

61-9.124

Procedures for Decision Making

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Table of Contents

PART A. GENERAL PROGRAM REQUIREMENTS	148
124.1. Purpose and scope.....	148
124.2. Definitions.	148
124.3. Application for a permit.....	148
124.5. Modification, revocation and reissuance, or termination of permits.	149
124.6. Draft permits.....	150
124.8. Fact sheet.	151
124.10. Public notice of permit actions and public comment period.....	151
124.11. Public comments and requests for public hearings.....	155
124.12. Public hearings.	155
124.13. Obligation to raise issues and provide information during the public comment period.	156
124.15. Issuance and effective date of permit.	156
124.17. Response to comments.....	156
124.19. Appeal of NPDES and State Permits.	157
PART D. SPECIFIC PROCEDURES APPLICABLE TO NPDES PERMITS	157
124.51. Purpose and scope.	157
124.52. Permits required on a case-by-case basis.	157
124.56. Fact sheets.....	157

124.57. Public notice.....	158
124.59. Conditions requested by the Corps of Engineers and other government agencies.....	159
124.62. Decision on variances.....	159

PART A GENERAL PROGRAM REQUIREMENTS

124.1. Purpose and scope.

This part contains the Department's procedures for issuing, modifying, revoking and reissuing, or terminating all NPDES, Land Application, and State permits (including "sludge-only" permits issued pursuant to R.61-9.122.1(b)(2)).

124.2. Definitions.

In addition to the definitions given in R.61-9.122.2, R.61-9.503.9, R.61-9.503.11, R.61-9.503.21, R.61-9.503.31, R.61-9.503.41, R.61-9.504.9, R.61-9.504.11, R.61-9.504.21, R.61-9.504.31, R.61-9.505.2 and 40 CFR 501.2 (sludge management), the following definitions apply to this regulation. Terms not defined in this section have the meaning given by the Clean Water Act (CWA) or Pollution Control Act (PCA).

(a) "Appropriate Act and regulations" means the Clean Water Act (CWA); the Pollution Control Act (PCA); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA); or Safe Drinking Water Act (SDWA), whichever is applicable; and applicable regulations promulgated under those statutes. Appropriate Act and regulations includes program requirements.

(b) [Reserved]

(c) "Interstate Agency" means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the "appropriate Act and regulations."

(d) "RCRA" means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended by Pub. L. 95-609, 42 U.S.C. Section 6901 et seq.).

(e) "SDWA" means the Safe Drinking Water Act (Pub. L. 95-523, as amended by Pub. L. 95-1900; 42 U.S.C. 300f et seq.; and the 1986 Amendments Pub. L.99-339.

(f) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the appropriate Act and regulations.

(g) "Section 404 permit" means a permit to regulate the discharge of dredged material and the discharge of fill material under Section 404 of the Clean Water Act in the waters of the State.

(h) "UIC" means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an "approved program."

124.3. Application for a permit.

(a)(1) Any person who requires a permit under the NPDES program shall complete, sign, and submit to the Department an application for each permit required under R.61-9.122.1. Applications are not required for NPDES general permits under R.61-9.122.28.

(2) The Department shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit.

(3) Permit applications must comply with the signature and certification requirements of R.61-9.122.22.

(4) A person discharging waste from more than one (1) location shall file a separate application for each discharge location. A single application may be filed for multiple outfalls discharging from a single location, except that the discharge from each outfall shall be described separately in the application.

(b)(1) Any person who requires a permit under the Land Application or State program shall complete, sign, and submit to the Department an application for each permit required under R.61-9.503, R.61-9.504 or R.61-9.505. Applications are not required for General permits under R.61-9.505.23. Notices of Intent are required for General permits. See R.61-9.505.23.

(2) The Department shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit.

(3) Permit applications must comply with the signature and certification requirements of R.61-9.505.22.

(4) A person discharging waste from more than one (1) location shall file a separate application for each discharge location. A single application may be filed for multiple sites discharging from a single location, except that the discharge from each site shall be described separately in the application.

