

## **IC 13-15-4**

### **Chapter 4. Schedules for Determinations on Permits**

#### **IC 13-15-4-1**

##### **Deadlines for acting on applications; renewals**

Sec. 1. (a) Except as provided in sections 2, 3, and 6 of this chapter, the commissioner shall approve or deny an application filed with the department after July 1, 1995, within the following number of days:

(1) Three hundred sixty-five (365) days for an application concerning the following:

- (A) A new hazardous waste or solid waste landfill.
- (B) A new hazardous waste or solid waste incinerator.
- (C) A major modification of a solid waste landfill.
- (D) A major modification of a solid waste incinerator.
- (E) A new hazardous waste treatment or storage facility.
- (F) A new Part B permit issued under 40 CFR 270 et seq. for an existing hazardous waste treatment or storage facility.
- (G) A Class 3 modification under 40 CFR 270.42 to a hazardous waste landfill.
- (H) A new solid waste processing facility other than a transfer station.

(2) Except as provided in IC 13-18-3-2.1, two hundred seventy (270) days for an application concerning the following:

- (A) A Class 3 modification under 40 CFR 270.42 of a hazardous waste treatment or storage facility.
- (B) A major new National Pollutant Discharge Elimination System permit.
- (C) A major modification to a solid waste processing facility other than a transfer station.

(3) Except as provided in IC 13-18-3-2.1, one hundred eighty (180) days for an application concerning the following:

- (A) A new transfer station or a major modification to a transfer station.
- (B) A minor new National Pollutant Discharge Elimination System individual permit.
- (C) A permit concerning the land application of a material.
- (D) A permit for marketing and distribution of a biosolid or an industrial waste product.

(4) Except as provided in IC 13-18-3-2.1, one hundred fifty (150) days for an application concerning a minor new National Pollutant Discharge Elimination System general permit.

(5) One hundred twenty (120) days for an application concerning a Class 2 modification under 40 CFR 270.42 to a hazardous waste facility.

(6) Ninety (90) days for an application concerning the following:

- (A) A minor modification to a permit for the following:

- (i) A solid waste landfill.
- (ii) A solid waste processing facility.
- (iii) An incinerator.
- (B) A wastewater facility or water facility construction permit.
- (7) The amount of time provided for in rules adopted by the board for an application concerning the following:
  - (A) An air pollution construction permit that is subject to 326 IAC 2-2 and 326 IAC 2-3.
  - (B) An air pollution facility construction permit (other than as defined in 326 IAC 2-2).
  - (C) Registration of an air pollution facility.
- (8) Sixty (60) days for an application concerning the following:
  - (A) A Class 1 modification under 40 CFR 270.42 requiring prior written approval, to a hazardous waste:
    - (i) landfill;
    - (ii) incinerator;
    - (iii) treatment facility; or
    - (iv) storage facility.
  - (B) Any other permit not specifically described in this section for which the application fee exceeds forty-nine dollars (\$49) and for which a time frame has not been established under section 3 of this chapter.

(b) When a person holding a valid permit concerning an activity of a continuing nature has made a timely and sufficient application for a renewal permit under the rules of one (1) of the boards, the commissioner shall approve or deny the application on or before the expiration date stated in the permit for which renewal is sought.

*As added by P.L.1-1996, SEC.5. Amended by P.L.224-1999, SEC.4; P.L.138-2000, SEC.5; P.L.240-2003, SEC.9; P.L.78-2009, SEC.13; P.L.159-2011, SEC.20; P.L.223-2011, SEC.1; P.L.113-2014, SEC.64.*

#### **IC 13-15-4-2**

##### **Public hearing; period for ruling on applications**

Sec. 2. (a) This section does not apply to permit applications described in section 1(a)(1) or 1(a)(2) of this chapter.

(b) If the department determines that a public hearing should be held under:

- (1) IC 13-15-3-3; or
- (2) any other applicable rule or law;

the commissioner has thirty (30) days in addition to the number of days provided for in section 1 of this chapter in which to approve or deny the application.

*As added by P.L.1-1996, SEC.5. Amended by P.L.1-2007, SEC.127.*

#### **IC 13-15-4-3**

##### **Period for ruling on applications; changes**

Sec. 3. (a) A board may adopt a rule under IC 4-22-2 that changes a period described under section 1 of this chapter within which the commissioner must approve or deny an application:

(1) if:

- (A) the general assembly enacts a statute;
- (B) a board adopts a rule; or
- (C) the federal government enacts a statute or adopts a regulation;

that imposes a new requirement concerning a class of applications that makes it infeasible for the commissioner to approve or deny the application within the period;

(2) if:

- (A) the general assembly enacts a statute;
- (B) a board adopts a rule; or
- (C) the federal government enacts a statute or adopts a regulation;

that establishes a new permit program for which a period is not described under section 1 of this chapter; or

(3) if some other significant factor concerning a class of applications makes it infeasible for the commissioner to approve or deny the application within the period.

