

Part 124 - Procedures for Decision Making

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Subpart A - General Program Requirements

Section 124.1 Purpose and scope.

(a) This part contains procedures for issuing, modifying, revoking and reissuing, or terminating DNREC hazardous waste permits other than Emergency Administrative Orders (see §122.61) and "permits by rule" (see §122.60). The procedures of this part also apply to denial of a permit for the active life of a DNREC hazardous waste management facility or unit under §122.29.

(Amended August 21, 1997)

Section 124.2 **[Reserved]**

Section 124.3 Application for a Permit.

(a)(1) Any person who requires a permit under the hazardous waste program shall complete, sign, and submit to the Secretary an application for hazardous waste permit.

(2) The Secretary shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit.

(3) Permit applications must comply with the signature and certification requirements of Part 122.

(b) **[Reserved]**

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(c) The Secretary shall review for completeness every application. Each application for a hazardous waste permit submitted by a new HWM facility should be reviewed for completeness by the Secretary within 30 days of its receipt. Each application for a hazardous waste permit submitted by an existing HWM facility (both Parts A and B of the application), should be reviewed for completeness within 60 days of receipt. Upon completing the review, the Secretary shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Secretary shall list the information necessary to make the application complete. When the application is for an existing HWM facility, the Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Secretary shall notify the applicant that the application is completed, upon receiving this information. After the application is complete, the Secretary may request additional information from an applicant but only when necessary to clarify, modify or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provision.

(e) If the Secretary decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and a date shall be scheduled.

(f) The effective date of an application is the date on which the Secretary notifies the applicant that the application is complete as provided in paragraph (c) of this section.

(g) For each application from a major new HWM facility, the Secretary shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Secretary intends to:

- (1) Prepare a draft permit;
- (2) Give public notice;
- (3) Complete the public comment period, including any public hearing; and
- (4) Issue a final permit.

Section 124.4 [Reserved]

Section 124.5 Modification, Revocation and Reissuance, or Termination of Permits.

(a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Secretary's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in §122.41 or §122.43. All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the Secretary decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(c)(1) If the Secretary tentatively decides to modify or revoke and reissue a permit, he shall prepare a draft permit under §124.6 incorporating the proposed changes. The Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Secretary shall require the submission of a new application.

(2) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this Section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(3) "Minor modifications" are not subject to the requirements of this section.

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(d) If the Secretary tentatively decides to terminate a permit under §122.43 he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under §124.6.

Section 124.6 Draft Permits.

(a) Once an application is complete, the Secretary shall tentatively decide whether to prepare a draft permit or to deny the application.

(b) If the Secretary tentatively decides to deny the permit application, he shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. (See §124.6(d)). If the Secretary's final decision is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (d) of this section.

(c) If the Secretary decides to prepare a draft permit, he shall prepare a draft permit that contains the following information:

(1) All conditions under §122.30 and §122.32;

(2) All compliance schedules under §122.33;

(3) All monitoring requirements under §122.31; and

(4) Hazardous waste permits, standards for treatment, storage, and/or disposal and other permit conditions under §122.30.

(d) All draft permits prepared under this section shall be accompanied by a statement of basis (§124.7) or fact sheet (§124.8), publicly noticed (§124.10) and made available for public comment (§124.11). The Secretary shall give notice of opportunity for a public hearing (§124.12) and respond to comments (§124.17).

Section 124.7 Statement of basis.

DNREC shall prepare a statement of basis for every draft permit for which a fact sheet under §124.8 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

Section 124.8 Fact Sheet.

(a) A fact sheet shall be prepared for every draft permit for a major HWM facility or activity, and for every draft permit which the Secretary finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Secretary shall send this fact sheet to the applicant and, on request, to any other person.

(b) The fact sheet shall include, when applicable:

(1) A brief description of the type of facility or activity which is the subject of the draft permit;

(2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(3) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(4) A description of the procedures for reaching a final decision on the draft permit including:

(i) The beginning and ending dates of the comment period under §124.10 and the address where comments will be received;

- (ii) Procedures for requesting a hearing and the nature of that hearing; and
- (iii) Any other procedures by which the public may participate in the final decision.
- (5) Name and telephone number of a person to contact for additional information.

Section 124.9 [Reserved]

Section 124.10 Public notice of permit actions and public comment period.

(a) Scope.

(1) The Secretary shall give public notice that the following actions have occurred:

- (i) A permit application has been tentatively denied under §124.6(b);
- (ii) A draft permit has been prepared under §124.6(c);
- (iii) A hearing has been scheduled under §124.12.

(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

(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 45 days for public comment.

(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. 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;

(ii) Any other agency which the Secretary knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), NPDES, 404, or sludge management permit for the 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, and other appropriate government authorities, including any affected States (Indian Tribes). (For the 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) 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 the 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 Secretary may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Secretary may delete from the list the name of any person who fails to respond to such a request.)

(v)(A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

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(B) To each State agency having any authority under State law with respect to the construction or operation of such facility.

(2)(i) Publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

(3) 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

(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;

(iii) A brief description of the business conducted at the facility or activity described in the RCRA and/or DNREC permit application or RCRA and/or DNREC draft permit;

(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) 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; and

(iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(e) In addition to the general public notice described in paragraph (d)(1) of this section, all persons identified in paragraphs (c)(1)(i), (ii), and (iii), of this section shall be mailed a copy of the fact sheet, the permit application (if any) and the draft permit (if any).

