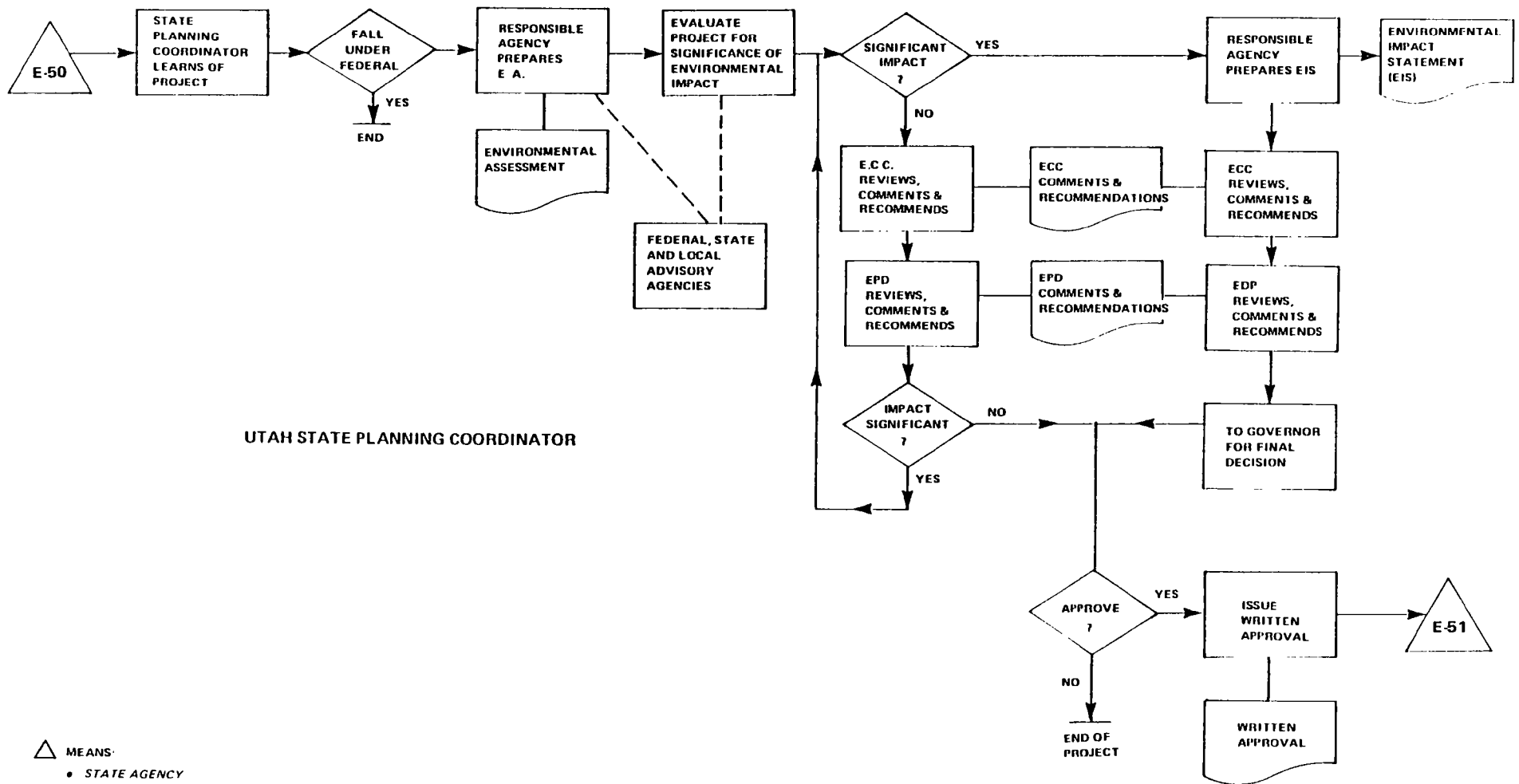
The ECC reviews the available information on the project, prepares its comments and recommendations and forwards everything to the Economic and Physical Development Interdepartmental Coordinative Group (EPD Group). The EPD Group then reviews the proposed project and prepares comments and recommendations. If the proposed project is again deemed to not have significant impact, the project approval is decided by the responsible agency and appropriate approval or disapproval issued. If a project is considered to have significant impact and an EIS has not yet been prepared,

then one must be prepared by the responsible agency and processed through the ECC and EPD Group for review. Any proposed project which has had an EIS prepared must go to the Governor with the cumulative comments and recommendations of all reviews. The final decisions on all projects with significant environmental impact, therefore, is made by the Governor and the appropriate approval or disapproval is issued.

- Issuables

- .. Environmental Assessment
- .. Environmental Impact Statement
- .. Project Approval

- Advisory Agencies



- △ MEANS:
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

. Utah-Division of Health: Air Quality Bureau (AQB)

- Legal Authority

Responsibility for, and authority over, the control of air pollution sources in Utah is given to the Division of Health by the Air Conservation Act and the Utah Code Annotated, 1953, Title 26.

- Description of the Process

The applicant must file with the AQB a Notice of Intent to Construct which notifies the AQB that there will be a new contributor of air pollution. Usually plans and specifications are filed with the Notice. The Bureau then reviews and evaluates the proposed project, accepting input from interested agencies (See Flow-chart E-52).

The Bureau makes its preliminary decision and issues public notice of the intended decision. This is to be published in the Salt Lake Tribune and a newspaper local to proposed project site. Comments are thereby solicited from the public, which are reviewed and evaluated. If public remarks warrant, public hearings may be held in which all interested parties are heard.

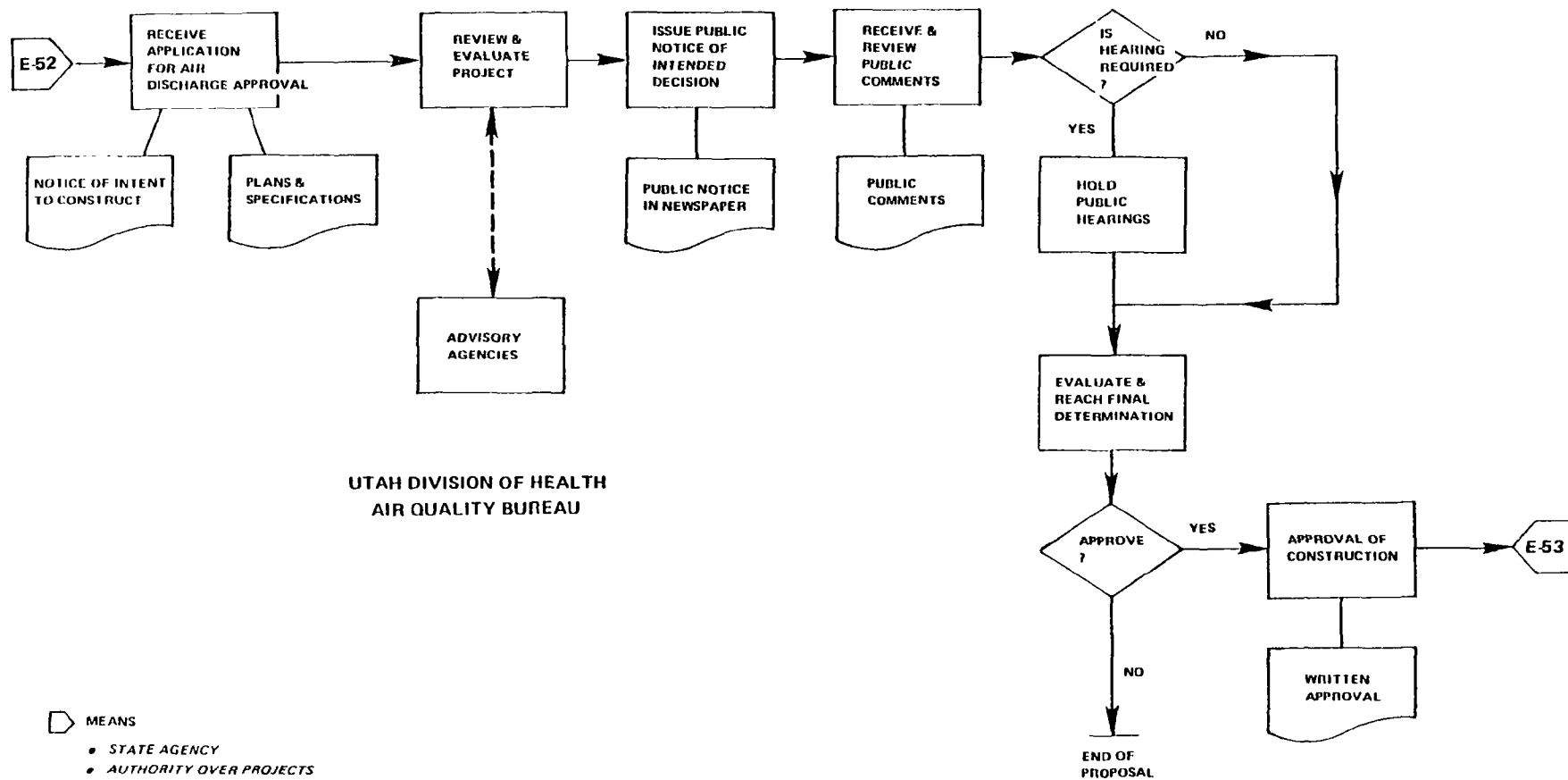
After all facts are gathered and all parties heard, the Bureau then reaches its final determination to either approve or deny the proposed project. If the project is approved, written notice is sent to the applicant.

- Issuables

.. Public Notice of Intended Decision

. Written Approval of Proposed Project

- Advisory Agencies



□ MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

Utah-Bureau of Solid Waste Management

- Legal Authority

The Bureau of Solid Waste Management under the authority of the Division of Health, is responsible for the enforcement of all solid waste disposal regulations.

- Description of the Process

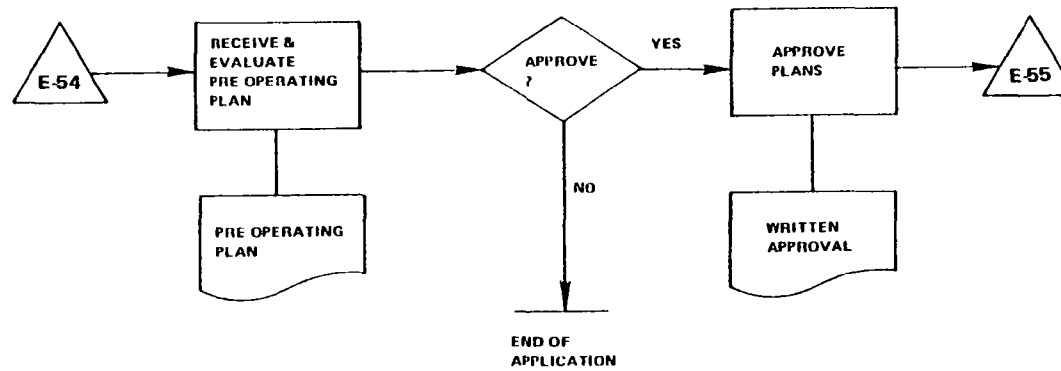
In this capacity, the Bureau must receive, review, and approve the preoperating plans prior to construction (See Flow Chart E-54).

- Issuables

Approval of preoperating plans

- Advisory Agencies

UTAH BUREAU OF SOLID WASTE MANAGEMENT



- △ MEANS.
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

. Utah Bureau of Sanitation

- Legal Authority

The Bureau of Sanitation under the authority of the Division of Health, is responsible for the enforcement of all plumbing regulations.

- Description of the Process

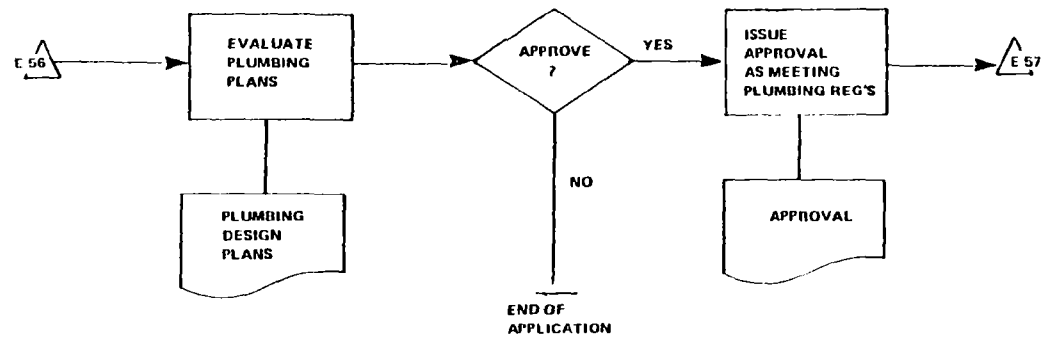
The Bureau must receive, review, and approve all plumbing design plans prior to constructing (See Flowchart E-56).

- Issuables

Approval of plumbing plans

- Advisory Agencies

UTAH BUREAU OF SANITATION



- △ MEANS
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

. Utah-Division of Health: Bureau of Water Quality (BWQ)

- Legal Authority

- Description of the Process

The Bureau of Water Quality is not yet supported by the statutes needed to comply with EPA Regulations. Thus, the only function it may perform is to analyze a proposed water discharge and to certify to the EPA that the proposal needs Federal standards and thus should be issued a Federal permit by EPA. Usually, applications are received one to three (1 to 3) years in advance of proposed construction (See Flow-chart E-58).

- Issuables

Certification to EPA

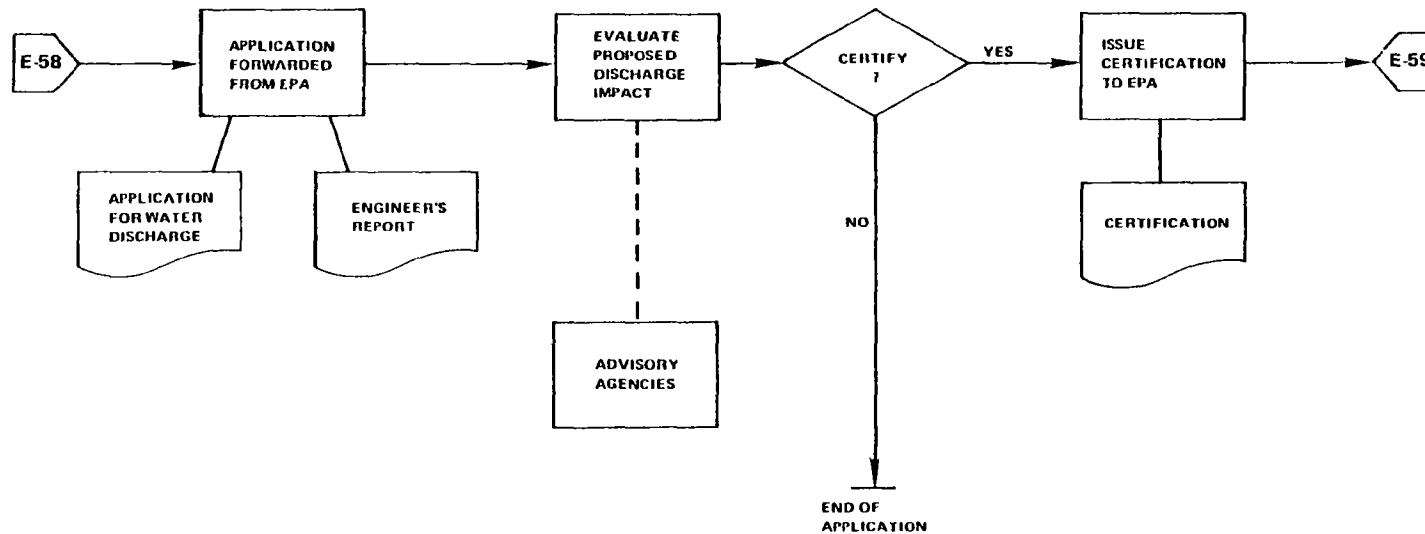
- Advisory Agencies

.. Environmental Coordinating Committee

.. Bureau of Natural Resources

.. Bureau of Solid Waste Management

UTAH DIVISION OF HEALTH
BUREAU OF WATER QUALITY



◇ MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

Utah Department of Business Regulation

- Legal Authority

The Department of Business Regulation, through the Public Service Commission (PSC), is responsible for supervision of all electric utilities in Utah. The Public Service Commission is granted authority in this area by Section 76-6-1 of the Revised Statutes of Utah, 1933.

- Description of the Process

When an application is received at the PSC, it must be determined that the PSC has jurisdiction and that the utility proposal involves at least a 25% change in the gross investment in the utility. If so, the PSC will investigate the proposal and reach a determination which is published in the form of a Report and Order. The Report and Order does not become effective until 20 days after it is issued. If, in that period, protests are filed, then a public hearing and reevaluation of the proposal is required.

After all hearings and evaluations, if the PSC decides to approve the proposal, a Certificate of Public Convenience and Necessity is issued. This allows the utility to proceed with the change (usually original construction or expansion) at the site in the proposal (See Flowchart E-60).

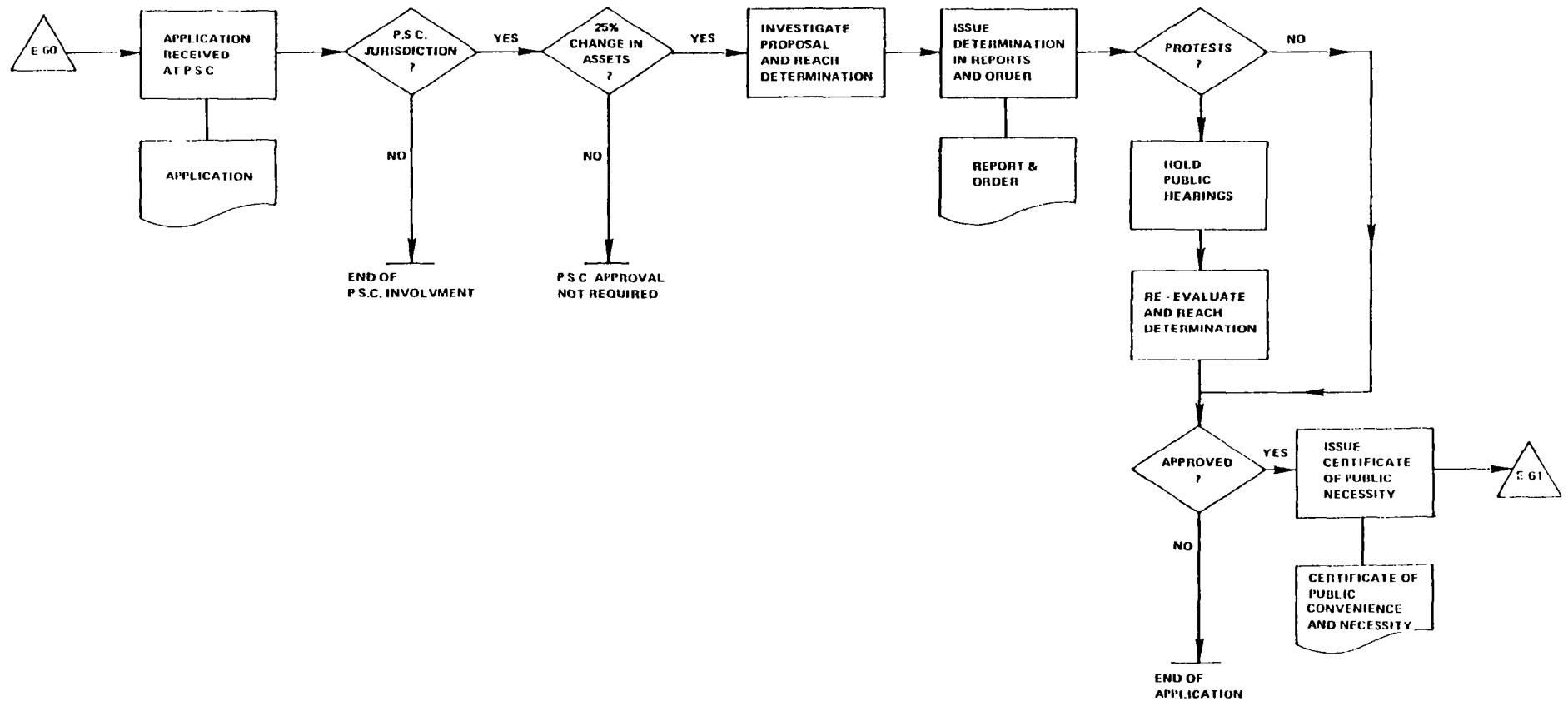
- Issuables

.. Report and Order

.. Certificate of Public Convenience and Necessity

- Advisory Agencies

UTAH DEPARTMENT OF BUSINESS REGULATION



- △ MEANS
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

. Utah-Division of Water Rights (DWR)

- Legal Authority

The Division of Water Rights of Utah is granted authority over water appropriation by the Utah Law of Water Rights of 1897 and subsequent amendments thereto.

- Description of the Process

Before commencing construction, enlargement, extension, or structural alteration of any distributing works, or performing similar work toward acquiring an appropriation right or enlarging an existing one, a written application must be made to the State Engineer. (See Flowchart E-62). Notice of the application is published; and protests that are filed must be considered by the State Engineer before he approves or rejects the application (Notice of the application and protests are allowed 30 days prior to State Engineer's decision). If approved, the applicant is authorized to proceed with construction of the necessary works and to take all steps required to perfect his proposed appropriation. The times within which construction of works shall be completed and the water applied to beneficial use are fixed by the State Engineer. The State Engineer issues a certificate of appropriation which evidences the holder's right of use.

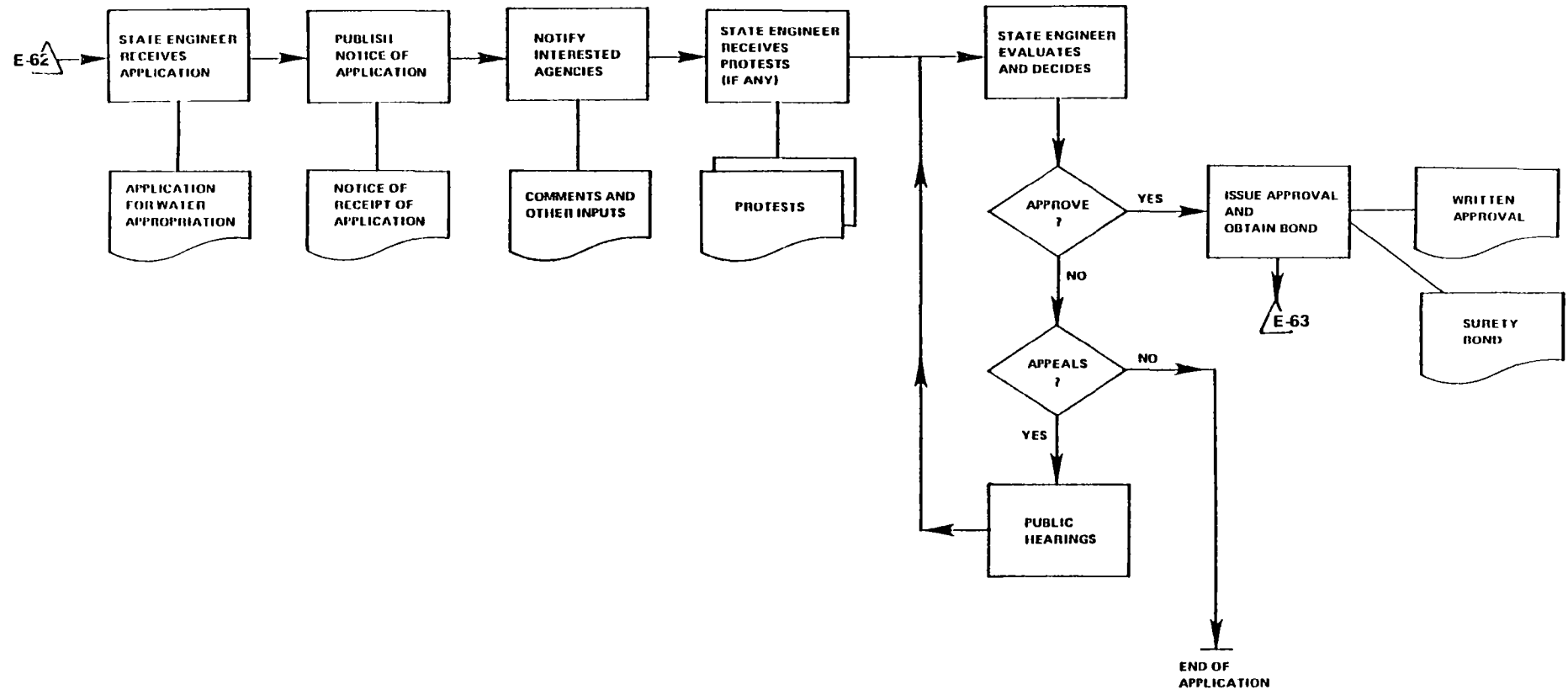
If the application is not approved, the applicant may appeal the decision, whereupon public hearings are held and the issue reevaluated and decided.

- Issuables

.. Certificate of Appropriation

- Advisory Agencies

UTAH DIVISION OF WATER RIGHTS



- △ MEANS
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

(f) WYOMING

. Wyoming - Department of Environmental Quality

The Wyoming Department of Environmental Quality (DEQ) is responsible for maintaining the quality of the air, water, and land within the State. Any energy developer must obtain an air, water, and land quality permit from the DEQ.

- Legal Authority

The Department of Environmental Quality operates under the authority of the Wyoming Environmental Quality Act of 1973.

- Description of the Process

For an air quality permit, a developer must apply to the Air Quality Division. For a water quality permit, a developer must apply to the Water Quality Division (See Flowchart E-64). The air quality permit must be issued prior to construction. To receive such a permit, the developer must show that neither the fugitive dust nor the new emissions will exceed the standards established by the Division.

Likewise for the water quality permit, the developer must show that any water from the project which is introduced into surface drainage or other water effluents will not exceed the standards established by the DEQ. Where the State standards are higher than those of the Environmental Protection Agency, the requirements of the EPA will be met when the State standards are met. Consequently, there will be no need for a developer to meet additional requirements to receive EPA approvals. If, however, Wyoming requirements are lower than those of the EPA, the higher Federal standards must be met before the developer may begin activity.

If the standards of the State are met, both the Air and Water Quality Divisions will issue permits to the developer.

- Issuables

The Air Quality Division issues:

- .. Permits to Construct
- .. Permit to Modify
- .. Permit to Operate

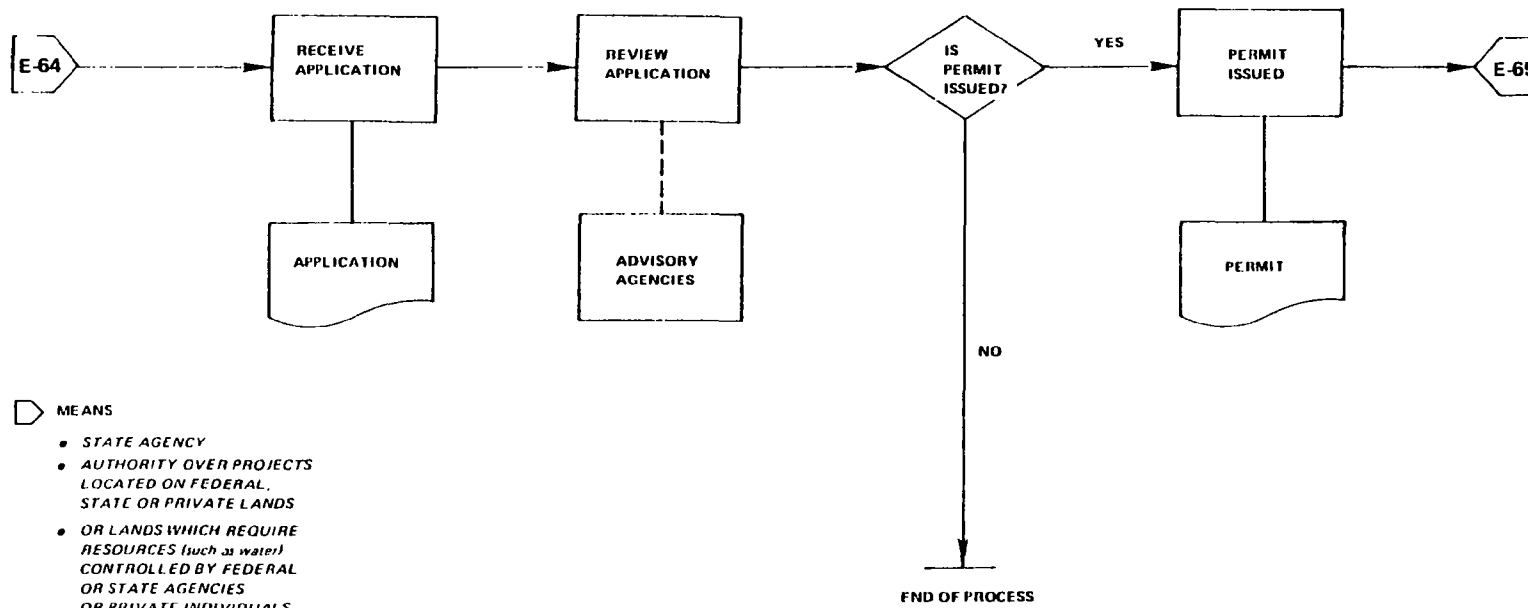
The Water Quality Division issues:

- .. Permit to Discharge and Operate
- .. Permit to Construct, Install, or Modify.

- Advisory Agencies

- .. State Engineer
- .. Game and Fish Commission
- .. Bureau of Reclamation
- .. Environmental Protection Agency.

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR AND WATER QUALITY DIVISIONS



Wyoming - Department of Environmental Quality

The Wyoming Department of Environmental Quality (DEQ) is responsible for maintaining the quality of the air, water, and land within the State. Any energy developer must obtain an air, water, and land quality permit from the DEQ.

- Legal Authority

The Department of Environmental Quality operates under the authority of the Wyoming Environmental Quality Act of 1973.

- Description of the Process

Prior to the construction of an energy conversion facility, such as an electric generating plant or a coal gasification plant, or prior to commencement of mining operations, a developer must receive approval from the Land Division of the DEQ (See Flowchart E-66).

For a developer to begin construction activity, the developer must receive a land use permit. To receive such a permit the developer must meet the land use requirements of the Land Division.

For a developer to begin mining operations, the Land Division must issue two permits. The first permit required is a mining permit. The mining permit will be issued after the Land Division approves the developer's mining plan. The second requirement of the Division is that the developer submit a reclamation plan and a bond. The developer must also post a reclamation bond.

- Issuables

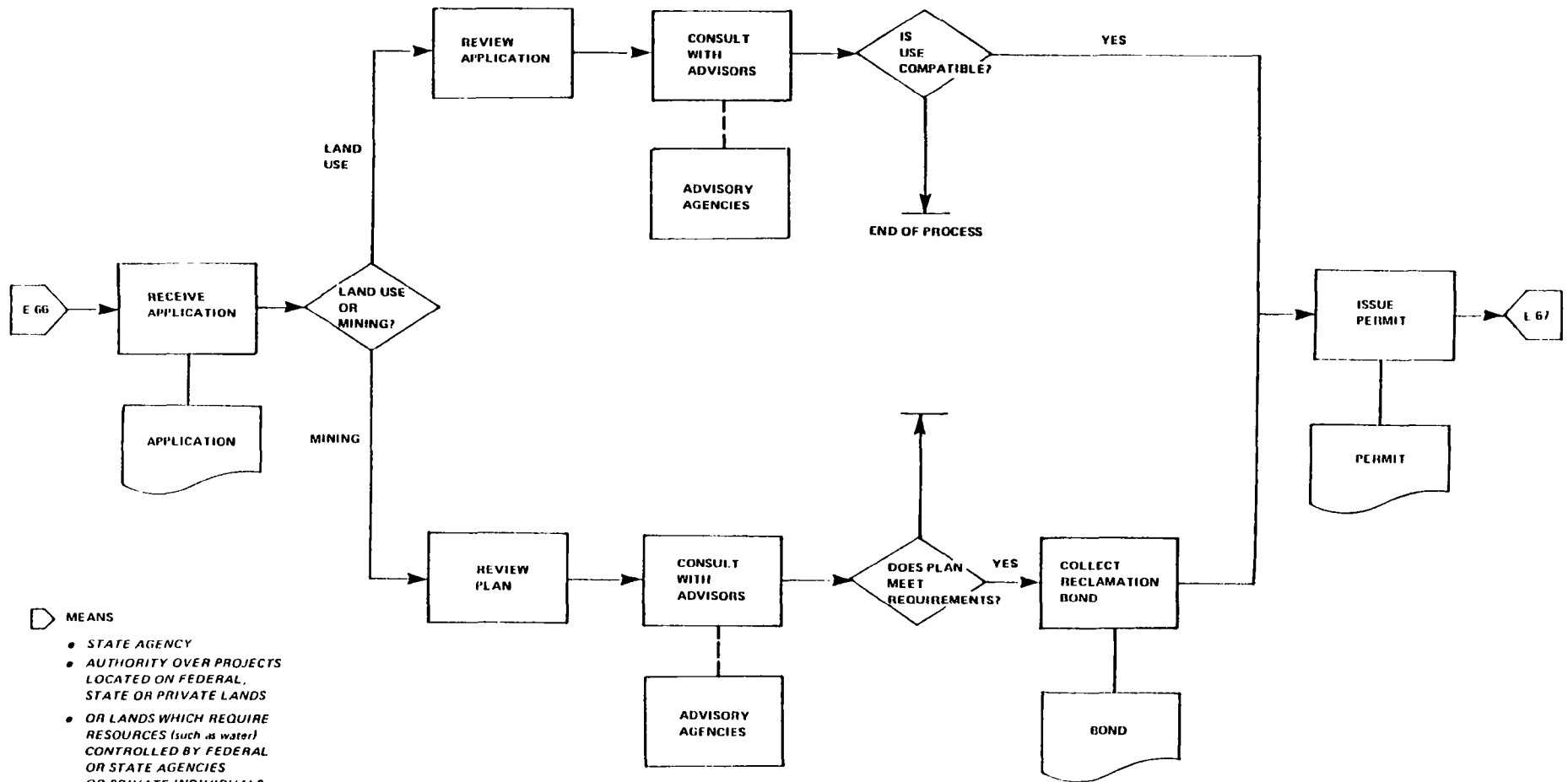
The Land Division issues:

- .. A Permit to Mine
- .. A License to Mine
- .. A License to Explore

- Advisory Agencies

- .. Land Use Commission
- .. Department of Economic Planning and Development
- .. State Geological Survey

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND DIVISION**



. Wyoming - State Engineer

The State Engineer issues all water rights permits and has the authority to administer the water supply. The authority of the State Engineer extends to both the diversion and use of water as well as attempts to convert water from one use to another. Any developer who requires water in the State, regardless of whether the project is located on Federal, State, or private lands, is subject to the jurisdiction of the State Engineer.

- Legal Authority

Wyoming Statutes 41-1.42 through 41-1.46 and Sections 9-160.22, 9-160.29, and 9-160.31 present the legal authority for the State Engineer.

- Description of the Process

Following the receipt of the completed application, the first step is for the State Engineer to conduct an analysis of the application (See Flowchart E-68). If the application is for a large amount of water, e.g., for the cooling of an electric generating facility or for use in a coal gasification plant, the State Engineer would determine that it would be necessary for the interdepartmental water conference to conduct a feasibility study. This study is designed to assess the impact of the proposed project and to evaluate the application in the context of the total State intention for water use.

If the amount of water is small, e.g., drilling a water well to support a coal exploration effort, the application decision will be made without the feasibility study.

In the conduct of the feasibility study, the water conference will analyze the application and supporting data; conduct public hearings to obtain the advice of private persons, local groups, and associations; and undertake any studies which the conference feels necessary. At the conclusion of the feasibility study, the water conference makes the decision whether or not to proceed with the application. If the decision is made to proceed, the State Engineer holds hearings under the State's contested hearing procedure. The decision is then made on the application.

If the State Engineer issues a permit, it is issued with the constraints under which the recipient must operate. When the stipulations are met, the permit is good for as long as it is used. Monitoring is done by division personnel. After completion of construction, the operation is advertised to allow any parties who were adversely affected to respond.

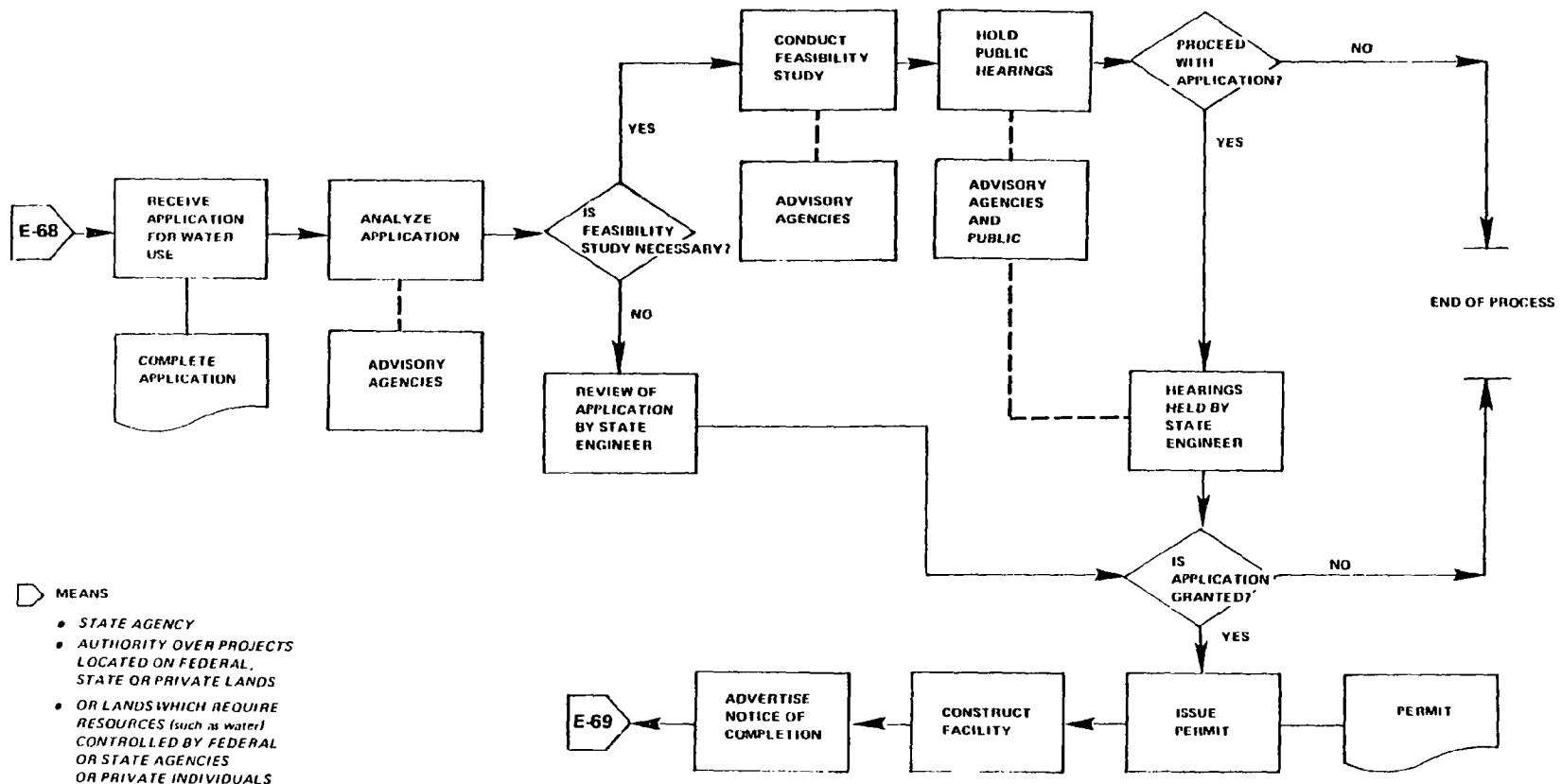
- Issuables

The State Engineer issues a water rights permit and the right to change water from one category to another.

- Advisory

- .. Department of Economic Planning and Development
- .. Department of Game and Fish
- .. Department of Environmental Quality
- .. State Land Office
- .. Department of Recreation.

WYOMING STATE ENGINEER



. Wyoming - Public Service Commission

The Public Service Commission of Wyoming is responsible for the intrastate regulation of electric generation facilities, natural gas, oil pipelines, and transmission lines along with non-energy related services such as telephone and water companies. The Commission gives a utility the right to serve an area and, in return for that right, a utility assumes the obligation to provide that service.

- Legal Authority

The Public Service Commission of Colorado operates under the legal authority granted by Chapter 83 of the Session Laws of Wyoming, 1963. The regulations governing the activities of the Commission are contained in "Rules of the Public Service Commission of the State of Wyoming" reissued May 1, 1967.

- Description of the Process

Following the receipt of the application (See Flowchart E-70), the Commission reviews the application and schedules public hearings. If, in advance of the public hearings, the Commission is able to determine who the parties are that are involved or affected by the proposed action, the Commission will send a notice to those affected. In all cases, however, public notice is given for the scheduled hearings.

At the hearings, testimony may be given by other agencies and members of the general public. The Commission gathers evidence at the hearing and employs this evidence in making a determination on the application. If the Commission decides to grant the application, the Commission publishes a public notice of the decision. If the application is denied, the applicant is so notified. In either case, parties who feel they are aggrieved by the action may file for an appeal. If the appeal is granted, a re-hearing may be held. If an appeal is not allowed, the Commission publishes its final decision.

Should the decision be in favor of the applicant, the Commission grants a certificate.

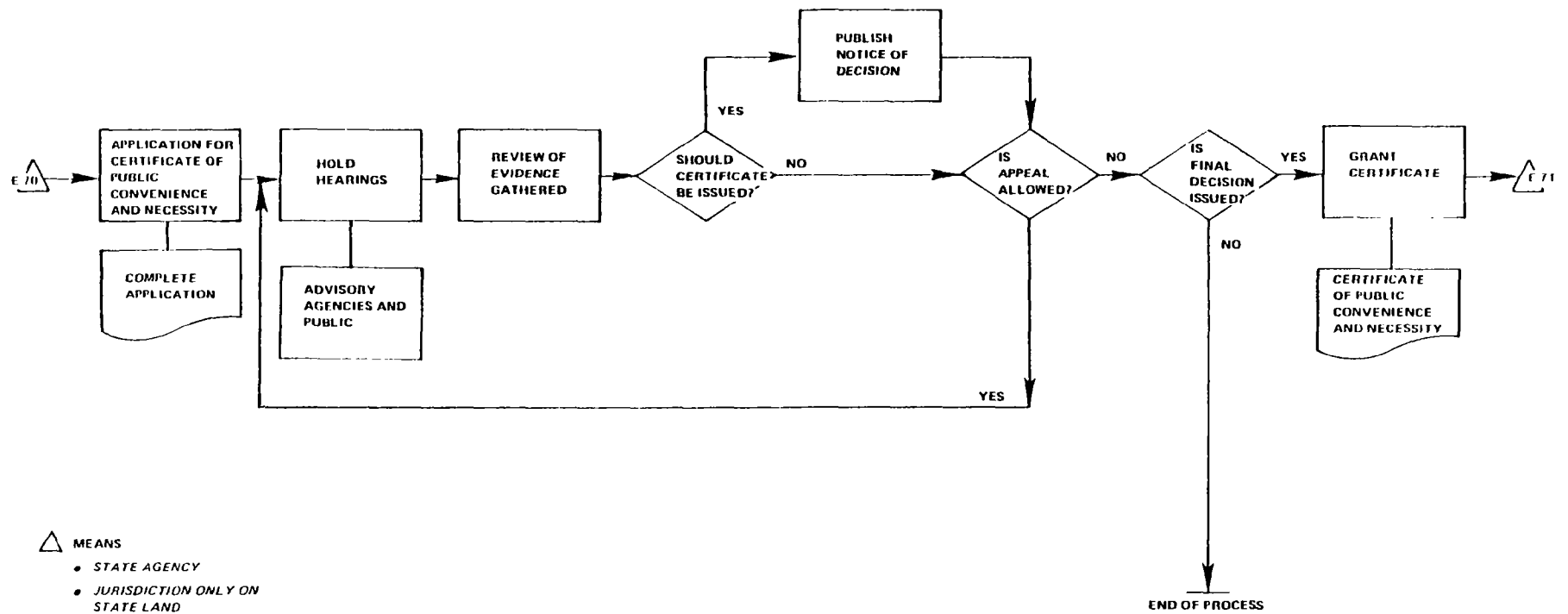
- Issuables

The Commission issues a Certificate of Public Convenience and Necessity.

- Advisory Agencies

- .. Department of Transportation
- .. Interstate Commerce Commission
- .. Federal Power Commission
- .. Federal Communications Commission.

WYOMING PUBLIC SERVICE COMMISSION



Wyoming - Industrial Siting Council

The Industrial Siting Council has the responsibility for approving energy development and other projects within the State which are of sufficient size to have a major impact on the communities in which the project is located. Included in the consideration of the Council are such impacts as roads, schools, hospitals, housing, police and fire protection.

- Legal Authority

The Council operates under the authority of the Industrial Development Information and Siting Act, Wyoming Statutes 35-502.75 through 35-502.94. The regulations governing the activities of the Council are presented in the "Rules and Regulations of the Industrial Siting Council, State of Wyoming" adopted September 10, 1975.

- Description of the Process

Any electric generating facility which has the capability of generating one hundred (100) megawatts of electricity or more or any addition to an existing generating facility which will increase the capacity of the existing facility by at least one hundred (100) megawatts must receive approval prior to construction by the Council. In addition, any newly constructed transmission lines that are necessary and essential to the operation of the generating facility must be approved by the Council.

A developer must submit an application to the Council for the receipt of approval and a permit (See Flow-chart E-72). Section 5 of the Council's Rules and Regulations specifies the contents of the application. The Council has no application forms. An application to the Council must present evidence that all other required permits have been obtained and that the applicant has complied with all applicable laws. Consequently, the first step following the receipt of the application is for the administrative staff to check completeness of the application, to verify that all applicable permits have been obtained, and to conduct an independent analysis of the application.

Following the determination of completeness by the administrative staff, a public hearing on the appli-

cation is scheduled. During this time, the Council conducts a study of the effect on the project area. This study is paid for by the applicant. Following the hearing and receipt of evidence, the Council must make a decision on the application. The Council has three choices. The Council may:

- .. Approve the application without any conditions
- .. Approve the application with conditions
- .. Reject the application pending further study.

If the application is approved, the developer may proceed following the approved plan. If the application is approved with conditions, the developer is notified of the required modifications and the changes must be made prior to the initiation of any activities. If the application is rejected pending further study, the applicant has thirty (30) days to appeal for a new hearing by the Council. If the application is denied a second time, the applicant may appeal through the courts following the procedures in the Wyoming Administrative Procedures Act.

Regardless of the decision of the Council, when the Council has reached a decision the Council must publish the study, its findings, and the decision. The local governments which would be affected by the project must receive copies and copies must be filed with the county clerk's office. In addition, notice of the Council's decision must be published in at least one newspaper of general circulation within the affected area.

- Issuables

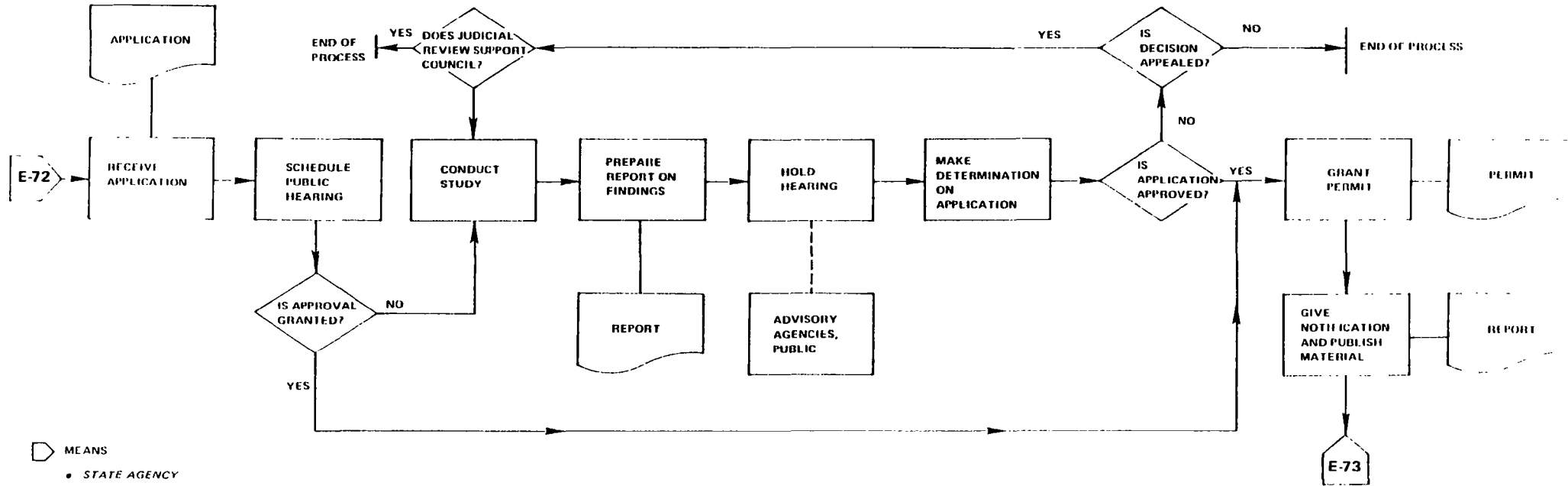
The Council issues a permit for the construction or operation of any industrial facility or facilities within the State.

- Advisory Agencies

- .. Department of Environmental Quality
- .. State Engineer
- .. County Commissions
- .. Army Corps of Engineers

- .. Environmental Protection Agency
- .. Nuclear Regulatory Commission
- .. Interested Parties.

WYOMING INDUSTRIAL SITING COUNCIL



MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

2. HYDRO-POWERED

Hydroelectric facilities harness the energy of falling water to generate electric power. Because the flow in a river is subject to considerable natural fluctuation, a reservoir is required to even the flow and ensure a fairly constant production of power during all seasons of the year. A dam serves as the means of forming this reservoir and creating a difference in water level so that water will flow through turbines located at the base of the dam to generate electricity. Hydroelectric facilities involving one dam and one reservoir are generally called conventional hydroelectric facilities.

A second method for generating electricity from water power employs two reservoirs at different elevations. During the night when demand for electricity is low, water is pumped from the full lower reservoir up to the empty higher reservoir. The following day, the water in the higher reservoir is released to the lower reservoir to flow through turbines and generate electricity. Some facilities employ this two reservoir concept on a weekly basis, generating power during the week and pumping water back to the upper reservoir in weekends. Such facilities are called pumped storage facilities.

(1) Federal Agencies Regulating Hydro-Powered Electric
Generation

This part of the report presents the Federal agencies which regulate the development of hydro-powered electric generating facilities.

(a) Federal Power Commission

The Federal Power Commission (FPC) issues and administers permits and licenses for the construction and operation of non-Federal hydroelectric projects on waters or lands subject to Federal jurisdiction.

. Legal Authority

The Federal Power Commission derives its jurisdiction over the construction and operation of hydroelectric projects from the Federal Power Act (16 U.S.C. 792) Part I, with penalty provisions being contained in Part III. Regulatory procedures are covered by Title 18 CFR Parts 4, 5, 6, 8, 9, 11, 12, 13, 16, 24, and 25.

. Description of the Process

The process of obtaining the necessary permits and license required from the FPC is presented below. (See Flowchart E-5)

The first stage of the process is an optional one. Before obtaining a license to construct and operate a hydro-powered electric generating facility, the applicant may apply for a preliminary permit which would allow the applicant to maintain a priority on the site while performing a site investigation. This permit ensures that no action on the specified site may be taken by another applicant thus preserving the rights of the first applicant. The preliminary permit application will contain the applicant's general plan for development.

The preliminary permit, active for 3 years, only maintains the priority of the applicant to file a license to construct a hydroelectric facility on that site. The preliminary permit does not grant permission to investigate the site. Such permission must be obtained from the landowner or the controlling Federal agency. The preliminary permit may contain requirements that certain tests be conducted during site investigation.

To gain a preliminary permit, the energy developer must make an application to FPC. The FPC will make public notice of the application and will distribute copies of the application to appropriate advisory agencies. After a comment period, the Commission decides on the issuance of a preliminary permit. Environmental Impact Statements are not prepared in connection with preliminary permits nor are hearings usually held on preliminary permits.

The second stage is the application for the required construction license. The completed application is received by the FPC and judged for adequacy. If the application is adequate FPC will make public notice of the application in a local newspaper and the Federal Register. Copies of the application are sent to all appropriate interested agencies, including Federal, state, local, and regional units of government. The FPC is required to consult with the U. S. Fish and Wildlife Service and cognizant State agencies to obtain advice to be used in considering the application. The Corps of Engineers reviews all hydroelectric project plans to determine the potential effects on river stages, discharge, and flow regimen. Furthermore, the Corps comments on the construction plan's effect on navigation and flood control.

Comments are solicited for 90 days. During this period, intervenors can file Petitions to Intervene. The Commission will either grant or deny permission to intervene. If permission to intervene is granted, a hearing before an Administrative Law Judge will be scheduled. During the comment period and afterward, the applicant is allowed to answer comments made concerning his application. Also, the FPC staff decides upon the need for an Environmental Impact Statement. If a statement is necessary, the sequence of preparing a draft, soliciting comments, and preparing a final EIS is followed. Because it is presented as evidence, the EIS must be completed for submission at the hearing.

The FPC holds a public hearing before an Administrative Law Judge. The judge recommends an initial decision which is not binding on the Commission. The judge can recommend granting a License to Construct, denying a License, or granting a License with conditions.

The final decision is up to the Commission. The Commission may also grant, deny, or grant a license with conditions. If the applicant is granted the construction license, the recipient has the authority to construct the facility in accordance with the terms and conditions of the license. In making its decision, the Commission must consider the impact of this new construction on the comprehensive development of the region. The decision of the Commission is subject to appeal in the Courts.

The FPC conducts an inspection program during construction. During this period of time intervenors can petition the FPC for intervention. However, at this stage, the License to Construct cannot be rescinded. Intervention can apply only to the specific issue at hand, which is usually an interim step required by conditions of the original license.

