

Memorandum

Florida Department of Environmental Protection

TO: District Waste Program Administrators
District Solid Waste Engineers

FROM: Chris McGuire, Office of General Counsel

DATE: September 27, 2011

SUBJECT: Notice Requirements for Solid Waste Permit Applications
SWM 04.41

Note: This memorandum updates a memo of July 29, 2004 on the same subject.

I am frequently asked about the notice requirements for solid waste permit applications, which are scattered among several rules and statutes. This memo is my attempt to compile those requirements in one place. I have not included any of the provisions regarding the form, timing, or consequences of the notice.

1. Generally.

Section 403.815, F.S.

The department may publish or by rule require the applicant to publish, or the applicant may elect to publish, in a newspaper of general circulation in the area affected, notice of application for a permit submitted under this chapter or chapter 253. . . . Notwithstanding any provision of s. 120.60, the department may publish or by rule require the applicant to publish, or the applicant may elect to publish, in a newspaper of general circulation in the area affected, notice of proposed agency action on any permit application submitted under this chapter or chapter 253.

2. Notice of application.

Rule 62-110.106

(6) Publication of a notice of application shall be required for those projects that, because of their size, potential effect on the environment or natural resources, controversial nature, or location, are reasonably expected by the Department to result in a heightened public concern or likelihood of request for administrative proceedings.

Rule 62-701.320

(8)(a) An applicant for a permit to construct or substantially modify a solid waste management facility shall publish and provide proof of publication to the Department of a Notice of Application in a newspaper of general circulation in the area where the facility will be located. This notice shall conform to the requirements of Rule 62-110.106, F.A.C., except that the notice shall be published within 14 days of submittal of a permit application to the Department.

(b) An applicant for a permit to construct or substantially modify a Class I or III landfill shall mail a notice of application to the Chair of the Board of County Commissioners, the highest ranking elected official of the municipality, and each State Senator and Representative serving the jurisdiction in which the project is located. The notice shall be mailed within 14 days of submittal of the application to the Department, and proof of mailing shall be provided to the Department. After the Department completes the permit review, the Department shall send a copy of the notice of intent to issue or deny the permit to these same officials.

Section 403.707, F.S.

(11) Before or on the same day of filing with the department of an application for a permit to construct or substantially modify a solid waste management facility, the applicant shall notify the local government having jurisdiction over the facility of the filing of the application. The applicant also shall publish notice of the filing of the application in a newspaper of general circulation in the area where the facility will be located. Notice shall be given and published in accordance with applicable department rules. The department shall not issue the requested permit until the applicant has provided the department with proof that the notices required by this subsection have been given. Issuance of a permit does not relieve an applicant from compliance with local zoning or land use ordinances, or with any other law, rules, or ordinances.

3. Notice of Intent to Issue or Deny.

Rule 62-110.106

(7)(a) The Department shall require publication of notice of the Department's proposed action on an application in the following circumstances:

1. The Department shall require applicants to publish an intent to issue for all construction permits for . . . solid waste disposal facilities . . . as well as any other project . . . that the Department finds is reasonably expected to result in a heightened public concern or likelihood of a request for administrative proceedings because of its size, potential effect on the environment or natural resources, controversial nature, or location.

3. Applicants for construction or expansion of solid waste facilities shall publish a notice of intent to deny a permit.

4. Notice of Modifications or Changes.

Rule 62-110.106

(7)(a)4. After publication of a notice of intent to issue or intent to deny a permit application, the applicant shall publish an additional notice if the subject activity or project is substantially modified by the applicant and the Department proposes to issue the permit with the modification.

(e) Notice of Administrative Proceeding. If the applicant initiates an administrative proceeding on a permit denial or an intent to deny and the project or activity is one for which publication of a notice of intent to issue would have been required under subparagraph (7)(a)1 above, the applicant shall publish a notice of administrative proceeding on permit application.

5. Notice of Agency Action.

Rule 62-110.106

(8) On a matter other than a permit application, the Department or any applicant, petitioner for a variance or waiver, party to a consent order, or person seeking the Department's authorization or approval of a report, plan, proposal, or other request

(excluding any request for hearing) may publish or be required to publish notice of the proposed action.

6. Voluntary Notice.

Rule 62-110.106

(10)(a) Any applicant or person benefiting from the Department's action may elect to publish notice of the Department's intended or proposed action (or notice of a proceeding on such intended action) in the manner provided by subsection (7) or (8) above.

7. Other Notices.

Section 403.707, F.S.

(4) When application for a construction permit for a Class I solid waste disposal facility is made, it is the duty of the department to provide a copy of the application, within 7 days after filing, to the water management district having jurisdiction where the area is to be located.

8. General Permits

Rule 62-4.530

(5) Unless otherwise required below as part of a specific category of general permit, persons qualifying for the use of a general permit are not required to, but may, publish in a newspaper of general circulation in the area affected by the proposed project a notice of intent to use a general permit. The notice, if published, shall follow substantially the format in Fla. Admin. Code Rule 62-103.150 and shall be published within 14 days of the date when the Department receives notification pursuant to Rule 62-4.530(1). No person who has published notice shall begin work until after the 21 days for requesting a hearing has passed or a hearing is held and a decision is rendered.

Section 403.814, F.S.

(3) The department may publish or by rule require the applicant to publish, or the applicant may elect to publish, in a newspaper of general circulation in the area affected, notice of application for a general permit. If published, such public notice of application shall be published within 14 days after the applicant notifies the department; and, within 21 days after publication of notice, any person whose substantial interests are affected may request a hearing in accordance with ss. 120.569 and 120.57.

9. Construction and Demolition Debris Facilities.

Section 403.707, F.S.

(9)(i) The department shall provide notice of receipt of a permit application for the initial construction of a construction and demolition debris disposal facility to the local governments having jurisdiction where the facility is to be located.

10. Variances

Section 120.542, F.S.

(6) Within 15 days after receipt of a petition for variance or waiver, an agency shall provide notice of the petition to the Department of State, which shall publish notice of the petition in the first available issue of the Florida Administrative Weekly.

(8) The agency shall provide notice of the disposition of the petition to the Department of State, which shall publish the notice in the next available issue of the Florida Administrative Weekly.

Section 403.201, F.S.

(3) The department shall publish notice, or shall require a petitioner for a variance to publish notice, in the Florida Administrative Weekly and in a newspaper of general circulation in the area affected, of proposed agency action; and the department shall afford interested persons an opportunity for a hearing on each application for a variance. If no request for hearing is filed with the department within 14 days of published notice, the department may proceed to final agency action without a hearing.