

10.2.1.2 Finalizing the Permit/Public Participation Process/Public Notice/Permit Modifications

Applicability:

Public notice is required for significant (major) changes to an existing permit.

Content:

The department or the permittee may initiate permit modifications. A permit may be modified for any of the causes listed in 10 CSR 20-6.010(8)(A)2 including but not limited to:

- A violation of any term or condition of the permit, such as exceeding an effluent limit.
- It is discovered that the permittee has misrepresented or failed to fully disclose all relevant facts in obtaining the permit.
- There has been a change in the operation, size, or capacity of the facility.
- Following proper public notice and opportunity for comment, when a wasteload allocation study has been completed showing that more stringent effluent limits are needed to protect water quality.

The permit may not be modified to extend the term of the permit beyond 5 years of its issuance, not its modification.

The Code of Federal Regulations provides the detailed reasons (causes) for modification of existing permits. These are presented in 40 CFR 122.62 and 40 CFR 122.63. Part 122.62 is a listing of “major” modifications and Part 122.63 lists minor modifications. Major modifications of permits need to be placed on public notice; minor modifications do not need to be placed on public notice.

Parts 122.62 and 122.63 are paraphrased (not fully quoted) below:

Causes for modification – these are considered as major modifications.

As specified in 40 CFR 122.62, the following are causes for modification of permits:

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice) which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) *Information.* New information has been received by the permitting office. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

(3) *New regulations.* The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Five qualifications are listed in the CFR.

(4) *Compliance schedules.* Good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case

may an NPDES compliance schedule be modified to extend beyond an applicable statutory deadline.

(5) When the permittee has filed a request for a variance or for “fundamentally different factors” within the time specified.

(6) *307(a) toxics*. When required to incorporate an applicable 307(a) toxic effluent standard or prohibition.

(7) *Reopener*. When required by the “reopener” conditions in a permit.

(8) *Net limits*. Upon request of a permittee who qualifies for effluent limitations on a net basis or when a discharger is no longer eligible for net limitations.

(9) *Pretreatment*. As necessary under regulatory or permit conditions to establish a compliance schedule for development of pretreatment program.

(10) *Failure to notify*. Upon failure by the department to notify another State whose waters may be affected by a discharge in Missouri.

(11) *Non-limited pollutants*. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

(12) *Notification levels*. To establish a “notification level” for toxic pollutants that are not limited in the permit but must be reported if concentrations in the discharge exceed these levels.

(13) *Innovative and alternative technology compliance schedules*. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under section 202(a)(3) of CWA for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under section 202(a)(2). In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

(14) *Small MS4s*. For a small Municipal Separate Storm Sewer System (MS4), to include an effluent limitation requiring implementation of a minimum control measure or other specified measures.

(15) *Technical Mistakes*. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

(16) *Failed BPJ Compliance*. When the discharger has installed the Best Professional Judgment (BPJ) treatment technology considered by the permit writer in setting effluent limitations and has properly operated and maintained the facilities, but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

(17) A federally reserved item.

(18) *Land application plans*. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

Causes for modification or revocation and reissuance – these are considered as major modifications.

The following are causes to modify or, alternatively, revoke and reissue a permit.

(1) Cause exists for permit termination, but it is determined that modification or revocation and reissuance is appropriate.

(2) The department has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

Major modifications must be public noticed. Modification does not change the expiration date of the permit.

Minor modifications of permits.

As specified in 40 CFR 122.63, upon the consent of the permittee, the department may modify a permit to make the corrections or allowances for changes in the permitted activity listed below without having to issue public notices, receive commentary, hold hearings and carry out similar procedural steps. Minor modifications may only:

- (a) Correct typographical errors;
- (b) Require more frequent monitoring or reporting by the permittee;
- (c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
- (d) Allow for a change in ownership or operational control of a facility where the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted;
- (e)(1) Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge, and
 - (2) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.
- (f) A federally reserved item.
- (g) Incorporate conditions of an approved POTW pretreatment program as enforceable conditions of the POTW's permits.

Legal References:

Code of State Regulations:

[10 CSR 20-6.010\(8\)\(A\)2](#) Construction and Operating Permits - Permit Terms and Conditions - Mandatory Conditions

Code of Federal Regulations

[40 CFR 122.62](#) EPA Administered Programs: The NPDES - Modification or revocation and reissuance of permits

[40 CFR 122.63](#) EPA Administered Programs: The NPDES - Minor modifications of permits.

Other Links:

[U.S. EPA NPDES Permit Writers' Manual](#), Chapter 11, Section 11.3.2 Permit Modification, Revocation, etc.

[Section 4.7.4.2. Application for Permit Modification at Existing Facility](#) (11 topics)

Key Words:

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