

**SUBCHAPTER 6. REVIEW PROCEDURES**

**§ 601 Review of the Application**

~~(a) Any person who requires a permit under the NNPDES program shall complete, sign and submit to the Director an application for the permit as required under Subchapter 3. The provisions of § 202 of the Uniform Regulations and this section shall govern the review of applications. Applications are not required for NNPDES general permits. (However, dischargers who elect to be covered by a general permit shall submit written notification to the Director at such time as the Director indicates in § 318(b)(2).)~~

~~(b) The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit, as required by Subchapter 3 and paid the required permit fee as provided by Subchapter 10. As provided in Subchapter 3, the lack of township, range, and section information shall not render an application incomplete.~~

~~(c) Permit applications must comply with the signature and certification requirements of § 304.~~

~~(d) Each application submitted by a NNPDES new source or NNPDES new discharger should be reviewed for completeness by the Director within thirty (30) days of its receipt. Each application for a NNPDES permit submitted by an existing source or sludge-only facility will be reviewed for completeness within sixty (60) days of receipt. Upon completing the review, the Director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete. When the application is for an existing source or sludge-only facility, the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director may request additional information from an applicant when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.~~

~~(e) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the NNPDES Act and regulations promulgated pursuant thereto.~~

~~(f) If the Director decides that a site visit is necessary for any reason in conjunction with the processing of an application, the applicant will be notified and a date scheduled.~~

~~(g) The effective date of an application is the date on which the Director notified the applicant that the application is complete as provided in subsection (d) of this section.~~

~~(h)~~ (c) For each application from a major facility new source or new discharger, the Director shall no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the Director intends to:

- (1) Prepare a draft permit;
- (2) Give public notice;
- (3) Complete the public comment period, including any public hearing;
- (4) Issue a final permit; and

(5) Complete any formal proceedings under the NNPDES regulations.

**§ 602 Permit Modification, Revocation and Reissuance, or Termination of Permits**

~~(a) Permits may only be modified, revoked and reissued, or terminated for the reasons specified in §§ 506 and 507. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request. The provisions of § 204 of the Uniform Regulations and this section shall govern permit modifications, revocations and reissuances, or termination of permits.~~

~~(b) If the Director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. However, the requestor, the permittee, or any interested person may request a hearing under § 613 on the denial before the Director within thirty (30) days of the denial. This appeal is a prerequisite to seeking judicial review of the Director's action under section 402 of the NNPDES Act.~~

~~(c) If the Director tentatively decides to modify or revoke and reissue a permit under § 506, he or she shall prepare a draft permit under § 603 incorporating the proposed changes. The Director 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 Director shall require the submission of a new application.~~

~~(1) In a permit modification under § 602, only those conditions to be modified will 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 § 602, 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.~~

~~(2) "Minor modifications" as defined in § 506(c) are not subject to the requirements of § ~~602~~ 204 of the Uniform Regulations.~~

~~(d) If the Director tentatively decides to terminate a permit under § 507, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 603.~~

**§ 603 Draft Permits**

~~(a) Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application. The provisions of § 205 of the Uniform Regulations and this section shall govern draft permits.~~

~~(b) If the Director tentatively decides to deny the permit application, then he or she 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 procedure as any draft permit prepared under this section. If the Director's final decision (under § 611) is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under § 603(d).~~

~~(c) If the Director tentatively decides to issue a NNPDES general permit, he~~

or she shall prepare a draft general permit in accordance with ~~§ 603(d)~~ 205(c) of the Uniform Regulations.

~~(d) If the Director decides to prepare a draft permit he or she shall prepare a draft permit that contains the following information:~~

~~(1) All conditions under Subchapter 4;~~

~~(2) All compliance schedules under § 502;~~

~~(3) All monitoring requirements under § 503;~~

~~(4) Effluent limitations, standards, prohibitions, standards for sewage sludge use or disposal, and conditions under Subchapters 3, 4, 5, 6, and 7 and all variances that are to be included.~~

~~(e) All draft permits prepared under this section shall be accompanied by a statement of basis or fact sheet and shall be based on the administrative record, publicly noticed, and made available for public comment. The Director will give notice of opportunity for a public hearing, issue a final decision and respond to comments. A request for a hearing may be made under § 613 pursuant to section 234(C) of the NNPDES Act following the issuance of a final decision.~~