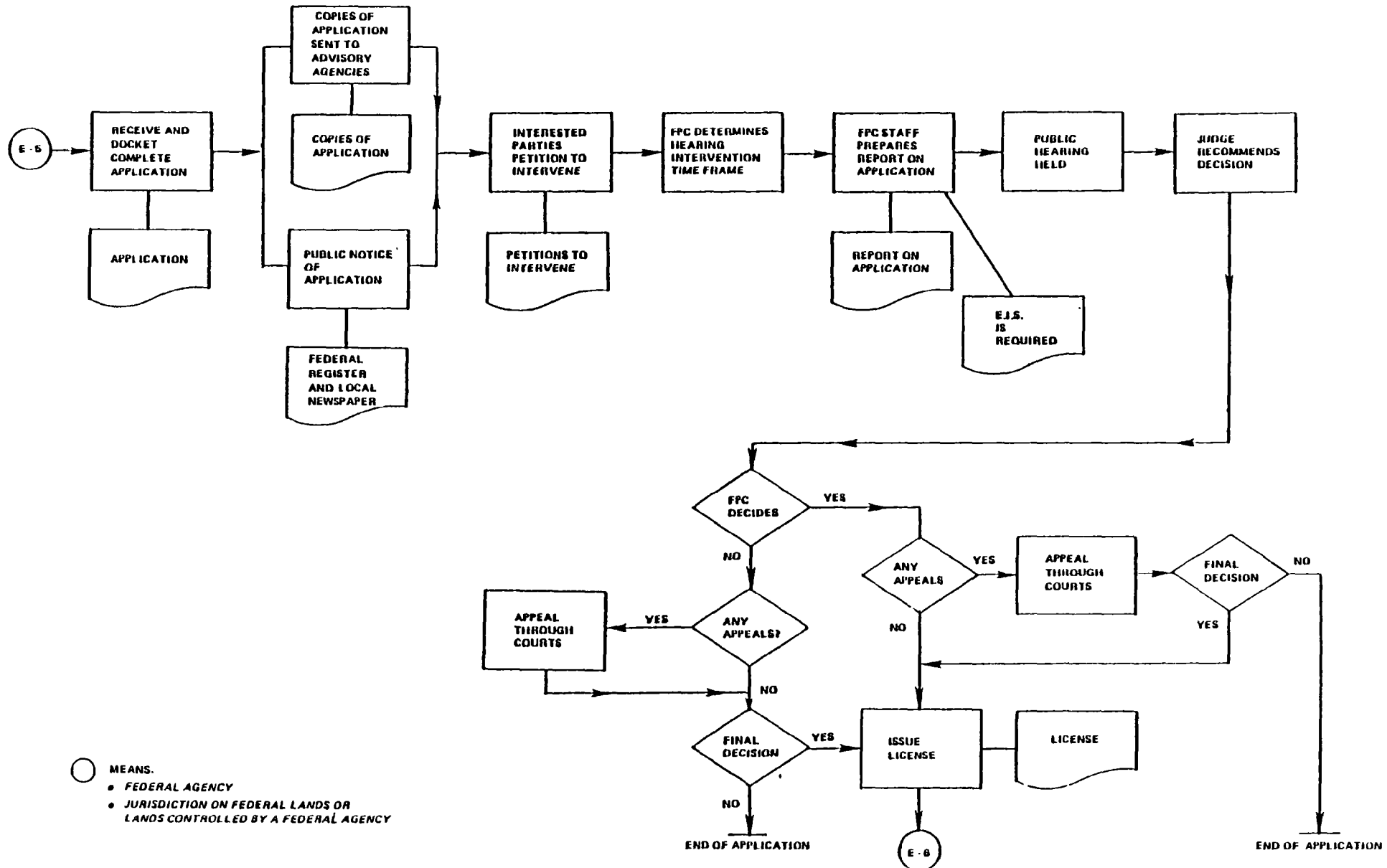
. Issuables

- Preliminary Permit (Optional)
- License to Construct

. Advisory Agencies

- Corps of Engineers
- U.S. Fish and Wildlife Service
- Forest Service
- River Basin Commissions
- Affected Federal Agencies
- Affected State, regional, local agencies

**FEDERAL POWER COMMISSION
CONSTRUCTION AND OPERATION PERMIT**



(b) Forest Service

The location of electric generating facilities may require siting permits or rights-of-way on Forest Service (FS) lands. The FS must approve the siting of any hydroelectric generating facility on FS lands.

- . Legal Authority

The granting of siting and rights-of-way on FS lands are governed by Title 36 of the Code of Federal Regulations.

- . Description of the Process

The first step in the consideration of a site or right-of-way application is the determination of whether the agency has jurisdiction over the land (See Flowchart E-7). If the land is under the control of FS, an Environmental Assessment Record (EAR) is prepared by the FS. Based on the findings in the EAR, the FS determines whether or not the environmental impact is significant enough to require an Environmental Impact Statement (EIS).

If the FS requires only the EAR, the evaluation of the request is made on the basis of the content of the EAR and the advice provided by other agencies who participate in the review process. If an EIS must be prepared, the lead agency is assigned and the preparation plan, i.e. the plan of action to handle the EIS, is drafted. A detailed description of the proposal and baseline area studies are important for any EIS. The FS must wait thirty (30) days after the EIS is submitted to the Council on Environmental Quality (CEQ) before any decision can be given.

The EAR/EIS process is critical to the protection of the environment. Once a permit for siting has been given, the recipient can not, by law, be denied access to the site. Consequently it is crucial that the FS place stipulations on the rights-of-way granted to ensure the protection of the environment. Compliance checks are conducted during the construction phase to verify the developer's compliance with the stipulations in the right-of-way.

On FS land, the FS monitors the rights-of-way and enforces public safety.

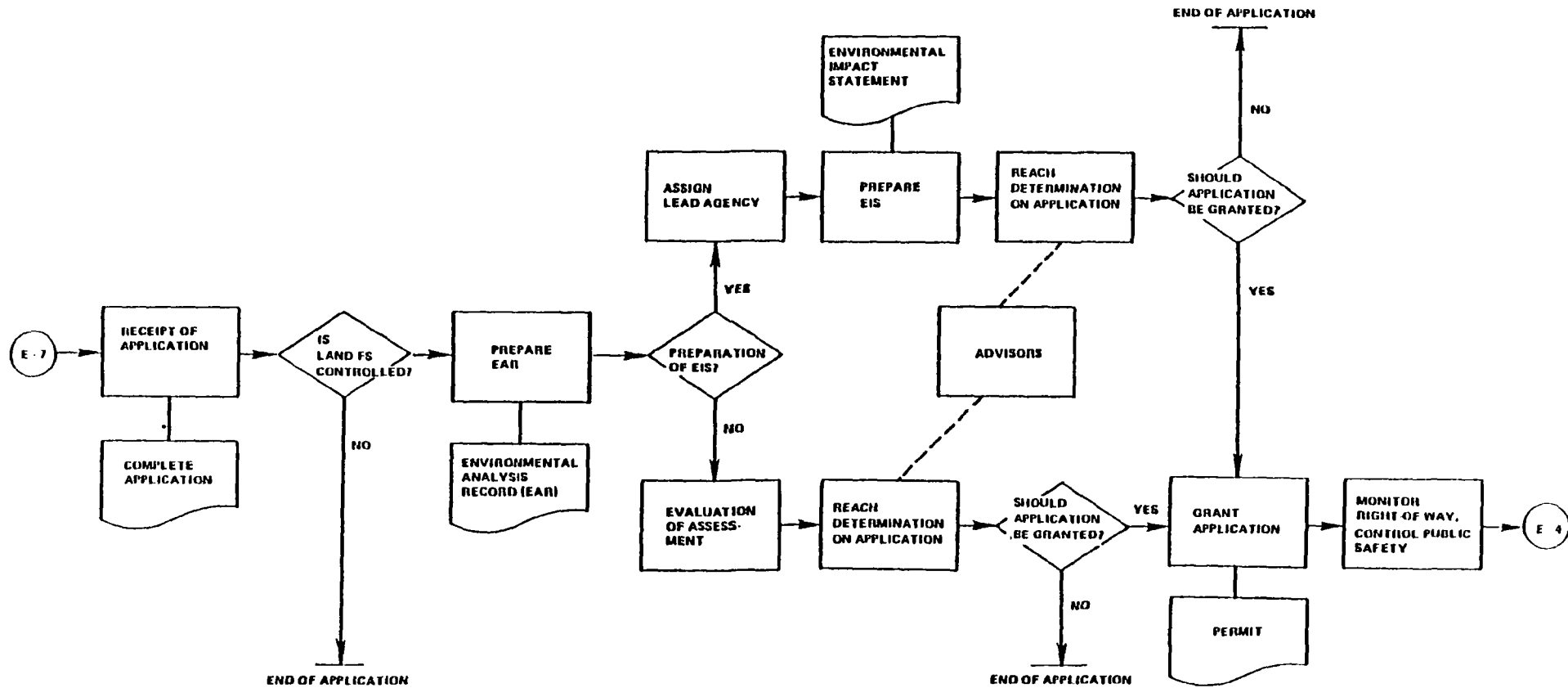
- . Issuables

The FS issues siting permits and rights-of-way.

. Advisory Agencies

Fish and Wildlife Service

**FOREST SERVICE
SITING AND RIGHT-OF-WAY PERMITS**



○ MEANS:

- FEDERAL AGENCY
- JURISDICTION ON FEDERAL LANDS OR LANDS CONTROLLED BY A FEDERAL AGENCY

(c) Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) is authorized to approve rights-of-way for electric power facilities over Indian lands. No right-of-way is issued over tribal lands, however, without prior consent of the tribe.

- . Legal Authority

The regulations governing applications to the BIA are contained in Title 25 of the Code of Federal Regulations.

- . Description of the Process

The application for a right-of-way is received in the regional office of the BIA (See Flowchart E-3). The application is reviewed by the BIA to determine whether or not an Environmental Impact Statement is necessary. If an EIS is necessary, the BIA prepares a draft copy of the EIS. Advisory agencies and interested persons are invited to comment upon the EIS and public hearings are held. The findings of the comment period and from the advisory agencies' reviews are incorporated into the final EIS.

If the BIA determines that the impact of the requested application is not sufficient to require an EIS, the decision-making process is based on the findings of the environmental assessment.

The results of the EIS or the assessment are forwarded to National for review and comment. The package is then returned to the regional office with any comments. The regional office then makes the determination on granting the right-of-way permit. If the BIA grants the application, the agency issues a permit.

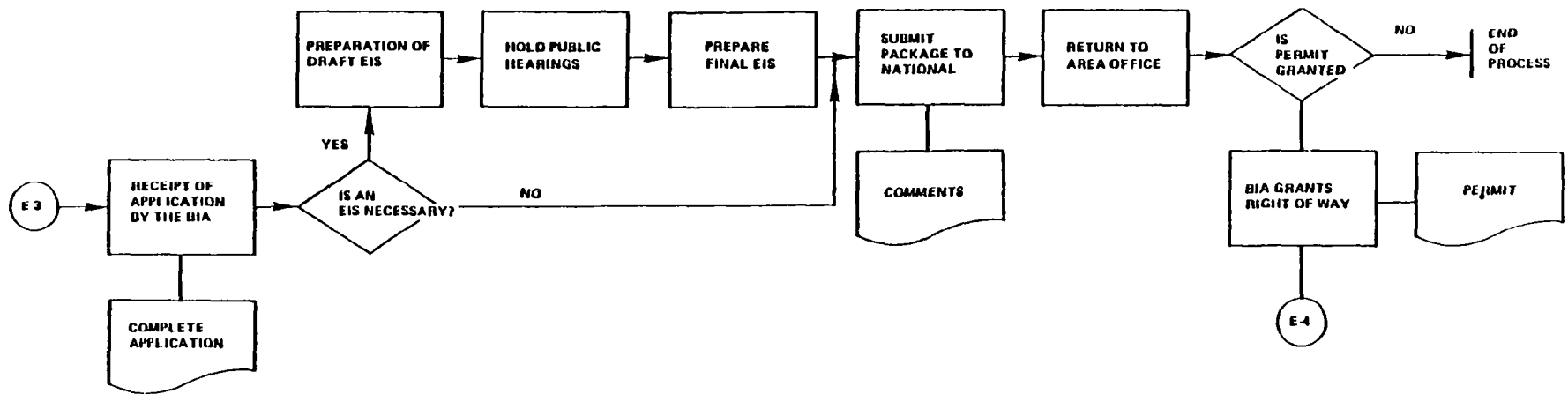
- . Issuables

The BIA issues a right-of-way permit

- . Advisory Agencies

- Fish and Wildlife Service
- Bureau of Land Management

BUREAU OF INDIAN AFFAIRS RIGHT-OF-WAY PERMIT



MEANS:

- **FEDERAL AGENCY**
- **JURISDICTION ON FEDERAL LANDS OR LANDS CONTROLLED BY A FEDERAL AGENCY**

(d) Federal Aviation Administration (FAA)

Whenever the erection of a tower may be proposed for a location which may affect air traffic safety, a Notice of Intent to Construct a Tower must be filed with the FAA.

. Legal Authority

The FAA is charged with the responsibility for air safety by Title 14 of the Code of Federal Regulations.

. Description of the Process

If an operator suspects a proposed tower to be under FAA jurisdiction, he must file a Notice of Intent to Construct a Tower at least 30 days prior to construction (See Flowchart E-11). The FAA then determines whether the proposed tower would be considered an obstruction to air traffic safety. This usually takes 2 to 3 weeks. If the proposed tower is not an obstruction, then the applicant may proceed with construction.

If it is an obstruction, however, the FAA must decide whether or not to issue a clearance for the tower. The FAA sends out notice of the proposed project to interested parties for comment. This may take up to 8 weeks for a significant clearance. If the FAA deems a public hearing to be needed, one will be held and all interested parties heard. The FAA then reviews the proposal and either issues or denies the clearance.

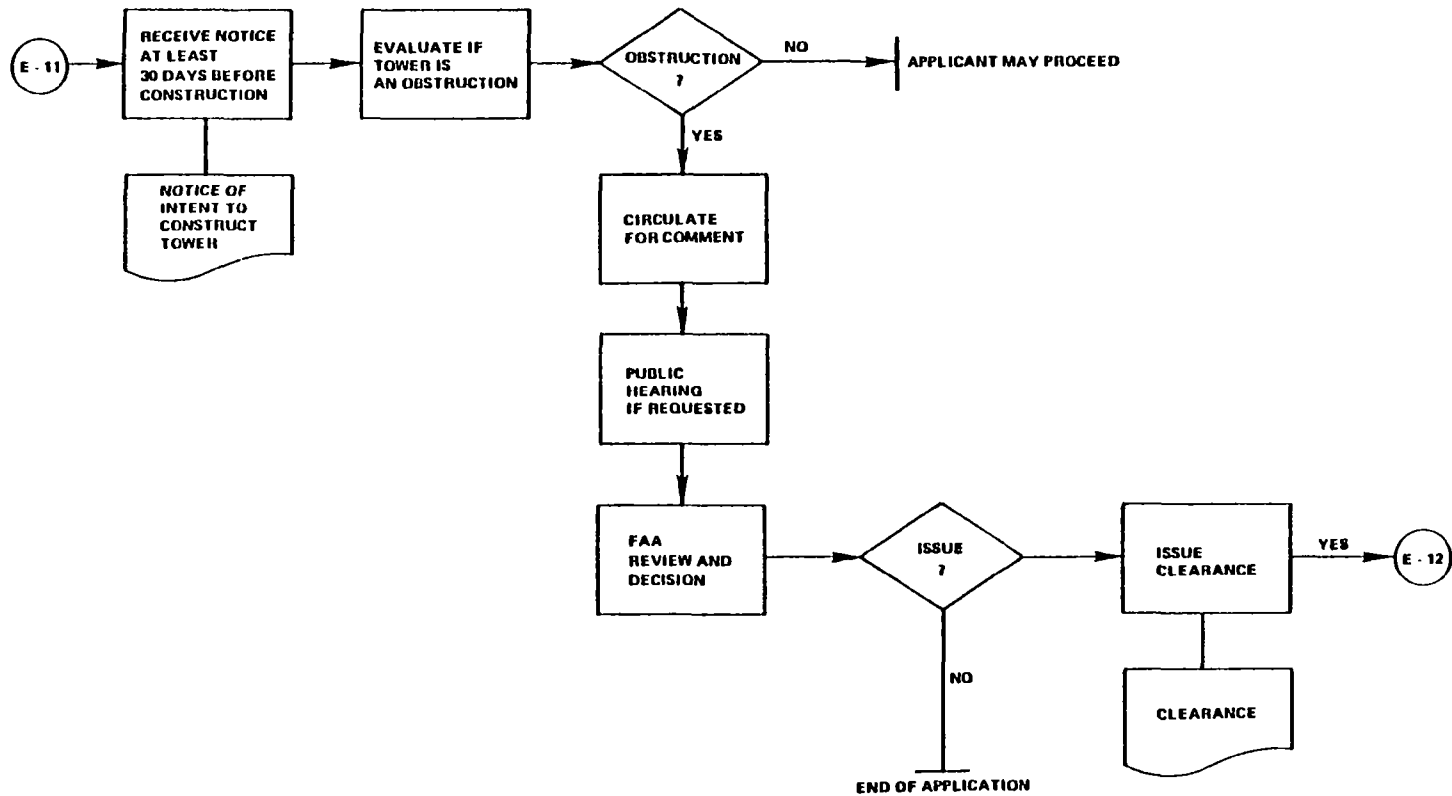
. Issuables

Clearance for a Tower

. Advisory Agencies

Undetermined

FEDERAL AVIATION ADMINISTRATION
TOWER CLEARANCE



MEANS:

- FEDERAL AGENCY
- JURISDICTION ON FEDERAL LANDS OR LANDS CONTROLLED BY A FEDERAL AGENCY

(e) Environmental Protection Agency (EPA)

The Environmental Protection Agency has primary responsibility over issuance of National Pollution Discharge Elimination System (NPDES) permits. This permit regulates the quality and quantity of liquid effluents discharged into rivers and waterways.

. Legal Authority

Under the 1972 amendments to the Federal Water Pollution Control Act, the discharge of pollutants into the U.S. waters without an NPDES permit is illegal. This is only applicable to new source discharges for which EPA effluent emission guidelines have been developed.

. Description of the Process

The EPA has primary responsibility over the NPDES program, but it may transfer responsibility for the NPDES program to States which have EPA approved programs (See Flowchart E-13). Where there are approved State programs, it is the State procedure which is followed, provided that the State abides by the same prohibitions against issuing permits that govern the EPA's decision. The EPA does, however, reserve the right to deny a permit when a State may grant it. The EPA may not issue a permit when a State with an approved program denies the permit.

For a State without an approved program, the EPA receives the application and engineer's reports directly (See Flowchart E-13). Other Federal and State agencies that are interested in the proposed project are sent copies of the application and comments solicited. A copy of the application is sent to the State authorities to certify that the project meets any applicable State standards. If the proposed project meets the State standards, the EPA must decide whether it is a major Federal action to issue the NPDES permit. If so, an Environmental Impact Statement (EIS) is required and must be prepared.

All information to this point is then analyzed and a preliminary decision reached. This preliminary decision and the application are then posted in a public notice, which is a solicitation for comments from any interested party. If a public hearing is required, it is held and all interested parties heard. This additional input is then weighed in the determination on issuance of the NPDES permit. If the determination is negative, there are appeal processes

available through the Administrator of the EPA. If the final determinatin is affirmative, then the NPDES permit is issued with a term of up to five years.

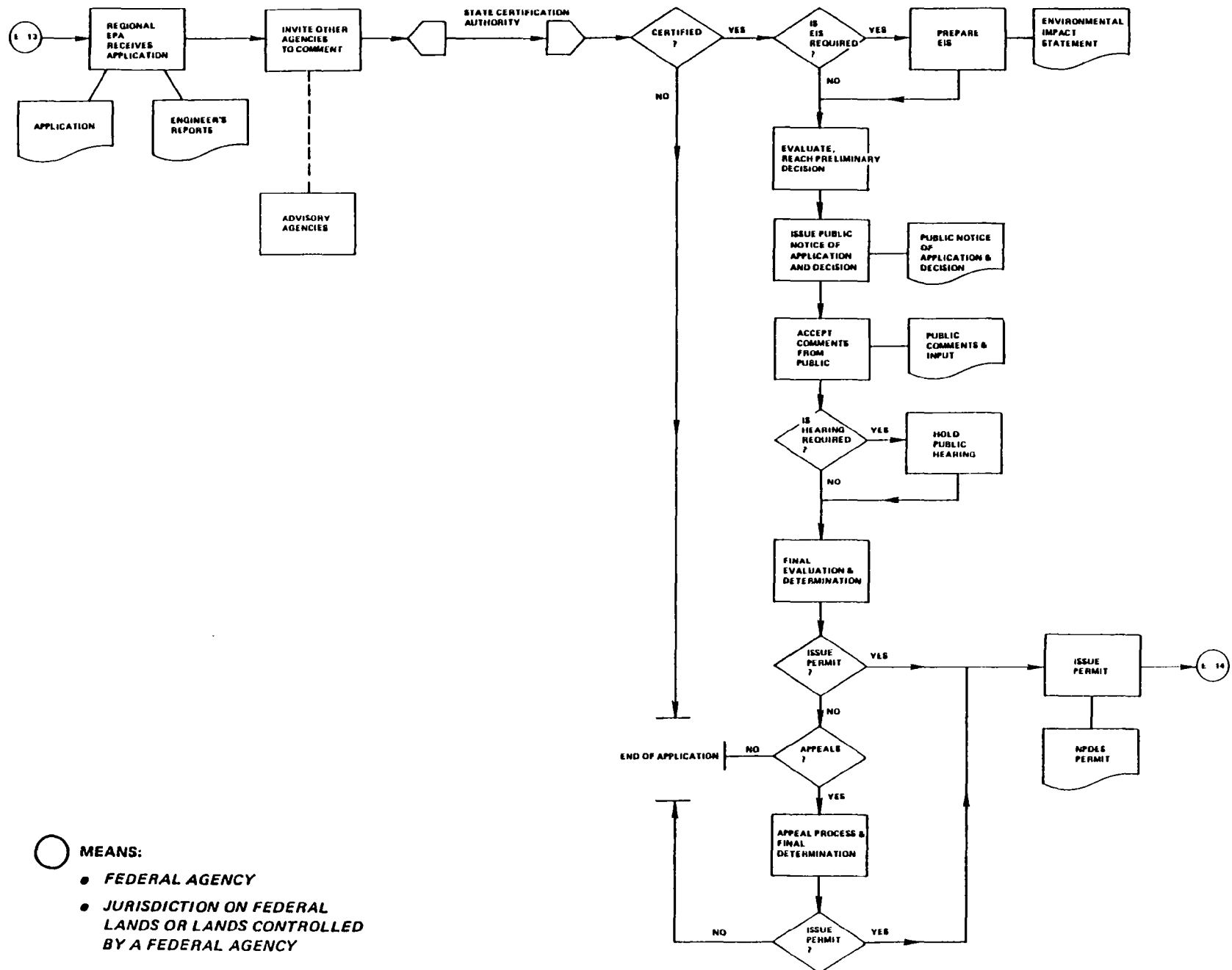
- . Issuables

- Environmental Impact Statement
- Public Notice of Application and Preliminary Decision
- National Pollution Discharge Elimination System Permit

- . Advisory Agencies

- Corps of Engineers
- U.S. Fish and Wildlife Service
- Bureau of Reclamation
- Other agencies as may be interested in either the EIA preparation or public hearings.

**ENVIRONMENTAL PROTECTION AGENCY
NPDES PERMIT**



(2) State Agencies Regulating Hydro Powered Electric Generating Facilities

This part of the report presents the State agencies which regulate hydro-powered electric generating facilities.

(a) COLORADO

Colorado - Public Utilities Commission

The Public Utilities Commission (PUC) has authority over the construction and operation of electric generating facilities within the State. This jurisdiction extends to all electric generating facilities regardless of whether they are fueled by fossil fuels, nuclear fuel, or hydro power.

One of the concerns of the Public Utilities Commission is with the economic feasibility of the proposed project. That is, what will be the effect of the construction costs of the new facility on the utilities rate structure and, ultimately, on the consumers of the utility.

In addition to the construction and operation of the electric generating facility, the PUC is concerned with the exploration for, and the development of, coal, oil, and gas by the utility or subsidiaries of the utility.

The PUC's involvement is not from a regulatory standpoint over such operations but rather its concern for the effect of exploration and development activities or the purchase of fuel on the rate structure of the utility.

THE PUC is not involved with the granting of rights-of-way. All rights-of-way are obtained by the utility from the owner/controller of the land. The PUC must approve the route for transmission, however. Any deviations from the approved routes which are material to the cost of the project will require a new PUC approval.

- Legal Authority

- Description of the Process

The Public Utilities Commission receives an application from a utility seeking approval for construction and operation of a generating facility and approval for the rights-of-way obtained (see Flowchart E-16). The application is reviewed by the Commission and public hearings are scheduled. At the hearings, the utility, any interested agencies and members of the public are allowed to testify.

Following the hearing, the PUC makes the decision to grant the application and approve the routes for the transmission lines. If approval is granted, the Commission issues a permit which enables the utility to proceed. During the construction of the facility, the utility must submit quarterly reports on construction progress including a comparison of proposed expenditures to the actuals to date.

- Issuables

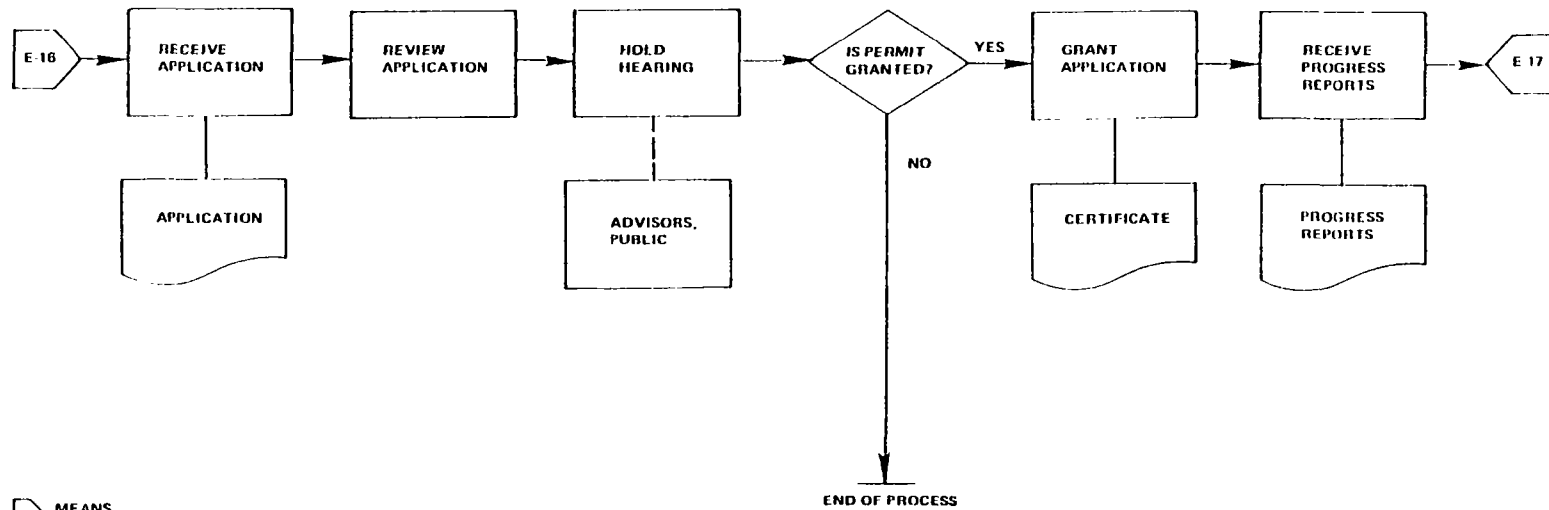
The Commission issues a Certificate of Public Convenience and Necessity.

- Advisory Agencies

-- State Land Use Commission

-- Department of Health.

COLORADO PUBLIC UTILITIES COMMISSION



◇ MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

Colorado Division of Water Resources

The Division of Water Resources is responsible for administering the use of water in the State. This is accomplished directly in the case of surface water and tributary ground water by the State Engineer, who is the Director of the Division; and, by the Ground Water Commission in the case of non-tributary designated ground water areas. The Division staff also serves as the staff for the Ground Water Commission. Water rights are obtained by decrees from the water courts generally following the axiom that the oldest right is the best right. In the designated ground water basins, the Ground Water Commission established priority lists of water users based on dates of initiation of uses.

In conjunction with the administration of water rights, the Division issues permits to drill water wells through an evaluation process which determines: (1) whether water is available for the proposed use, and (2) whether vested water rights will be materially injured.

Reviews are also made by the Division to determine possible adverse effects on vested water rights for proposals to: (1) dispose of mine tailings, (2) operate mine reclamation projects, (3) operate salt water disposal wells from oil and gas operations, and (4) develop geothermal resources.

The State Engineer and the Division of Water Resources, acting through the Board of Examiners for Water Well Drilling Contractors, exercises additional administrative control of water resources by the licensing of water well drillers and through rules and regulations governing water well construction and test hole drilling.

The Division of Water Resources may also review and grant temporary approval for plans of augmentation submitted by water users. Energy development projects typically require large amounts of water, and in the case where this water is tributary ground water, the augmentation plan must detail how the new users will obtain and return a sufficient supply of water to the total system to remedy any injury that may result to any senior water rights from his use.

- Legal Authority

The Division of Water Resources and the Office of the State Engineer operate under the authority granted

by Articles 37-90, 37-91 and 37-92 of the Colorado Revised Statutes, 1973. The first article, 37-90, covers designated ground water areas and the Ground Water Commission's jurisdiction. The second article, 37-91, deals with the Board of Examiners for Water Well Drilling Contractors, and the third article, 37-92, deals with surface and tributary ground waters. The Division's authority to grant temporary approval for plans of augmentation is found in Section 37-92-307, C. R. S., 1973. Responsibilities in the field of geothermal resources are set forth in Article 37-70, C. R. S., 1973. Additional duties and responsibilities of the State Engineer are found in Article 37-80, C. R. S., 1973.

- Description of the Process

Applications for permits to drill water wells are submitted to the Division of Water Resources (see flow chart E-22) or to the Ground Water Commission, through the staff of the State Engineer, in the case of designated basins. The staff reviews the applications for completeness and in the case of complete applications, evaluates the same with consultation, if needed, with advisory agencies to determine whether the application can be approved. The decision is made by the State Engineer. Any applicant whose request has been denied by the State Engineer may request a hearing through an administrative appeal process. Ultimate relief of an appeal of any action by the Division or the State Engineer can be found in the appropriate court. Applications in designated ground water areas, if recommended for approval by the staff, are published so that interested parties may file an objection with the Ground Water Commission.

Plans for augmentation are submitted simultaneously to the Division of Water Resources and to the water court. The Division of Water Resources reviews the plan for completeness and, in conjunction with consultation with advisory agencies, if needed, determines whether or not the plan can be approved. The application made to the court is published so that interested parties are given the opportunity to file an objection with the court. The final decision as to whether or not the plan can be approved rests with the water court.

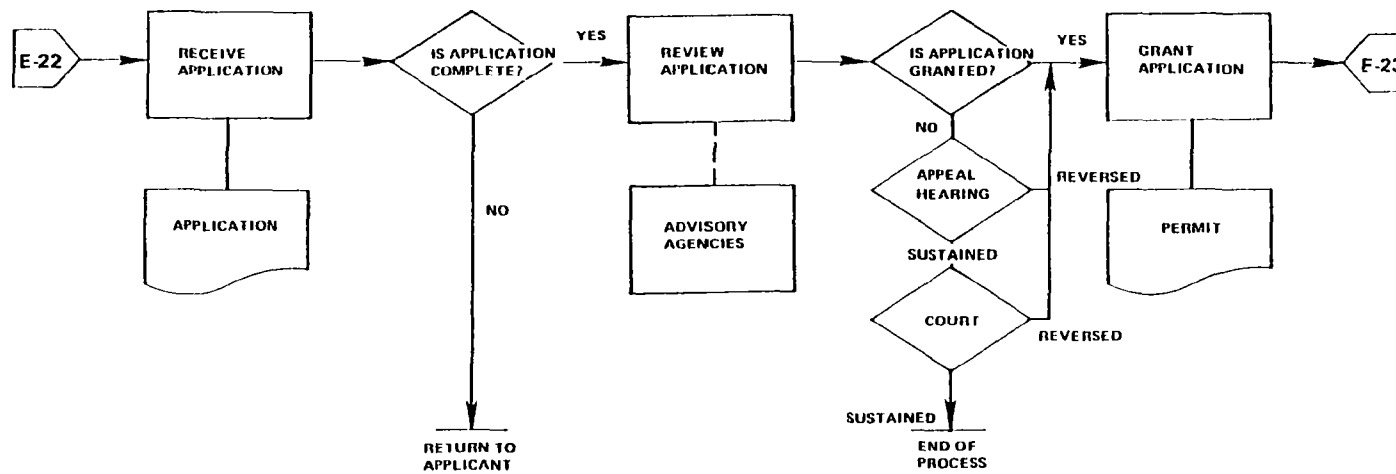
- Issuables

- .. Issues a permit to drill a water well.
- .. Licenses water well drillers.
- .. Grants temporary approval for plans for augmentation, and
- .. Acting for the Ground Water Commission, issues a permit to drill a well and to appropriate designated ground water.

- Advisory Agencies

- .. Water Conservation Board
- .. Oil and Gas Commission
- .. Mine Reclamation Board
- .. Water Quality Control Board
- .. State and County Health Boards

COLORADO DIVISION OF WATER RESOURCES



MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

. Colorado - Department of Health, Air Pollution Control Division

The Air Pollution Control Division is charged with developing and maintaining a comprehensive program for the prevention, control, and abatement of air pollution. The Division develops and promulgates ambient air quality standards and may issue cease and desist orders where emergency pollution exists.

- Legal Authority

The Air Pollution Control Division derives its authority from the Air Pollution Control Act of 1970, State of Colorado, Section 25-7. The rules and regulations governing the administration of this act are contained in the "Statements of Policy by the Division", "Common Provisions Regulations", and Regulations 1 through 9 of the Division.

- Description of the Process

The State does not allow the construction or operation of any new direct air contamination source without first obtaining or possessing a valid emission/permit. Any significant alteration of a source must be filed with the Division. Following the receipt of an application for such a permit, the Division must determine if the application is complete. The application is reviewed to determine the effect of this new source on the air quality of the area. Following this review the preliminary analysis of the effect of the direct source upon the ambient air quality and the extent of emission control are made available to the public. (See flowchart E-18)

If the application warrants public comment, a copy of the preliminary analysis and the application are filed with the appropriate county clerk and published in a local paper. Following the receipt of comments, the Division makes the determination whether or not to approve the application. If the application is denied, the applicant may request a conference with the Division and a hearing. If the application is approved, the permit is granted and the applicant may proceed.

The approval to proceed does not, however, constitute final approval. Prior to the operation of the facility the developer must give notice to the Division.

The Division then conducts an inspection to determine if the operating facility meets the standards projected in the application. If the standards are met, a final approval is granted.

The Division conducts on-going inspection efforts to ensure that standards are maintained during the operation of the project.

- Issuables

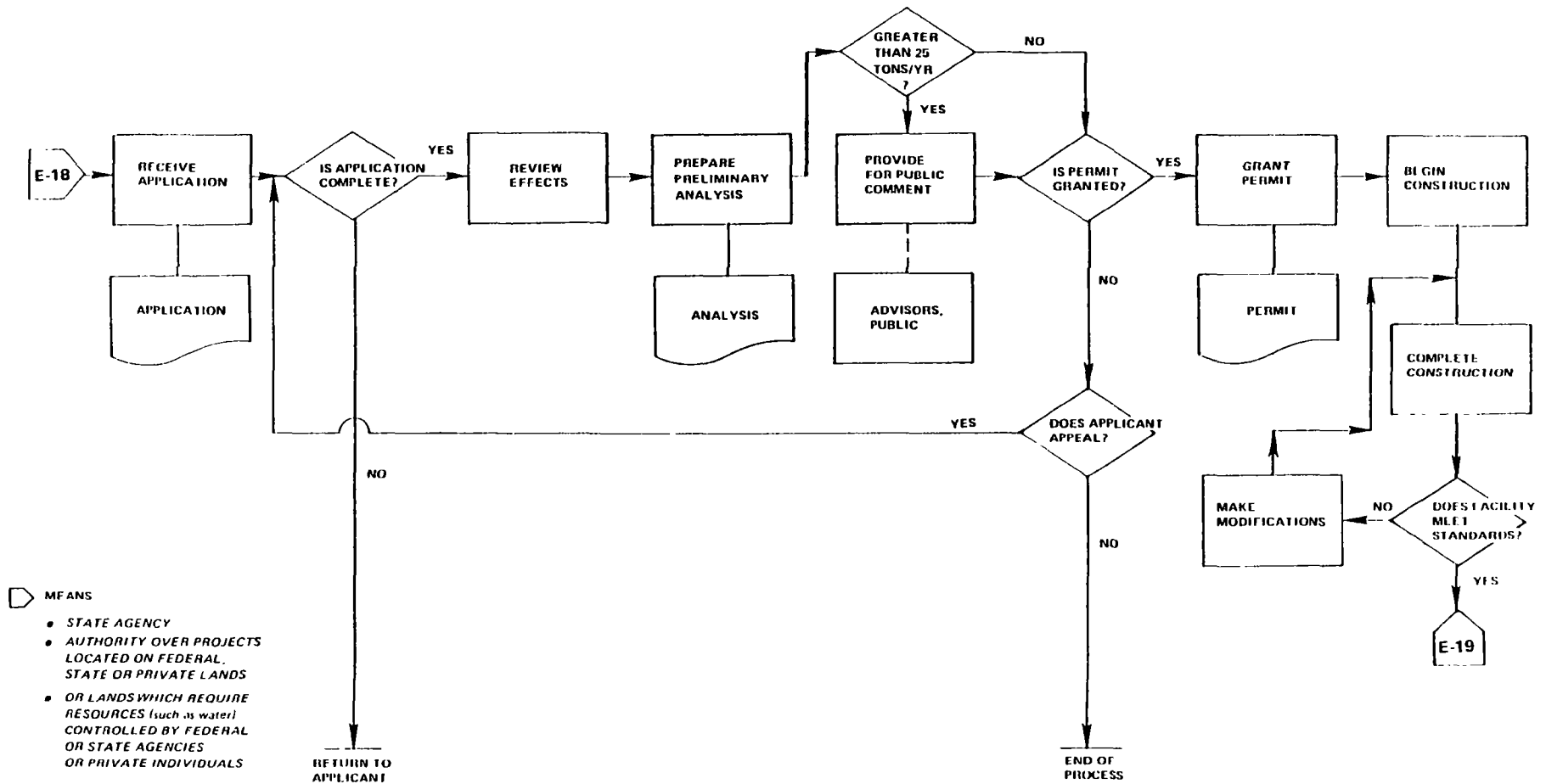
The Air Pollution Control Division issues the following permits which are relevant to a developer of an energy facility:

- .. Stationary Sources Air Emission Permit
- .. Open Burning Permit
- .. Fugitive Dust Permit

. Advisory Agencies

- .. Environmental Protection Agency
- .. Parties who are interested in the impact of fugitive dust or air emissions.

**COLORADO DEPARTMENT OF HEALTH
AIR POLLUTION CONTROL DIVISION**



. Colorado Department of Health: Water Quality Control Division

The Water Quality Control Division is charged with adopting a comprehensive program for the prevention, control and abatement of pollution of the waters of the State. The Water Quality Control Division promulgates rules, regulations, and standards of water quality and waste discharge and may issue cease and desist orders for violations.

- Legal Authority

The Water Quality Control Division operates under the authority of the Colorado Water Quality Control Act (C.R.S., 1963, 66-28-101, et. seq.).

- Description of the Process

No one is allowed to discharge any pollutant into any State water from a point source without first having obtained a permit from the Division for such discharge.

Applications for permits are filed with the Division (See Flowchart E-20). Once the application is received, the Division must determine if the application is complete. If complete, a draft permit is prepared. If the application is not for a point source discharge, the Division investigates and evaluates the application and prepares a letter of Certification to be forwarded with the application to the Corps of Engineers. For a point source, the Division sends copies of the draft permit to interested parties and invites response within 30 days. Public notification of the application is made, and if the response warrants, public hearings are held with all the information at hand. The Division decides whether or not to issue the permit. Either way, the aggrieved party has the right to appeal.

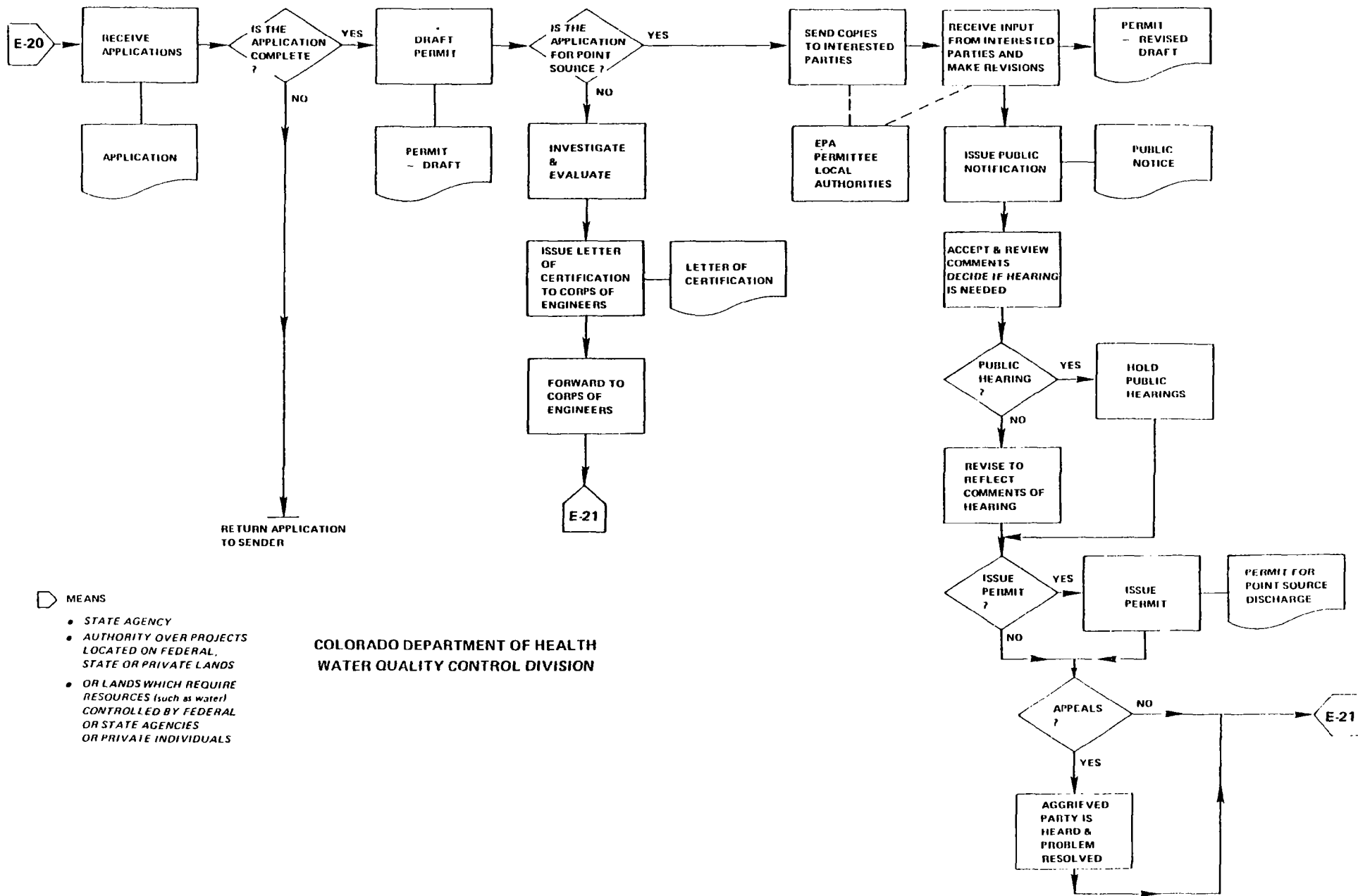
- Issuables

- .. Permit for point source discharge
- .. Letter of certification to U.S. Army Corps of Engineers.

- Advisory Agencies

.. Environmental Protection Agency

.. U.S. Army Corps of Engineers



(b) MONTANA

Montana - Department of State Lands

- Legal Authority

The Department of State Lands is responsible for leasing of all State lands under the Revised Codes of Montana, 1947, as amended.

- Description of the Process

There are two methods of obtaining a lease on State land in Montana, either through competitive bidding for a lease or through an award as the first qualified bidder (See Flowchart E-24). Generally, the competitive bid procedure is utilized for lease of lands with known resources and non-competitive award for unknown lands.

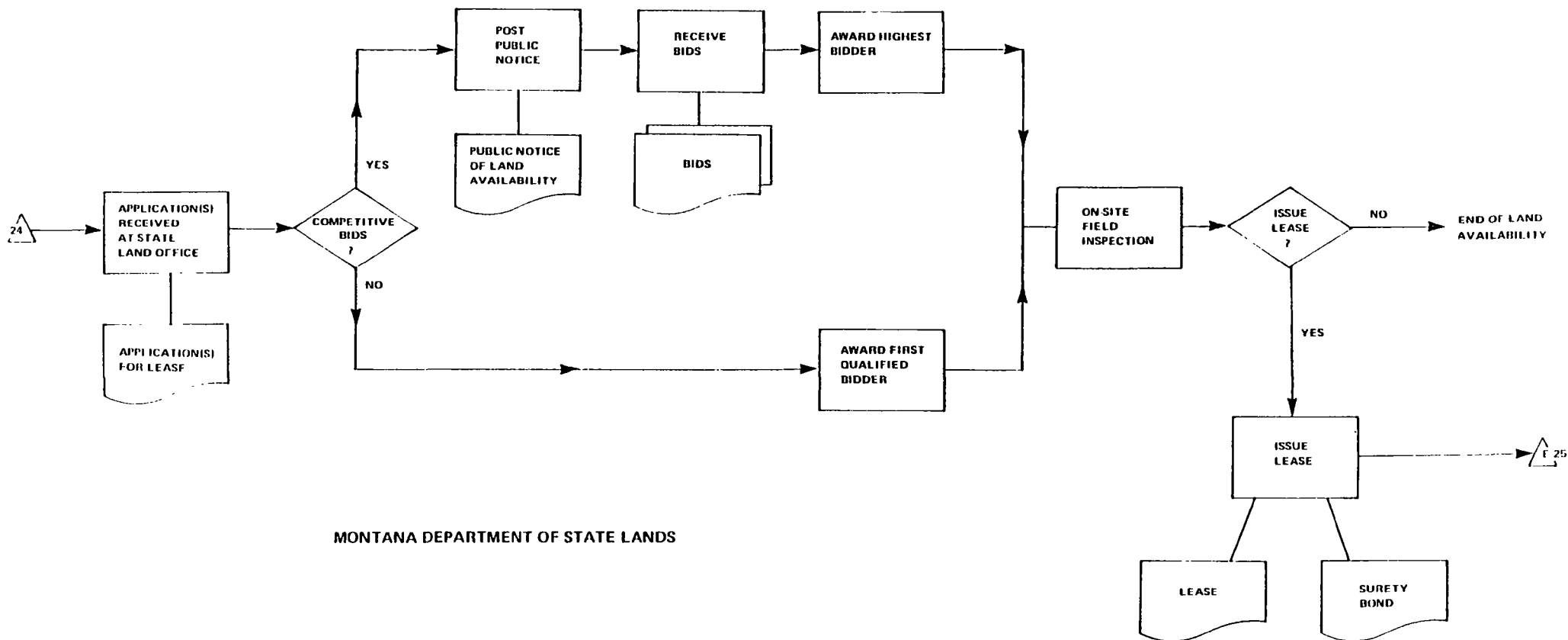
When an application for a State land lease is received, it is first determined whether the land in question is subject to competitive bidding. If so, availability is posted and bids accepted. The lease is then awarded to the highest bidder. In the case of non-competitive land, the award is to the first qualified bidder. Once an award is made, the Department decides whether or not to issue the lease. The land is usually not retracted. An on-site field inspection is required before issuance of the lease. When the lease is issued, the successful applicant must furnish a safety bond to the State.

- Issuables

.. Lease

.. Bond.

- Advisory Agencies



MONTANA DEPARTMENT OF STATE LANDS

- △ MEANS
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

Montana Department of Health and Environmental Sciences -
Air Quality Bureau

- Legal Authority

Responsibility for, and jurisdiction over control of air pollution sources in Montana are given to the Department of Health and Environmental Sciences by the Clean Air Act of Montana. The Air Quality Bureau (AQB) handles air pollution and discharges for the Department.

- Description of the Process

The applicant must file with the AQB a Notice of Intent to Construct which notifies the AQB that there will be a new contributor of air pollution. Usually plans and specifications are filed with the Notice. The Bureau then reviews and evaluates the proposed project, accepting input from interested agencies. If the project will have a significant impact, an Environmental Impact Statement is required to be prepared.

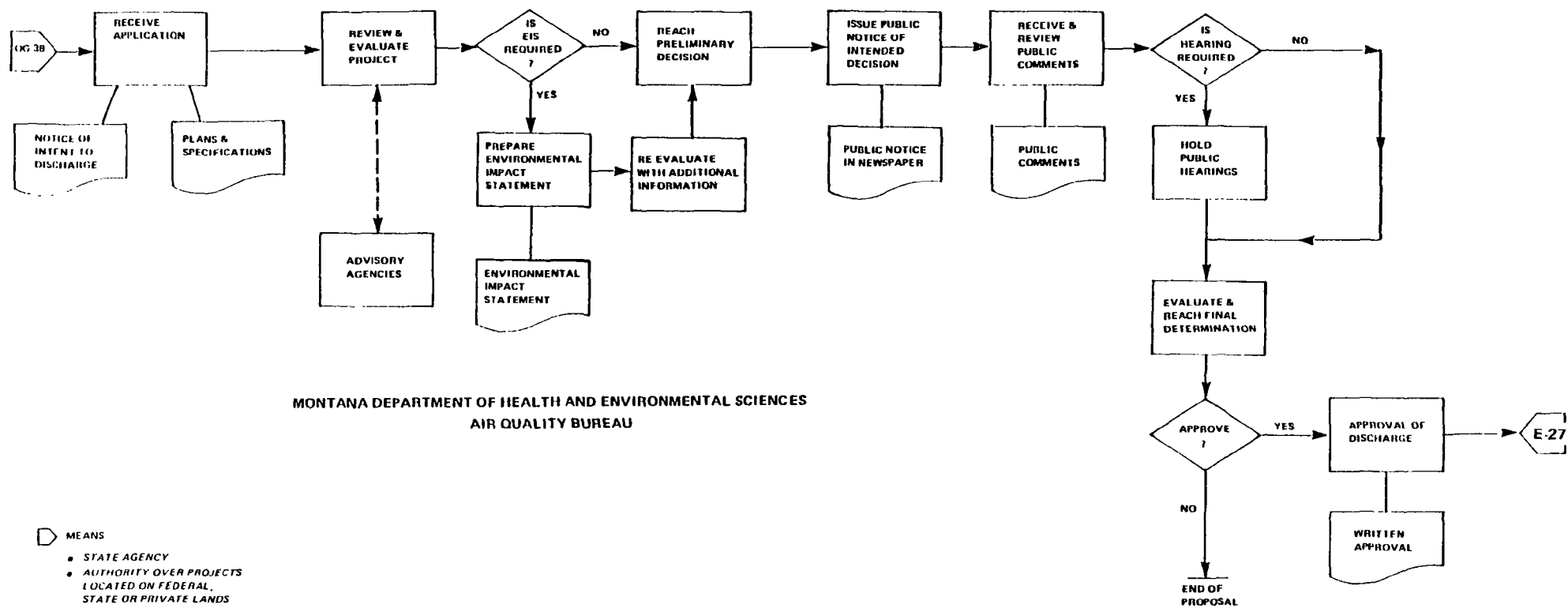
With the analysis prepared as required, the Bureau makes its preliminary decision and issues public notice of the intended decision. Comments are thereby solicited from the public, which are reviewed and evaluated. If public remarks warrant, public hearings may be held in which all interested parties are heard.

After all facts are gathered and all parties heard, the Bureau then reaches its final determination to either approve or deny the proposed project. If the project is approved, written notice is sent to the applicant (See Flowchart E-26).

- Issuables

- .. Public Notice of Intended Decision
- .. Written Approval of Proposed Project
- .. Environmental Impact Statement

- Advisory Agencies



. Montana - Department of Natural Resources and
Conservation Water Resource Division

- Legal Authority

The responsibility and authority for jurisdiction over all water in Montana is granted to the Department of Natural Resources by Montana Water Law Chapters 8 and 29. All water, wherever found, is under control of the Department.

- Description of the Process

A permit is required for any new appropriation of water, or construction of any diversion, impoundment, withdrawal or distribution works unless the project is exempted. A project is exempted if it is well outside the boundaries of a controlled ground-water area with a maximum yield of less than 100 gallons per minute. For an exempted well, within 60 days of completion of the well, the Division must receive notice of completion of the well, after which a Certificate of Water Right will be issued.

Unless the project is exempted, an application for permit must be filed with the Division (See Flow-chart E-28). Public notice of the application is published for three consecutive weeks in a newspaper in the area of the proposed water source. After the public notice, 30 to 60 days is allowed for receipt of objections to the project. The Division determines whether the objections warrant public hearings and hold the hearings if needed.

The proposed project is then evaluated and a decision is reached to issue or deny the permit. If the decision is to deny, the applicant may appeal to the Division for reconsideration. If the final decision is to issue the Permit, then the Permit is issued. Notice of completion must be filed within the prescribed time after the permit is issued or any authorized extension thereof. A Certificate of Water Right is issued if the project has been completed in substantial accordance with the permit. A Certificate of Water Right cannot be issued however until a general determination of existing rights in the source has been completed.

- Existing Water Rights

An existing water right is a right to the use of water which would be protected under the law as it existed prior to July 1, 1973. Water use for energy development may require the use of water for which a water right has been established. If a change of place of use, place of diversion, purpose of use, or place of storage is contemplated, pursuant to 89-892, R.C.M. 1947, application must be made and authorization received from the DNR&C. The severance or sale of a water right, pursuant to 89-893, R.C.M. 1947 also requires authorization by the department. Pursuant to the section cited, notice, hearing, etc. are conducted as per applications for water use permits.

