

Environmental Protection Agency

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parties may express their views concerning the permit application.

(2) Public notice of a public hearing shall be given at least 30 days before the hearing.

(3) The Regional Administrator may approve a program with shorter public notice timing if the Regional Administrator determines that sufficient public notice is provided for.

(c) The Director shall give public notice by each of the following methods:

(1) By mailing a copy of the notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his rights to receive notice for any classes or categories of permits):

(i) The applicant.

(ii) Any agency with jurisdiction over the activity or the disposal site, whether or not the agency issues a permit.

(iii) Owners of property adjoining the property where the regulated activity will occur.

(iv) All persons who have specifically requested copies of public notices. (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.)

(v) Any State whose waters may be affected by the proposed discharge.

(2) In addition, by providing notice in at least one other way (such as advertisement in a newspaper of sufficient circulation) reasonably calculated to cover the area affected by the activity.

(d) All public notices shall contain at least the following information:

(1) The name and address of the applicant and, if different, the address or location of the activity(ies) regulated by the permit.

(2) The name, address, and telephone number of a person to contact for further information.

(3) A brief description of the comment procedures and procedures to request a public hearing, including deadlines.

(4) A brief description of the proposed activity, its purpose and intended use, so as to provide sufficient information concerning the nature of the activity to generate meaningful comments, in-

cluding a description of the type of structures, if any, to be erected on fills, and a description of the type, composition and quantity of materials to be discharged.

(5) A plan and elevation drawing showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area.

(6) A paragraph describing the various evaluation factors, including the 404(b)(1) Guidelines or State-equivalent criteria, on which decisions are based.

(7) Any other information which would significantly assist interested parties in evaluating the likely impact of the proposed activity.

(e) Notice of public hearing shall also contain the following information:

(1) Time, date, and place of hearing.

(2) Reference to the date of any previous public notices relating to the permit.

(3) Brief description of the nature and purpose of the hearing.

§ 233.33 Public hearing.

(a) Any interested person may request a public hearing during the public comment period as specified in § 233.32. Requests shall be in writing and shall state the nature of the issues proposed to be raised at the hearing.

(b) The Director shall hold a public hearing whenever he determines there is a significant degree of public interest in a permit application or a draft general permit. He may also hold a hearing, at his discretion, whenever he determines a hearing may be useful to a decision on the permit application.

(c) At a hearing, any person may submit oral or written statements or data concerning the permit application or draft general permit. The public comment period shall automatically be extended to the close of any public hearing under this section. The presiding officer may also extend the comment period at the hearing.

(d) All public hearings shall be reported verbatim. Copies of the record of proceedings may be purchased by any person from the Director or the reporter of such hearing. A copy of the transcript (or if none is prepared, a

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tape of the proceedings) shall be made available for public inspection at an appropriate State office.

§ 233.34 Making a decision on the permit application.

(a) The Director will review all applications for compliance with the 404(b)(1) Guidelines and/or equivalent State environmental criteria as well as any other applicable State laws or regulations.

(b) The Director shall consider all comments received in response to the public notice, and public hearing if a hearing is held. All comments, as well as the record of any public hearing, shall be made part of the official record on the application.

(c) After the Director has completed his review of the application and consideration of comments, the Director will determine, in accordance with the record and all applicable regulations, whether or not the permit should be issued. No permit shall be issued by the Director under the circumstances described in § 233.20. The Director shall prepare a written determination on each application outlining his decision and rationale for his decision. The determination shall be dated, signed and included in the official record prior to final action on the application. The official record shall be open to the public.

§ 233.35 Issuance and effective date of permit.

(a) If the Regional Administrator comments on a permit application or draft general permit under § 233.50, the Director shall follow the procedures specified in that section in issuing the permit.

(b) If the Regional Administrator does not comment on a permit application or draft general permit, the Director shall make a final permit decision after the close of the public comment period and shall notify the applicant.

(1) If the decision is to issue a permit, the permit becomes effective when it is signed by the Director and the applicant.

(2) If the decision is to deny the permit, the Director will notify the applicant in writing of the reason(s) for denial.

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§ 233.36 Modification, suspension or revocation of permits.

(a) *General.* The Director may re-evaluate the circumstances and conditions of a permit either on his own motion or at the request of the permittee or of a third party and initiate action to modify, suspend, or revoke a permit if he determines that sufficient cause exists. Among the factors to be considered are:

(1) Permittee's noncompliance with any of the terms or conditions of the permit;

(2) Permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at the time;

(3) Information that activities authorized by a general permit are having more than minimal individual or cumulative adverse effect on the environment, or that the permitted activities are more appropriately regulated by individual permits;

(4) Circumstances relating to the authorized activity have changed since the permit was issued and justify changed permit conditions or temporary or permanent cessation of any discharge controlled by the permit;

(5) Any significant information relating to the activity authorized by the permit if such information was not available at the time the permit was issued and would have justified the imposition of different permit conditions or denial at the time of issuance;

(6) Revisions to applicable statutory or regulatory authority, including toxic effluent standards or prohibitions or water quality standards.

(b) *Limitations.* Permit modifications shall be in compliance with § 233.20.

(c) *Procedures.* (1) The Director shall develop procedures to modify, suspend or revoke permits if he determines cause exists for such action (§ 233.36(a)). Such procedures shall provide opportunity for public comment (§ 233.32), coordination with the Federal review agencies (§ 233.50), and opportunity for public hearing (§ 233.33) following notification of the permittee. When permit modification is proposed, only the conditions subject to modification need be reopened.