~~(f)~~ (c) Statement of Basis. A statement of basis shall be prepared for every draft permit for which a fact sheet is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

#### § 604 Fact Sheets

(a) The provisions of § 206 of the Uniform Regulations and this section shall govern fact sheets. A fact sheet shall be prepared for every draft permit for a major NNPDES facility or activity, for every NNPDES general permit, for every NNPDES draft permit that incorporates a variance or requires an explanation under § 604(d), for every Class I Sludge Management Facility, for every draft permit that includes a sewage sludge land application plan and for every draft permit which the Director finds is the subject of widespread 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 Director shall send this fact sheet to the applicant and, on request, to any other persons.

~~(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 or are being treated, stored, disposed of, injected, emitted, or discharged;~~

~~(3) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;~~

~~(4) Reasons why any requested variances or alternatives to required standards do or do not appear justified;~~

~~(5) A description of the procedures for reaching a final decision on the draft~~

~~permit including:~~

~~— A. The beginning and ending dates of the comment period and the address where comments will be received;~~

~~— B. Procedures for requesting a hearing and the nature of that hearing; and~~

~~— C. Any other procedures by which the public may participate in the final decision.~~

~~(6) Name and telephone number of a person to contact for additional information.~~

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

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

~~A. Limitations to control toxic pollutants under § 402(e);~~

~~B. Limitations on internal waste streams under § 403(h);~~

~~C. Limitations on indicator pollutants;~~

~~D. Limitations set on a case-by-case basis under §§ 701(c)(2) or (3) or pursuant to section 405(d)(4) of the CWA/section 209(A)(5) of the NNPDES Act.~~

~~(2) For every permit to be issued to a treatment works owned by a person other than the Navajo Nation or political subdivision or entity of the Navajo Nation, an explanation of the Director's decision on regulation of users under § 402(1).~~

~~(e) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application.~~

~~(f) (d) For permits that include a sewage sludge land application plan, a brief description of how each of the required elements of the land application plan are addressed in the permit.~~

#### **§ 605 Public Notice of Permit Actions and Public Comment Period**

~~(a) Scope. The provisions of § 207 of the Uniform Regulations and this section shall govern public notice of permit actions and public comment period.~~

~~(1) The Director will give public notice that the following actions have occurred:~~

~~— A. A permit application has been tentatively denied under § 603(b);~~

~~— B. A draft permit has been prepared under § 603(d); or~~

~~— C. A hearing has been scheduled under § 607.~~

~~(2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under § 602. Written~~

~~notice of the denial will be given to the requester and to the permittee.~~

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

**(b) Timing**

~~(1) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under § 605(a) will allow at least thirty (30) days for public comment.~~

~~(2) Public notice of a public hearing shall be given at least thirty (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 § 605(a)(1) will 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 their rights to receive notice for any classes and categories of permits.):~~

~~A. The applicant, except for NNPDES general permittees, and Region IX, USEPA.~~

~~B. Federal and Navajo agencies with jurisdiction over fish and wildlife resources, the Advisory Council on Historic Preservation, the appropriate State Historical Preservation Officer (as necessary), Navajo Historic Preservation Department and other appropriate government authorities, including any affected states or Tribes;~~

~~C. The U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service.~~

~~D. Any user identified in the permit application of a privately owned treatment works; and~~

~~E. Persons on a mailing list developed by:~~

~~i. Including those who request in writing to be on the list;~~

~~ii. Soliciting persons for area lists from participants in past permit proceedings in that area, and~~

~~iii. 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 newsletters, environmental bulletins, or Tribal law journals. The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The name of any person who fails to respond to such a request may be deleted from the list.~~

~~F. Any Chapter or other unit of local government having jurisdiction over the area where the facility is proposed to be located and each Navajo Nation agency having any authority under Navajo Nation law with respect to construction or operation of such facility.~~

~~G. Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Federal Clean Air Act), NPDES, 404, or sludge management permit) for the same facility or activity.~~

~~(2) For major permits, NNPDES general permits, and permits that include sewage sludge land application plans, the Director will publish a notice in a daily or weekly newspaper within the area affected by the facility or activity;~~

