



Rules of
Department of Natural Resources
Division 25—Hazardous Waste Management Commission
Chapter 8—Public Participation and General
Procedural Requirements

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**Title 10—DEPARTMENT OF
NATURAL RESOURCES
Division 25—Hazardous Waste
Management Commission
Chapter 8—Public Participation and
General Procedural Requirements**

**10 CSR 25-8.010 Public Participation and
General Procedural Requirements**
(Rescinded January 30, 1999)

AUTHORITY: sections 260.370, RSMo Supp. 1988 and 260.400, 260.405 and 260.437, RSMo 1986. Original rule filed March 13, 1979, effective Jan. 1, 1980. Rescinded and readopted: Filed April 14, 1982, effective Oct. 11, 1982. Rescinded and readopted: Filed Dec. 13, 1983, effective June 18, 1984. Amended: Filed Dec. 16, 1985, effective Oct. 1, 1986. Amended: Filed Dec. 1, 1987, effective Aug. 12, 1988. Amended: Filed Feb. 16, 1990, effective Dec. 31, 1990. Amended: Filed Jan. 15, 1991, effective Aug. 1, 1991. Rescinded and readopted: Filed Sept. 4, 1991, effective Feb. 6, 1992. Amended: Filed June 3, 1993, effective Jan. 31, 1994. Rescinded: Filed June 1, 1998, effective Jan. 30, 1999.

**10 CSR 25-8.124 Procedures for Decision
Making**

PURPOSE: This rule reflects the requirements of the federal regulations in 40 CFR part 124 July 1, 2010, with modifications and additional requirements established by the Revised Statutes of Missouri. This rule establishes the requirements for public notice and public participation in the issuance, denial, modification, and revocation of hazardous waste management facility permits, appeal hearings, variance petitions, and closure and post-closure activities. This rule also specifies procedures for the issuance, modification, and revocation of resource recovery facility certifications and the issuance and revocation of transporter licenses.

(1) Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule, in addition to any other modifications established in paragraph (1)(A)2. of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized so that Missouri requirements analogous to a particular lettered subpart in 40 CFR part 124 are set forth in the corresponding lettered subsection of section (1) of this rule. For example, the general program requirements in 40

CFR part 124 subpart A, with Missouri modifications, are found in subsection (1)(A) of this rule.)

(A) This subsection sets forth requirements that correspond to those requirements in 40 CFR part 124 subpart A.

1. Purpose and scope. This subsection contains procedures for the review, issuance, class 3 or department-initiated modification, total modification, or revocation of all permits issued pursuant to sections 260.350 through 260.434, RSMo. This subsection also contains procedures for the denial of a permit, either in its entirety or as to the active life of a hazardous waste management facility or unit, under 40 CFR 270.29, as incorporated in 10 CSR 25-7.270. Interim status is not a permit and is covered by specific provisions in 10 CSR 25-7.265 and 10 CSR 25-7.270. Class 1 or class 2 permit modifications, as defined in 40 CFR 270.42 as incorporated in 10 CSR 25-7.270, are not subject to the requirements of this subsection.

2. Definitions. In addition to the definitions given in 40 CFR 270.2, as incorporated in 10 CSR 25-7.270, the definitions below apply to this rule—

A. “Draft permit” means a document prepared under paragraph (1)(A)6. of this rule indicating the department’s tentative decision to issue, deny, modify in part or in total, revoke, or reissue a “permit.” A notice of intent to revoke, as discussed in subparagraph (1)(A)5.D. of this rule, and a notice of intent to deny, as discussed in subparagraph (1)(A)6.B. of this rule, are types of draft permits. A denial of a request for modification, total modification, or revocation of a permit, as discussed in subparagraph (1)(A)5.B. of this rule, is not a type of “draft permit”;

B. “Formal hearing” means any contested case held under section 260.400, RSMo;

C. “Permit application” means the U.S. Environmental Protection Agency standard national forms for applying for a permit, including any additions, revisions, or modifications to the forms; or forms approved by the U.S. Environmental Protection Agency for use in Missouri, including any approved modifications or revisions. It also includes the information required by the department under 40 CFR 270.14–270.29, as incorporated into 10 CSR 25-7.270;

D. “Public hearing” means any hearing on a tentative decision at which any member of the public is invited to give oral or written comments;

E. “Revocation” means the termination of a permit;

F. “Schedule of compliance” means a schedule of remedial measures in a permit,

including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with sections 260.350 through 260.434, RSMo;

G. “Total modification” means the revocation and reissuance of a permit;

H. “Site” means the land or water area where any “facility or activity” is physically located or conducted, including adjacent land used in connection with the facility or activity; and

I. “Variance” means any variation from the Missouri Hazardous Waste Management Law as defined in section 260.405, RSMo.

3. Application for a permit.

A. Any person who requires a permit shall complete, sign, and submit to the department a permit application for each permit required under 40 CFR 270.1, as incorporated in 10 CSR 25-7.270. Permit applications are not required for permits by rule per 40 CFR 270.60, as incorporated in 10 CSR 25-7.270. The department shall not begin the processing of a permit until the applicant has fully complied with the permit application requirements for that permit, as provided under 40 CFR 270.10 and 270.13, as incorporated in 10 CSR 25-7.270. Permit applications shall comply with the signature and certification requirements of 40 CFR 270.11, as incorporated in 10 CSR 25-7.270.