(b) A board may adopt a rule described in subsection (a) as an emergency rule under IC 4-22-2-37.1, if:

- (1) the variance procedures are included in the rule; and
- (2) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.

If a board adopts an emergency rule under this subsection, the period described in section 1 of this chapter is suspended during the emergency rulemaking process. An emergency rule adopted under this subsection may be extended for two (2) extension periods by adopting another emergency rule under IC 4-22-2-37.1. IC 4-22-2-37.1(g)(3) does not apply to an emergency rule adopted under this subsection.

*As added by P.L.1-1996, SEC.5. Amended by P.L.140-2013, SEC.14.*

#### **IC 13-15-4-4**

##### **Review of permit renewal**

Sec. 4. An application for a permit renewal that includes a modification shall be reviewed within the period applicable to the modification.

*As added by P.L.1-1996, SEC.5.*

#### **IC 13-15-4-5**

##### **Effect on hazardous waste permit modification rules**

Sec. 5. Sections 1 through 4 and section 6 of this chapter do not alter the procedures and time frames set forth in the hazardous waste permit modification rules adopted by the department, except to the extent that sections 1 through 4 and 6 of this chapter establish

specific calendar day time frames where no time frame exists under the rules.

*As added by P.L.1-1996, SEC.5.*

#### **IC 13-15-4-6**

##### **Interim permits**

Sec. 6. (a) Notwithstanding the periods specified in sections 1 through 4 of this chapter and this section, a person proposing to construct, modify, or operate any equipment, facility, or pollution control device that is demonstrated to achieve pollution control or pollution prevention in excess of applicable federal, state, or local requirements may apply to the commissioner for an interim permit to construct, modify, or operate the equipment, facility, or pollution control device.

(b) The commissioner shall approve or deny the interim permit not later than sixty (60) days after receipt of the application for an interim permit, unless the applicant and the commissioner agree that a longer review period is necessary.

(c) This section does not relieve a person from complying with:

- (1) the permit requirements provided under this title; and
- (2) rules adopted under this title;

to the extent that this title and the rules are not inconsistent with this section.

*As added by P.L.1-1996, SEC.5. Amended by P.L.133-2012, SEC.102.*

#### **IC 13-15-4-7**

##### **Calculation of periods**

Sec. 7. (a) For purposes of calculating a period under sections 1 through 6 of this chapter, the period:

(1) begins on the earlier of the date:

- (A) an application and any required fee is received and stamped received by the department; or
- (B) marked by the department on a certified mail return receipt accompanying an application and any required fee; and

(2) ends on the date a decision is issued to approve or deny the application under IC 4-21.5-3-4 or IC 4-21.5-3-5.

(b) If an applicant pays an application fee with a check that is not covered with sufficient funds, a period described under sections 1 through 6 of this chapter is suspended until the applicant pays the permit application fee.

*As added by P.L.1-1996, SEC.5.*

#### **IC 13-15-4-8**

##### **Extension of periods**

Sec. 8. (a) The commissioner and an applicant may agree in writing to extend any time allowed under sections 1 through 6 of this

chapter for a decision to be made on an application.

(b) The commissioner and an applicant may agree in writing to have a consultant review an application submitted to the department:

- (1) to expedite the process of reviewing the application; and
- (2) at the applicant's expense.

*As added by P.L.1-1996, SEC.5.*

#### **IC 13-15-4-9**

##### **Denial of applications**

Sec. 9. The commissioner may deny a permit application because the application is incomplete if:

- (1) the department, not later than thirty-five (35) working days after receiving the application, identifies each part of the application that is incomplete; and
- (2) the applicant has failed to submit or make a good faith effort to submit the requested information not later than sixty (60) days after receiving a written request from the department.

*As added by P.L.1-1996, SEC.5.*

#### **IC 13-15-4-10**

##### **Suspension of processing of applications**

Sec. 10. The commissioner may suspend the processing of an application, and the period described under sections 1 through 6 of this chapter is suspended, if one (1) of the following occurs:

- (1) The department determines that the application is incomplete and has mailed a notice of deficiency to the applicant that specifies the parts of the application that:
  - (A) do not contain adequate information for the department to process the application; or
  - (B) are not consistent with applicable law.

