

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE**

SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS

PART 1 - THE PROCESS

252:4-7-13. Notices

(a) **Statutory requirements for notice.** The Uniform Environmental Permitting Act requires an applicant to give notice in accordance with 27A O.S. § 2-14-301.

(b) **Notice to landowner.** Applicants shall certify by affidavit that they own the real property, have a current lease or easement which is given to accomplish the permitted purpose or have provided legal notice to the landowner.

(c) **Notice content.** The applicant shall provide DEQ with a draft notice for approval prior to publication. All published legal notice(s) shall contain the:

- (1) Name and address of the applicant;
- (2) Name, address and legal description of the site, facility and/or activity;
- (3) Purpose of notice;
- (4) Type of permit or permit action being sought;
- (5) Description of activities to be regulated;
- (6) Locations where the application may be reviewed;
- (7) Names, addresses and telephone numbers of contact persons for the DEQ and for the applicant;
- (8) Description of public participation opportunities and time period for comment and requests; and
- (9) Any other information required by DEQ rules.

(d) **Proof of publication.** Within twenty (20) days after the date of publication, an applicant shall provide the DEQ with a written affidavit of publication for each notice published. In case of a mistake in a published notice, the DEQ shall require a legal notice of correction or republication of the entire notice, whichever is appropriate. Inconsequential errors in spelling, grammar or punctuation shall not be cause for correction or republication.

(e) **Exception to notice requirement.** Applicants for solid waste transfer station permits may be exempt from public meeting requirements under 27A O.S. § 2-10-307.

(f) **Additional notice.**

- (1) Applicants for a NPDES, RCRA or UIC permit are subject to additional notice provisions of federal requirements adopted by reference as DEQ rules.
- (2) Applicants for a proposed wastewater discharge permit that may affect the water quality of a neighboring state must give written notice to the environmental regulatory agency of that state. [27A O.S. § 2-6-203(A)(7)]
- (3) Applicants for a landfill permit shall provide notice by certified mail, return receipt requested, to owners of mineral interests and to adjacent landowners whose property may be substantially affected by installation of a landfill site. See *DuLaney v. OSDH*, 868 P.2d 676 (Okl. 1993).

(g) **Additional notice content requirements for Clean Air Act Permits.** In addition to the notice provisions of 27A O.S. §§ 2-14-301, ~~and 2-14-302~~, and 2-14-304(C), and other provisions of this section, the following requirements apply.

- (1) For Tier II and Tier III air quality applications, applicants shall give notice by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the DEQ, including those who request in writing to be on the list; and by other means if determined by the Executive Director to be necessary to assure adequate notice to the affected public.
- (2) All published notice(s) for permit modification shall identify the emissions change involved in the modification.
- (3) An applicant for a Part 70 permit that may affect the air quality of a neighboring state must give written notice to the environmental regulatory agency of that state. [27A O.S. § 2-5-112(E)]
- (4) ~~An~~ A modification of an existing Part 70 source operating permit may be issued to an applicant for a new Part 70 operating permit without further public review if the operating permit modification accommodates a change for which no construction permit is required under 100-8-4(a)(1), or is based on a construction permit that meets the requirements of 252:4-7-32(b)(1)(B), 252:4-7-32(b)(2)(A) or (B). In the latter case, and the public notice for the construction permit contains shall contain the following language.
- (A) This permit is subject to EPA review, EPA objection, and petition to EPA, as provided by 252:100-8-8 and 40 CFR § 70.8.
 - (B) If the operating permit as modified has conditions which do not differ from the construction permit's operating conditions in any way considered significant under 252:100-8-7.2(b)(2), the operating permit modification will be issued without further public notice and comment; and,
 - (C) The public will not receive another opportunity to provide comments when the modified operating permit is issued.
- (5) For permits under OAC 252:100-8, Part 7:
- (A) all published notice(s) shall identify the degree of increment consumption that is expected from the source or modification.
 - (B) the mailing list developed by DEQ under paragraph (g)(1) shall include the mailing address and/or email address for those who request in writing to be on the list, as well as the EPA Administrator, and other officials and agencies having cognizance over the location where the proposed construction would occur as follows:
 - (i) the chief executives of the city and county where the source would be located;
 - (ii) any comprehensive regional land use planning agency; and
 - (iii) any State, Federal Land Manager, or Tribal Government whose lands may be affected by emissions from the source or modification.
- (6) In addition to any obligation for an applicant to publish notices under 27A O.S. Sections 2-14-301, 2-14-302, and 2-14-304, DEQ shall prepare and provide corresponding notices on the agency's web site for Tier II and III applications. Such notices shall, at a minimum, provide the same information as is provided in the corresponding published notices, which information may be posted in tabular form. For purposes of permits under OAC 252:100-8, Part 7 (PSD), these postings shall constitute the "consistent noticing method" referred to in 40 CFR Section 51.166(q)(2)(iii).
- (7) DEQ shall prepare and post on the agency's web site notices of a 30-day opportunity for public comment for draft individual construction permits and draft individual construction permit modifications for Tier I applications. Such notices shall, at a minimum, provide

information consistent with the requirements of 40 CFR Section 51.161, and may be posted in tabular form with appropriate links to additional information sources.

