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**Memorandum**

FILE: Solid Waste Program Files

TO: All Interested Parties

FROM: Diana A. Trussell, Manager *DAT*  
Solid Waste Program  
Division of Waste Management

SUBJECT: Public Participation for Solid Waste Management Permits

DATE: March 7, 2023

**Introduction**

The North Dakota Department of Environmental Quality (Department) – Solid Waste Program encourages participation by the public during the permitting process for solid waste management facilities.

Prior to the submittal of a permit application, all new solid waste management facilities that are subject to the location standards of North Dakota Administrative Code (NDAC) Subsection 33.1-20-04.1-01(2) are required to submit a preapplication to the Solid Waste Program in accordance with NDAC 33.1-20-03.1-01(1). The Solid Waste Program must consult with the State Geologist and the State Engineer prior to approving any preapplication in accordance with NDAC Subsection 33.1-20-03.1-01(2).

At any point during the permitting process and after completion of the permitting process, any interested person can request records that are not available online by visiting the Department's website at: <https://deq.nd.gov/OpenRecords.aspx>.

This memo will outline how the public can participate in the permitting process for solid waste management facilities once a permit application has been submitted to the Solid Waste Program.

**Public Participation**

Permit applications for solid waste management facilities are received by the Solid Waste Program and information regarding the name of the facility, permit number (if applicable), date received and type of permit (i.e. major modification, new and/or renewal) and status of the permit application are published on the Department's website at <https://deq.nd.gov/WM/Solidwasteprogram/Permitting/>. The status of the permit application is updated throughout the review process from the date of receipt until a decision is made on whether a permit is signed.

If a permit application is for a new solid waste management facility or a major modification as listed in NDAC Subsection 33.1-20-02.1-07(4), the applicant is required to publish 2 public notices in the official county newspaper of where the facility is proposed to be located or is located in accordance with NDAC Subsection 33.1-20-03.1-02(4). This requirement does not apply to permit applications for renewal of permits.

If a permit application is for a solid waste management facility that is proposing disposal of coal processing waste in a mining permit area, the applicant must also file a copy of the permit application with the North Dakota Public Service Commission in accordance with NDAC Subsection 33.1-20-03.1-01(3) and NDAC Subdivision 69-05.2-19-02(1)(a). This requirement does not apply to any other permit applications.

Once the Solid Waste Program has completed review of a permit application (major modification, new and/or renewal) and determined that the permit application is complete and meets the requirements of the Solid Waste Management Rules (NDAC Article 33.1-20), a review memo in accordance with NDAC Subsection 33.1-20-03.1-03(2), draft permit and public notice are prepared. A letter is sent to the applicant and the county commissioners of the county where the facility is located to let them know that a draft permit is going out for public comment (see attached templates). The letter attaches a copy of the Solid Waste Program's review memo, draft permit and public notice. In addition, the local public health unit is copied on the letter. In accordance with NDAC Subsection 33.1-20-03.1-03(3), the Solid Waste Program's publishes a public notice (see attached template) in the official county newspaper in the county in which the solid waste management unit or facility is located and in the daily newspaper of general circulation in the area of the facility.

In addition to the statutory requirements, it is the Solid Waste Program's policy to publish the review memo, draft permit and public notice on our website at: <https://deq.nd.gov/PublicNotice.aspx> and <https://deq.nd.gov/wm/PublicNotices/default.aspx>. A notice is sent out through the Department's listserv stating that a draft permit has been posted on our website. Anyone can sign-up for free on the Department's listserv at: <https://deq.nd.gov/subscriptions/>. The listserv, to-date over 750 email addresses, includes members of the public, the media (newspapers, radio and television), the regulated community, consultants, environmental groups, local government (townships, cities/towns, counties) and State/Federal government (state agencies, federal agencies). This policy applies to all permit applications for major modifications, new and/or renewals.

The Solid Waste Program's public notice (see attached templates) lists the dates that the public comment period is open for and must be a minimum of 30 days in accordance with NDAC Subdivision 33.1-20-03.1-03(3)(a). A public hearing may be scheduled as part of the public comment period, and at least 15 days' notice will be provided prior to any public hearing is scheduled in accordance with NDAC Subdivision 33.1-20-03.1-03(3)(b). If a public hearing is not scheduled as part of the public comment period, the public notice states how a public hearing can be requested and that at least 15 days' notice will be provided prior to any public hearing is scheduled in accordance with NDAC Subdivision 33.1-20-03.1-03(3)(b). The public notice states "...During that period, any interested person may submit written comments and request a public hearing by stating the nature of specific issues to be raised." These requirements apply to all permit applications for major modifications, new and/or renewals.

In general, it is the Solid Waste Program's policy to hold a public hearing if it has been requested even if only a single request for a public hearing has been received. It is important to note that it is up to the Department's discretion to determine significant interest on a case-by-case basis. The Department considers factors such as amount of interest, information that may be provided by the public, how many questions the public has, and type of permit (major modification, new facility, new regulation, renewal). This policy applies to all permit applications for major modifications, new and/or renewals.

All public notices (see attached templates) for the Solid Waste Program include information on how any person can request an accommodation or translation of written materials. The public notice states:

"The NDDEQ will consider every request for reasonable accommodation to provide an accessible meeting facility or other accommodation for people with disabilities, language interpretation for people with limited English proficiency (LEP), and translations of written material necessary to access programs and information. To request accommodations, contact the Non-discrimination Coordinator at 701-328-5150 or [deqEJ@nd.gov](mailto:deqEJ@nd.gov). TTY users may use Relay North Dakota at 711 or 1-800-366-6888."

Any interested person can request that the public comment period be extended. It is within the Department's discretion to grant extension and it is based on public interest. In order to request an extension of the public comment period, a written comment must be submitted as listed in the public notice (see attached templates). The public notice states "...During that period, any interested person may submit written comments and request a public hearing by stating the nature of specific issues to be raised." This applies to all permit applications for major modifications, new and/or renewals.

Upon completion of the public comment period, the Solid Waste Program will determine if any comments have been received. If no comments were received, a final permit is issued. It is the Solid Waste Program's policy to post all final permits for 30 days on our website at: <https://deq.nd.gov/PublicNotice.aspx> and <https://deq.nd.gov/wm/PublicNotices/default.aspx>. A notice is sent out through the Department's listserv stating that a final permit has been posted on our website. This policy applies to all permit applications for major modifications, new and/or renewals.

If comments have been received during the public comment period, the Solid Waste Program will review all comments and issue a response to comments or findings and conclusions in accordance with North Dakota Century Code (NDCC) Section 23.1-01-11. A copy must be sent to the applicant and any interested person who requested a copy. This requirement applies to all permit applications for major modifications, new and/or renewals.

In addition, it is the Solid Waste Program's policy to publish the response to comments and the final permit for 30 days on our website at: <https://deq.nd.gov/PublicNotice.aspx> and <https://deq.nd.gov/wm/PublicNotices/default.aspx>. A notice is sent out through the Department's listserv stating that a final permit has been posted on our website. This policy applies to all permit applications for major modifications, new and/or renewals.

Upon issuance of a final permit, it may be challenged by appealing to district court in accordance with NDCC Section 23.1-01-11.

## **Conclusion**

As discussed above, there are opportunities throughout the permitting process for solid waste management facilities for the public to participate. This memorandum will be updated periodically as there are changes to public participation opportunities.

DAT

Enc.: County Letter Template  
Facility Letter Template  
Public Notice Template  
Public Notice Hearing Template