

§ 124.5

40 CFR Ch. I (7–1–03 Edition)

whenever a facility or activity requires all permits either from EPA or from an approved State.

(2) The Regional Administrator and the State Director(s) may agree to consolidate draft permits whenever a facility or activity requires permits from both EPA and an approved State.

(3) Permit applicants may recommend whether or not the processing of their applications should be consolidated.

(d) [Reserved]

(e) Except with the written consent of the permit applicant, the Regional Administrator shall not consolidate processing a PSD permit with any other permit under paragraph (a) or (b) of this section when to do so would delay issuance of the PSD permit more than one year from the effective date of the application under §124.3(f).

[48 FR 14264, Apr. 1, 1983, as amended at 65 FR 30910, May 15, 2000]

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

(a) *(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* Permits (other than PSD 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 §122.62 or §122.64 (NPDES), 144.39 or 144.40 (UIC), 233.14 or 233.15 (404), and 270.41 or 270.43 (RCRA). 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 Regional Administrator may be informally appealed to the Environmental Appeals Board 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 termi-

nation proceedings under paragraph (c) of this section. The appeal shall be considered denied if the Environmental Appeals Board 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 §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* (1) If the Director tentatively decides to modify or revoke and reissue a permit under §§122.62 (NPDES), 144.39 (UIC), 233.14 (404), or 270.41 or 270.42(c) (RCRA), he or she shall prepare a draft permit under §124.6 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) *(Applicable to State programs, see §§123.25 (NPDES) of this chapter, 145.11 (UIC) of this chapter, and 271.14 (RCRA) of this chapter).* (1) If the Director tentatively decides to terminate: A permit under §144.40 (UIC) of this chapter, a permit under §§122.64(a) (NPDES) of this chapter or 270.43 (RCRA) of this chapter (for EPA-issued NPDES permits, only at the request of the permittee), or a permit under §122.64(b)

(NPDES) of this chapter where the permittee objects, 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 of this chapter.

(2) For EPA-issued NPDES or RCRA permits, if the Director tentatively decides to terminate a permit under § 122.64(a) (NPDES) of this chapter, other than at the request of the permittee, or decides to conduct a hearing under section 3008 of RCRA in connection with the termination of a RCRA permit, he or she shall prepare a complaint under 40 CFR 22.13 and 22.44 of this chapter. Such termination of NPDES and RCRA permits shall be subject to the procedures of part 22 of this chapter.

(3) In the case of EPA-issued permits, a notice of intent to terminate or a complaint shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibility to an approved State under §§ 123.24(b)(1) (NPDES) of this chapter, 145.25(b)(1) (UIC) of this chapter, 271.8(b)(6) (RCRA) of this chapter, or 501.14(b)(1) (sludge) of this chapter. In addition, termination of an NPDES permit for cause pursuant to § 122.64 of this chapter may be accomplished by providing written notice to the permittee, unless the permittee objects.

(e) When EPA 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)).* Any request by the permittee for modification to an existing 404 permit (other than a request for a minor modification as defined in § 233.16 (404)) shall be treated as a permit application and shall be processed in accordance with all requirements of § 124.3.

(g)(1) (Reserved for PSD Modification Provisions).

(2) PSD permits may be terminated only by rescission under § 52.21(w) or by automatic expiration under § 52.21(r). Applications for rescission shall be

preprocessed under § 52.21(w) and are not subject to this part.

[48 FR 14264, Apr. 1, 1983, as amended at 53 FR 37934, Sept. 28, 1988; 54 FR 18785, May 2, 1989; 57 FR 60129, Dec. 18, 1992; 65 FR 30910, May 15, 2000]

§ 124.6 Draft permits.

(a) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit (except in the case of State section 404 permits for which no draft permit is required under § 233.39) 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).)* If the Director tentatively decides to issue an NPDES or 404 general permit, he or she shall prepare a draft general permit under paragraph (d) of this section.

(d) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* If the Director decides to prepare a draft permit, he or she shall prepare a draft permit that contains the following information:

(1) All conditions under §§ 122.41 and 122.43 (NPDES), 144.51 and 144.42 (UIC), 233.7 and 233.8 (404, or 270.30 and 270.32 (RCRA) (except for PSD permits));

(2) All compliance schedules under §§ 122.47 (NPDES), 144.53 (UIC), 233.10 (404), or 270.33 (RCRA) (except for PSD permits);

(3) All monitoring requirements under §§ 122.48 (NPDES), 144.54 (UIC), 233.11 (404), or 270.31 (RCRA) (except for PSD permits); and

(4) For: