

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
AIR POLLUTION CONTROL DIVISION
STATIONARY SOURCES PROGRAM

INTER-OFFICE MEMORANDUM

Permit Section (PS) Memo 99-06

TO: SSP Staff

FROM: Dave Ouimette, Jim King, and Jim Geier

DATE: May 1, 2000
May 21, 2001 (first revision)
February 27, 2008 (second revision/addendum)

RE: Public comment guidance and EPA/FLM notification

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

Addendum (February, 2008)

Following is a restatement/clarification on certain Public Comment issues based on the May 21, 2001 version of this memo. Note that the memo itself has not been reviewed or updated.

1) Public Comment: Nonattainment Areas

The PC threshold changes from 50 TPY to 25 TPY (TPY is for the application/project being noticed, i.e. the sum of multiple permits if appropriate) 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 their combined emissions).

2) Public Comment: Area Source MACTs

A source subject to an Area Source MACT will *not be required* to go through Public Comment solely because it is subject to the MACT if the only MACT requirements applicable to the source are recordkeeping, reporting, Work Practices, or if the Area Source MACT requirements are otherwise required by the State Regulations e.g. Stage 1 Vapor Recovery). In addition, existing permitted sources that become subject to an area source MACT rule will not typically be subject to public comment for permit modifications proposed after the promulgation of the new rule. Also, any Area Source MACT, no matter what the requirements, that has not been adopted by the Division into its rules as of the permit issuance date shall not be included in the permit and shall not require Public Comment. Note that in any situation if the permit engineer believes that

there is a compelling reason for Public Comment, he or she should discuss the specific situation with their unit supervisor to determine if public comment is warranted.

3) Public Comment: Synthetic Minors

Note that the requirement for Public Comment for synthetic minors applies to the application/project being noticed. If a true minor permit is being processed for an existing synthetic minor PSD/NANSR/HAP/Title V source, the permit is not subject to Public Comment.

In addition, the previous “25% rule” set forth on page 5 of PS Memo 99-06 is hereby suspended (see below)

- ~~Modifying an existing synthetic minor permit that has already undergone public comment: The permit should be re-noticed if the emission limits on the permit will be increased by more than 25% for the synthetic minor pollutant, or if comments were received during the original public comment period, or if there is some specific concern regarding the source, such as complaints made to the Division. Here notices are required on an emissions increase basis.~~

CONSTRUCTION PERMIT REQUIREMENTS

Regulation No. 3, Part B, Section IV.C. outlines the situations when public comment is required for issuance of permits to new and modified sources. These include:

1. Sources with permitted annual emissions of any pollutant (for particulate matter use PM₁₀, not TSP) for which an ambient air quality standard has been designated as follows:
 - a. Greater than 25 tons per year (non-attainment area);
 - b. Greater than 50 tons per year (attainment area); or
 - c. Greater than 200 pounds per year of lead (any area).

Although the regulations do not specifically say, the Division has interpreted the non-attainment area level listed above to only apply to the pollutants for which the area is non-attainment. The application only needs to go to public notice if the emissions associated with that application are over the public comment levels.

2. Sources for which the preliminary analysis indicates a possible violation of Regulation No. 2. Note that this requirement originated in the late 1970s and currently odor modeling is not required of sources, so this provision is not used.
3. For hazardous air pollutants if:
 - a. The source is subject to Federal NESHAPS, Federal or Colorado MACT or GACT standards (currently there are no Colorado MACT/GACT standards).
 - b. The source is voluntarily applying to limit its HAP potential to emit, in order to avoid being subject to a MACT standard or to avoid major source status.

If a source is subject to a MACT, and there are no substantial requirements other than meeting NSPS requirements, the Division will not, in general, require public comment. This determination will be 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 comment is not required. This requirement is somewhat confusing because some MACTs require sources to meet NSPS requirements, as part of the MACT.

