

10.2.2 Finalizing the Permit/Public Participation Process/ Response to Public Comments

Applicability:

There shall be a period of not less than 30 days following the date of the public notice during which interested persons may submit their written views about the proposed operating permit or general permit. All relevant and material comments received in response to the public notice shall be given consideration by the department before making a final decision. (10 CSR 20-6.020(1)(B) and (H).

Content:

The Missouri Clean Water Law indicates that the department must issue notices, hold hearings and consider such factors, comments and recommendations as required by state or federal law, but does not provide detailed direction or requirements for seeking and responding to public comments (Section 644.051.3 and .4). Federal and State Regulations provide the more specific provisions related to public comments (see citations in Legal Requirements below).

The department must issue public notice of a pending operating permit or of a new or reissued statewide general permit. The public comment period is the length of time not less than 30 days following the date of the public notice during which interested persons may submit written comments about the proposed permit. Given the wording of the rule which states “not less than 30 days”, the department can set a public comment period for longer than 30 days for certain permits by specifying that in the public notice.

The public comment period can be extended or re-opened in response to significant interest in the permit, requests by commenters for more time, or significant changes to the permit because of comments received. Such an extension or re-opening must be done through a new public notice. While not specifically applicable to the state permit program, background concepts related to extension or re-opening of a public notice period are presented in the federal regulations in 40 CFR Parts 124.13 and 124.14.

A person may request a public hearing related to the proposed permit during the comment period.

The request for the hearing shall be in writing and shall state the interest of the party filing the request and the nature of the issues proposed to be raised in the hearing. The department shall hold a hearing if there is significant technical merit and concern related to Clean Water Law responsibilities. Instances of doubt are resolved in favor of holding the hearing. A public notice related to the hearing must be issued at least 30 days before it is to be held. Requests for hearings and the public notice process related to hearings are addressed in 10 CSR 20-6.020(4) and 40 CFR 124.10(b) and (d), 124.11 and 124.12. While not addressed in, nor specifically applicable to, the state rules, the federal regulations automatically extend the overall public comment period related to the proposed permit to the close of the public hearing.

All relevant and material comments received during the public comment period or during any hearing shall be given consideration by the department before any final decision is made about the proposed permit. The department may choose to hold a public meeting to discuss significant water quality concerns raised during the public comment period. The department must respond to relevant and material comments when the final permit is issued. The department’s response must specify which provisions, if any, of the draft permit have been changed in the final permit and the reasons for the change. Additionally, the department must briefly describe and respond to all significant comments on the draft permit raised during the comment period or the public

hearing. Finally, the department's response to comments must be available to the public (see 40 CFR 124.17).

Other Related Comments and Response

Note that the department does not have jurisdiction to address questions of zoning, facility location, property values or other issues not related to water quality (see 10 CSR 20-6.020(1)(H)). Therefore, comments or concerns raised related to these issues do not result in changes to the draft permit. The department should respond to such comments citing its lack of jurisdiction.

As part of the public comment process, the department must notify various public agencies and affected states about the proposed operating permit or general permit (10 CSR 20-6.020(2)). The agencies and other states may comment about the proposed permit in writing to the department and the U.S. EPA Regional Administrator. Additionally, they may request a public hearing be held. Comments from the agencies and other states must be addressed by the department by incorporating appropriate changes into the permit or through written explanations of the reasons for not accepting the comments.

Certain types of comments received from the U.S. Army Corps of Engineers result in the permit being denied or specific conditions being included in the permit. The applicant can request review of or appeal the denial or conditions to the Corps of Engineers.

For background information and requirements related to notification of and response to other governmental entities, see 40 CFR 124.10(c)(ii) and (iii), 40 CFR 124.59, and 10 CSR 20-6.020(2)(A) and (B) and (4)(A)1.

Legal References:

Missouri Clean Water Law, Chapter 644 RSMo

[644.051.3 and .4](#) Prohibited acts--permits required, when, fee--bond required of permit holders, when--permit application procedures--rulemaking--limitation on use of permit fee moneys.

Code of State Regulations:

[10 CSR 20-6.010\(4\)\(F\)](#) Construction and Operating Permits - Construction Permits (CP) - OP Noticed prior to CP Issuance (Notice of Permit Pending)
[10 CSR 20-6.020\(1\), \(2\), and \(4\)](#) Public Participation, Hearings and Notice to Government Agencies -
(1) Public Participation
(2) Notice to Other Governmental Agencies (3 Named)
(4) Public Participation Process

Code of Federal Regulations

[40 CFR 124.10](#) Procedures for Decisionmaking Public notice of permit actions and public comment period.
[40 CFR 124.11](#) Public comments and requests for public hearings.
[40 CFR 124.14](#) Reopening of the public comment period.
[40 CFR 124.17](#) Response to comments.
[40 CFR 124.59](#) Conditions requested by the Corps of Engineers and other government agencies.

Other Links:

[U.S. EPA NPDES Permit Writers' Manual](#), Chapter 11, Section 11.2.2 relating to public comments

[10.2.1.4 Public Notice Process](#)

[10.2.3 Public Hearings and Public Meetings](#)

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Public comment, public comment period, public comments, comments

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