

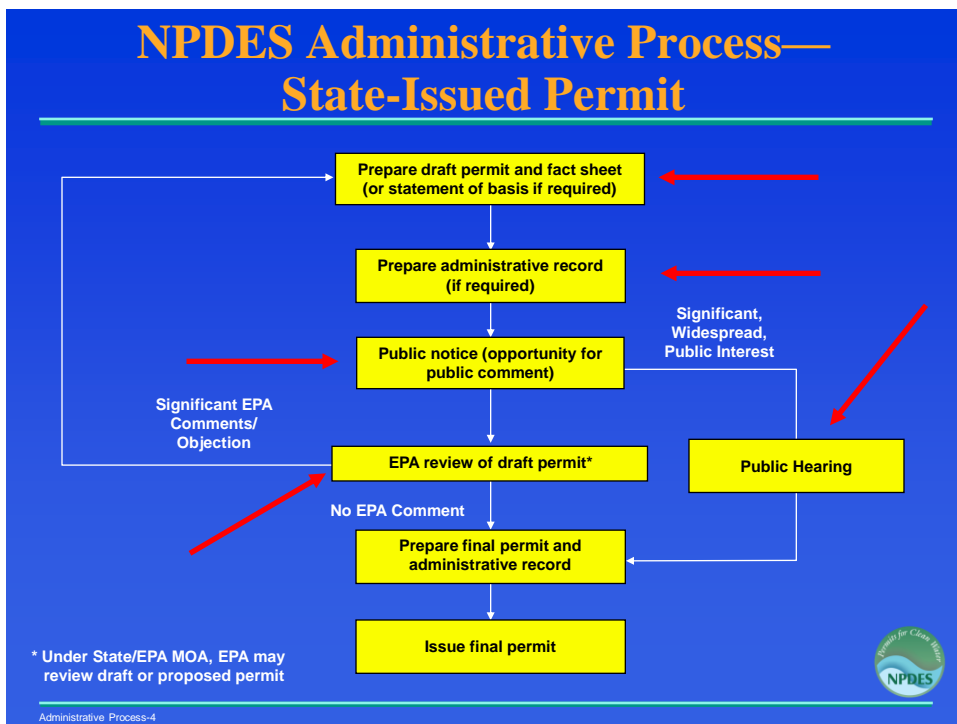
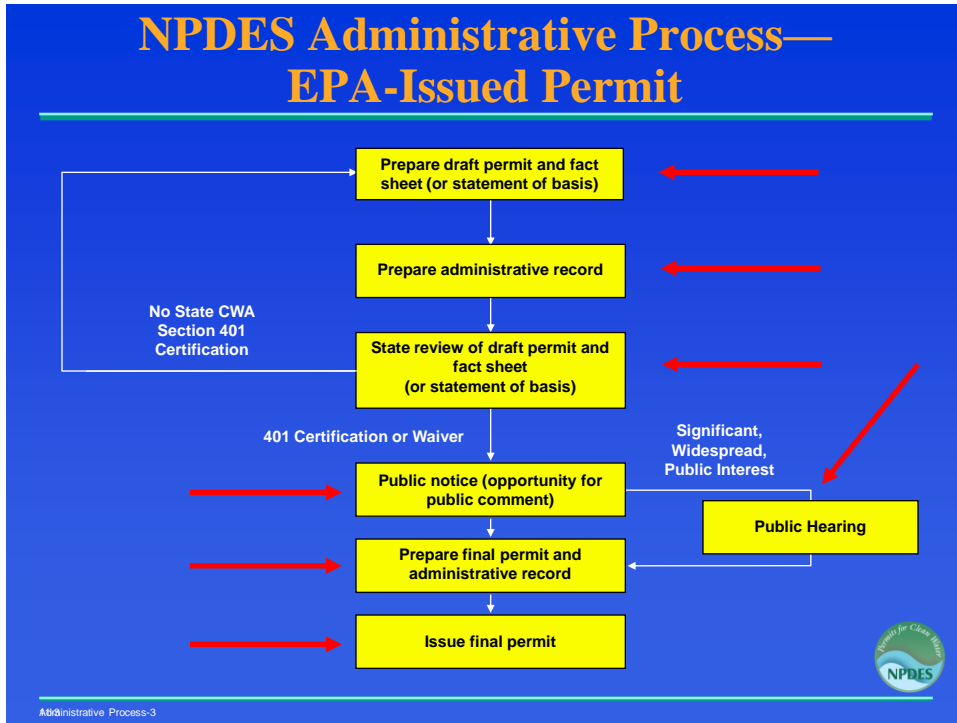
## The Administrative Process for NPDES Permits