B. The department shall review for completeness every permit application. Each permit application submitted by a new facility should be reviewed for completeness by the department within thirty (30) days of its receipt. Each permit application submitted by an existing facility should be reviewed for completeness by the department within sixty (60) days of its receipt. Upon completing the review, the department will notify the applicant in writing whether the permit application is complete. If the permit application is incomplete, the department will list the information necessary to make the permit application complete. When the permit application is for an existing facility, the department will specify in the notice of deficiency a date for submitting the necessary information. The department will notify the applicant that the permit application is complete upon receiving the required information. After the permit application is complete, the department may request additional information from an applicant, but only as necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render a permit application incomplete.

C. If an applicant fails or refuses to



correct deficiencies in the permit application, the permit may be denied and enforcement actions may be taken under the applicable statutory provisions of sections 260.350 through 260.434, RSMo.

D. The effective date of a permit application is the date the department notifies the applicant that the permit application is complete, as provided in subparagraph (1)(A)3.B. of this rule.

E. For each permit application the department will, no later than the effective date of the permit application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the department intends to—

(I) Prepare a draft permit;

(II) Give public notice;

(III) Complete the public comment period, including any public hearing; and

(IV) Issue a final permit decision.

F. If the department decides that a site visit is necessary for any reason in conjunction with the processing of a permit application, the department will notify the applicant and a date will be scheduled.

G. Whenever a facility or activity requires more than one (1) type of environmental permit from the state, the applicant may request, or the department may offer, a unified permitting schedule that covers the timing and order to obtain such permits, as provided in section 640.017, RSMo, and 10 CSR 1-3.010.

4. *Reserved.*

5. Modification, total modification, or revocation of permits.

A. Permits may be modified in part or in total, or revoked, either at the request of the permittee or of any interested person or upon the department's initiative. However, permits may only be modified or revoked for the reasons specified in 40 CFR 270.41 or 40 CFR 270.43, as incorporated in 10 CSR 25-7.270. All requests shall be in writing and shall contain facts and reasons supporting the request.

B. If the department decides the request is not justified, a brief written response giving a reason for the decision shall be sent to the person requesting the permit modification and to the permittee. Denial of a request for modification, in part or in total, or revocation of a permit is not subject to public notice, comment, or hearing, and is not appealable under section (2) of this rule.

C. Tentative decision to modify.

(I) If the department tentatively decides to modify a permit in part or in total, a draft permit incorporating the proposed changes will be prepared according to paragraph (1)(A)6. of this rule. The department

may request additional information and, in the case of a partial permit modification, may require the submission of an updated permit application. In the case of a total permit modification, the department will require the submission of a new permit application.

(II) When a permit is partially modified under this paragraph, only the conditions being modified shall be reopened. All other conditions of the original permit shall remain in effect for the duration of the original permit. When a permit is totally modified under this paragraph, the entire permit is reopened just as if the permit had expired and was being reissued. During any total modification, the permittee shall comply with all conditions of the original permit until a new, final permit is issued.

(III) "Class 1 and class 2 permit modifications" as defined in 40 CFR 270.42, as incorporated in 10 CSR 25-7.270, are not subject to the requirements of this paragraph.

D. If the department tentatively decides to revoke a permit, the department will issue a notice of intent to revoke. A notice of intent to revoke is a type of draft permit and follows the same procedures as any draft permit decision prepared under paragraph (1)(A)6. of this rule.

6. Draft permits.

A. Once the technical review of a permit application is complete, the department shall tentatively decide whether to prepare a draft permit, or deny the permit application.

B. If the department decides to deny the permit application, a notice of intent to deny shall be issued. A notice of intent to deny is a type of draft permit and follows the same procedures as any draft permit decision prepared under this paragraph. If the department's final decision under paragraph (1)(A)15. of this rule is that the decision to deny the permit application was incorrect, the department shall withdraw the notice of intent to deny and prepare a draft permit under this paragraph.

C. If the department tentatively decides to prepare a draft permit, the department will prepare a draft permit that contains the following information:

(I) All conditions under 40 CFR 270.30 and 270.32, as incorporated in 10 CSR 25-7.270;

(II) All compliance schedules under 40 CFR 270.33, as incorporated in 10 CSR 25-7.270;

(III) All monitoring requirements under 40 CFR 270.31, as incorporated in 10 CSR 25-7.270; and

(IV) Standards for treatment, storage, and/or disposal and other permit condi-

tions under 40 CFR 270.30, as incorporated in 10 CSR 25-7.270.