(Amended August 21, 1997)

Section 124.11 Public comments and requests for public hearings.

During the public comment period provided under §124.10, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in §124.17.

Section 124.12 Public hearings.

(a)(1) The Secretary shall hold a public hearing whenever he finds, on the basis of requests, a significant degree of public interest in a draft permit(s);

(2) The Secretary may also hold a public hearing at his discretion, whenever for instance, such a hearing might clarify one or more issues involved in the permit decision;

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(3)(i) The Secretary shall hold a public hearing whenever he receives written notice of opposition to a draft permit and a request for hearing within 45 days of public notice under §124.10(b)(1);

(ii) Whenever possible, the Secretary shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility;

(4) Public notice of the hearing shall be given as specified in §124.10.

(b) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under §124.10 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(c) A tape recording or written transcript of the hearing shall be made available to the public.

Section 124.13 - 124.14 [Reserved]

Section 124.15 Issuance and Effective Date of Permit.

(a) After the close of the public comment period under §124.10 on a draft permit, the Secretary shall issue a final permit decision (or a decision to deny a permit for the active life of a hazardous waste management facility or unit under §122.29). The Secretary shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit or a decision to terminate a permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(b) A final permit decision (or a decision to deny a permit for the active life of a hazardous waste management facility or unit under §122.29) shall become effective 30 days after the service of notice of the decision unless:

(1) A later effective date is specified in the decision; or

(2) An appeal of the decision is received in accordance with 7 Del. C., §6313.

(3) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

(Amended June 19, 1992, August 21, 1997)

Section 124.16 [Reserved]

Section 124.17 Response to comments.

(a) At the time that any final permit is issued, the Secretary shall issue a response to comments. This response shall:

(1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(b) The response to comments shall be available to the public.

Subpart B - Specific Procedures Applicable to RCRA Permits

§124.31 Pre-application public meeting and notice.

(a) Applicability. The requirements of this section shall apply to all Part B applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to Part B applications seeking renewal of permits for such units, where the renewal

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application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a class 3 permit modification under §122.42. The requirements of this section do not apply to permit modifications §122.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Prior to the submission of a Part B permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b) of this section, and copies of any written comments or materials submitted at the meeting, to the DNREC as a part of the Part B application, in accordance with §122.14b).

(d) The applicant must provide public notice of the pre-application meeting at least 30 days prior to the meeting. The applicant must maintain, and provide to the permitting agency upon request, documentation of the notice.

(1) The applicant shall provide public notice in all of the following forms:

(i) A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in paragraph (d)(2) of this section, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Secretary shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Secretary determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

(ii) A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph (d)(2) of this section. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

(iii) A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in paragraph (d)(2) of this section, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Secretary.

(iv) A notice to DNREC. The applicant shall send a copy of the newspaper notice to DNREC and to the appropriate units of State and local government, in accordance with §124.10(c)(1)(v).

(2) The notices required under paragraph (d)(1) of this section must include:

(i) The date, time, and location of the meeting;

(ii) A brief description of the purpose of the meeting;

(iii) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

(iv) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and

(v) The name, address, and telephone number of a contact person for the applicant.

§124.32 Public notice requirements at the application stage.

(a) Applicability. The requirements of this section shall apply to all Part B applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to Part B applications seeking renewal of permits for such units under §122.51. The requirements of this section do not apply to permit modifications under §122.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

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(b) Notification at application submittal.

(1) The Secretary shall provide public notice as set forth in §124.10(c)(1)(iv), and notice to appropriate units of State and local government as set forth in §124.10(c)(1)(iv), that a Part B permit application has been submitted to DNREC and is available for review.

(2) The notice shall be published within a reasonable period of time after the application is received by the Secretary. The notice must include:

(i) The name and telephone number of the applicant's contact person;

(ii) The name and telephone number of the DNREC Solid and Hazardous Waste Management Branch, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

(iii) An address to which people can write in order to be put on the facility mailing list;

(iv) The location where copies of the permit application and any supporting documents can be viewed and copied;

(v) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

(vi) The date that the application was submitted.

(c) Concurrent with the notice required under §124.32(b) of this subpart, the Secretary must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the DNREC Solid and Hazardous Waste Management Branch.

§124.33 Information repository.

(a) Applicability. The requirements of this section apply to all applications seeking permits for hazardous waste management units.

(b) The Secretary may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Secretary shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Secretary determines, at any time after submittal of a permit application, that there is a need for a repository, then the Secretary shall notify the facility that it must establish and maintain an information repository. (See §122.30(m) for similar provisions relating to the information repository during the life of a permit).

(c) The information repository shall contain all documents, reports, data, and information deemed necessary by the Secretary to fulfill the purposes for which the repository is established. The Secretary shall have the discretion to limit the contents of the repository.

(d) The information repository shall be located and maintained at a site chosen by the facility. If the Secretary finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Secretary shall specify a more appropriate site.

(e) The Secretary shall specify requirements for informing the public about the information repository. At a minimum, the Secretary shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

(f) The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Secretary. The Secretary may close the repository at his or her discretion, based on the factors in paragraph (b) of this section.