



Air Pollution Control Division

Stationary Sources Program

Inter-Office Communication

PS Memo #: 99-06
TO: SSP Staff
FROM: Matthew S. Burgett, P.E.
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RE: Public Notice Guidance

This memo supersedes PS Memo 92-05, which discussed public notice requirements for Construction Permits. This memo also outlines the public notice requirements for Operating Permits.

1. Overview

Colorado Regulation No. 3 requires that applications for certain new or modified sources undergo public notice before permit issuance. Part D, Section IV includes public notice requirements for projects subject to Prevention of Significant Deterioration (PSD) and/or Non-Attainment New Source Review (NANSR) requirements. Part B, Section III.C describes public notice requirements for certain preconstruction permits that are not subject to PSD or NANSR. Public notice requirements for operating permits are contained in Part C, Section VI. This memo discusses the regulatory requirements and describes the Division's procedures for conducting public notice actions.

2. Public Notice Requirements for Construction Permits not Subject to PSD and/or NANSR

2.1. Regulatory Requirements

Regulation No. 3, Part B, Section III.C requires public notice for the following situations. Note that projects subject to PSD and/or NANSR under Part D are discussed separately under Section 4.

1. Sources with projected controlled annual emissions of any pollutant for which an ambient air quality standard has been designated as follows (Reg 3, Part B, Section III.C.1.a):
 - Greater than 25 tons per year (non-attainment area)
 - Greater than 50 tons per year (attainment area)
 - Greater than 200 pounds per year of lead (any area).

Pollutants for which an air quality standard has been designated are: carbon monoxide, nitrogen dioxide (direct emissions and as a precursor to ozone and PM_{2.5}), sulfur dioxide (direct emissions and as a precursor to PM_{2.5}), PM₁₀, PM_{2.5}, ozone, volatile organic compounds (as a precursor to ozone), and lead.

Note that the 25 tpy threshold applies only for the pollutants for which the area is nonattainment. In the case of an ozone nonattainment area, the 25 tpy threshold applies to either NO_x or VOC, but not NO_x and VOC combined.

2. Sources for which the preliminary analysis indicates a possible violation of Regulation No. 2 (Reg 3, Part B, Section III.C.1.b).
3. Sources subject to Federal National Emission Standards for Hazardous Air Pollutants (NESHAP) (Reg 3, Part B, Section III.C.1.c.(i)). Note that federal NESHAPs are located in 40 CFR Part 61.
4. Sources subject to Federal or Colorado Maximum Achievable Control Technology (MACT) or Generally Available Control Technology (GACT) standards (Reg 3, Part B, Section III.C.1.c.(ii)). Federal MACTs are located in 40 CFR Part 63. Currently, there are no Colorado MACT or GACT standards. See Section 2.3 below for more information about public notice for federal MACT-affected sources.
5. The source is voluntarily applying for permit conditions to limit the source's potential to emit of hazardous air pollutants (Reg 3, Part B, Section III.C.1.c.(iii)).
6. Sources subject to Sections V. or VI. of Part D of Regulation No. 3 that are attempting to obtain a federally enforceable limit on the potential to emit of the source in order to avoid other requirements (Reg 3, Part B, Section III.C.1.d.).

This requirement addresses sources that are obtaining synthetic minor limits to avoid PSD and/or NANSR requirements. Note this could apply to: (1) a new source obtaining limits to avoid being classified as a new major stationary source, (2) an existing minor source obtaining limits for a modification that would otherwise exceed the major stationary source thresholds, or (3) an existing major stationary source obtaining limits on a modification to avoid requirements for major modifications at major stationary sources.