D. All draft permits prepared under this paragraph will be accompanied by a fact sheet per paragraph (1)(A)8. of this rule, publicly noticed per paragraph (1)(A)10. of this rule, and made available for public comment per paragraph (1)(A)11. of this rule. The department will give notice of opportunity for a public hearing per paragraph (1)(A)12. of this rule, issue a final decision per paragraph (1)(A)15. of this rule, and respond to comments per paragraph (1)(A)17. of this rule. An appeal may be filed under section (2) of this rule.

E. Prior to making the draft permit available for public comment, the department shall deliver the draft permit to the applicant for review, as provided in section 640.016.2, RSMo. The applicant shall have ten (10) days to review the draft permit for nonsubstantive drafting errors. The department shall make the applicant's changes to the draft permit within ten (10) days of receiving the applicant's review and then submit the draft permit for public comment. The applicant may waive the opportunity to review the draft permit prior to public notice.

7. *Reserved.*

8. Fact sheet.

A. A fact sheet will be prepared for every draft permit. The fact sheet will briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The department will send this fact sheet to the applicant and to any person who requests a copy.

B. The fact sheet shall include, when applicable:

(I) A brief description of the type of facility or activity which is the subject of the draft permit;

(II) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(III) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(IV) A description of the procedures for reaching a final decision on the draft permit including:

(a) The beginning and ending dates of the public comment period under paragraph (1)(A)10. of this rule and the address where comments will be received;

(b) Procedures for requesting a hearing and the nature of that hearing; and

(c) Any other procedures by which the public may participate in the final decision; and



(V) Name and telephone number of a department contact for additional information.

9. *Reserved.*

10. Public notice of permit actions and public comment period.

A. Scope.

(I) The department will give public notice that the following actions have occurred:

(a) A notice of intent to deny a permit application has been prepared under subparagraph (1)(A)6.B. of this rule;

(b) A draft permit has been prepared under subparagraph (1)(A)6.C. of this rule;

(c) A hearing has been scheduled under paragraph (1)(A)12. of this rule;

(d) An appeal hearing has been scheduled under section (2) of this rule; or

(e) A notice of intent to revoke a permit has been prepared under subparagraph (1)(A)5.D. of this rule.

(II) No public notice is required when a request for permit modification, in part or in total, or revocation is denied. A brief written response giving a reason for the decision will be sent to the requester and to the permittee.

B. Timing.

(I) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application and a notice of intent to revoke a permit) required under subparagraph (1)(A)10.A. of this rule will allow at least forty-five (45) days for public comment.

(II) Public notice of a public hearing will be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as the public notice of the draft permit, and the two (2) notices may be combined.

C. Methods. Public notice of activities described in part (1)(A)10.A.(I) of this rule will be given by the following methods:

(I) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this part may waive their rights to receive notice for any permit):

(a) The applicant;

(b) Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, natural resource management plans, and state historic preservation officers, including any affected states (Indian tribes); and

(c) Persons on a mailing list maintained by the facility which is developed by—

I. Including those who request

to be on the list;

II. Soliciting persons for “area lists” from participants in past permit proceedings in that area;

III. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. The facility shall be responsible for maintaining and updating the mailing list. The department may require the facility to update the mailing list from time-to-time by requesting written indication of continued interest from those listed. The facility may remove from the list the name of any person who fails to respond to such a request;

IV. Including all record owners of real property adjacent to the current or proposed facility, in accordance with section 260.395.8, RSMo;

V. Including, for a post-closure disposal facility, all record owners of real property which overlie any known plume of contamination originating from the facility; and

VI. Including, for an operating disposal facility, all record owners of real property located within one (1) mile of the outer boundaries of the current or proposed facility, in accordance with section 260.395.8, RSMo;

(d) A copy of the notice shall also be sent to the highest elected official of the county and the highest elected official of the city, town, or village having jurisdiction over the area where the facility is currently or proposed to be located, in accordance with section 260.395.8, RSMo, and each state agency having any authority under state law with respect to the construction or operation of such facility;

(e) The department will mail a copy of the legal notice, fact sheet, and draft permit to the location where the permit application was placed for public review under subpart (1)(B)2.B.(II)(d) of this rule; and

(f) A copy of the notice shall also be sent to any other department program or federal agency which the department knows has issued or is required to issue a Resource Conservation and Recovery Act (RCRA), Hazardous and Solid Waste Amendments (HSWA), Underground Injection Control (UIC), Prevention of Significant Deterioration (PSD), (or other permit issued under the Clean Air Act), National Pollutant Discharge Elimination System (NPDES), 404, or sludge management permit for the same facility or activity (including the U.S. Environmental Protection Agency);

(II) Other publication.

