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# Title 40

## § 124.10 Public notice of permit actions and public comment period.

### (a) *Scope.*

- (1) The Director shall give public notice that the following actions have occurred:
  - (i) A permit application has been tentatively denied under § 124.6(b);
  - (ii) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).*) A draft permit has been prepared under § 124.6(d);
  - (iii) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404) and 271.14 (RCRA).*) A hearing has been scheduled under § 124.12;
  - (iv) (*Applicable to State programs, see § 233.26 (404).*) A State section 404 application has been received in cases when no draft permit will be prepared (see § 233.39); or
  - (v) An NPDES new source determination has been made under § 122.29.
- (2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under § 124.5(b). Written notice of that denial shall be given to the requester and to the permittee.
- (3) Public notices may describe more than one permit or permit actions.

### (b) *Timing (applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).*

- (1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this section shall allow at least 30 days for public comment. For RCRA permits only, public notice shall allow at least 45 days for public comment. For EPA-issued permits, if the Regional Administrator determines under 40 CFR part 6, subpart F that an Environmental Impact Statement (EIS) shall be prepared for an NPDES new source, public notice of the draft permit shall not be given until after a draft EIS is issued.
- (2) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

### (c) Methods (applicable to State programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)). Public notice of activities described in paragraph (a)(1) of this section shall be given by the following methods:

- (1) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits);
  - (i) The applicant (except for NPDES and 404 general permits when there is no applicant);
  - (ii) Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), NPDES, 404, sludge management permit, or ocean dumping permit under the Marine Research Protection and Sanctuaries Act for the same facility or activity (including EPA when the draft permit is prepared by the State);
  - (iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected States (Indian Tribes). (For purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States.)
  - (iv) For NPDES and 404 permits only, any State agency responsible for plan development under CWA section 208(b)(2), 208(b)(4) or 303(e) and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;
  - (v) For NPDES permits only, any user identified in the permit application of a privately owned treatment works;
  - (vi) For 404 permits only, any reasonably ascertainable owner of property adjacent to the regulated facility or activity and the Regional Director of the Federal Aviation Administration if the discharge involves the construction of structures which may affect aircraft operations or for purposes associated with seaplane

operations;

- (vii) For PSD permits only, affected State and local air pollution control agencies, the chief executives of the city and county where the major stationary source or major modification would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the regulated activity;
  - (viii) For Class I injection well UIC permits only, state and local oil and gas regulatory agencies and state agencies regulating mineral exploration and recovery;
  - (ix) Persons on a mailing list developed by:
    - (A) Including those who request in writing to be on the list;
    - (B) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and
    - (C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to such a request.)
  - (x)
    - (A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and
    - (B) to each State agency having any authority under State law with respect to the construction or operation of such facility.
  - (xi) For Class VI injection well UIC permits, mailing or e-mailing a notice to State and local oil and gas regulatory agencies and State agencies regulating mineral exploration and recovery, the Director of the Public Water Supply Supervision program in the State, and all agencies that oversee injection wells in the State.
- (2)
- (i) For major permits, NPDES and 404 general permits, and permits that include sewage sludge land application plans under 40 CFR 501.15(a)(2)(ix), publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity; and for EPA-issued NPDES general permits, in the *FEDERAL REGISTER*;

**Note:**

The Director is encouraged to provide as much notice as possible of the NPDES or Section 404 draft general permit to the facilities or activities to be covered by the general permit.

- (ii) For all RCRA permits, publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.
- (iii) For PSD permits:
  - (A) In lieu of the requirement in paragraphs (c)(1)(ix)(B) and (C) of this section regarding soliciting persons for "area lists" and notifying the public of the opportunity to be on a mailing list, the Director may use generally accepted methods (e.g., hyperlink sign-up function or radio button on an agency Web site, sign-up sheet at a public hearing, etc.) that enable interested parties to subscribe to a mailing list. The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to such a request within a reasonable timeframe.
  - (B) In lieu of the requirement in paragraph (c)(2)(i) of this section to publish a notice in a daily or weekly newspaper, the Director shall notify the public by posting the following information, for the duration of the public comment period, on a public Web site identified by the Director: A notice of availability of the draft permit for public comment (or the denial of the permit application), the draft permit, information on how to access the administrative record, and information on how to request and/or attend a public hearing on the draft permit.