4. Sources wanting to obtain a synthetic minor permit in order to avoid the requirements of Regulation No. 3, Part B, Section IV.D.2 (major source NSR), or Section IV.D.3 (PSD), Title V or MACT requirements. This applies to new sources and modifications.
5. Sources applying for an alternative emission control plan, compliance method, test method or procedure pursuant to Regulation No. 7, Section II.E.
6. Sources applying for a de minimis exemption pursuant to Regulation No. 7, Section I.A. The Commission may grant de minimis exemptions for specific source categories from Regulation No. 7 requirements upon certain demonstrations. Once the de minimis exemption has been federally approved, a source must incorporate that exemption into a permit, which must then go through public comment.
7. Regulation No. 3, Part B, Section IV.C.3 gives the Division the authority to require public comment in situations not required by Sections IV.C.1 or IV.C.2.a. or b., if the Division determines that public comment 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 public comment based on this requirement, please check with your unit supervisor.
8. Sources subject to PSD or major NANSR (non-attainment NSR). (Also see **PS Memo 00-01** for additional information regarding Federal Land Managers.)

Regulation No. 3, Part B, Section IV.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. Note that the provision for hazardous pollutants resulting from the six months or less duration projects 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 be followed and emissions of other hazardous pollutants included in NESHAP standards in Part E (MACT standards) will not be considered when evaluating the six-month exemption.

When public comment is required due to items 1, 2, or 7 listed above, but the project does not trigger PSD or NANSR, a copy of the **public comment packet** (public notice, preliminary analysis summary, draft permit, and supporting documents as necessary) should be sent to the county clerk and to the environmental health director, or designee, in the county in which the

source is located. If the source is portable, the packet should be sent to the county clerk and local agency in the county where the source will initially be located. No notification to either EPA or federal land managers is required. The public notice should be published in a paper of general distribution in the area in which the proposed project will be located. In the metro area, the *Rocky Mountain News* can usually be used.

When public comment is required due to items 3, 4, 5, or 6 listed above, a copy of the public comment packet should be sent to the county clerk in the county in which the source is located, to Meredith Bond at EPA, and the appropriate local agency contact. No notification to federal land managers is required. The public notice should be published in a paper of general distribution in the area in which the proposed project will be located. In the metro area, the *Rocky Mountain News* can usually be used.

For sources that are subject to item 8 above (NANSR or PSD), a copy of the public comment packet, the complete application, and a copy or summary of any other materials considered in drafting the permit, shall be filed with the appropriate county clerk and EPA. A copy of the public notice shall be sent to the applicant, the chief executives of the city (mayor or city manager, only if within city limits) and the county commissioners (one copy only) where the source will be located, any comprehensive regional land use agency, and the federal land manager(s). A copy of the public comment packet should be sent to the appropriate local health agency contact. The public notice shall be published in a paper of statewide circulation (*Denver Post*), as well as in a local paper. A list of the regional comprehensive land use agencies is listed at the end of this memo. This list will include only those that address air quality issues.

In addition, for sources subject to PSD or NANSR which may impact Federal Class 1 areas, within 20 days of receipt, the Division shall provide the Federal Land Managers with a copy of the complete application for their review in regard to visibility and other air quality related values (the NSR rules only address visibility impacts and not other AQRVs). If the Division receives advance notification of such a source, it shall notify all affected Federal Land Managers in writing within 30 days of such notification. (Also see **PS Memo 00-01** regarding FLM notifications.) Within 15 days after a final decision has been made on an application subject to PSD or NANSR, a copy of all public comments and the permit decision must be made available for public inspection at the county clerk's office per Regulation No. 3, Part B, Section IV.C.10.

In addition to the public notice requirements noted above, a copy of the notice must also be sent to any groups or individuals who wish to be notified. Requests for being added to the public notice list should be directed in writing to the construction permit unit leader. A list of the groups wishing to be notified is included at the end of this memo. The list also includes the type of sources, and counties they are interested in.

Due to the large number of copies of the complete application which may need to be sent out for PSD permits, please make sure that all the copies identified in the definition of complete (Reg. 3, Part A, I.B.15.) are submitted; typically this will be at least eight copies.