(a) Publish a legal notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

(b) For any draft permit that includes active land disposal of hazardous waste, issue a news release to the media serving the area where the facility is currently or proposed to be located, in accordance with section 260.395.8, RSMo; and

(III) Any other method reasonably calculated to give actual notice of the activity to the persons potentially affected by it, including news releases or any other forum or medium to elicit public participation.

D. Contents. All notices issued under this paragraph shall contain the following minimum information:

(I) Name and address of the department;

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

(III) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(IV) Name, address, and telephone number of a department contact person from whom interested persons may obtain additional information;

(V) A brief description of the comment procedures, the date, time, and place of any hearing that will be held, a statement of procedures for requesting a hearing (unless a hearing has already been scheduled), and any other procedures by which the public may participate in the final permit decision;

(VI) Any additional information considered necessary or proper by the department;

(VII) The location where the information listed in subpart (1)(A)10.C.(I)(e) of this rule was placed for public review; and

(VIII) In addition to the information listed above, the public notice of a public hearing under paragraph (1)(A)12. of this rule shall contain the following information:

(a) Reference to the date of previous public notices relating to the draft permit;

(b) Date, time, and place of the hearing; and

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

E. In addition to the notice described in subparagraph (1)(A)10.D. of this rule, the department shall mail a copy of the permit application (if any), draft permit, and fact



sheet to all persons identified in subparts (1)(A)10.C.(I)(a), (b), and (f) of this rule.

11. Public comments and requests for public hearings. During the public comment period provided under paragraph (1)(A)10. of this rule, 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 to be raised in the hearing. All written comments and oral comments given at the public hearing, if one is held, shall be considered by the department in making the final permit decision and shall be answered as provided in paragraph (1)(A)17. of this rule.

12. Public hearings.

A. In accordance with section 260.395.8, RSMo, the department will hold a public hearing whenever a written request for a hearing is received within forty-five (45) days of the public notice under part (1)(A)10.B.(I) of this rule. For any permit that includes active land disposal of hazardous waste, the department shall hold a public hearing after public notice, as required in paragraph (1)(A)10. of this rule, before issuing, modifying in total, or renewing the permit; and before any Class 3 or department-initiated permit modification related to the hazardous waste land disposal unit(s), including those necessary due to the department's five (5)-year review.

B. The department may hold a public hearing at its own discretion whenever there is significant public interest in a draft permit or when one (1) or more issues involved in the permit decision requires clarification.

C. Whenever possible, the department will schedule a public hearing under this paragraph at a location convenient to the nearest population center to the current or proposed facility.

D. Public notice of the public hearing will be given as specified in paragraph (1)(A)10. of this rule.

E. Any person may submit written comments or data concerning the draft permit. The department will accept oral comments during the public hearing. Reasonable limits may be set on the time allowed for oral comments. Any person who cannot present oral comments due to time limitations will be provided an opportunity to present written comments. The public comment period under paragraph (1)(A)10. of this rule will automatically be extended to the close of any public hearing if the public hearing is held later than forty-five (45) days after the start of the public comment period.

F. A tape recording or written transcript of the public hearing shall be made available to the public.

13. Obligation to raise issues and provide information during the public comment period. All persons, including the applicant, who believes any condition of a draft permit is inappropriate or that the department's tentative decision to deny a permit application, prepare a draft permit, or revoke a permit is inappropriate, shall raise all ascertainable issues and submit all relevant arguments supporting their position by the close of the public comment period under paragraph (1)(A)10. of this rule. Any supporting materials that are submitted shall be included in full and may not be incorporated by reference, unless the supporting materials are state or federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials.

14. *Reserved.*

15. Issuance and effective date of permit.

A. For purposes of this paragraph, a final permit decision means the issuance, denial, Class 3 or department-initiated modification, total modification, or revocation of a permit. After the close of the public comment period under paragraph (1)(A)10. of this rule, the department will issue a final permit decision (or a decision to deny a permit for the active life of a hazardous waste management facility or unit under 40 CFR 270.29, as incorporated in 10 CSR 25-7.270). The department will notify the applicant and each person who submitted written comments, gave oral comments at the public hearing, or requested notice of the final permit decision. This notice will include reference to the procedures for appealing a final permit decision under section (2) of this rule. The department will also send a news release announcing the final permit decision to the media serving the area where the facility is currently or proposed to be located, in accordance with section 260.395.8, RSMo.

B. A final permit issuance, denial, or modification decision (or a decision to deny a permit either in its entirety or as to the active life of a hazardous waste management facility or unit under 40 CFR 270.29, as incorporated in 10 CSR 25-7.270) will become effective on the date the decision is signed by the department. A final permit revocation decision will become effective thirty (30) days after the department signs the decision, unless no comments requested a change in the draft permit revocation decision, in which case the final permit revocation decision will become effective on the date the decision is signed by the department.