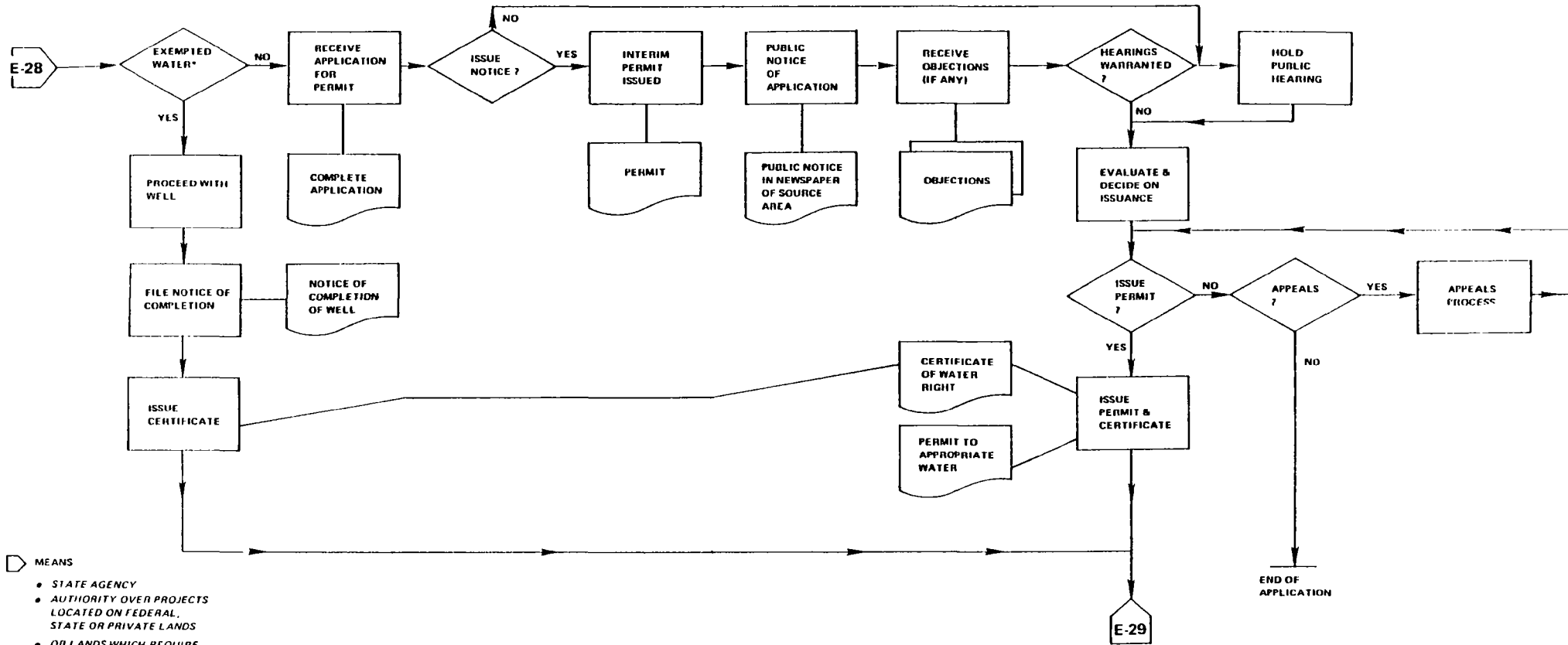
- Issuables

- .. Application for Permit to Appropriate Water
- .. Permit to Appropriate Water
- .. Certificate of Water Right
- .. Completion Report of Water Development
- .. Authorization of Change of Existing Water Right.

- Advisory Agencies

- .. None

**MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
WATER RESOURCES DIVISION**



MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- ON LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

* SOURCE IS A WELL NOT IN CONTROLLED GROUND WATER AREA WITH MAXIMUM YIELD LESS THAN 100 GPM

. Montana-Department of Natural Resources and Conservation:
Energy Planning Division

- Legal Authority

The Montana Major Facility Siting Act grants the Department of Natural Resources and Conservation jurisdiction over any facility designed for, or capable of, generating 50 megawatts of electricity or more, or any addition thereto having an estimated cost in excess of \$250,000 and related transmission lines.

- Description of the Process

No facility under this jurisdiction may be built without first applying for and receiving a Certificate of Environmental Compatibility and Public Need. Upon receipt of the application, the Division begins the review, evaluation, and study of the proposed project (See Flowchart E-30). This study is allowed up to two (2) years and encompasses an environmental and economic assessment of the project. After completion of the study, the Division presents its report of all findings and recommendations to the Board of Natural Resources and Conservation. The Board invites input from all interested State advisory agencies.

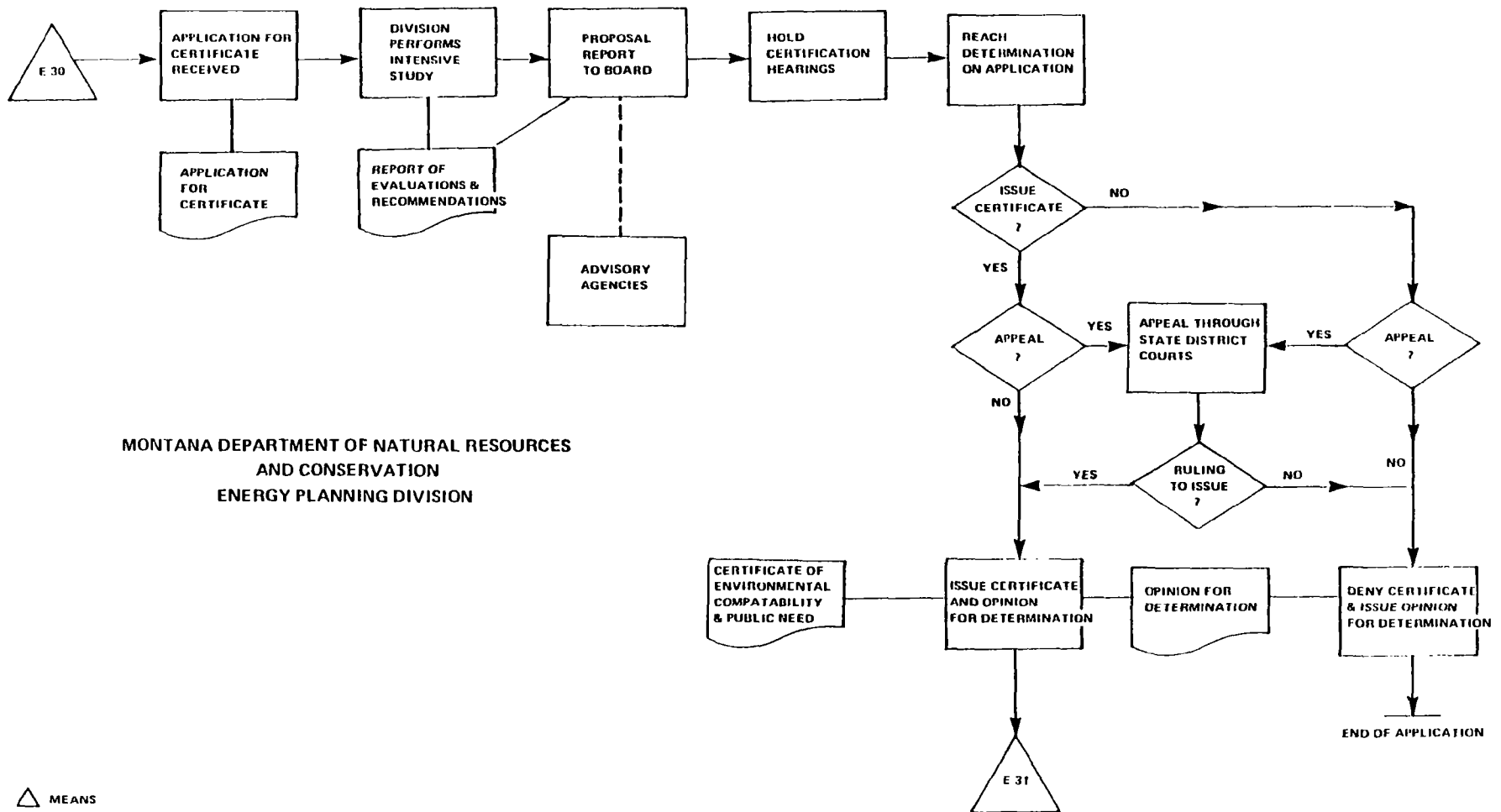
Within four (4) months, the Board holds public certification hearings to accept additional input to the evaluation. Within three (3) months after the end of the hearings, the Board issues its opinion and decision on the issuance of a Certificate for the project. Any aggrieved parties may petition to the State district courts for appeal.

When the final determination is reached, either the project is issued a Certificate of Environmental Compatibility and Public Need and may proceed or it is denied a Certificate and is terminated.

- Issuables

- .. Application for Certificate of Environmental Compatibility and Public Need
- .. Division Report on Project (Environmental and Economic Assessment)
- .. Certification Hearings

- .. Opinion for Determination
- .. Certificate of Environmental Compatability and Public Need
- Advisory Agencies
 - .. Department of Health and Environmental Sciences
 - .. Department of Highways
 - .. Department of Intergovernmental Relations
 - .. Department of Fish and Game
 - .. Department of Public Service Regulation.



MONTANA DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
ENERGY PLANNING DIVISION

- △ MEANS
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

. Montana-Division of Health: Water Quality Bureau (WQB)

- Legal Authority

Responsibility for, and authority over the control of air pollution sources in Montana is given to the Division of Health by Chapter 69-4800 of the Montana laws.

- Description of the Process

The applicant must file with the WQB a Notice of Intent to Construct which notified the WQB that there will be a new contribution to water pollution. Usually plans and specifications are filed with the Notice. The Water Quality Board notifies the Environmental Protection Agency of the receipt of the application. The Bureau then reviews and evaluates the proposed projects, accepting input from interested agencies, (See Flowchart E-32).

The Bureau makes its preliminary decision and issues public notice of the intended decision. Comments are thereby solicited from the public. These comments are reviewed and evaluated. If public remarks warrant, public hearings may be held in which all interested parties are heard.

After all facts are gathered and all parties heard, the Bureau then reaches its final determination to approve or deny the proposed project. Written notice of the decision is mailed to the applicant and to the EPA.

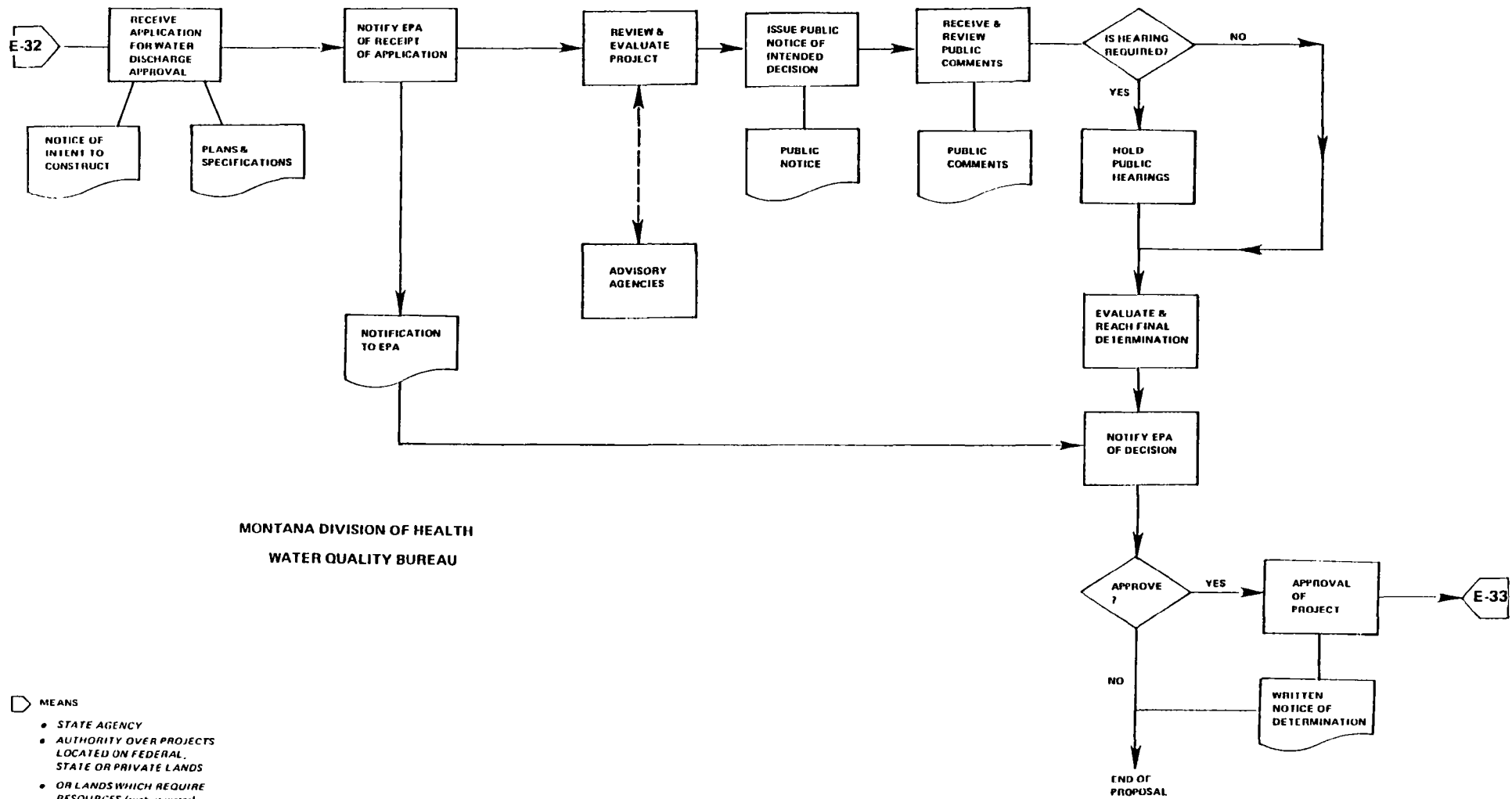
- Issuables

.. Public Notice of Intended Decision

.. Written Approval or Disapproval of Proposed Project

- Advisory Agencies

Environmental Protection Agency



(c) NORTH DAKOTA

. North Dakota - Public Service Commission

The Public Service Commission in North Dakota has responsibility for regulating several energy development categories within the State. The Commission issues permits for the mining of coal and for the reclamation which must follow. In addition, the Commission is responsible for the administration and enforcement of the North Dakota Energy Conversion and Transmission Facility Siting Act. In this capacity, the Commission must grant certificates of site compatability for energy conversion facilities, energy transmission facilities, and route permits for facilities in transmission corridors.

- Legal Authority

The authority for the Commission to regulate the siting of energy facilities is granted by the North Dakota Energy Conversion and Transmission Facility Siting Act, Chapter 49-22 of the North Dakota Century Code. The regulations governing the Commission's actions under this legislation are continued in "Rules and Regulations of the North Dakota Public Service Commission Governing the Siting of Energy Conversion and Transmission Facilities" which were adopted December 23, 1975.

- Description of the Process

Following the recent application for site compatability, the Commission must make two determinations as to completeness (See Flowchart E-34). Along with an examination to determine if all of the requirements of the Commission have been met, the Commission must determine if all other required permits have been obtained by the developer and if the developer has filed a letter of intent. Any developer seeking a site compatability permit must file a letter of intent with the Commission one (1) year prior to the filing of an application, unless a shorter time is approved by the Commission.

If the determination is made that the application is complete, the application is reviewed by the Commission. One of the purposes of this review is to ascertain whether the proposed site for the facility is in a constraint area. If the site is in a constraint area, the next determination is whether the site is an exclusion area or an avoidance area. If the area has

been designated as an exclusion area, the developer is prohibited from building his facility. If the area has been designated as an avoidance area, the developer may build the facility only if he is able to demonstrate a compelling reason for locating on that site.

Should the application process continue, the next step is for the Commission to schedule and hold a public hearing. At this hearing, both advisory agencies and members of the public may be heard. Following the hearings, the Commission assembles the results and evaluates its findings. If the Commission decides to grant the application, the permit is issued and development may proceed. Appeals to decisions of the Commission may be filed in the district court.

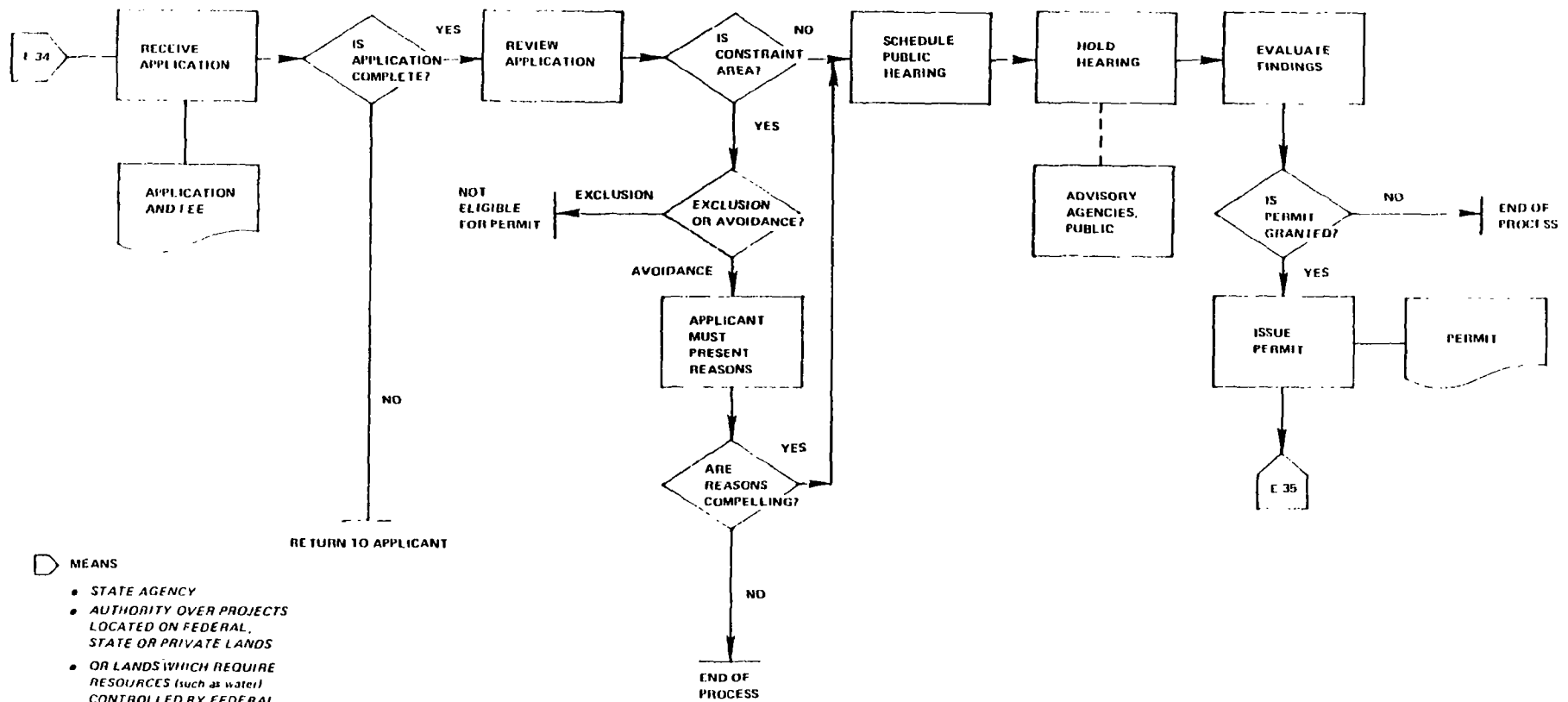
- Issuables

The Commission issues a Certificate of Site Compatability.

- Advisory Agencies

- .. Water Commission
- .. Soil Conservation Committee
- .. State Game and Fish Department
- .. Natural Resources Council
- .. Planning Division
- .. Regional Environmental Assessment Program
- .. Business and Industrial Development Commission

NORTH DAKOTA PUBLIC SERVICE COMMISSION



D MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

. North Dakota - Water Commission

The State Engineer administers the Water Rights Program for the State Water Commission. The State Engineer issues permits for the appropriation and use of water within North Dakota. The authority of the Commission covers all water in the State, whether it is associated with the Federal Government, the State, or private land owners. If the water in question is, for example, under the control of a Federal agency, the developer must obtain a permit from the Federal agency and the Engineer. Along with the permit to appropriate and use water, any energy developer who plans to construct a dam or a storage reservoir which is capable of impounding more than 12.5 acre-feet of water must obtain a permit from the Commission prior to construction.

- Legal Authority

The authority of the Commission and State Engineer over water resources within the State is granted by Chapter 61-02 and 61-04 of the North Dakota Century Code. The regulations governing the activity of the Commission are stated in "Circular of Instructions Relative to Appropriation and Use of Water" published in June, 1974.

- Description of the Process

Following the receipt of the application, the Engineer assigns a priority date to the application (See Flowchart E-36). State law recognizes the concept of prior appropriation of water, consequently the date of the application becomes important should a conflict develop. Once the priority date has been assigned, the Engineer reviews the application for completeness. If the application is complete, the Engineer reviews the application to determine if there is unappropriated water available and if the application is in the public interest. If the Engineer determines that the answer to both of these questions is "yes", the Engineer schedules a hearing. While a hearing is required for all water applications, now that the siting legislation requires a hearing, hearings for water use related to a facility which requires a siting permit are held jointly with the Public Service Commission. Once a hearing has been scheduled, the applicant must give notice of the

hearing to owners of land within a mile radius of the location and publish a notice in a newspaper of general circulation within the area.

At the hearing, testimony is heard from any agency or member of the public wishing to speak. Following the hearing, the Engineer evaluates the evidence and makes a determination on the application. If the application for water is granted, the applicant receives a Conditional Water Permit. Once the water is applied to a beneficial use, the applicant receives a Perfected Water Permit. For a dam, the applicant receives a construction permit and a permit to appropriate water.

Any action of the Engineer or Commission may be appealed through the District Court.

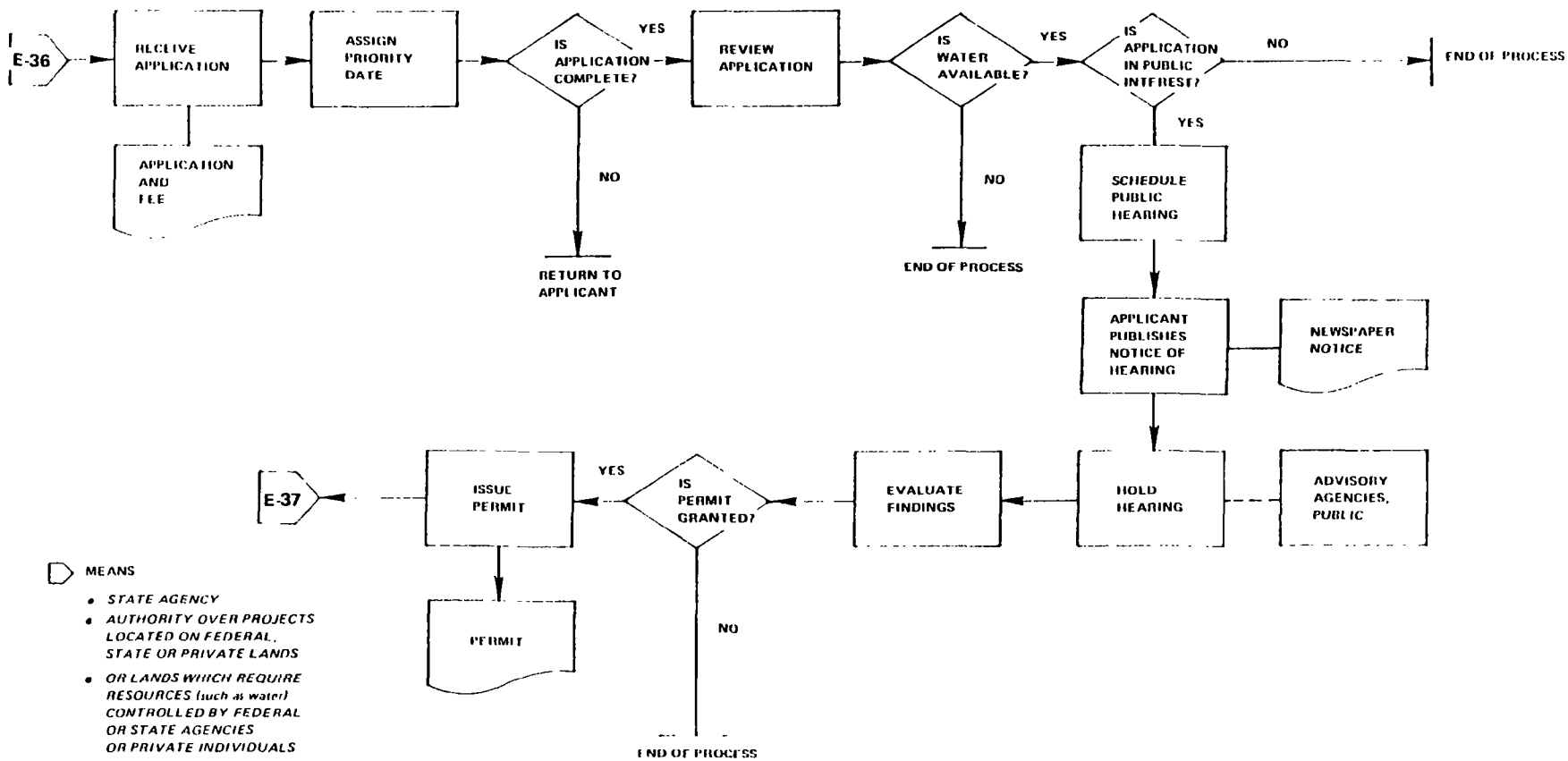
- Issuables

The Engineer and/or Commission issues:

- .. Conditional Water Permit
- .. Perfected Water Permit
- .. Dam Construction Permit

- Advisory Agencies

NORTH DAKOTA WATER COMMISSION



. North Dakota - Department of Health: Air Quality Division

The Air Quality Division of the Department of Health plays three important regulatory roles in energy development within the State. The Division:

- Regulates air pollution in the State and is responsible for maintaining air quality
- Functions as the nuclear regulatory agency in the State and is responsible for monitoring radioactive materials. This is done under an agreement with the Nuclear Regulatory Commission. Consequently, the Division functions as the NRC in North Dakota
- Regulates solid waste disposal. In this capacity, the Division is responsible for monitoring such problems as oil spills at production sites.

These are two Air Quality Maintenance Areas (AQMA's) which have been designated within the State.

- Legal Authority

- Description of the Process

Upon receipt of the application, the Division makes a determination as to completeness of the application (See Flowchart E-38). If the application is complete, the Division conducts a preliminary review. Following the review, the Commission conducts an inspection of the proposed site for construction. This inspection is conducted to determine the additive effect of the new source of air pollution on the site. If the site is found to be unacceptable, the developer must either improve his controls to reduce the emissions or find a new site. If the developer chooses to find a new site, the application is resubmitted.

If the site is found acceptable, the Division evaluates its findings. Based on this evaluation, the Division publishes a public notice of its intent to approve or disapprove the applications. This public notification is given to provide the public with the opportunity

to give comments to the Division. Following the receipt of the public comments, the Division assesses all the material received and makes its decision. If the decision is affirmative, the Division issues a permit to construct. This permit is generally issued with conditions or standards which the developer must meet.

Following construction, the developer is allowed a trial operation period. During the trial operation period, the Division conducts a test to ensure that standards are met. These tests are done during a one year pre-operation period and a two year post-operation period. If the facility meets the standards, a three year operating permit is issued. Each permit must be renewed every three years. The Division conducts compliance inspections during the operation of the facility.

- Issuables

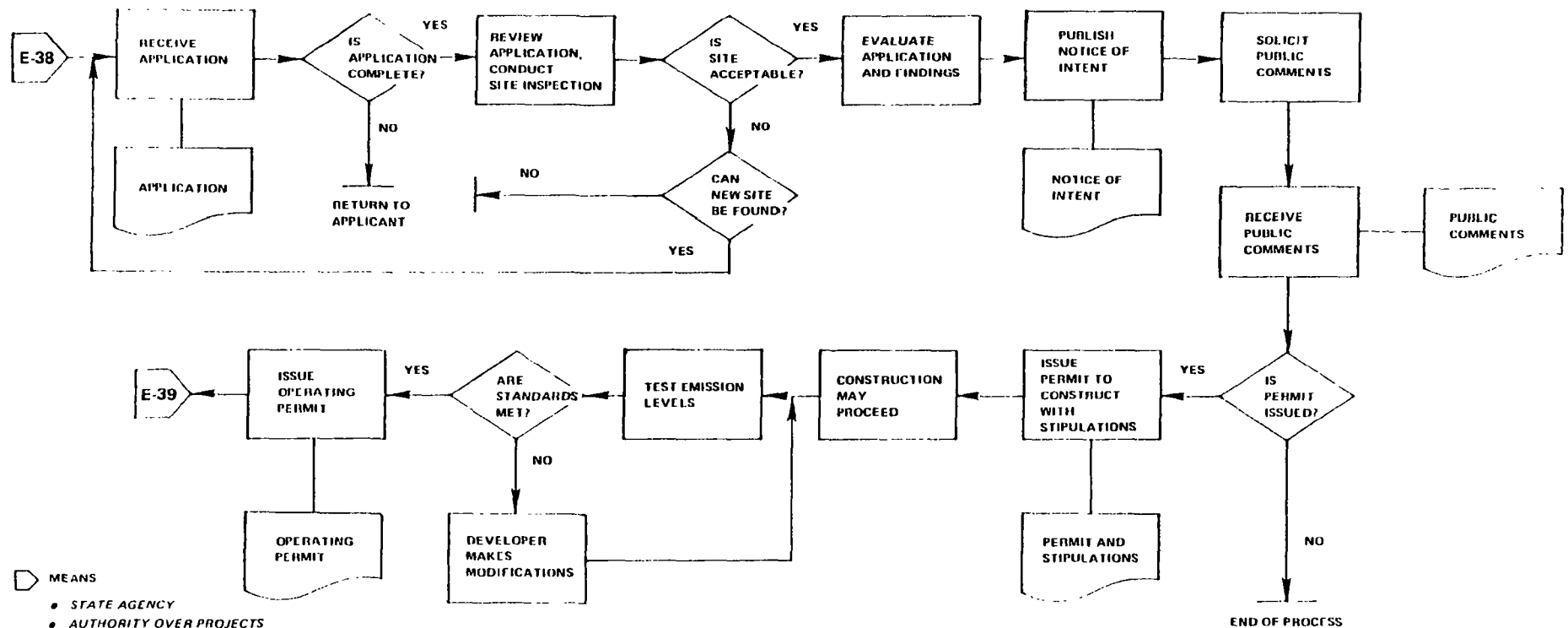
The Division issues:

- .. Construction Permit
- .. Fugitive Dust Permit
- .. Operation Permit
- .. Radioactive Material Permit
- .. Solid Waste Disposal Permit

- Advisory Agencies

- .. Environmental Protection Agency
- .. Nuclear Regulatory Commission
- .. State Planning Agency
- .. Regional Environmental Assessment Program

**NORTH DAKOTA DEPARTMENT OF HEALTH
AIR QUALITY DIVISION**



◇ MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

North Dakota - Department of Health: State Water Pollution Prevention Agency

The State Water Pollution Prevention Agency is charged with the responsibility to protect, maintain, and improve the quality of water in North Dakota. In this capacity the Agency must monitor all water emissions from any energy development activity and ensure that all waste water treatment facilities meet the standards of the Agency prior to construction.

- Legal Authority

The Agency operates under the authority of Chapter 479, Sections 61-28-01 through 61-28-08, of the North Dakota Century Code effective July 1973 and Amendments 61-28-02, 61-28-04, and 61-28-06 effective January 1975. The regulations governing the actions of the Agency are contained in "Standards of Surface Water Quality for the State of North Dakota," published by the Department of Health.

- Description of the Process

Following the receipt of the application, the Agency makes a determination as to its completeness (See Flowchart E-40). If the application is complete, the Agency reviews the plans and specifications for the project to determine if the effluents from the project will meet the State standards. If a retention pond is employed in the energy development project, the pond must be sealed to prevent contamination of ground water.

After an analysis of the specifications for the project are made, the Agency determines if the State standards are met. The State generally employs the water quality standards employed by the Environmental Protection Agency. However, there are some instances where the State standards are more strict. If the State standards are met, the Agency issues a permit. Following the commencement of operation, the developer must monitor his waste water. This self-monitoring with regular reporting to the Agency is done to insure that the standards continue to be met.

The Agency issues no permit for longer than five (5) years. Currently, however, no permits are being issued for a time period beyond 1980.

- Issuables

The Agency issues:

.. Construction permit

.. Operation permit

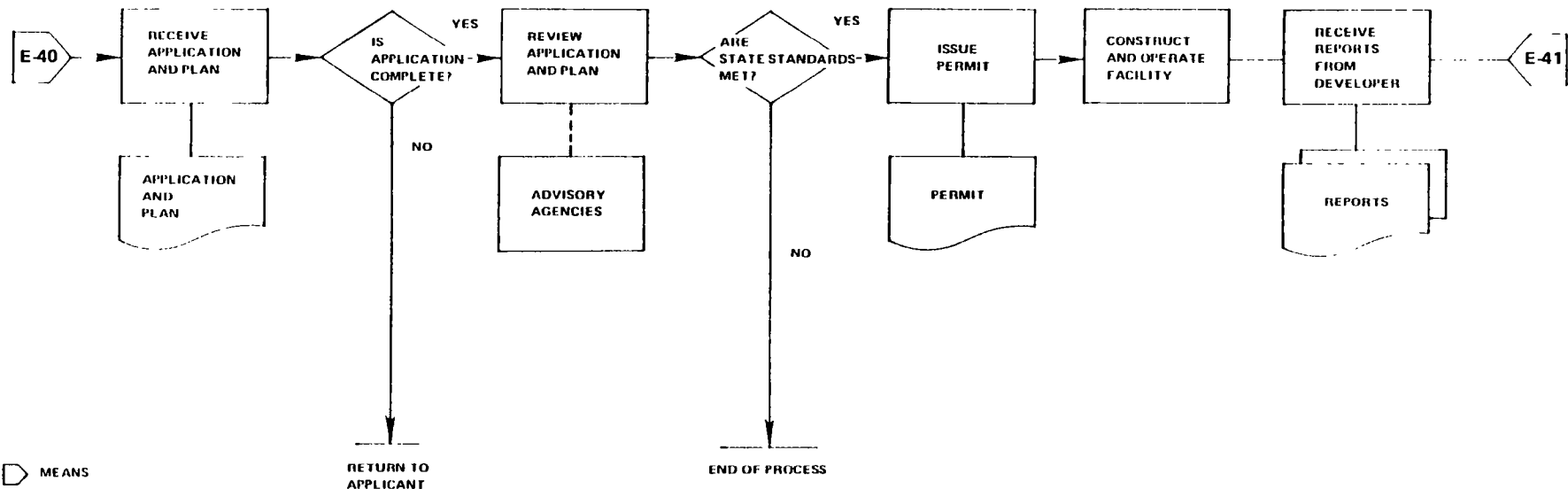
- Advisory Agencies

.. Environmental Protection Agency

.. Water Commission

.. State Game and Fish Department

**NORTH DAKOTA DEPARTMENT OF HEALTH
STATE WATER POLLUTION PREVENTION AGENCY**



- MEANS**
- STATE AGENCY
 - AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
 - OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

(d) SOUTH DAKOTA

South Dakota - Office of Cultural Preservation

The Office of Cultural Preservation operates to mitigate the damages of any energy development activity which may have an effect on archaeological sites or areas of historical significance. Any project which is Federally funded, assisted, licensed, or approved must report to the Office. The State Legislature has extended the authority of the Office to State land and, if the owner has registered with the State, to private lands within the State.

- Legal Authority

The Office of Cultural Preservation is authorized by the National Historic Preservation Act (P. L. 89-665), Executive Order 11593, and the South Dakota State Antiquities Law (SDCL 1-20-17 through SDCL 1-20-37), in conjunction with the National Environmental Policy Act.

- Description of the Process

Any project in the State which is Federally funded, assisted, licensed, or approved must have a plan filed with the State Office of Cultural Preservation (See Flowchart E42). The Office reviews the proposed plan and makes a determination. The project may either have no effect on the significance of the area, have a positive effect on the area, or have an adverse effect. If the Office concludes there will be no adverse effect, documentation of such is sent to the President's Advisory Council for concurrence. If the Council does not concur, the same procedure as for an adverse effect is followed. If the project will have an adverse effect, the Office will advise the developer that a study must be conducted to detail the effects. The Office will conduct the study for the developer; however, the developer is free to have his study conducted by a qualified party of his own choosing. In either case, the developer must pay the costs of the study.

The object of this entire effort is to preserve areas or items of historical or archaeological significance. When the project is site specific, for example a coal mine, the Office attempts to prohibit all development from proceeding until any area, building, and so forth have been moved or had their significant articles salvaged before development proceeds. Where it is possible to shift the location of the facility, for example a generating plant, the Office will encourage such action.

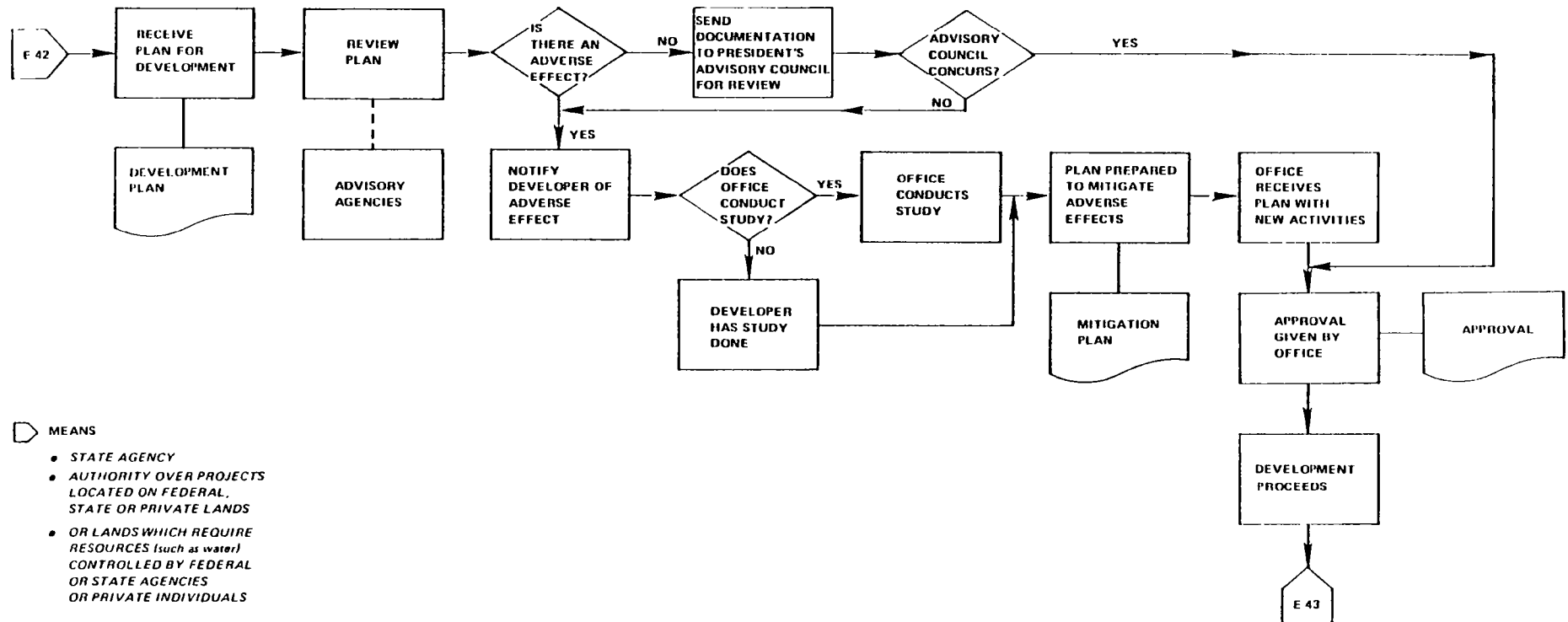
- Issuables

The Office issues approval for the compatability of the development project with the archaeological or historical heritage of the State.

- Advisory Agencies

- .. State Planning Bureau
- .. Department of Natural Resource Development
- .. Energy Policy Office
- .. Department of Environmental Protection
- .. President's Advisory Council

SOUTH DAKOTA OFFICE OF CULTURAL PRESERVATION



. South Dakota - Public Utilities Commission

The State of South Dakota has no siting legislation, consequently the Commission has no authority over the siting of facilities or transmission lines. The Commission has recently received authority to determine public convenience and necessity. This authority, however, is so new that the Commission is somewhat uncertain as to the scope of its authority.

The focus of the Commission's authority is on the rate structure of utilities. For any utility which derives twenty-five percent (25%) or more of its revenue from South Dakota, the Commission must approve the financing mix for any new facilities.

- Legal Authority

The authority of the Commission is granted by Chapter 49-34A of the SDCL. The regulations governing the activities of the Commission are contained in "Public Utilities Commission of the State of South Dakota Procedure Rules of the Public Utilities."

- Description of the Process

Following the receipt of the financing description of any new construction by a utility, the Commission must make two determinations. First, does the utility derive twenty-five percent (25%) or more of its revenue from South Dakota. If the answer to this question is "no," the Commission has no jurisdiction.

If the answer is "yes," the Commission must determine if the financing proposal follows the regulations of the Securities and Exchange Commission. If this determination is affirmative, the Commission reviews the proposal. Should the financing of the new facility not adversely effect the utility's rate structure, the Commission will approve the proposal. (See flowchart E-44)

- Issuables

.. Approval of the financing plan.

- Advisory Agencies

. South Dakota - Public Utilities Commission

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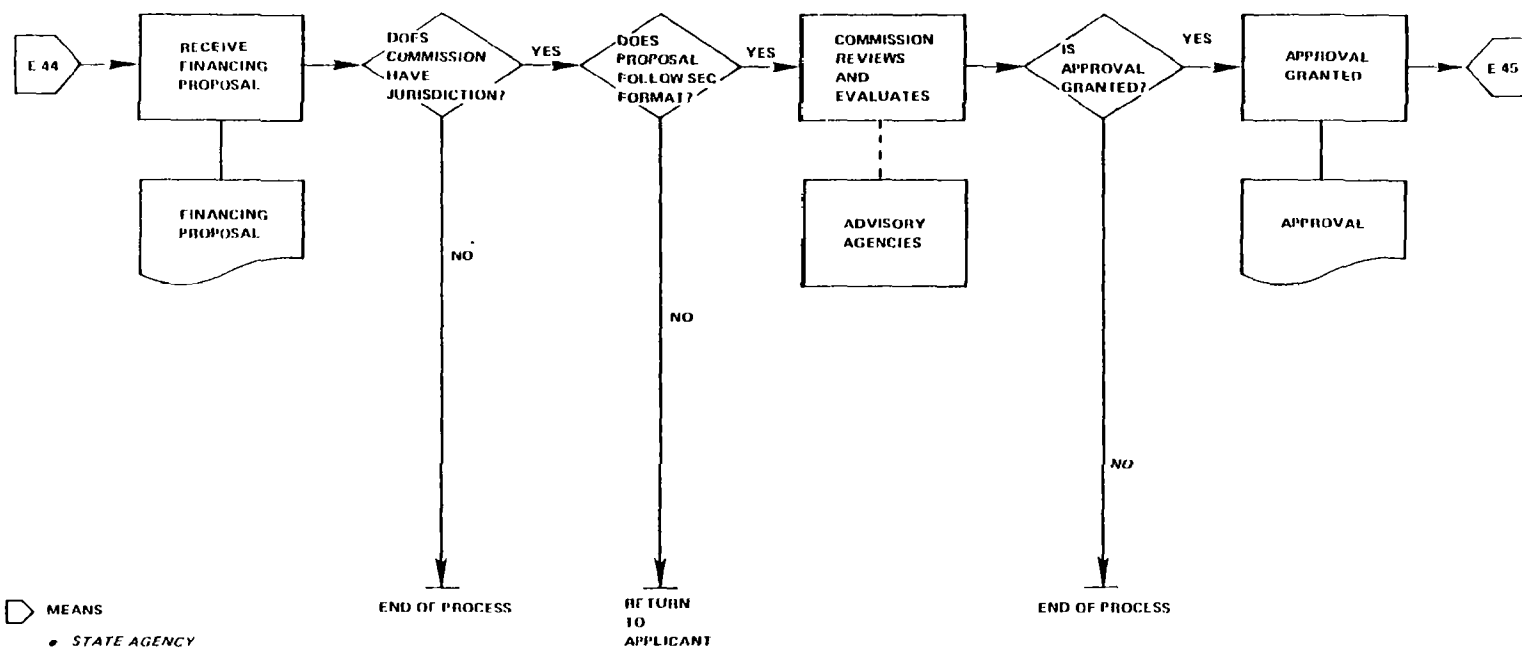
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- Issuables

.. Approval of the financing plan.

- Advisory Agencies

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION



◇ MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

. South Dakota - Department of Environmental Protection

The South Dakota Department of Environmental Protection is responsible for maintaining the quality of the air and water within the State and for monitoring hazardous and solid waste discharges. For air emissions and solid waste, the Department must issue a permit. The Department has not concluded an agreement with EPA at this time which will enable the Department to issue wastewater discharge permits under the National Pollutant Discharge Elimination System. Currently the Department cooperates with the EPA on the issuance of all such permits. On October 1, 1976, however, the Department will certify the federally-issued permits.

In addition, the State now requires that any State agency which takes a significant action must file an environmental impact statement with the Department. Actions of State agencies such as the issuances of licenses and permits may be considered significant State actions. The final statement of any agency must be filed with the Department at least thirty (30) days prior to the beginning of any activity resulting from the State action.

- Legal Authority

The Department operates under authority granted by several State statutes. The South Dakota Compiled Laws (SDCL) 34-16A provide air pollution control authority; SDCL 46-25 provide water pollution control authority; and SDCL 11-1A is the Environmental Policy Act.

- Description of the Process

Following the receipt of the application, the Department examines the application to determine if it is complete (See Flowchart E-46). If the application is complete, the Department determines if the emissions from the facility meet the standards of the State. If the State standards are met, the Department will issue a permit.

- Issuables

The Department issues:

- .. A permit to construct under the air quality program
- .. A permit to operate under the air quality program

.. A permit to operate a solid waste disposal facility

- Advisory Agencies

.. Environmental Protection Agency

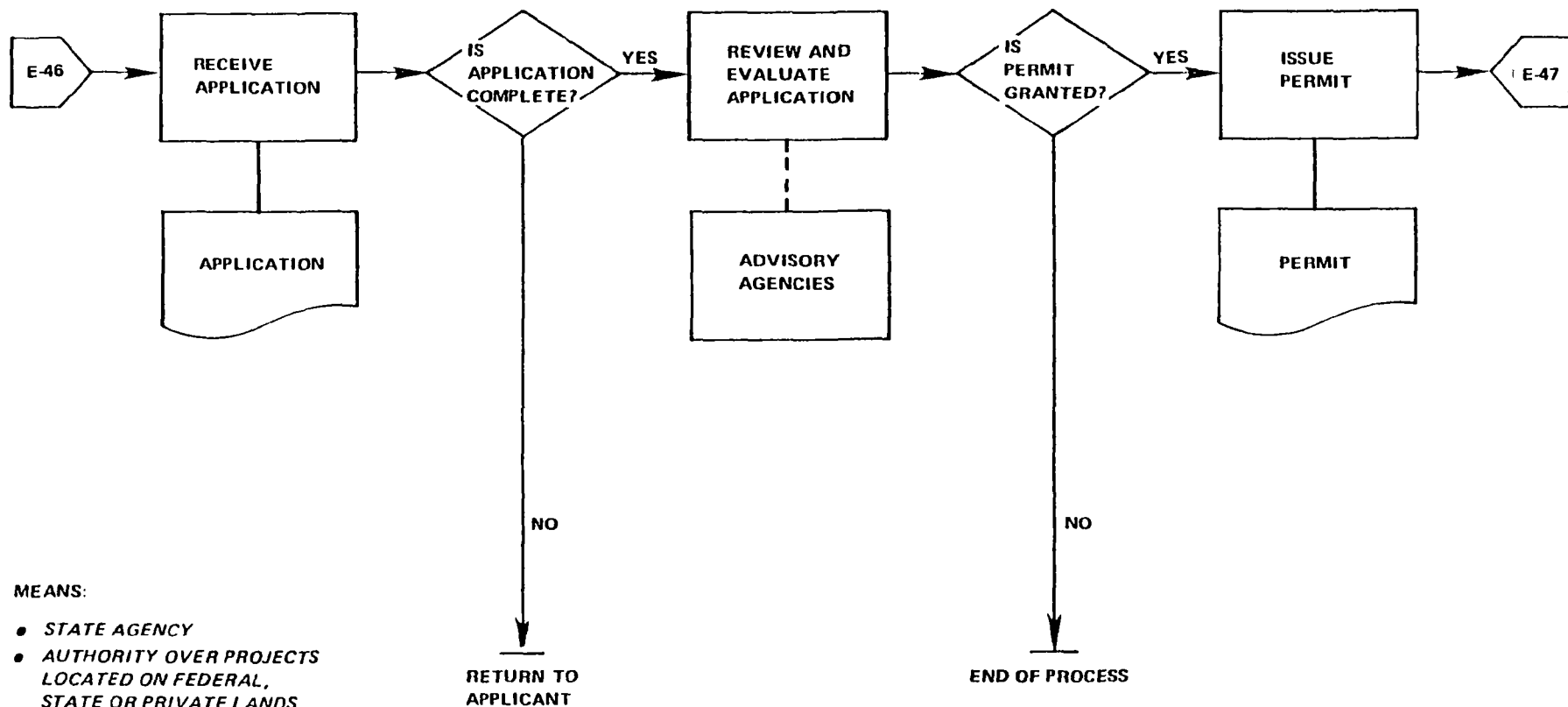
.. Department of Natural Resource Development

.. Conservation Division (Department of Agriculture)

.. State Planning Bureau

.. Department of Game, Fish and Parks

SOUTH DAKOTA DEPARTMENT OF ENVIRONMENTAL PROTECTION



MEANS:

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

. South Dakota - Department of Natural Resource Development

The Department of Natural Resource Development has two divisions which play an important role in regulating energy development in South Dakota. The Water Rights Division has the authority over water appropriation and use within the State. The Geological Survey regulates the production and transportation of oil and gas.

The Water Rights Division must approve any use of water other than domestic. In addition, the Division must approve any reservoir. A developer which drills a water well must notify the Division.

The authority for these components of the Department extends to Federal, State, and private lands.

- Legal Authority

The authority for the Water Rights Division is granted by Chapters SDLC 46-1 through SDLC 46-32, the South Dakota Water Laws. The regulations governing the activities of the Division are contained in "Rules of Water Rights Commission."

- Description of the Process

Following the receipt of the application by the Division, the Division makes a determination of completeness (See Flowchart E-48). If the application is complete, the Division plans an advertisement of the application in newspapers local to the affected area for a two (2) week period. The application is then brought to the Water Rights Commission. The Water Rights Commission is an eight member, lay commission from across the State appointed by the governor.

After evaluating the application and the testimony, the Commission makes a determination. Any request for water rights for more than ten thousand (10,000) acre-feet per year must be approved by the State legislature.

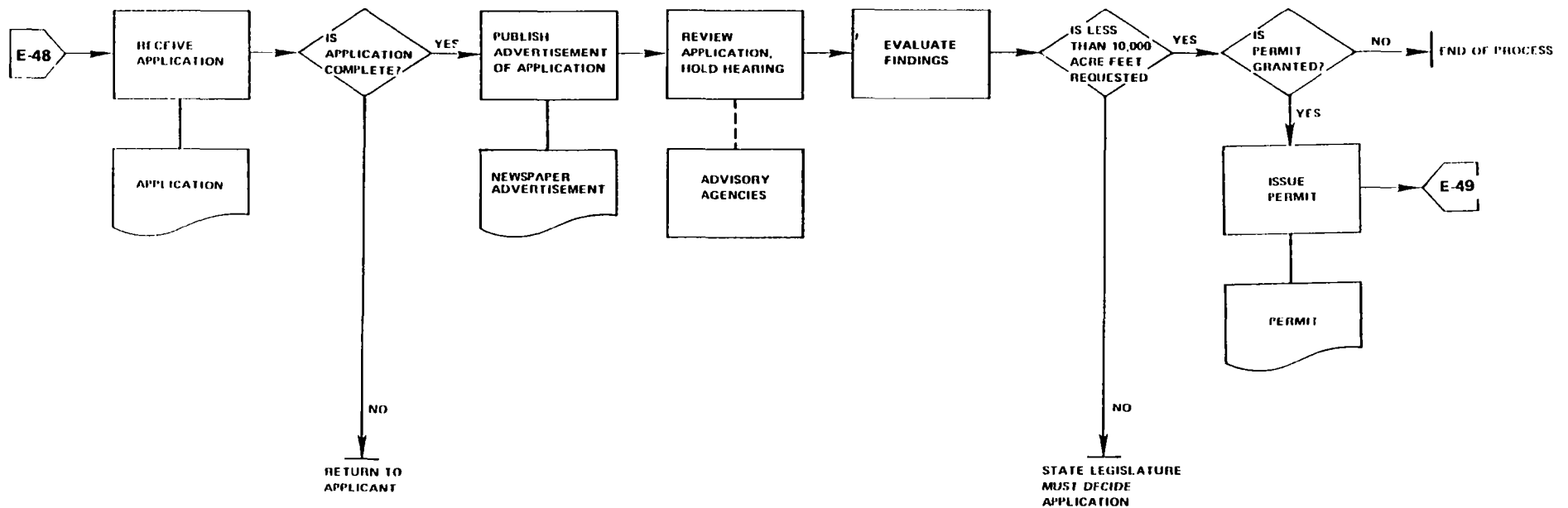
- Issuables

.. Water Rights Permit

Advisory Agencies

- .. Bureau of Reclamation
- .. Army Corps of Engineers
- .. Environmental Protection Agency
- .. Department of Environmental Quality
- .. Department of Game, Fish and Parks

**SOUTH DAKOTA DEPARTMENT OF NATURAL RESOURCE DEVELOPMENT
WATER RIGHTS DIVISION**



◇ MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

(e) UTAH

. Utah-State Planning Coordinator

- Legal Authority

The Office of the State Planning Coordinator is charged with the responsibility of implementing the Executive Order on Environmental Quality of 1974. This same Executive Order also grants the Coordinator the authority for implementation of the order.

- Description of the Process

The State planning Coordinator is notified of a proposed project either by an agency with jurisdiction over the project or by the party proposing the project (See Flowchart E-50). If the project is Federally assisted or in other ways falls under the National Environmental Policy Act or OMB Circular A-95 or A-102 procedures, then compliance with these procedures is sufficient and no further review is required by the Coordinator. A project not so exempted must have an environmental assessment prepared by the agency responsible for the proposed activity.

Information obtained through coordination with other agencies, together with information obtained from other appropriate investigation and study, is used in making an environmental assessment of the proposed action. This assessment allows the initial determination of whether or not the project will have a significant environmental impact. If not, the environmental assessment is forwarded directly to the Environmental Coordinating Committee (ECC) for review. If the action is deemed to have a significant impact, the responsible agency must first prepare an Environmental Impact Statement (EIS) prior to forwarding the EIS and the environmental assessment to the ECC for review.