In regard to RACT, BACT, and LAER determinations, the Division shall submit all BACT and LAER determinations and those RACT determinations that set precedent to the EPA Clearinghouse within 30 days of permit issuance.

Finally, the Division shall provide EPA and the Federal Land Managers with copies of both the IA permits and FA permits as issued for all PSD and major NANSR sources. Copies of Initial and Final Approval permits will continue to be sent to local agencies when issued.

See the attached table on the next page for a summary of the above discussion. In order to expedite processing of public comment packets, please be sure to complete the attached Public Comment & EPA Signoff Sheet with each public comment that you process. A copy of this form can also be found on the CDPHE LAN in the K:\forms subdirectory.

SUBSEQUENT NOTICES FOR CONSTRUCTION PERMITS

In certain circumstances, emissions at a source or facility may require a subsequent public notice beyond the original public notice. Common examples would include:

- ~~Modifying an existing synthetic minor permit that has already undergone public comment: The permit should be re-noticed if the emission limits on the permit will be increased by more than 25% for the synthetic minor pollutant, or if comments were received during the original public comment period, or if there is some specific concern regarding the source, such as complaints made to the Division. Here notices are required on an emissions increase basis.~~
- Modifying an existing MACT permit that has already undergone public comment: No subsequent notices are required. The Division considers the “source” to be *the emission unit or the entire facility*. If a dry cleaner replaces one perc unit for another perc unit, no additional notice is required, because the facility previously underwent public comment. Therefore once that source has undergone public comment, the public comment requirement has been satisfied forever. If a facility with an existing MACT unit constructs another unit subject to a different MACT, then a public notice would be required for the new MACT unit. Here notices are required on a source basis.
- Modifying an existing minor source permit that exceeds the 25 tpy (n/a area) or 50 tpy (att. area) thresholds upon modifying: If cumulative changes eventually bring source-wide emissions over the public comment levels, that alone will not trigger public notice, only individual applications which exceed the levels require notice. Here notices are required on an application basis.
- Sources which relocate: Occasionally sources will move their permanent location and a question arises as to whether the permit should undergo public comment 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).

This approach promotes more first-time public notices and discourages subsequent notices.

OPERATING PERMITS

For all operating permits the public notice procedures will be the same as for PSD and NANSR permits as follows: a copy of the **public comment packet** (includes public notice, technical review document, draft permit), the complete application, and a copy or summary of any other materials considered in drafting the permit, shall be filed with the appropriate county clerk and EPA. A copy of the public notice only shall be sent to the applicant, the chief executives of the city (mayor or city manager, only if source is within city limits), county commissioners (where the source will be located), any comprehensive regional land use agency, any affected state or tribe within 50 miles of the source, and the Federal land manager(s) for any Federal Class 1 area located within 100 km of the source. A copy of the public comment packet should be sent to the appropriate local agency contact. The public notice shall be published in a paper of statewide circulation (*Denver Post*), as well as in a local paper. A list of the regional comprehensive land use agencies is listed at the end of this memo. This list will include only those that address air quality issues.

In addition to the public notice requirements noted above, a copy of the notice must also be sent to any groups or individuals who wish to be notified. Requests for being added to the public notice list should be directed in writing to the operating permit unit leader. A list of the groups wishing to be notified is included at the end of this memo. The list also includes the type of sources, and counties they are interested in.

FOR ALL PERMITS

A copy of all public notices for sources where a public hearing is available will be sent to the AQCC office. This includes PSD and operating permits. Only the notice will be sent initially, and additional information will be sent if requested by the AQCC office.

Information sent to local Agencies and the AQCC office will be sent via E-mail, whenever possible. In order to do so please send the Public Notice information by E-mail to the public comment coordinator, who will then transmit the information to the local agency and the AQCC. The information sent should include the public notice, the draft permit and the preliminary analysis summary for construction permits, or the technical review document for operating permits. A copy of the application form will not be included in the packets sent by E-mail, but will be included in regular mailings. If anyone asks for copies of information associated with a permit notice, it can be sent electronically for free, however if hard copies are requested a fee of \$0.50 will be charged for each image. The public notice coordinator will also keep a list of parties interested in receiving public notice information and will be responsible for proper mailing of all public notice information.

