

WAC 173-308-90005 Appendix 5—Procedures for issuing general permits. When the department issues general permits, it will do so in accordance with the procedures in this section.

(1) General permit coverage.

(a) The director may issue general permits to satisfy any or all of the biosolids management requirements in chapter 70.95J RCW or other applicable state or federal biosolids management requirements.

(b) The director may issue general permits to cover categories or subcategories of facilities within appropriate geographic areas.

(c) General permits may be written to cover categories of treatment works treating domestic sewage that meet all of the following requirements:

(i) Involve the same or substantially similar types of operations.

(ii) Engage in the same types of biosolids use or sewage sludge disposal practices.

(iii) Require the same or substantially similar operating conditions or standards for biosolids use or sewage sludge disposal.

(iv) Require the same or substantially similar monitoring.

(v) In the opinion of the director are more appropriately controlled under a general permit than under individual permits.

(2) General permit preparation - preliminary determination.

(a) For all general permits, the department must make a preliminary determination to develop a general permit.

(i) Interested persons may petition the director requesting that a category of facilities be considered for the development of a general permit.

(ii) The department must respond to such a petition within ninety days of receipt.

(b) The department must provide public notice of all preliminary determinations to develop a general permit pursuant to subsection (5)(a) of this section.

(c) In the event that the department determines not to develop a general permit after publishing a preliminary determination pursuant to subsection (5)(a) of this section, the department must provide public notice to that effect in the same manner as the preliminary determination public notice was provided.

(3) Fact sheets.

(a) The department must prepare a fact sheet for every draft general permit determination. Such fact sheets must summarize the following:

(i) The legal basis of the permitting program.

(ii) The type of facility or activity which is the subject of the general permit.

(iii) The geographical area for which the general permit is valid.

(iv) The criteria for which coverage under a general permit will be approved.

(v) If available, a listing or some other means of identifying the facilities proposed to be covered under the general permit.

(vi) The information required to be submitted as part of the application for coverage under the general permit.

(vii) The general characteristics of the facilities being authorized under the general permit.

(viii) Standards and limitations imposed in the general permit.

(ix) A general description of the conditions in the general permit.

(x) Any compliance schedules proposed as part of the general permit.

(xi) The procedures for the formulation of final determinations, including:

(A) The thirty-day comment period required in subsection (5)(c)(iv) of this section, including the date and time after which public comments will not be considered by the department in formulating the final determination on the draft general permit.

(B) The time and place of the public hearing(s) required in subsection (7) of this section.

(C) Any other procedures by which the public may participate in the formulation of the final determination.

(xii) A summary of the economic impact analysis required in subsection (4) of this section, including any mitigation proposed for small business.

(b) The department must provide copies of general permit fact sheets to any interested person upon request.

(4) Economic impact analysis.

(a) The department must prepare an economic impact analysis on all draft general permits which are intended to directly cover small business. The economic impact analysis must be prepared on the draft general permit for which public notice is being provided pursuant to subsection (5)(c) of this section.

(b) The purpose of the economic impact analysis is to reduce the economic impact of the general permit on small business by doing one or more of the following when it is legal and feasible in meeting the stated objectives of chapter 70.95J RCW:

(i) Establishing differing compliance or reporting requirements or timetables for small businesses.

(ii) Clarifying, consolidating, or simplifying the compliance and reporting requirements under the general permit for small businesses.

(iii) Establishing performance rather than design standards.

(iv) Exempting small businesses from parts of the general permit.

(c) The contents of an economic impact analysis of a proposed general permit must include, at a minimum, the following:

(i) A brief description of the compliance requirements of the general permit, including:

(A) The minimum quality requirements.

(B) The monitoring requirements contained in the general permit.

(C) The reporting and recordkeeping requirements.

(D) Any plan submittal requirements.

(ii) The estimated costs of compliance, based upon existing data for facilities intended to be covered under the general permit. Costs must include:

(A) The costs associated with (c)(i) of this subsection.

(B) The costs of equipment, supplies, labor, and any increased administrative costs.

(iii) A comparison, to the greatest extent possible, of the cost of compliance for small businesses with the cost of compliance for the largest ten percent of the facilities intended to be covered under the general permit. The economic impact analysis must use one or more of the following as a basis for comparing costs:

(A) Cost per employee.

(B) Cost per hour of labor.

(C) Cost per one hundred dollars of sales.

(d) The following compliance costs associated with a general permit must not be included in the economic impact analysis:

(i) The costs necessary to comply with chapter 173-308 WAC.

(ii) The costs associated with requirements of the general permit which result from conformity or compliance, or both, with federal law or regulations.

(5) **Public notice.** The department must provide public notice of all preliminary determinations to develop a general permit, all determinations not to develop a general permit after publishing such a preliminary determination, all draft general permit determinations, and the issuance of a final general permit. All public notices must be circulated in a manner designed to inform interested and potentially affected persons of the proposed general permit.

