

GUIDEBOOK TO HAWAII ADMINISTRATIVE RULES
CHAPTER 11-271.1
HAZARDOUS WASTE MANAGEMENT:
PERMIT PROCEDURES

IMPORTANT

This guidebook is provided to assist regulated businesses and the public in understanding Hawaii Administrative Rules (HAR) chapters 11-260.1 to 11-279.1, which now incorporate by reference portions of the Code of Federal Regulations (CFR). *This guidebook is not the regulations.*

Please go to <http://health.hawaii.gov/shwb/hazwaste/> or call the Department of Health Solid and Hazardous Waste Branch at (808) 586-4226 to obtain a copy of the Hawaii Administrative Rules regulating hazardous waste and used oil within the state of Hawaii.

- The table of contents for 40 CFR part 124 subparts A and B is provided below for convenience.
- 40 CFR part 124 subparts A and B (July 1, 2017) is incorporated by reference in §11-271.1-1, HAR with substitutions made in §11-271.1-2 and amendments made in §§11-271.1-3 to 11-271.1-4.
- The text of 40 CFR part 124 subparts A and B (July 1, 2017) is copied below and changes made to the incorporated text in §§11-271.1-2 to 11-271.1-4, HAR have been made.
- Amendments made in §§11-271.1-3 to 11-271.1-4 are shown using “track changes.” Substitutions made in §11-271.1-2 are not shown using “track changes.” Exceptions in §11-271.1-2(b), HAR have been noted in blue.
- All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in the text pasted below mean the Hawaii Administrative Rules analog, as incorporated and amended in chapters 11-260.1 to 11-279.1.
- The proper citation for the Hawaii Administrative Rules analog of a CFR section is constructed like this: “40 CFR section 262.16, as incorporated and amended in section 11-262.1-1, Hawaii Administrative Rules”, “40 CFR §260.43, as incorporated and amended in §11-260.1-1, HAR”, or “40 CFR §273.13, as incorporated and amended in chapter 11-273.1, HAR”.

PART 124—PROCEDURES FOR DECISIONMAKING

Subpart A—General Program Requirements..... 3

- § 124.1 Purpose and scope. 3
- § 124.2 Definitions..... 3
- § 124.3 Application for a permit..... 3
- ~~§ 124.4 Consolidation of permit processing.~~
- § 124.5 Modification, revocation and reissuance, or termination of permits. 4
- § 124.6 Draft permits..... 6
- § 124.7 Statement of basis..... 7
- § 124.8 Fact sheet..... 7
- § 124.9 Administrative record for draft permits 7
- § 124.10 Public notice of permit actions and public comment period. 8
 - (a) Scope. 8
 - (b) Timing 8
 - (c) Methods..... 9
 - (d) Contents 10
 - (e) 11
- § 124.11 Public comments and requests for public hearings. 11
- § 124.12 Public hearings..... 11
- § 124.13 Obligation to raise issues and provide information during the public..... 12
- § 124.14 Reopening of the public comment period. 12
- § 124.15 Issuance and effective date of permit; appeal of permits..... 13
- ~~§ 124.16 Stays of contested permit conditions.~~
- § 124.17 Response to comments..... 14
- § 124.18 Administrative record for final permit 14
- ~~§ 124.19 Appeal of RCRA, UIC, NPDES and PSD Permits.~~
- ~~§ 124.20 Computation of time.~~
- ~~§ 124.21 Effective date of part 124.~~

Subpart B—Specific Procedures Applicable to RCRA Permits 15

- § 124.31 Pre-application public meeting and notice. 15
- § 124.32 Public notice requirements at the application stage. 16
- § 124.33 Information repository..... 17

Subpart A—General Program Requirements

§ 124.1 Purpose and scope.

(a) [subsection replaced in its entirety]

This part contains state department of health procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA permits governed by chapter 11-270.1. The procedures of this part also apply to denial of a permit for the active life of a RCRA hazardous waste management facility or unit under 40 C.F.R. section 270.29, as incorporated and amended in section 11-270.1-1.

(b) [subsection replaced in its entirety]

Subpart A describes the steps the state department of health will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearings on draft permits. Subpart A also covers assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decisions. Subpart B contains public participation requirements applicable to all RCRA hazardous waste management facilities.

(c) Part 124 offers an opportunity for public hearings (see § 124.12).

(d) ~~This part is designed to allow permits for a given facility under two or more of the listed programs to be processed separately or together~~ [Subsection is excluded from incorporation; excluded text not reproduced.]