The period described under sections 1 through 6 of this chapter shall be suspended during the first two (2) notices of deficiency sent to an applicant under this subdivision. If more than two (2) notices of deficiency are issued on an application, the period may not be suspended unless the applicant agrees in writing to defer processing of the application pending the applicant's response to the notice of deficiency. A notice of deficiency may include a request for the applicant to conduct tests or sampling to provide information necessary for the department to process the application. If an applicant's response does not contain complete information to satisfy all deficiencies described in a notice of deficiency, the department shall notify the applicant not later than thirty (30) working days after receiving the response. The commissioner shall resume processing the application, and the period described under sections 1 through 6 of this chapter resumes on the earlier of the date the department receives and stamps as received the applicant's complete information or the date marked by the department on

a certified mail return receipt accompanying the applicant's complete information.

(2) The commissioner receives a written request from an applicant to:

- (A) withdraw; or
- (B) defer processing of;

the application for the purposes of resolving an issue related to a permit or to provide additional information concerning the application.

(3) The department is required by federal law or by an agreement with the United States Environmental Protection Agency for a federal permit program to transmit a copy of the proposed permit to the administrator of the United States Environmental Protection Agency for review and possible objections before the permit may be issued. The period described under sections 1 through 6 of this chapter shall be suspended from the time the department submits the proposed permit to the administrator for review until:

- (A) the department receives the administrator's concurrence or objection to the issuance of the proposed permit; or
- (B) the period established in federal law by which the administrator is required to make objections expires without the administrator having filed an objection.

(4) A board initiates emergency rulemaking under section 3(b) of this chapter to revise the period described under sections 1 through 6 of this chapter.

*As added by P.L.1-1996, SEC.5. Amended by P.L.235-2005, SEC.130; P.L.140-2013, SEC.15.*

#### **IC 13-15-4-11**

##### **Applicant's alternatives when operating pending permit application or pending commissioner's ruling on application**

Sec. 11. (a) If an applicant is operating pursuant to a continuation of an existing permit pending determination of an application for a new or renewed permit under IC 13-15-3-6, the applicant may proceed under this section after notifying the commissioner in writing of its intent to do so.

(b) If the commissioner does not issue or deny a permit within the time specified under sections 1 through 6 of this chapter, the applicant may proceed under this section. After reaching an agreement with the commissioner or after consulting with the commissioner for thirty (30) days and failing to reach an agreement, the applicant may choose to proceed under one (1) of the following alternatives:

- (1) The:
  - (A) applicant may, except as provided in section 12.1 of this chapter, request and receive a refund of a permit application fee paid by the applicant; and

- (B) commissioner shall do the following:
  - (i) Continue to review the application.
  - (ii) Approve or deny the application as soon as practicable.
  - (iii) Except as provided in section 12.1 of this chapter, refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.
- (2) The:
  - (A) applicant may:
    - (i) except as provided in section 12.1 of this chapter, request and receive a refund of a permit application fee paid by the applicant; and
    - (ii) submit to the department a draft permit and any required supporting technical justification for the permit; and
  - (B) commissioner shall do the following:
    - (i) Review the draft permit.
    - (ii) Approve, with or without revision, or deny the draft permit in accordance with section 16 of this chapter.
    - (iii) Except as provided in section 12.1 of this chapter, refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.
- (3) The:
  - (A) applicant may hire an outside consultant to prepare a draft permit and any required supporting technical justification for the permit; and
  - (B) commissioner shall:
    - (i) review the draft permit; and
    - (ii) approve, with or without revision, or deny the draft permit in accordance with section 16 of this chapter.

*As added by P.L.1-1996, SEC.5. Amended by P.L.184-2002, SEC.6; P.L.240-2003, SEC.10.*

#### **IC 13-15-4-12**

##### **Repealed**

*(As added by P.L.1-1996, SEC.5. Repealed by P.L.184-2002, SEC.30.)*

#### **IC 13-15-4-12.1**

##### **Applicant not entitled to refund of application fee for permit renewal**

Sec. 12.1. An applicant may not receive a refund of a permit application fee if the permit application concerned the renewal of a permit.

*As added by P.L.240-2003, SEC.11.*

#### **IC 13-15-4-13**

**Repealed**

*(As added by P.L.1-1996, SEC.5. Repealed by P.L.184-2002, SEC.30.)*

**IC 13-15-4-14**

**Effect of commencement of construction or operation of equipment or facility**

Sec. 14. Except for applicants proceeding under section 11(a) of this chapter, an applicant may not proceed under any of the options described in section 11(b) of this chapter if construction or operation of the equipment or facility described in the permit application has already begun, unless construction or operation before obtaining the permit is authorized by a board rule or state statute.

*As added by P.L.1-1996, SEC.5. Amended by P.L.184-2002, SEC.7.*

**IC 13-15-4-15**

**Consultants**

Sec. 15. (a) If an applicant chooses to proceed under section 11(b)(3) of this chapter, the department and the applicant shall jointly:

- (1) select a consultant that has the appropriate background to review the applicant's application; and
- (2) authorize the consultant to begin work;

not later than fifteen (15) working days after the department receives notice that the applicant has chosen to proceed under section 11(b)(3) of this chapter.