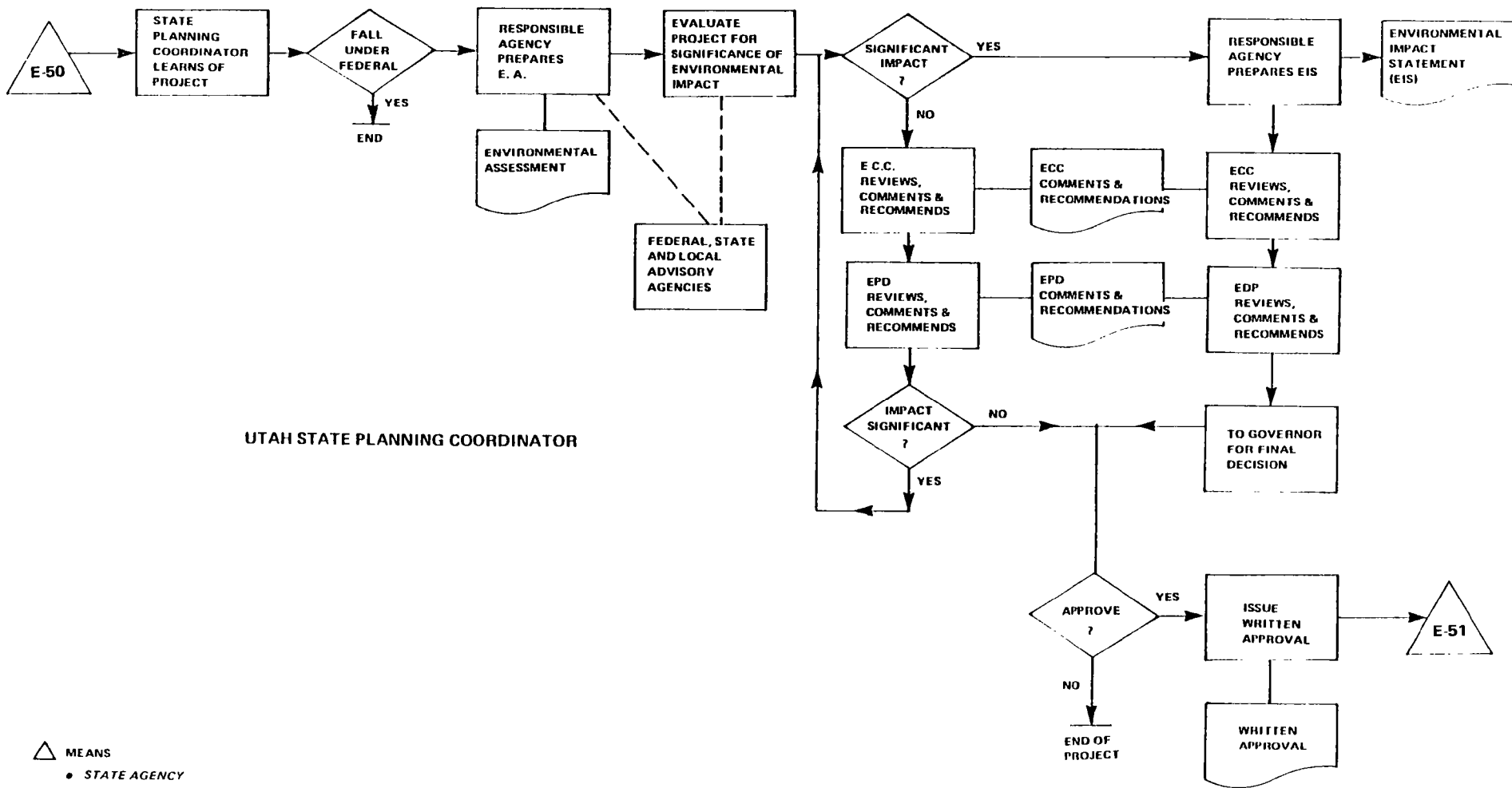
The ECC reviews the available information on the project, prepares its comments and recommendations and forwards everything to the Economic and Physical Development Interdepartmental Coordinative Group (EPD Group). The EPD Group then reviews the proposed project and prepares comments and recommendations. If the proposed project is again deemed to not have significant impact, the project approval is decided by the responsible agency and appropriate approval or disapproval issued. If a project is considered to have significant impact and an EIS has not yet been prepared,

then one must be prepared by the responsible agency and processed through the ECC and EPD Group for review. Any proposed project which has had an EIS prepared must go to the Governor with the cumulative comments and recommendations of all reviews. The final decisions on all projects with significant environmental impact, therefore, is made by the Governor and the appropriate approval or disapproval is issued.

- Issuables

- .. Environmental Assessment
- .. Environmental Impact Statement
- .. Project Approval

- Advisory Agencies



- △ MEANS
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

. Utah-Division of Health: Air Quality Bureau (AQB)

- Legal Authority

Responsibility for, and authority over, the control of air pollution sources in Utah is given to the Division of Health by the Air Conservation Act and the Utah Code Annotated, 1953, Title 26.

- Description of the Process

The applicant must file with the AQB a Notice of Intent to Construct which notifies the AQB that there will be a new contributor of air pollution. Usually plans and specifications are filed with the Notice. The Bureau then reviews and evaluates the proposed project, accepting input from interested agencies (See Flow-chart E-52).

The Bureau makes it preliminary decision and issues public notice of the intended decision. This is to be published in the Salt Lake Tribune and a newspaper local to proposed project site. Comments are thereby solicited from the public, which are reviewed and evaluated. If public remarks warrant, public hearings may be held in which all interested parties are heard.

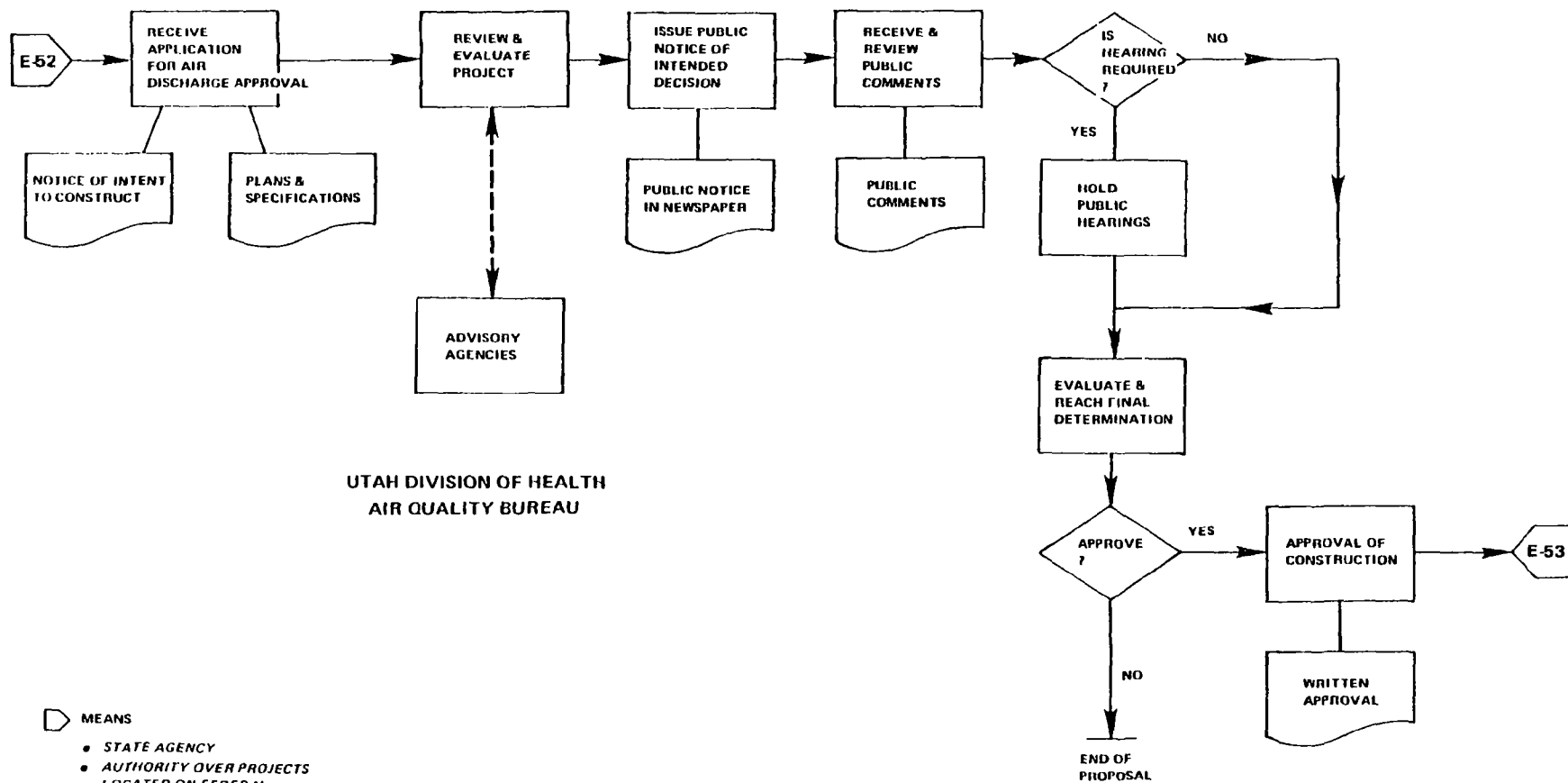
After all facts are gathered and all parties heard, the Bureau then reaches its final determination to either approve or deny the proposed project. If the project is approved, written notice is sent to the applicant.

- Issuables

.. Public Notice of Intended Decision

. Written Approval of Proposed Project

- Advisory Agencies



D MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

Utah-Bureau of Solid Waste Management

- Legal Authority

The Bureau of Solid Waste Management under the authority of the Division of Health, is responsible for the enforcement of all solid waste disposal regulations.

- Description of the Process

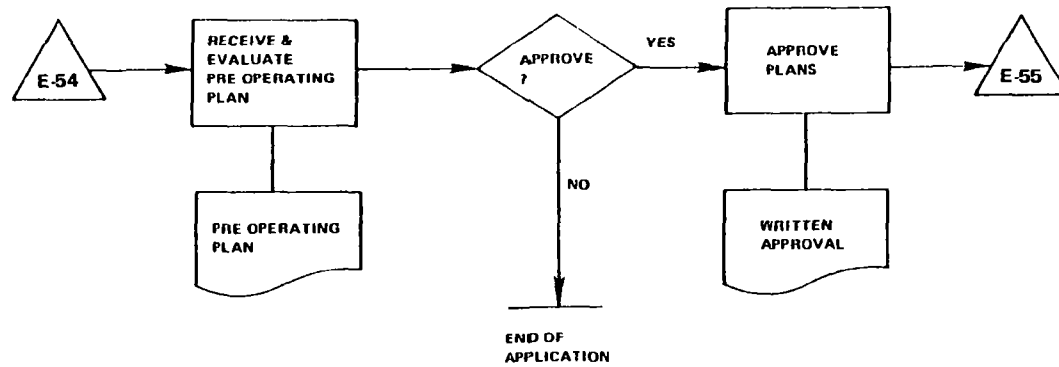
In this capacity, the Bureau must receive, review, and approve the preoperating plans prior to construction (See Flow Chart E-54).

- Issuables

Approval of preoperating plans

- Advisory Agencies

UTAH BUREAU OF SOLID WASTE MANAGEMENT



- △ MEANS
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

Utah Bureau of Sanitation

- Legal Authority

The Bureau of Sanitation under the authority of the Division of Health, is responsible for the enforcement of all plumbing regulations.

- Description of the Process

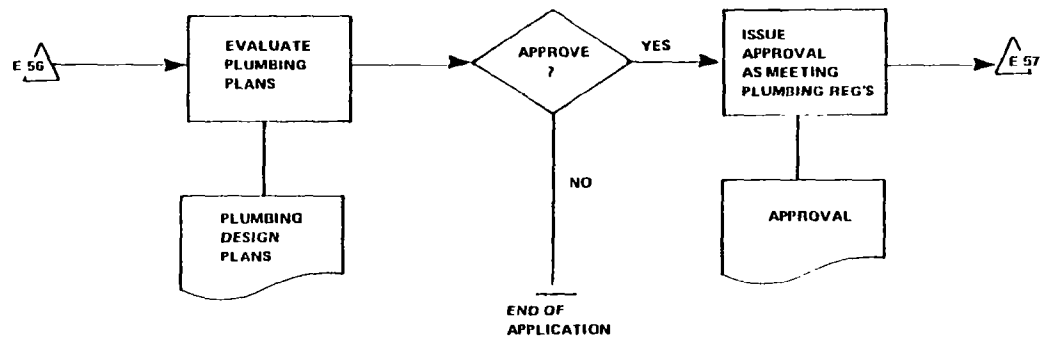
The Bureau must receive, review, and approve all plumbing design plans prior to constructing (See Flowchart E-56).

- Issuables

Approval of plumbing plans

- Advisory Agencies

UTAH BUREAU OF SANITATION



- △ MEANS.
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

Utah-Division of Health: Bureau of Water Quality (BWQ)

- Legal Authority

- Description of the Process

The Bureau of Water Quality is not yet supported by the statutes needed to comply with EPA Regulations. Thus, the only function it may perform is to analyze a proposed water discharge and to certify to the EPA that the proposal needs Federal standards and thus should be issued a Federal permit by EPA. Usually, applications are received one to three (1 to 3) years in advance of proposed construction (See Flow-chart E-58).

- Issuables

Certification to EPA

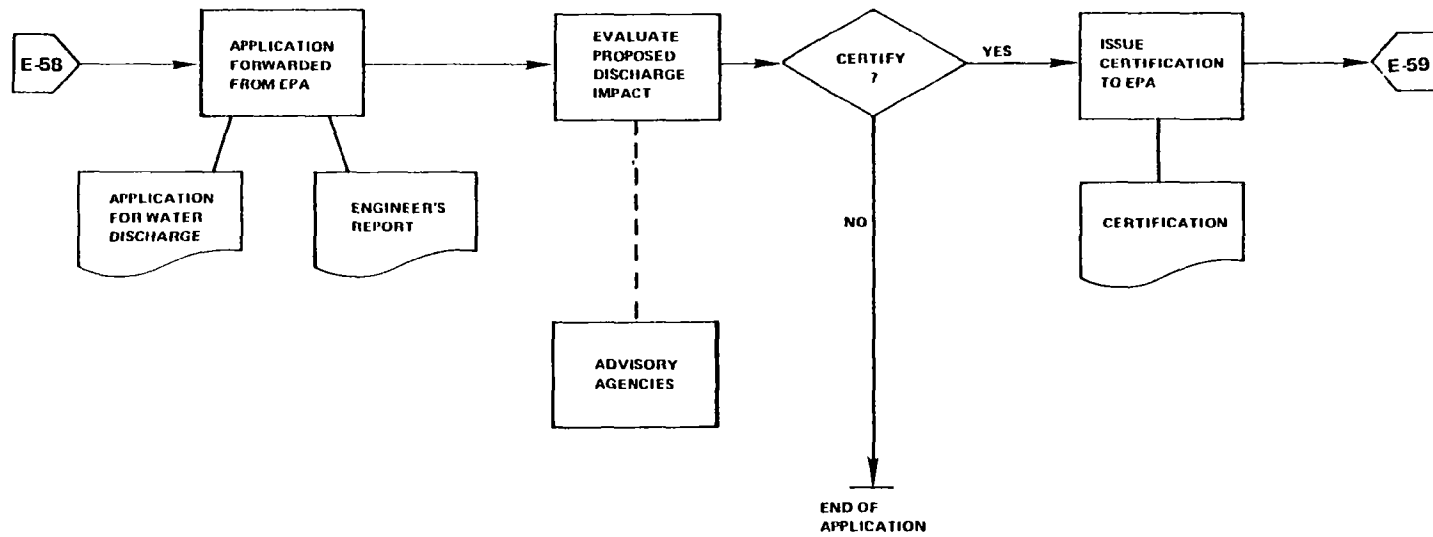
- Advisory Agencies

.. Environmental Coordinating Committee

.. Bureau of Natural Resources

.. Bureau of Solid Waste Management

UTAH DIVISION OF HEALTH
BUREAU OF WATER QUALITY



◇ MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

Utah Department of Business Regulation

- Legal Authority

The Department of Business Regulation, through the Public Service Commission (PSC), is responsible for supervision of all electric utilities in Utah. The Public Service Commission is granted authority in this area by Section 76-6-1 of the Revised Statutes of Utah, 1933.

- Description of the Process

When an application is received at the PSC, it must be determined that the PSC has jurisdiction and that the utility proposal involves at least a 25% change in the gross investment in the utility. If so, the PSC will investigate the proposal and reach a determination which is published in the form of a Report and Order. The Report and Order does not become effective until 20 days after it is issued. If, in that period, protests are filed, then a public hearing and reevaluation of the proposal is required.

After all hearings and evaluations, if the PSC decides to approve the proposal, a Certificate of Public Convenience and Necessity is issued. This allows the utility to proceed with the change (usually original construction or expansion) at the site in the proposal (See Flowchart E-60).

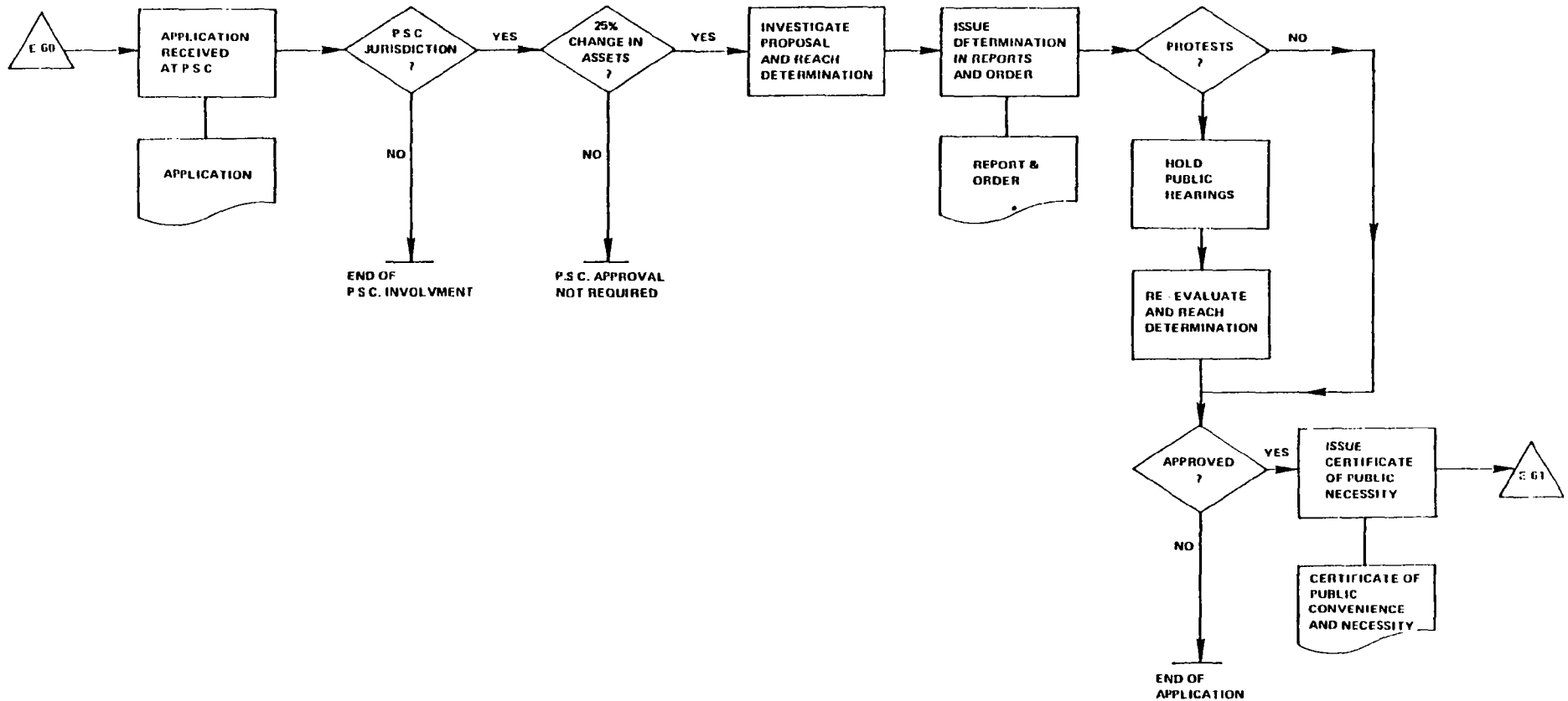
- Issuables

.. Report and Order

.. Certificate of Public Convenience and Necessity

- Advisory Agencies

UTAH DEPARTMENT OF BUSINESS REGULATION



- △ MEANS:
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

. Utah-Division of Water Rights (DWR)

- Legal Authority

The Division of Water Rights of Utah is granted authority over water appropriation by the Utah Law of Water Rights of 1897 and subsequent amendments thereto.

- Description of the Process

Before commencing construction, enlargement, extension, or structural alteration of any distributing works, or performing similar work toward acquiring an appropriation right or enlarging an existing one, a written application must be made to the State Engineer. (See Flowchart E-62). Notice of the application is published; and protests that are filed must be considered by the State Engineer before he approves or rejects the application (Notice of the application and protests are allowed 30 days prior to State Engineer's decision). If approved, the applicant is authorized to proceed with construction of the necessary works and to take all steps required to perfect his proposed appropriation. The times within which construction of works shall be completed and the water applied to beneficial use are fixed by the State Engineer. The State Engineer issues a certificate of appropriation which evidences the holder's right of use.

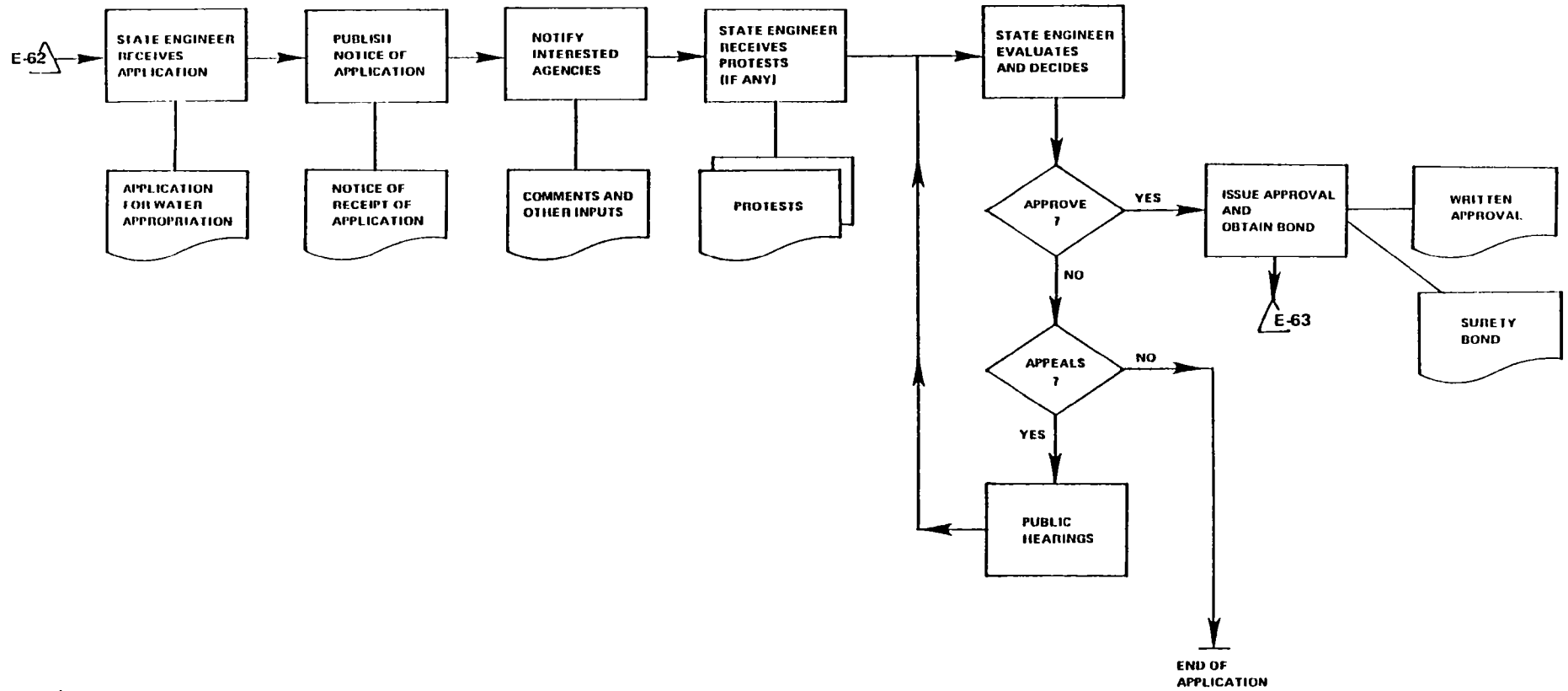
If the application is not approved, the applicant may appeal the decision, whereupon public hearings are held and the issue reevaluated and decided.

- Issuables

.. Certificate of Appropriation

- Advisory Agencies

UTAH DIVISION OF WATER RIGHTS



△ MEANS

- STATE AGENCY
- JURISDICTION ONLY ON STATE LAND

(f) WYOMING

. Wyoming - Department of Environmental Quality

The Wyoming Department of Environmental Quality (DEQ) is responsible for maintaining the quality of the air, water, and land within the State. Any energy developer must obtain an air, water, and land quality permit from the DEQ.

- Legal Authority

The Department of Environmental Quality operates under the authority of the Wyoming Environmental Quality Act of 1973.

- Description of the Process

For an air quality permit, a developer must apply to the Air Quality Division. For a water quality permit, a developer must apply to the Water Quality Division (See Flowchart E-64). The air quality permit must be issued prior to construction. To receive such a permit, the developer must show that neither the fugitive dust nor the new emissions will exceed the standards established by the Division.

Likewise for the water quality permit, the developer must show that any water from the project which is introduced into surface drainage or other water effluents will not exceed the standards established by the DEQ. Where the State standards are higher than those of the Environmental Protection Agency, the requirements of the EPA will be met when the State standards are met. Consequently, there will be no need for a developer to meet additional requirements to receive EPA approvals. If, however, Wyoming requirements are lower than those of the EPA, the higher Federal standards must be met before the developer may begin activity.

If the standards of the State are met, both the Air and Water Quality Divisions will issue permits to the developer.

- Issuables

The Air Quality Division issues:

- .. Permits to Construct
- .. Permit to Modify
- .. Permit to Operate

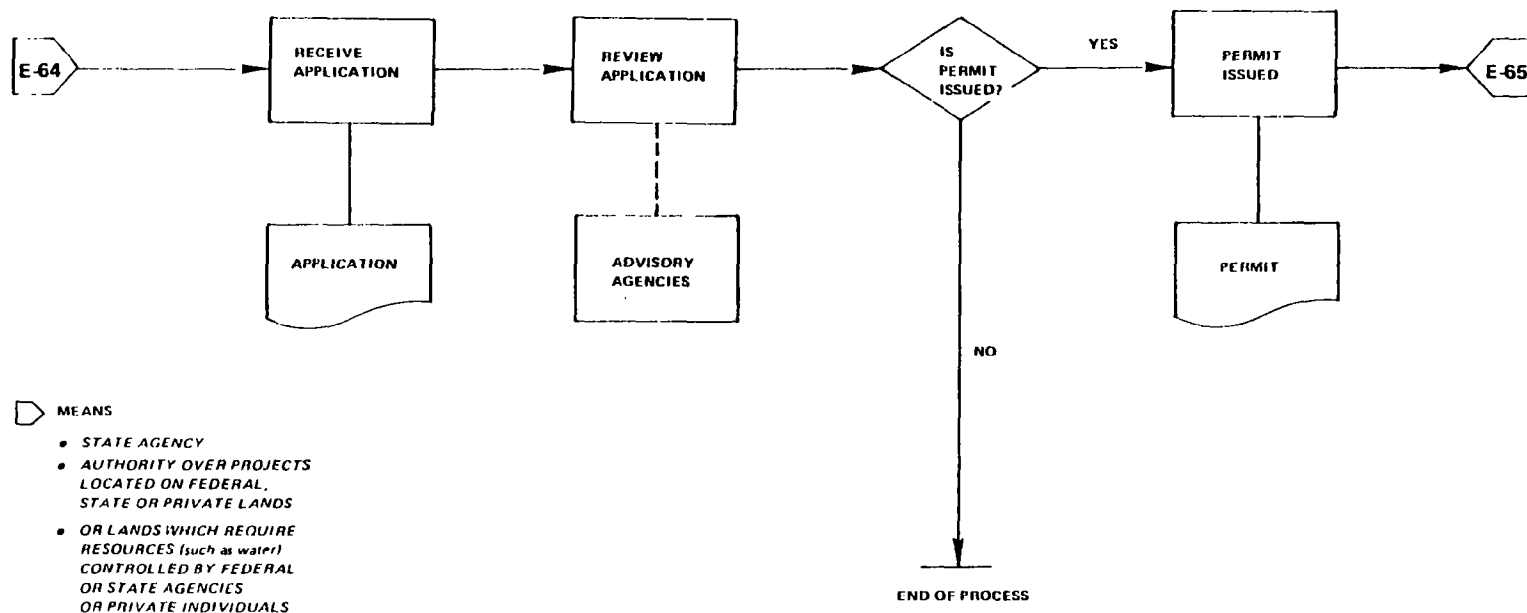
The Water Quality Division issues:

- .. Permit to Discharge and Operate
- .. Permit to Construct, Install, or Modify.

- Advisory Agencies

- .. State Engineer
- .. Game and Fish Commission
- .. Bureau of Reclamation
- .. Environmental Protection Agency.

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR AND WATER QUALITY DIVISIONS



Wyoming - Department of Environmental Quality

The Wyoming Department of Environmental Quality (DEQ) is responsible for maintaining the quality of the air, water, and land within the State. Any energy developer must obtain an air, water, and land quality permit from the DEQ.

- Legal Authority

The Department of Environmental Quality operates under the authority of the Wyoming Environmental Quality Act of 1973.

- Description of the Process

Prior to the construction of an energy conversion facility, such as an electric generating plant or a coal gasification plant, or prior to commencement of mining operations, a developer must receive approval from the Land Division of the DEQ (See Flowchart E-66).

For a developer to begin construction activity, the developer must receive a land use permit. To receive such a permit the developer must meet the land use requirements of the Land Division.

For a developer to begin mining operations, the Land Division must issue two permits. The first permit required is a mining permit. The mining permit will be issued after the Land Division approves the developer's mining plan. The second requirement of the Division is that the developer submit a reclamation plan and a bond. The developer must also post a reclamation bond.

- Issuables

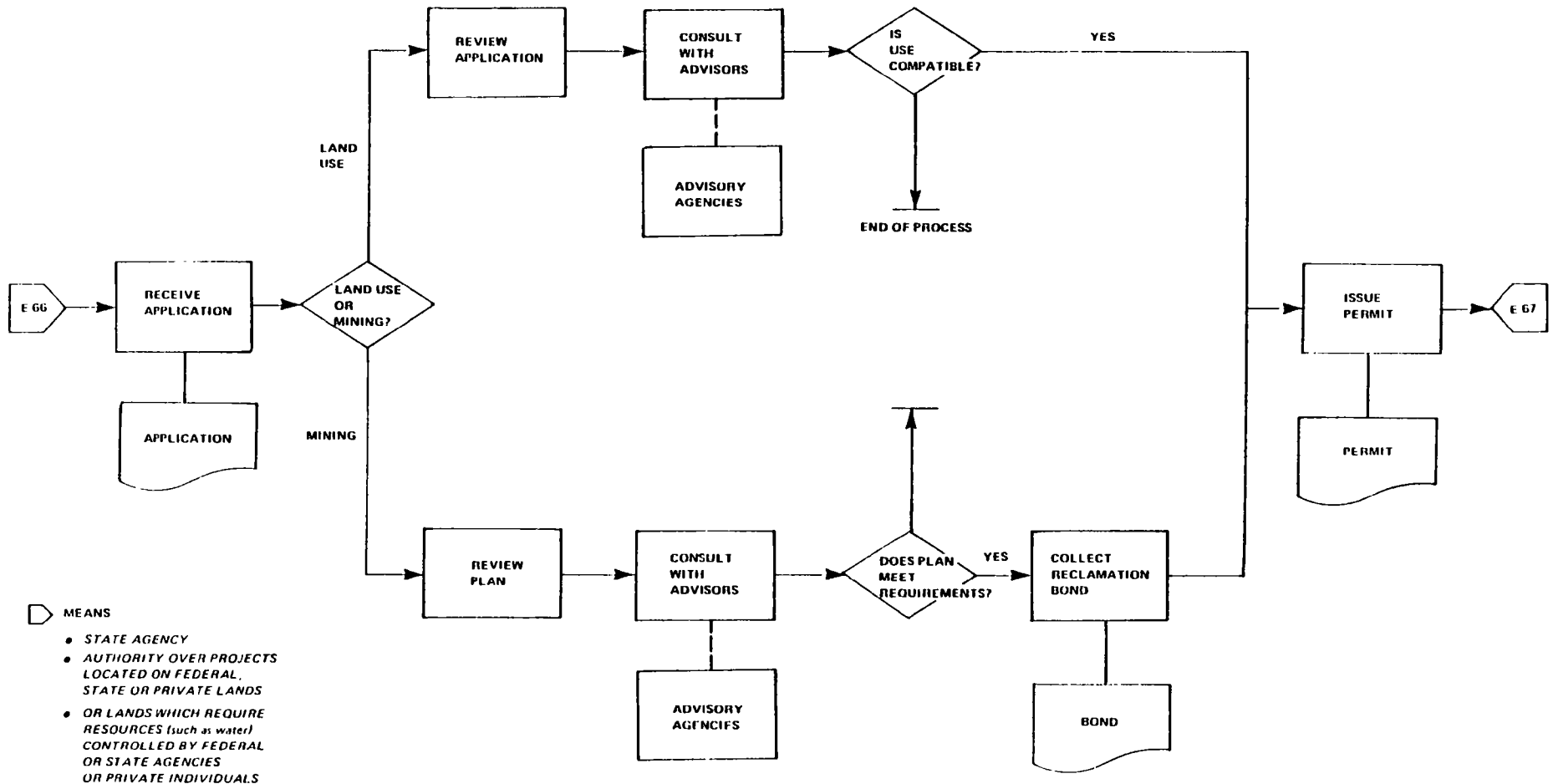
The Land Division issues:

- .. A Permit to Mine
- .. A License to Mine
- .. A License to Explore

- Advisory Agencies

- .. Land Use Commission
- .. Department of Economic Planning and Development
- .. State Geological Survey

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND DIVISION**



Wyoming - State Engineer

The State Engineer issues all water rights permits and has the authority to administer the water supply. The authority of the State Engineer extends to both the diversion and use of water as well as attempts to convert water from one use to another. Any developer who requires water in the State, regardless of whether the project is located on Federal, State, or private lands, is subject to the jurisdiction of the State Engineer.

- Legal Authority

Wyoming Statutes 41-1.42 through 41-1.46 and Sections 9-160.22, 9-160.29, and 9-160.31 present the legal authority for the State Engineer.

- Description of the Process

Following the receipt of the completed application, the first step is for the State Engineer to conduct an analysis of the application (See Flowchart E-68). If the application is for a large amount of water, e.g., for the cooling of an electric generating facility or for use in a coal gasification plant, the State Engineer would determine that it would be necessary for the interdepartmental water conference to conduct a feasibility study. This study is designed to assess the impact of the proposed project and to evaluate the application in the context of the total State intention for water use.

If the amount of water is small, e.g., drilling a water well to support a coal exploration effort, the application decision will be made without the feasibility study.

In the conduct of the feasibility study, the water conference will analyze the application and supporting data; conduct public hearings to obtain the advice of private persons, local groups, and associations; and undertake any studies which the conference feels necessary. At the conclusion of the feasibility study, the water conference makes the decision whether or not to proceed with the application. If the decision is made to proceed, the State Engineer holds hearings under the State's contested hearing procedure. The decision is then made on the application.

If the State Engineer issues a permit, it is issued with the constraints under which the recipient must operate. When the stipulations are met, the permit is good for as long as it is used. Monitoring is done by division personnel. After completion of construction, the operation is advertised to allow any parties who were adversely affected to respond.

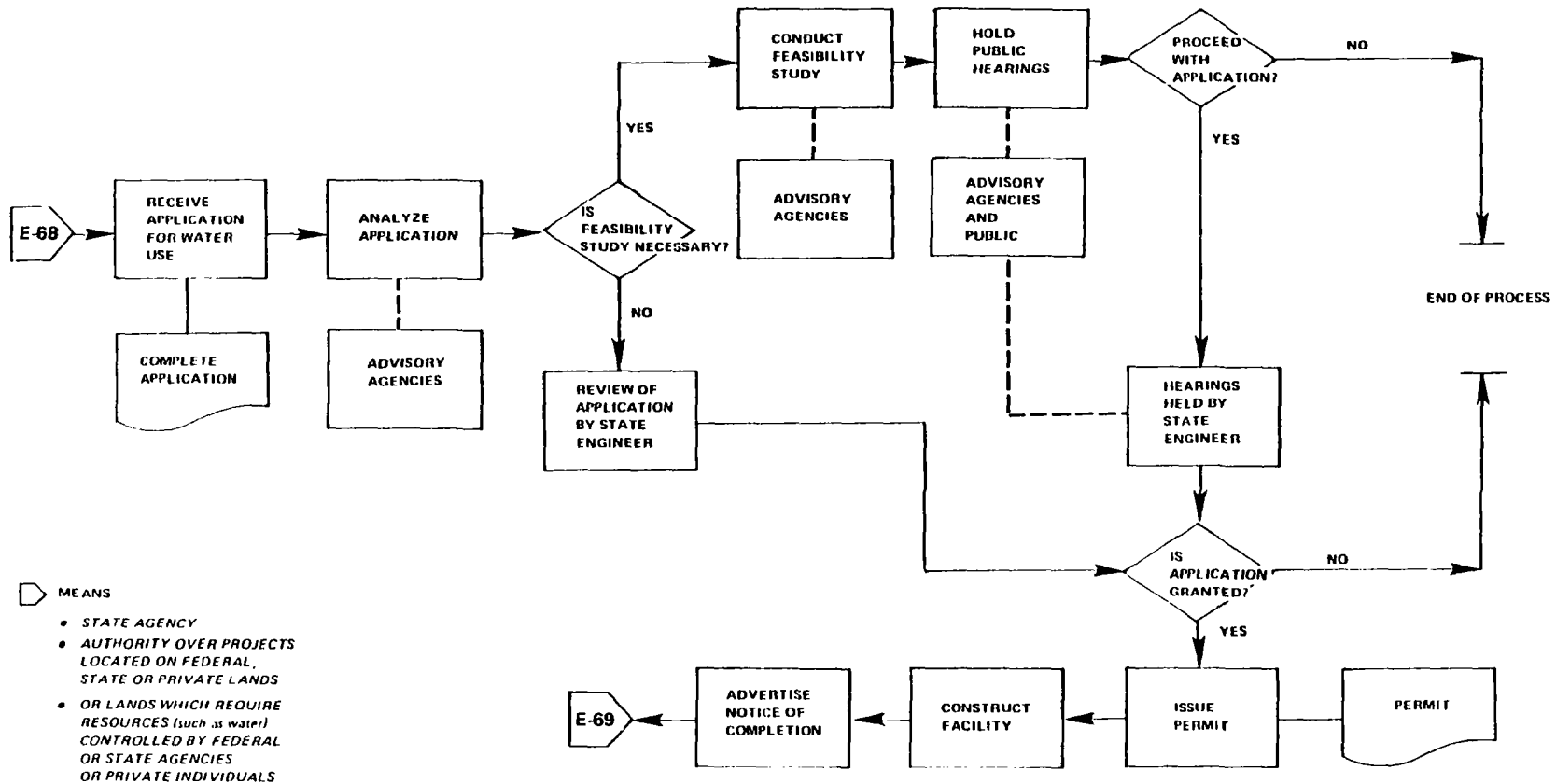
- Issuables

The State Engineer issues a water rights permit and the right to change water from one category to another.

- Advisory

- .. Department of Economic Planning and Development
- .. Department of Game and Fish
- .. Department of Environmental Quality
- .. State Land Office
- .. Department of Recreation.

WYOMING STATE ENGINEER



. Wyoming - Public Service Commission

The Public Service Commission of Wyoming is responsible for the intrastate regulation of electric generation facilities, natural gas, oil pipelines, and transmission lines along with non-energy related services such as telephone and water companies. The Commission gives a utility the right to serve an area and, in return for that right, a utility assumes the obligation to provide that service.

- Legal Authority

The Public Service Commission of Colorado operates under the legal authority granted by Chapter 83 of the Session Laws of Wyoming, 1963. The regulations governing the activities of the Commission are contained in "Rules of the Public Service Commission of the State of Wyoming" reissued May 1, 1967.

- Description of the Process

Following the receipt of the application (See Flowchart E-70), the Commission reviews the application and schedules public hearings. If, in advance of the public hearings, the Commission is able to determine who the parties are that are involved or affected by the proposed action, the Commission will send a notice to those affected. In all cases, however, public notice is given for the scheduled hearings.

At the hearings, testimony may be given by other agencies and members of the general public. The Commission gathers evidence at the hearing and employs this evidence in making a determination on the application. If the Commission decides to grant the application, the Commission publishes a public notice of the decision. If the application is denied, the applicant is so notified. In either case, parties who feel they are aggrieved by the action may file for an appeal. If the appeal is granted, a re-hearing may be held. If an appeal is not allowed, the Commission publishes its final decision.

Should the decision be in favor of the applicant, the Commission grants a certificate.

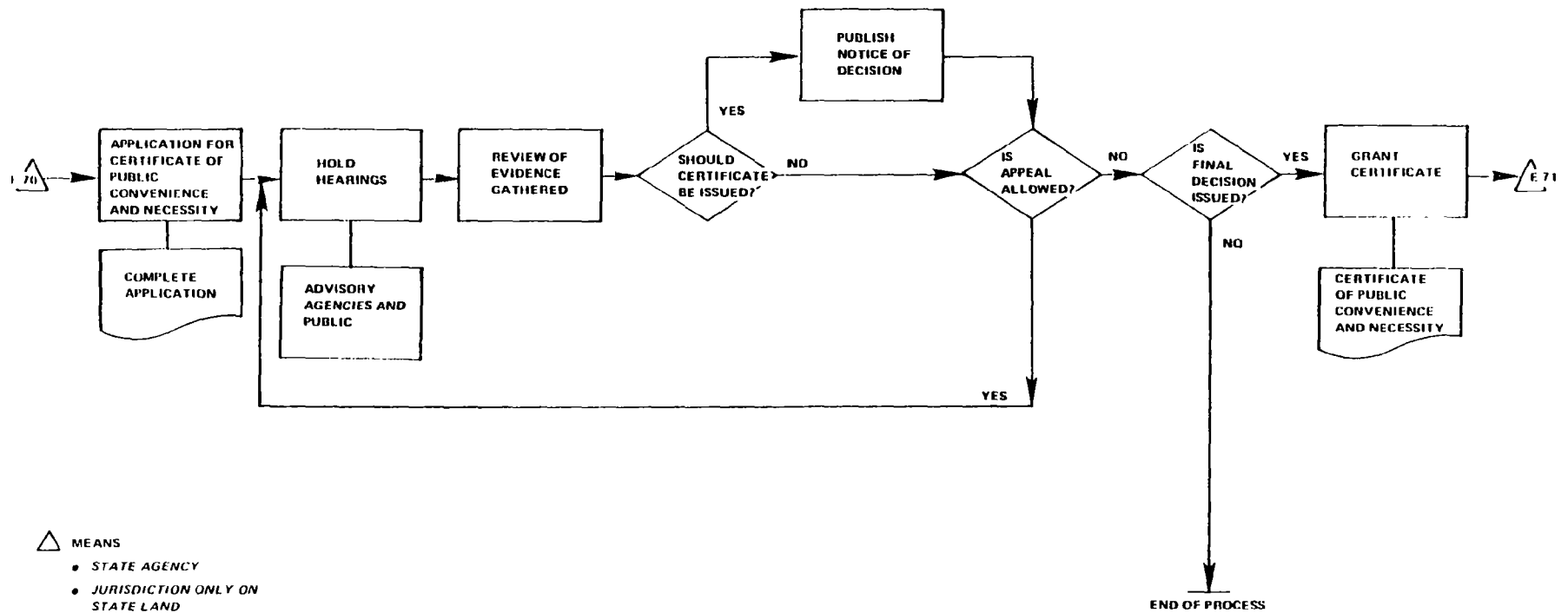
- Issuables

The Commission issues a Certificate of Public Convenience and Necessity.

- Advisory Agencies

- .. Department of Transportation
- .. Interstate Commerce Commission
- .. Federal Power Commission
- .. Federal Communications Commission.

WYOMING PUBLIC SERVICE COMMISSION



Wyoming - Industrial Siting Council

The Industrial Siting Council has the responsibility for approving energy development and other projects within the State which are of sufficient size to have a major impact on the communities in which the project is located. Included in the consideration of the Council are such impacts as roads, schools, hospitals, housing, police and fire protection.

- Legal Authority

The Council operates under the authority of the Industrial Development Information and Siting Act, Wyoming Statutes 35-502.75 through 35-502.94. The regulations governing the activities of the Council are presented in the "Rules and Regulations of the Industrial Siting Council, State of Wyoming" adopted September 10, 1975.

- Description of the Process

Any electric generating facility which has the capability of generating one hundred (100) megawatts of electricity or more or any addition to an existing generating facility which will increase the capacity of the existing facility by at least one hundred (100) megawatts must receive approval prior to construction by the Council. In addition, any newly constructed transmission lines that are necessary and essential to the operation of the generating facility must be approved by the Council.

A developer must submit an application to the Council for the receipt of approval and a permit (See Flow-chart E-72). Section 5 of the Council's Rules and Regulations specifies the contents of the application. The Council has no application forms. An application to the Council must present evidence that all other required permits have been obtained and that the applicant has complied with all applicable laws. Consequently, the first step following the receipt of the application is for the administrative staff to check completeness of the application, to verify that all applicable permits have been obtained, and to conduct an independent analysis of the application.

Following the determination of completeness by the administrative staff, a public hearing on the appli-

cation is scheduled. During this time, the Council conducts a study of the effect on the project area. This study is paid for by the applicant. Following the hearing and receipt of evidence, the Council must make a decision on the application. The Council has three choices. The Council may:

- .. Approve the application without any conditions
- .. Approve the application with conditions
- .. Reject the application pending further study.

If the application is approved, the developer may proceed following the approved plan. If the application is approved with conditions, the developer is notified of the required modifications and the changes must be made prior to the initiation of any activities. If the application is rejected pending further study, the applicant has thirty (30) days to appeal for a new hearing by the Council. If the application is denied a second time, the applicant may appeal through the courts following the procedures in the Wyoming Administrative Procedures Act.

Regardless of the decision of the Council, when the Council has reached a decision the Council must publish the study, its findings, and the decision. The local governments which would be affected by the project must receive copies and copies must be filed with the county clerk's office. In addition, notice of the Council's decision must be published in at least one newspaper of general circulation within the affected area.

- Issuables

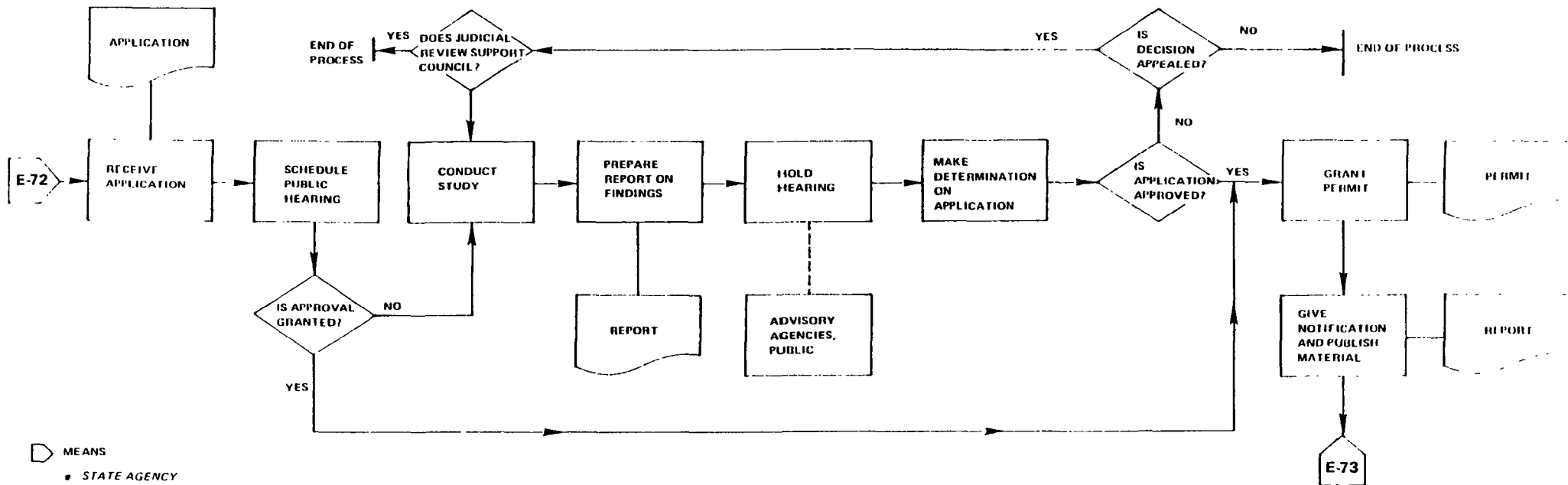
The Council issues a permit for the construction or operation of any industrial facility or facilities within the State.

- Advisory Agencies

- .. Department of Environmental Quality
- .. State Engineer
- .. County Commissions
- .. Army Corps of Engineers

- .. Environmental Protection Agency
- .. Nuclear Regulatory Commission
- .. Interested Parties.

WYOMING INDUSTRIAL SITING COUNCIL



D MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

3. NUCLEAR-FUELED

Nuclear-fueled power plants differ only slightly from fossil-fueled plants. The heat supply comes from the fissioning of uranium rather than the burning of coal, oil, or gas.

The regulatory process for nuclear-fueled generating facilities differs significantly from the process for fossil-fueled facilities. This part of the report presents the regulatory procedures for nuclear-fueled electric generating facilities.

(1) Federal Agencies Regulating Nuclear-Fueled Electric
Generation Development

This portion of the report presents the Federal agencies which regulate the various stages in the development of nuclear-fueled electric generating facilities.

(a) Nuclear Regulatory Commission (NRC)

While other agencies participate in the licensing and regulatory process for nuclear-powered electric generating facilities, the agency with the most authority is the Nuclear Regulatory Commission. Before an energy developer can build a nuclear-powered plant at a particular site, the developer must obtain a construction permit from the NRC.

. Legal Authority

The regulations governing the submission and approval of permits for construction are contained in Title 10 of the Code of Federal Regulations.

. Description of the Process

Prior to a formal application to the NRC, the applicant provides NRC a preliminary report. NRC performs an acceptance review. If the preliminary material is adequate, NRC begins the formal application. The preliminary submittal covers both environmental and safety issues. The application for a construction permit is submitted to the NRC (See Flowchart E-8). This application must contain the design criteria for the proposed facility, and a report on the environmental impact of the facility. Anti-trust details of the proposed facility should be submitted to NRC six months prior to application. After receiving the complete application, the NRC performs an evaluation on the proposed design of the facility to assess the safety aspects for construction and operation. From this evaluation, the NRC prepares a Safety Evaluation Report (SER).

The NRC, in consultation with consulting agencies, conducts an environmental review of the proposed facility. Environmental review includes transmission lines associated with the facility. While this review allows the NRC to assess the potential environmental impact of the project, the review contains a cost-benefit analysis to compare the benefits of the new facility with the potential harm to the environment. After this review is completed, the NRC issues a draft Environmental Impact Statement (EIS). This EIS is distributed to the advisory agencies and local agencies and the public for review. Comments are returned to the NRC and a final version of the EIS is prepared.

Once the final EIS and SER are prepared, the NRC holds public hearings. These hearings are designed to address the environmental and safety problems which could result from the proposed facility.

Hearings on environment and safety are combined on occasion. In cases where the environmental assessments and the related hearings are completed before the safety review is completed, the NRC can grant the applicant a Limited Work Authorization (LWA). The LWA allows the applicant to begin construction on non-safety related items such as access roads, land clearing, and ancillary facilities.

Following the public hearing(s) the initial decision on the application for a construction permit is made. The initial decision, if favorable, is subject to review by Atomic Safety and Licensing Board Panel. The decision may also be reviewed by the Commissioners of the NRC. The construction permit does not provide for any operation of the facility.

. Issuables

- Draft Environmental Impact Statement
- Final Environmental Impact Statement
- Safety Evaluation Report
- Limited Work Authorization
- Construction Permit

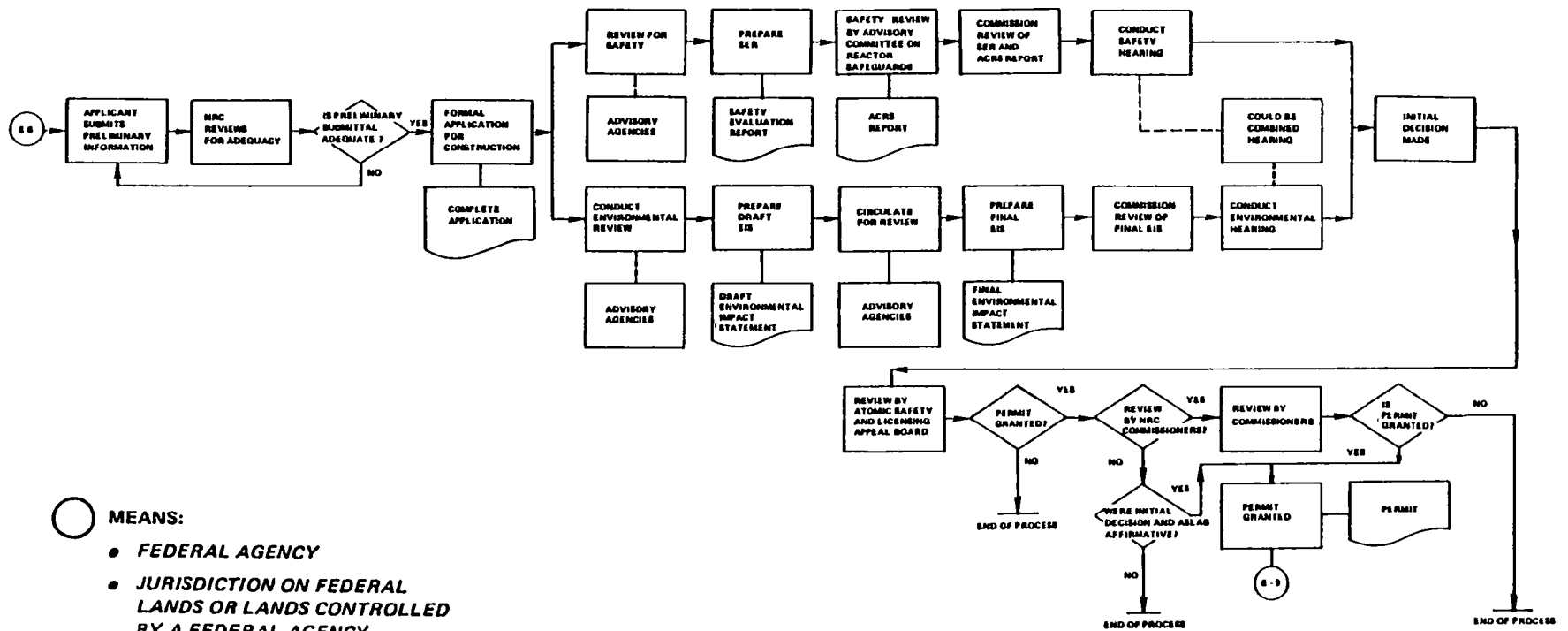
. Advisory Agency

- Atomic Safety and Licensing Board Panel

. Consulting Agencies

- U. S. Geological Survey
- Environmental Protection Agency
- Fish and Wildlife Service
- National Oceanic and Atmospheric Administration
- Army Corps of Engineers
- State Agencies

**NUCLEAR REGULATORY COMMISSION
CONSTRUCTION PERMIT**



(b) Nuclear Regulatory Commission (NRC)

After the construction of a facility under the permit to construct a nuclear-powered electric generating facility, the NRC issues a license to operate the facility.