16. *Reserved.*

17. Response to comments.

A. At the same time that any final permit decision is issued under paragraph (1)(A)15. of this rule, the department will issue a response to comments. This response shall—

(I) Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change; and

(II) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period and public hearing, if one was held.

B. The response to comments will be made available to the public.

18. *Reserved.*

19. *Reserved.*

20. Computation of time.

A. Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

B. Any time period scheduled to end before the occurrence of an act or event shall end on the last working day before the act or event.

C. If the last day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

D. Whenever a party or interested person has the right or is required to act within a specific time period after he or she receives notice by mail, three (3) days shall be added to the time period to allow for mail delivery.

(B) This subsection sets forth requirements that correspond to the requirements in 40 CFR part 124 subpart B.

1. Applicable permit procedures.

A. The requirements of this paragraph shall apply to all new permit applications and permit applications for renewal of permits where a significant change in facility operations is proposed. For purposes of this paragraph, a "significant change" is any change that would qualify as a class 3 permit modification under 40 CFR 270.42, as incorporated in 10 CSR 25-7.270. The requirements of this paragraph do not apply to class 1 or class 2 permit modifications, as defined in 40 CFR 270.42, as incorporated in 10 CSR 25-7.270, or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

B. At least ninety (90) days prior to submitting a permit application for a disposal facility, the applicant shall submit to the department a letter of intent to construct, substantially alter, or operate a hazardous



waste disposal facility, in accordance with section 260.395.7, RSMo. The department will publish the letter within ten (10) days of receipt. The letter will be published as specified in section 493.050, RSMo. The letter will be published once a week for four (4) consecutive weeks in a newspaper of general circulation serving the county in which the facility is currently or proposed to be located.

C. Prior to submitting a permit application for a facility, the applicant shall hold at least one (1) public meeting to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide an opportunity for attendees to voluntarily provide their names and addresses.

D. The applicant shall submit a summary of the meeting, the list of attendees and their addresses developed under subparagraph (1)(B)1.C. of this rule, and copies of any written comments or materials submitted at the meeting to the department as a part of the permit application, in accordance with 40 CFR 270.14(b), as incorporated in 10 CSR 25-7.270.

E. The applicant shall provide public notice of the pre-application meeting at least thirty (30) days prior to the meeting. The applicant shall maintain, and provide to the department as part of the permit application, documentation of the notice.

(I) The applicant shall provide public notice in all of the following forms:

(a) A newspaper advertisement.

The applicant shall publish a notice as a display advertisement in a newspaper of general circulation serving the county or equivalent jurisdiction where the current or proposed facility is located. In addition, the applicant shall publish the notice in newspapers of general circulation serving adjacent counties or equivalent jurisdictions;

(b) A visible and accessible sign.

The applicant shall post a notice on a clearly marked sign at or near the facility. If the applicant places the sign on the facility property, the sign shall be large enough to be read from the nearest point where the public would pass by the site;

(c) A broadcast media announcement. The applicant shall broadcast a notice as a paid advertisement at least once on at least one (1) local radio station or television station. The applicant may employ another medium with the prior written approval of the department; and

(d) In addition to the department, the applicant shall send a copy of the newspaper advertisement to the units of state

and local government described in subpart (1)(A)10.C.(I)(d) of this rule.

(II) All notices required under this subparagraph shall include:

(a) The date, time, and location of the meeting;

(b) A brief description of the purpose of the meeting;

(c) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the current or proposed facility location;

(d) A statement encouraging people to contact the facility at least seventy-two (72) hours before the meeting if they need special access to participate in the meeting; and

(e) The name, address, and telephone number of a contact person for the applicant.

2. Public notice requirements at the permit application stage.

A. Applicability. The requirements of this paragraph shall apply to all new permit applications for hazardous waste management units and permit applications for renewal of permits for such units under 40 CFR 270.51, as incorporated in 10 CSR 25-7.270. The requirements of this paragraph do not apply to permit modifications, as defined in 40 CFR 270.42, as incorporated in 10 CSR 25-7.270, or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

B. Notification at permit application submittal.

(I) The department shall provide public notice as set forth in subpart (1)(A)10.C.(I)(c) of this rule, and notice to the appropriate units of state and local government as set forth in subpart (1)(A)10.C.(I)(d) of this rule, that a complete permit application has been submitted to the department and is available for review.

(II) The notice will be published within a reasonable period of time after the department determines that the permit application is complete. The notice must include:

(a) The name and telephone number of the applicant's contact person;

(b) The name and telephone number of the department contact person and a mailing address to which information and inquiries may be directed throughout the permitting process;

(c) An address to which people can write in order to be put on the facility mailing list;

(d) A location where copies of the permit application and any supporting documents can be viewed and copied;

(e) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the current or proposed facility location on the front page of the notice; and

(f) The date that the permit application was submitted.

C. Concurrent with the notice required under subparagraph (1)(B)2.B. of this rule, the department will place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the department's office as identified in the notice.