(e) ~~Certain procedural requirements set forth in part 124 must be adopted by States in order to gain EPA approval to operate RCRA, UIC, NPDES, and 404 permit programs.~~ [Subsection is excluded from incorporation; excluded text not reproduced.]

(f) ~~To coordinate decisionmaking when different permits will be issued by EPA and approved State programs~~ [Subsection is excluded from incorporation; excluded text not reproduced.]

§ 124.2 Definitions.

[section replaced in its entirety]

Terms used in this chapter have the meanings given in 40 C.F.R. section 270.2, as incorporated and amended in section 11-270.1-1. Terms not defined have the meaning given by RCRA.

§ 124.3 Application for a permit.

(a) [subsection replaced in its entirety]

(1) Any person who requires a permit under 40 C.F.R. section 270.1, as incorporated and amended in section 11-270.1-1, shall complete, sign, and submit to the director an application. Applications are not required for RCRA permits by rule (40 C.F.R. section 270.60, as incorporated and amended in section 11-270.1-1).

(2) The director shall not begin the processing of a permit until the application has fully complied with the application requirements. See 40 C.F.R. sections 270.10 and 270.13, as incorporated and amended in section 11-270.1-1.

(3) Permit applications must comply with the signature and certification requirements of 40 C.F.R. section 270.11, as incorporated and amended in section 11-270.1-1.

(b) [Reserved]

(c) The director shall review for completeness every application for ~~an EPA-issued permit~~ a permit. Each application for ~~an EPA-issued permit~~ a permit submitted by a new HWM facility, ~~a new UIC injection well, a major PSD stationary source or major PSD modification, or an NPDES new source or NPDES new discharger~~ should be reviewed for completeness by the director within 30 days of its receipt. Each application for ~~an EPA-issued permit~~ a permit submitted by an existing HWM facility (both Parts A and B of the application), ~~existing injection well or existing NPDES source or sludge-only facility~~ should be reviewed for completeness within 60 days of receipt. Upon completing the review, the director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the director shall list the information necessary to make the application complete. When the application is for an existing HWM facility, ~~an existing UIC injection well or an existing NPDES source or "sludge-only facility"~~ the director shall specify in the notice of deficiency a date for submitting the necessary information. The director shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the director 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 including RCRA section 3008, ~~SDWA sections 1423 and 1424, CAA section 167, and CWA sections 308, 309, 402(h), and 402(k) and section 342J-7, HRS.~~

(e) If the director 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 director 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, ~~major new UIC injection well, major NPDES new source, major NPDES new discharger, or a permit to be issued under provisions of § 122.28(c),~~ the director shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. ~~(This paragraph does not apply to PSD permits.)~~ The schedule shall specify target dates by which the director 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.

~~§ 124.4 Consolidation of permit processing.~~

§ 124.5 Modification, revocation and reissuance, or termination of permits.

(a) [subsection replaced in its entirety]

Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 40 C.F.R. sections 270.41 and 270.43, as incorporated and amended in section 11-270.1-1. All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the Director 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. Denials by the director may be informally appealed to the director by a letter briefly setting forth the relevant facts. ~~The Environmental Appeals Board may direct the Regional Administrator to begin modification, revocation and reissuance, or termination proceedings under paragraph (c) of this section.~~ The appeal shall be considered denied if the director takes no action on the letter within 60 days after receiving it. ~~This informal appeal is, under 5 U.S.C. 704, a prerequisite to seeking judicial review of EPA action in denying a request for modification, revocation and reissuance, or termination.~~

(c) ~~(Applicable to State programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).~~

(1) [paragraph replaced in its entirety]

If the director tentatively decides to modify or revoke and reissue a permit under 40 C.F.R. section 270.41 or 270.42(c), as incorporated and amended in section 11-270.1-1, he or she shall prepare a draft permit under 40 C.F.R. section 124.6, as incorporated and amended in this chapter, incorporating the proposed changes. The director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the director 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” as defined in §§ 122.63 (NPDES), 144.41 (UIC), and 233.16 (404), and~~ “Classes 1 and 2 modifications” as defined in § 270.42 (a) and

(b) ~~(RCRA)~~ are not subject to the requirements of this section.

(d) [subsection replaced in its entirety]

If the director tentatively decides to terminate a permit under 40 C.F.R. section 270.43, as incorporated and amended in section 11-270.1-1, where the permittee objects, the director 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 40 C.F.R. section 124.6, as incorporated and amended in this chapter.

