

## § 124.9

## 40 CFR Ch. I (7–1–13 Edition)

### § 124.9 Administrative record for draft permits when EPA is the permitting authority.

(a) The provisions of a draft permit prepared by EPA under §124.6 shall be based on the administrative record defined in this section.

(b) For preparing a draft permit under §124.6, the record shall consist of:

(1) The application, if required, and any supporting data furnished by the applicant;

(2) The draft permit or notice of intent to deny the application or to terminate the permit;

(3) The statement of basis (§124.7) or fact sheet (§124.8);

(4) All documents cited in the statement of basis or fact sheet; and

(5) Other documents contained in the supporting file for the draft permit.

(6) For NPDES new source draft permits only, any environmental assessment, environmental impact statement (EIS), finding of no significant impact, or environmental information document and any supplement to an EIS that may have been prepared. NPDES permits other than permits to new sources as well as all RCRA, UIC and PSD permits are not subject to the environmental impact statement provisions of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4321.

(c) Material readily available at the issuing Regional Office or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this section, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.

(d) This section applies to all draft permits when public notice was given after the effective date of these regulations.

### § 124.10 Public notice of permit actions and public comment period.

(a) *Scope.* (1) The Director shall give public notice that the following actions have occurred:

(i) A permit application has been tentatively denied under §124.6(b);

(ii) (*Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).*) A draft permit has been prepared under §124.6(d);

(iii) (*Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404) and 271.14 (RCRA).*) A hearing has been scheduled under §124.12;

(iv) (*Applicable to State programs, see §233.26 (404).*) A State section 404 application has been received in cases when no draft permit will be prepared (see §233.39); or

(v) An NPDES new source determination has been made under §122.29.

(2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under §124.5(b). Written notice of that denial shall be given to the requester and to the permittee.

(3) Public notices may describe more than one permit or permit actions.

(b) *Timing (applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* (1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this section shall allow at least 30 days for public comment. For RCRA permits only, public notice shall allow at least 45 days for public comment. For EPA-issued permits, if the Regional Administrator determines under 40 CFR part 6, subpart F that an Environmental Impact Statement (EIS) shall be prepared for an NPDES new source, public notice of the draft permit shall not be given until after a draft EIS is issued.

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

(c) Methods (applicable to State programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.23 (404), and 271.14 (RCRA)). Public notice of activities described in paragraph (a)(1) of this section shall be given by the following methods:

(1) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her