124.5. Modification, revocation and reissuance, or termination of permits.

(a) Permits may be modified (to include any term, condition, or a schedule of compliance), revoked and reissued, suspended or terminated either at the request of any interested person (including the permittee) or upon the Department's initiative. However, permits may only be modified, revoked and reissued, or terminated after notice and for the reasons specified in R.61-9.122.62, R.61-9.122.64, R.61-9.505.62 or R.61-9.505.64. All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) See section 124.19 for appeals procedure.

(c)(1) If the Department tentatively decides to modify or revoke and reissue a NPDES permit under R.61-9.122.62 or Land Application permit under R.61-9.505.62, it shall prepare a draft NPDES or Land Application permit under section 124.6 incorporating the proposed changes. The Department may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Department shall require the submission of a new application.

(2) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued and effective.

(3) "Minor Modifications" as defined in R.61-9.122.63 or R.61-9.505.63 are not subject to the requirements of this provision.

(d)(1) If the Department tentatively decides to terminate a permit under section 122.64(a) (NPDES) or a permit under section 122.64(b) (NPDES) where the permittee objects, the Department shall issue a notice of intent to terminate.

(2) If the Department tentatively decides to terminate a permit under R.61-9.505.64, it shall issue a notice of intent to terminate.

(3) A notice of intent to terminate is a type of draft permit which follows the same procedures as any other draft permit prepared under section 124.6.

124.6. Draft permits.

(a) Once an application is complete, the Department shall tentatively decide whether to prepare a draft permit or to deny the application.

(b) If the Department tentatively decides to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any other draft permit prepared under this section. See section 124.6(e). If the Department's final decision (section 124.15) is that the tentative decision to deny the permit application was incorrect, it shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (d) of this section.

(c) If the Department tentatively decides to issue an NPDES, Land Application, State, or general permit, it shall prepare a draft NPDES, Land Application, State, general or 404 general permit under paragraph (d) of this section.

(d) If the Department decides to prepare a draft permit, it shall prepare a draft permit that contains the following information:

(1) For permits under R.61-9.122, all conditions under R.61-9.122.41 and R.61-9.122.43;

(2) For permits under R.61-9.122, all compliance schedules under R.61-9.122.47;

(3) For permits under R.61-9.122, all monitoring requirements under R.61-9.122.48;

(4)(i) For permits under R.61-9.505, all applicable conditions under R.61-9.505.41; and R.61-9.505.43;

(ii) For permits under R.61-9.505, all compliance schedules under R.61-9.505.47; and

(iii) For permits under R.61-9.505, all applicable monitoring requirements under R.61-9.505.48;

(iv) For Land Application, State or sludge disposal permits, effluent limitations, standards, prohibitions, standards for sewage sludge use or disposal, and conditions under R.61-9.503; R.61-9.504; or R.61-9.505 including R.61-9.505.41, R.61-9.505.42, R.61-9.505.44, and any applicable conditions as determined by the Department;

(v) For NPDES permits, effluent limitations, standards, prohibitions, standards for sewage sludge use or disposal, and conditions under R.61-9.122.41, R.61-9.122.42, and R.61-9.122.44, including when

applicable any conditions certified by a State agency under section 124.55 and all variances that are to be included under section 124.63.

(e) Draft NPDES, Land Application, State or general permits prepared by the State shall be accompanied by a fact sheet if required under section 124.8.

124.8. Fact sheet.

(a) A fact sheet shall be prepared for every draft permit for a major NPDES facility or activity, for every Class I sludge management facility, for every NPDES general permit (R.61-9.122.28), for every NPDES draft permit that incorporates a variance or requires an explanation under section 124.56(b), for every draft permit that includes a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix), and for every draft permit which the Department finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Department shall send this fact sheet to the applicant and, on request, to any other person. A fact sheet may be prepared by the Department for draft permits under R.61-9.505.

