

Administrative Process for NPDES Permits

NPDES Permit Writers' Course
Online Training Curriculum

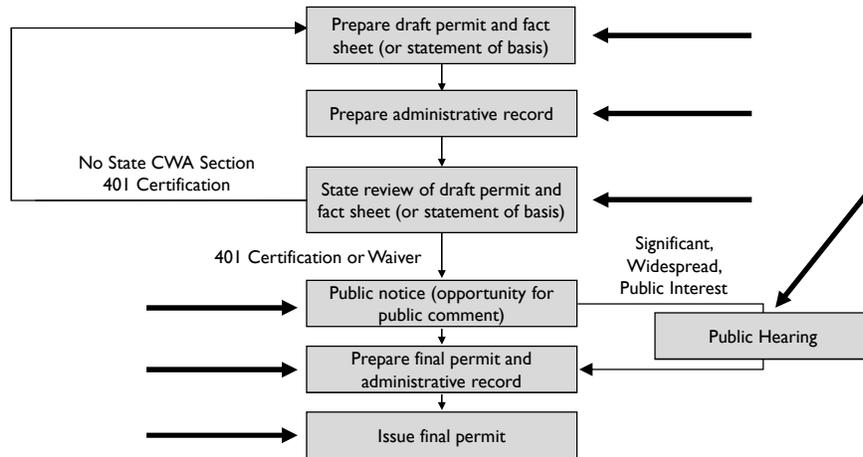


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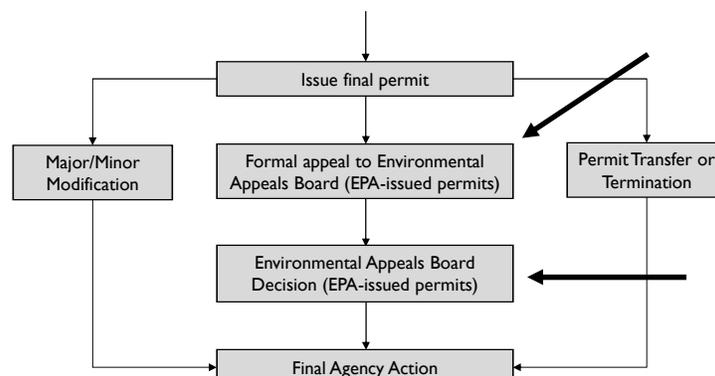
NPDES Administrative Process— EPA-Issued Permit



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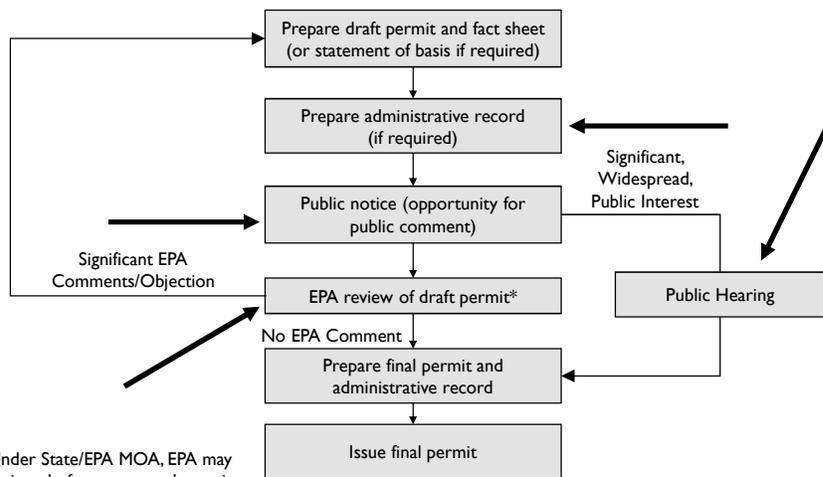
NPDES Administrative Process— After Final Permit Issuance



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NPDES Administrative Process— State-Issued Permit



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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)



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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
- Helps permit writer to be organized and logical throughout permit development process



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Contents of Administrative Record Draft Permit – § 124.9

- 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



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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

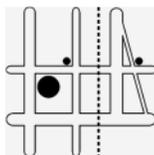
Statement of Basis [§ 124.7]

- 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

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Minimum Elements of a Fact Sheet – §§ 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



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Minimum Elements of a Fact Sheet – §§ 124.8, 124.56 (continued)

- Detailed rationale of permit conditions
 - explanation and calculation of effluent limitations and conditions
 - specific explanation of:
 - toxic pollutant limits
 - limits on internal waste streams
 - 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



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Minimum Elements of a Fact Sheet – §§ 124.8, 124.56 (continued)

Administrative Requirements

- permit procedures
 - comment period begin and end dates
 - procedures for requesting a hearing
 - other procedures for public involvement in the final decision
- permitting authority contact name and telephone number



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State Review of EPA Permits – § 124.53

- EPA permit may not be issued until a certification is granted or waived in accordance with CWA section 401
- State certification must include:
 - conditions necessary to assure compliance with CWA and appropriate requirements of state law
 - specific citation to CWA or state law upon which conditions more stringent than those in the draft permit are based
 - statement indicating the extent to which each condition of the draft permit can be made less stringent without violating requirements of state law

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EPA Review of State Permits – §§ 123.44, 123.24

- EPA can review the permit (proposed or draft) and comment, object, or make recommendations
- If the state fails to adequately respond to an EPA objection or the timeline for response expires, exclusive authority to issue the permit passes to EPA
- EPA can waive the right to review certain classes or categories of permits, but not for:
 - major municipal and industrial permits
 - general permits
 - others [see § 123.24(d)]

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Public Notice

- Types of actions requiring public notice [§ 124.10(a)]
 - 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)



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Public Notice (Continued)

- Methods for public notice [§ 124.10(c)]
 - direct mailing
 - publication in newspaper
- Contents of public notice [§ 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
 - for permits issued by EPA—information on administrative record and statement of whether an EIS was completed if a new source



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Public Notice (Continued)



- Timing of public notice [§ 124.10(b)]
 - must allow at least 30 days for public comments
- Responding to comments [§ 124.11, 124.17]
 - significant comments require a response in writing
 - explain changes from the draft permit
 - response to comments must be made available to public

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Public Hearings – §§ 124.11, 124.12

- Public hearings may be requested by any party
- Hearings are optional
- 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 available to interested persons



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Environmental Justice and Public Participation

- 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



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Contents of Administrative Record Final Permit – § 124.18

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



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After Final Permit Issuance

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



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Permit Appeal – § 124.19

- Used to contest final permit limits and conditions
- Regulatory requirements
 - must be requested within 30 days after 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 appeal for permits issued by EPA and public notice required if granted
- Only contested permit conditions are stayed (for EPA permits)
- Permit writers' role during appeal is to serve as source of technical knowledge for attorney



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Minor Modifications – § 122.63

- 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

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“Major” Modifications – § 122.62

- 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

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“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

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Permit Terminations – §§ 124.5(d), 122.64

- 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



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Permit Transfer – § 122.61

- 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



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Feedback and Other Presentations

Questions or comments?

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