## Today's Speakers

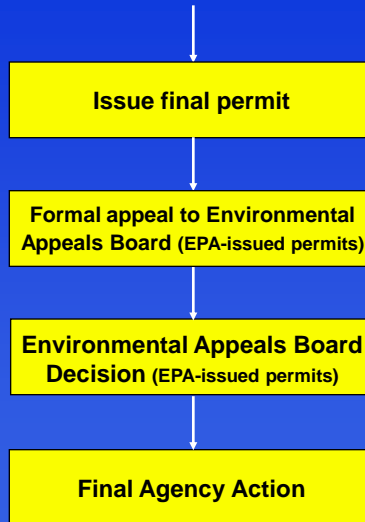
- **David Hair**  
Environmental Engineer  
US Environmental Protection Agency  
Washington, DC
- **Greg Currey**  
Environmental Engineer  
Tetra Tech, Incorporated  
Fairfax, Virginia



Administrative Process-2



## NPDES Administrative Process— After Final Permit Issuance



Administrative Process-5



## NPDES Administrative Process

- **The administrative process of developing and issuing a permit involves:**
  - documenting all permit decisions
  - coordinating EPA and state, territorial, or tribal review of the draft permit
  - providing public notice, conducting hearings (if appropriate), and responding to comments
  - defending the permit and modifying after issuance (if required)

Administrative Process-6



## Reasons for Good Documentation

- Establishes permanent record of the basis for the permit
- Explains legal basis of permit
- Provides sound basis for future modifications and permits
- Requires permit writer to be organized and logical throughout permit development process



Administrative Process-7

## Contents of Administrative Record - Draft Permit

- **What is it?**
- **What is in it?**
  - application and supporting data
  - draft permit
  - statement of basis or fact sheet
  - documents or other items cited in statement of basis or fact sheet
  - other items supporting permit development
  - Environmental Impact Statement (EIS) for new source draft permits



Administrative Process-8

## Fact Sheet vs. Statement of Basis

### Fact Sheet (§§124.8, 124.56)

- Required for draft permits:
  - for major facilities
  - for Class I sludge management facilities
  - that incorporate a variance
  - that are NPDES general permits
  - that include a sewage sludge land application plan
  - that are subject to widespread public interest
- Minimum elements of a fact sheet specified in regulations

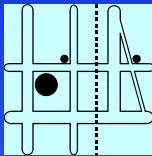
### Statement of Basis (§124.7)

- Used when fact sheet not required
- Regulations require that a statement of basis include:
  - description of the conditions of the draft permit
  - reasons for the conditions



Administrative Process-9

## Minimum Elements of a Fact Sheet (40 CFR 124.8, 124.56)



- General facility information**
  - description of facility or activity
  - sketch or description of location
  - type and quantity of waste/pollutants discharged
- Summary rationale of permit conditions**
  - applicable statutory and regulatory citations
  - references to administrative record



Administrative Process-10

## Minimum Elements of a Fact Sheet (continued)

- **Detailed rationale of permit conditions**
  - explanation and calculation of effluent limitations and conditions
  - specific explanation of:
    - toxic pollutant limits
    - limits on internal wastestreams
    - case-by-case requirements
    - limits on indicator pollutants
    - regulation of users (non-POTWs only)
  - explanation of how required sewage sludge land application plan elements are addressed
  - inappropriateness of requested variances



Administrative Process-11

## Minimum Elements of a Fact Sheet (continued)

- **Administrative Requirements**
  - permit procedures
    - comment period begin and end dates
    - procedures for requesting a hearing
    - other procedures by which the public may participation in final decision
  - permitting authority contact name and telephone number



Administrative Process-12

## EPA or State/Tribe/Territory Review

- **EPA issues the permit (§124.53)**
  - a state/tribe/territory section 401 certification required
    - certifies that permit will achieve water quality standards
- **A state/tribe/territory issues the permit (§123.44, 123.24)**
  - EPA can review the permit (proposed or draft) and comment, object, or make recommendations
  - The state/tribe/territory must respond to an EPA objection
  - EPA can waive the right to review certain classes or categories of permits
  - EPA must retain the right to review:
    - major municipal and industrial permits
    - general permits
    - others (see 40 CFR 123.24(d))



Administrative Process-13

## Public Notice (40 CFR 124.10)

### Types of actions requiring public notice

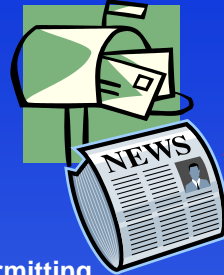
- Tentative denial of application (EPA-issued permits)
- Draft NPDES permit
- Public hearing scheduled
- Appeal granted (EPA-issued permits)
- New source determination made (EPA-issued permits)
- Major permit modifications (after issuance)