Due to the high cost of public notices the content of the notice should be minimized. The notice will note that more detailed information is available at the county clerks office. The description of the project or activity should be limited to a statement about what the project is, where it is located, when it is planned to begin operation, and what type of permit is being issued (PSD, synthetic minor, operating permit). In general the notice should be limited to a few sentences.

MEMO HISTORY

First revision changes include reformatting changes, corrections to the Public Notice Summary Table and Public Comment & EPA Signoff Sheet, and addition of a new section titled Subsequent Notices for Construction Permits.

PUBLIC NOTICE SUMMARY TABLE

This table indicates what material must be sent as part of the public notice and comment process. There are three different types of mailings:

N - Notice only (only the public notice itself is sent)

P - Public Comment Packet (includes public notice, preliminary analysis summary (CP) or technical review document (OP), draft permit and any pertinent supporting documents and application form (except E-mail))

A - Complete Application

| Reason for Public Comment ----- Send to: | >25 tpy (n/a), >50 tpy (att.), >200 lb/yr Pb, Odor, Misc., NESHAPS, MACT/GACT, Reg. 7, I.A. or II.E. | Synthetic minor | PSD, NANSR | Operating permits |
|--|--|---|---|--|
| Newspaper | N general distribution -metro area use <i>Rocky Mtn. News</i> | N general distribution -metro area use <i>Rocky Mtn. News</i> | N <i>Denver Post</i> and local paper (if not in Metro area) | N <i>Denver Post</i> and local paper (if not in Metro area) |
| County Clerk | P | P | P, A | P, A |
| Applicant | P | P | P | P |
| EPA | - | P | P, A | P, A |
| Local Health Dept* | P | P | P | P |
| Interested Parties list+ | P | P | P | P |
| Federal Land Mgr(s). - NPS, USFS | - | - | N, A | N |
| County Commissioners | - | - | N A (if requested) | N |
| City Mayor or Manager | - | - | N | N |
| AQCC | - | - | N | N |
| Local Planning Agency | - | - | N | N |
| Affected States or Tribes** | - | - | N | N |
| RACT, BACT, LAER submittal | RACT-if required and precedent setting | RACT-if required and precedent setting | BACT, LAER | BACT, LAER |

* Any local health department with an organized air program (see list attached to memo)

+ Interested parties will be sent all notices for the area they request, or for the source type they request

** Affected State or Tribes are those within 50 miles of the source

PUBLIC COMMENT & EPA SIGNOFF SHEET

| | | |
|-----------------|------|-----------------|
| Company | | Permit No. |
| Company Contact | Date | Permit Engineer |

- Minor source (new or modified): > 25 tpy (n/a area), > 50 tpy (att. area), Pb > 200 lb/yr, Division determination, odor, NESHAPS, MACT, GACT, Reg. 7, I.A. or II.E. **(please circle all items that apply including new or modified)**

Public comment sent to: County clerk by: _____ on _____
 (Copies sent by support staff) Applicant by: _____ on _____
 Local health dept. by: _____ on _____
 Interested parties by: _____ on _____

In Metro area, use Rocky Mountain News, elsewhere, use local paper of general circulation

- Synthetic minor (new or modified), Division determination, odor, NESHAPS, MACT, GACT, Reg. 7, I.A. or II.E. **(please circle all items that apply including new or modified)**

Public comment sent to: County clerk by: _____ on _____
 (Copies sent by support staff) Applicant by: _____ on _____
 EPA (M. Bond) by: _____ on _____
 Local health dept. by: _____ on _____
 Interested parties by: _____ on _____

In Metro area, use Rocky Mountain News, elsewhere, use local paper of general circulation

- PSD, NANSR, OP (new or modified) **(please circle all items that apply including new or modified)**