. Legal Authority

The regulations governing the applications for an operating permit are contained in Title 10 of the Code of Federal Regulations.

. Description of the Process

The developer of the generating facility initiates the application process by submitting a final Safety Analysis Report (See Flowchart E-9). This document is reviewed by the NRC and, based on this information, a Safety Evaluation Report (SER) is prepared. The NRC then publishes a public notice that the application for operation is being considered by the NRC and invites public comments. The NRC may also hold a public hearing to consider additional public comments on the application. Following the analysis of all comments, the NRC issues its decision on the application.

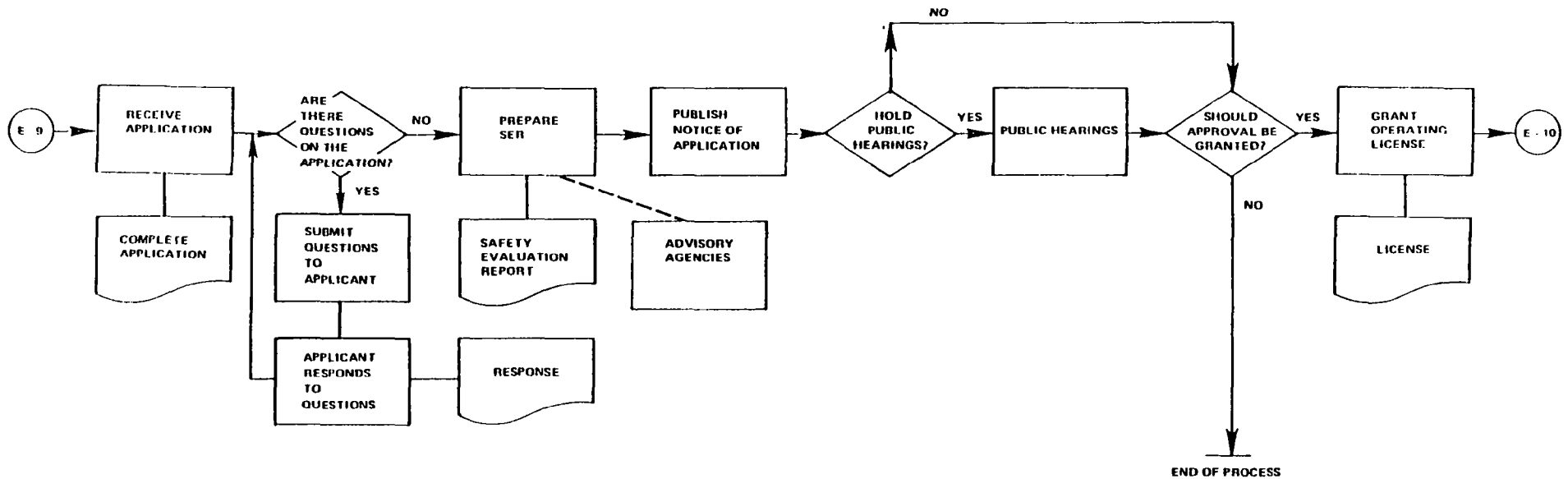
. Issuables

- Draft Environmental Impact Statement
- Final Environmental Impact Statement
- Safety Evaluation Report
- Operating License

. Advisory Agencies

- Fish and Wildlife Service
- Environmental Protection Agency

**NUCLEAR REGULATORY COMMISSION
OPERATING LICENSE**



MEANS:

- **FEDERAL AGENCY**
- **JURISDICTION ON FEDERAL LANDS OR LANDS CONTROLLED BY A FEDERAL AGENCY**

(c) Army Corps of Engineers

The Army Corps of Engineers is responsible for monitoring the condition of navigable water whether the water is a tidal area, ocean or gulf, from the shore to the continental limit, including river, streams or lakes. A single permit is required for all activities including:

- . Work in or placement of structures in the water. This encompasses such activities as buildings intake and outfall structures, transmission lines across waters, and so forth
- . Disposal of dredged or fill material into navigable waters including the transportation of such material on navigable waters for the purpose of disposal
- . Other activities which may have an effect on navigable waters

- . Legal Authority

The Army Corps of Engineers operates under the River and Harbor Act of 1899; the Federal Water Pollution Control Act Amendments of 1972; and the Marine Protection, Research, and Sanctuaries Act of 1972. The regulations governing action are in Title 33 of the Code of Federal Regulations.

- . Description of the Process

In the initial step following the receipt of the application, the Army Corps of Engineers prepares an environmental assessment (See Flowchart E-1). This assessment is prepared employing consultation from other parties, both public and private, who may have an interest in the action. Following the evaluation of the assessment, the Corps determines if an Environmental Impact Statement (EIS) is required

If the Corps determines that the impact is not sufficient to require an EIS, the Corps consults with advisory agencies on the decision to grant the request. As part of this decision-making process the Corps may hold public hearings; however, public hearings are not required.

On the other hand, if an EIS is required the Corps will prepare the EIS and circulate it among the advisory agencies. The Corps holds public hearings. Using the information gathered in this procedure, the Corps makes a determination on the application.

If the Corps grants the permit, a Federal right-of-way may

be required. If so, the applicant must file with the agency controlling the surface rights for the appropriate right-of-way.

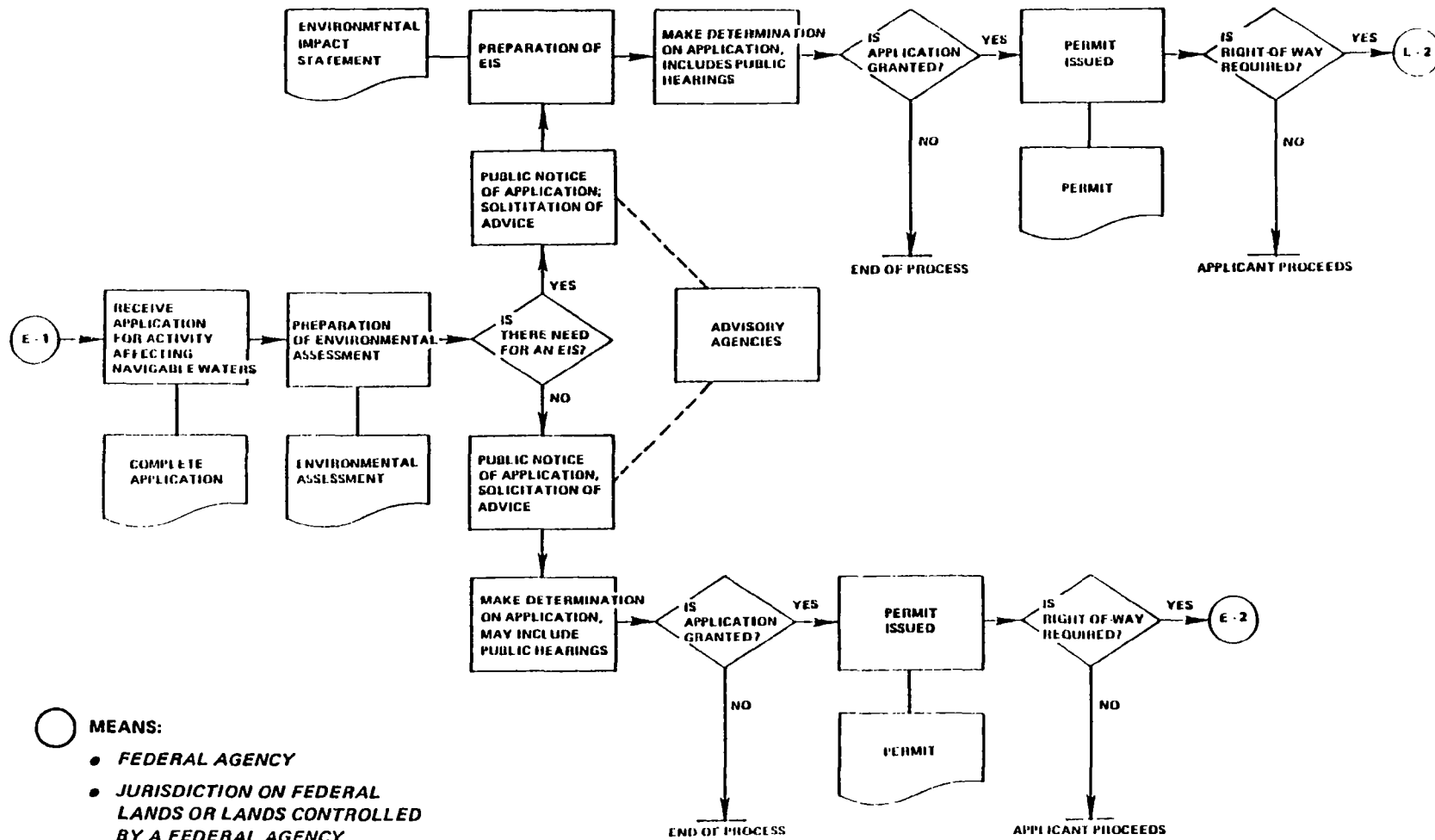
- . Issuables

The Army Corps of Engineers issues a single permit for activities effecting navigable waters.

- . Advisory Agencies

- Fish and Wildlife Service
- Bureau of Reclamation
- National Oceanic and Atmospheric Administration

CORPS OF ENGINEERS



(d) Bureau of Land Management

The location of electric generating facilities may require rights-of-way on Federal lands. The BLM is the principal grantor of rights-of-way on Federal lands. Other agencies, for example the Forest Service and the National Park Service, control surface rights to land. Because of similar processes, the description of the process is being presented here using the BLM as the principal agency.

. Legal Authority

The granting of rights-of-way on Federal lands are governed by Title 43 of the Code of Federal Regulations Subpart 2800.

. Description of the Process

The first step in the consideration of a right-of-way application is the determination of whether the agency has jurisdiction over the land (See Flowchart E-2). If the land is under the control of the BLM an Environmental Assessment Record (EAR) is prepared by the BLM. Based on the findings in the EAR, the BLM determines whether or not the environmental impact is significant enough to require an Environmental Impact Statement (EIS).

If the BLM requires only the EAR, the evaluation of the request is made on the basis of the content of the EAR and the advice provided by other agencies who participate in the review process. If an EIS must be prepared, the lead agency is assigned and the preparation plan, i.e., the plan of action to handle the EIS, is drafted. The Office of Environmental Project Review is responsible for coordinating the BLM's participation in the EIS review. Depending on the complexity of the EIS, the statement takes from nine(9) months to two (2) years to complete the process. A detailed description of the proposal and baseline area studies are important for any EIS. The BLM must wait thirty (30) days after the EIS is submitted to the Council on Environmental Quality (CEQ) before any decision can be given.

The EAR/EIS process is critical to the protection of the environment. Once a permit for exploration or mining has been given, the recipient can not, by law, be denied access to the site. Consequently, it is crucial that the BLM place stipulations on the rights-of-way granted to ensure the protection of the environment. Compliance checks are conducted during the construction phase to verify the developer's compliance with the stipulations in the right-

of-way.

The USGS is responsible for monitoring any stipulations on effluents and any other stipulations in the right-of-way.

On FS land, the FS monitors the rights-of-way and enforces public safety.

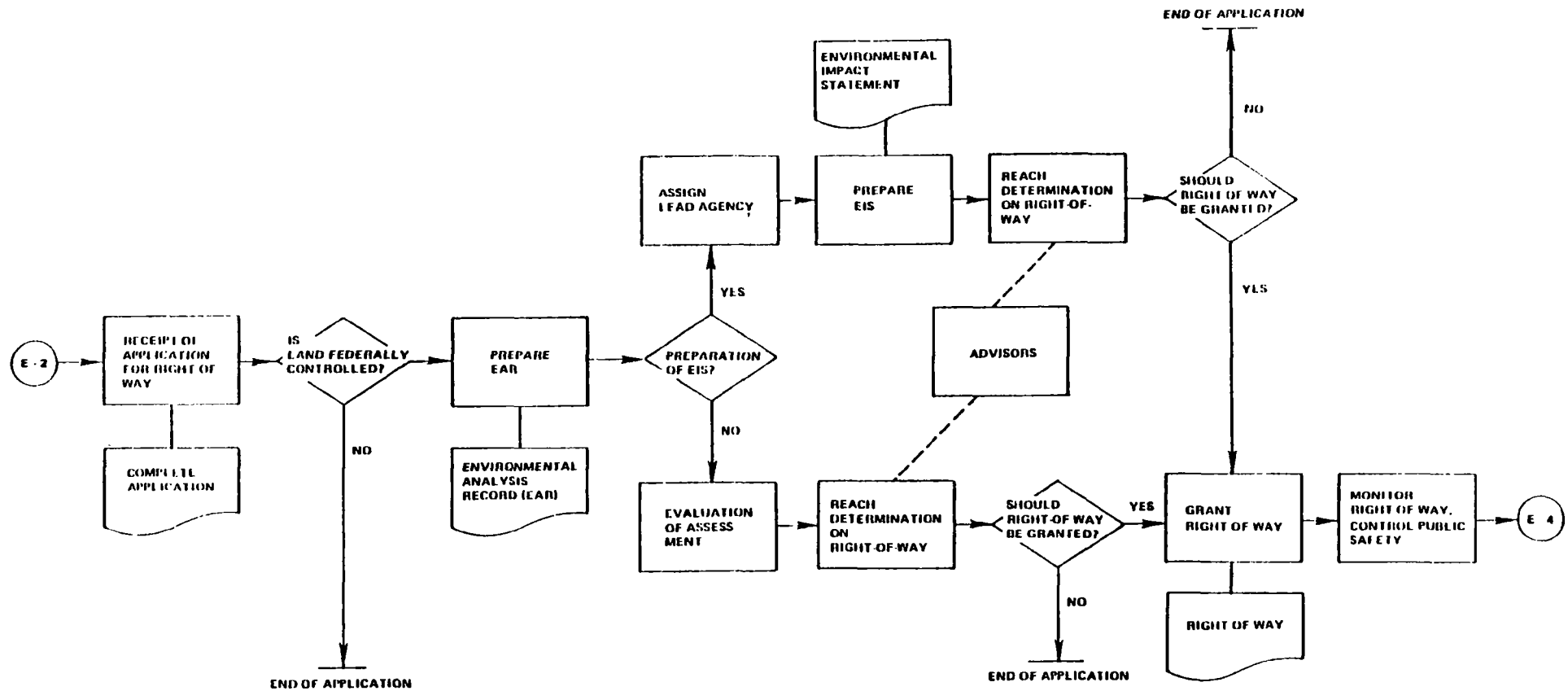
- . Issuables

The BLM issues rights-of-way

- . Advisory Agencies

Fish and Wildlife Service

**BUREAU OF LAND MANAGEMENT
RIGHT-OF-WAY PERMIT**



MEANS:

- **FEDERAL AGENCY**
- **JURISDICTION ON FEDERAL LANDS OR LANDS CONTROLLED BY A FEDERAL AGENCY**

(e) Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) is authorized to approve rights-of-way for electric power facilities over Indian lands. No right-of-way is issued over tribal lands, however, without prior consent of the tribe.

. Legal Authority

The regulations governing applications to the BIA are contained in Title 25 of the Code of Federal Regulations.

. Description of the Process

The application for a right-of-way is received in the regional office of the BIA (See Flowchart E-3). The application is reviewed by the BIA to determine whether or not an Environmental Impact Statement is necessary. If an EIS is necessary, the BIA prepares a draft copy of the EIS. Advisory agencies and interested persons are invited to comment upon the EIS and public hearings are held. The findings of the comment period and from the advisory agencies' reviews are incorporated into the final EIS.

If the BIA determines that the impact of the requested application is not sufficient to require an EIS, the decision-making process is based on the findings of the environmental assessment.

The results of the EIS or the assessment are forwarded to National for review and comment. The package is then returned to the regional office with any comments. The regional office then makes the determination on granting the right-of-way permit. If the BIA grants the application, the agency issues a permit.

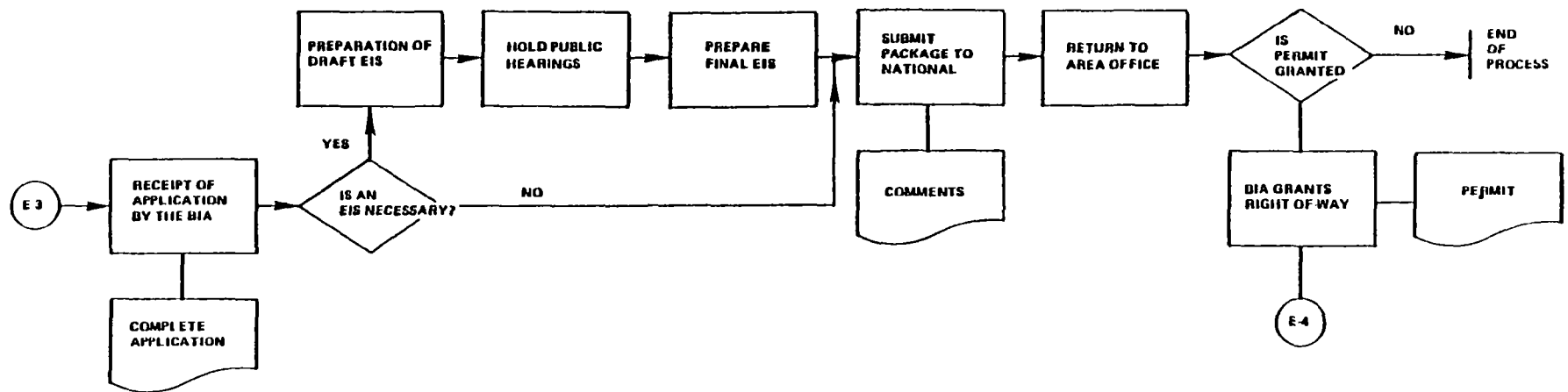
. Issuables

The BIA issues a right-of-way permit

. Advisory Agencies

- Fish and Wildlife Service
- Bureau of Land Management

**BUREAU OF INDIAN AFFAIRS
RIGHT-OF-WAY PERMIT**



MEANS:

- **FEDERAL AGENCY**
- **JURISDICTION ON FEDERAL LANDS OR LANDS CONTROLLED BY A FEDERAL AGENCY**

(f) Federal Aviation Administration (FAA)

Whenever the erection of a tower may be proposed for a location which may affect air traffic safety, a Notice of Intent to Construct a Tower must be filed with the FAA.

. Description of the Process

If an operator suspects a proposed tower to be under FAA jurisdiction, he must file a Notice of Intent to Construct prior to construction (See Flowchart E-11). The FAA then determines whether the proposed tower would be considered an obstruction to air traffic safety. This usually takes 2 to 3 weeks. If the proposed tower is not an obstruction, then the applicant may proceed with construction.

If it is an obstruction, however, the FAA must decide whether or not to issue a clearance for the tower. The FAA sends out notice of the proposed project to interested parties for comment. This may take up to 8 weeks for a significant clearance. If the FAA deems a public hearing to be needed, one will be held and all interested parties heard. The FAA then reviews the proposal and either issues or denies the clearances.

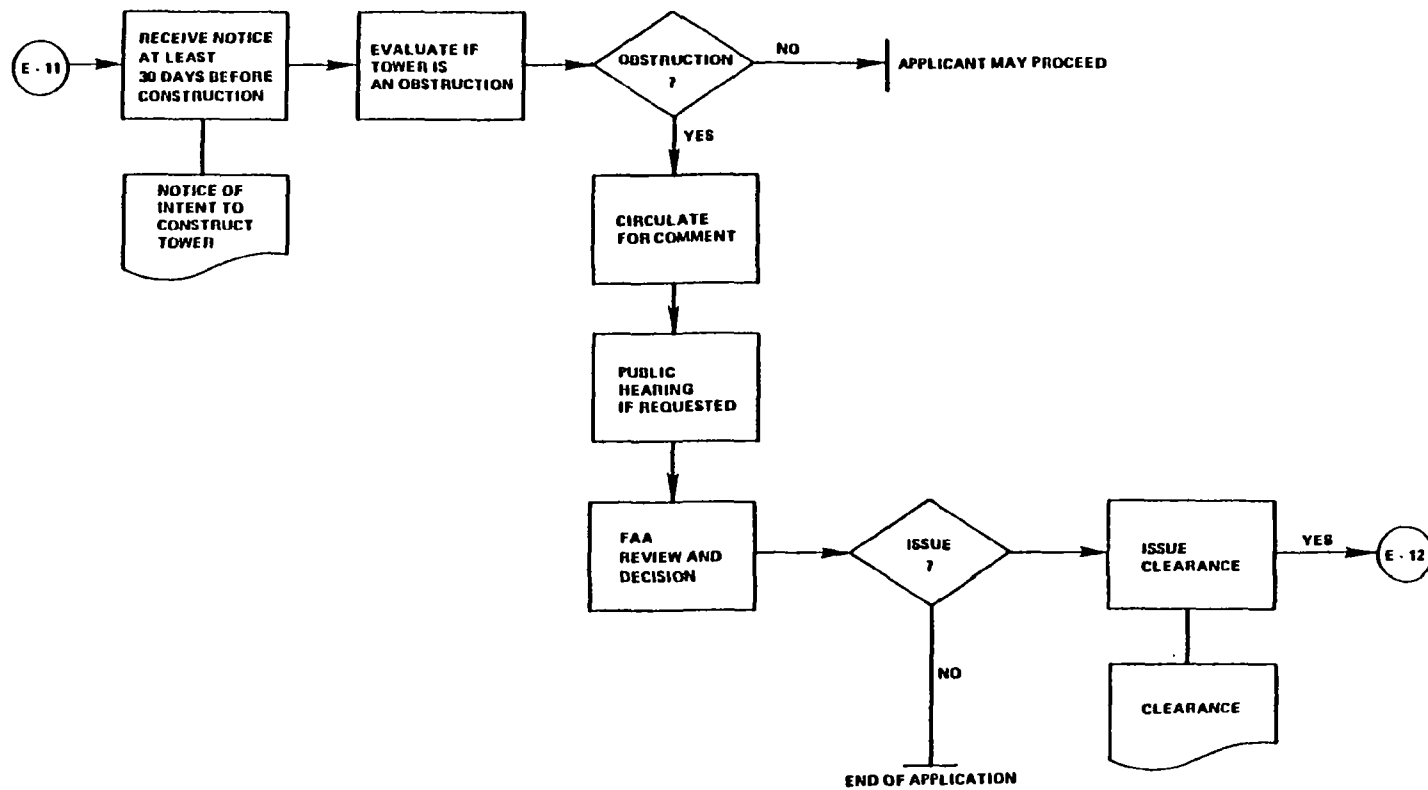
. Issuables

Clearance for a Tower

. Advisory Agencies

Undetermined

FEDERAL AVIATION ADMINISTRATION
TOWER CLEARANCE



○ MEANS:

- FEDERAL AGENCY
- JURISDICTION ON FEDERAL LANDS OR LANDS CONTROLLED BY A FEDERAL AGENCY

(g) Environmental Protection Agency (EPA)

The Environmental Protection Agency has primary responsibility over issuance of National Pollution Discharge Elimination System (NPDES) permits. This permit regulates the quality and quantity of liquid effluent discharges into rivers and waterways.

. Legal Authority

Under the 1972 amendments to the Federal Water Pollution Control Act, the discharge of a pollutant into the U.S. waters without an NPDES permit is illegal. This is only applicable to new source discharges for which EPA effluent emission guidelines have been developed.

. Description of the Process

The EPA has primary responsibility for the NPDES program, but it may transfer responsibility over the NPDES program to States which have EPA approved programs. Where there are approved State programs, it is the State procedure which is followed, provided that the State abides by the same prohibitions against issuing permits that govern the EPA's decision. The EPA does, however, reserve the right to deny a permit when a State may grant it. On the other hand, the EPA may not issue a permit when a State with an approved program denies the application.

For a State without an approved program, the EPA receives the application and engineer's reports directly (See Flowchart E-13). Other Federal and State agencies that are interested in the proposed project are sent copies of the application and comments solicited. A copy of the application is sent to the State authorities to certify that the project meets any applicable State standards. If the proposed projects meets the State standards, the EPA must decide whether it is a major Federal action to issue the NPDES permit. If so, an Environmental Impact Statement (EIS) is required and must be prepared.

All information to this point is then analyzed and a preliminary decision reached. This preliminary decision and the application are then posted in a public notice, which is a solicitation for comments from any interested party. If a public hearing is required, it is held and all interested parties heard. This additional input is then weighed in the determination on issuance of the NPDES permit. If the determination is negative, there are appeals through the

Administrator of the EPA. If the final determination is affirmative, then the NPDES permit is issued with a term of up to five years.

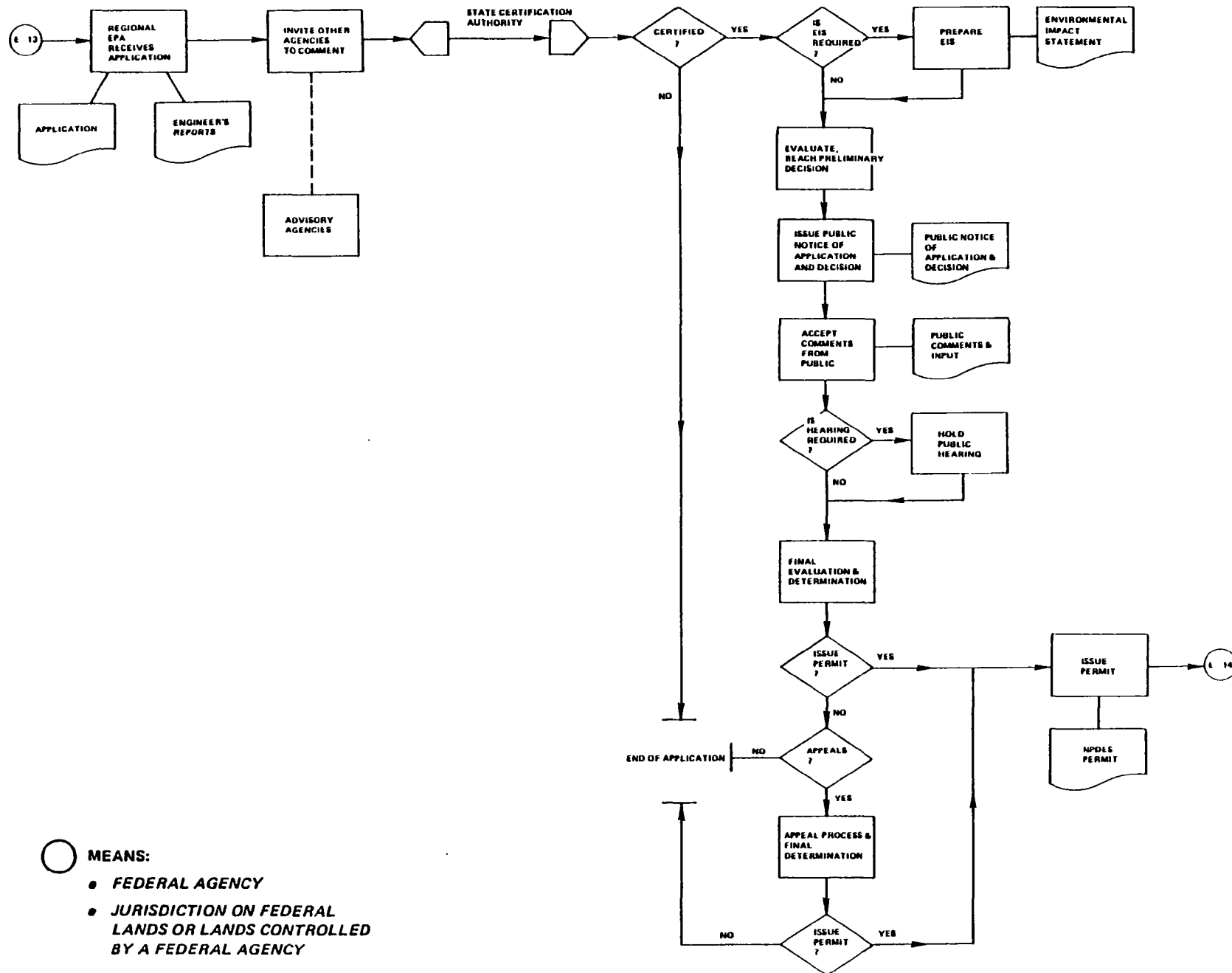
. Issuables

- Environmental Impact Statement
- Public Notice of Application and Preliminary Decision
- National Pollution Discharge Elimination System Permit

. Advisory Agencies

- Corps of Engineers
- U.S. Fish and Wildlife Service
- Bureau of Reclamation
- Other agencies as may be interested in either the EIS preparation or public hearings.

**ENVIRONMENTAL PROTECTION AGENCY
NPDES PERMIT**



(2) State Agencies Regulating Nuclear Fueled Electric
Generation Development

This part of the report presents the State agencies which regulate nuclear-fueled electric generation development.

(a) COLORADO

. Colorado - Public Utilities Commission

The Public Utilities Commission (PUC) has authority over the construction and operation of electric generating facilities within the State. This jurisdiction extends to all electric generating facilities regardless of whether they are fueled by fossil fuels, nuclear fuel, or hydro power.

One of the concerns of the Public Utilities Commission is with the economic feasibility of the proposed project. That is, what will be the effect of the construction costs of the new facility on the utilities rate structure and, ultimately, on the consumers of the utility.

In addition to the construction and operation of the electric generating facility, the PUC is concerned with the exploration for, and the development of, coal, oil, and gas by the utility or subsidiaries of the utility.

The PUC's involvement is not from a regulatory standpoint over such operations but rather its concern for the effect of exploration and development activities or the purchase of fuel on the rate structure of the utility.

THE PUC is not involved with the granting of rights-of-way. All rights-of-way are obtained by the utility from the owner/controller of the land. The PUC must approve the route for transmission, however. Any deviations from the approved routes which are material to the cost of the project will require a new PUC approval.

- Legal Authority

- Description of the Process

The Public Utilities Commission receives an application from a utility seeking approval for construction and operation of a generating facility and approval for the rights-of-way obtained (see Flowchart E-16). The application is reviewed by the Commission and public hearings are scheduled. At the hearings, the utility, any interested agencies and members of the public are allowed to testify.

Following the hearing, the PUC makes the decision to grant the application and approve the routes for the transmission lines. If approval is granted, the Commission issues a permit which enables the utility to proceed. During the construction of the facility, the utility must submit quarterly reports on construction progress including a comparison of proposed expenditures to the actuals to date.

- Issuables

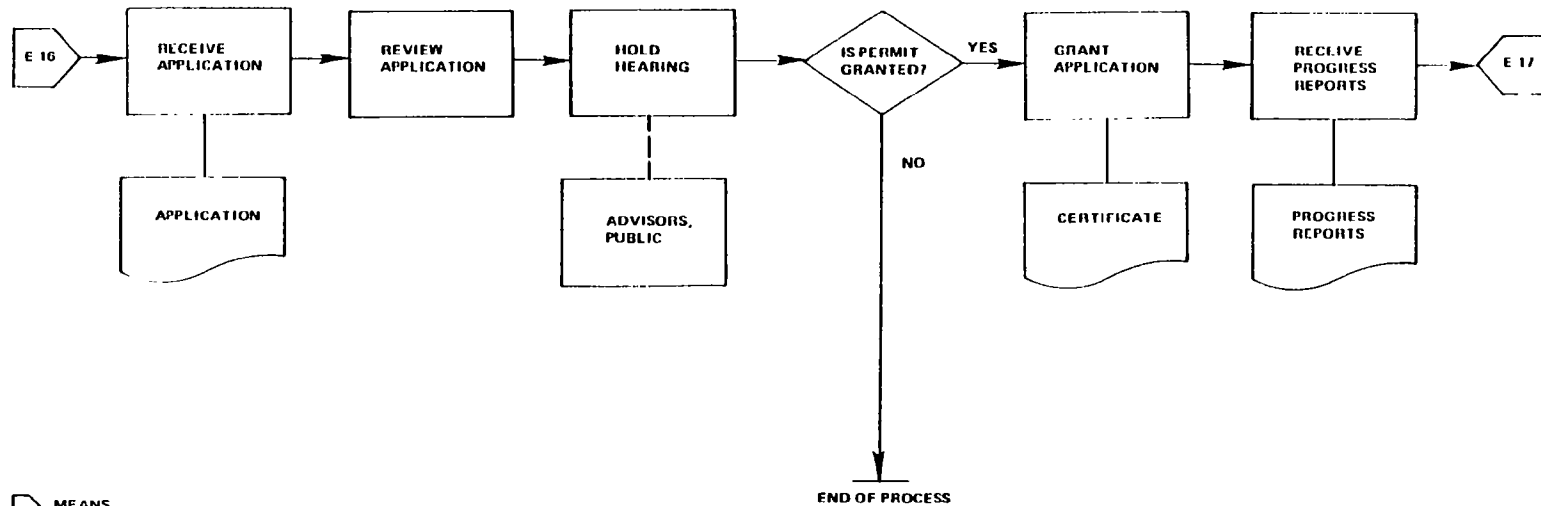
The Commission issues a Certificate of Public Convenience and Necessity.

- Advisory Agencies

-- State Land Use Commission

-- Department of Health.

COLORADO PUBLIC UTILITIES COMMISSION



◇ MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

. Colorado - Department of Health, Air Pollution Control Division

The Air Pollution Control Division is charged with developing and maintaining a comprehensive program for the prevention, control, and abatement of air pollution. The Division develops and promulgates ambient air quality standards and may issue cease and desist orders where emergency pollution exists.

- Legal Authority

The Air Pollution Control Division derives its authority from the Air Pollution Control Act of 1970, State of Colorado, Section 25-7. The rules and regulations governing the administration of this act are contained in the "Statements of Policy by the Division", "Common Provisions Regulations", and Regulations 1 through 9 of the Division.

- Description of the Process

The State does not allow the construction or operation of any new direct air contamination source without first obtaining or possessing a valid emission/permit. Any significant alteration of a source must be filed with the Division. Following the receipt of an application for such a permit, the Division must determine if the application is complete. The application is reviewed to determine the effect of this new source on the air quality of the area. Following this review the preliminary analysis of the effect of the direct source upon the ambient air quality and the extent of emission control are made available to the public. (See flowchart E-18)

If the application warrants public comment, a copy of the preliminary analysis and the application are filed with the appropriate county clerk and published in a local paper. Following the receipt of comments, the Division makes the determination whether or not to approve the application. If the application is denied, the applicant may request a conference with the Division and a hearing. If the application is approved, the permit is granted and the applicant may proceed.

The approval to proceed does not, however, constitute final approval. Prior to the operation of the facility the developer must give notice to the Division.

The Division then conducts an inspection to determine if the operating facility meets the standards projected in the application. If the standards are met, a final approval is granted.

The Division conducts on-going inspection efforts to ensure that standards are maintained during the operation of the project.

- Issuables

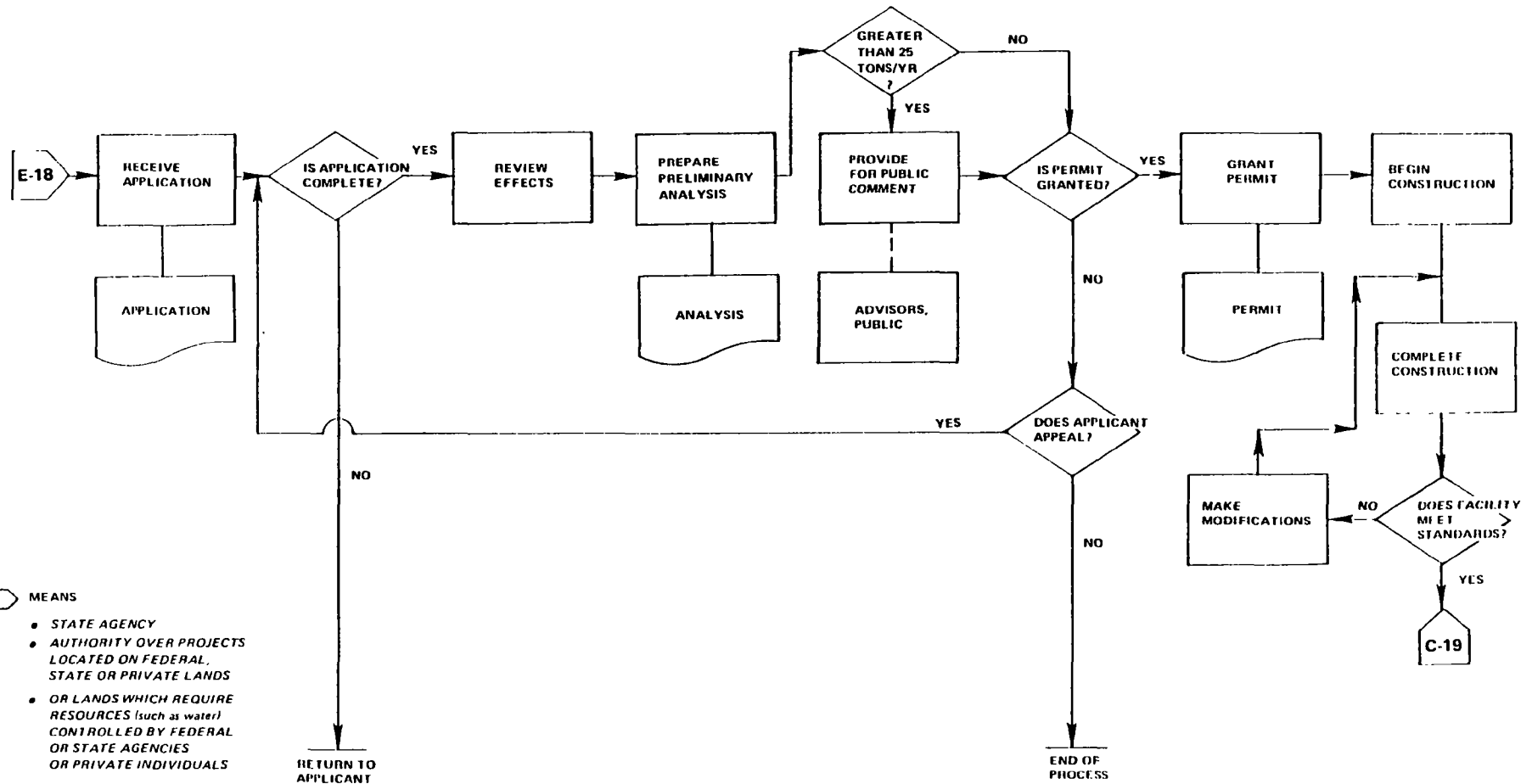
The Air Pollution Control Division issues the following permits which are relevant to a developer of an energy facility:

- .. Stationary Sources Air Emission Permit
- .. Open Burning Permit
- .. Fugitive Dust Permit

. Advisory Agencies

- .. Environmental Protection Agency
- .. Parties who are interested in the impact of fugitive dust or air emissions.

**COLORADO DEPARTMENT OF HEALTH
AIR POLLUTION CONTROL DIVISION**



. Colorado Department of Health: Water Quality Control Division

The Water Quality Control Division is charged with adopting a comprehensive program for the prevention, control and abatement of pollution of the waters of the State. The Water Quality Control Division promulgates rules, regulations, and standards of water quality and waste discharge and may issue cease and desist orders for violations.

- Legal Authority

The Water Quality Control Division operates under the authority of the Colorado Water Quality Control Act (C.R.S., 1963, 66-28-101, et. seq.).

- Description of the Process

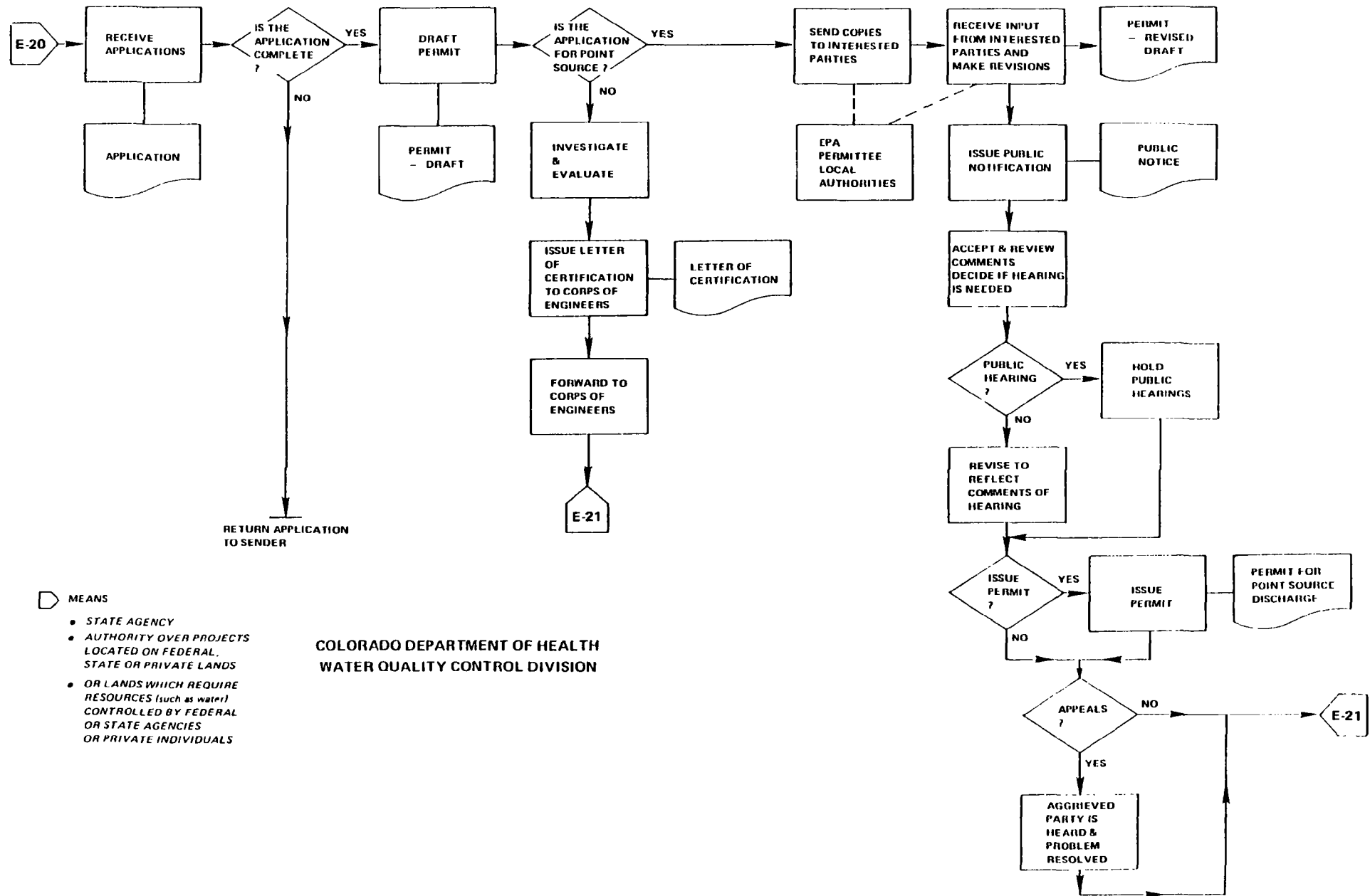
No one is allowed to discharge any pollutant into any State water from a point source without first having obtained a permit from the Division for such discharge.

Applications for permits are filed with the Division (See Flowchart E-2D). Once the application is received, the Division must determine if the application is complete. If complete, a draft permit is prepared. If the application is not for a point source discharge, the Division investigates and evaluates the application and prepares a letter of Certification to be forwarded with the application to the Corps of Engineers. For a point source, the Division sends copies of the draft permit to interested parties and invites response within 30 days. Public notification of the application is made, and if the response warrants, public hearings are held with all the information at hand. The Division decides whether or not to issue the permit. Either way, the aggrieved party has the right to appeal.

- Issuables

- .. Permit for point source discharge
- .. Letter of certification to U.S. Army Corps of Engineers.

- Advisory Agencies
 - .. Environmental Protection Agency
 - .. U.S. Army Corps of Engineers



Colorado Division of Water Resources

The Division of Water Resources is responsible for administering the use of water in the State. This is accomplished directly in the case of surface water and tributary ground water by the State Engineer, who is the Director of the Division; and, by the Ground Water Commission in the case of non-tributary designated ground water areas. The Division staff also serves as the staff for the Ground Water Commission. Water rights are obtained by decrees from the water courts generally following the axiom that the oldest right is the best right. In the designated ground water basins, the Ground Water Commission established priority lists of water users based on dates of initiation of uses.

In conjunction with the administration of water rights, the Division issues permits to drill water wells through an evaluation process which determines: (1) whether water is available for the proposed use, and (2) whether vested water rights will be materially injured.

Reviews are also made by the Division to determine possible adverse effects on vested water rights for proposals to: (1) dispose of mine tailings, (2) operate mine reclamation projects, (3) operate salt water disposal wells from oil and gas operations, and (4) develop geothermal resources.

The State Engineer and the Division of Water Resources, acting through the Board of Examiners for Water Well Drilling Contractors, exercises additional administrative control of water resources by the licensing of water well drillers and through rules and regulations governing water well construction and test hole drilling.

The Division of Water Resources may also review and grant temporary approval for plans of augmentation submitted by water users. Energy development projects typically require large amounts of water, and in the case where this water is tributary ground water, the augmentation plan must detail how the new users will obtain and return a sufficient supply of water to the total system to remedy any injury that may result to any senior water rights from his use.

- Legal Authority

The Division of Water Resources and the Office of the State Engineer operate under the authority granted

by Articles 37-90, 37-91 and 37-92 of the Colorado Revised Statutes, 1973. The first article, 37-90, covers designated ground water areas and the Ground Water Commission's jurisdiction. The second article, 37-91, deals with the Board of Examiners for Water Well Drilling Contractors, and the third article, 37-92, deals with surface and tributary ground waters. The Division's authority to grant temporary approval for plans of augmentation is found in Section 37-92-307, C. R. S., 1973. Responsibilities in the field of geothermal resources are set forth in Article 37-70, C. R. S., 1973. Additional duties and responsibilities of the State Engineer are found in Article 37-80, C. R. S., 1973.

- Description of the Process

Applications for permits to drill water wells are submitted to the Division of Water Resources (see flow chart E-22) or to the Ground Water Commission, through the staff of the State Engineer, in the case of designated basins. The staff reviews the applications for completeness and in the case of complete applications, evaluates the same with consultation, if needed, with advisory agencies to determine whether the application can be approved. The decision is made by the State Engineer. Any applicant whose request has been denied by the State Engineer may request a hearing through an administrative appeal process. Ultimate relief of an appeal of any action by the Division or the State Engineer can be found in the appropriate court. Applications in designated ground water areas, if recommended for approval by the staff, are published so that interested parties may file an objection with the Ground Water Commission.

Plans for augmentation are submitted simultaneously to the Division of Water Resources and to the water court. The Division of Water Resources reviews the plan for completeness and, in conjunction with consultation with advisory agencies, if needed, determines whether or not the plan can be approved. The application made to the court is published so that interested parties are given the opportunity to file an objection with the court. The final decision as to whether or not the plan can be approved rests with the water court.

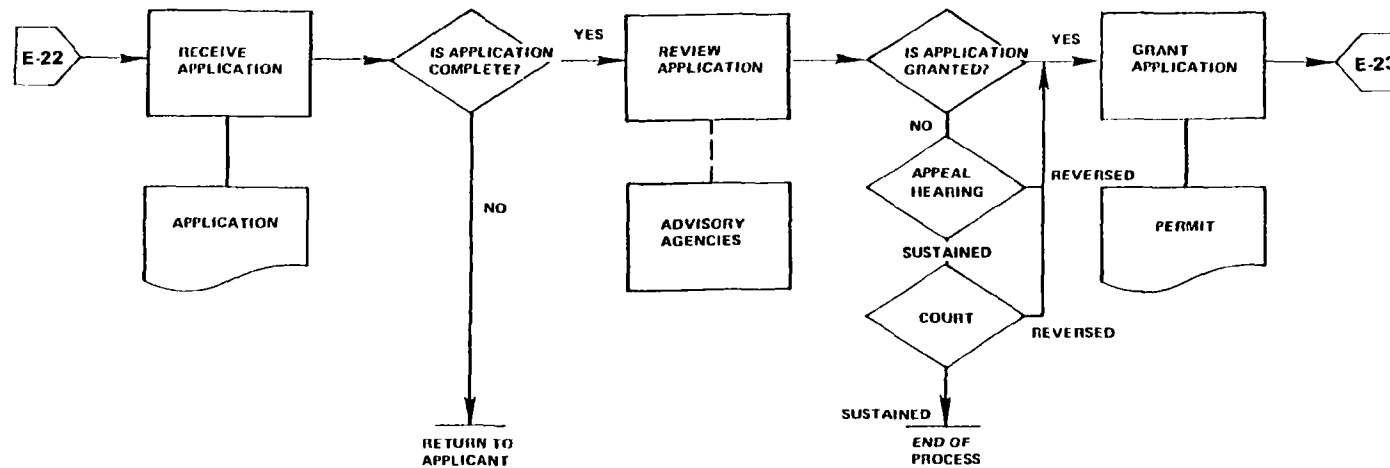
- Issuables

- .. Issues a permit to drill a water well,
- .. Licenses water well drillers.
- .. Grants temporary approval for plans for augmentation, and
- .. Acting for the Ground Water Commission, issues a permit to drill a well and to appropriate designated ground water.

- Advisory Agencies

- .. Water Conservation Board
- .. Oil and Gas Commission
- .. Mine Reclamation Board
- .. Water Quality Control Board
- .. State and County Health Boards

COLORADO DIVISION OF WATER RESOURCES



MEANS:

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

(b) MONTANA

. Montana - Department of State Lands

- Legal Authority

The Department of State Lands is responsible for leasing of all State lands under the Revised Codes of Montana, 1947, as amended.

- Description of the Process

There are two methods of obtaining a lease on State land in Montana, either through competitive bidding for a lease or through an award as the first qualified bidder (See Flowchart E-24). Generally, the competitive bid procedure is utilized for lease of lands with known resources and non-competitive award for unknown lands.

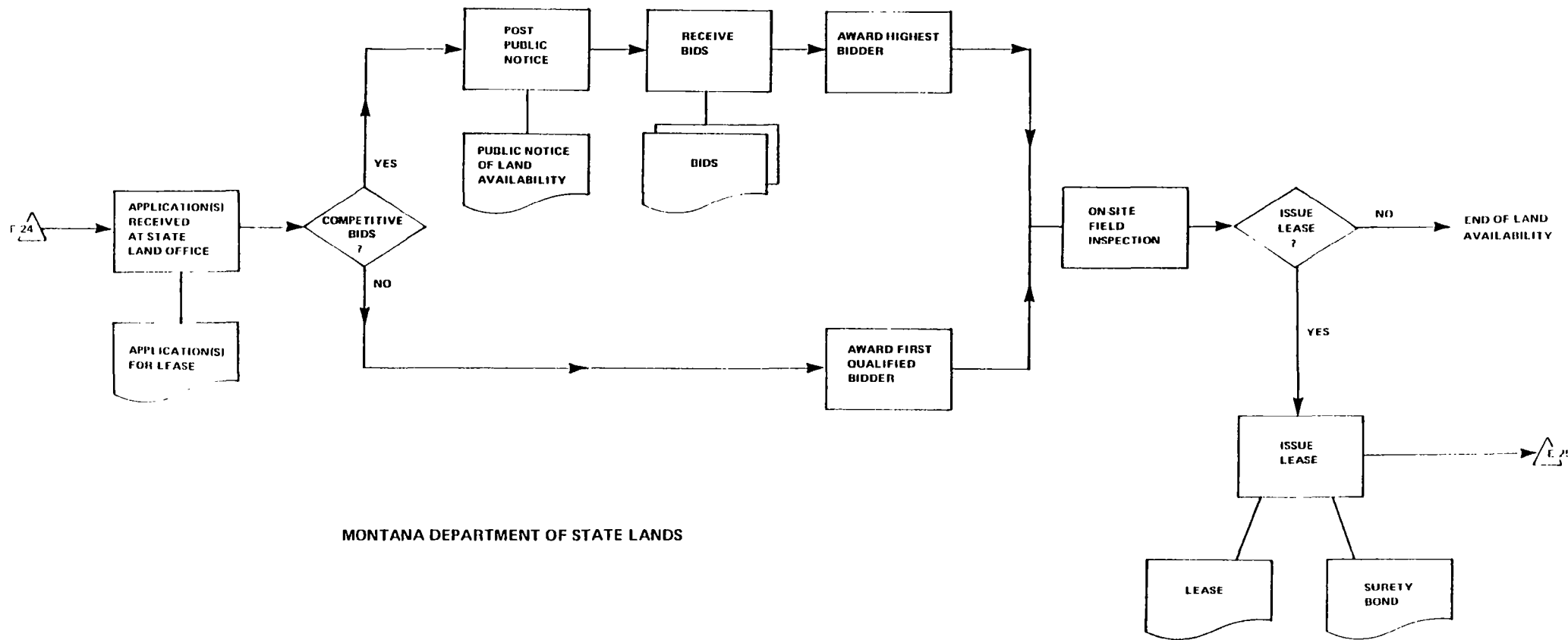
When an application for a State land lease is received, it is first determined whether the land in question is subject to competitive bidding. If so, availability is posted and bids accepted. The lease is then awarded to the highest bidder. In the case of non-competitive land, the award is to the first qualified bidder. Once an award is made, the Department decides whether or not to issue the lease. The land is usually not retracted. An on-site field inspection is required before issuance of the lease. When the lease is issued, the successful applicant must furnish a safety bond to the State.

- Issuables

.. Lease

.. Bond.

- Advisory Agencies



MONTANA DEPARTMENT OF STATE LANDS

- △ MEANS
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

Montana Department of Health and Environmental Sciences -
Air Quality Bureau

- Legal Authority

Responsibility for, and jurisdiction over control of air pollution sources in Montana are given to the Department of Health and Environmental Sciences by the Clean Air Act of Montana. The Air Quality Bureau (AQB) handles air pollution and discharges for the Department.

- Description of the Process

The applicant must file with the AQB a Notice of Intent to Construct which notifies the AQB that there will be a new contributor of air pollution. Usually plans and specifications are filed with the Notice. The Bureau then reviews and evaluates the proposed project, accepting input from interested agencies. If the project will have a significant impact, an Environmental Impact Statement is required to be prepared.