7. Sources submitting an application for a BART determination or BART alternative pursuant to Regulation Number 3, Part F (Reg 3, Part B, Section III.C.1.e.). Recent BART determinations were made and noticed outside of the permitting process by the Policy and Planning Program; future BART determinations are also not likely to occur within the context of a construction or operating permit.
8. Regulation No. 3, Part B, Section III.C.3 gives the Division the authority to require public comment in situations not otherwise required as described above, if the Division determines that public notice is warranted based on such factors as the project duration, its location, the nature and projected amount of emissions, anticipated public concern, and other relevant factors. Before requiring the public comment based on this requirement, please check with your supervisor.

9. In addition to the requirements of Part B, Section III.C.1 described above, the Division will also require public notice for sources attempting to obtain a federally enforceable limit on the potential to emit in order to avoid the requirements of the Title V Operating Permit Program (for criteria and/or hazardous air pollutants).
10. Regulation No. 3, Part B, Section III.C.2 lists situations where public comment generally is not required. These include sources of six month's duration or less, except for all sources of hazardous pollutants without regard to the duration, and demolition projects, even if asbestos materials are present, provided that all the requirements of Regulation No. 8, Part B are followed for any and all materials suspected of containing asbestos. The SSP asbestos unit will issue permits for demolition. See Section 2.3 below for additional information on how to address HAP sources of short durations.

2.2. Definition of Project/Activity

2.2.1. Modifications to Existing Facilities

The public notice requirements in Section 2.1 apply both to new sources and to modifications at existing facilities. Generally, each application for each individual project should be evaluated separately against the requirements listed in Section 2.1. When determining whether public notice is required for modifications, the determination should be based on the attributes of the specific modification and not necessarily for the facility as a whole. For example, a modification at an existing facility that is a major stationary source for PSD applicability and is subject to one or more major source federal MACTs may not require public notice if: (1) the change in permitted emissions due to the modification does not exceed 25/50 tons per year, (2) all new and modified equipment associated with the project is not subject to any MACT or NESHAP requirements not already addressed by the permit and (3) the modification will not require any new limits that would allow the source to avoid new requirements that would otherwise be caused by the modification (i.e. MACT requirements, PSD/NANSR requirements, or Title V Operating Permit requirements).

2.2.2. Projects Involving Multiple Permits

In some cases, a single project (new source or modification) may be addressed by more than one permit. In these situations, the changes across all modified permits should be aggregated when evaluating the project against public notice thresholds (i.e. 25/50 tons per year).

2.3. Special Considerations for Sources Subject to Federal NESHAP and MACT Requirements

Historically, MACT requirements applied to major sources of HAP (i.e. sources with HAP Potential to Emit greater than 10 tpy of an individual HAP or 25 tpy total HAP). Newer federal rulemakings have introduced MACT requirements for non-major HAP sources, also called area sources. The public notice requirements of Regulation No. 3 were originally implemented prior to the promulgation or proposal of any federal area source MACTs, and were intended to address facilities subject to major source HAP requirements.

The following sources will not be required to go through Public Comment solely because they are defined as an affected source under a federal MACT:

- Affected sources under an area source MACT where the only applicable requirements are recordkeeping, reporting, work practices, or if the area source MACT requirements are otherwise required by the State Regulations (e.g. State I Vapor Recovery).
- Existing permitted sources that become subject to a new area source MACT following permit issuance will not typically be subject to public notice for permit modifications proposed after the promulgation of the new rule.
- Any area source MACT, no matter what the requirements, that has not been adopted by the Division into Colorado Regulation No. 8 Part E as of the permit issuance date shall not be included in the permit and shall not require public notice.
- If a source is subject to a federal MACT which does not include any substantial requirements other than a reference to meet NSPS requirements, the Division will not necessarily require public notice. This determination will be made on a case-by-case basis according to the specific facts. Please discuss the specific situation with your unit supervisor before making a determination that public notice is not required. An example of this scenario is in the stationary reciprocating internal combustion engine MACT (40 CFR 63 Subpart ZZZZ), which does not include requirements for new or reconstructed engines at areas sources except to meet the applicable NSPS requirements (see 40 CFR 63.6590(c)(1)).
- Note that the provision requiring public notice for projects that would otherwise be exempt due to short duration (six months or less) if they are sources of HAPs has been in the regulations for many years and was intended to refer only to hazardous pollutants covered by the EPA NESHAP regulations contained in Regulation No. 8, Part A. This intent should also be applied to the MACT standards in Regulation No. 8, Part E, which will not be considered when evaluating the six-month exemption.
- When modifying an existing MACT permit that has already undergone public notice, and no substantively new MACT requirements are being introduced by the modification, no subsequent notices will be required. For example, if a dry cleaner replaces one perc unit for another perc unit, no additional notice is required, because the facility previously underwent public notice. If a facility with an existing MACT unit constructs another unit subject to a different MACT, then public notice would be required for the new MACT unit.