Public comment sent to: County clerk by: _____ on _____
 (Copies sent by support staff) Applicant by: _____ on _____
 EPA (Reisbeck/Bond) by: _____ on _____
 NPS (D. Coddling) by: _____ on _____
 USFS (D. Haddow) by: _____ on _____
 County comm. by: _____ on _____
 City mayor/manager by: _____ on _____
 AQCC office by: _____ on _____
 Local plan. agency by: _____ on _____
 Local health dept. by: _____ on _____
 Affected states/tribes by: _____ on _____
 Interested parties by: _____ on _____

Use Denver Post and local paper (if not in Metro area)

For permits that require copy of notice to EPA and FLMs:

Comments received from: EPA: No Yes: On: _____ (engineer)
FLM: No Yes: On: _____ (engineer)

PSD AND MAJOR NANSR PERMITS:

Initial Approval Permit Issued on: _____
Copy of Initial Approval Permit Sent to: EPA (M. Bond) by: _____ on: _____
Local Agency by: _____ on: _____

Final Approval Permit Issued on: _____
Copy of Final Approval Permit Sent to: EPA (M. Bond) by: _____ on: _____
Local Agency by: _____ on: _____

RACT / BACT / LAER Determination Sent to Clearinghouse by: _____ on: _____
(engineer)

Copies of all comments and permit decision sent to county clerk (sent within 10 days of decision to ensure arrival within 15 days of decision) by: _____ on: _____
(engineer)

OPERATING PERMITS:

Operating Permit Issued on: _____
Copy of Final Operating Permit sent to: EPA by: _____ on: _____
Local Agency by: _____ on: _____

Comments:

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INTERESTED PARTIES TO RECEIVE PUBLIC NOTICE (May 2000)

| Group Name - Contact person | Address & E-mail | Counties for Notification | Types of Sources |
|---|--|--|------------------|
| Sierra Club Sangre de Cristo Group Ross Vincent | P.O. Box 8328 Pueblo, CO 81008 E-mail: ross.vincent@ sierraclub.org | Crowley, Kiowa, Bent, Otero, Prowers, Baca, Las Animas, Huerfano, Pueblo, Fremont, Custer, Saguache, Rio Grande, Conejos, Alamosa, Costilla, Lake, Chaffee, Mineral | All Source Types |
| Western Slope Environmental Resource Council Tara Thomas | P.O. Box 1612 Paonia, CO 81428 970-527-5307 E-mail: Tara@wserc.org | Delta County | All Source Types |
| Reed Zars | 2020 Grand Ave. Suite 522 Laramie, WY 82070 | All Counties | All Power Plants |

LOCAL HEALTH DEPARTMENTS TO RECEIVE PUBLIC NOTICE (May 2000)
(Phone and FAX numbers from CDPHE Phone Book)

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|--|--|
| Boulder County Health Dept. 3450 Broadway Boulder, CO 80304 Diana Shannon/Jeff Zayach E-mail: jjzhe@co.boulder.co.us | Chaffee County Environmental Health Dept. County Courthouse P.O. Box 699 Salida, CO 81201 |
| Clear Creek County Environmental Health Dept. 405 Argentine Street P.O. Box 2000 Georgetown, CO 80444 | Delta County Health Dept. 255 West 6 th Street Delta, CO 81416 Ken Nordstrom |
| Denver Dept. of Environmental Health 1391 Speer Blvd., Suite 700 Denver, CO 80204-2555 Theresa Donahue/Maureen Dudley E-mail: dudleym@ci.denver.co.us | Eagle County Environmental Health Dept. P.O. Box 179 Eagle, CO 81631 |
| El Paso County Health and Environment 301 S. Union Blvd. Colorado Springs, CO 80910 Dan Bowlds/John James E-mail: john.james@epcdhe.org | Fremont County Environmental Health Dept. 615 Macon, Room B5 Canon City, CO 81212 Sid Darden |
| Hinsdale County Environmental Health Dept. P.O. Box 277 Lake City, CO 81235 | Jefferson County Dept. of Health and Environment 1801 19 th Street Golden, CO 80401 Jim Dale/John Moody E-mail: jmoody@co.jefferson.co.us |
| Kit Carson County Environmental Health Dept. P.O. Box 70 252 S. 14 th Street Burlington, CO 80807 | Lake County Environmental Health Dept. County Courthouse P.O. Box 513 Leadville, CO 80461 |
| Larimer County Dept. of Health and Environment 1525 Blue Spruce Drive Fort Collins, CO 80524-2004 Jerry Blehm/Doug Bjorlo E-mail: bjorlod@co.larimer.co.us | Las-Animas Huerfano Counties Health Dept. 412 Benedicta Avenue Trinidad, CO 81082 John Martinez |
| Mesa County Health Dept. 515 Patterson Road Grand Junction, CO 81506 Steve DeFeyter/Perry Buda E-mail: sdefeyter@co.mesa.co.us | Montezuma County Environmental Health Dept. County Annex Building 106 West North Street Cortez, CO 81321 |

