

## Environmental Protection Agency

## § 124.15

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 of general applicability, or other generally available reference materials. Commenters shall make supporting materials not already included in the administrative record available to EPA as directed by the Regional Administrator. (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.)

[49 FR 38051, Sept. 26, 1984]

### § 124.14 Reopening of the public comment period.

(a)(1) The Regional Administrator may order the public comment period reopened if the procedures of this paragraph could expedite the decision-making 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 Regional Administrator'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 Regional Administrator. 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 Regional Administrator.

(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 Regional Administrator 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 Regional Administrator 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.

[48 FR 14264, Apr. 1, 1983, as amended at 49 FR 38051, Sept. 26, 1984; 65 FR 30911, May 15, 2000]

### § 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 Regional Administrator

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

[48 FR 14264, Apr. 1, 1983, as amended at 54 FR 9607, Mar. 7, 1989; 65 FR 30911, May 15, 2000]

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

(a) *Stays.* (1) If a request for review of a RCRA, UIC, or NPDES permit under §124.19 of this part is filed, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final agency action. Uncontested permit conditions shall be stayed only until the date specified in paragraph (a)(2)(i) of this section. (No stay of a PSD permit is available under this section.) If the permit involves a new facility or new injection well, new source, new discharger or a recommencing discharger, the applicant shall be without a permit for the proposed new facility, injection well, source or discharger pending final agency action. See also §124.60.

(2)(i) Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions. The Regional Administrator shall identify the stayed

provisions of permits for existing facilities, injection wells, and sources. All other provisions of the permit for the existing facility, injection well, or source become fully effective and enforceable 30 days after the date of the notification required in paragraph (a)(2)(ii) of this section.

(ii) The Regional Administrator shall, as soon as possible after receiving notification from the EAB of the filing of a petition for review, notify the EAB, the applicant, and all other interested parties of the uncontested (and severable) conditions of the final permit that will become fully effective enforceable obligations of the permit as of the date specified in paragraph (a)(2)(i) of this section. For NPDES permits only, the notice shall comply with the requirements of §124.60(b).

(b) *Stays based on cross effects.* (1) A stay may be granted based on the grounds that an appeal to the Administrator under §124.19 of one permit may result in changes to another EPA-issued permit only when each of the permits involved has been appealed to the Administrator and he or she has accepted each appeal.

(2) No stay of an EPA-issued RCRA, UIC, or NPDES permit shall be granted based on the staying of any State-issued permit except at the discretion of the Regional Administrator and only upon written request from the State Director.

(c) Any facility or activity holding an existing permit must:

(1) Comply with the conditions of that permit during any modification or revocation and reissuance proceeding under §124.5; and

(2) To the extent conditions of any new permit are stayed under this section, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed.

[48 FR 14264, Apr. 1, 1983, as amended at 65 FR 30911, May 15, 2000]

**§ 124.17 Response to comments.**

(a) (*Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26*