

Environmental Protection Agency

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virtue of the fact that such information was furnished by an applicant other than the permittee.

§ 221.5 Processing fees.

(a) A processing fee of \$1,000 will be charged in connection with each application for a permit for dumping in an existing dump site designated in this subchapter H.

(b) A processing fee of an additional \$3,000 will be charged in connection with each application for a permit for dumping in a dump site other than a dump site designated in this subchapter H.

(c) Notwithstanding any other provision of this § 221.5, no agency or instrumentality of the United States or of a State or local government will be required to pay the processing fees specified in paragraphs (a) and (b) of this section.

PART 222—ACTION ON OCEAN DUMPING PERMIT APPLICATIONS UNDER SECTION 102 OF THE ACT

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AUTHORITY: 33 U.S.C. 1412 and 1418.

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§ 222.1 General.

Decisions as to the issuance, denial, or imposition of conditions on general, special, emergency, interim and research permits under section 102 of the Act will be made by application of the criteria of parts 227 and 228. Final action on any application for a permit will, to the extent practicable, be taken within 180 days from the date a complete application is filed.

§ 222.2 Tentative determinations.

(a) Within 30 days of the receipt of his initial application, an applicant shall be issued notification of whether his application is complete and what, if any, additional information is required. No such notification shall be deemed to foreclose the Administrator or the Regional Administrator, as the case may be, from requiring additional information at any time pursuant to § 221.2.

(b) Within 30 days after receipt of a completed permit application, the Administrator or the Regional Administrator, as the case may be, shall publish notice of such application including a tentative determination with respect to issuance or denial of the permit. If such tentative determination is to issue the permit, the following additional tentative determinations will be made:

- (1) Proposed time limitations, if any;
- (2) Proposed rate of discharge from the barge or vessel transporting the waste;
- (3) Proposed dumping site; and
- (4) A brief description of any other proposed conditions determined to be appropriate for inclusion in the permit in question.

§ 222.3 Notice of applications.

(a) *Contents.* Notice of every complete application for a general, special, interim, emergency and research permit shall, in addition to any other material, include the following:

- (1) A summary of the information included in the permit application;
- (2) Any tentative determinations made pursuant to paragraph (b) of § 222.2;
- (3) A brief description of the procedures set forth in § 222.5 for requesting a public hearing on the application including specification of the date by which requests for a public hearing must be filed;
- (4) A brief statement of the factors considered in reaching the tentative determination with respect to the permit and, in the case of a tentative determination to issue the permit, the reasons for the choice of the particular permit conditions selected; and

(5) The location at which interested persons may obtain further information on the proposed dumping, including copies of any relevant documents.

(b) *Publication*—(1) *Special, interim and research permits*. Notice of every complete application for special, interim and research permits shall be given by:

(i) Publication in a daily newspaper of general circulation in the State in closest proximity to the proposed dump site; and

(ii) Publication in a daily newspaper of general circulation in the city in which is located the office of the Administrator or the Regional Administrator, as the case may be, giving notice of the permit application.

(2) *General permits*. Notice of every complete application for a general permit or notice of action proposed to be taken by the Administrator to issue a general permit, without an application, shall be given by publication in the FEDERAL REGISTER.

(3) *Emergency permits*. Notice of every complete application for an emergency permit shall be given by publication in accordance with paragraphs (b)(1)(i) and (ii) of this section; *Provided, however*, That no such notice and no tentative determination in accordance with §222.2 shall be required in any case in which the Administrator determines:

(i) That an emergency, as defined in paragraph (c) of §220.3 exists;

(ii) That the emergency poses an unacceptable risk relating to human health;

(iii) That the emergency admits of no other feasible solution; and

(iv) That the public interest requires the issuance of an emergency permit as soon as possible.

Notice of any determination made by the Administrator pursuant to this paragraph (b)(3) shall be given as soon as practicable after the issuance of the emergency permit by publication in accordance with paragraphs (b)(1)(i) and (ii) and with paragraphs (a), (c) through (i) of this section.

(c) *Copies of notice sent to specific persons*. In addition to the publication of notice required by paragraph (b) of this section, copies of such notice will be mailed by the Administrator or the Regional Administrator, as the case may

be, to any person, group or Federal, State or local agency upon request. Any such request may be a standing request for copies of such notices and shall be submitted in writing to the Administrator or to any Regional Administrator and shall relate to all or any class of permit applications which may be acted upon by the Administrator or such Regional Administrator, as the case may be.

(d) *Copies of notice sent to States*. In addition to the publication of notice required by paragraph (b) of this section, copies of such notice will be mailed to the State water pollution control agency and to the State agency responsible for carrying out the Coastal Zone Management Act, if such agency exists, for each coastal State within 500 miles of the proposed dumping site.