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|---|--|
| <p>Northeast Colorado Health Dept. 700 Columbine Street Sterling, CO 80751 Roger Hosea <i>Logan, Morgan, Phillips, Sedgwick, Washington, Yuma Counties</i></p> | <p>Otero County Health Dept. 13 West Third Street La Junta, CO 81050 Christy Bowman</p> |
| <p>Park County Public Health P.O. Box 983 Bailey, CO 80421-0983 Don Bantam</p> | <p>Pitkin County Environmental Health Dept. 130 South Galena Aspen, CO 81611 Tom Dunlap</p> |
| <p>Prowers County Environmental Health Dept. Southwestern Region 1001 South Main Street Lamar, CO 81052 Monty Torres <i>Baca, Bent, Kiowa, Prowers County</i></p> | <p>Pueblo City-County Health Dept. 151 Central Main Street Pueblo, CO 81003 Heather Mais/Emmett Hance E-mail: ehance@iex.net</p> |
| <p>Routt County Environmental Health Dept. P.O. Box 770087 136 6th Street Routt County Courthouse Steamboat Springs, CO 80477 Mike Zopf</p> | <p>San Juan Basin Health Dept. P.O. Box 140 Durango, CO 81302 Pat Shepard <i>La Plata, Archuleta Counties</i></p> |
| <p>San Miguel County Environmental Health Dept. P.O. Box 4130 Telluride, CO 81435 Dave Schneck</p> | <p>Summit County Environmental Health Dept. P.O. Box 5660 37 Summit County Road #1005 Frisco, CO 80443 Jim Rada</p> |
| <p>Teller County Environmental Health Dept. P.O. Box 5079 Woodland Park, CO 80866</p> | <p>Tri-County Health Dept. 7000 East Belleview, Suite 301 Englewood, CO 80111-1628 Bruce Wilson/Lynn Robbio Wagner E-mail: robbiolynn@aol.com <i>Adams, Arapahoe, Douglas Counties</i></p> |
| <p>Weld County Dept. of Public Health and Env. 1555 North 17th Avenue Greeley, CO 80631 Trevor Jiricek E-mail: tjiricek@co.weld.co.us</p> | |

LOCAL AIR QUALITY PLANNING AGENCIES (May 2000)

1. Regional Air Quality Council (RAQC)
1445 Market St. #260
Denver, CO 80202

303-629-5450
<http://www.raqc.org>
Executive Director: Ken Lloyd

Covers: Metro Denver Area (Adams, Arapahoe, Boulder, Denver, Douglas, Jefferson counties)

2. Pikes Peak Area Council of Governments
15 S. 7th St.
Colorado Springs, CO 80905

719-471-7080
<http://www.ppacg.org>
Director: Fred Van Antwerp

Covers: El Paso, Park, and Teller counties

3. North Front Range Transportation & Air Quality Planning Association
210 E. Olive
Ft. Collins, CO 80524

970-416-2252
<http://fcgov.com/transportation/nfr-index.php>
Director: Ron Phillips

Covers: Larimer and Weld counties