(e) When [the] state department of health is the permitting authority, all draft permits (including notices of intent to terminate) prepared under this section shall be based on the administrative record as defined in § 124.9.

(f) ~~(Applicable to State programs, see § 233.26 (404).)~~ [Subsection excluded from incorporation; excluded text not reproduced.]

(g) ~~(1) (Reserved for PSD Modification Provisions).~~ [Subsection excluded from incorporation; excluded text not reproduced.]

§ 124.6 Draft permits.

(a) [subsection replaced in its entirety]

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

(b) If the Director tentatively decides to deny the permit application, he or she 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(e). If the Director's final decision (§ 124.15) 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) ~~(Applicable to State programs, see §§ 123.25 (NPDES) and 233.26 (404).)~~ [Subsection excluded from incorporation; excluded text not reproduced.]

(d) [subsection replaced in its entirety]

If the director decides to prepare a draft permit, he or she shall prepare a draft permit that contains the following information:

(1) All the conditions under 40 C.F.R. sections 270.30 and 270.32, as incorporated and amended in section 11-270.1-1;

(2) All compliance schedules under 40 C.F.R. section 270.33, as incorporated and amended in section 11-270.1-1;

(3) All monitoring requirements under 40 C.F.R. section 270.31, as incorporated and amended in section 11-270.1-1; and

(4) Standards for treatment, storage, and/or disposal and other permit conditions under 40 C.F.R. section 270.30, as incorporated and amended in section 11-270.1-1.

(e) ~~(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)~~ All draft permits prepared by [the] state department of health under this section shall be accompanied by a statement of basis (§ 124.7) or fact sheet (§ 124.8), and shall be based on the administrative record (§ 124.9), publicly noticed (§ 124.10) and made available for public comment (§ 124.11). The director shall give notice of opportunity for a public hearing (§ 124.12), issue a final decision (§ 124.15) and respond to comments (§ 124.17). ~~For RCRA, UIC or PSD permits, an appeal may be taken under § 124.19 and, for NPDES permits, an appeal may be taken under § 124.74. Draft permits prepared by a State shall be accompanied by a fact sheet if required under § 124.8. A contested case hearing may be requested as provided in 40 C.F.R. section 124.15, as incorporated and amended in this chapter.~~

§ 124.7 Statement of basis.

[The] state department of health 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.

§ 124.8 Fact sheet.

~~(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)~~

(a) [subsection is replaced in its entirety]

A fact sheet shall be prepared for every draft permit for a major HWM facility or activity and for every draft permit which the director finds is the subject of wide-spread 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 director 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) ~~For a PSD permit~~ [Paragraph excluded from incorporation; excluded text not reproduced.]

(4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9 ~~(for EPA-issued permits)~~;

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

(6) 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.

(7) Name and telephone number of a person to contact for additional information.

(8) ~~For NPDES permits~~ [Paragraph excluded from incorporation; excluded text not reproduced.]

(9) ~~Justification for waiver of any application requirements under § 122.21(j) or (q) of this chapter.~~ [Paragraph excluded from incorporation.]

§ 124.9 Administrative record for draft permits ~~when EPA is the permitting authority.~~

- (a) The provisions of a draft permit prepared by [the] state department of health under § 124.6 shall be based on the administrative record defined in this section.
- (b) For preparing a draft permit under § 124.6, the record shall consist of:
 - (1) The application, if required, and any supporting data furnished by the applicant;
 - (2) The draft permit or notice of intent to deny the application or to terminate the permit;
 - (3) The statement of basis (§ 124.7) or fact sheet (§ 124.8);
 - (4) All documents cited in the statement of basis or fact sheet; and
 - (5) Other documents contained in the supporting file for the draft permit.
 - (6) ~~For NPDES new source draft permits only~~ [Paragraph excluded from incorporation; excluded text not reproduced.]
- (c) Material readily available at the state department of health or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this section, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.
- (d) This section applies to all draft permits when public notice was given after the effective date of these regulations.

§ 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).)~~ [Paragraph excluded from incorporation; excluded text not reproduced.]
 - (v) ~~An NPDES new source determination has been made under § 122.29.~~ [Paragraph excluded from incorporation.]
- (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) [paragraph replaced in its entirety]
Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under 40 C.F.R. 124.10(a), as incorporated and amended in this chapter, 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 ~~(applicable to State programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.23 (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);~~ The 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~~ [Paragraph excluded from incorporation; excluded text not reproduced.]

(v) ~~For NPDES permits only~~ [Paragraph excluded from incorporation; excluded text not reproduced.]