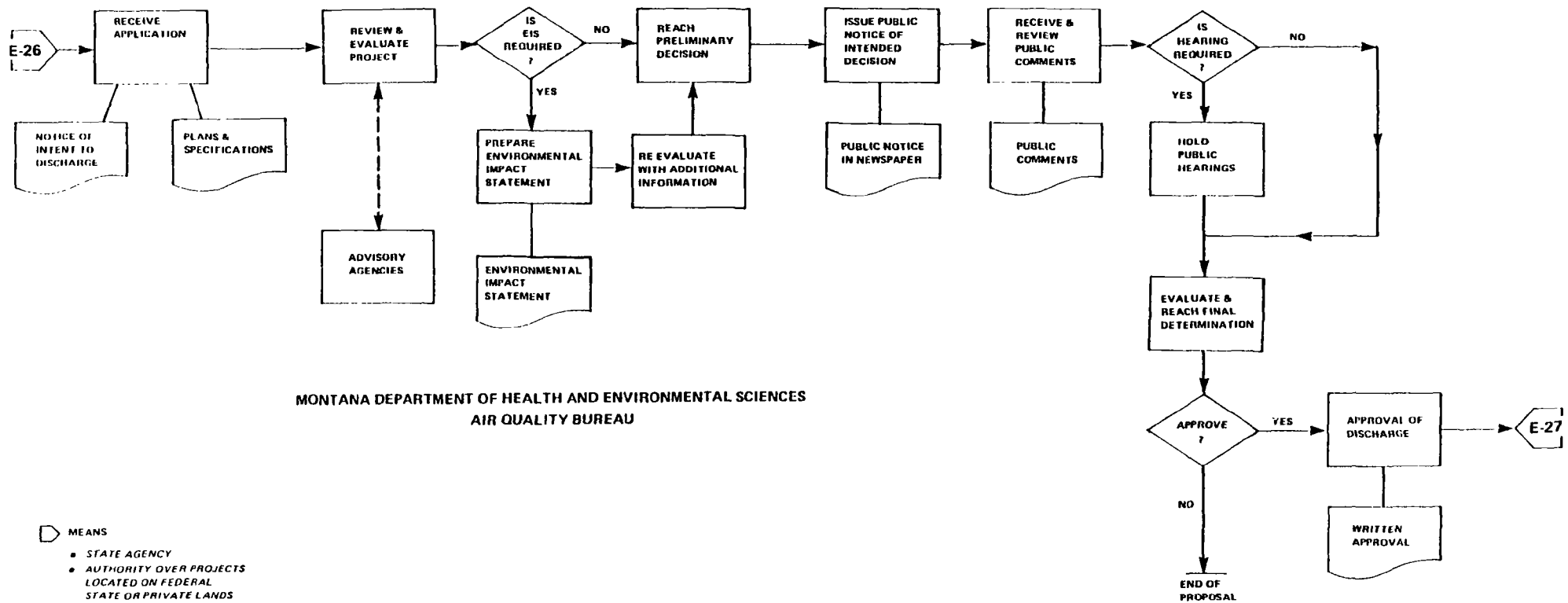
With the analysis prepared as required, the Bureau makes its preliminary decision and issues public notice of the intended decision. Comments are thereby solicited from the public, which are reviewed and evaluated. If public remarks warrant, public hearings may be held in which all interested parties are heard.

After all facts are gathered and all parties heard, the Bureau then reaches its final determination to either approve or deny the proposed project. If the project is approved, written notice is sent to the applicant (See Flowchart E-26).

- Issuables

- .. Public Notice of Intended Decision
- .. Written Approval of Proposed Project
- .. Environmental Impact Statement

- Advisory Agencies



. Montana - Department of Natural Resources and
Conservation Water Resource Division

- Legal Authority

The responsibility and authority for jurisdiction over all water in Montana is granted to the Department of Natural Resources by Montana Water Law Chapters 8 and 29. All water, wherever found, is under control of the Department.

- Description of the Process

A permit is required for any new appropriation of water, or construction of any diversion, impoundment, withdrawal or distribution works unless the project is exempted. A project is exempted if it is well outside the boundaries of a controlled ground-water area with a maximum yield of less than 100 gallons per minute. For an exempted well, within 60 days of completion of the well, the Division must receive notice of completion of the well, after which a Certificate of Water Right will be issued.

Unless the project is exempted, an application for permit must be filed with the Division (See Flow-chart E-28). Public notice of the application is published for three consecutive weeks in a newspaper in the area of the proposed water source. After the public notice, 30 to 60 days is allowed for receipt of objections to the project. The Division determines whether the objections warrant public hearings and hold the hearings if needed.

The proposed project is then evaluated and a decision is reached to issue or deny the permit. If the decision is to deny, the applicant may appeal to the Division for reconsideration. If the final decision is to issue the Permit, then the Permit is issued. Notice of completion must be filed within the prescribed time after the permit is issued or any authorized extension thereof. A Certificate of Water Right is issued if the project has been completed in substantial accordance with the permit. A Certificate of Water Right cannot be issued however until a general determination of existing rights in the source has been completed.

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- Existing Water Rights

An existing water right is a right to the use of water which would be protected under the law as it existed prior to July 1, 1973. Water use for energy development may require the use of water for which a water right has been established. If a change of place of use, place of diversion, purpose of use, or place of storage is contemplated, pursuant to 89-892, R.C.M. 1947, application must be made and authorization received from the DNR&C. The severance or sale of a water right, pursuant to 89-893, R.C.M. 1947 also requires authorization by the department. Pursuant to the section cited, notice, hearing, etc. are conducted as per applications for water use permits.

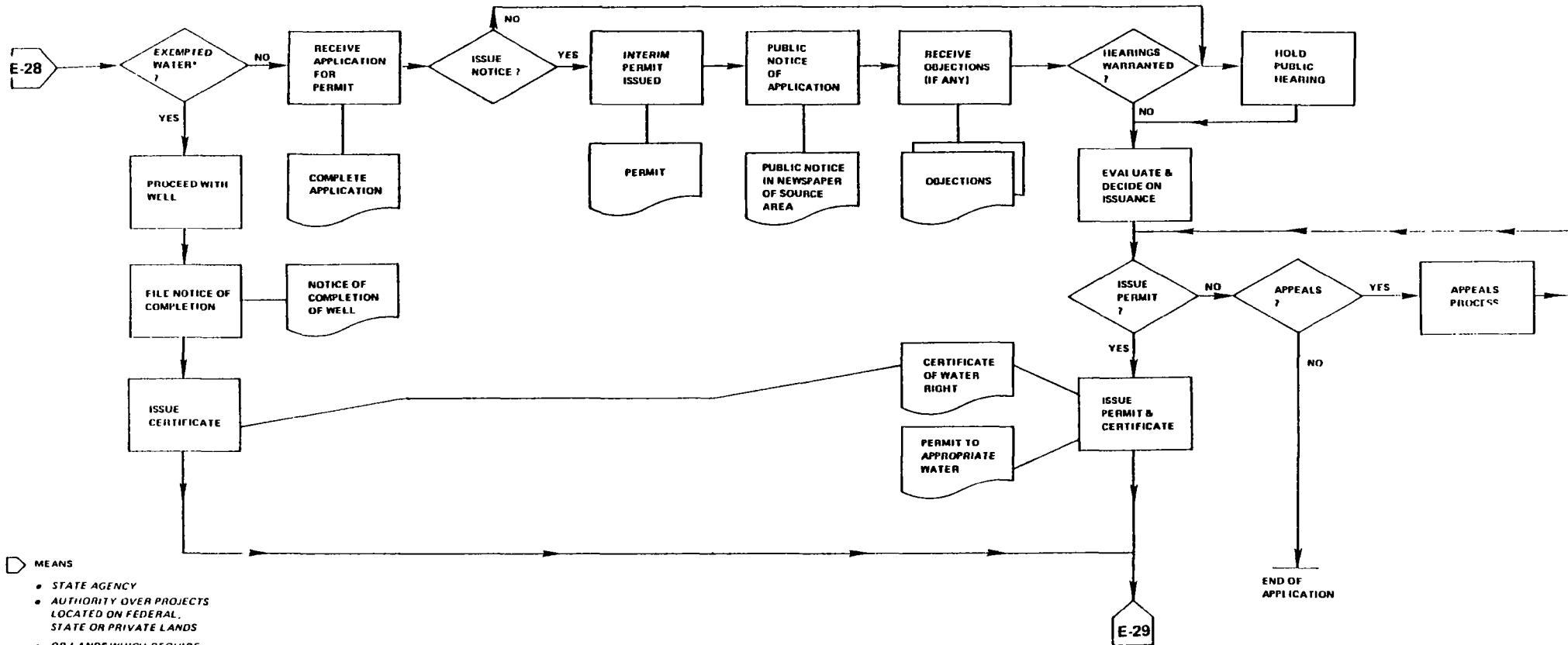
- Issuables

- .. Application for Permit to Appropriate Water
- .. Permit to Appropriate Water
- .. Certificate of Water Right
- .. Completion Report of Water Development
- .. Authorization of Change of Existing Water Right.

- Advisory Agencies

- .. None

**MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
WATER RESOURCES DIVISION**



◇ MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

* SOURCE IS A WELL NOT IN CONTROLLED GROUND WATER AREA WITH MAXIMUM YIELD LESS THAN 100 GPM

. Montana-Department of Natural Resources and Conservation:
Energy Planning Division

- Legal Authority

The Montana Major Facility Siting Act grants the Department of Natural Resources and Conservation jurisdiction over any facility designed for, or capable of, generating 50 megawatts of electricity or more, or any addition thereto having an estimated cost in excess of \$250,000 and related transmission lines.

- Description of the Process

No facility under this jurisdiction may be built without first applying for and receiving a Certificate of Environmental Compatibility and Public Need. Upon receipt of the application, the Division begins the review, evaluation, and study of the proposed project (See Flowchart E-30). This study is allowed up to two (2) years and encompasses an environmental and economic assessment of the project. After completion of the study, the Division presents its report of all findings and recommendations to the Board of Natural Resources and Conservation. The Board invites input from all interested State advisory agencies.

Within four (4) months, the Board holds public certification hearings to accept additional input to the evaluation. Within three (3) months after the end of the hearings, the Board issues its opinion and decision on the issuance of a Certificate for the project. Any aggrieved parties may petition to the State district courts for appeal.

When the final determination is reached, either the project is issued a Certificate of Environmental Compatibility and Public Need and may proceed or it is denied a Certificate and is terminated.

- Issuables

- .. Application for Certificate of Environmental Compatibility and Public Need
- .. Division Report on Project (Environmental and Economic Assessment)
- .. Certification Hearings

.. Opinion for Determination

.. Certificate of Environmental Compatability and
Public Need

- Advisory Agencies

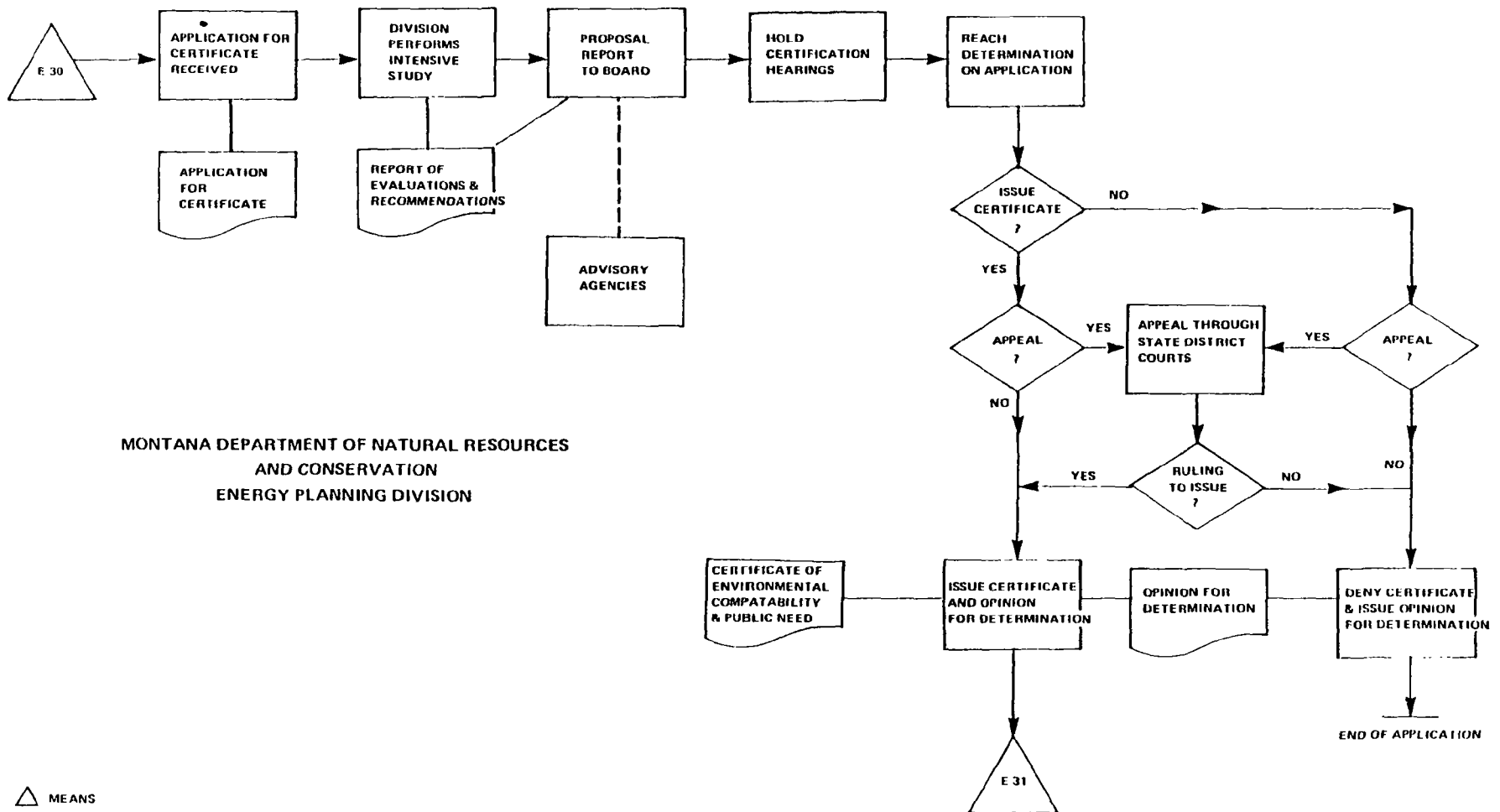
.. Department of Health and Environmental Sciences

.. Department of Highways

.. Department of Intergovernmental Relations

.. Department of Fish and Game

.. Department of Public Service Regulation.



MONTANA DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
ENERGY PLANNING DIVISION

- △ MEANS
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

Montana-Division of Health: Water Quality Bureau (WQB)

- Legal Authority

Responsibility for, and authority over the control of air pollution sources in Montana is given to the Division of Health by Chapter 69-4800 of the Montana laws.

- Description of the Process

The applicant must file with the WQB a Notice of Intent to Construct which notified the WQB that there will be a new contribution to water pollution. Usually plans and specifications are filed with the Notice. The Water Quality Board notifies the Environmental Protection Agency of the receipt of the application. The Bureau then reviews and evaluates the proposed projects, accepting input from interested agencies, (See Flowchart E-32).

The Bureau makes its preliminary decision and issues public notice of the intended decision. Comments are thereby solicited from the public. These comments are reviewed and evaluated. If public remarks warrant, public hearings may be held in which all interested parties are heard.

After all facts are gathered and all parties heard, the Bureau then reaches its final determination to approve or deny the proposed project. Written notice of the decision is mailed to the applicant and to the EPA.

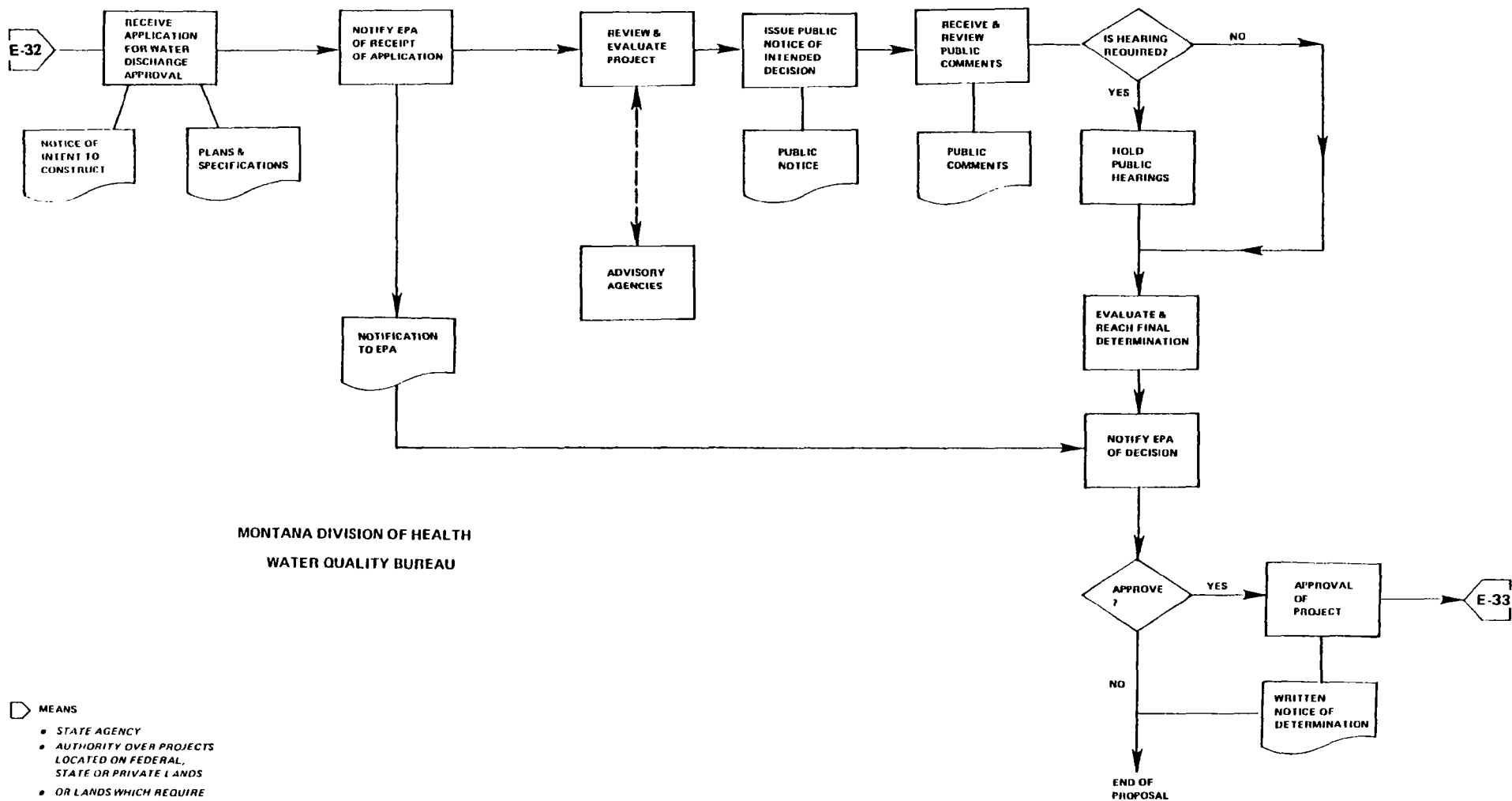
- Issuables

.. Public Notice of Intended Decision

.. Written Approval or Disapproval of Proposed Project

- Advisory Agencies

Environmental Protection Agency



**MONTANA DIVISION OF HEALTH
WATER QUALITY BUREAU**

- MEANS**
- STATE AGENCY
 - AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
 - OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

(c) NORTH DAKOTA

North Dakota - Public Service Commission

The Public Service Commission in North Dakota has responsibility for regulating several energy development categories within the State. The Commission issues permits for the mining of coal and for the reclamation which must follow. In addition, the Commission is responsible for the administration and enforcement of the North Dakota Energy Conversion and Transmission Facility Siting Act. In this capacity, the Commission must grant certificates of site compatibility for energy conversion facilities, energy transmission facilities, and route permits for facilities in transmission corridors.

- Legal Authority

The authority for the Commission to regulate the siting of energy facilities is granted by the North Dakota Energy Conversion and Transmission Facility Siting Act, Chapter 49-22 of the North Dakota Century Code. The regulations governing the Commission's actions under this legislation are continued in "Rules and Regulations of the North Dakota Public Service Commission Governing the Siting of Energy Conversion and Transmission Facilities" which were adopted December 23, 1975.

- Description of the Process

Following the recent application for site compatibility, the Commission must make two determinations as to completeness (See Flowchart E-34). Along with an examination to determine if all of the requirements of the Commission have been met, the Commission must determine if all other required permits have been obtained by the developer and if the developer has filed a letter of intent. Any developer seeking a site compatibility permit must file a letter of intent with the Commission one (1) year prior to the filing of an application, unless a shorter time is approved by the Commission.

If the determination is made that the application is complete, the application is reviewed by the Commission. One of the purposes of this review is to ascertain whether the proposed site for the facility is in a constraint area. If the site is in a constraint area, the next determination is whether the site is an exclusion area or an avoidance area. If the area has

been designated as an exclusion area, the developer is prohibited from building his facility. If the area has been designated as an avoidance area, the developer may build the facility only if he is able to demonstrate a compelling reason for locating on that site.

Should the application process continue, the next step is for the Commission to schedule and hold a public hearing. At this hearing, both advisory agencies and members of the public may be heard. Following the hearings, the Commission assembles the results and evaluates its findings. If the Commission decides to grant the application, the permit is issued and development may proceed. Appeals to decisions of the Commission may be filed in the district court.

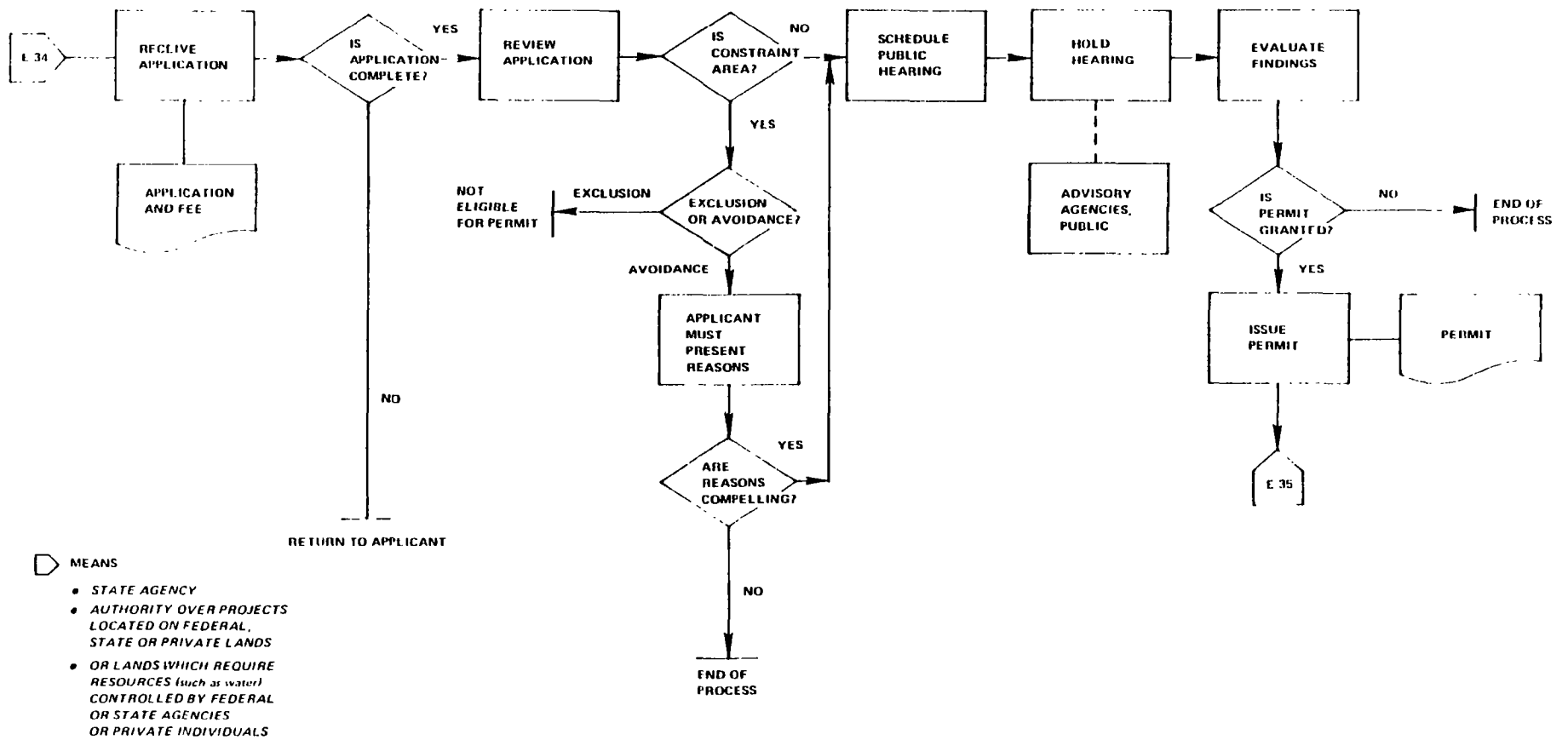
- Issuables

The Commission issues a Certificate of Site Compatability.

- Advisory Agencies

- .. Water Commission
- .. Soil Conservation Committee
- .. State Game and Fish Department
- .. Natural Resources Council
- .. Planning Division
- .. Regional Environmental Assessment Program
- .. Business and Industrial Development Commission

NORTH DAKOTA PUBLIC SERVICE COMMISSION



. North Dakota - Water Commission

The State Engineer administers the Water Rights Program for the State Water Commission. The State Engineer issues permits for the appropriation and use of water within North Dakota. The authority of the Commission covers all water in the State, whether it is associated with the Federal Government, the State, or private land owners. If the water in question is, for example, under the control of a Federal agency, the developer must obtain a permit from the Federal agency and the Engineer. Along with the permit to appropriate and use water, any energy developer who plans to construct a dam or a storage reservoir which is capable of impounding more than 12.5 acre-feet of water must obtain a permit from the Commission prior to construction.

- Legal Authority

The authority of the Commission and State Engineer over water resources within the State is granted by Chapter 61-02 and 61-04 of the North Dakota Century Code. The regulations governing the activity of the Commission are stated in "Circular of Instructions Relative to Appropriation and Use of Water" published in June, 1974.

- Description of the Process

Following the receipt of the application, the Engineer assigns a priority date to the application (See Flowchart E-36). State law recognizes the concept of prior appropriation of water, consequently the date of the application becomes important should a conflict develop. Once the priority date has been assigned, the Engineer reviews the application for completeness. If the application is complete, the Engineer reviews the application to determine if there is unappropriated water available and if the application is in the public interest. If the Engineer determines that the answer to both of these questions is "yes", the Engineer schedules a hearing. While a hearing is required for all water applications, now that the siting legislation requires a hearing, hearings for water use related to a facility which requires a siting permit are held jointly with the Public Service Commission. Once a hearing has been scheduled, the applicant must give notice of the

hearing to owners of land within a mile radius of the location and publish a notice in a newspaper of general circulation within the area.

At the hearing, testimony is heard from any agency or member of the public wishing to speak. Following the hearing, the Engineer evaluates the evidence and makes a determination on the application. If the application for water is granted, the applicant receives a Conditional Water Permit. Once the water is applied to a beneficial use, the applicant receives a Perfected Water Permit. For a dam, the applicant receives a construction permit and a permit to appropriate water.

Any action of the Engineer or Commission may be appealed through the District Court.

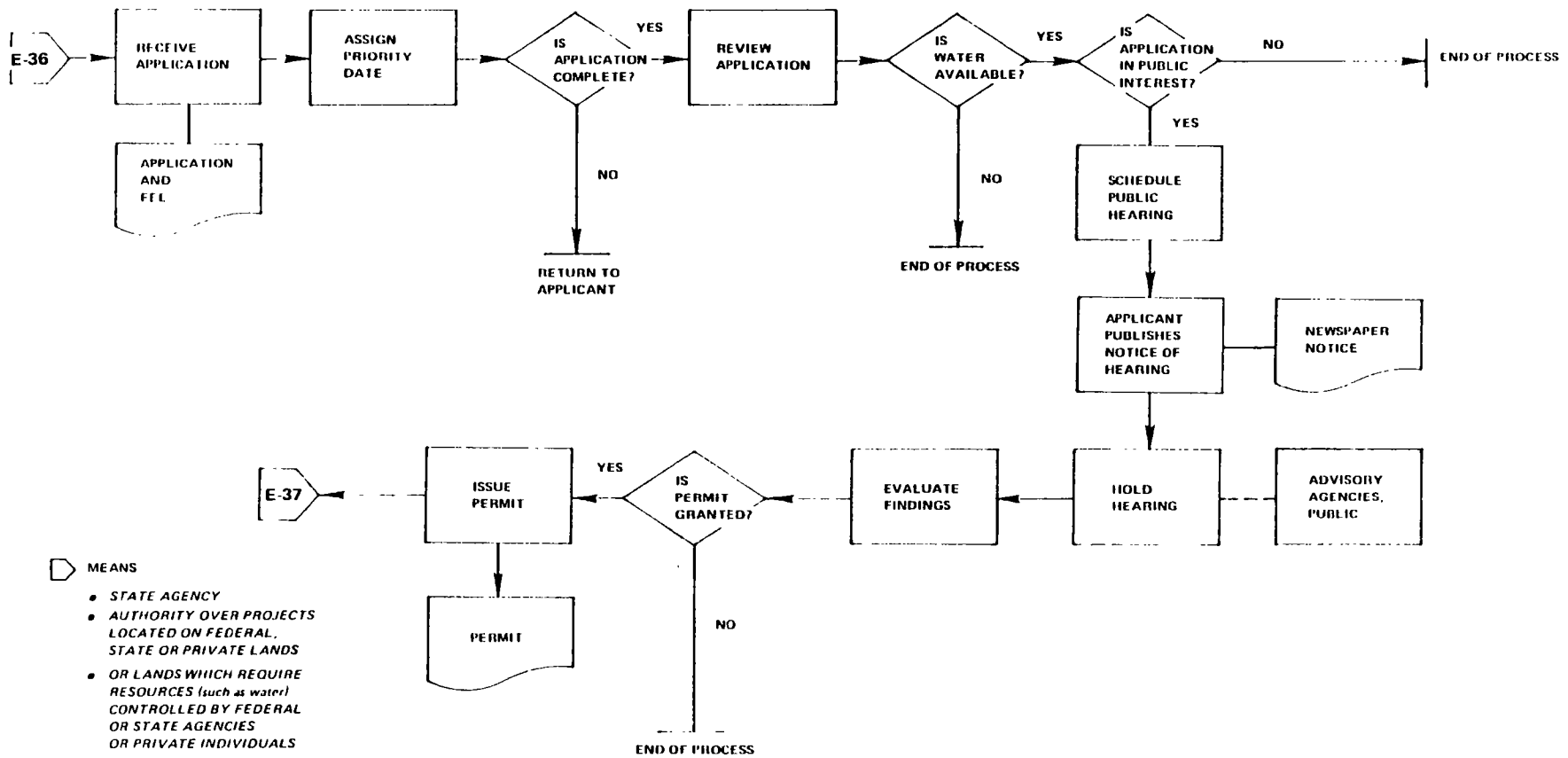
- Issuables

The Engineer and/or Commission issues:

- .. Conditional Water Permit
- .. Perfected Water Permit
- .. Dam Construction Permit

- Advisory Agencies

NORTH DAKOTA WATER COMMISSION



North Dakota - Department of Health: Air Quality Division

The Air Quality Division of the Department of Health plays three important regulatory roles in energy development within the State. The Division:

- Regulates air pollution in the State and is responsible for maintaining air quality
- Functions as the nuclear regulatory agency in the State and is responsible for monitoring radioactive materials. This is done under an agreement with the Nuclear Regulatory Commission. Consequently, the Division functions as the NRC in North Dakota
- Regulates solid waste disposal. In this capacity, the Division is responsible for monitoring such problems as oil spills at production sites.

These are two Air Quality Maintenance Areas (AQMA's) which have been designated within the State.

- Legal Authority

- Description of the Process

Upon receipt of the application, the Division makes a determination as to completeness of the application (See Flowchart E-38). If the application is complete, the Division conducts a preliminary review. Following the review, the Commission conducts an inspection of the proposed site for construction. This inspection is conducted to determine the additive effect of the new source of air pollution on the site. If the site is found to be unacceptable, the developer must either improve his controls to reduce the emissions or find a new site. If the developer chooses to find a new site, the application is resubmitted.

If the site is found acceptable, the Division evaluates its findings. Based on this evaluation, the Division publishes a public notice of its intent to approve or disapprove the applications. This public notification is given to provide the public with the opportunity

to give comments to the Division. Following the receipt of the public comments, the Division assesses all the material received and makes its decision. If the decision is affirmative, the Division issues a permit to construct. This permit is generally issued with conditions or standards which the developer must meet.

Following construction, the developer is allowed a trial operation period. During the trial operation period, the Division conducts a test to ensure that standards are met. These tests are done during a one year pre-operation period and a two year post-operation period. If the facility meets the standards, a three year operating permit is issued. Each permit must be renewed every three years. The Division conducts compliance inspections during the operation of the facility.

- Issuables

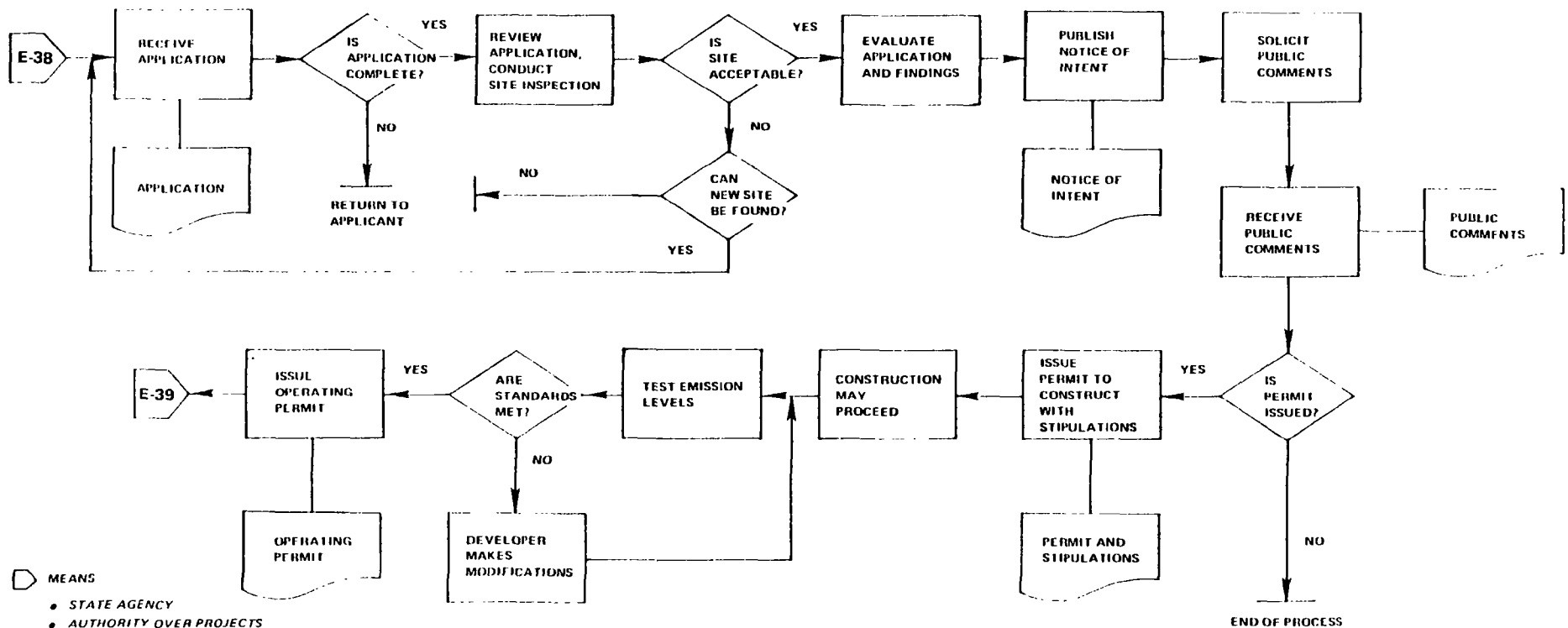
The Division issues:

- .. Construction Permit
- .. Fugitive Dust Permit
- .. Operation Permit
- .. Radioactive Material Permit
- .. Solid Waste Disposal Permit

- Advisory Agencies

- .. Environmental Protection Agency
- .. Nuclear Regulatory Commission
- .. State Planning Agency
- .. Regional Environmental Assessment Program

**NORTH DAKOTA DEPARTMENT OF HEALTH
AIR QUALITY DIVISION**



North Dakota - Department of Health: State Water Pollution Prevention Agency

The State Water Pollution Prevention Agency is charged with the responsibility to protect, maintain, and improve the quality of water in North Dakota. In this capacity the Agency must monitor all water emissions from any energy development activity and ensure that all waste water treatment facilities meet the standards of the Agency prior to construction.

- Legal Authority

The Agency operates under the authority of Chapter 479, Sections 61-28-01 through 61-28-08, of the North Dakota Century Code effective July 1973 and Amendments 61-28-02, 61-28-04, and 61-28-06 effective January 1975. The regulations governing the actions of the Agency are contained in "Standards of Surface Water Quality for the State of North Dakota," published by the Department of Health.

- Description of the Process

Following the receipt of the application, the Agency makes a determination as to its completeness (See Flowchart E-40). If the application is complete, the Agency reviews the plans and specifications for the project to determine if the effluents from the project will meet the State standards. If a retention pond is employed in the energy development project, the pond must be sealed to prevent contamination of ground water.

After an analysis of the specifications for the project are made, the Agency determines if the State standards are met. The State generally employs the water quality standards employed by the Environmental Protection Agency. However, there are some instances where the State standards are more strict. If the State standards are met, the Agency issues a permit. Following the commencement of operation, the developer must monitor his waste water. This self-monitoring with regular reporting to the Agency is done to insure that the standards continue to be met.

The Agency issues no permit for longer than five (5) years. Currently, however, no permits are being issued for a time period beyond 1980.

- Issuables

The Agency issues:

.. Construction permit

.. Operation permit

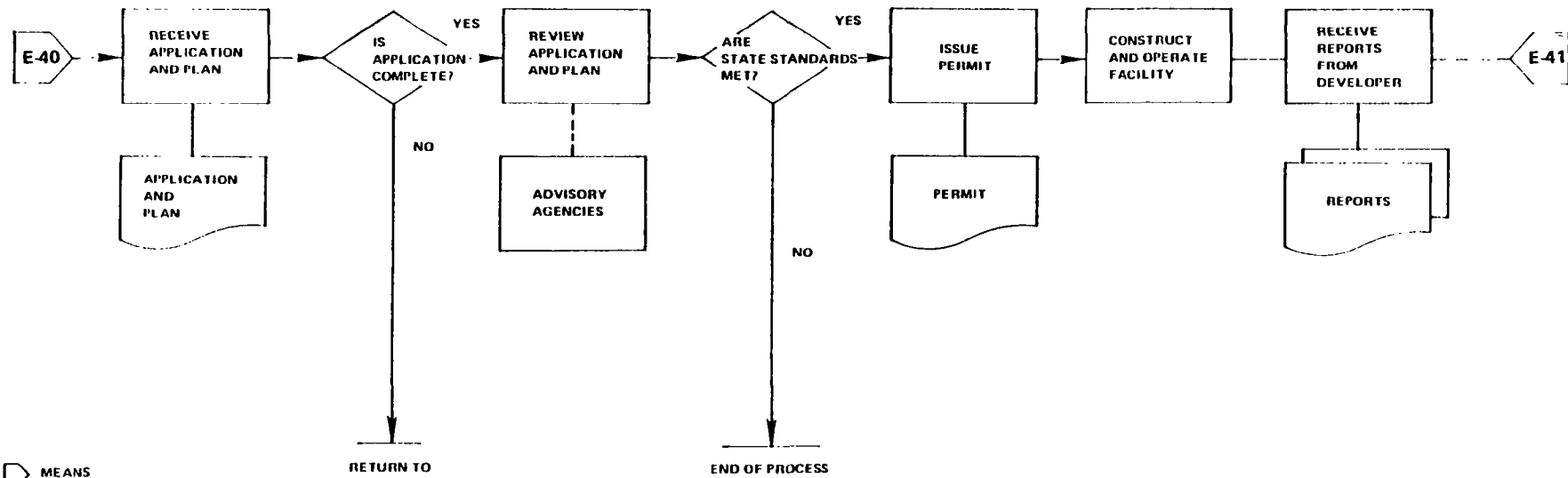
- Advisory Agencies

.. Environmental Protection Agency

.. Water Commission

.. State Game and Fish Department

**NORTH DAKOTA DEPARTMENT OF HEALTH
STATE WATER POLLUTION PREVENTION AGENCY**



- D** MEANS
- STATE AGENCY
 - AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
 - OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

(d) SOUTH DAKOTA

. South Dakota - Office of Cultural Preservation

The Office of Cultural Preservation operates to mitigate the damages of any energy development activity which may have an effect on archaeological sites or areas of historical significance. Any project which is Federally funded, assisted, licensed, or approved must report to the Office. The State Legislature has extended the authority of the Office to State land and, if the owner has registered with the State, to private lands within the State.

- Legal Authority

The Office of Cultural Preservation is authorized by the National Historic Preservation Act (P. L. 89-665), Executive Order 11593, and the South Dakota State Antiquities Law (SDCL 1-20-17 through SDCL 1-20-37), in conjunction with the National Environmental Policy Act.

- Description of the Process

Any project in the State which is Federally funded, assisted, licensed, or approved must have a plan filed with the State Office of Cultural Preservation (See Flowchart E-42). The Office reviews the proposed plan and makes a determination. The project may either have no effect on the significance of the area, have a positive effect on the area, or have an adverse effect. If the Office concludes there will be no adverse effect, documentation of such is sent to the President's Advisory Council for concurrence. If the Council does not concur, the same procedure as for an adverse effect is followed. If the project will have an adverse effect, the Office will advise the developer that a study must be conducted to detail the effects. The Office will conduct the study for the developer; however, the developer is free to have his study conducted by a qualified party of his own choosing. In either case, the developer must pay the costs of the study.

The object of this entire effort is to preserve areas or items of historical or archaeological significance. When the project is site specific, for example a coal mine, the Office attempts to prohibit all development from proceeding until any area, building, and so forth have been moved or had their significant articles salvaged before development proceeds. Where it is possible to shift the location of the facility, for example a generating plant, the Office will encourage such action.

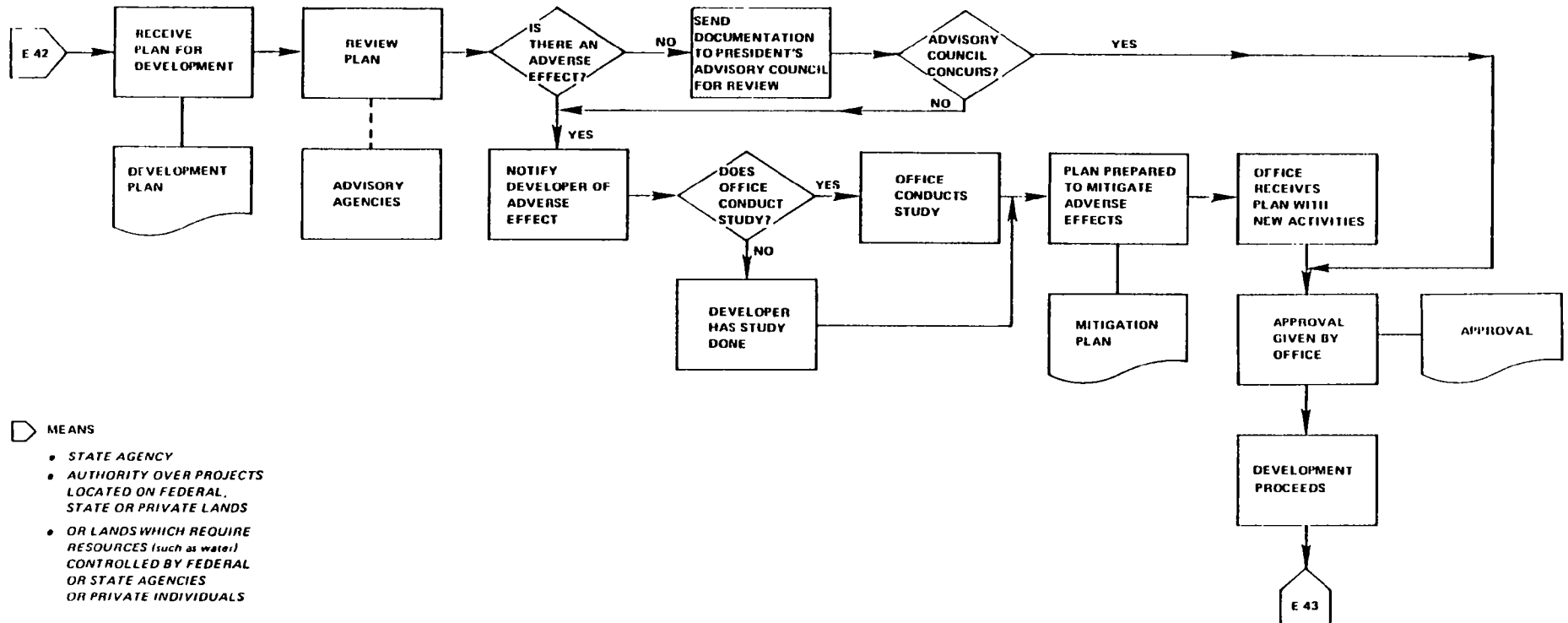
- Issuables

The Office issues approval for the compatability of the development project with the archaeological or historical heritage of the State.

- Advisory Agencies

- .. State Planning Bureau
- .. Department of Natural Resource Development
- .. Energy Policy Office
- .. Department of Environmental Protection
- .. President's Advisory Council

SOUTH DAKOTA OFFICE OF CULTURAL PRESERVATION



South Dakota - Public Utilities Commission

The State of South Dakota has no siting legislation, consequently the Commission has no authority over the siting of facilities or transmission lines. The Commission has recently received authority to determine public convenience and necessity. This authority, however, is so new that the Commission is somewhat uncertain as to the scope of its authority.

The focus of the Commission's authority is on the rate structure of utilities. For any utility which derives twenty-five percent (25%) or more of its revenue from South Dakota, the Commission must approve the financing mix for any new facilities.

- Legal Authority

The authority of the Commission is granted by Chapter 49-34A of the SDCL. The regulations governing the activities of the Commission are contained in "Public Utilities Commission of the State of South Dakota Procedure Rules of the Public Utilities."

- Description of the Process

Following the receipt of the financing description of any new construction by a utility, the Commission must make two determinations. First, does the utility derive twenty-five percent (25%) or more of its revenue from South Dakota. If the answer to this question is "no," the Commission has no jurisdiction. (See Flowchart E-44)

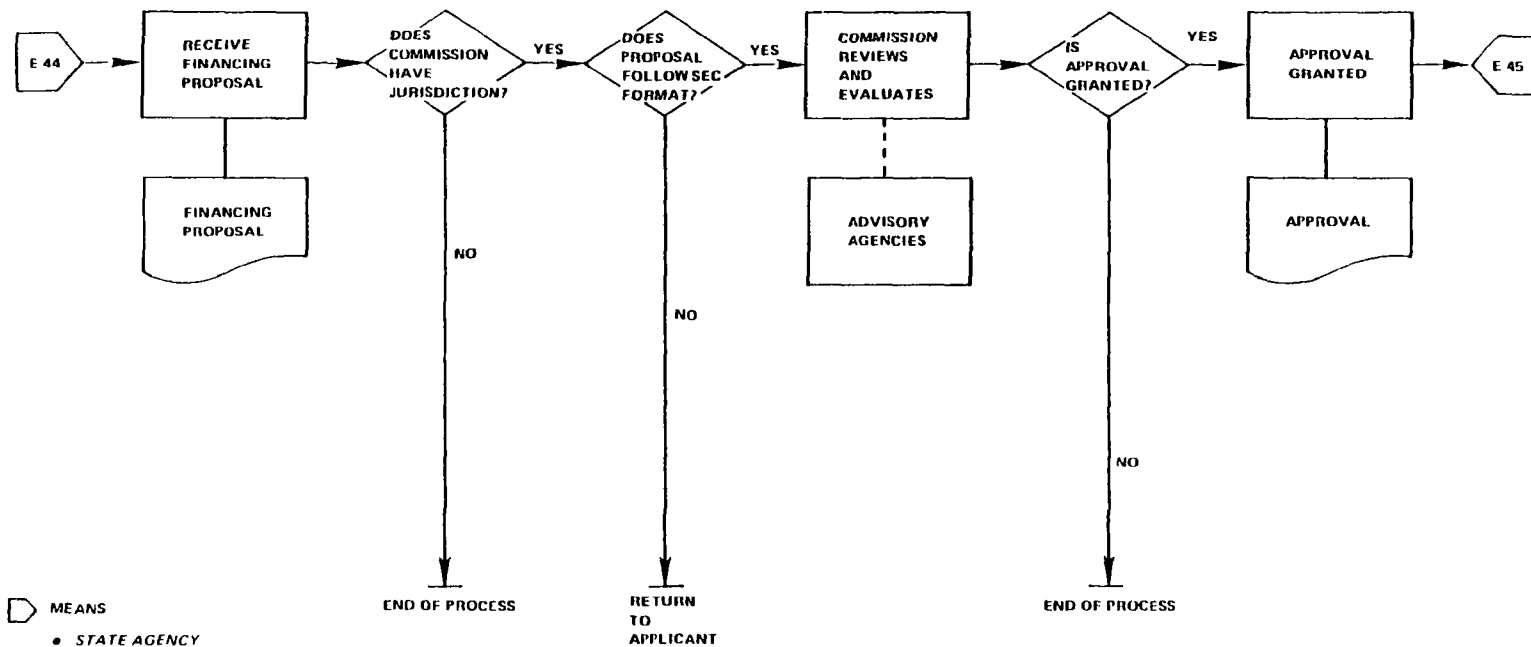
If the answer is "yes," the Commission must determine if the financing proposal follows the regulations of the Securities and Exchange Commission. If this determination is affirmative, the Commission reviews the proposal. Should the financing of the new facility not adversely effect the utility's rate structure, the Commission will approve the proposal.

- Issuables

.. Approval of the financing plan.

- Advisory Agencies

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION



MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

South Dakota - Department of Environmental Protection

The South Dakota Department of Environmental Protection is responsible for maintaining the quality of the air and water within the State and for monitoring hazardous and solid waste discharges. For air emissions and solid waste, the Department must issue a permit. The Department has not concluded an agreement with EPA at this time which will enable the Department to issue wastewater discharge permits under the National Pollutant Discharge Elimination System. Currently the Department cooperates with the EPA on the issuance of all such permits. On October 1, 1976, however, the Department will certify the federally-issued permits.

In addition, the State now requires that any State agency which takes a significant action must file an environmental impact statement with the Department. Actions of State agencies such as the issuances of licenses and permits may be considered significant State actions. The final statement of any agency must be filed with the Department at least thirty (30) days prior to the beginning of any activity resulting from the State action.

- Legal Authority

The Department operates under authority granted by several State statutes. The South Dakota Compiled Laws (SDCL) 34-16A provide air pollution control authority; SDCL 46-25 provide water pollution control authority; and SDCL 11-1A is the Environmental Policy Act.

- Description of the Process

Following the receipt of the application, the Department examines the application to determine if it is complete (See Flowchart E-46). If the application is complete, the Department determines if the emissions from the facility meet the standards of the State. If the State standards are met, the Department will issue a permit.

- Issuables

The Department issues:

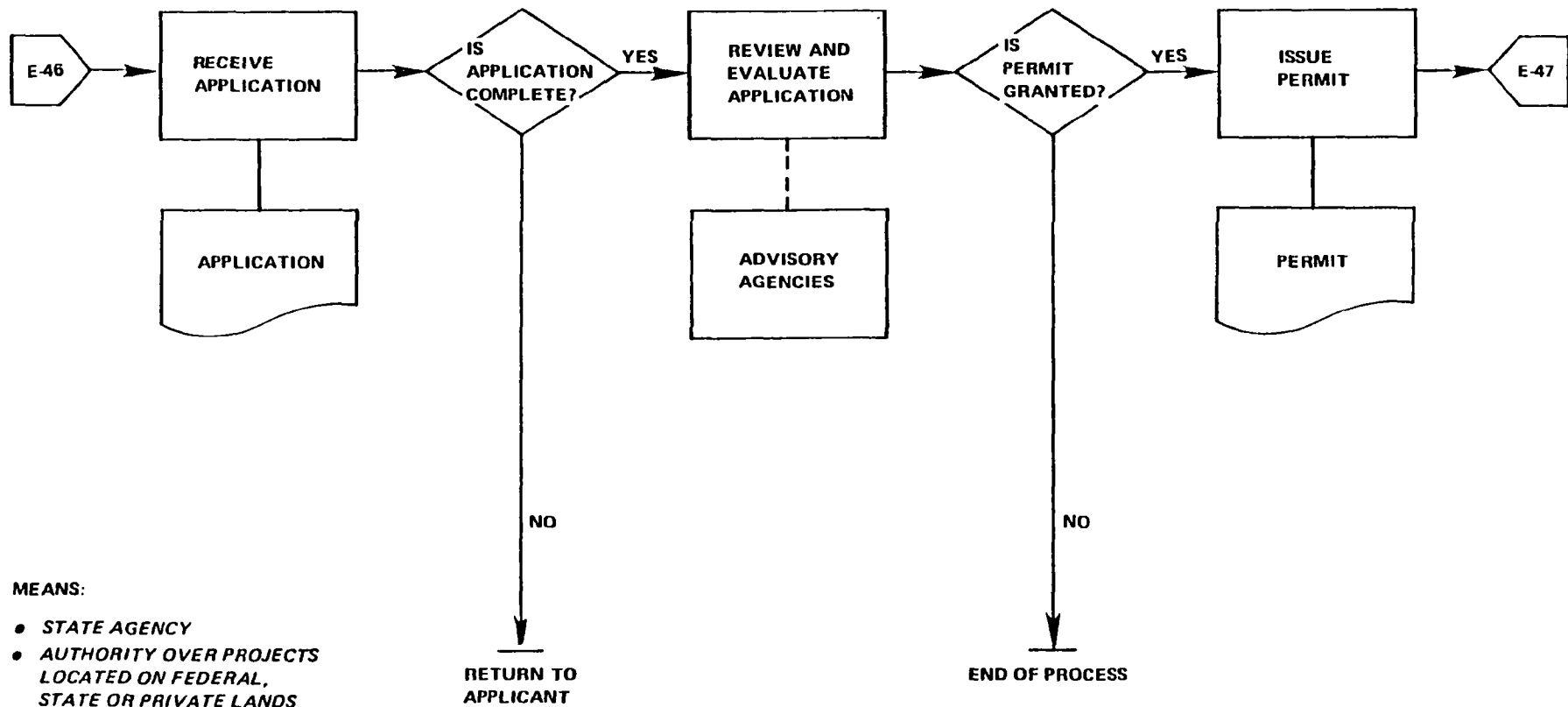
- .. A permit to construct under the air quality program
- .. A permit to operate under the air quality program

- .. A permit to operate a solid waste disposal facility

Advisory Agencies

- .. Environmental Protection Agency
- .. Department of Natural Resource Development
- .. Conservation Division (Department of Agriculture)
- .. State Planning Bureau
- .. Department of Game, Fish and Parks

SOUTH DAKOTA DEPARTMENT OF ENVIRONMENTAL PROTECTION



MEANS:

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

. South Dakota - Department of Natural Resource Development

The Department of Natural Resource Development has two divisions which play an important role in regulating energy development in South Dakota. The Water Rights Division has the authority over water appropriation and use within the State. The Geological Survey regulates the production and transportation of oil and gas.