(8) If a minor facility is eligible to use the FESOP Enhanced NSR process under OAC 252:100-7, the public notice for a construction permit for modification of a permitted minor facility prepared and posted under paragraph (7) shall contain a statement to the following effect: The facility's subsequent operating permit modification will be issued without further public notice and comment, unless the operating permit conditions as modified significantly differ from the construction permit's operating conditions.

(9) DEQ shall prepare and post on the agency's web site notices of a 30-day opportunity for public comment for draft minor facility individual operating permits for Tier I applications and for draft modifications of existing minor facility operating permits for Tier I applications. Such notices shall, at a minimum, provide information consistent with the requirements of OAC 252:4-7-13(c), and may be posted in tabular form with appropriate links to additional information sources. However, for a minor facility that is eligible to use the FESOP Enhanced NSR process under OAC 252:100-7, a modification of an existing minor facility operating permit may be issued without further public review if the operating permit modification is based on a construction permit that was made available for review and comment under 252:4-7-13(g)(7) and (8).

(10) Posting of such notices for other authorizations as listed in OAC 252:4-7-32(c) shall be at the Director's discretion. In addition, posting of such notices for other Tier I applications, including Tier I applications under OAC 252:4-7-32(a)(2)(C) or OAC 252:4-7-32(b)(2)(C) for extension of expiration date of a construction permit, shall be at the Director's discretion.

PART 3 - AIR QUALITY DIVISION TIERS AND TIME LINES

252:4-7-32. Air quality applications - Tier I

(a) **Minor facility permits.** The following air quality authorizations for minor facilities require Tier I applications.

(1) **New permits.** New construction, operating and relocation permits.

(2) **Modifications of permits.**

(A) Modification of a construction permit for a minor facility that will remain minor after the modification.

(B) Modification of an operating permit that will not change the facility's classification from minor to major.

(C) Extension of expiration date of a construction permit.

(b) **Part 70 source permits.** The following air quality authorizations for Part 70 sources require Tier I applications.

(1) **New permits.**

~~(A) New construction permit for an existing Part 70 source for any change considered minor under 252:100-8-7.2(b)(1).~~

~~(B) New operating permit that:~~

~~(i) is based on a construction permit that was processed under Tier II or III, and 252:100-8-8, and~~

~~(ii) has conditions which do not differ from the construction permit's operating conditions in any way considered significant under 252:100-8-7.2(b)(2).~~

(2) **Modifications of permits.**

(A) Modification of any operating permit condition that ~~(i)~~ is based on the operating conditions of a construction permit that was processed under Tier I, II or III, and 252:100-8-8, and

~~(ii)~~ (i) does not differ from those construction permit conditions in any way considered significant under 252:100-8-7.2(b)(2) or,

(ii) accommodates a change for which no construction permit is required under 100-8-4(a)(1).

(B) A construction or operating permit modification that is minor under 252:100-8-7.2(b)(1).

(C) Extension of expiration date of a Part 70 source's construction permit with no or minor modifications.

(c) **Other authorizations.** The following air quality authorizations require Tier I applications.

(1) New, modified and renewed individual authorizations under general operating permits for which a schedule of compliance is not required by 252:100-8-5(e)(8)(B)(i).

(2) Burn approvals.

(3) Administrative amendments of all air quality permits and other authorizations.

252:4-7-33. Air quality applications - Tier II

(a) **Minor facility permit actions.**

(1) Any minor facility seeking a permit for a modification that when completed would turn it into a Part 70 source is required to apply under subsection (b) of this section.

(2) Any Part 70 source seeking a permit that would limit its potential to emit such that when issued it would qualify as a minor facility requires a Tier II application.

(b) **Part 70 source permits.** The following air quality authorizations for Part 70 sources require Tier II applications.

(1) **New permits.**

(A) New construction permit for a new Part 70 source not classified under Tier III.

(B) New construction permit for an existing Part 70 source for any change considered significant under 252:100-8-7.2(b)(2) and which is not classified under Tier III.

(C) New operating permit for a Part 70 source ~~that did not have an underlying construction permit processed under Tier II or III, and 252:100-8-8.~~

(D) ~~[Reserved] New operating permit with one or more conditions that differ from the underlying Tier II or III construction permit's operating conditions in a way considered significant under 252:100-8-7.2(b)(2).~~

(E) New acid rain permit that is independent of a Part 70 permit application.

(F) New temporary source permit under 252:100-8-6.2.

(2) **Modifications of permits.**

(A) Significant modification, as described in 252:100-8-7.2(b)(2), of an operating permit that is not based on an underlying construction permit processed under Tier II or III, and 252:100-8-8.

(B) Modification of an operating permit when the conditions proposed for modification differ from the underlying construction permit's operating conditions in a way considered significant under 252:100-8-7.2(b)(2).

(C) A construction permit modification considered significant under 252:100-8-7.2(b)(2) and which is not classified under Tier III.

- (3) **Renewals.** Renewals of operating permits.
- (c) **Other authorizations.** The following air quality authorizations require Tier II applications.
 - (1) New, modified and renewed general operating permits.
 - (2) Individual authorizations under any general operating permit for which a schedule of compliance is required by 252:100-8-5(c)(8)(B)(i).
 - (3) Plant-wide emission plan approval under 252:100-37-25(b) or 252:100-39-46(j).
 - (4) Alternative emissions reduction authorizations. (Also subject to state implementation plan revision procedures in 252:100-11.)