- ~~(3) In a manner constituting legal notice to the public under Navajo law; and~~
- ~~(4) Any other method reasonably determined 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 issued under this part shall contain the following minimum information:~~

~~— A. Name and address of the office processing the permit action for which notice is being given;~~

~~— B. 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 NNPDES draft general permits under § 318;~~

~~— C. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for NNPDES general permits when there is no application;~~

~~— D. 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;~~

~~— E. A brief description of the comment procedures 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;~~

~~— F. For NNPDES 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; and~~

~~— G. Any additional information considered necessary or appropriate.~~

~~(2) Public notices for hearings. In addition to the general public notice described in § 605(d), the public notice for a permit hearing under § 607 will contain the following information:~~

~~— A. Reference to the date of previous public notices relating to the permit;~~

~~— B. Date, time, and place of the hearing;~~

~~— C. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.~~

~~(3) Requests under § 315(c). In addition to the information required under § 605(d)(1) public notice of a NNPDES draft permit for a discharge when a § 315(c) request has been filed will include:~~

~~— A. A statement that the thermal component of the discharge is subject to effluent limitations under § 701(a) and a brief description, including a quantitative statement of the proposed thermal effluent limitations; and~~

B. A statement that a § 315(c) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

C. If the applicant has filed an early screening request under § 704(c) for a variance, a statement that the applicant has submitted such a plan.

~~(e)(c)~~ In addition to the general public notice described in § 605(d) all persons identified in §§ 605(c)(1)(A) - (C) and (G) will be mailed a copy of the fact sheet or statement of basis, the permit application (if any) and the draft permit (if any).

#### **§ 606 Public Comments and Requests for Public Hearings**

~~During the public comment period provided under § 605, 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 will be considered in making the final decision and shall be answered as provided in § 612. The provisions of § 208 of the Uniform Regulations shall govern public comments and requests for public hearings.~~

#### **§ 607 Public Hearings**

~~(a) The Director shall hold a public hearing when he or she finds, on the basis of request(s), a significant degree of public interest in draft permit(s). The Director also may hold a public hearing at his or her discretion whenever, for instance, a hearing might clarify one or more issues involved in the permit decision. The Director may designate a hearing officer for the hearing who shall be responsible for its orderly conduct. The provisions of § 209 of the Uniform Regulations shall govern public hearings.~~

~~(b) Public notice of the hearing will be given as specified in § 605.~~

~~(c) Any person may submit oral or written statements in the English or Navajo language 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 § 605 will 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.~~

#### **§ 608 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 Director'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 and factual grounds supporting their position, including all supporting material, by the close of the public comment period including any public hearing under § 605. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative records in the same proceeding or consist of Tribal or federal statutes and regulations, USEPA or the Director's documents of general applicability, or other generally available reference materials. Persons~~

~~making comment shall make supporting material not already included in the administrative record available to the Director. Additional time may be granted under § 605 to the extent that a person desiring to comment who requests additional time demonstrates need for such time. Nothing in this section shall be construed to prevent any person aggrieved by a final permit decision from filing a request for a hearing under § 613, subject to the requirement of § 613(d). The provisions of § 210 of the Uniform Regulations shall govern obligation to raise issues and provide information during the public comment period.~~

**§ 609 Conditions Requested by the Corps of Engineers and Other Government Agencies**

(a) If, during the comment period for a NNPDES draft permit, the District Engineer of the Corps of Engineers advises the Director in writing that anchorage and navigation of the waters of the Navajo Nation would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director 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 NNPDES permit for the duration of that stay.

(b) If, during the comment period, the U.S. Fish and Wildlife Service or any other Tribal, state or federal agency with jurisdiction over fish, wildlife, or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish or wildlife resources, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the ~~NNPDES Act~~ NNCWA and of the CWA.

(c) In appropriate cases the Director 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 statement of basis or fact sheet, or the draft permit.