3. Information repository.

A. Applicability. The requirements of this paragraph apply to all applicants seeking hazardous waste management facility permits.

B. The department shall assess the need, on a case-by-case basis, for a local information repository. When assessing the need for a local information repository, the department will consider a variety of factors, including the level of public interest, the type of facility, and the presence of an existing repository. If the department determines, at any time after submittal of a permit application, that there is a need for a local repository, then the department will notify the facility that it must establish and maintain a local information repository.

C. The information repository shall contain all documents, reports, data, and information deemed necessary by the department to fulfill the purposes for which the repository is established. The department will have the discretion to limit the contents of the repository.

D. The information repository shall be located and maintained at a location chosen by the facility. If the department finds the location unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, the department will specify a more appropriate location.

E. The department will specify requirements the applicant must meet for informing the public about the local information repository. At a minimum, the department will require the applicant to provide a written notice about the information repository to all individuals on the facility mailing list.

F. The applicant shall be responsible for maintaining and updating the repository



with appropriate information throughout the time period specified by the department. The department may close the repository at its discretion, based on the factors in subparagraph (1)(B)3.B. of this rule.

(2) Appeal of Final Decision.

(A) For purposes of this section, a final permit decision means the issuance, denial, partial or total modification, or revocation of a permit. The requirements of this section apply to final permit decisions, closure plan approvals, post-closure plan approvals, and any condition of a final permit decision or approval.

(B) The applicant or any aggrieved person may appeal to have the matter heard by the Administrative Hearing Commission. To initiate the appeal, the aggrieved party must follow the procedure established in 10 CSR 25-2.020 and sections 260.395.11 and 621.250, RSMo. Written petitions must be filed within thirty (30) days after the date the final permit decision or approval was mailed or the date it was delivered, whichever was earlier. If the written petition is sent by registered or certified mail, the petition will be deemed filed on the date it was mailed. If the written petition is sent by any other method, the petition will be deemed filed on the date it is received by the Administrative Hearing Commission. The written petition shall set forth the grounds for the appeal. The appeal shall be limited to issues raised during the public comment period and not resolved in the final permit decision or approval to the applicant's or aggrieved person's satisfaction. Issues included in the written petition outside those raised during the public comment period shall not be considered; however, the Administrative Hearing Commission may consider an appeal of a condition in the final permit decision or approval that was not part of the draft permit or proposal and therefore could not have been commented on during the public comment period.

(C) Any appeal under this section shall be a contested case and shall be conducted under section 260.400, RSMo.

(D) Any party described in subsection (2)(G) of this rule may petition the Administrative Hearing Commission for an interlocutory order staying the effectiveness of a final permit decision, a closure plan approval, a post-closure plan approval, or any condition of a final permit decision or approval which is subject to an appeal, until the Missouri Hazardous Waste Management Commission enters its final order upon the appeal. At any time during the proceeding, the applicant may apply to the Administrative

Hearing Commission for relief from a stay order previously issued.

1. In determining whether to grant a stay or relief from a stay, the Administrative Hearing Commission will consider the likelihood that the petition will eventually succeed on the merits, the potential for harm to the applicant, business, industry, public health, or the environment if the requested stay or relief is or is not granted, and the potential magnitude of the harm.

2. Any decision concerning a petition for a stay or relief from a stay shall not be considered a contested case or a final order and shall be made by a majority of the sitting quorum of the Administrative Hearing Commission.

3. The stay of any final permit decision pending appeal to the Administrative Hearing Commission shall have the effect of continuing the effect and enforceability of any existing permit until the Missouri Hazardous Waste Management Commission issues a final order upon the appeal, unless the stay is lifted sooner by the Administrative Hearing Commission. During the appeal proceeding, the stay of any condition of a final permit decision pending appeal shall not relieve the applicant of complying with all conditions of the final permit decision not stayed.

4. No petition for a stay order or relief from a stay order shall be presented to the Administrative Hearing Commission on less than ten (10) days' notice to all other parties to the proceeding.

(E) A timely written petition of appeal stays the effectiveness of a final permit revocation decision. If a timely written petition of appeal is not filed, the final permit revocation becomes effective thirty (30) days after the department signs the decision.

(F) Public notice of the appeal hearing, including the time, date, and place of the appeal hearing, shall be given in accordance with part (1)(A)10.C.(II) of this rule. The department will mail a copy of the notice to all persons identified in subparts (1)(A)10.C.(I)(a) and (c) of this rule. After the Hazardous Waste Management Commission issues a final appeal decision, the department will notify the participants in the appeal hearing and each person who requested notice of the final appeal decision. The department will also send a news release announcing the final appeal decision to the media serving the area where the facility is currently or proposed to be located.

(G) The participants in an appeal hearing shall be—

1. The department;
2. The applicant;

3. Any aggrieved person filing a timely written petition of appeal; and

4. Any person who files a timely application for intervention and is granted leave to intervene of right or permissive intervention. Any person desiring to intervene in an appeal shall file with the Administrative Hearing Commission, an application to intervene according to the procedures of Rule 52.12, Supreme Court Rules of Civil Procedure.