(vi) ~~For 404 permits only~~ [Paragraph excluded from incorporation; excluded text not reproduced.]

(vii) ~~For PSD permits only~~ [Paragraph excluded from incorporation; excluded text not reproduced.]

(viii) ~~For Class I injection well UIC permits only~~ [Paragraph excluded from incorporation; excluded text not reproduced.]

(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~~ [Paragraph excluded from incorporation; excluded text not reproduced.]
- (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)~~ [Paragraph excluded from incorporation; excluded text not reproduced.]
- (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; and
- (3) ~~When the program is being administered by an approved State, in a manner constituting legal notice to the public under State law; and~~ [Paragraph excluded from incorporation.]
- (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~~ 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~~ [Paragraph excluded from incorporation; excluded text not reproduced.]
- (viii) ~~For 404 permits only~~ [Paragraph excluded from incorporation; excluded text not reproduced.]

(ix) ~~Requirements applicable to cooling water intake structures under section 316(b) of the CWA~~ [Paragraph excluded from incorporation; excluded text not reproduced..]

(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; and

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

(iv) ~~For 404 permits only~~ [Paragraph excluded from incorporation; excluded text not reproduced.]

(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).

§ 124.11 Public comments and requests for public hearings.

~~(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)~~ During the public comment period provided under § 124.10, any interested person may submit written comments on the draft permit ~~or the permit application for 404 permits when no draft permit is required (see § 233.39)~~ 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.

§ 124.12 Public hearings.

(a) ~~(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)~~

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

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

(3) ~~For RCRA permits only,~~

(i) [T]he Director shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within 45 days of public notice under § 124.10(b)(1);

(ii) whenever possible the Director 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) Whenever a public hearing will be held ~~and EPA is the permitting authority~~, the director shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(c) 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~~ presiding officer may also extend the comment period by so stating at the hearing.

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

§ 124.13 Obligation to raise issues and provide information during the public comment period.

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under § 124.10. Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, ~~EPA documents~~ EPA or state department of health documents of general applicability, or other generally available reference materials. Commenters shall make supporting materials not already included in the administrative record available to [the] state department of health as directed by the director. (A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section. Additional time shall be granted under § 124.10 to the extent that a commenter who requests additional time demonstrates the need for such time.)

§ 124.14 Reopening of the public comment period.

- (a) (1) The director may order the public comment period reopened if the procedures of this paragraph could expedite the decisionmaking process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date, not less than sixty days after public notice under paragraph (a)(2) of this section, set by the director. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than twenty days after the date set for filing of the material, set by the director.
- (2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of § 124.14(a) shall apply.

(3) On his own motion or on the request of any person, the director may direct that the requirements of paragraph (a)(1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (a)(1) of this section will substantially expedite the decisionmaking process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they shall be granted under § 124.10 to the extent they appear necessary.

(b) If any data information or arguments submitted during the public comment period, including information or arguments required under § 124.13, appear to raise substantial new questions concerning a permit, the director may take one or more of the following actions:

- (1) Prepare a new draft permit, appropriately modified, under § 124.6;
- (2) Prepare a revised statement of basis under § 124.7, a fact sheet or revised fact sheet under § 124.8 and reopen the comment period under § 124.14; or
- (3) Reopen or extend the comment period under § 124.10 to give interested persons an opportunity to comment on the information or arguments submitted.

(c) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under § 124.10 shall define the scope of the reopening.

(d) [Reserved]

(e) Public notice of any of the above actions shall be issued under § 124.10.

§ 124.15 Issuance and effective date of ~~permit.~~ permit; appeal of permits.

(a) After the close of the public comment period under § 124.10 on a draft permit, the director shall issue a final permit decision (or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29). The director 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 RCRA, UIC, PSD, or NPDES permit under § 124.19 of this part.~~ The notice of final permit decision shall inform the persons authorized by 40 C.F.R. section 124.15(c), as incorporated and amended in this chapter, to request a contested case hearing of the procedures for requesting such a hearing. Chapter 11-1 procedures for contested case hearings apply to contested case hearings for permits. 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 RCRA hazardous waste management facility or unit under § 270.29) 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) ~~Review is requested on the permit under § 124.19.~~ A written request for a contested case hearing is made within thirty days of the date of issuance of the final permit decision by a person authorized by 40 C.F.R. section 124.15(c), as

incorporated and amended in this chapter, to request a contested case hearing;
or

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

(c) After the issuance of a final permit decision, a contested case hearing may be requested in writing by:

(1) The permittee whose permit has been modified, or revoked and reissued, or terminated;

(2) The person whose application for a permit has been denied; and

(3) Any person whose legal rights, duties, or privileges will be specially, personally, and adversely affected by the permit decision and who has participated as an adversary during the public comment period or public hearing in the manner provided by 40 C.F.R. sections 124.11 to 124.14, as incorporated and amended in this chapter.