The Water Rights Division must approve any use of water other than domestic. In addition, the Division must approve any reservoir. A developer which drills a water well must notify the Division.

The authority for these components of the Department extends to Federal, State, and private lands.

- Legal Authority

The authority for the Water Rights Division is granted by Chapters SDLC 46-1 through SDLC 46-32, the South Dakota Water Laws. The regulations governing the activities of the Division are contained in "Rules of Water Rights Commission."

- Description of the Process

Following the receipt of the application by the Division, the Division makes a determination of completeness (See Flowchart E-48). If the application is complete, the Division plans an advertisement of the application in newspapers local to the affected area for a two (2) week period. The application is then brought to the Water Rights Commission. The Water Rights Commission is an eight member, lay commission from across the State appointed by the governor.

After evaluating the application and the testimony, the Commission makes a determination. Any request for water rights for more than ten thousand (10,000) acre-feet per year must be approved by the State legislature.

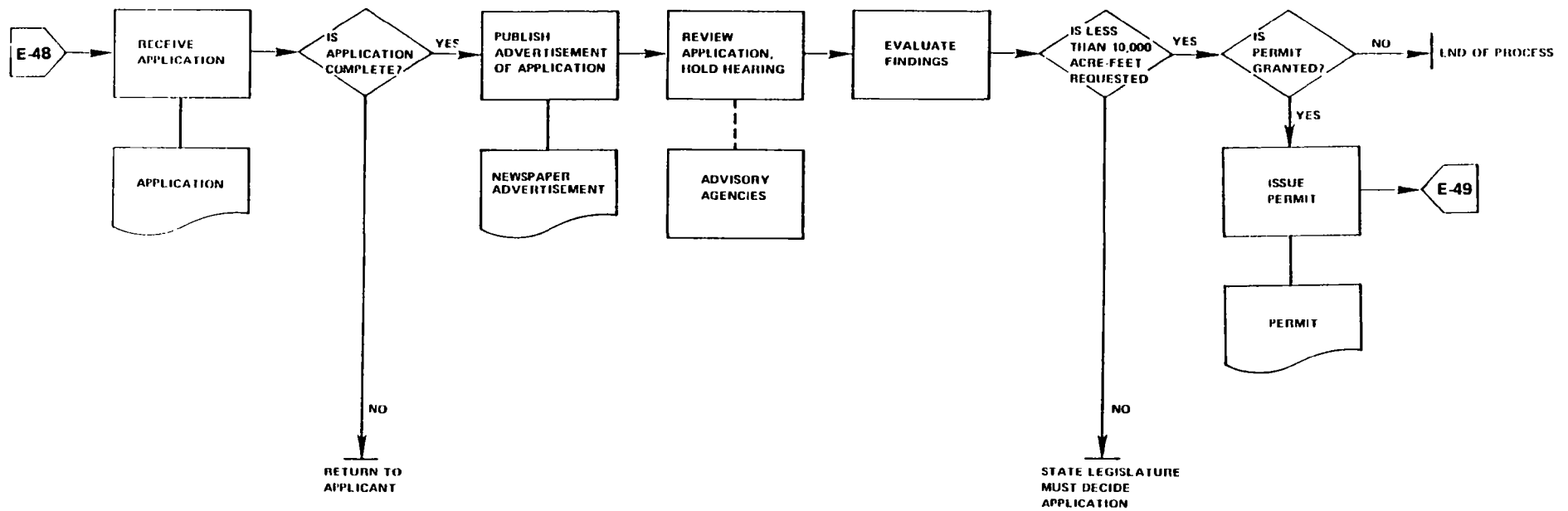
- Issuables

.. Water Rights Permit

Advisory Agencies

- .. Bureau of Reclamation
- .. Army Corps of Engineers
- .. Environmental Protection Agency
- .. Department of Environmental Quality
- .. Department of Game, Fish and Parks

**SOUTH DAKOTA DEPARTMENT OF NATURAL RESOURCE DEVELOPMENT
WATER RIGHTS DIVISION**



□ MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

(e) UTAH

Utah-State Planning Coordinator

- Legal Authority

The Office of the State planning Coordinator is charged with the responsibility of implementing the Executive Order on Environmental Quality of 1974. This same Executive Order also grants the Coordinator the authority for implementation of the order.

- Description of the Process

The State Planning Coordinator is notified of a proposed project either by an agency with jurisdiction over the project or by the party proposing the project (See Flowchart E-50). If the project is Federally assisted or in other ways falls under the National Environmental Policy Act or OMB Circular A-95 or A-102 procedures, then compliance with these procedures is sufficient and no further review is required by the Coordinator. A project not so exempted must have an environmental assessment prepared by the agency responsible for the proposed activity.

Information obtained through coordination with other agencies, together with information obtained from other appropriate investigation and study, is used in making an environmental assessment of the proposed action. This assessment allows the initial determination of whether or not the project will have a significant environmental impact. If not, the environmental assessment is forwarded directly to the Environmental Coordinating Committee (ECC) for review. If the action is deemed to have a significant impact, the responsible agency must first prepare an Environmental Impact Statement (EIS) prior to forwarding the EIS and the environmental assessment to the ECC for review.

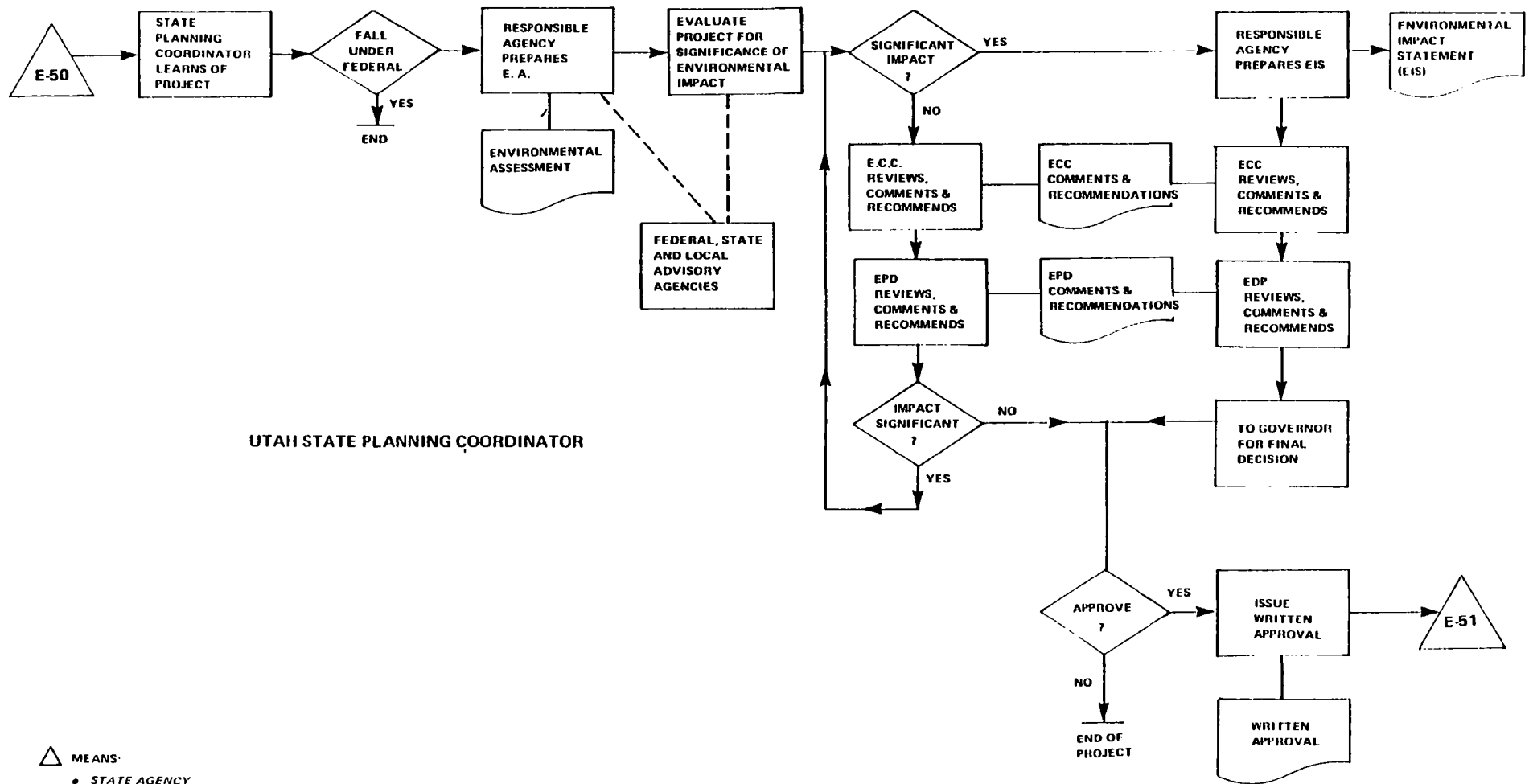
The ECC reviews the available information on the project, prepares its comments and recommendations and forwards everything to the Economic and Physical Development Interdepartmental Coordinative Group (EPD Group). The EPD Group then reviews the proposed project and prepares comments and recommendations. If the proposed project is again deemed to not have significant impact, the project approval is decided by the responsible agency and appropriate approval or disapproval issued. If a project is considered to have significant impact and an EIS has not yet been prepared,

then one must be prepared by the responsible agency and processed through the ECC and EPD Group for review. Any proposed project which has had an EIS prepared must go to the Governor with the cumulative comments and recommendations of all reviews. The final decisions on all projects with significant environmental impact, therefore, is made by the Governor and the appropriate approval or disapproval is issued.

- Issuables

- .. Environmental Assessment
- .. Environmental Impact Statement
- .. Project Approval

- Advisory Agencies



UTAH STATE PLANNING COORDINATOR

- △ MEANS:
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

Utah-Division of Health: Air Quality Bureau (AQB)

- Legal Authority

Responsibility for, and authority over, the control of air pollution sources in Utah is given to the Division of Health by the Air Conservation Act and the Utah Code Annotated, 1953, Title 26.

- Description of the Process

The applicant must file with the AQB a Notice of Intent to Construct which notifies the AQB that there will be a new contributor of air pollution. Usually plans and specifications are filed with the Notice. The Bureau then reviews and evaluates the proposed project, accepting input from interested agencies (See Flow-chart E-52).

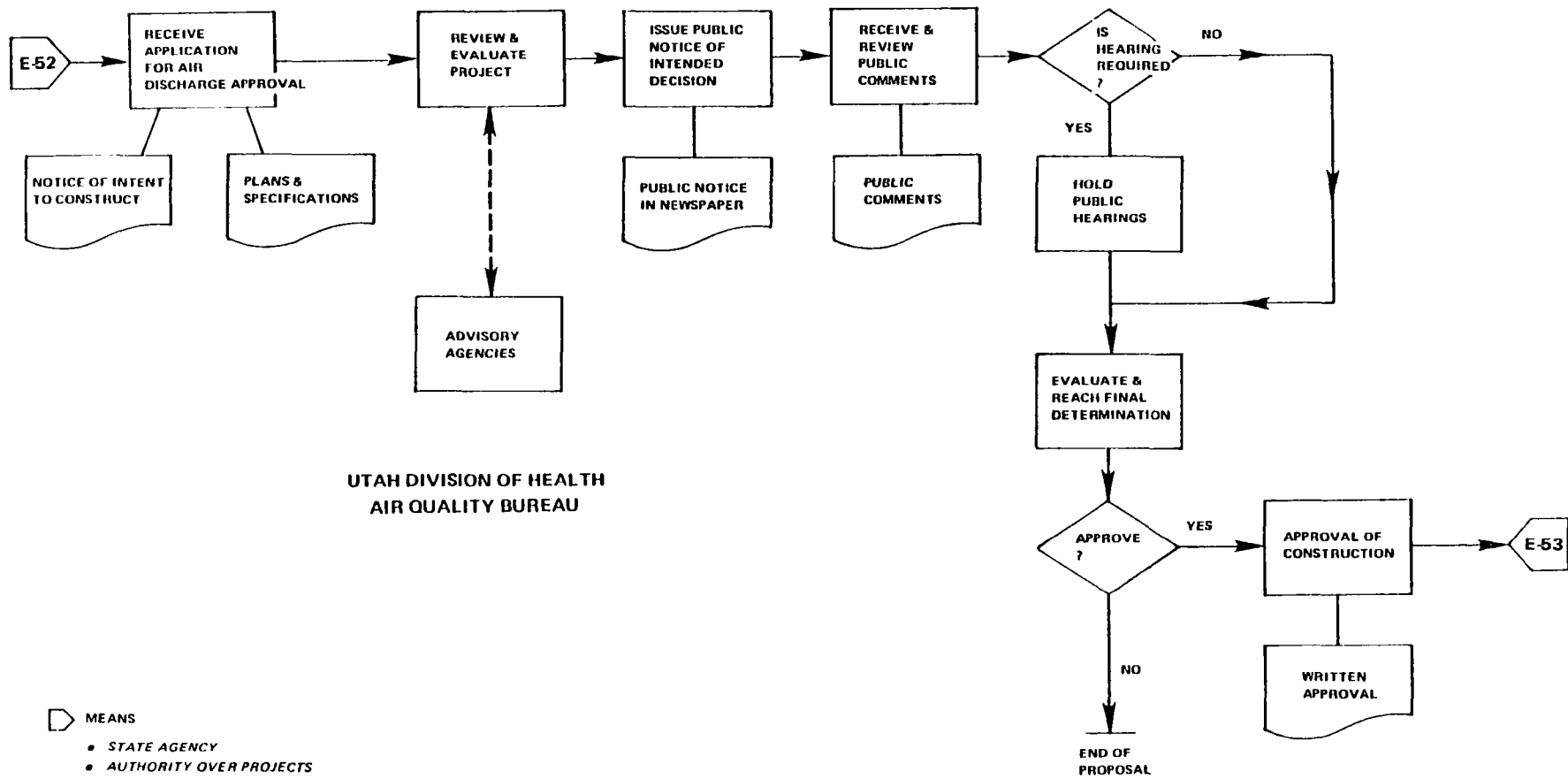
The Bureau makes it preliminary decision and issues public notice of the intended decision. This is to be published in the Salt Lake Tribune and a newspaper local to proposed project site. Comments are thereby solicited from the public, which are reviewed and evaluated. If public remarks warrant, public hearings may be held in which all interested parties are heard.

After all facts are gathered and all parties heard, the Bureau then reaches its final determination to either approve or deny the proposed project. If the project is approved, written notice is sent to the applicant.

- Issuables

- .. Public Notice of Intended Decision
- . Written Approval of Proposed Project

- Advisory Agencies



Utah-Bureau of Solid Waste Management

- Legal Authority

The Bureau of Solid Waste Management under the authority of the Division of Health, is responsible for the enforcement of all solid waste disposal regulations.

- Description of the Process

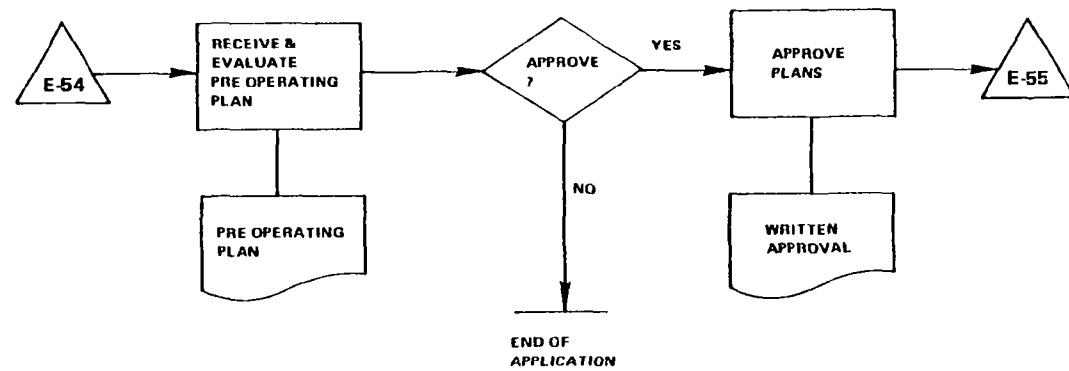
In this capacity, the Bureau must receive, review, and approve the preoperating plans prior to construction (See Flow Chart E-54).

- Issuables

Approval of preoperating plans

- Advisory Agencies

UTAH BUREAU OF SOLID WASTE MANAGEMENT



- △ MEANS.
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

Utah Bureau of Sanitation

- Legal Authority

The Bureau of Sanitation under the authority of the Division of Health, is responsible for the enforcement of all plumbing regulations.

- Description of the Process

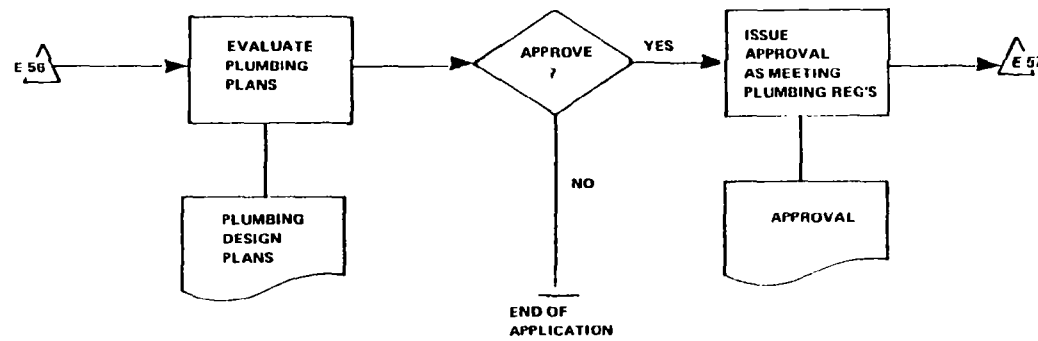
The Bureau must receive, review, and approve all plumbing design plans prior to constructing (See Flowchart E-56).

- Issuables

Approval of plumbing plans

- Advisory Agencies

UTAH BUREAU OF SANITATION



- △ MEANS:
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

Utah-Division of Health: Bureau of Water Quality (BWQ)

- Legal Authority

- Description of the Process

The Bureau of Water Quality is not yet supported by the statutes needed to comply with EPA Regulations. Thus, the only function it may perform is to analyze a proposed water discharge and to certify to the EPA that the proposal needs Federal standards and thus should be issued a Federal permit by EPA. Usually, applications are received one to three (1 to 3) years in advance of proposed construction (See Flow-chart E-58).

- Issuables

Certification to EPA

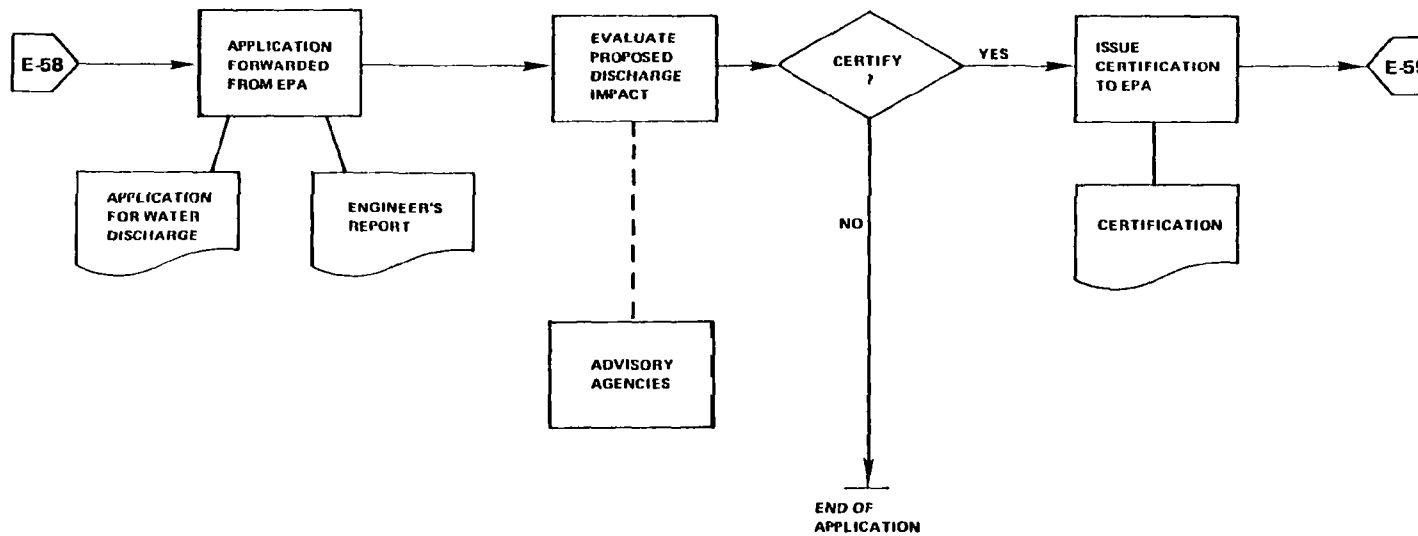
- Advisory Agencies

.. Environmental Coordinating Committee

.. Bureau of Natural Resources

.. Bureau of Solid Waste Management

UTAH DIVISION OF HEALTH
BUREAU OF WATER QUALITY



◇ MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

Utah Department of Business Regulation

- Legal Authority

The Department of Business Regulation, through the Public Service Commission (PSC), is responsible for supervision of all electric utilities in Utah. The Public Service Commission is granted authority in this area by Section 76-6-1 of the Revised Statutes of Utah, 1933.

- Description of the Process

When an application is received at the PSC, it must be determined that the PSC has jurisdiction and that the utility proposal involves at least a 25% change in the gross investment in the utility. If so, the PSC will investigate the proposal and reach a determination which is published in the form of a Report and Order. The Report and Order does not become effective until 20 days after it is issued. If, in that period, protests are filed, then a public hearing and reevaluation of the proposal is required.

After all hearings and evaluations, if the PSC decides to approve the proposal, a Certificate of Public Convenience and Necessity is issued. This allows the utility to proceed with the change (usually original construction or expansion) at the site in the proposal (See Flowchart E-60).

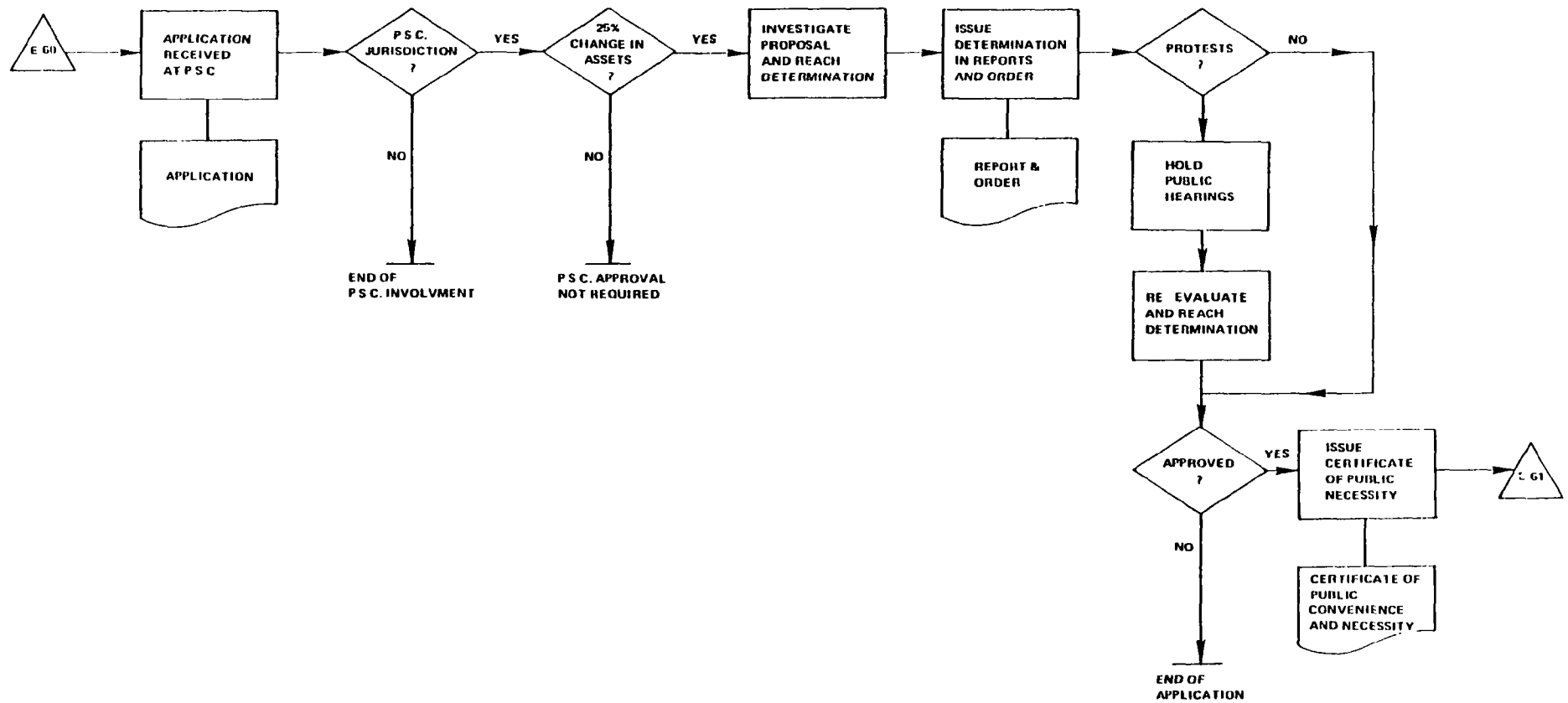
- Issuables

.. Report and Order

.. Certificate of Public Convenience and Necessity

- Advisory Agencies

UTAH DEPARTMENT OF BUSINESS REGULATION



- △ MEANS
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

. Utah-Division of Water Rights (DWR)

- Legal Authority

The Division of Water Rights of Utah is granted authority over water appropriation by the Utah Law of Water Rights of 1897 and subsequent amendments thereto.

- Description of the Process

Before commencing construction, enlargement, extension, or structural alteration of any distributing works, or performing similar work toward acquiring an appropriation right or enlarging an existing one, a written application must be made to the State Engineer. (See Flowchart E-62). Notice of the application is published; and protests that are filed must be considered by the State Engineer before he approves or rejects the application (Notice of the application and protests are allowed 30 days prior to State Engineer's decision). If approved, the applicant is authorized to proceed with construction of the necessary works and to take all steps required to perfect his proposed appropriation. The times within which construction of works shall be completed and the water applied to beneficial use are fixed by the State Engineer. The State Engineer issues a certificate of appropriation which evidences the holder's right of use.

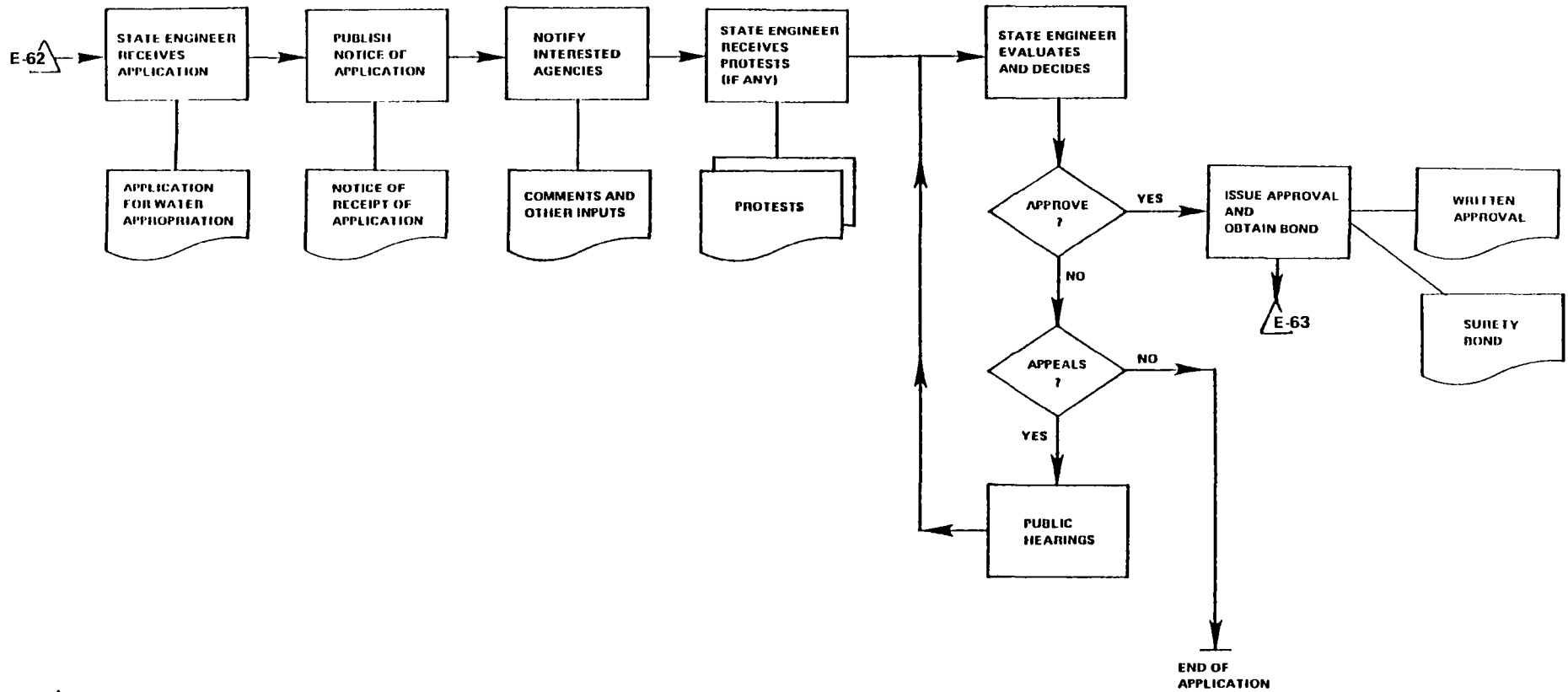
If the application is not approved, the applicant may appeal the decision, whereupon public hearings are held and the issue reevaluated and decided.

- Issuables

.. Certificate of Appropriation

- Advisory Agencies

UTAH DIVISION OF WATER RIGHTS



(f) WYOMING

. Wyoming - Department of Environmental Quality

The Wyoming Department of Environmental Quality (DEQ) is responsible for maintaining the quality of the air, water, and land within the State. Any energy developer must obtain an air, water, and land quality permit from the DEQ.

- Legal Authority

The Department of Environmental Quality operates under the authority of the Wyoming Environmental Quality Act of 1973.

- Description of the Process

For an air quality permit, a developer must apply to the Air Quality Division. For a water quality permit, a developer must apply to the Water Quality Division (See Flowchart E-64). The air quality permit must be issued prior to construction. To receive such a permit, the developer must show that neither the fugitive dust nor the new emissions will exceed the standards established by the Division.

Likewise for the water quality permit, the developer must show that any water from the project which is introduced into surface drainage or other water effluents will not exceed the standards established by the DEQ. Where the State standards are higher than those of the Environmental Protection Agency, the requirements of the EPA will be met when the State standards are met. Consequently, there will be no need for a developer to meet additional requirements to receive EPA approvals. If, however, Wyoming requirements are lower than those of the EPA, the higher Federal standards must be met before the developer may begin activity.

If the standards of the State are met, both the Air and Water Quality Divisions will issue permits to the developer.

- Issuables

The Air Quality Division issues:

- .. Permits to Construct
- .. Permit to Modify
- .. Permit to Operate

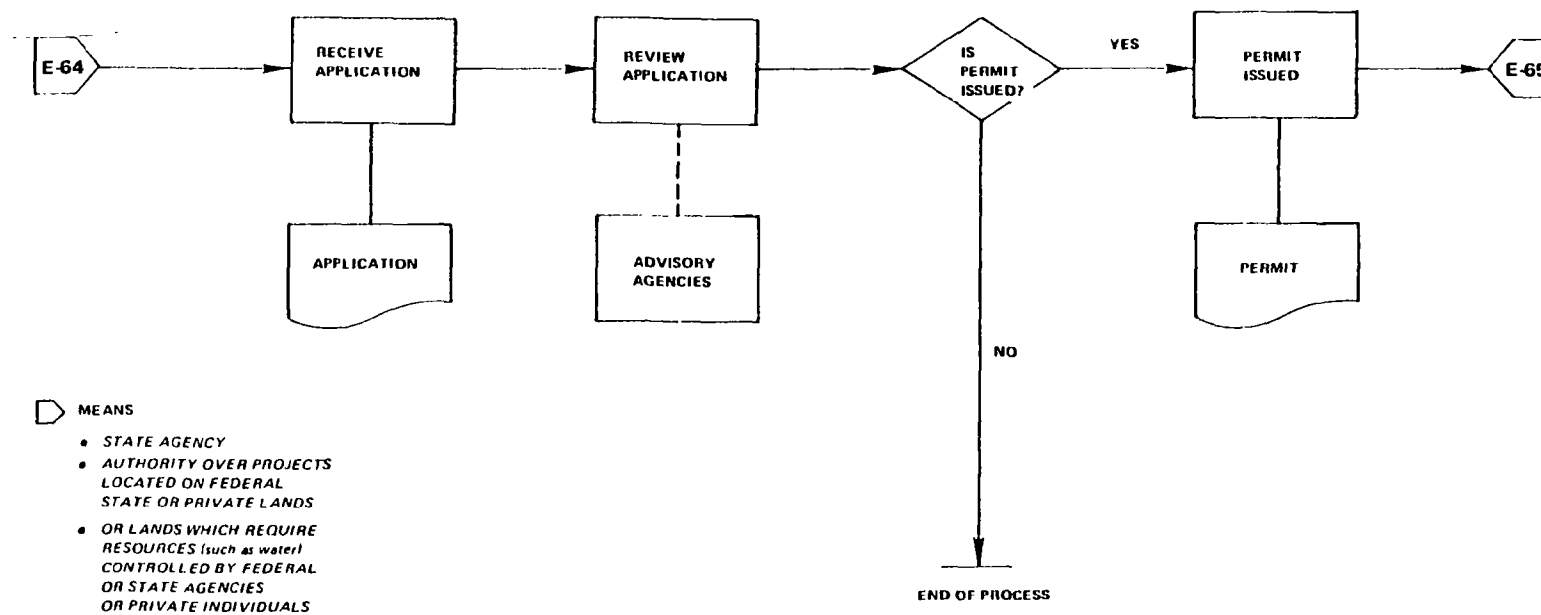
The Water Quality Division issues:

- .. Permit to Discharge and Operate
- .. Permit to Construct, Install, or Modify.

- Advisory Agencies

- .. State Engineer
- .. Game and Fish Commission
- .. Bureau of Reclamation
- .. Environmental Protection Agency.

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR AND WATER QUALITY DIVISIONS



. Wyoming - Department of Environmental Quality

The Wyoming Department of Environmental Quality (DEQ) is responsible for maintaining the quality of the air, water, and land within the State. Any energy developer must obtain an air, water, and land quality permit from the DEQ.

- Legal Authority

The Department of Environmental Quality operates under the authority of the Wyoming Environmental Quality Act of 1973.

- Description of the Process

Prior to the construction of an energy conversion facility, such as an electric generating plant or a coal gasification plant, or prior to commencement of mining operations, a developer must receive approval from the Land Division of the DEQ (See Flowchart E-66).

For a developer to begin construction activity, the developer must receive a land use permit. To receive such a permit the developer must meet the land use requirements of the Land Division.

For a developer to begin mining operations, the Land Division must issue two permits. The first permit required is a mining permit. The mining permit will be issued after the Land Division approves the developer's mining plan. The second requirement of the Division is that the developer submit a reclamation plan and a bond. The developer must also post a reclamation bond.

- Issuables

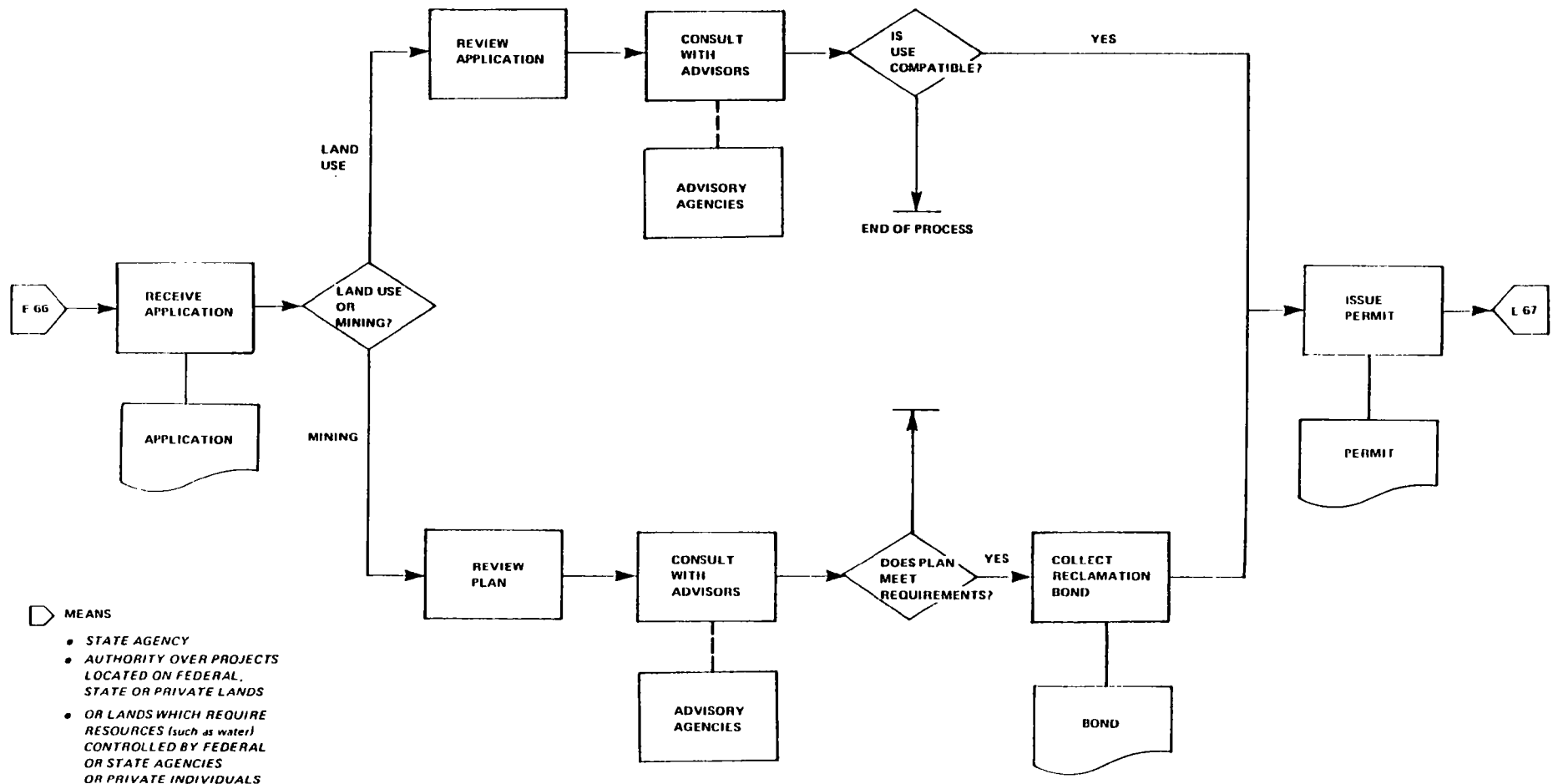
The Land Division issues:

- .. A Permit to Mine
- .. A License to Mine
- .. A License to Explore

- Advisory Agencies

- .. Land Use Commission
- .. Department of Economic Planning and Development
- .. State Geological Survey

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND DIVISION**



. Wyoming - State Engineer

The State Engineer issues all water rights permits and has the authority to administer the water supply. The authority of the State Engineer extends to both the diversion and use of water as well as attempts to convert water from one use to another. Any developer who requires water in the State, regardless of whether the project is located on Federal, State, or private lands, is subject to the jurisdiction of the State Engineer.

- Legal Authority

Wyoming Statutes 41-1.42 through 41-1.46 and Sections 9-160.22, 9-160.29, and 9-160.31 present the legal authority for the State Engineer.

- Description of the Process

Following the receipt of the completed application, the first step is for the State Engineer to conduct an analysis of the application (See Flowchart E-68). If the application is for a large amount of water, e.g., for the cooling of an electric generating facility or for use in a coal gasification plant, the State Engineer would determine that it would be necessary for the interdepartmental water conference to conduct a feasibility study. This study is designed to assess the impact of the proposed project and to evaluate the application in the context of the total State intention for water use.

If the amount of water is small, e.g., drilling a water well to support a coal exploration effort, the application decision will be made without the feasibility study.

In the conduct of the feasibility study, the water conference will analyze the application and supporting data; conduct public hearings to obtain the advice of private persons, local groups, and associations; and undertake any studies which the conference feels necessary. At the conclusion of the feasibility study, the water conference makes the decision whether or not to proceed with the application. If the decision is made to proceed, the State Engineer holds hearings under the State's contested hearing procedure. The decision is then made on the application.

If the State Engineer issues a permit, it is issued with the constraints under which the recipient must operate. When the stipulations are met, the permit is good for as long as it is used. Monitoring is done by division personnel. After completion of construction, the operation is advertised to allow any parties who were adversely affected to respond.

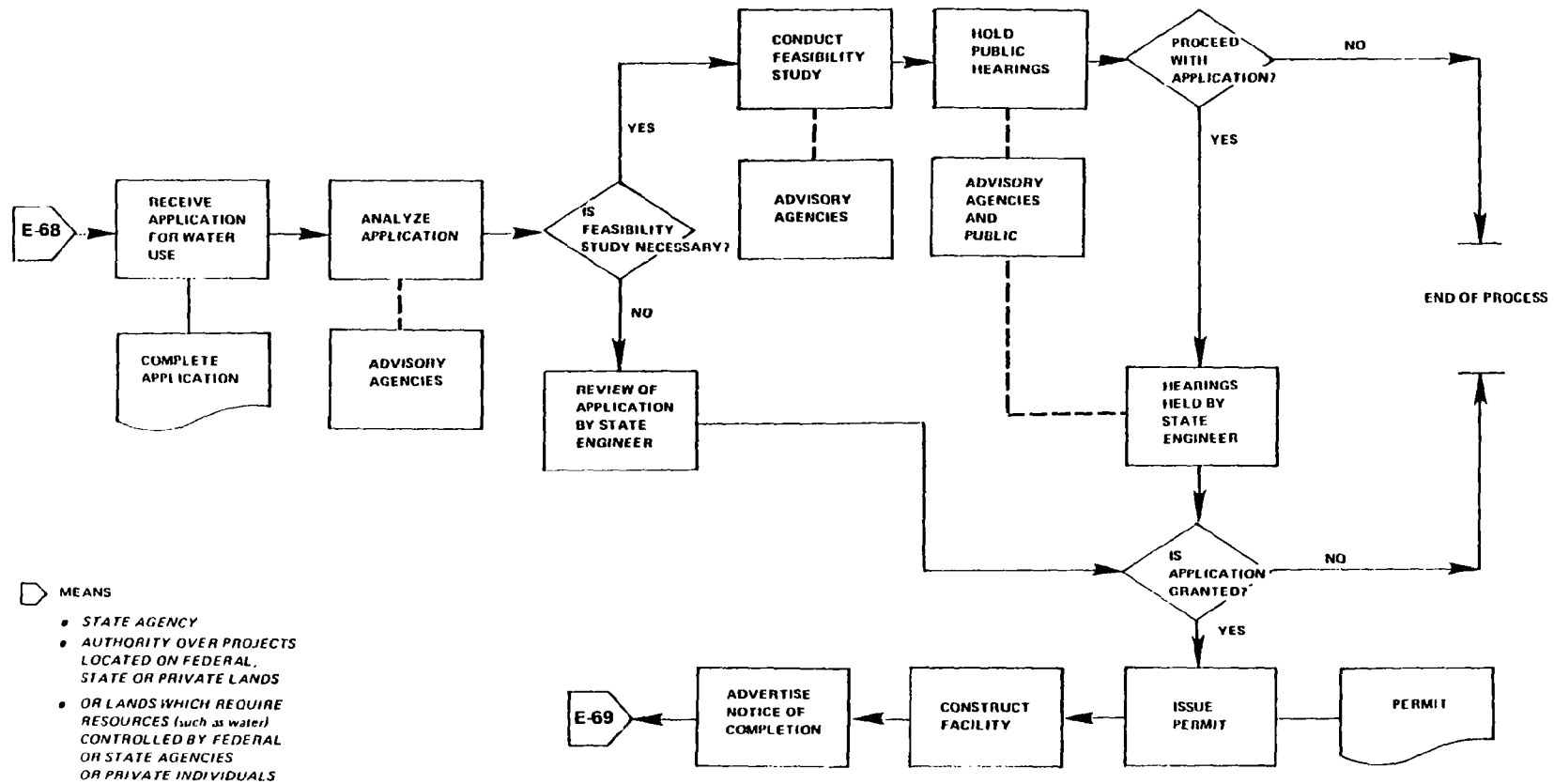
- Issuables

The State Engineer issues a water rights permit and the right to change water from one category to another.

- Advisory

- .. Department of Economic Planning and Development
- .. Department of Game and Fish
- .. Department of Environmental Quality
- .. State Land Office
- .. Department of Recreation.

WYOMING STATE ENGINEER



. Wyoming - Public Service Commission

The Public Service Commission of Wyoming is responsible for the intrastate regulation of electric generation facilities, natural gas, oil pipelines, and transmission lines along with non-energy related services such as telephone and water companies. The Commission gives a utility the right to serve an area and, in return for that right, a utility assumes the obligation to provide that service.

- Legal Authority

The Public Service Commission of Colorado operates under the legal authority granted by Chapter 83 of the Session Laws of Wyoming, 1963. The regulations governing the activities of the Commission are contained in "Rules of the Public Service Commission of the State of Wyoming" reissued May 1, 1967.

- Description of the Process

Following the receipt of the application (See Flowchart E-70), the Commission reviews the application and schedules public hearings. If, in advance of the public hearings, the Commission is able to determine who the parties are that are involved or affected by the proposed action, the Commission will send a notice to those affected. In all cases, however, public notice is given for the scheduled hearings.

At the hearings, testimony may be given by other agencies and members of the general public. The Commission gathers evidence at the hearing and employs this evidence in making a determination on the application. If the Commission decides to grant the application, the Commission publishes a public notice of the decision. If the application is denied, the applicant is so notified. In either case, parties who feel they are aggrieved by the action may file for an appeal. If the appeal is granted, a re-hearing may be held. If an appeal is not allowed, the Commission publishes its final decision.

Should the decision be in favor of the applicant, the Commission grants a certificate.

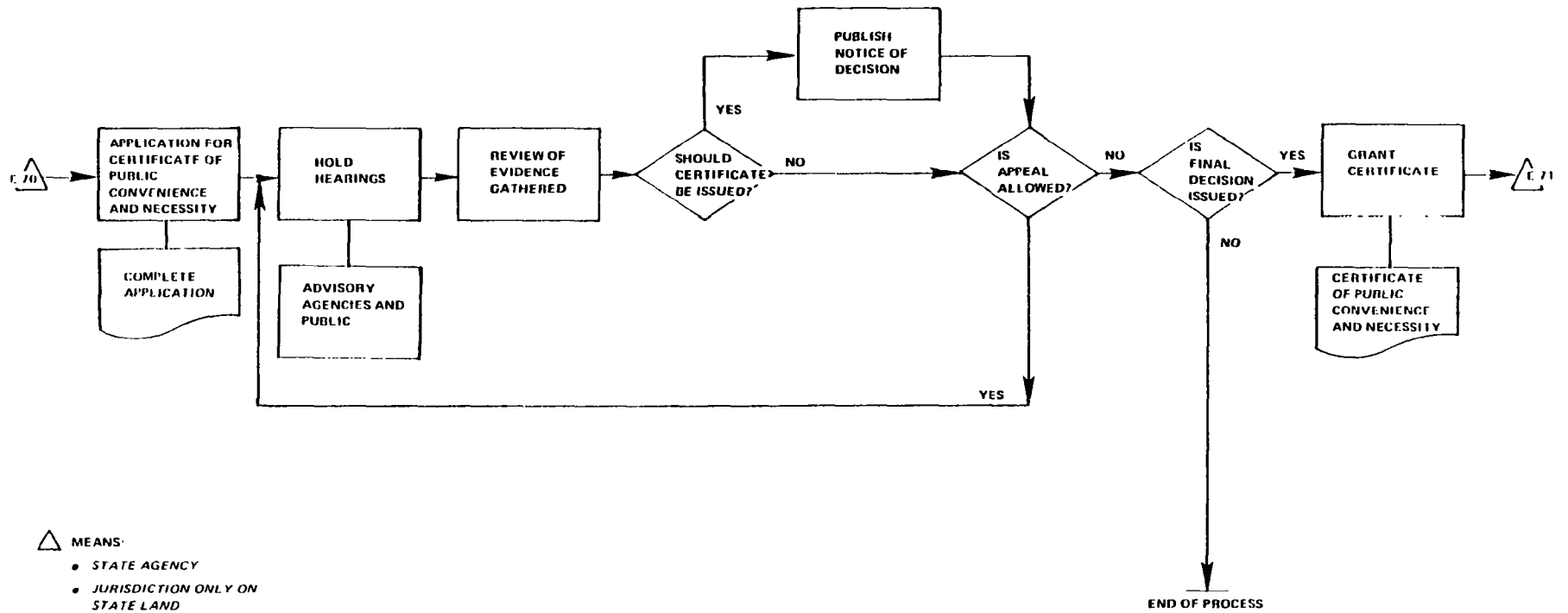
- Issuables

The Commission issues a Certificate of Public Convenience and Necessity.

- Advisory Agencies

- .. Department of Transportation
- .. Interstate Commerce Commission
- .. Federal Power Commission
- .. Federal Communications Commission.

WYOMING PUBLIC SERVICE COMMISSION



Wyoming - Industrial Siting Council

The Industrial Siting Council has the responsibility for approving energy development and other projects within the State which are of sufficient size to have a major impact on the communities in which the project is located. Included in the consideration of the Council are such impacts as roads, schools, hospitals, housing, police and fire protection.

- Legal Authority

The Council operates under the authority of the Industrial Development Information and Siting Act, Wyoming Statutes 35-502.75 through 35-502.94. The regulations governing the activities of the Council are presented in the "Rules and Regulations of the Industrial Siting Council, State of Wyoming" adopted September 10, 1975.

- Description of the Process

Any electric generating facility which has the capability of generating one hundred (100) megawatts of electricity or more or any addition to an existing generating facility which will increase the capacity of the existing facility by at least one hundred (100) megawatts must receive approval prior to construction by the Council. In addition, any newly constructed transmission lines that are necessary and essential to the operation of the generating facility must be approved by the Council.

A developer must submit an application to the Council for the receipt of approval and a permit (See Flow-chart E-72). Section 5 of the Council's Rules and Regulations specifies the contents of the application. The Council has no application forms. An application to the Council must present evidence that all other required permits have been obtained and that the applicant has complied with all applicable laws. Consequently, the first step following the receipt of the application is for the administrative staff to check completeness of the application, to verify that all applicable permits have been obtained, and to conduct an independent analysis of the application.

Following the determination of completeness by the administrative staff, a public hearing on the appli-

cation is scheduled. During this time, the Council conducts a study of the effect on the project area. This study is paid for by the applicant. Following the hearing and receipt of evidence, the Council must make a decision on the application. The Council has three choices. The Council may:

- .. Approve the application without any conditions
- .. Approve the application with conditions
- .. Reject the application pending further study.

If the application is approved, the developer may proceed following the approved plan. If the application is approved with conditions, the developer is notified of the required modifications and the changes must be made prior to the initiation of any activities. If the application is rejected pending further study, the applicant has thirty (30) days to appeal for a new hearing by the Council. If the application is denied a second time, the applicant may appeal through the courts following the procedures in the Wyoming Administrative Procedures Act.

Regardless of the decision of the Council, when the Council has reached a decision the Council must publish the study, its findings, and the decision. The local governments which would be affected by the project must receive copies and copies must be filed with the county clerk's office. In addition, notice of the Council's decision must be published in at least one newspaper of general circulation within the affected area.

- Issuables

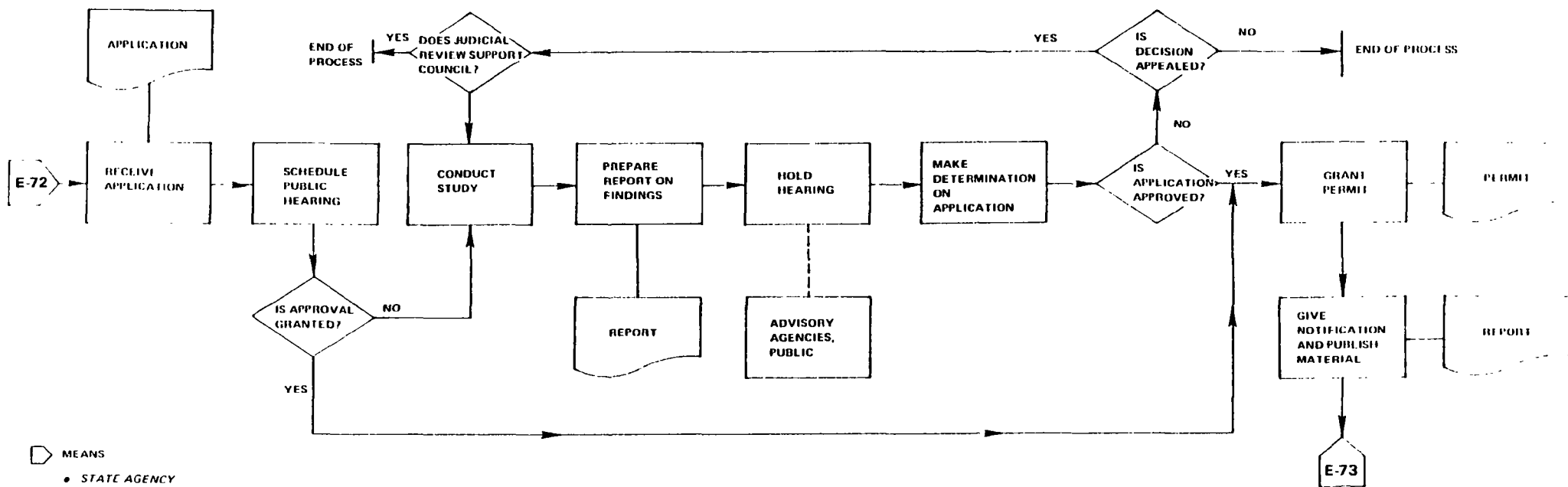
The Council issues a permit for the construction or operation of any industrial facility or facilities within the State.

