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## **SUBCHAPTER 16. TRANSFER, MODIFICATION, REVOCATION AND REISSUANCE, RENEWAL, SUSPENSION, AND REVOCATION OF EXISTING PERMITS**

### **7:14A-16.1 Purpose and scope**

This subchapter sets forth the causes for and the procedures governing the transfer, modification, revocation and reissuance, renewal, suspension, and revocation of existing NJPDES permits. Specific procedures governing authorizations issued under general permits are set forth at N.J.A.C. 7:14A-6.13.

### **7:14A-16.2 Transfer of a permit**

- (a) A permittee shall not transfer a NJPDES permit to any person except after due notice to the Department in accordance with (b) or (d) below.
- (b) To identify a new owner or operator, a permit may be transferred:
  - 1. As a major modification or revocation and reissuance if one or more causes at N.J.A.C. 7:14A-16.4 are identified;
  - 2. As a minor modification with changes identified at N.J.A.C. 7:14A-16.5;  
or
  - 3. As an automatic transfer under (d) below.
- (c) (Reserved.)
- (d) Any permit shall be automatically transferred to a new permittee if:
  - 1. The current permittee provides written notice to the Department by certified mail or by other means which provides verification of the date of delivery to the Department of the proposed transfer at least 30 days prior to the proposed transfer date. This notice shall include the following:
    - i. The name of the current owner and the address of facility;
    - ii. The name and address of the new owner or owners and operator;
    - iii. The permit number;
    - iv. The names of the principal officer or officers responsible for the facility operation and maintenance under the new operator identified under (d)1ii above;
    - v. The names and current telephone numbers of persons upon whom

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legal process can be served;

- vi. A notarized statement signed by the new principal officer identified in (d)1iv above stating that he or she has read the permit and certifies, pursuant to N.J.A.C. 7:14A-4.9, that he or she shall abide by all the conditions of the permit and that production levels, products generated, rates of discharge, and discharge characteristics shall remain unchanged; and
  - vii. A written agreement between the current permittee and new permittee which includes a specific date for transfer of permit responsibility between the current permittee and new permittee; and
2. The Department does not issue a response letter in accordance with N.J.A.C. 7:14A-16.3(c) to notify the current permittee and the new permittee, within 30 days of receipt of notice of the proposed transfer provided the permittee complies with the requirements in (d)1 above. The Department shall incorporate the name of the new permittee into the permit as a minor modification in accordance with N.J.A.C. 7:14A-16.5.

**7:14A-16.3 Procedures for the modification, revocation and reissuance, renewal, suspension, or revocation of a permit**

- (a) An existing permit shall be modified, revoked and reissued, renewed, suspended, or revoked for cause as specified at N.J.A.C. 7:14A-16.4 through 16.6, as applicable, either at the request of the permittee, or a person, or upon the Department's initiative.
- (b) Any request under (a) above shall be submitted in accordance with the following procedures:
  1. The request shall be in writing;
  2. The request shall contain facts and reasons supporting the request, including a specific reference to the applicable cause(s) under N.J.A.C. 7:14A-16.4 through 16.6;
  3. A person submitting the request shall also identify the environmental, aesthetic, or recreational interest which is or may be affected by the permit action;
  4. A permittee requesting a modification for a less stringent effluent limitation or standard shall comply with any outstanding fee, penalty or fine requirements contained in N.J.S.A. 58:10A-6(k); and
  5. The Department shall request additional information that is necessary to process the request as follows:

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- i. For a permit modification, the submission of an updated permit application to support the request for modification in accordance with N.J.A.C. 7:14A-4.2.
    - ii. For a renewal or revocation and reissuance, submission of a new permit application in accordance with N.J.A.C. 7:14A-4.2 except for applicants for renewals issued a notice of eligibility for expedited renewal in accordance with (h) below.
- (c) In response to a request submitted under (a) above, or upon its own initiative, the Department shall take action as follows:
  1. For a request for a major modification or revocation and reissuance for one or more of the causes listed in N.J.A.C. 7:14A-16.4, the Department shall either:
    - i. Issue a draft permit in accordance with N.J.A.C. 7:14A-15.6 which shall include a fact sheet in accordance with N.J.A.C. 7:14A-15.8; or
    - ii. Deny the request for a major modification or revocation and reissuance. The Department shall issue the requester a response letter stating the reason for the denial. This decision is a final agency action.
  2. For a request for a permit renewal, the Department shall either:
    - i. Issue a draft permit in accordance with N.J.A.C. 7:14A-15.6 which shall include a fact sheet in accordance with N.J.A.C. 7:14A-15.8; or
    - ii. Deny the request for a permit renewal for one or more causes listed at N.J.A.C. 7:14A-16.6. The Department shall issue a notice of intent to deny, which is a type of draft permit in accordance with N.J.A.C. 7:14A-15.6 which includes only a statement of basis in accordance with N.J.A.C. 7:14A-15.7.
  3. For a request for a permit suspension or revocation for one or more causes listed at N.J.A.C. 7:14A-16.6, the Department shall either:
    - i. Issue a draft permit under N.J.A.C. 7:14A-15.6, which includes only a statement of basis in accordance with N.J.A.C. 7:14A-15.7; or
    - ii. Deny the request for a suspension or revocation. The Department shall issue the requester a response letter stating the reasons for the denial. This decision is a final agency action.
  4. For a request for a minor modification, the Department shall either:
    - i. Issue a minor modification in accordance with N.J.A.C. 7:14A-16.5;

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or

- ii. Deny the request for a minor modification. The Department shall issue the requester a response letter stating the reasons for the denial. This decision is a final agency action.
- (d) (Reserved.)
  - (e) When the Department issues a draft permit for a major modification, only those conditions that are being modified shall be reopened for notice and comment. Where a permit is renewed or revoked and reissued, the entire permit shall be reopened for notice and comment.
  - (f) The permittee shall comply with all conditions of the existing permit while a request for modification, revocation and reissuance, renewal, suspension or revocation is being processed by the Department unless the conditions of the existing permit are stayed in accordance with N.J.A.C. 7:14A-17.6.
  - (g) (Reserved.)
  - (h) Procedures for expedited permit renewal are as follows:
    1. A permittee shall be eligible for an expedited permit renewal when the Department reviews the existing permit and determines that no change to the permit is needed other than changes which would constitute a minor modification under N.J.A.C. 7:14A-16.5. The Department may determine eligibility on its own initiative or a permittee may request that the Department consider issuing an expedited permit renewal by submitting a request for consideration for an expedited permit renewal at least 270 days prior to the permit expiration date. The Department shall notify permittees as to their eligibility for an expedited renewal 210 days before the permit expiration date.
    2. A permittee notified of eligibility for an expedited permit renewal pursuant to (h)1 above shall, at least 180 days prior to the permit expiration date, either submit a written request for the expedited renewal or, if not interested in expedited permit renewal and the discharge will continue after the permit expiration date, submit a renewal application in accordance with N.J.A.C. 7:14A-4.
    3. When issuing an expedited permit renewal:
      - i. In accordance with N.J.A.C. 7:14A-15.10(d), the Department shall provide a consolidated public notice in the DEP Bulletin and appropriate newspaper(s) for those facilities classified as major facilities, listing those permits it plans to renew. Such public notice shall include the opportunity for public comment and the procedure

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for requesting a public hearing in accordance with N.J.A.C. 7:14A-15.11; and

- ii. Issue a final permit to each permittee after the close of the public comment period which shall include the same terms and conditions as the existing permit, with the exception of changes that constitute minor modifications pursuant to N.J.A.C. 7:14A-16.5 unless the Department determines, based on issues raised during the public comment period, to prepare a new draft permit pursuant to N.J.A.C. 7:14A-15.14(a).
- (i) When taking any permit action pursuant to (c) above for two or more similar permits, the Department may consolidate the procedures listed in N.J.A.C. 7:14A-15.7, 15.8 and 15.10, such that one statement of basis or fact sheet, as appropriate, and one public notice for all of the permits are prepared for publication.
  - (j) When a proposed rule change affects multiple permits, the Department may modify the affected permits through a rule proposal.
    1. The permit modification may be done through a rule proposal provided the Department:
      - i. Identifies the affected permits in the rule proposal; and
      - ii. Provides the affected permittees with a copy of the rule proposal as published in the New Jersey Register.
    2. When a permit is modified through a rule proposal, the rule proposal shall serve as the draft permit for the purposes of N.J.A.C. 7:14A-15.6 and fact sheet for the purposes of N.J.A.C. 7:14A-15.8.
    3. The affected permit(s) will be finalized simultaneously on adoption of the rule proposal and constitute a final permit decision.

