

**567—64.5(455B) Notice and public participation in the individual NPDES permit process.**

**64.5(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 public notice as described in 64.5(2).

*a.* If the tentative determination is to issue an NPDES permit, the department shall prepare a permit rationale for each draft permit pursuant to 64.5(3) and a draft permit. The draft permit shall include the following:

(1) Effluent limitations identified pursuant to 64.7(2) and 64.7(3), for those pollutants proposed to be limited.

(2) If necessary, a proposed schedule of compliance, including interim dates and requirements, identified pursuant to 64.7(4) and 64.7(5), for meeting the effluent limitations and other permit requirements.

(3) Any other special conditions (other than those required in 64.7(7)) which will have a significant impact upon the discharge described in the permit application.

*b.* If the tentative determination is to deny an NPDES permit, the department shall prepare a notice of intent to deny the permit application. The notice of intent to deny an application will be placed on public notice as described in 64.5(2).

*c.* If the tentative determination is to issue an operation permit (non-NPDES permit), the department shall prepare a final permit and transmit the final permit to the applicant. The applicant will have 30 days to appeal the final operation permit.

*d.* If the tentative determination is to deny an operation permit (non-NPDES permit), no public notice is required. The department shall send written notice of the denial to the applicant. The applicant will have 30 days to appeal the denial.

**64.5(2) Public notice 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, public notice 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 public notice shall be transmitted by the department to the following persons:

1. The applicant;

2. Any other federal or state agency which has issued or is required to issue an NPDES permit for the same facility or activity, including EPA;

3. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, state historic preservation officers, and affected states (the term “state” includes Indian tribes treated as states);

4. Any state agency responsible for the development of an areawide waste treatment management plan or a water quality standards and implementation plan under CWA Section 208(b)(2), 208(b)(4) or 303(e);

5. The U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

6. Any user identified in the permit application of a privately owned treatment works;

7. Any unit of local government having jurisdiction over the area where the facility is located; and

8. Each state agency having any authority under state law with respect to the construction or operation of such facility.

(2) The public notice shall be transmitted by the department to any person upon request.

(3) Any person or group may request to receive copies of all public notices concerning the tentative determinations with respect to the permit applications within the state or within a certain geographical area. The department shall transmit a copy of all public notices to such persons or groups.

(4) The department shall periodically notify the public of the opportunity to receive notices. The director may update the notice 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 paragraph “a” of this subrule 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 a period of not less than 30 days following the date of the public notice 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 64.5(6). 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 director’s final determinations with respect to the permit application. The period for comment may be extended at the discretion of the department. 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 64.5(8).

d. The contents of the public notice of a draft NPDES permit, a major permit amendment, or the denial of a permit application for an NPDES permit shall include at least the following:

- (1) The name, address, and telephone number of the department.
- (2) The name and address of each applicant.
- (3) A brief description of each applicant’s activities or operations which result in the discharge described in the permit application (e.g., municipal waste treatment plant, corn wet milling plant, or meat packing plant).
- (4) The name of the waterway to which each discharge of the applicant is made and a short description of the location of each discharge of the applicant on the waterway.
- (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 paragraph “c” of this subrule, 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, request a copy of the tentative determination and any associated documents prepared pursuant to 64.5(1), request a copy of the permit rationale described in 64.5(3), and inspect and copy permit forms and related documents.

e. No public notice is required for a minor permit amendment, including but not limited to an amendment to correct typographical errors, include more frequent monitoring requirements, revise interim compliance schedule dates, change an owner or facility name or address, include a local pretreatment program, or remove a point source outfall that does not result in the discharge of pollutants from other outfalls.

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

**64.5(3) Permit rationales and notices of intent to deny.**

a. When the department has made a determination to issue an NPDES permit as described in 64.5(1), the department shall prepare and, upon request, shall send to any person a permit rationale with respect to the application described in the public notice. The contents of such permit rationales shall include at least the following information:

- (1) A detailed description of the location of the discharge described in the permit application.
- (2) A quantitative description of the discharge described in the permit application which includes:
  1. The average daily discharge in pounds per day of any pollutants which are subject to limitations or prohibitions under 64.7(2) or Section 301, 302, 306 or 307 of the Act and regulations published thereunder; and
  2. For thermal discharges subject to limitation under the Act, the average and maximum summer and winter discharge temperatures in degrees Fahrenheit.
- (3) The tentative determinations required under 64.5(1).

(4) A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards applicable to the receiving waters and effluent standards and limitations applicable to the proposed discharge.

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

(6) Any calculations or other necessary explanation of the derivation of effluent limitations.

*b.* When the department has made a determination to deny an application for an NPDES permit as described in 64.5(1), the department shall prepare and, upon request, shall send to any person a notice of intent to deny with respect to the application described in the public notice. The contents of such notice of intent to deny shall include at least the following information:

(1) A detailed description of the location of the discharge described in the permit application; and

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

*c.* When the department has made a determination to issue an operation permit as described in 64.5(1), the department shall prepare a short description of the waste disposal system and the reasons supporting the decision to issue an operation permit. The description shall be sent to the operation permit applicant upon request.