~~§ 124.16 Stays of contested permit conditions.~~

§ 124.17 Response to comments.

(a) [introductory paragraph replaced in its entirety]

At the time that any final permit decision is issued under 40 C.F.R. section 124.15, as incorporated and amended in this chapter, the director 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 ~~or the permit application (for section 404 permits only)~~ raised during the public comment period, or during any hearing.

(b) ~~For EPA-issued permits, any~~ Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in § 124.18. If new points are raised or new material supplied during the public comment period, [the] state department of health may document its response to those matters by adding new materials to the administrative record.

(c) ~~(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).) The response to comments shall be available to the public. The response to comments shall be available to the public~~

§ 124.18 Administrative record for final permit ~~when EPA is the permitting authority.~~

(a) The director shall base final permit decisions under § 124.15 on the administrative record defined in this section.

(b) The administrative record for any final permit shall consist of the administrative record for the draft permit and:

(1) All comments received during the public comment period provided under § 124.10 (including any extension or reopening under § 124.14);

(2) The tape or transcript of any hearing(s) held under § 124.12;

(3) Any written materials submitted at such a hearing;

(4) The response to comments required by § 124.17 and any new material placed in the record under that section;

(5) ~~For NPDES new source permits only~~ [Paragraph excluded from incorporation; excluded text not reproduced.]

(6) Other documents contained in the supporting file for the permit; and

(7) The final permit.

(c) The additional documents required under paragraph (b) of this section should be added to the record as soon as possible after their receipt or publication by the state department of health. The record shall be complete on the date the final permit is issued.

(d) [subsection replaced in its entirety]

This section applies to all final permits when the draft permit was subject to the administrative record requirements of 40 C.F.R. section 124.9, as incorporated and amended in this chapter.

(e) Material readily available at the state department of health, or published materials which are generally available and which are included in the administrative record under the standards of this section or of § 124.17 (“Response to comments”), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments.

~~§ 124.19 Appeal of RCRA, UIC, NPDES and PSD Permits.~~

~~§ 124.20 Computation of time.~~

~~§ 124.21 Effective date of part 124.~~

Subpart B—Specific Procedures Applicable to RCRA Permits

§ 124.31 Pre-application public meeting and notice.

(a) [subsection replaced in its entirety]

Applicability. The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal 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 40 C.F.R. section 270.42, as incorporated and amended in section 11-270.1-1. The requirements of this section do not apply to permit modifications under 40 C.F.R. 270.42, as incorporated and amended in section 11-270.1-1, 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 RCRA permit application for a facility, ~~or to the submission of a written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart J),~~ 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 permitting agency as a part of the part B application, in accordance with 40 CFR 270.14(b), ~~or with the written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart J).~~

(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 Director shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Director 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 Director.

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

(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) [subsection replaced in its entirety]

Applicability. The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units under 40 C.F.R. section 270.51, as incorporated and amended in section 11-270.1-1. The requirements of this section do not apply to permit modifications under 40 C.F.R. 270.42, as incorporated and amended in section 11-270.1-1, or to permit applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Notification at application submittal.

(1) The Director shall provide public notice as set forth in § 124.10(c)(1)(ix), and notice to appropriate units of State and local government as set forth in § 124.10(c)(1)(x), that a part B permit application has been submitted to the state department of health and is available for review.

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

- (i) The name and telephone number of the applicant's contact person;
- (ii) The name and telephone number of the permitting agency's contact office, 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 Director 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 permitting agency's office.

§ 124.33 Information repository.

(a) [subsection replaced in its entirety]

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

(b) The Director may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Director 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 Director determines, at any time after submittal of a permit application, that there is a need for a repository, then the Director shall notify the facility that it must establish and maintain an information repository. (See 40 CFR 270.30(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 Director to fulfill the purposes for which the repository is established. The Director 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 Director 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 Director shall specify a more appropriate site.
- (e) The Director shall specify requirements for informing the public about the information repository. At a minimum, the Director 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 Director. The Director may close the repository at his or her discretion, based on the factors in paragraph (b) of this section.