**7:14A-16.4 Causes for major modification or revocation and reissuance of a permit**

- (a) The Department shall issue a major modification or revoke and reissue a permit only for one or more of the causes set forth at (b) below.
- (b) The following constitute cause for major modification or revocation and reissuance of a permit:
  1. Any material and substantial alteration or addition to the permitted facility, activity, or discharge (including one or more changes in the permittee's residual use or disposal practices) which occurred after permit issuance and which justifies the application of permit conditions that are

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different or absent from those in the existing permit. A request for a permit modification under this paragraph shall include all information demonstrating that the alterations or additions occurred after permit issuance and therefore this information was not available at the time of permit issuance or renewal;

2. New information which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of different permit conditions at the time of issuance. A request for consideration under this paragraph shall include all information demonstrating that the information was not available at the time of permit issuance. Such information includes, but is not limited to, the following:
  - i. Information showing a need for additional flow;
  - ii. Effluent testing indicating that the cumulative effects on the environment are unacceptable or are in violation of applicable standards; or
  - iii. Any toxic pollutant that a permittee begins or expects to begin to use or manufacture as an intermediate or final product or by-product which was not reported in the permit application under N.J.A.C. 7:14A-4.2. A permittee subject to this subparagraph shall amend its permit application to list those pollutants;
3. A change in the regulation or standard on which the issued permit was based by subsequent rule amendment or by judicial decision upon which no further appeals may be taken. The Department may provide for a schedule of compliance in accordance with N.J.A.C. 7:14A-6.4 in order for the permittee to meet such regulations or standards;
4. An act of God, strike, flood, or other events over which the permittee has little or no control and for which there is no reasonably available remedy which the Department has determined warrants the modification of a compliance schedule. However, in no case shall a compliance schedule be modified to extend beyond an applicable State or Federal statutory deadline;
5. A complete and timely request filed by the permittee for any of the variances listed in N.J.A.C. 7:14A-11.7;
6. Incorporation of an applicable toxic effluent standard or prohibition under Section 307(a) of the Federal Act (see N.J.A.C. 7:14A-13.2 through 13.4);
7. Inclusion or modification of an effluent limitation or parameter pursuant to a permit "reopener" condition as follows:

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- i. For effluent limitations, including those limitations necessary to implement a TMDL or watershed management plan adopted in accordance with N.J.A.C. 7:15-7, pursuant to N.J.A.C. 7:14A-6.2(a)10;
  - ii. For surrogate parameters, pursuant to N.J.A.C. 7:14A-13.7 or 13.10;
  - iii. For making a determination of reasonable potential to cause or contribute to an exceedance of the Surface Water Quality Standards, pursuant to N.J.A.C. 7:14A-13.5;
  - iv. For action levels associated with a specific effluent limitation that have been exceeded, pursuant to N.J.A.C. 7:14A-13.18;
  - v. For limitations based on narrative Surface Water Quality Standards, pursuant to N.J.A.C. 7:14A-13.7;
  - vi. For residual use or disposal, pursuant to N.J.A.C. 7:14A-20.5;
  - vii. (Reserved.)
  - viii. For modification of effluent standards when Whole Effluent Toxicity data obtained by the Department shows toxicity at levels that exceed applicable effluent standards, as specified in N.J.A.C. 7:9-5.7(a); or
  - ix. For issuance of a facility wide permit, requiring pollution prevention at a facility, to incorporate a pollution prevention plan or to require more stringent effluent levels based on pollutant prevention strategies or technologies applicable to that facility or industry, in accordance with Section 48 of the Pollution Prevention Act, N.J.S.A. 13:1D-35, and its implementing regulations, specifically, N.J.A.C. 7:1K-7.1(c);
8. The filing of a complete request from a permittee who qualifies for effluent limitations on a net basis under N.J.A.C. 7:14A-13.4(k) or when a permittee is no longer eligible for net limitations as provided for in N.J.A.C. 7:14A-13.4(k) (see the information requirements contained in 40 CFR 122.45(g));
  9. Establishment of a compliance schedule for development of a pretreatment program in accordance with N.J.A.C. 7:14A-6.4(c) and N.J.A.C. 7:14A-19;
  10. Failure of the State to notify, as required by Section 402(b)(3) of the Federal Act, another state whose waters may be affected by a discharge from the State;
  11. The level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology based