- (C) In lieu of the requirement in paragraph (d)(1)(vi) of this section to specify a location of the administrative record for the draft permit, the Director may post the administrative record on an identified public Web site.
- (iv) For NPDES major permits and NPDES general permits, in lieu of the requirement for publication of a notice in a daily or weekly newspaper, as described in paragraph (c)(2)(i) of this section, the Director may publish all notices of activities described in paragraph (a)(1) of this section to the permitting authority's public website. If the Director selects this option for a draft permit, as defined in § 122.2, in addition to meeting the requirements in paragraph (d) of this section, the Director must post the draft permit and fact sheet on the website for the duration of the public comment period.

**Note to paragraph (c)(2)(iv):**

The Director is encouraged to ensure that the method(s) of public notice effectively informs all interested communities and allows access to the permitting process for those seeking to participate.

- (3) When the program is being administered by an approved State, in a manner constituting legal notice to the public under State law; *and*
  - (4) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.
- (d) **Contents (applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)) -**
- (1) **All public notices.** All public notices issued under this part shall contain the following minimum information:
    - (i) Name and address of the office processing the permit action for which notice is being given;
    - (ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of NPDES and 404 draft general permits under §§ 122.28 and 233.37;
    - (iii) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for NPDES or 404 general permits when there is no application.
    - (iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application; and
    - (v) A brief description of the comment procedures required by §§ 124.11 and 124.12 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.
    - (vi) For EPA-issued permits, the location of the administrative record required by § 124.9, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant is available as part of the administrative record.
    - (vii) For NPDES permits only (including those for "sludge-only facilities"), a general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice(s) and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application. For EPA-issued NPDES permits only, if the discharge is from a new source, a statement as to whether an environmental impact statement will be or has been prepared.
    - (viii) For 404 permits only,
      - (A) The purpose of the proposed activity (including, in the case of fill material, activities intended to be conducted on the fill), a description of the type, composition, and quantity of materials to be discharged and means of conveyance; and any proposed conditions and limitations on the discharge;
      - (B) The name and water quality standards classification, if applicable, of the receiving waters into which the discharge is proposed, and a general description of the site of each proposed discharge and the portions of the site and the discharges which are within State regulated waters;
      - (C) A description of the anticipated environmental effects of activities conducted under the permit;
      - (D) References to applicable statutory or regulatory authority; and

- (E) Any other available information which may assist the public in evaluating the likely impact of the proposed activity upon the integrity of the receiving water.
  - (ix) Requirements applicable to cooling water intake structures under section 316(b) of the CWA, in accordance with part 125, subparts I, J, and N of this chapter.
  - (x) Any additional information considered necessary or proper.
- (2) **Public notices for hearings.** In addition to the general public notice described in paragraph (d)(1) of this section, the public notice of a hearing under § 124.12 shall contain the following information:
- (i) Reference to the date of previous public notices relating to the permit;
  - (ii) Date, time, and place of the hearing;
  - (iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures; and
  - (iv) For 404 permits only, a summary of major issues raised to date during the public comment period.
- (e) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).*) In addition to the general public notice described in paragraph (d)(1) of this section, all persons identified in paragraphs (c)(1) (i), (ii), (iii), and (iv) of this section shall be mailed a copy of the fact sheet or statement of basis (for EPA-issued permits), the permit application (if any) and the draft permit (if any).

[48 FR 14264, Apr. 1, 1983; 48 FR 30115, June 30, 1983, as amended at 53 FR 28147, July 26, 1988; 53 FR 37410, Sept. 26, 1988; 54 FR 258, Jan. 4, 1989; 54 FR 18786, May 2, 1989; 65 FR 30911, May 15, 2000; 66 FR 65338, Dec. 18, 2001; 69 FR 41683, July 9, 2004; 71 FR 35040, June 16, 2006; 75 FR 77286, Dec. 10, 2010; 78 FR 5285, Jan. 24, 2013; 81 FR 71631, Oct. 18, 2016; 84 FR 3338, Feb. 12, 2019]