(e) *Copies of notice sent to Corps of Engineers*. In addition to the publication of notice required by paragraph (b) of this section, copies of such notice will be mailed to the office of the appropriate District Engineer of the U.S. Army Corps of Engineers for purposes of section 106(c) of the Act, (pertaining to navigation, harbor approaches, and artificial islands on the outer continental shelf).

(f) *Copies of notice sent to Coast Guard*. In addition to the publication of notice required by paragraph (b) of this section, copies of such notice will be sent to the appropriate district office of the U.S. Coast Guard for review and possible suggestion of additional conditions to be included in the permit to facilitate surveillance and enforcement.

(g) *Fish and Wildlife Coordination Act*. The Fish and Wildlife Coordination Act, Reorganization Plan No. 4 of 1970, and the Act require that the Administrator or the Regional Administrator, as the case may be, consult with appropriate regional officials of the Departments of Commerce and Interior, the Regional Director of the NMFS-NOAA, and the agency exercising administrative jurisdiction over the fish and wildlife resources of the States subject to any dumping prior to the issuance of a permit under this subchapter H. Copies of the notice shall be sent to the persons noted in paragraph (g) of this section.

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(h) *Copies of notice sent to Food and Drug Administration.* In addition to the publication of notice required by paragraph (b) of this section, copies of such notice will be mailed to Food and Drug Administration, Shellfish Sanitation Branch (HF-417), 200 C Street SW., Washington, DC 20204.

(i) *Failure to give certain notices.* Failure to send copies of any public notice in accordance with paragraphs (c) through (h) of this section shall not invalidate any notice given pursuant to this section nor shall such failure invalidate any subsequent administrative proceeding.

(j) *Failure of consulted agency to respond.* Unless advice to the contrary is received from the appropriate Federal or State agency within 30 days of the date copies of any public notice were dispatched to such agency, such agency will be deemed to have no objection to the issuance of the permit identified in the public notice.

§ 222.4 Initiation of hearings.

(a) In the case of any permit application for which public notice in advance of permit issuance is required in accordance with paragraph (b) of § 222.3, any person may, within 30 days of the date on which all provisions of paragraph (b) of § 222.3 have been complied with, request a public hearing to consider the issuance or denial of, or the conditions to be imposed upon, such permit. Any such request for a public hearing shall be in writing, shall identify the person requesting the hearing, shall state with particularity any objections to the issuance or denial of, or to the conditions to be imposed upon, the proposed permit, and shall state the issues which are proposed to be raised by such person for consideration at a hearing.

(b) Whenever (1) a written request satisfying the requirements of paragraph (a) of this section has been received and the Administrator or Regional Administrator, as the case may be, determines that such request presents genuine issues, or (2) the Administrator or Regional Administrator, as the case may be, determines in his discretion that a public hearing is necessary or appropriate, the Administrator or the Regional Administrator,

as the case may be, will set a time and place for a public hearing in accordance with § 222.5, and will give notice of such hearing by publication in accordance with § 222.3.

(c) In the event the Administrator or the Regional Administrator, as the case may be, determines that a request filed pursuant to paragraph (a) of this section does not comply with the requirements of such paragraph (a) of this section or that such request does not present substantial issues of public interest, he shall advise, in writing, the person requesting the hearing of his determination.

§ 222.5 Time and place of hearings.

Hearings shall be held in the State in closest proximity to the proposed dump site, whenever practicable, and shall be set for the earliest practicable date no less than 30 days after the receipt of an appropriate request for a hearing or a determination by the Administrator or the Regional Administrator, as the case may be, to hold such a hearing without such a request.

§ 222.6 Presiding Officer.

A hearing convened pursuant to this subchapter H shall be conducted by a Presiding Officer. The Administrator or Regional Administrator, as the case may be, may designate a Presiding Officer. For adjudicatory hearings held pursuant to § 222.11, the Presiding Officer shall be an EPA employee who has had no prior connection with the permit application in question, including without limitation, the performance of investigative or prosecuting functions or any other functions, and who is not employed in the Enforcement Division or any Regional enforcement office.

[42 FR 2471, Jan. 11, 1977; 42 FR 6583, Feb. 3, 1977]

§ 222.7 Conduct of public hearing.

The Presiding Officer shall be responsible for the expeditious conduct of the hearing. The hearing shall be an informal public hearing, not an adversary proceeding, and shall be conducted so as to allow the presentation of public comments. When the Presiding Officer determines that it is necessary or appropriate, he shall cause a suitable record, which may include a verbatim