(b) The fact sheet shall include, when applicable:

- (1) A brief description of the type of facility or activity which is the subject of the draft permit;
- (2) The type and quantity of wastes, fluids, or pollutants which are proposed to be treated, stored, disposed of, injected, emitted, or discharged;
- (3) [Reserved]
- (4) [Reserved]
- (5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
- (6) A description of the procedures for reaching a final decision on the draft permit including:
 - (i) The beginning and ending dates of the comment period under section 124.10 and the address where comments will be received;
 - (ii) Procedures for requesting a hearing and the nature of that hearing; and
 - (iii) Any other procedures by which the public may participate in the final decision.
- (7) Name and telephone number of a person to contact for additional information.
- (8) For NPDES permits, provisions satisfying the requirements of section 124.56.
- (9) Justification for waiver of any application requirements under section 122.21(j) or (q) of this chapter.

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

(a) Scope.

(1) The Department shall give public notice of NPDES or Land Application permits that the following actions have occurred:

- (i) A permit application has been tentatively denied under section 124.6(b);
- (ii) A draft permit has been prepared under section 124.6(d);
- (iii) A hearing has been scheduled under section 124.12;
- (iv) [Reserved]
- (v) [Reserved]
- (vi) An NPDES new source determination has been made under R.61-9.122.29.

(2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under section 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)(1) Public notice of the preparation of a draft NPDES or Land Application 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.

(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. 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 rights to receive notice for any classes and categories of permits);

(i) The applicant (except for NPDES or Land Application general permits when there is no applicant);

(ii) Any other agency which the Department knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), NPDES, 404, sludge management permit, or ocean dumping permit under the Marine Research Protection and Sanctuaries Act for the same facility or activity (including EPA when a draft NPDES permit is prepared by the State);

(iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected States.

(iv) Any State agency responsible for plan development under CWA section 208(b)(2), 208(b)(4) or 303(e) and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

(v) Any user identified in the permit application of a privately owned treatment works;

(vi) [Reserved]

(vii) [Reserved]

(viii) [Reserved]

(ix) Persons on a mailing list developed by:

(A) Including those who request in writing to be on the list;

(B) Soliciting persons for “area lists” from participants in past permit proceedings in that area;
and

(C) 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 Department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Department may delete from the list the name of any person who fails to respond to such a request).

(x)(A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(B) To each State agency having any authority under State law with respect to the construction or operation of such facility.

(2)(i) For major NPDES permits, NPDES general permits, and permits that include sewage sludge land application plans under 40 CFR 501.15(a)(2)(ix), publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity.

(ii) [Reserved]

(iii) [Reserved]

(iv) For NPDES major permits and NPDES general permits, in lieu of the requirement for publication of a notice in a daily or weekly newspaper, as described in paragraph (c)(2)(i) of this section, the Department may publish all notices of activities described in paragraph (a)(1) of this section to the Department’s public website. If the Department selects this option for a draft permit, as defined in Section 122.2, in addition to meeting the requirements in paragraph (d) of this section, the Department must post the draft permit and fact sheet on the website for the duration of the public comment period.

Note to paragraph (c)(2)(iv):

The Department is encouraged to ensure that the method(s) of public notice effectively informs all interested communities and allows access to the permitting process for those seeking to participate.

(3) In a manner constituting legal notice to the public under State law; and

(4) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(d) Contents.

(1) All public notices. All public notices for NPDES and Land Application permits issued under this regulation shall contain the following minimum information:

(i) Name and address of the office processing the permit action for which notice is being given;

(ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of NPDES and 404 draft general permits under R.61-9.122.28 and 40 CFR 233.37;

(iii) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for NPDES or 404 general permits when there is no application.

(iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application; and

(v) A brief description of the comment procedures required by section 124.11 and section 124.12 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.

(vi) [Reserved]

(vii) For NPDES permits only (including those for “sludge-only facilities”), a general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice(s) and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area.

(viii) [Reserved]

(ix) Requirements applicable to cooling water intake structures under section 316(b) of the CWA, in accordance with 40 CFR 125, subpart I.

(x) Any additional information considered necessary or proper.

2. Public notices for hearings. In addition to the general public notice described in paragraph (d)(1) of this section, the public notice of a hearing under section 124.12 shall include the following information:

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

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

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

(e) In addition to the general public notice described in paragraph (d)(1) of this section, all persons identified in paragraphs (c)(1)(i)(ii), (iii), and (iv) of this section shall be mailed a copy of the fact sheet, the permit application (if any) and the draft permit (if any).