**§ 610 Reopening of the Public Comment Period**

~~(a) The Director may order the public comment period reopened if the procedures of this section could expedite the decision making process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date not less than sixty (60) days after public notice under paragraph (b) of this section, set by the Director, unless an earlier date is specified by the Director in the notice. Thereafter, any person may file a written response to the material filed by any other person, by a date not less than ten (10) days after the date set for filing of the material, set by the Director. The provisions of § 211 of the Uniform Regulations shall govern reopening of the public comment period.~~

~~(b) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of this section shall apply.~~

~~(c) On his or her own motion or on the request of any person, the Director may~~

~~direct that the requirements of paragraph (a) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (a) of this section will substantially expedite the decision making process. The notice of the draft permit shall state whenever this has been done.~~

~~(d) Persons desiring to comment may request longer comment periods and a longer comment period may be granted under § 605 to the extent it appears necessary.~~

~~(e) If any data, information or arguments submitted during the public comment period, including information or arguments required under § 608, appear to raise substantial new questions concerning a permit, the Director may take one or more of the following actions:~~

~~(1) Prepare a new draft permit, appropriately modified, under § 603;~~

~~(2) Prepare a revised statement of basis under § 603(f), a fact sheet or revised fact sheet under § 604, and reopen the comment period under this section; or~~

~~(3) Reopen or extend the comment period under § 605 to give interested persons an opportunity to comment on the information or arguments submitted.~~

~~(f) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under § 605 shall define the scope of the reopening.~~

~~(g) Public notice of any of the above actions shall be issued under § 605.~~

#### **§ 611 Issuance and Effective Date of Permit**

~~(a) After the close of the public comment period under § 605, the Director will issue a final permit decision. The Director shall notify the applicant and each person who has submitted written comments or requested notice of that decision. The notice shall include reference to the procedures for appealing the decision. For the purpose of this section, a final permit decision shall mean a final decision to issue, deny, modify, revoke and reissue, or terminate a permit. The provisions of § 212 of the Uniform Regulations shall govern issuance and effective date of permit.~~

~~(b) A final permit decision shall become effective thirty (30) days after the service of notice of the decision under § 611(a) unless:~~

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

~~(2) Review is requested pursuant to section 234 of the NNPDES Act and § 613;~~

~~(3) No comments requested a change in the draft permit, in which case the Director may make the permit effective immediately upon issuance.~~

~~(c) The order or determination which is a condition precedent to requesting a hearing under section 234 of the NNPDES Act and § 613 shall be the final permit decision. The thirty (30) day appeal period shall begin on the date of issuance of the notice of the Director's action and shall not begin on the date the permit decision becomes effective.~~

#### **§ 612 Response to Comments and Administrative Record**

~~(a) **Response to Comments.** At the time that any final permit decision is issued under § 611, the Director shall issue a response to comments. The response will fully consider all comments resulting from any hearing conducted~~

~~under this regulation. This response shall: The provisions of § 213 of the Uniform Regulations shall govern response to comments and administrative record.~~

- ~~(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.~~
- ~~(3) The response to the comments shall be available to the public.~~

~~Any request for a hearing on the response shall be filed according to procedures specified in the NNPDES Act and rules promulgated pursuant thereto.~~

~~(b) **Administrative Record.** The Director shall base tentative and final permit decisions under these regulations on the administrative record defined below.~~

~~(1) For draft permits, the administrative record shall consist of:~~

~~— A. The application, if required, and any supporting data furnished by the applicant;~~

~~— B. The draft permit or notice of intent to deny the application or to terminate the permit;~~

~~— C. The statement of basis or fact sheet;~~

~~— D. The public notice;~~

~~— E. All documents cited in the statement of basis or fact sheet; and~~

~~— F. Other documents contained in the supporting file for the draft permit.~~

~~(2) For final permits, the administrative record shall consist of:~~

~~— A. The administrative record for the draft permit;~~

~~— B. All comments received during the public comment period provided (including any extension or reopening);~~

~~— C. The tape or transcript or notes of any hearing(s) held and any written materials submitted at such a hearing;~~

~~— D. The response to comments and any new material placed in the record under that provision;~~

~~— E. Other documents contained in the supporting file for the permit; and~~

~~— F. The final permit.~~

~~The additional documents required under this paragraph should be added to the record as soon as possible after their receipt or publication by the Director. The record shall be complete on the date the final permit is issued.~~

~~(3) Material readily available at the Navajo NPDES Program office or published material that is generally available, and that is included in the administrative record under these provisions, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet or response to comments.~~