(b) The commissioner may:

- (1) consult with the applicant regarding the advisability of proceeding under this section; and
- (2) document the communications.

*As added by P.L.1-1996, SEC.5. Amended by P.L.184-2002, SEC.8.*

**IC 13-15-4-16**

**Draft permits**

Sec. 16. (a) If an applicant chooses to proceed under section 11(b)(2) or 11(b)(3) of this chapter, the applicant or a consultant shall prepare and submit to the commissioner the draft permit and any required supporting technical justification for the permit not later than thirty-five (35) working days after:

- (1) the applicant has notified the commissioner that the applicant has chosen to proceed under section 11(b)(2) of this chapter; or
- (2) the department and the applicant have authorized a consultant to begin work under section 11(b)(3) of this chapter.

(b) Subject to subsection (c), the commissioner shall:

- (1) approve, with or without revision; or
- (2) deny;

the draft permit not later than twenty-five (25) working days after

receiving the draft permit.

(c) If notice of opportunity for public comment or public hearing is required under applicable law before a permit decision can be issued, the commissioner shall comply with all public participation requirements and:

- (1) approve, with or without revision; or
- (2) deny;

the draft permit not later than fifty-five (55) working days after receipt of the draft permit.

(d) If the commissioner denies the draft permit, the commissioner shall specify the reasons for the denial.

(e) If an applicant has elected to have a draft permit prepared under section 11(b)(3) of this chapter and:

- (1) the consultant fails to submit a draft permit and supporting technical justification to the commissioner; or
- (2) the commissioner fails to approve or deny the draft permit; within the applicable time specified under subsection (a), (b), or (c), the department shall refund the applicant's permit application fee not later than twenty-five (25) working days after expiration of the applicable period.

(f) The commissioner and the applicant may mutually agree to extend the deadlines in this section.

*As added by P.L.1-1996, SEC.5. Amended by P.L.184-2002, SEC.9.*

#### **IC 13-15-4-17**

##### **Notice of applicant's alternatives before expiration of period**

Sec. 17. (a) Any time before a period specified under sections 1 through 6 of this chapter has expired, the commissioner may do the following:

- (1) Notify an applicant that the commissioner does not believe that the commissioner will be able to approve or deny a permit application filed with the department before the time specified in sections 1 through 6 of this chapter expires.

- (2) Offer to the applicant and allow the applicant to accept one (1) of the following options:

(A) The applicant may submit to the department a draft permit and any legally required supporting technical justification within a period agreed to by the applicant and the commissioner.

(B) The department may hire a qualified consultant at the applicant's cost to:

- (i) complete the review of the application; and
- (ii) prepare a draft permit and any legally required supporting technical justification.

(b) If the applicant submits a draft permit and supporting documentation on time under subsection (a)(2)(A) or elects to fund the hiring of a consultant under subsection (a)(2)(B), the commissioner shall issue or deny the permit within the period

specified under sections 1 through 6 of this chapter. If the commissioner does not make a decision within the period specified:

- (1) the department shall refund to the applicant:
  - (A) the permit application fee paid by the applicant; and
  - (B) any consultant's fees paid by the applicant;
- (2) if a consultant has been hired by the department and has not submitted a draft permit to the department, the consultant shall submit the draft permit and any required supporting technical justification to the department not later than fifteen (15) working days after the expiration of the period specified in sections 1 through 6 of this chapter; and
- (3) the commissioner shall approve, with or without revision, or deny the draft permit submitted by the applicant or a consultant within the period specified under section 16(b) or 16(c) of this chapter.

*As added by P.L.1-1996, SEC.5.*

#### **IC 13-15-4-18**

##### **Remedies not exclusive**

Sec. 18. The remedies provided in this chapter are not the exclusive remedies available to a permit applicant. A permit applicant's election of a remedy under this chapter does not preclude the permit applicant from seeking other remedies available at law or in equity.

*As added by P.L.1-1996, SEC.5.*

#### **IC 13-15-4-19**

##### **Report**

Sec. 19. Before July 15 of each year, the commissioner shall provide to the interim study committee on environmental affairs established by IC 2-5-1.3-4 in an electronic format under IC 5-14-6 a list, current through July 1 of the year, of National Pollutant Discharge Elimination System (NPDES) permits that have been administratively extended that includes for each permit:

- (1) the number of months that the permit has been administratively extended;
- (2) the number of months that the department has extended a period under section 8 of this chapter or suspended processing of a permit application under section 10 of this chapter;
- (3) the type of permit according to the types identified in IC 13-18-20-2 through IC 13-18-20-11; and
- (4) the dates when public notice of a draft permit was given.

*As added by P.L.184-2002, SEC.10. Amended by P.L.53-2014, SEC.120.*