*d.* When the department has made a determination to deny an application for an operation permit as described in 64.5(1), 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.

*e.* 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 of intent to deny and shall send a copy of all permit rationales and notices of intent to deny to such persons or groups.

**64.5(4) Notice to other government agencies.** Prior to the issuance of an NPDES permit, the department shall notify other appropriate government agencies of each complete application for an NPDES permit and shall provide such agencies an opportunity to submit their written views and recommendations. Notifications may be distributed and written views or recommendations may be submitted by paper or electronic means. Procedures for such notification shall include the procedures of paragraphs “a” to “f.”

*a.* At the time of issuance of public notice pursuant to 64.5(2), the department shall transmit the public notice to any other state whose waters may be affected by the issuance of the NPDES permit. Each affected state shall be afforded an opportunity to submit written recommendations to the department and to the regional administrator which the director may incorporate into the permit if issued. Should the director fail to incorporate any written recommendation thus received, the director shall provide to the affected state or states and to the regional administrator a written explanation of the reasons for failing to accept any written recommendation.

*b.* At the time of issuance of public notice pursuant to 64.5(2), the department shall send the public notice for proposed discharges (other than minor discharges) into navigable waters to the appropriate district engineer of the army corps of engineers.

(1) The department and the district engineer for each corps of engineers district within the state may arrange for: notice to the district engineer of minor discharges; waiver by the district engineer of the right to receive public notices with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular navigable waters or parts thereof; and any procedures for the transmission of forms, period of comment by the district engineer (e.g., 30 days), and for objections of the district engineer.

(2) A copy of any written agreement between the department and a district engineer shall be forwarded to the regional administrator and shall be available to the public for inspection and copying in accordance with 567—Chapter 2.

*c.* Upon request, the department shall send the public notice to any other federal, state, or local agency, or any affected county, and provide such agencies an opportunity to respond, comment, or request a public hearing pursuant to 64.5(6).

*d.* The department shall send the public notice for any proposed NPDES permit within the geographical area of a designated and approved management agency under Section 208 of the Act (33 U.S.C.1288).

*e.* The department shall send the public notice to the local board of health for the purpose of assisting the applicant in coordinating the applicable requirements of the Act and Iowa Code chapter 455B with any applicable requirements of the local board of health.

*f.* Upon request, the department shall provide any of the entities listed in 64.5(4) “a” through “e” with a copy of the permit rationale, permit application, or proposed permit prepared pursuant to 64.5(1).

**64.5(5) *Public access to NPDES information.*** The records of the department connected with NPDES permits are available for public inspection and copying to the extent provided in 567—Chapter 2.

**64.5(6) *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 or petition for a public hearing with respect to an NPDES application. Any such request shall clearly state issues and topics to be addressed at the hearing. Any such request or petition for public hearing must be filed with the director within the 30-day period prescribed in 64.5(2) “c” and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted. The director shall hold an informal and noncontested case hearing if there is a significant public interest (including the filing of requests or petitions for such hearing) in holding such a hearing. Frivolous or insubstantial requests for hearing may be denied by the director. Instances of doubt should be resolved in favor of holding the hearing. 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 discretion of the director. Web-based hearings may also be held at the discretion of the director. In addition, any hearing held pursuant to this subrule may, as appropriate, consider related groups of permit applications.

**64.5(7) *Public notice of public hearings on proposed NPDES permits.***

*a.* Public notice of any hearing held pursuant to 64.5(6) shall be circulated at least as widely as was the notice of the tentative determinations with respect to the permit application. Notice pursuant to this paragraph shall be made at least 30 days in advance of the hearing.

(1) Notice shall be transmitted to all persons and government agencies which received a copy of the notice for the permit application; and

(2) Notice shall be transmitted to any person or group upon request.

*b.* The contents of public notice of any hearing held pursuant to 64.5(6) shall include at least the following:

(1) The name, address, and telephone number of the department;

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

(3) The name of the water body to which each discharge is made and a short description of the location of each discharge to the water body;

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

(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, request a copy of the draft NPDES permit prepared pursuant to 64.5(1), request a copy of the permit rationale prepared pursuant to 64.5(3), and inspect and copy permit forms and related 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 determinations with respect to the permit application.

**64.5(8) *Response to comments.*** At the time a final NPDES permit is issued, the director shall issue a response 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 the document shall be made available to the public upon request. 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 public notice or during any hearing. Comments on a draft permit may be submitted by paper or electronic means or orally at a public hearing.

[**ARC 7625B**, IAB 3/11/09, effective 4/15/09; **ARC 0529C**, IAB 12/12/12, effective 1/16/13; **ARC 2482C**, IAB 4/13/16, effective 5/18/16; **ARC 6191C**, IAB 2/9/22, effective 3/16/22]