124.11. Public comments and requests for public hearings.

During the public comment period provided under section 124.10, 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 proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in section 124.17.

124.12. Public hearings.

(a) Determinations and Scheduling.

(1) Within the thirty (30) day comment period or other applicable comment period provided after posting or publishing of a public notice, an applicant, any affected state or interstate agency, the Regional Administrator or any other interested person or agency may file a petition with the Department for a public hearing on an application for a permit. A petition for a public hearing shall indicate the specific reasons why a hearing is requested, the existing or proposed discharge identified therein and specifically indicate which portions of the application or other permit form or information constitutes necessity for a public hearing. If the Department determines that a petition constitutes significant cause or that there is sufficient public interest in an application for a public hearing, it may direct the scheduling of a hearing thereon.

(2) A hearing shall be scheduled not less than four (4) nor more than eight (8) weeks after the Department determines the necessity of the hearing in the geographical location of the applicant or, at the discretion of the Department, at another appropriate location, and shall be noticed at least thirty (30) days before the hearing. The notice of public hearing shall be transmitted to the applicant and shall be published in at least one (1) newspaper of general circulation in the geographical area of the existing or proposed discharge identified on the permit application and shall be mailed to any person or group upon request therefor. Notice shall be mailed to all persons and governmental agencies which received a copy of the notice or the fact sheet for the permit application.

(3) The Department may hold a single public hearing on related groups of permit applications.

(4) The Department may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision;

(5) Public notice of the hearing shall be given as specified in section 124.10.

(b) [Reserved]

(c) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under section 124.10 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

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

124.13. Obligation to raise issues and provide information during the public comment period.

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Department's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under section 124.10. No issue shall be raised during an appeal by any party that was not submitted to the administrative record as part of the preparation and comment on a draft permit, unless good cause is shown for the failure to submit it. Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, Department and EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting materials not already included in the administrative record available. (A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section. Additional time shall be granted under section 124.10 to the extent that a commenter who requests additional time demonstrates the need for such time).

124.15. Issuance and effective date of permit.

(a) After the close of the public comment period under section 124.10 on a draft permit, the Department shall issue a final permit decision. The Department shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(b) A final permit decision shall become effective 30 days after the service of notice of the decision unless:

(1) A later effective date is specified in the decision; or

(2) [Reserved]

(3) No comments requested a change in the draft permit, in which case the permit shall become effective on the effective date shown in the issued permit.

124.17. Response to comments.

(a) The Department is only required to issue a response to comments when a final permit is issued. This response shall:

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

(2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(b) [Reserved]

(c) The response to comments shall be available to the public.

124.19. Appeal of NPDES and State Permits.

a. A Department decision involving issuance, denial, renewal, modification, suspension, or revocation of an NPDES, Land Application, or State permit may be appealed by an affected person with standing pursuant to applicable law, including S.C. Code Title 1, Chapter 23 and Title 44, Chapter 1.

b. Any person to whom an order, related to an NPDES, Land Application, or State permit, is issued may appeal it pursuant to applicable law, including S.C. Code Title 1, Chapter 23 and Title 44, Chapter 1.

PART D SPECIFIC PROCEDURES APPLICABLE TO NPDES PERMITS

124.51. Purpose and scope.

(a) This part sets forth additional requirements and procedures for decision making for the NPDES program. Part D applies only to NPDES permits prepared under R.61-9.122.

(b) Decisions on NPDES variance requests ordinarily will be made during the permit issuance process. Variances and other changes in permit conditions ordinarily will be decided through the same notice-and-comment and hearing procedures as the basic permit.

124.52. Permits required on a case-by-case basis.

(a) Various sections of R.61-9.122 Part B allow the Department to determine, on a case-by-case basis, that certain concentrated animal feeding operations (R.61-9.122.23), concentrated aquatic animal production facilities (R.61-9.122.24) storm water discharges (R.61-9.122.26) and certain other facilities covered by general permits (R.61-9.122.28) that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(b) Whenever the Department decides that an individual permit is required under this section, except as provided in paragraph (c) of this section, the Department shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit under R.61-9.122.21 within 60 days of notice, unless permission for a later date is granted by the Department. The question whether the designation was proper will remain open for consideration during the public comment period under section 124.11 and in any subsequent hearing.

