

Effective 5/10/2016

19-5-105.3 Independent peer review of a proposal.

- (1) As used in this section:
 - (a) "Challenging party" means a person who has or is seeking a permit in accordance with this chapter and chooses to use the independent peer review process described in this section to challenge a proposal.
 - (b) "Independent peer review" is a review conducted:
 - (i) in accordance with this section;
 - (ii) by experts having technical expertise in the proposal being reviewed; and
 - (iii) by individuals who are not:
 - (A) currently conducting research funded by the division or the challenging party;
 - (B) employed by an entity that is regulated under this chapter;
 - (C) a spouse or family member of someone who is employed by the division or the challenging party; or
 - (D) an active, participatory member of a non-profit organization that advocates positions with the division or the Legislature.
 - (c) "Proposal" means any science-based initiative proposed by the division on or after January 1, 2016, that would financially impact a challenging party and that would:
 - (i) change water quality standards;
 - (ii) develop or modify total maximum daily load requirements;
 - (iii) modify wasteloads or other regulatory requirements for permits; or
 - (iv) change rules or other regulatory guidance.
 - (d) "Study" means a written analysis conducted by or otherwise relied upon by the division in support of a proposal.
 - (e) "Technology based nutrient effluent limits" are maximum nutrient limitations based on the availability of technology to achieve the limitations, rather than on a water quality standard or a total maximum daily load standard.
- (2) The director shall initiate an independent peer review when the following conditions are met:
 - (a) a challenging party challenges in writing a study or the technical or scientific data upon which a proposal is based and requests an independent peer review;
 - (b) if the independent peer review is related to examining a technology based nutrient effluent limit, the challenging party provides written notice to the division requesting an independent peer review before the technology based nutrient effluent limit is adopted into a permit issued by the division;
 - (c) if the independent peer review is not related to examining a technology based nutrient effluent limit, the challenging party provides written notice to the division requesting an independent peer review related to a proposal before the proposal has been adopted by the division or the board;
 - (d) the challenging party agrees to provide the funding to pay for the independent peer review; and
 - (e) the challenging party would be substantially impacted by the adoption of the proposal.
- (3) The director shall ensure that the independent peer review is completed within one year from the date the peer review panel described in Subsection (5) is selected.
- (4)
 - (a) If there is more than one challenging party challenging a study or the technical or scientific data upon which a proposal is based, the challenges will be consolidated into one independent peer review.

- (b) If challenges are consolidated into one independent peer review, the challenging parties will be responsible for allocating the costs of the independent peer review among the challenging parties.
- (5)
- (a) When an independent peer review is conducted, there shall be appointed to a peer review panel a minimum of three independent experts who are mutually agreeable to both the division and the challenging party.
 - (b) Any additional independent experts appointed to the panel shall be mutually agreeable to both the division and the challenging party.
 - (c) If an independent peer review panel has not been appointed within 60 days of the day on which the director receives a written request for an independent peer review, a three-person panel shall be selected as follows:
 - (i) one independent expert selected by the division;
 - (ii) one independent expert selected by the challenging party or, if more than one challenge has been consolidated as described in Subsection (4), one independent expert selected and mutually agreed to by the challenging parties; and
 - (iii) one independent expert mutually agreeable to the independent experts described in Subsections (5)(c)(i) and (ii).
- (6)
- (a) An independent peer review panel shall conduct its review in general accordance with the guidance contained in the United States Environmental Protection Agency's Peer Review Handbook.
 - (b) As part of an independent peer review, the independent peer review panel shall allow for written public comment on the proposal being reviewed prior to issuing a written report.
- (7) An independent peer review panel shall prepare a final written report that:
- (a) includes the findings of each member of the panel;
 - (b) is supported by the majority of the panel;
 - (c) includes an analysis of the panel's confidence, certainty, and major data gaps, if any, related to the scientific basis behind the proposal; and
 - (d) includes one of the following findings:
 - (i) the proposal is scientifically defensible;
 - (ii) the proposal is not scientifically defensible; or
 - (iii) the proposal is scientifically defensible with conditions developed by the panel.
- (8) In addition to the requirements described in Subsection (7), if an independent peer review panel is examining a technology based nutrient effluent limit for a specified downstream water body or a series of hydrologically connected water bodies, the panel's written report shall find one of the following:
- (a) the technology based nutrient effluent limit is scientifically necessary to protect the designated beneficial uses of the specified downstream water body or the series of hydrologically connected water bodies; or
 - (b) the technology based nutrient effluent limit is not scientifically necessary to protect the designated beneficial uses of the specified downstream water body or the series of hydrologically connected water bodies.
- (9) The findings and any conditions of an independent peer review panel shall be incorporated into a proposal as needed to ensure the scientific accuracy of the proposal.
- (10) A proposal reviewed by an independent peer review panel that is found scientifically defensible or scientifically defensible with conditions may be forwarded to the board or to the director for further consideration and action as applicable.

(11) If technology based nutrient effluent limits in a proposal are found by an independent peer review to not be scientifically necessary to protect a specified downstream water body or series of hydrologically connected water bodies, the challenging party shall be granted a variance by the division exempting compliance with the technology based effluent limitation.

Enacted by Chapter 340, 2016 General Session