A. The application to intervene shall state the interests of the intervener, the grounds upon which intervention is sought, and a statement of the position which the intervener desires to take in the proceeding. The intervener shall serve a copy of the application to intervene on each of the parties to the proceeding as determined under part (1)(A)10.C.(II) of this rule.

B. The Administrative Hearing Commission or duly appointed hearing officer will grant or deny the application to intervene pursuant to Rule 52.12, Supreme Court Rules of Civil Procedure. The Administrative Hearing Commission or hearing officer may condition any grant of intervention as the circumstances may warrant.

(H) A tape recording or written transcript of the appeal hearing shall be made available to the public.

(3) Transporter License.

(A) Issuance or Denial of a Transporter License.

1. Upon receipt of a complete application for a transporter license, the department will determine whether the application conforms to the requirements of sections 260.385 and 260.395, RSMo, and 10 CSR 25-6. The department will notify the applicant of its decision to issue, with or without conditions, or denying the license. If the license is denied, the department will specify the reasons for the denial. No license will be issued until the fees required by section 260.395.1, RSMo, have been paid.

2. The procedure for appealing a license issuance, denial, or any condition of a license shall be the same as the procedure for appealing a final permit decision under section (2) of this rule.

(B) Revocation of a Transporter License.

1. Transporter licenses may be revoked for the reasons specified in sections 260.379.2, 260.395.3, 260.410.3, and 260.410.4, RSMo, or for failure to comply with sections 260.395.1(2) and 260.395.1(3), RSMo.

2. The department may initiate proceedings to revoke a transporter license. If the department proposes to revoke a transporter license, it will send a notice of intent to



revoke by certified mail to the licensee, specifying the provisions of sections 260.350–260.434, RSMo, 10 CSR 25-6, the conditions of the license or the provisions of an order issued to the licensee that the licensee has violated, the manner in which the licensee misrepresented or failed to fully disclose relevant facts, or the manner in which the activities of the licensee endanger human health or the environment or are creating a public nuisance.

3. The procedure for appealing a license revocation shall be the same as the procedure for appealing a permit revocation under section (2) of this rule. A timely written petition for appeal stays the effectiveness of a license revocation. If a timely written petition for appeal is not filed, the revocation shall become effective thirty (30) days after the department signs the revocation decision.

(4) Resource Recovery Facility Certifications.

(A) Issuance of Resource Recovery Facility Certifications. Upon receipt of a complete application for resource recovery facility certification, the department will determine whether the application conforms to the requirements of section 260.395.13, RSMo, and 10 CSR 25-9.020. The department will notify the applicant of its decision to issue, with or without conditions, or deny the certification. If the certification is denied, the department will specify the reasons for the denial. The procedure for appealing a certification issuance, denial, or any condition of a certification will be the same as the procedure for appealing a final permit decision under section (2) of this rule.

(B) Modification of Resource Recovery Facility Certifications.

1. The department may modify a resource recovery facility certification under any of the following circumstances:

A. When required to prevent violations of the requirements of section 260.395.14, RSMo, or 10 CSR 25-9.020;

B. When relevant facts have been misrepresented or not fully disclosed;

C. When required to protect the health of humans or the environment or to prevent or abate a public nuisance;

D. When the facility proposes changing any waste stream(s) managed by the facility; or

E. When the facility proposes changing any processes or equipment utilized for resource recovery operations at the facility.

2. If the department proposes to modify the resource recovery facility certification, it will send a notice of intent to modify by certified mail to the certificate holder, specifying the reasons for the proposed modification and

the manner in which the certificate is proposed to be modified.

3. The facility may appeal any certification modifications, except those requested by the facility that were approved as proposed without further modification. The procedure for appealing a certification modification shall be the same as the procedure for appealing a final permit decision under section (2) of this rule.

(C) Revocation of Resource Recovery Facility Certifications.

1. The department may initiate proceedings to revoke a resource recovery facility certification. If the department decides to revoke a resource recovery facility certification, it will send a final revocation by certified mail to the certificate holder, specifying the provisions of section 260.395.14, RSMo, 10 CSR 25-9.020, or an order issued to the certificate holder that have been violated, the manner in which the certificate holder misrepresented or failed to fully disclose relevant facts, or the manner in which the activities at the facility endanger human health or the environment or are creating a public nuisance.

2. Resource recovery facility certifications may be revoked for the reasons specified in paragraph (4)(B)1. of this rule.

3. The procedure for appealing a certification revocation shall be the same as the procedure for appealing a permit revocation under section (2) of this rule. A timely written petition for appeal stays the effectiveness of a certification revocation. If a timely written petition for appeal is not filed, the revocation shall become effective thirty (30) days after the department signs the revocation decision.