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section (see R.61-9.122.26(a)(1)(v), (a)(9)(iii), and (c)(1)(v)), the Department may require the discharger to submit a permit application or other information regarding the discharge under section 308 of the CWA. In requiring such information, the Department shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit within 180 days of notice, unless permission for a later date is granted by the Department. The question whether the initial designation was proper will remain open for consideration during the public comment period under section 124.11 and in any subsequent hearing.

124.56. Fact sheets.

In addition to meeting the requirements of section 124.8, NPDES fact sheets shall contain the following:

(a) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal as required by R.61-9.122.44 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

(b)(1) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

(i) Limitations to control toxic pollutants under R.61-9.122.44(e);

(ii) Limitations on internal waste streams under R.61-9.122.45(h);

(iii) Limitations on indicator pollutants under R.61-9.125.3(g);

(iv) Limitations set on a case-by-case basis under R.61-9.125.3(c)(2) or (c)(3), or pursuant to section 405(d)(4) of the CWA;

(v) Limitations to meet the criteria for permit issuance under R61-9.122.4(i); or

(vi) Waivers from monitoring requirements granted under R61-9.122.44(a).

(2) For every permit to be issued to a treatment works owned by a person other than a State or municipality, an explanation of the Department's decision on regulation of users under R.61-9.122.44(m).

(c) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application; and

(d) [Reserved]

(e) [Reserved].

124.57. Public notice.

(a) Section 316(a) requests. In addition to the information required under section 124.10(d)(1), public notice of an NPDES draft permit for a discharge where a CWA section 316(a) request has been filed under section R.61-9.122.21(l) shall include:

(1) A statement that the thermal component of the discharge is subject to effluent limitations under CWA sections 301 or 306 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 or 306;

(2) A statement that a section 316(a) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under section 316(a) and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and

(b) [Reserved]

124.59. Conditions requested by the Corps of Engineers and other government agencies.

(a) If during the comment period for an NPDES draft permit, the District Engineer advises the Department in writing that anchorage and navigation of any waters of the State would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advised the Department that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Department shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this regulation. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the NPDES permit for the duration of that stay.

(b) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other State or Federal agency with jurisdiction over fish, wildlife, or public health advises the Department in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Department may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of R.61-9.122.49 and of the CWA.

(c) In appropriate cases, the Department may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the fact sheet, or the draft permit.

124.62. Decision on variances.

(a) The Department may grant or deny requests for the following variances (subject to EPA objection under 40 CFR Part 123.44 for State NPDES permits);

(1) [Reserved]

(2) After consultation with the Regional Administrator, extensions under CWA section 301(k) based on the use of innovative technology; or

(3) Variances under CWA section 316(a) for thermal pollution.

(b) The Department may deny, or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

(1) [Reserved]

(2) A variance based on water quality related effluent limitations under CWA section 302(b)(2) or PCA.

(c) The Regional Administrator may deny, forward, or submit to the Office Director for Water Enforcement and Permits with a recommendation for approval, a request for a variance listed in paragraph (b) of this section that is forwarded by the Department.

(d) The EPA Office Director for Water Enforcement and Permits may approve or deny any variance request submitted under paragraph (c) of this section. If the Office Director approves the variance, the Department may prepare a draft permit incorporating the variance.

(e) The Department may deny or forward to the Administrator (or his delegate) with a written concurrence a completed request for:

(1) A variance based on the presence of “fundamentally different factors” from those on which an effluent limitations guideline was based;

(2) A variance based upon certain water quality factors under CWA section 301(g).

(f) The Administrator (or his delegate) may grant or deny a request for a variance listed in paragraph (e) of this section that is forwarded by the Department. If the Administrator (or his delegate) approves the variance, the Department may prepare a draft permit incorporating the variance.