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treatment requirements appropriate to the permittee under N.J.A.C. 7:14A-13.2 through 13.4;

12. Establishment of a "notification level" as provided in N.J.A.C. 7:14A-6.2(b)2;
13. Modification of a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under Section 202(a)(3) of the Federal Act or public loan moneys for the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under Section 202(a)(2) of the Federal Act. In no case shall a compliance schedule be modified to extend beyond an applicable State or Federal statutory deadline. For a permit modification under this paragraph a permittee shall submit all information detailing the reasons for time lost during construction and why such loss of time was not the fault of the permittee;
14. Correction of technical mistakes, such as errors in calculation, or mistaken interpretations of law or rules, made in determining permit conditions. For a permit modification under this paragraph, when the request is initiated by a permittee, the permittee shall cite the location of the alleged error or interpretation, denote what the correction should be and provide a detailed basis for the correction including any applicable regulatory citations or calculations;
15. Inability to achieve effluent limitations when the discharger has installed the treatment technology considered by the Department in setting effluent limitations imposed under section 402(a)(1) of the Federal Act and has properly operated and maintained the facilities. The limitations in the modified permit shall reflect the level of pollutant control actually achieved but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline;
16. Inclusion of a plan or compliance schedule for the management of septage or sludge in accordance with the Statewide Sludge Management Plan;
17. Existence of cause for revocation under N.J.A.C. 7:14A-16.6 where the Department determines that modification or revocation and reissuance is instead appropriate;
18. When the proposed automatic transfer of a permit includes one or more of the causes for a major modification under this section;
19. For changes in permit issuance and renewal schedules to better manage the Department's workload and optimize its resource and to facilitate issuing permits on a watershed basis;

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20. For substitution of ambient monitoring for compliance monitoring in order to gather data for issuing permits on a watershed basis; or
21. For a small MS4, to include an effluent limitation requiring implementation of one or more control measures (or component(s) thereof) when:
  - i. The permit recognizes under N.J.A.C. 7:14A-25.7(b) that another governmental entity or the Department was responsible for implementing the measure(s), or component(s) thereof; and
  - ii. The other governmental entity or the Department does not implement the measure(s), or component(s) thereof.

#### **7:14A-16.5 Minor modification of a permit**

- (a) The Department shall, with the consent of the permittee and without following the procedures set forth in N.J.A.C. 7:14A-15, modify a permit to make any of the following changes:
  1. Correct typographical errors and make language changes that have no legal or substantial effect or correct technical or administrative errors which do not result in changes to the permit effluent limitations;
  2. Require more frequent monitoring or reporting by the permittee;
  3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;
  4. Reflect a change in the owner or operator of a facility where the Department determines that no permit change(s) necessary to accomplish the change in the owner or operator constitutes a major modification under N.J.A.C. 7:14A-16.4, provided that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittees has been submitted to the Department;
  5. Change the construction schedule for a discharger which is a new source. Such change shall not affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge;
  6. Delete a point source when the discharge from such point source is terminated and does not result in a change to the characteristics of the effluent from other point sources except in accordance with permit limits;
  7. Incorporate the requirements of an industrial pretreatment program in accordance with the procedures in 40 CFR 403.11 as enforceable

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conditions of the permit; or

8. Substitute the parameter CBOD<sub>5</sub> for BOD<sub>5</sub> and revise the effluent limitations consistent with the secondary treatment provisions specified at N.J.A.C. 7:14A-12.2(c).

**7:14A-16.6 Causes for suspension or revocation of a permit or denial of a permit renewal**

- (a) The following are causes for suspending or revoking a permit during its term, or for denying a permit renewal application:
  1. Noncompliance by the permittee with any condition of the permit;
  2. The permittee's failure in the application or during the permit issuance or treatment works approval process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
  3. A determination by the Department that the permitted activity endangers human health or the environment which can be corrected only by suspension or revocation;
  4. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or residual use or disposal practice regulated under the permit;
  5. For an individual SIU permit with an actual or potential discharge to a nondelegated local agency, information that shows that a permittee has ceased to meet all criteria under which an individual SIU permit is required pursuant to N.J.A.C. 7:14A-2;
  6. The nonconformance of the discharge with any applicable facility, basin or areawide plans;
  7. Inconsistency of the permit with any duly promulgated effluent limitation, permit, regulation, statute, or other applicable State or Federal law; or
  8. Failure to pay applicable permit fees.