2.4. Source Relocation

Occasionally sources will move their permanent location and a question arises as to whether the permit should undergo public notice again. If the source is moving less than one mile from its original location, then an additional notice is not required. Moves over one mile will require a subsequent notice if emissions exceed 25/50 tpy depending on the area designation. If a source has been noticed only due to

synthetic minor concerns, a subsequent notice is not required (unless criteria pollutants exceed 25/50 tpy).

2.5. Public Notice Procedures for Construction Permits

See Section 5 for a discussion of the procedures to be followed.

3. Operating Permits

Colorado Regulation No. 3, Part C, Section VI.A. requires public notice for the following operating permit proceedings: initial permit issuance, significant modifications, re-openings and renewals.

For operating permit actions subject to public notice, the applicant or any member of the public may request a public hearing regarding the application. Requirements for public hearings are listed in Regulation No. 3, Part C, Sections VI.C through VI.F.

See Section 5 for a discussion of the procedures to be followed for public notice for operating permits.

4. Projects Subject to PSD and/or NANSR

Any project that is subject to the requirements of PSD and/or NANSR in Sections V and VI of Part D, Regulation No 3 will also be subject to the specific public notice requirements in Part D, Section IV. Note that a PSD/NANSR permitting action can be completed as a construction permit or through an operating permit action (Part D, Section III.A).

For PSD/NANSR permit actions, the applicant or any member of the public may request a public hearing regarding the application. Requirements for public hearings are listed in Regulation No. 3, Part D, Sections IV.A.3 - IV.A.6.

See Section 5 for a discussion of the procedures to be followed for public notice for PSD and/or NANSR permitting actions. In addition to the specific public notice requirements, the Division has implemented procedures for providing information to Federal Land Managers at other times during the permitting process. Some of these notifications need to be made immediately upon receipt of an application at the Division. Please consult PS Memo 00-01 for additional details and notify your supervisor immediately whenever you receive an application that may be subject to PSD/NANSR requirements.

5. Public Notice Procedures

The Public Notice Summary Table on Page 7 provides a description of the specific documents that are to be provided to each of the parties involved in the public notice process. Engineers should consult their supervisors for the most current instructions for creating each of the documents and coordinating with administrative staff throughout the process.

5.1. Interested Parties

The Division maintains an email list where any interested party can subscribe to receive notice of the permitting actions described above. To subscribe or unsubscribe from this list, see <https://www.colorado.gov/pacific/cdphe/air-mailing-lists>.

5.2. Portable Sources

Note that for portable sources, the notices should be directed to the initial county in which the source will be located.

5.3. Application Copies

The Division is required to forward copies of the application to numerous recipients, as summarized on the table on Page 7. Applicants should submit multiple copies of the application to avoid additional per-page copy fees. The minimum number of copies required for each type of application is:

- Construction permits not subject to PSD/NANSR review: original plus the following additional copies as necessary: one additional copy if the permit will include a new synthetic minor limit, one additional copy if the source/facility is also subject to the Title V Operating Permit Program, and one additional copy if the application contains modeling analyses.
- Operating permits: original plus three copies
- PSD/NANSR permits: original plus a minimum of eight copies are required. Applicants should consult with the permitting engineer or unit supervisor to determine whether additional copies are required for any particular application.

