

October 18, 2017 Version of Draft Changes to Chapter 173-401 WAC

AMENDATORY SECTION (Amending WSR 16-05-003, filed 2/3/16, effective 3/5/16)

WAC 173-401-725 (1) Permit modification

(d) [Minor permit modification] Notice requirements.

Commented [GE(1)]: Included as an FYI.

- Concurrent with the notice to the administrator and affected states, the permitting authority shall submit to the permit register notice of each proposed minor permit modification.
- Publication in the next available issue of the permit register will signal the beginning of a public comment period of twenty-one days. Each notice must describe the proposed revisions and specify the deadline to file comments with the permitting authority on the proposed modification.

Commented [GE(2)]: We're not changing the existing structure for minor permit modifications.

WAC 173-401-800 Public involvement. (1) Purpose. It is ecology's and local air authorities' goal to ensure that accurate permitting information is made available to the public in a timely manner. The permitting authority is responsible for providing notice of permitting actions that allows sufficient time for comment and for providing enough information to inform the public of the extent of the actions proposed. These public involvement regulations establish a statewide process to be followed by all permitting authorities.

(2) Public notice.

(a) The permitting authority shall provide public notice for the following actions:

- (i) Issuance of a draft permit or permit renewal;
- (ii) Intended denial of a permit application;
- (iii) Issuance of a draft permit modification;
- (iv) Issuance of a draft general permit;

(v) Scheduling of a public hearing under subsection (4) of this section; and

(vi) Any other related activities that the permitting authority considers to involve substantial public interest.

(b) ~~((Public notice shall be provided by the permitting authority by prominent advertisement in the area affected by the facility applying for a permit. Publication in *Ecology's Operating Permit Register* does not satisfy this requirement. Prominent advertisement may be by publication in a newspaper of general circulation in the area affected by the facility applying for a permit as determined by the permitting authority. The permitting authority may provide additional notice to the public through other methods, such as newsletters and press releases. Notice shall also be published in the *Ecology Permit Register*. The permitting authority shall send information on any action requiring publication in the *Permit Register* to ecology within three days of the action.))~~ Notice shall be given by the following methods:

(i) Permitting authority web site. A permitting authority must post notice on its web site for the duration of the public comment period. Public notice must be posted by noon of the first day of the public comment period.

Commented [GE(3): Reformatted to require web posting.

Commented [GE(4): All air agencies agreed to switch to web-based notice and posting.

Commented [GE(5): Add to clarify what is considered a day.

(ii) Optional notice. A permitting authority may supplement notice on an individual permit or action. Additional notice may include, but is not limited to, a newspaper of general circulation in the area of the permittee.

Commented [GE(6)]: Existing requirement.

(iii) *Permit Register*.

(A) Ecology shall publish notice in the *Permit Register* according to WAC 173-401-805.

(B) The permitting authority shall send information on any action requiring publication in the *Permit Register* to ecology within three days of the action.

Commented [GE(7)]: Relocated without changing the requirements.

(c) Notice of the activities described in (a) of this subsection shall also be provided to persons requesting to receive (~~such~~) this notice. The permitting authority shall maintain a mailing list of persons requesting notice, and may maintain more than one list, such as lists based on geographical location. The mailing list may be electronic or hardcopy, or both. No request shall require the extension of the comment period associated with the notice. The permitting authority may from time to time inform the public of the opportunity to be on the list and may also delete from the list persons who fail to respond to an inquiry of continued interest in receiving the notices.

Commented [GE(8)]: Clarification.

(d) Public notice must include:

(i) The date the notice is posted;

Commented [GE(9)]: Added for increased transparency so the public knows the period when the notice was posted.

(ii) The start date and end date of the thirty-day public comment period. If a Washington state holiday falls within this period, the holiday is not one of the thirty days;

Commented [GE(10)]: Added to clarify the public comment period.

Commented [GE(11)]: Added to reflect a best practice for public notice

(iii) Name and address of the permitting authority;

~~((i))~~ (iv) Name and address of the permit applicant, and if different, the name and address of the facility or activity regulated by the permit, unless it is a general permit;

~~((iii))~~ (v) A brief description of the business conducted at the facility and activity involved in the permit action;

~~((iv))~~ (vi) Name, address, and telephone number of a person (or an email or web address) from whom interested persons may obtain further information such as copies of the draft permit, the application, and relevant supporting materials;

Commented [GE(12)]: Added to allow electronic communication.

~~((v))~~ (vii) A brief description of the comment procedures, including the procedures to request a hearing, and the time and place of any hearings scheduled for the permit; and

~~((vi))~~ (viii) A description of the emission change involved in any permit modification.

(e) Availability for public inspection.

Commented [GE(13)]: Revisions reflect EPA requirements.

(i) The permitting authority must post the draft permit and technical support document on its web site for the duration of the public comment period.

(ii) Administrative record. The permitting authority must make the administrative record available for public inspection ~~((7))~~ for the duration of the public comment period. The administrative record must:

(A) Be available in at least one location near the chapter 401 source ~~((7))~~. This may be at a physical location and/or posted on the permitting authority web site; and

(B) Include all nonproprietary information contained in the permit application ~~((7-draft permit))~~ and supporting materials. ~~((Public inspections of materials for nonstationary sources or general permits may be located at the discretion of the permitting authority.))~~ Supporting materials available only in hardcopy or too large for posting on a web site must be identified and made available on request.

(3) Public comment. Except as otherwise provided in WAC 173-401-725, the permitting authority shall provide a minimum of thirty days for public comment on actions described in subsection (2)(a) of this section.

(a) This comment period begins on the date of ~~((publication of notice in the Permit Register or publication in the newspaper of~~

Commented [GE(14): For reference, the provision is included at the beginning of this material.

~~largest general circulation in the area of the facility applying for the permit, whichever is later.)~~ posting notice on the permitting authority's web site. Public notice must be posted by noon of the first day of the public comment period;

(b) No proposed permit shall be issued until the public comment period has ended and the permitting authority has prepared a response to the comments received.

(4) Public hearings. The applicant, any interested governmental entity, any group or any person may request a public hearing within the comment period required under subsection (3) of this section. Any such request shall indicate the interest of the entity filing it and why a hearing is warranted. The permitting authority may, in its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held at a time(s) and place(s) as the permitting authority deems reasonable. The permitting authority shall provide at least thirty days prior notice of any hearing.

(5) The permitting authority shall keep a record of the commentors and issues raised during the public participation process. Such records shall be available to the public.

Commented [GE(15): Added to align with web posting of a notice as the primary notice mechanism and to clarify that posting must occur by noon to be considered the posting day. This action unlinks the public comment period with the publication of the *Permit Register*. The existing rule language reflects a system that delivered notice in a newspaper and by the US mail, rather than through web posting and e-mail.

The permitting agency must continue to send notice to the *Permit Register* on required actions.

[Statutory Authority: RCW 70.94.011, 70.94.161, 70.94.162, 70.94.331, and 70.94.510. WSR 16-05-003 (Order 13-12), § 173-401-800, filed 2/3/16, effective 3/5/16. Statutory Authority: Chapter 70.94 RCW. WSR 93-20-075 (Order 91-68), § 173-401-800, filed 10/4/93, effective 11/4/93.]