(5) Variances.

(A) Applicability. According to section 260.405.1, RSMo, unless prohibited by any federal hazardous waste management act, the Hazardous Waste Management Commission may grant individual variances from the requirements of sections 260.350 to 260.430, RSMo, whenever it is found, upon presentation of adequate proof, that compliance will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation, or activity, in either case without sufficient corresponding benefit or advantage to the people. The commission will not consider any petition for variance that would permit the occurrence or continuance of a condition that unreasonably poses a present or potential threat to the health of humans or other living organisms. The department may require any petitioner for a variance to submit mailing

lists and mailing labels required to accomplish the public notice requirements of this section.

(B) Evaluation. Upon receipt of any petition for a variance, the department will evaluate the petition to determine whether the request is substantive or non-substantive based upon the effect of the proposed variance on facility operations, types of waste, type and volume of hazardous waste management units, location of facility, public interest, and compliance history. Variances from generator or transporter requirements will be deemed non-substantive provided all conditions of subsection (3)(A) of this rule are met.

(C) Substantive Variance. If a variance petition is deemed substantive, the department will—

1. Upon receipt—

A. Mail a notice to all record owners of real property located within one (1) mile of the outer boundaries of the facility, the highest elected official of the county, and the highest elected official of the city, town, or village having jurisdiction over the area where the facility is located; and

B. Issue a news release to the media and publish a legal notice in a newspaper of general circulation serving the area where the facility is located;

2. Within sixty (60) days of receipt—

A. Prepare a recommendation as to whether the variance should be granted, granted with conditions, or denied;

B. Submit the recommendation to the Missouri Hazardous Waste Management Commission;

C. Notify the petitioner of the recommendation;

D. Publish a legal notice regarding the recommendation in a newspaper of general circulation serving the area where the facility is located; and

E. Mail a notice regarding the recommendation to all record owners of real property adjacent to the facility, the highest elected official of the county, and the highest elected official of the city, town, or village having jurisdiction over the area where the facility is located; and

3. Request a formal hearing before the Missouri Hazardous Waste Management Commission or a duly appointed hearing officer on the variance petition and the department's recommendation, as provided in section 260.400, RSMo.

(D) Non-Substantive Variance. If a variance petition is deemed non-substantive, the department will comply with paragraph (5)(C)2. of this rule. The Missouri Hazardous Waste Management Commission will hold a formal hearing as provided in section 260.400,



RSMo, if requested by the petitioner. A request for a formal hearing may also be made by any aggrieved person if the department's recommendation is to grant the variance with or without conditions. Any request by the petitioner or aggrieved person for a formal hearing shall be made in writing within thirty (30) days of the date the legal notice regarding the recommendation is published.

(E) Final Decision. If no formal hearing is requested, the Missouri Hazardous Waste Management Commission shall make a decision on the variance at a public meeting held no earlier than thirty (30) days from the date the legal notice regarding the recommendation was published.

(F) Hearing Procedures. Any hearings under this section shall be a contested case pursuant to section 260.400 and Chapter 536, RSMo. The participants shall be the department, the petitioner, any aggrieved person who requests a formal hearing, and any person who files a timely application for intervention and is granted leave to intervene. Any person desiring to intervene shall file an application to intervene with the Missouri Hazardous Waste Management Commission secretary within thirty (30) days from the date the legal notice regarding the recommendation is published.

1. The application to intervene shall state the interests of the intervener, the grounds upon which intervention is sought, and a statement of the position that the intervener desires to take in the proceeding. The intervener shall serve a copy of the application to intervene on each of the parties listed in subsection (5)(F) of this rule.

2. The Missouri Hazardous Waste Management Commission or duly appointed hearing officer will grant or deny the application to intervene pursuant to Rule 52.12, Supreme Court Rules of Civil Procedure. The Missouri Hazardous Waste Management Commission or hearing officer may condition any grant of intervention as the circumstances may warrant.

(G) If the applicant fails to comply with the terms and conditions of the variance as specified by the Missouri Hazardous Waste Management Commission, the variance may be revoked or modified by the commission after a formal hearing held after no less than thirty (30) days' written notice. The department will notify all persons who will be subjected to greater restrictions if the variance is revoked or modified and each person who requested notice from the department.

June 1, 1998, effective Jan. 30, 1999. Amended: Filed Feb. 1, 2001, effective Oct. 30, 2001. Amended: Filed April 15, 2011, effective Dec. 30, 2011.

**Original authority: 260.370, RSMo 1977, amended 1980, 1988, 1993, 1995, 2004, 2010; 260.400, RSMo 1977, amended 1980, 1993; 260.405, RSMo 1977, amended 1980; and 260.437, RSMo 1983, amended 1995.*

AUTHORITY: section 260.370, RSMo Supp. 2010, and sections 260.400, 260.405, and 260.437, RSMo 2000. Original rule filed*