**§ 613 Hearings Under the ~~NNPDES Act~~ NNCWA**

~~(a) A determination under § 611 or a determination under Subchapter 8, when issued by the Director, will be subject to a request for a hearing pursuant to section 234 of the NNPDES Act. The provisions of sections 207(d)(2), 208, 209, and 214 of the Uniform Regulations shall govern hearings under § 505 of the NNCWA.~~

~~(b) The applicant, the permit holder, or any interested person may request a hearing pursuant to the NNPDES Act.~~

~~(c) Any hearing held pursuant to this section will be subject to the provisions of the NNPDES Act as provided below.~~

~~(1) Any person requesting a hearing under the Act shall request the hearing by submission of a petition in writing to the Director no later than thirty (30) days after a NPDES final permit decision has been issued under § 611(a) or pretreatment determination under Subchapter 8. The 30-day period within which a person may request review under this section begins on the date of issuance of notice of the Director's action, unless a later date is specified in that notice. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing), showing that the condition in question is based on:~~

~~— A. A finding of fact or conclusion of law which is clearly erroneous, or~~

~~— B. An exercise of discretion or an important policy consideration which the Director should, in his/her discretion, review.~~

~~The petition shall be no longer than 20 pages (single spaced, 10 characters per inch), excluding attachments, except upon written authorization from the Director.~~

~~(2) Within thirty (30) days following the filing of the petition for review, the Director shall issue an order granting or denying the petition for review. To the extent review is denied, the conditions of the final permit or pretreatment decision become final agency action. To the extent review is granted and a hearing is scheduled, public notice shall be given as provided in § 605, as well as any person who submitted comments on the permit or pretreatment determination at issue or requested to be notified of actions regarding the permit or pretreatment determination at issue. The hearing shall be held within thirty (30) calendar days after receipt of written request, or as soon thereafter as reasonably practical. The public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent only to the person(s) requesting review.~~

~~(3) The Director shall hold the hearing in an informal manner and provide all parties an opportunity to be heard and present their case. The Director may affirm, modify or reverse his or her initial decision based upon the evidence presented at the hearing.~~

~~(d) Failure to raise issues pursuant to § 608 will preclude an interested person from requesting a hearing pursuant to the NNPDES Act, unless the issue was raised by another person with reasonable specificity. This restriction does not apply if the person can demonstrate to the Director that it was impracticable to raise the objection at that time or if the grounds for the objection arose after the public comment period, but within the time period for administrative review.~~

~~(e) A petition to the Director under paragraph (a) of this section is, under sections 234 and 402(A) of the NNPDES Act, a prerequisite to the seeking of judicial review of the final agency action.~~

~~(f) For purposes of judicial review under section 402(A) of the NNPDES Act, final agency action occurs when a final NNPDES permit is issued or denied by the Director, agency review procedures are exhausted, and notice of the final action is provided by the Director.~~

#### § 614 Stays of Contested Permit Conditions

(a) If a request to the Director for review of a NNPDES permit is granted, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final action by the Director. If the permit involves a new source, new discharger or a recommencing discharger, the applicant shall be without a permit for the proposed new facility, source or discharger pending final action by the Director.

(b) Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions. Stayed provisions of permits for existing facilities and sources shall be identified by the Director. All other provisions of the permit for the existing facility or source shall remain fully effective and enforceable.

#### § 615 Decision on Variances

(a) The Director may grant or deny completed requests for the following variances (subject to the Administrator's objection under 40 CFR § 123.44/§ 202(b)):

(1) Variances under § 315(c) for thermal pollution under section 316(a) of the CWA (also see §§ 701(b)(3) and 704).

(b) The Director may deny or forward to the Regional Administrator with a written concurrence, or submit to USEPA without recommendation 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 (also see §§ 315(a) and 703);

(2) A variance based on the economic capability of the applicant under section 301(c) of the CWA (also see §§ 315(b) and 701(b)(1));

(3) A variance based upon certain water quality factors under section 301(g) of the CWA (also see §§ 315(b) and 701(b)(2)); or

(4) A variance based on water quality related effluent limitations under section 302(b)(2) of the CWA (also see §§ 315(d) and 316(a)).

If USEPA approves the variance, the Director may prepare a draft permit incorporating the variance. The public notice of the draft permit for which a variance has been approved or denied shall identify the applicable procedures for appealing the decision.