

567—60.5(455B) Notice and public participation in the individual permit process.

60.5(1) Formulation of tentative determination. The department shall make a tentative determination to issue or deny an operation or NPDES permit for the discharge described in a permit application in advance of the PN (described in 60.5(2)). If the tentative determination is to:

a. Issue an NPDES permit, the department shall prepare a permit rationale pursuant to 60.5(3) and a draft permit. The draft permit shall include:

(1) Effluent limitations identified pursuant to 60.7(2) and 60.7(3) for those pollutants proposed to be limited;

(2) If necessary, a proposed compliance schedule, pursuant to 60.7(4) and 60.7(5) that includes interim dates and requirements for meeting the effluent limitations and other permit conditions; and

(3) Any other special conditions (other than those required in 60.7(7)) that will have a significant impact upon the discharge described in the permit application.

b. Deny an NPDES permit, the department shall prepare a notice to deny the permit application and place it on PN as described in 60.5(2).

c. Issue an operation permit (non-NPDES permit), the department shall prepare a final permit and transmit it to the applicant. The applicant will have 60 days to appeal the final operation permit.

d. Deny an operation permit (non-NPDES permit), no PN is required. The department shall send written notice of the denial to the applicant. The applicant will have 60 days to appeal the denial.

60.5(2) Public notice (PN) for individual NPDES permits.

a. Prior to the issuance of an NPDES permit, a major NPDES permit amendment, or the denial of a permit application for an NPDES permit, a PN shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the tentative determination to issue or deny an NPDES permit for the proposed discharge.

(1) The PN shall be transmitted by the department to the persons noted in 40 CFR §124.10(c)(1).

(2) The PN shall be transmitted by the department to any person upon request. Any person or group may request to receive copies of any PNs concerning the tentative determinations with respect to the permit applications within the state or within a certain geographical area.

(3) The department shall periodically notify the public of the opportunity to receive PNs. The director may update the PN distribution 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 or group who fails to respond to such a request.

b. The director may publish all notices of activities described in 60.5(2)“a” to the department’s website. If this option is selected for a draft permit, the director must post the draft permit and permit rationale on the website for the duration of the public comment period.

c. The department shall provide not less than 30 days following the PN date during which time interested persons may submit their written views on the tentative determinations with respect to the permit application and request a public hearing pursuant to 60.5(4). Written comments may be submitted by paper or electronic means. All pertinent comments submitted during the 30-day comment period shall be retained by the department and considered by the director in the formulation of the final determinations with respect to the permit application. The comment period may be extended at the department’s discretion. Pertinent and significant comments received during either the original comment period or an extended comment period shall be responded to in a responsiveness summary pursuant to 60.5(5).

d. A PN of a draft NPDES permit, a major permit amendment, or the denial of a permit application for an NPDES permit shall contain:

(1) The name, email address, and telephone number of the permit writer.

(2) The name and address of the applicant.

(3) A brief description of the applicants’ activities or operations that result in the discharge described in the permit application.

(4) The name of the waterway to which each discharge of the applicant is made.

(5) A statement of the department’s tentative determination to issue, amend, or deny an NPDES permit for the discharge or discharges described in the permit application.

(6) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by 60.5(2)“c,” procedures for requesting a public hearing and any other means by which interested persons may influence or comment upon those determinations.

(7) The address, telephone number, email address, and website of places at which interested persons may obtain further information and request copies of, or inspect and copy the tentative determination, permit rationale, and any associated documents.

e. No PN is required for a minor permit amendment.

f. No PN is required when a request for a permit amendment or permit termination is denied. The department shall send written notice of the denial to the requester and the permittee only. No PN is required if an applicant withdraws a permit application.

60.5(3) *Permit rationales and notices of intent to issue or deny.*

a. When the department has made a determination to issue or deny an NPDES or operation permit as described in 60.5(1), it shall prepare and send the following information, specific to each determination.