Administrative Process-14

## Public Notice (Continued)

- **Methods for public notice (40 CFR 124.10(c))**
  - direct mailing
  - publication in newspaper
- **Contents of public notice (40 CFR 124.10(d))**
  - name and address of regulatory authority
  - name and address of permittee
  - brief description of facility
  - name, address, and telephone number of permitting authority contact
  - name and location of receiving water and sludge use or disposal practices and site
  - description of public participation procedures
  - for permits issued by EPA—information on administrative record and statement of whether an EIS was completed if a new source



Administrative Process-15

## Public Notice (Continued)

- **Timing of public notice (40 CFR 124.10(b))**
  - must allow at least 30 days for public comments
- **Responding to comments (40 CFR 124.17)**
  - significant comments require a response in writing
  - explain changes from the draft permit
  - response to comments must be made available to public



Administrative Process-16



## Public Hearings (40 CFR 124.11, 124.12)

- Public hearings may be requested by any party
- Hearings are discretionary
- Scheduling the hearing automatically extends the comment period until the close of the hearing [§124.12(c)]
- A recording or transcript of the hearing must be made available to the public



Administrative Process-17

## Public Participation and Environmental Justice

- Environmental justice (EJ) ensures fair treatment with respect to implementation of environmental laws and policies regardless of race, color, national origin, income
- Public participation process provides opportunities to address EJ concerns
  - provide appropriate avenues for public participation
  - seek out and facilitate involvement of those potentially affected
  - include public notices in more than one language where appropriate



Administrative Process-18

## Contents of Administrative Record - Final Permit (40 CFR 124.18)

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- Administrative record of draft permit
- All comments received
- Response to comments
- Public hearing recording or transcript
- Final EIS for new sources
- Final permit



Administrative Process-19

## After Final Permit Issuance

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- Permit appeals
- Minor and major permit modifications
- Permit termination
- Permit transfer



Administrative Process-20

## Permit Appeal (40 CFR 124.19)

- Used to contest final permit limits and conditions
- Must be requested within 30 days following final permit issuance
  - challenges limited to issues raised during public comment on draft permit (unless good cause is shown)
- EAB decides to grant/deny request for permits issued by EPA
- Public notice of appeal required
- Only contested permit conditions are stayed (for EPA permits)



Administrative Process-21

## Permit Appeal (continued)

- Permit writers' role during appeal
  - source of technical knowledge for attorney



Administrative Process-22

## Minor Modifications (40 CFR 122.63)

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- Used to make corrections to permit conditions with consent of the permittee
- Exempt from administrative procedures (i.e., draft permit, public notice, etc.)
- Actions considered minor:
  1. correcting typographical errors
  2. requiring more frequent monitoring
  3. changing interim compliance date (<120 days)
  4. allowing for a change in ownership
  5. changing the construction schedule for new source
  6. deleting a point source outfall
  7. incorporating an approved local pretreatment program



Administrative Process-23

## Major Modifications (40 CFR 122.62)

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- Used to address changes or information that might impact permit conditions
- Administrative procedures must be followed (i.e., draft permit, public notice, etc.)
- Causes for modification:
  1. alterations justifying new or different conditions
  2. new information
  3. new regulations (*with consent of the permittee*)
  4. modifying a compliance schedule for good cause
  5. addressing a variance request
  6. inserting a 307(a) toxic effluent standard
  7. requirements of a reopener condition
  8. incorporating or removing net limits



Administrative Process-24

## Major Modifications (continued)

- **Causes for modification (continued):**
  9. requiring a POTW to develop a pretreatment program
  10. failure to notify a state whose waters might be affected by the discharge
  11. addressing discharges of non-limited pollutants
  12. establishing a notification level
  13. requiring implementation of minimum control measure(s) for a small MS4
  14. correcting technical mistakes or mistaken interpretations of law
  15. modifying effluent limits when unsuccessful BPJ treatment was installed
  16. incorporating, revising, or adding a sewage sludge land application plan



Administrative Process-25

## Permit Terminations



- **Used to retract privilege to discharge during permit term**
- **Causes for termination:**
  - suspend effectiveness in emergency
  - terminate for falsifications, recalcitrance, or changed conditions (e.g., plant closure)
- **Administrative procedures must be followed (i.e., public notice)**
  - no public notice is required for termination because of outfall deletion or plant closure



Administrative Process-26

## Permit Transfer

- Necessary to address change in owner or operator
- Transfer Options
  - transfer by modification or by revocation and reissuance
  - automatic transfer
    - prior 30-day notice
    - written agreement between new and old owners
    - permit will not be modified or revoked



Administrative Process-27

## Feedback and Other Presentations

Questions or comments?

[npdeswebtraining@tetrattech.com](mailto:npdeswebtraining@tetrattech.com)

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