- Advisory Agencies

- .. Department of Environmental Quality
- .. State Engineer
- .. County Commissions
- .. Army Corps of Engineers

- .. Environmental Protection Agency
- .. Nuclear Regulatory Commission
- .. Interested Parties.

WYOMING INDUSTRIAL SITING COUNCIL



MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

4. ELECTRIC TRANSMISSION LINES

Electric transmission lines are those lines which attach to the generating facility and conduct the electricity away from the generating facility into the distribution network. Transmission lines are often of long length and transport high voltage electricity. Generally the lines carry electricity of 115 to 230 kilovolts (KV).

Distribution lines, on the other hand, bring the electricity to the individual consumer. These lines, usually below forty-six (46) kilovolts are of shorter length than transmission lines.

This subsection of the report presents the agencies which regulate the siting and construction of electric transmission lines.

(1) Federal Agencies Regulation The Siting and Construction of
Electric Transmission Lines

This part of the report presents the Federal agencies which regulate the siting and construction of electric transmission lines.

(a) Bureau of Land Management

The location of electric generating facilities may require rights-of-way on Federal lands. The BLM is the principal grantor of rights-of-way on Federal lands. Other agencies, for example the Forest Service and the National Park Service, often control surface rights to land. Because of the similar process, the description of the process is being presented here using the BLM as the principal agency.

. Legal Authority

The granting of rights-of-way on Federal lands are governed by Title 43 of the Code of Federal Regulations Subpart 2800.

. Description of the Process

The first step in the consideration of a right-of-way application is the determination of whether the agency has jurisdiction over the land (See Flowchart E-2). If the land is under the control of the BLM an Environmental Assessment Record (EAR) is prepared by the BLM. Based on the findings in the EAR, the BLM determines whether the environmental impact is significant enough to require an Environmental Impact Statement (EIS).

If the BLM requires only the EAR, the evaluation of the request is made on the basis of the content of the EAR and the advice provided by other agencies who participate in the review process. If an EIS must be prepared, the lead agency is assigned and the preparation plan, i.e., the plan of action to handle the EIS, is drafted. The Office of Environmental Project Review is responsible for coordinating the BLM's participation in the EIS review. Depending on the complexity of the EIS, the statement takes from nine (9) months to two (2) years to complete the process. A detailed description of the proposal and baseline area studies are important for any EIS. The BLM must wait thirty (30) days after the EIS is submitted to the Council on Environmental Quality (CEQ) before any decision can be given.

The EAR/EIS process is critical to the protection of the environment. Once a permit for exploration or mining has been given, the recipient can not, by law, be denied access to the site. Consequently, it is crucial that the BLM place stipulations on the rights-of-way granted to ensure the protection of the environment. Compliance checks are conducted during the construction phase to verify the developer's compliance with the stipulations in the right-of-way.

The USGS is responsible for monitoring any stipulations on effluents and any other stipulations in the right-of-way.

Of FS land, the FS monitors the rights-of-way and enforces public safety.

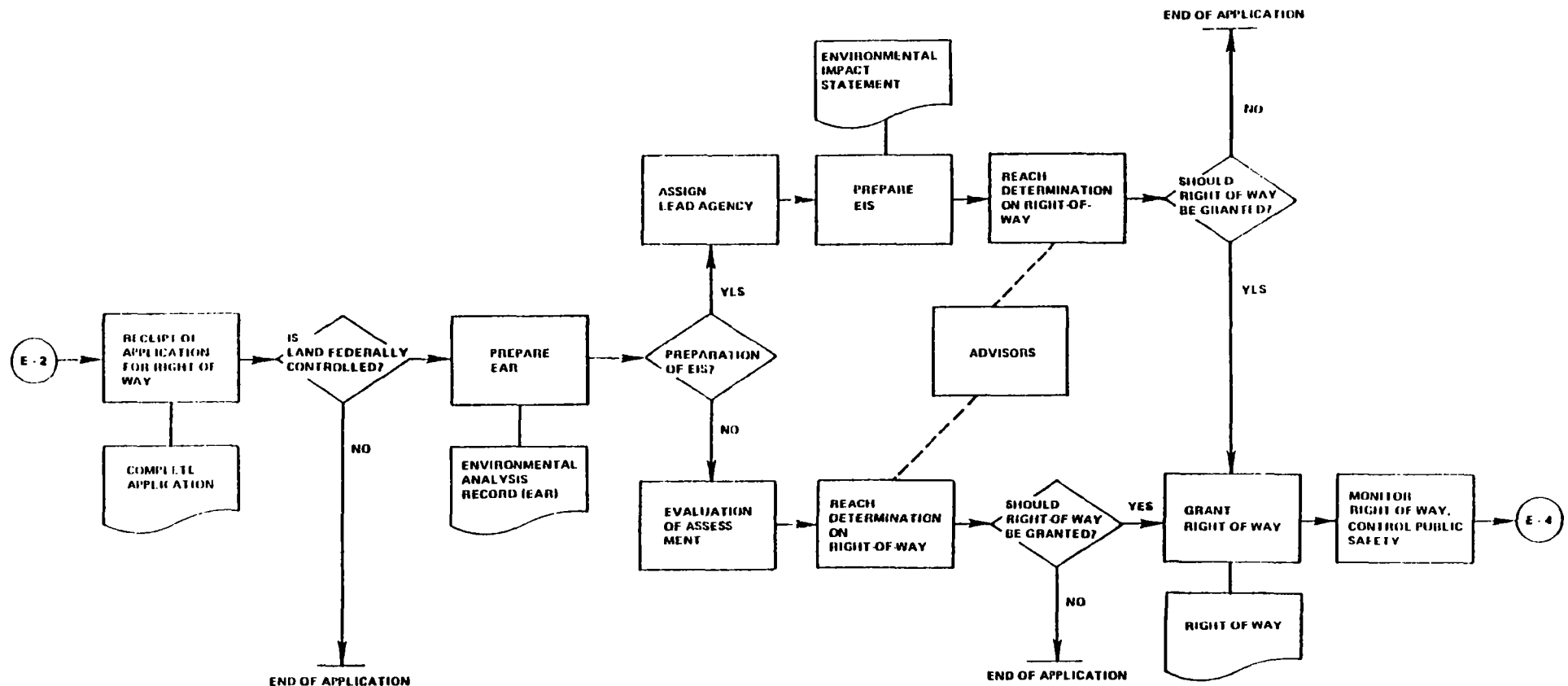
- . Issuables

The BLM issues rights-of-way

- . Adivsory Agencies

Fish and Wildlife Service

**BUREAU OF LAND MANAGEMENT
RIGHT-OF-WAY PERMIT**



MEANS:

- FEDERAL AGENCY
- JURISDICTION ON FEDERAL LANDS OR LANDS CONTROLLED BY A FEDERAL AGENCY

(b) Bureau of Indian Affairs (BIA)

The Bureau of Indian Affairs (BIA) is authorized to approve rights-of-way for electric power facilities over Indian lands. No right-of-way is issued over tribal lands, however, without prior consent of the tribe.

- . Legal Authority

The regulations governing applications to the BIA are contained in Title 25 of the Code of Federal Regulations.

- . Description of the Process

The application for a right-of-way is received in the regional office of the BIA (See Flowchart E-3). The application is reviewed by the BIA to determine whether or not an Environmental Impact Statement is necessary. If an EIS is necessary, the BIA prepares a draft copy of the EIS. Advisory agencies and interested persons are invited to comment upon the EIS and public hearings are held. The findings of the comment period and from the advisory agencies' reviews are incorporated into the final EIS.

If the BIA determines that the impact of the requested application is not sufficient to require an EIS, the decision-making process is based on the findings of the environmental assessment.

The results of the EIS or the assessment are forwarded to the national office for review and comment. The package is then returned to the regional office with any comments. The regional office then makes the determination of granting the right-of-way permit. If the BIA approves the application, the agency issues a permit.

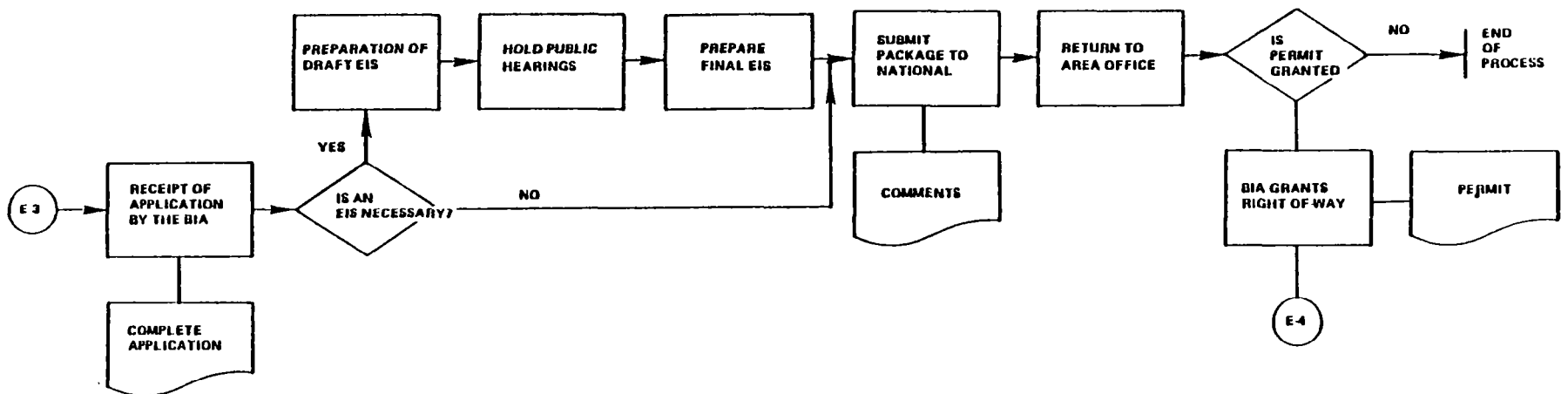
- . Issuables

The BIA issues a right-of-way permit.

- . Advisory Agencies

- Fish and Wildlife Service
- Bureau of Land Management

**BUREAU OF INDIAN AFFAIRS
RIGHT-OF-WAY PERMIT**



MEANS:

- **FEDERAL AGENCY**
- **JURISDICTION ON FEDERAL LANDS OR LANDS CONTROLLED BY A FEDERAL AGENCY**

(c) Army Corps of Engineers

The Army Corps of Engineers is responsible for monitoring the condition of navigable water whether the water is a tidal area, ocean or gulf (from the shore to the continental limit), river, stream or lake. A single permit is required for all activities including:

- . Work in, or placement of, structures in the water. This encompasses such activities as building intake and outfall structures, transmission lines across waters, and so forth
- . Disposal of dredged or fill material into navigable waters including the transportation of such material on navigable waters for the purpose of disposal
- . Other activities which may have an effect on navigable waters.
- . Legal Authority

The Army Corps of Engineers operates under the River and Harbor Act of the 1899; the Federal Water Pollution Control Act Amendments of 1972; and the Marine Restriction, Research, and Sanctuaries Act of 1972. The regulations governing actions are in Title 33 of the Code of Federal Regulations.

- . Description of the Process

In the initial step following the receipt of the application, the Army Corps of Engineers prepares an environmental assessment (See Flowchart E-1). This assessment is prepared employing consultation from other parties, both public and private, who may have an interest in the action. Following the evaluation of the assessment, the Corps determines if an Environmental Impact Statement (EIS) is required.

If the Corps determines that the impact is not sufficient to require an EIS, the Corps consults with advisory agencies on the decision to grant the request. As part of this decision-making process the Corps may hold public hearings; however, public hearings are not required.

On the other hand, if an EIS is required, the Corps will prepare the EIS and circulate it among the advisory agencies. The Corps holds public hearings. Using the information gathered in this procedure, the Corps makes a determination on the application.

If the Corps grants the permit, a Federal right-of-way may

be required. If so, the applicant must file with the agency controlling the surface rights for the appropriate right-of-way.

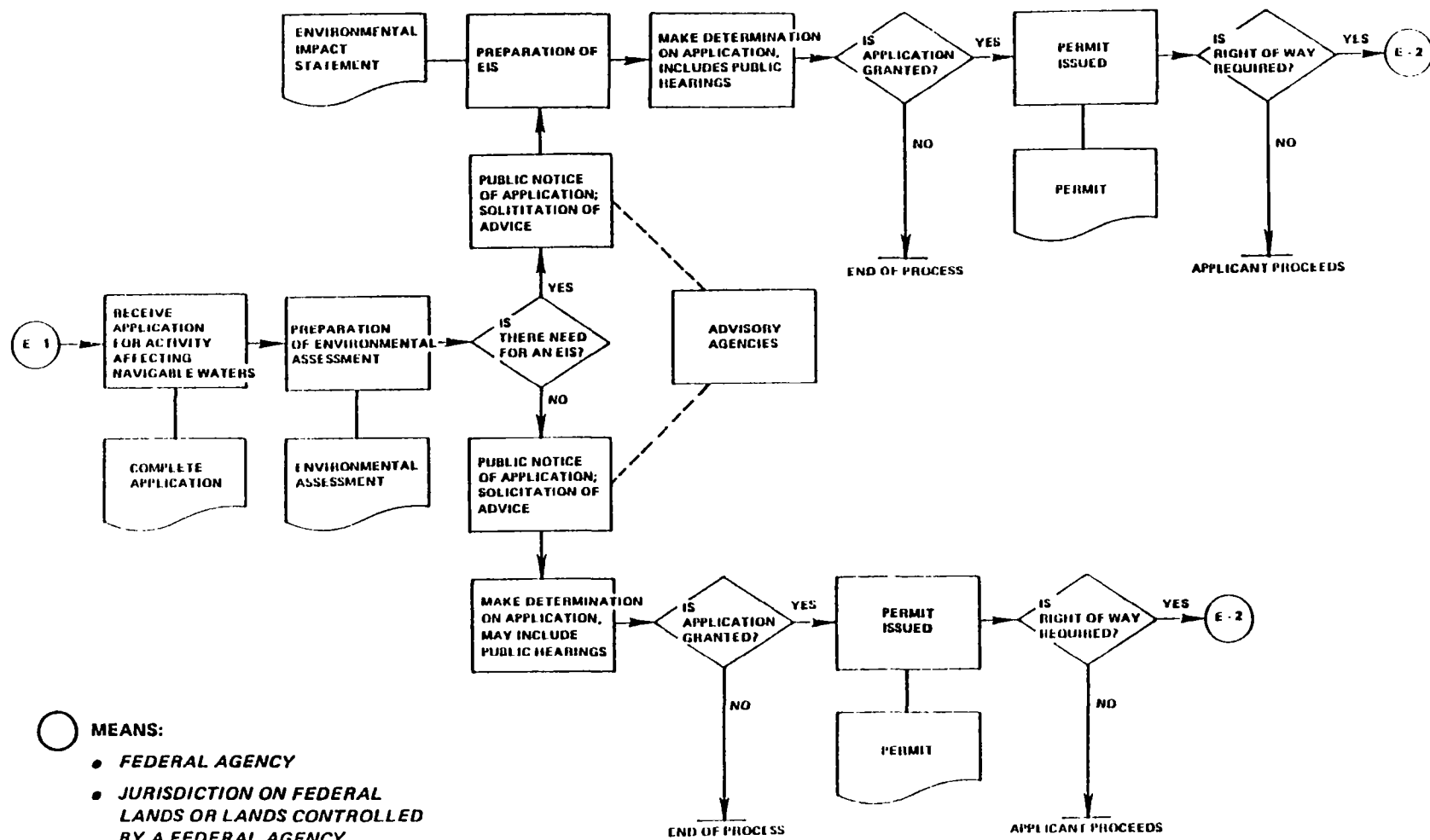
- . Issuables

The Army Corps of Engineers issues a single permit for activities affecting navigable waters.

- . Advisory Agencies

- Fish and Wildlife Service
- Bureau of Reclamation
- National Oceanic and Atmospheric Administration

CORPS OF ENGINEERS



(d) Nuclear Regulatory Commission (NRC)

The Nuclear Regulatory Commission regulates the siting of electric transmission lines which are built as part of an NRC licensed nuclear-fueled electric generating project. When transmission lines are to be constructed as part of an NRC licensed project, they are considered as part of the total application package. Primary lines to the point of interconnection with the power system are subject to NRC licensing and conditions of licenses.

For a discussion of Legal Authority, a Description of the Process, Issuables, and Advisory Agencies involved in NRC's licensing of nuclear-fueled electric generating facilities and transmission lines, see Part 3, Subsection (1) (a) and (b) of this section.

(e) Federal Power Commission (FPC)

The Federal Power Commission regulates the siting of electric transmission lines which are built as part of an FPC licensed hydroelectric project. In addition, the FPC considers power line routes in authorizing construction of transmission lines from licensed non-Federal projects on lands subject to Federal jurisdiction.

When transmission lines are to be constructed as part of an FPC licensed project, they are considered as part of the total application package. Primary lines to the point of interconnection with the power system are subject to FPC licensing and conditions of licenses. Secondary lines are subject to FPC consideration as part of the application package, but the FPC cannot attach conditions concerning secondary lines to licenses. Such conditions, if any, are the jurisdiction of the state government concerned.

The FPC considers power line routes from licensed non-Federal projects on lands subject to Federal jurisdiction. The procedures for obtaining a license for these transmission lines are the same as for hydroelectric facilities on Federal lands.

For a discussion of Legal Authority, a Description of the Process, Issuables, and Advisory Agencies involved in FPC's licensing of hydroelectric facilities and transmission lines, see Part 2, Subsection (1)(a) of this section

(f) Federal Aviation Administration (FAA)

Whenever the erection of a tower is proposed for a location which may affect air traffic safety, a Notice of Intent to Construct a Tower must be filed with the FAA.

. Legal Authority

The FAA is charged with the responsibility for air safety by Title 14 of the Code of Federal Regulations.

. Description of the Process

If an operator suspects a proposed tower to be under FAA jurisdiction, he must file a Notice of Intent to Construct a Tower at least 30 days prior to construction (See Flowchart E-11). The FAA then determines whether the proposed tower would be considered an obstruction to air traffic safety. This usually takes 2 to 3 weeks. If the proposed tower is not an obstruction, then the applicant may proceed with construction.

If it is an obstruction, however, the FAA must decide whether or not to issue a clearance for the tower. The FAA sends out notice of the proposed project to interested parties for comment. This may take up to 8 weeks for a significant clearance. If the FAA deems a public hearing to be needed, one will be held and all interested parties heard. The FAA then reviews the proposal and either issues or denies the clearance.

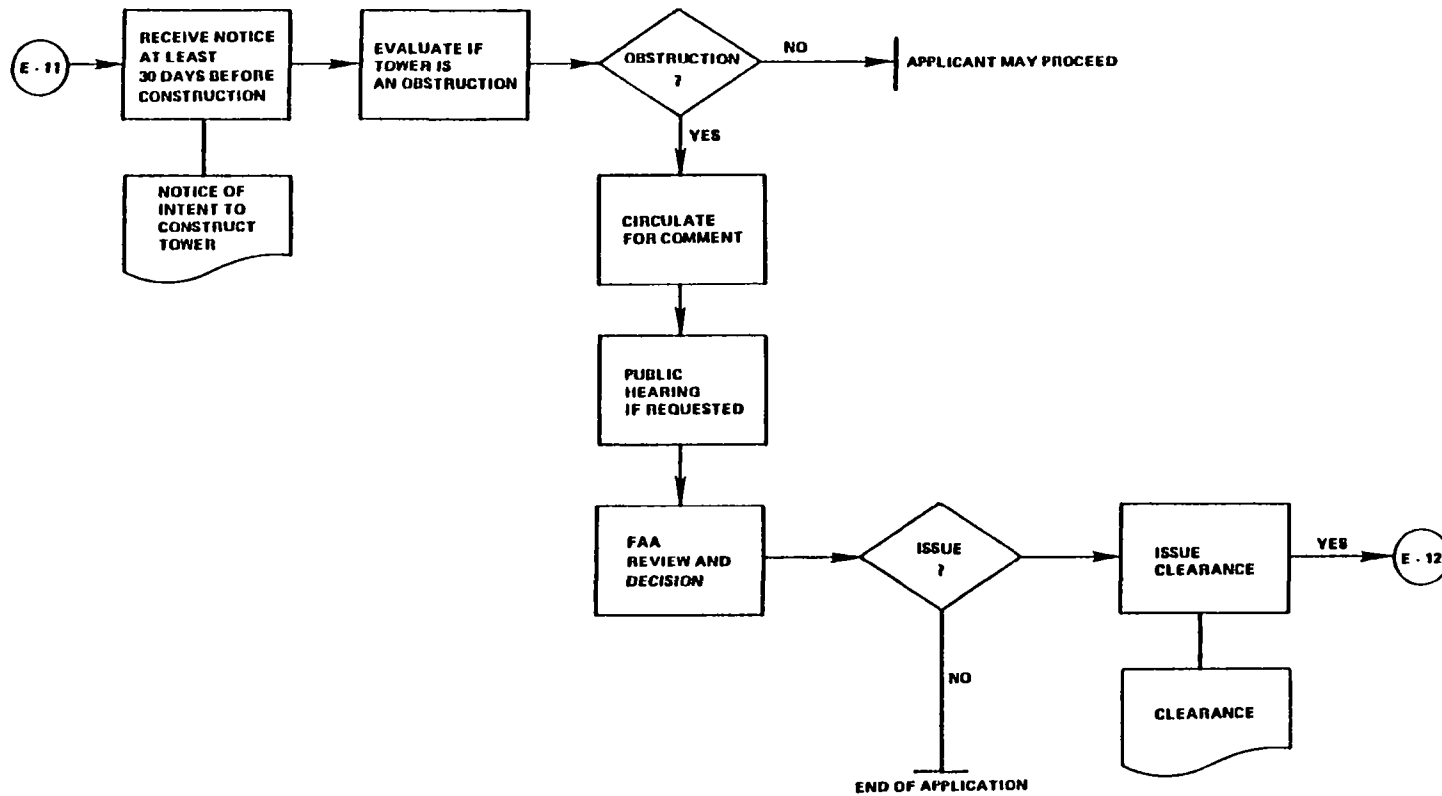
. Issuables

Clearance for a Tower

. Advisory Agencies

Undetermined

FEDERAL AVIATION ADMINISTRATION
TOWER CLEARANCE



MEANS:

- FEDERAL AGENCY
- JURISDICTION ON FEDERAL LANDS OR LANDS CONTROLLED BY A FEDERAL AGENCY

(2) State Agencies Regulating the Siting and Construction
of Electric Transmission Lines

This part of the report presents the State agencies which regulate the siting and construction of electric transmission lines.

(a) COLORADO

Colorado - Public Utilities Commission

The Public Utilities Commission (PUC) has authority over the construction and operation of electric generating facilities within the State. This jurisdiction extends to all electric generating facilities regardless of whether they are fueled by fossil fuels, nuclear fuel, or hydro power.

One of the concerns of the Public Utilities Commission is with the economic feasibility of the proposed project. That is, what will be the effect of the construction costs of the new facility on the utilities rate structure and, ultimately, on the consumers of the utility.

In addition to the construction and operation of the electric generating facility, the PUC is concerned with the exploration for, and the development of, coal, oil, and gas by the utility or subsidiaries of the utility.

The PUC's involvement is not from a regulatory standpoint over such operations but rather its concern for the effect of exploration and development activities or the purchase of fuel on the rate structure of the utility.

THE PUC is not involved with the granting of rights-of-way. All rights-of-way are obtained by the utility from the owner/controller of the land. The PUC must approve the route for transmission, however. Any deviations from the approved routes which are material to the cost of the project will require a new PUC approval.

- Legal Authority

- Description of the Process

The Public Utilities Commission receives an application from a utility seeking approval for construction and operation of a generating facility and approval for the rights-of-way obtained (see Flowchart E-16). The application is reviewed by the Commission and public hearings are scheduled. At the hearings, the utility, any interested agencies and members of the public are allowed to testify.

Following the hearing, the PUC makes the decision to grant the application and approve the routes for the transmission lines. If approval is granted, the Commission issues a permit which enables the utility to proceed. During the construction of the facility, the utility must submit quarterly reports on construction progress including a comparison of proposed expenditures to the actuals to date.

- Issuables

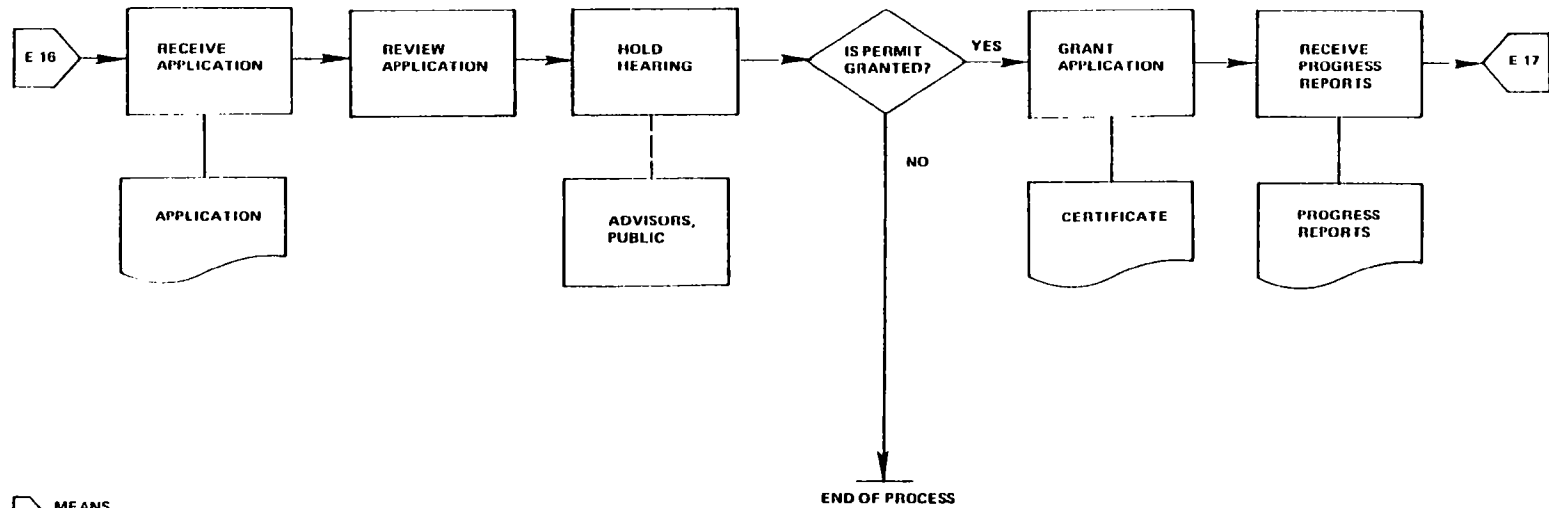
The Commission issues a Certificate of Public Convenience and Necessity.

- Advisory Agencies

-- State Land Use Commission

-- Department of Health.

COLORADO PUBLIC UTILITIES COMMISSION



◇ MEANS

- STATE AGENCY
- AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
- OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

(b) MONTANA

Montana - Department of State Lands

- Legal Authority

The Department of State Lands is responsible for leasing of all State lands under the Revised Codes of Montana, 1947, as amended.

- Description of the Process

There are two methods of obtaining a lease on State land in Montana, either through competitive bidding for a lease or through an award as the first qualified bidder (See Flowchart E-24). Generally, the competitive bid procedure is utilized for lease of lands with known resources and non-competitive award for unknown lands.

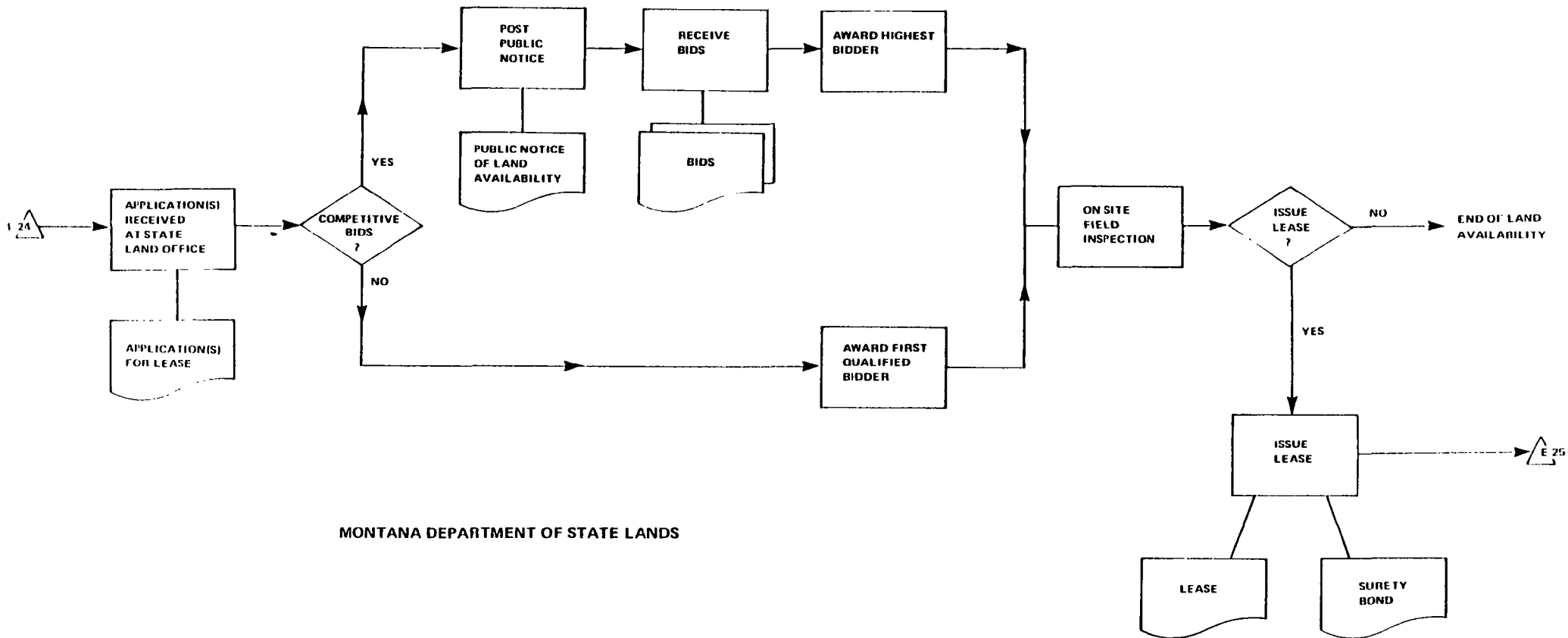
When an application for a State land lease is received, it is first determined whether the land in question is subject to competitive bidding. If so, availability is posted and bids accepted. The lease is then awarded to the highest bidder. In the case of non-competitive land, the award is to the first qualified bidder. Once an award is made, the Department decides whether or not to issue the lease. The land is usually not retracted. An on-site field inspection is required before issuance of the lease. When the lease is issued, the successful applicant must furnish a safety bond to the State.

- Issuables

.. Lease

.. Bond.

- Advisory Agencies



MONTANA DEPARTMENT OF STATE LANDS

- △ MEANS
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

. Montana-Department of Natural Resources and Conservation:
Energy Planning Division

- Legal Authority

The Montana Major Facility Siting Act grants the Department of Natural Resources and Conservation jurisdiction over any facility designed for, or capable of, generating 50 megawatts of electricity or more, or any addition thereto having an estimated cost in excess of \$250,000 and related transmission lines.

- Description of the Process

No facility under this jurisdiction may be built without first applying for and receiving a Certificate of Environmental Compatibility and Public Need. Upon receipt of the application, the Division begins the review, evaluation, and study of the proposed project (See Flowchart E-30). This study is allowed up to two (2) years and encompasses an environmental and economic assessment of the project. After completion of the study, the Division presents its report of all findings and recommendations to the Board of Natural Resources and Conservation. The Board invites input from all interested State advisory agencies.

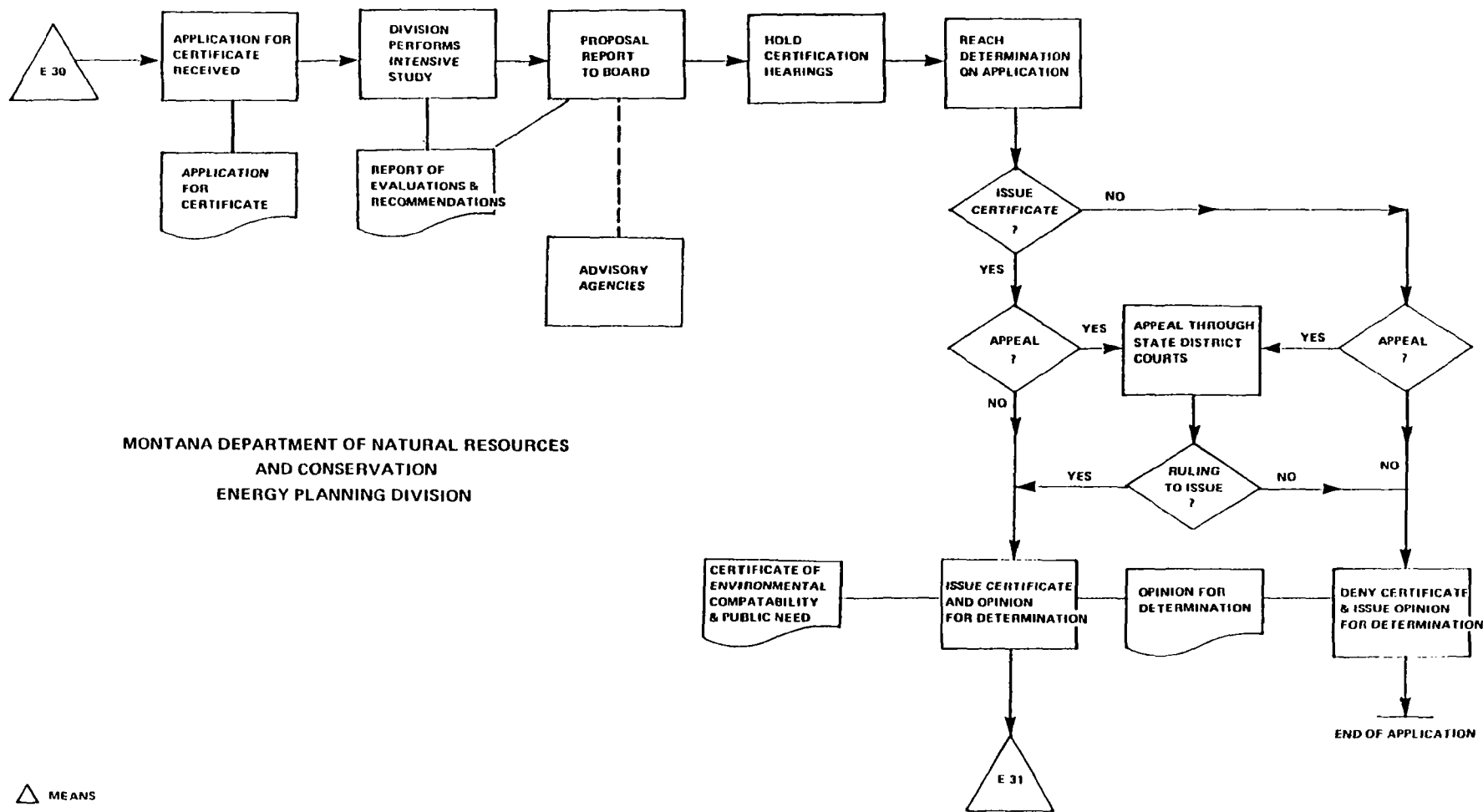
Within four (4) months, the Board holds public certification hearings to accept additional input to the evaluation. Within three (3) months after the end of the hearings, the Board issues its opinion and decision on the issuance of a Certificate for the project. Any aggrieved parties may petition to the State district courts for appeal.

When the final determination is reached, either the project is issued a Certificate of Environmental Compatibility and Public Need and may proceed or it is denied a Certificate and is terminated.

- Issuables

- .. Application for Certificate of Environmental Compatibility and Public Need
- .. Division Report on Project (Environmental and Economic Assessment)
- .. Certification Hearings

- .. Opinion for Determination
- .. Certificate of Environmental Compatability and Public Need
- Advisory Agencies
 - .. Department of Health and Environmental Sciences
 - .. Department of Highways
 - .. Department of Intergovernmental Relations
 - .. Department of Fish and Game
 - .. Department of Public Service Regulation.



**MONTANA DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
ENERGY PLANNING DIVISION**

- △ MEANS
- STATE AGENCY
 - JURISDICTION ONLY ON STATE LAND

(c) NORTH DAKOTA

. North Dakota - Public Service Commission

The Public Service Commission in North Dakota has responsibility for regulating several energy development categories within the State. The Commission issues permits for the mining of coal and for the reclamation which must follow. In addition, the Commission is responsible for the administration and enforcement of the North Dakota Energy Conversion and Transmission Facility Siting Act. In this capacity, the Commission must grant certificates of site compatibility for energy conversion facilities, energy transmission facilities, and route permits for facilities in transmission corridors.

- Legal Authority

The authority for the Commission to regulate the siting of energy facilities is granted by the North Dakota Energy Conversion and Transmission Facility Siting Act, Chapter 49-22 of the North Dakota Century Code. The regulations governing the Commission's actions under this legislation are continued in "Rules and Regulations of the North Dakota Public Service Commission Governing the Siting of Energy Conversion and Transmission Facilities" which were adopted December 23, 1975.

- Description of the Process

Following the recent application for site compatibility, the Commission must make two determinations as to completeness (See Flowchart E-34). Along with an examination to determine if all of the requirements of the Commission have been met, the Commission must determine if all other required permits have been obtained by the developer and if the developer has filed a letter of intent. Any developer seeking a site compatibility permit must file a letter of intent with the Commission one (1) year prior to the filing of an application, unless a shorter time is approved by the Commission.

If the determination is made that the application is complete, the application is reviewed by the Commission. One of the purposes of this review is to ascertain whether the proposed site for the facility is in a constraint area. If the site is in a constraint area, the next determination is whether the site is an exclusion area or an avoidance area. If the area has

been designated as an exclusion area, the developer is prohibited from building his facility. If the area has been designated as an avoidance area, the developer may build the facility only if he is able to demonstrate a compelling reason for locating on that site.

Should the application process continue, the next step is for the Commission to schedule and hold a public hearing. At this hearing, both advisory agencies and members of the public may be heard. Following the hearings, the Commission assembles the results and evaluates its findings. If the Commission decides to grant the application, the permit is issued and development may proceed. Appeals to decisions of the Commission may be filed in the district court.

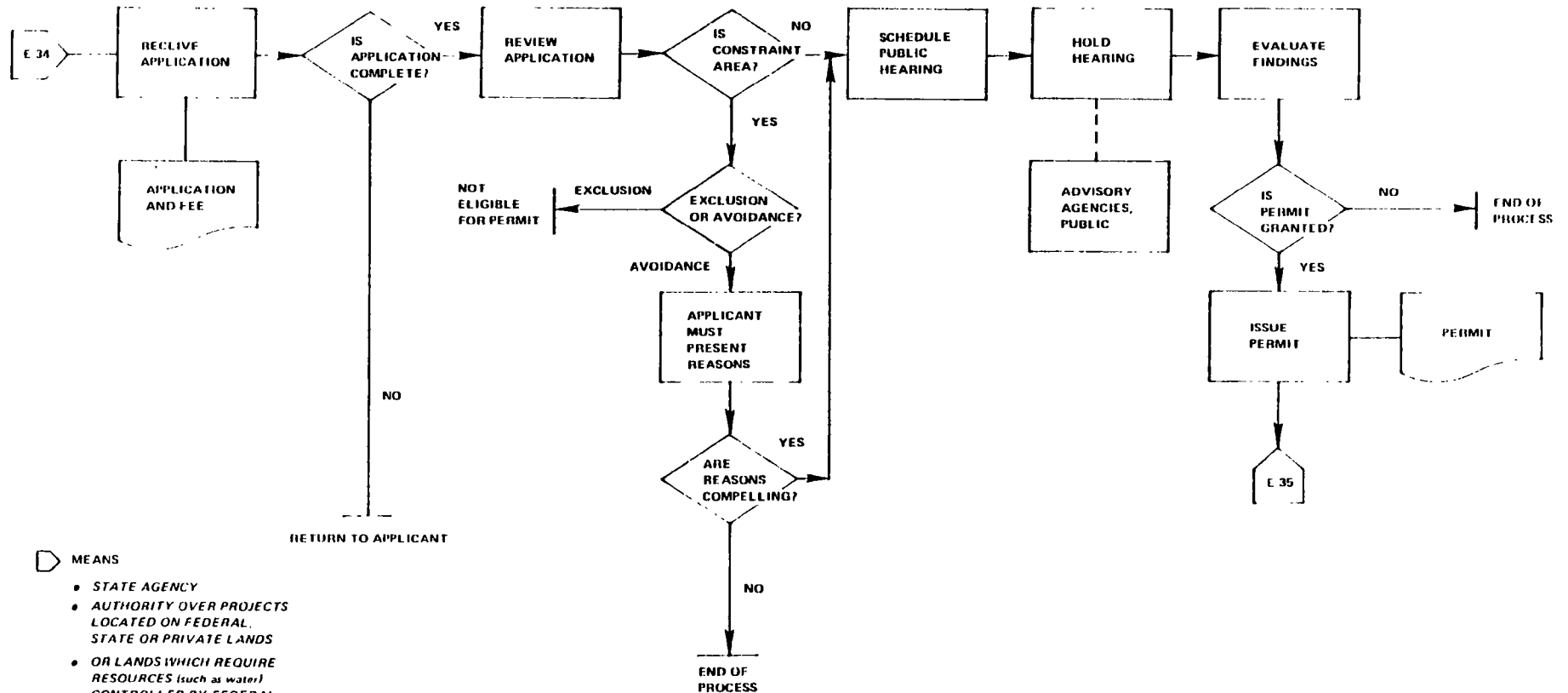
- Issuables

The Commission issues a Certificate of Site Compatability.

- Advisory Agencies

- .. Water Commission
- .. Soil Conservation Committee
- .. State Game and Fish Department
- .. Natural Resources Council
- .. Planning Division
- .. Regional Environmental Assessment Program
- .. Business and Industrial Development Commission

NORTH DAKOTA PUBLIC SERVICE COMMISSION



- MEANS
- STATE AGENCY
 - AUTHORITY OVER PROJECTS LOCATED ON FEDERAL, STATE OR PRIVATE LANDS
 - OR LANDS WHICH REQUIRE RESOURCES (such as water) CONTROLLED BY FEDERAL OR STATE AGENCIES OR PRIVATE INDIVIDUALS

(d) SOUTH DAKOTA

. South Dakota - Office of Cultural Preservation

The Office of Cultural Preservation operates to mitigate the damages of any energy development activity which may have an effect on archaeological sites or areas of historical significance. Any project which is Federally funded, assisted, licensed, or approved must report to the Office. The State Legislature has extended the authority of the Office to State land and, if the owner has registered with the State, to private lands within the State.

- Legal Authority

The Office of Cultural Preservation is authorized by the National Historic Preservation Act (P. L. 89-665), Executive Order 11593, and the South Dakota State Antiquities Law (SDCL 1-20-17 through SDCL 1-20-37), in conjunction with the National Environmental Policy Act.

- Description of the Process

Any project in the State which is Federally funded, assisted, licensed, or approved must have a plan filed with the State Office of Cultural Preservation (See Flowchart E-42). The Office reviews the proposed plan and makes a determination. The project may either have no effect on the significance of the area, have a positive effect on the area, or have an adverse effect. If the Office concludes there will be no adverse effect, documentation of such is sent to the President's Advisory Council for concurrence. If the Council does not concur, the same procedure as for an adverse effect is followed. If the project will have an adverse effect, the Office will advise the developer that a study must be conducted to detail the effects. The Office will conduct the study for the developer; however, the developer is free to have his study conducted by a qualified party of his own choosing. In either case, the developer must pay the costs of the study.

The object of this entire effort is to preserve areas or items of historical or archaeological significance. When the project is site specific, for example a coal mine, the Office attempts to prohibit all development from proceeding until any area, building, and so forth have been moved or had their significant articles salvaged before development proceeds. Where it is possible to shift the location of the facility, for example a generating plant, the Office will encourage such action.

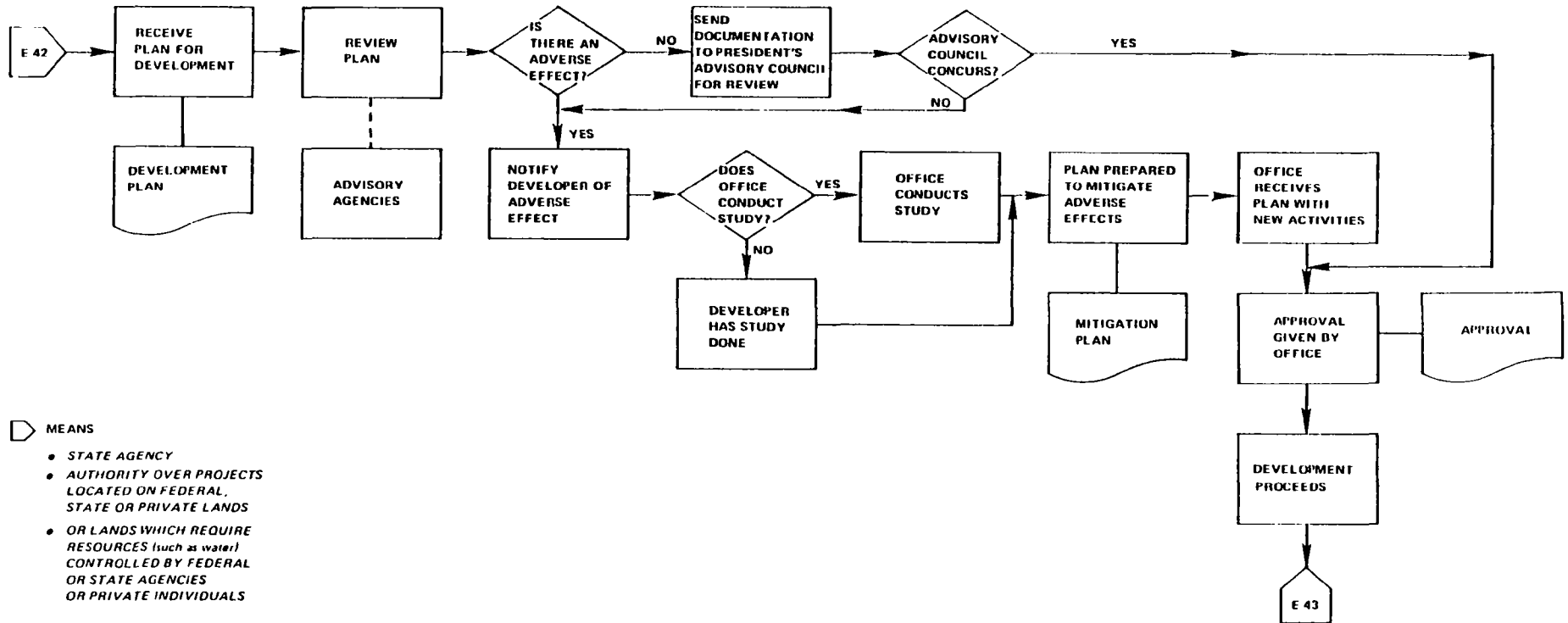
- Issuables

The Office issues approval for the compatability of the development project with the archaeological or historical heritage of the State.

- Advisory Agencies

- .. State Planning Bureau
- .. Department of Natural Resource Development
- .. Energy Policy Office
- .. Department of Environmental Protection
- .. President's Advisory Council

SOUTH DAKOTA OFFICE OF CULTURAL PRESERVATION



(e) UTAH

Utah-State Planning Coordinator

- Legal Authority

The Office of the State Planning Coordinator is charged with the responsibility of implementing the Executive Order on Environmental Quality of 1974. This same Executive Order also grants the Coordinator the authority for implementation of the order.

- Description of the Process

The State Planning Coordinator is notified of a proposed project either by an agency with jurisdiction over the project or by the party proposing the project (See Flowchart E-50). If the project is Federally assisted or in other ways falls under the National Environmental Policy Act or OMB Circular A-95 or A-102 procedures, then compliance with these procedures is sufficient and no further review is required by the Coordinator. A project not so exempted must have an environmental assessment prepared by the agency responsible for the proposed activity.

Information obtained through coordination with other agencies, together with information obtained from other appropriate investigation and study, is used in making an environmental assessment of the proposed action. This assessment allows the initial determination of whether or not the project will have a significant environmental impact. If not, the environmental assessment is forwarded directly to the Environmental Coordinating Committee (ECC) for review. If the action is deemed to have a significant impact, the responsible agency must first prepare an Environmental Impact Statement (EIS) prior to forwarding the EIS and the environmental assessment to the ECC for review.

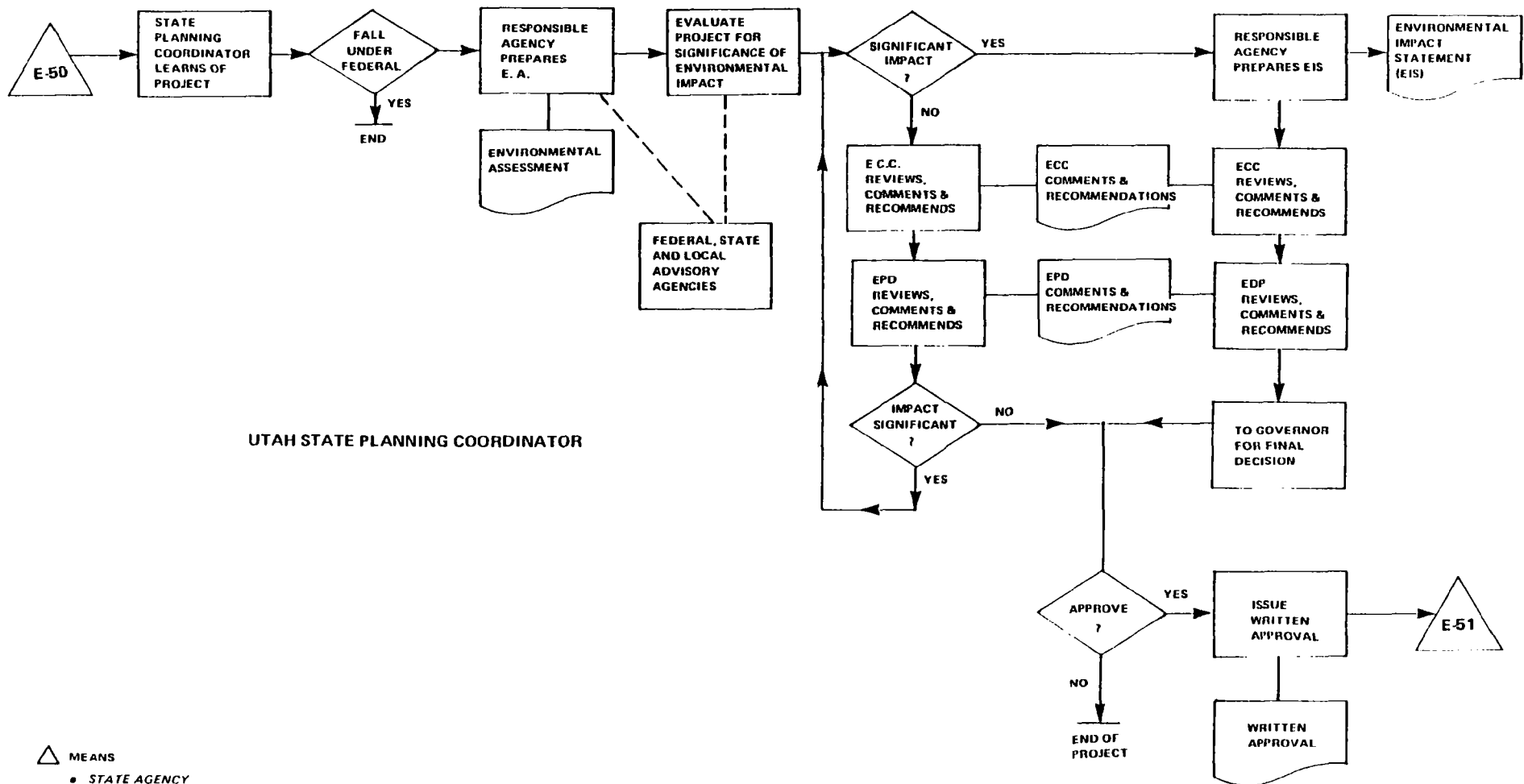
The ECC reviews the available information on the project, prepares its comments and recommendations and forwards everything to the Economic and Physical Development Interdepartmental Coordinative Group (EPD Group). The EPD Group then reviews the proposed project and prepares comments and recommendations. If the proposed project is again deemed to not have significant impact, the project approval is decided by the responsible agency and appropriate approval or disapproval issued. If a project is considered to have significant impact and an EIS has not yet been prepared,

then one must be prepared by the responsible agency and processed through the ECC and EPD Group for review. Any proposed project which has had an EIS prepared must go to the Governor with the cumulative comments and recommendations of all reviews. The final decisions on all projects with significant environmental impact, therefore, is made by the Governor and the appropriate approval or disapproval is issued.

- Issuables

- .. Environmental Assessment
- .. Environmental Impact Statement
- .. Project Approval

- Advisory Agencies



(F) WYOMING

. Wyoming - Public Service Commission

The Public Service Commission of Wyoming is responsible for the intrastate regulation of electric generation facilities, natural gas, oil pipelines, and transmission lines along with non-energy related services such as telephone and water companies. The Commission gives a utility the right to serve an area and, in return for that right, a utility assumes the obligation to provide that service.

- Legal Authority

The Public Service Commission of Colorado operates under the legal authority granted by Chapter 83 of the Session Laws of Wyoming, 1963. The regulations governing the activities of the Commission are contained in "Rules of the Public Service Commission of the State of Wyoming" reissued May 1, 1967.

- Description of the Process

Following the receipt of the application (See Flowchart E-70), the Commission reviews the application and schedules public hearings. If, in advance of the public hearings, the Commission is able to determine who the parties are that are involved or affected by the proposed action, the Commission will send a notice to those affected. In all cases, however, public notice is given for the scheduled hearings.

At the hearings, testimony may be given by other agencies and members of the general public. The Commission gathers evidence at the hearing and employs this evidence in making a determination on the application. If the Commission decides to grant the application, the Commission publishes a public notice of the decision. If the application is denied, the applicant is so notified. In either case, parties who feel they are aggrieved by the action may file for an appeal. If the appeal is granted, a re-hearing may be held. If an appeal is not allowed, the Commission publishes its final decision.

Should the decision be in favor of the applicant, the Commission grants a certificate.

- Issuables

The Commission issues a Certificate of Public Convenience and Necessity.

- Advisory Agencies

- .. Department of Transportation
- .. Interstate Commerce Commission
- .. Federal Power Commission
- .. Federal Communications Commission.

WYOMING PUBLIC SERVICE COMMISSION

