Kansas Administrative Regulations

Department of Health and Environment

Article 16.—Water Pollution Control—State Grants to Municipalities for the Construction of Water Pollution Control Projects Benefiting from Federal Grants.

28-16-61. Public notice of permit actions, public comment period, and public hearings.

(a) Definitions.

(1) "Clean Water Act (CWA)" means the federal water pollution control act, or federal pollution control act amendments of 1972, P.L. 92-500, as amended by P.L. 95-217, P.L. 95-576, P.L. 96-438, and P.L. 97-117; 33 U.S.C. 1251 et seq.

(2) "Draft permit" means a document prepared under K.A.R. 28-16-60 indicating the director's tentative decision to issue, reissue, deny, modify, revoke and reissue, or terminate a permit.

(3) "Facility or activity" means any NPDES point source as defined in K.A.R. 28-16-57a or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under K.A.R. 28-16-57.

(4) "General permit" means a permit authorizing a category of discharges or activities under the CWA within a geographical area. For NPDES, a general permit means a permit issued under K.A.R. 28-16-150 to 154, inclusive.

(5) "Indian tribe" means any indian tribe having a federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

(6) "Major facilities" are those facilities which are on a mutually agreed list as determined by EPA and the department.

(7) "Permit" means an authorization, license, or equivalent control document issued by the director to implement the requirements of K.A.R. 28-16-57. Permit does not include any document which has not yet been the subject of final agency action, such as a draft permit.

(8) "Resource Conservation and Recovery Act (RCRA)" means the solid waste disposal act of 1965, as amended in 1970, as amended by the resource conservation and recovery act of 1976, P.L. 94-580, as amended by P.L. 95-609, P.L. 98-616, and P.L. 99-499; 42 U.S.C. 6901 et seq.

(9) "UIC" means the underground injection control program under part C of the safe drinking water act, 42 U.S.C. 300f et seq.

(b) Public Notice and Comment Period.

(1) Scope and Timing. Public notice shall be given when a draft permit has been prepared under K.A.R. 28-16-60 and when a hearing has been scheduled under subsection (d) of this regulation.

(A) A public notice shall not be required when a request for permit modification, revocation and reissuance, or termination is denied under K.A.R. 28-16-62. Written notification of that denial shall be given both to the person who requests this change and to the permittee.

(B) Public notices may describe more than one permit or permit action.

(C) Public notice of the preparation of a draft permit shall allow at least 30 days for public comment.

(D) Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of the hearing may be combined with the public notice of the draft permit.

(2) Methods.

(A) Incorporation. 40 CFR sections 124.8 (a), (b)(1), (2), (4), (5), (6), (7), and (8); 124.10 (c)(1)(i), (ii), (iii), (iv), (v), and (x); (c)(2)(i); (c)(3); and (c)(4); and 124.56, as in effect on July 1, 1991, are adopted by reference.

(B) Each person who is on a mailing list maintained by the department shall also be mailed a copy of the notice. The mailing list shall include:

(i) each person who requests in writing to be placed on the list;

(ii) each person solicited for "area lists" from participants in past permit proceedings in that area; and

(iii) each person who responds to a notice, published in the Kansas Register once a year, of the opportunity to be placed on the list. The mailing list may be updated from

time to time by a request from the director for a written indication of continued interest from those listed. The name of any person who fails to respond to such a request may be deleted from the list.

(3) Contents.

(A) Public notice. Each public notice issued under this regulation shall contain the following minimum information:

(i) the name and address of the office processing the permit action for which notice is being given;

(ii) the name and address of the permittee or the permit applicant, and if different, the name of the facility or activity regulated by the permit;

(iii) a brief description of the business conducted at the facility or the activity described in the permit application;

(iv) the name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application; and

(v) a brief description of the comment procedures established by subsections (c) and (d) of this regulation and of the time and place of any hearing that will be held. The notice shall also include a statement of procedures to request a hearing, if a hearing has not already been scheduled, and other procedures by which the public may participate in the final permit decision.

(B) Public notices for hearings. In addition to the general public notice described in paragraph (3)(A) of this subsection, each public notice of a hearing shall contain the following:

(i) reference to the date of any previous public notices relating to the permit at issue; and

(ii) a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(C) In addition to the general public notice described in paragraph (3)(A) of this subsection, each person identified in 40 CFR 124.10(c)(1)(i), (ii), (iii), and (iv) shall be mailed a copy of the fact sheet, the permit application, if any, and the draft permit, if any.

(c) Public comments and request for public hearings. During the public comment period provided under subsection (b) of this regulation, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised during the hearing. All comments shall be considered in making the final decision and shall be answered as provided in subsection (e) of this regulation.

(d) Public hearings; incorporation. 40 CFR section 124.12(a)(1) and (2), as in effect on July 1, 1991, are adopted by reference.

(e) Response to comments. A response to comments shall be issued at the time that any final permit decision is issued. The response to comments shall be available to the public and shall:

(1) specify which provision, if any, of the draft permit has been changed in the final permit decision, and the reasons for the change; and

(2) briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearings.

(Authorized by K.S.A. 65-171d; implementing K.S.A. 65-165, and K.S.A. 65-166; effective, E-74-32, June 14, 1974; effective May 1, 1975; amended May 1, 1987; amended Sept. 27, 1993.)

***** Authenticated Kansas Administrative Regulation *****