(1) NPDES permit issuance. For a determination to issue an NPDES permit, the department shall prepare and, upon request, shall send to any person a permit rationale with respect to the application described in the PN. Permit rationales shall include at least the following information:

1. For each discharge described in the permit application, a detailed description of the discharge location and a quantitative description of the discharge.

2. A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the WQS applicable to the receiving waters, and of the effluent standards and limitations applicable to the proposed discharge.

3. An explanation of the principal facts and the significant factual, legal, methodological, and policy questions considered in the preparation of the draft permit.

4. Any calculations or other necessary explanation of the derivation of effluent limitations.

(2) NPDES permit application denial. For a determination to deny an application for an NPDES permit, the department shall prepare and, upon request, shall send a notice to deny with respect to the application described in the PN. A notice to deny shall include:

1. The location of the discharge; and

2. A description of the reasons supporting the tentative decision to deny the permit application.

(3) Operation permit issuance. For a determination to issue an operation permit, the department shall prepare and issue a permit. The reasons supporting the decision to issue an operation permit can be sent to the operation permit applicant upon request.

(4) Operation permit application denial. For a determination to deny an application for an operation permit, the department shall prepare and send written notice of the denial to the applicant only. The written denial shall include a description of the reasons supporting the decision to deny the permit application.

b. Upon request, the department shall add the name of any person or group to a distribution list to receive copies of permit rationales and notices to deny and shall make copies of all permit rationales and notices to deny available.

60.5(4) *Public hearings on proposed NPDES permits.* The applicant, any affected state, the regional administrator, or any interested agency, person, or group of persons may request a public hearing with respect to a tentative determination to issue or deny an NPDES permit.

a. Public hearing requests shall:

(1) Clearly state issues and topics to be addressed at the hearing;

(2) Be filed with the director within the 30-day period prescribed in 60.5(2)“c”; and

(3) Indicate the interest of the party filing the request and the reasons why a hearing is warranted.

b. The director shall hold an informal and noncontested case hearing if there is a significant public interest in holding a hearing. Frivolous or insubstantial requests for hearing may be denied by the director. Instances of doubt should be resolved in favor of holding a hearing.

c. Any hearing held pursuant to this subrule shall be held in the geographical area of the proposed discharge when possible or other appropriate area at the director’s discretion. Web-based hearings may also be held at the director’s discretion. In addition, any hearing held pursuant to this subrule may, as appropriate, consider related groups of permit applications.

d. PN of any hearing held pursuant to this subrule shall be circulated at least as widely as was the notice of the tentative determination with respect to the permit application. Notice pursuant to this paragraph shall be made at least 30 days in advance of the hearing. Notice shall be transmitted to:

(1) All persons and government agencies that received a copy of the notice for the permit application; and

(2) Any person or group upon request.

e. The contents of a PN of any hearing held pursuant to this subrule shall include at least the following:

(1) The name, email address, and telephone number of the permit writer;

(2) The name and address of each applicant whose application will be considered at the hearing;

(3) The name of the waterbody to which each discharge is made;

(4) A brief reference to the PN issued for each NPDES application, including the date of notice;

(5) Information regarding the time and location for the hearing;

(6) The purpose of the hearing;

(7) A concise statement of the issues raised by the person or persons requesting the hearing;

(8) The address, telephone number, email address, and website where interested persons may obtain further information and request copies of, or inspect and copy the draft NPDES permit, permit rationale, and any associated documents;

(9) A brief description of the nature of the hearing, including the rules and procedures to be followed; and

(10) The final date for submission of comments regarding the tentative determination.

60.5(5) *Response to comments.* At the time a final NPDES permit is issued, the director shall respond to significant and pertinent comments in the form of a responsiveness summary. A copy of the responsiveness summary shall be sent to the permit applicant and made available on the department's website. The responsiveness summary shall:

a. Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the changes; and

b. Briefly describe and respond to all significant and pertinent comments on the draft permit raised during the public comment period provided for in the PN or during any hearing. Comments on a draft permit may be submitted by paper or electronic means or orally at a public hearing.

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