Public Notice Summary Table

Recipient	Construction Permits Subject to Public Notice Requirements of Reg 3, Part B, but not subject to PSD/NANSR		Operating Permits	Any Permitting Action Subject to PSD/NANSR
	Permit includes new synthetic minor limit	Permit does not include new synthetic minor limit		
Newspaper ¹	-	-	-	Notice ⁵
Division Website	Notice Preliminary Analysis Draft Permit	Notice Preliminary Analysis Draft Permit	Notice Tech Review Draft Permit Permit Summary	Notice Preliminary Analysis Draft Permit
County Clerk	Notice Application ⁵ Preliminary Analysis ⁵ Draft Permit ⁵	Notice Application ⁵ Preliminary Analysis ⁵ Draft Permit ⁵	Notice Application ⁵ Tech Review ⁵ Draft Permit Permit Summary	Notice Application ⁵ Preliminary Analysis ⁵ Draft Permit ⁵
Applicant	Notice Preliminary Analysis Draft Permit	Notice Preliminary Analysis Draft Permit	Notice ⁵ Tech Review Draft Permit Permit Summary	Notice ⁵ Preliminary Analysis Draft Permit
EPA	Notice ⁵ Application Preliminary Analysis Draft Permit ⁵	-	Notice Application Tech Review Draft Permit Permit Summary	Notice ⁵ Application Preliminary Analysis Draft Permit
Interested Parties	Notice ⁵	Notice ⁵	Notice ⁵ Permit Summary	Notice ⁵
Federal Land Managers ²	-	-	Notice Permit Summary	Notice ⁵
Affected States or Tribes ³	-	-	Notice ⁵ Permit Summary	Notice ⁵
Other Agencies ⁴	-	-	-	Notice ⁵
AQCC	-	-	-	Notice

1. In the interest of minimizing publication costs, the Notice provided to the newspaper will be as brief as possible while still containing the information required in Regulation No. 3 Part B, Section III.C.4 (for construction permits), Part C, Section VI.B (for operating permits), or Part D Sections IV.A and IV.A.1 (for PSD/NANSR permits). A longer form of the notice containing additional details may be provided to all other recipients. Engineers should consult their supervisors to determine the appropriate newspaper to use for each permit action. *Note that Reg 3 revisions adopted 8/21/2014 (effective 10/15/2014) no longer require the Division to include notices in newspaper publications for permitting actions not subject to PSD/NANSR.*

2. For operating permits, the Division will provide notice to the National Park Service and the US Forest Service for any source that is within 100 km of a Federal Class I Area. For PSD/NANSR permits, FLMs are included in the agencies described in Reg 3, Part D, Section IV.A.1. Engineers should consult their supervisors to determine the FLM notification requirements for PSD/NANSR permits. Note that additional notifications will also apply as described in Section 4 above.
3. For operating permits, affected states or tribes are defined in Reg 3, Part A, Section I.B.4. For PSD/NANSR permits, affected states or tribes are part of the definition in Reg 3, Part D, Section IV.A.1. Engineers should consult their supervisors to determine the affected states or tribes for each situation.
4. Reg 3, Part D, Section IV.A.1 states that notice should be provided to “officials and agencies having cognizance over the location where the proposed construction would occur, including any other state or local air pollution control agencies and any state, Indian governing body or Federal Land Manager whose lands may be affected by emissions from the source or modification.” Examples of such agencies include: County Commissioners, City Mayors or Managers, local health departments and local planning agencies. Engineers should consult their supervisors to determine the specific notification requirements for each PSD/NANSR permit.
5. Items in the table above marked with a “5” notation are those items that are required to be provided by Regulation No. 3. The specific citations are: Part B, Section III.C.4 (for construction permits), Part C, Section VI.B (for operating permits) and Part D, Sections IV.A and IV.A.1 (for PSD/NANSR permits).