(a) **Public notice for preliminary determinations.** The department must provide public notice of all preliminary determinations to develop a general permit as follows:

(i) The public notice must be circulated within the geographical area of the proposed general permit. Such notice may include any or all of the following:

(A) Publishing, as a paid advertisement or legal notice, the department's preliminary determination in one or more major local newspapers throughout the area of proposed coverage.

(B) Issuance of news releases, focus sheets, or newsletters.

(C) Publication in the State Register.

(ii) The department must request comments on whether a general permit is appropriate for the proposed category of facilities or whether individual permits are necessary.

(iii) The public notice must provide an opportunity for any interested or potentially affected party to submit information on facilities proposed to be covered under a general permit including:

(A) Any documented information on the characteristics of the biosolids including quantity, quality, and any land application sites. Information may be from an individual facility or be representative of the category as a whole.

(B) Any other relevant information.

(iv) The department must add the name of any person upon request to a general permit specific mailing list to receive information and notices related to the development of the general permit.

(b) In the event that the department determines not to develop a general permit after publishing a preliminary determination pursuant to (a) of this subsection, the department must provide public notice to that effect.

(c) **Public notice for draft general permits.** The department must provide public notice of every draft general permit as follows:

(i) The notice must be circulated throughout the geographical area covered by the general permit. Such circulation may include any or all of the following:

(A) Posting for a period of thirty days in post offices, public libraries, and public places within the geographical area covered by the general permit.

(B) Publishing the notice as a paid advertisement, display advertisement, or legal notice, in one or more major local newspapers of general circulation serving the area covered by the general permit.

(C) Issuance of news releases, focus sheets, or newsletters.

(ii) Notice must be mailed to any person upon request, including all persons on the general permit specific mailing list established

pursuant to (a)(iv) of this subsection and all known, potential permittees.

(iii) At least thirty days before the public hearing(s) required in subsection (7) of this section, the department must have the following published in the State Register:

(A) The public notice contents contained in (c)(vi) of this subsection.

(B) A reference to the relevant sections of chapter 70.95J RCW as the statutory authority for issuing the general permit.

(C) The date on which the agency intends to issue the general permit.

(D) A short explanation of the permit, its purpose, and anticipated effects.

(E) A summary of the economic impact analysis required in subsection (4) of this section.

(iv) *Public comment period.* The department must provide a period of not less than thirty days following the last publication of the public notice, during which time interested persons may submit their written views on a draft general permit determination. All written comments submitted during the comment period must be retained by the department and considered in the formulation of its final determination with respect to the draft general permit. The period for comment may be extended at the discretion of the department.

(v) The department must make available during the public comment period:

(A) The draft general permit.

(B) The fact sheet on the draft general permit required pursuant to subsection (3) of this section.

(C) The economic impact analysis required pursuant to subsection (4) of this section.

(D) A copy of the proposed application for coverage.

(E) The notice required pursuant to (c)(iii) of this subsection.

(vi) The contents of the draft general permit public notice must, at a minimum, summarize the following:

(A) The name, address, and phone number of the agency issuing the public notice.

(B) The type of facilities and activities which are the subject of the general permit.

(C) The geographical area for which the general permit is valid.

(D) The criteria for which coverage under a general permit will be approved.

(E) If available, a listing or some other means of generally identifying the facilities proposed to be covered under the general permit.

(F) The tentative determination to issue a general permit.

(G) The procedures for the formulation of final determinations, including the thirty-day comment period required in (c)(iv) of this subsection and any other means by which interested persons may comment upon those determinations.

(H) The date, time, and place when the public hearing(s) required in subsection (7) of this section will be held.

(I) The address and phone number of state premises at which interested persons may obtain further information.

(J) The date and time after which comments will not be considered by the department in formulating the final determination on the draft general permit.

(d) **Public notice for final general permits.** The department must provide public notice of the issuance of a final general permit as follows:

(i) The notice of general permit issuance must be circulated in a manner similar to that used to circulate the notice on the draft general permit in (c)(i) of this subsection and must be published in the State Register.

(ii) The notice of general permit issuance must be provided to all persons on the general permit specific mailing list established pursuant to (a)(iv) of this subsection and all known, potential permittees.

(iii) The public notice of the issuance of a general permit must contain:

(A) The name, address, and phone number of the agency issuing the public notice.

(B) The type of facilities and activities which are the subject of the general permit.

(C) The geographical area for which the general permit is valid.

(D) The criteria for which coverage under a general permit will be approved.

(E) If available, a listing or some other means of generally identifying the facilities proposed to be covered under the general permit.

(F) A summary of the application process by which eligible facilities may obtain coverage under the general permit.

(G) An explanation of any changes to the final general permit, other than editing changes, and the principal reasons for adopting the changes.

(H) A notice that the terms and conditions of the general permit may be appealed only by filing an appeal with the pollution control hearings board and by serving it upon the department within thirty days, and the process for doing so as contained in RCW 43.21B.310.

(I) The date after which the general permit will be effective. The effective date of a general permit must be no sooner than thirty days after the publication in the State Register of the public notice required pursuant to (d)(i) of this subsection.

(6) **Notice to other government agencies.** The department must notify other appropriate government agencies of each draft general permit determination and must provide such agencies an opportunity to submit their written views and recommendations.

(7) **Public hearings.**

(a) The department must hold one or more public hearing(s) on all draft general permits. The public hearing must be held during the public comment period provided pursuant to subsection (5)(c)(iv) of this section.

(b) The date, time, and place will be at the discretion of the department provided:

(i) At least thirty days is provided between the time the public notice is published pursuant to subsection (5)(c)(i) and (iii) of this section, and the time the hearing is held.

(ii) The hearing location is within the geographical area covered by the general permit.

(c) The department must cause a record to be made of all hearings required pursuant to this section. The record may be stenographic, mechanical, or electronic.

(8) **Public access to information.**

(a) In accordance with chapter 42.17 RCW and its published policy describing disclosure of public records, the department must make identifiable public records relating to all general permits available to the public for inspection and copying.

(b) The department must designate a general permit coordinator for each general permit. The coordinator must:

(i) Have knowledge of the general permit being prepared.

(ii) Maintain the records associated with the development of the general permit including the general permit file required pursuant to (c) of this subsection.

(iii) Be identified as the department contact in public notices regarding the general permit.

(c) **General permit development file.** The department must prepare a general permit development file for each issued general permit. The general permit development file must be available for public inspection subject to the provisions of this section. The general permit development file must contain:

(i) Copies of all public notices required pursuant to subsection (5) of this section.

(ii) A copy of the fact sheet required pursuant to subsection (3) of this section and any other documents not readily available to the public which were used in developing the terms and conditions of the general permit.

(iii) A copy of the economic impact analysis required pursuant to subsection (4) of this section.

(iv) Copies of the draft and final general permits and the application for coverage.

(v) All written comments received during the public comment period required pursuant to subsection (5)(c)(iv) of this section, on the draft general permit, fact sheet, economic impact analysis, and application for coverage.

(vi) The record of public hearings produced pursuant to subsection (7)(c) of this section.

(vii) The response to comments prepared pursuant to subsection (9)(a) of this section.

(d) The department must add the name of any person, upon request, to a mailing list to receive notices of department actions associated with a general permit.

(e) The department must provide facilities for the inspection of information relating to general permits and must ensure that employees honor requests for such inspection promptly without undue requirements or restrictions. The department must do either:

(i) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee.

(ii) Otherwise provide for, or coordinate with copying facilities or services such that requests for copies of nonconfidential, identifiable public records be honored promptly.

(9) **Issuance of general permits.**

(a) At the close of the public comment period required pursuant to subsection (5)(c)(iv) of this section, the department must prepare a response to all relevant comments received (both written and oral) and must briefly describe any changes, other than editing changes, and the principal reasons for making the changes to the draft general permit.

(b) General permits must be deemed issued upon signing by the director or by a person delegated the authority to issue general permits pursuant to chapter 173-06 WAC.

(c) The department must provide public notice of the issuance of all final general permits pursuant to subsection (5)(d) of this section.

(d) General permits become effective thirty days after the date of publication in the State Register of the public notice required pursuant to subsection (5)(d) of this section unless a later date is specified by the department.

(10) **Appeals.**

(a) The terms and conditions of a general permit as they apply to the appropriate class of facilities are subject to appeal within thirty days of issuance of a general permit in accordance with chapter 43.21B RCW.

(b) The terms and conditions of a general permit, as they apply to an individual facility, are appealable, within thirty days of the effective date of coverage of that facility, in accordance with chapter 43.21B RCW. This appeal is limited to the general permit's applicability or nonapplicability to that individual facility.

(c) The appeal of general permit coverage of an individual facility does not affect any other facilities covered under the general permit. If the terms and conditions of a general permit are found to be inapplicable to any individual facility, the matter must be remanded to the department for consideration of issuance of an individual permit or permits.

(11) **Modification, revocation and reissuance, and termination of general permits.** A general permit may be modified, revoked and reissued, or terminated, during its term for cause including, but not limited to, the following:

(a) A change occurs in the technology or practices for control or abatement of pollutants applicable to the category of facilities covered under the general permit.

(b) New biosolids or sewage sludge guidelines or standards are promulgated pursuant to the Clean Water Act or chapter 70.95J RCW, for the category of facilities covered under the general permit.

(c) Information is obtained which indicates that cumulative effects on the environment from facilities covered under the general permit are unacceptable.

(12) **Notice for determinations to modify or revoke.** In the event that the director has determined to modify or revoke, in whole or in part, a general permit pursuant to subsection (11) of this section the director must notify, in writing, all facilities covered under the general permit. The notification must include:

(a) The reason(s) why the general permit is being revoked or modified.

(b) The process for appealing the determination pursuant to RCW 43.21B.310.

(c) An application form and a time limit for submitting the application.

(d) Any other information determined to be relevant by the department.

[Statutory Authority: Chapters 70.95J and 70.95 RCW. WSR 07-12-010 (Order 06-06), § 173-308-90005, filed 5/24/07, effective 6/24/07.]