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A Guide for States on the Proposed Consolidated Permit Regulations



ABOUT THE PROPOSED CONSOLIDATED REGULATIONS

This Guide discusses the proposed regulations consolidating the procedures which govern issuance of permits under four environmental statutes, as these new regulations pertain to State administration of those programs. The proposed regulations were published in the Federal Register on June 14, 1979.

TO OBTAIN COPIES OF THE REGULATIONS OR GUIDES

Write to:

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A GUIDE TO STATES ON THE PROPOSED CONSOLIDATED PERMIT REGULATIONS

I. A NEED AND A RESPONSE

The role of State governments in protecting our Nation's environmental resources has grown steadily. Legislation enacted both by the States and the Federal government has produced a number of programs for establishing and enforcing environmental standards. However, much of this legislation resulted in single-purpose programs having little coordination with other programs with similar or complementary responsibilities. As indicated in a recent study by the Council of State Governments, this approach to environmental regulation has produced a system of uncoordinated permit requirements, overlapping jurisdictions, and sometimes contradictory pollution control standards. The report stated:

Increased efforts to promote environmental quality have generated a rapid growth in the number of permits required for development. For many proposed projects, numerous permits are needed, often from many different government agencies at the local, Regional, State and Federal levels. This proliferation of permits has created a multitude of problems for permit applicants, concerned citizens, and State governments... In short, the regulation system has become a maze...applicants must spend exorbitant amounts of time and money both for determining what permits are required and securing decisions on those permits.*

*Untangling the Permit Web: Washington's Environmental Coordination Procedures Act, James E. Jarrett and Jimmy Hicks, The Council of State Governments, Lexington, Kentucky, June 1978 (RM 627).

The U.S. Environmental Protection Agency believes that environmental regulatory programs can be more effective if they are developed and implemented in a coordinated and consistent manner. Therefore, EPA has proposed consolidated permit program regulations and an application form which were published in the Federal Register on June 14, 1979 (44 FR 34244 and 44 FR 34346). These regulations consolidate requirements for the following five permit programs under four Federal environmental laws:

- ° the Hazardous Waste Management (HWM) program under the Resource Conservation and Recovery Act;
- ° the Underground Injection Control (UIC) program under the Safe Drinking Water Act;
- ° the National Pollutant Discharge Elimination System (NPDES) program under the Clean Water Act;
- ° the Prevention of Significant Deterioration (PSD) program of the Clean Air Act, but only where EPA is the permitting authority; and
- ° State section 404 (Dredge or Fill) programs under the Clean Water Act.

Table I provides a synopsis of these programs. A more complete picture of each program may be obtained by reading the other pamphlets in this series. A list of guides covering the programs involved in the consolidation effort is given on the inside back cover of this pamphlet.

Through its efforts to consolidate regulations for these permit programs, EPA is seeking to streamline its own procedures and requirements

TABLE I

Name	Abbrev	Coverage	Consolidated in			Act	Technical Requirements	Comments
			122	123	124			
Hazardous Waste Management Program	HWM	generation, transportation, treatment, storage, disposal of hazardous waste	Yes	Yes	Yes	Resource Conservation & Recovery Act	40 CFR 250*	States may take program, or EPA issues permits, 6 mos. after regs final
Underground Injection Control Program	UIC	well injection/ protection of drinking water aquifers	Yes	Yes	Yes	Safe Drinking Water Act	40 CFR 146**	listed States have 270 days after regs to assume program
National Pollutant Discharge Elimination System	NPDES	discharge of wastewater into waters of the U.S.	Yes	Yes	Yes	Clean Water Act	40 CFR 125 and Subchapter N	50,000 permits issued, 70,000 sources identified
Dredge or Fill Program	404	discharge of dredged or fill material, often in wetlands	Only Subpart A	Yes	Only Subpart A	Clean Water Act	40 CFR 230***	COE or State operates program, EPA approves transfer of authority over certain waters to States
Prevention of Significant Deterioration	PSD	emission of pollutants from sources in attainment areas	No	No	Yes	Clean Air Act	40 CFR 52	regs only apply to EPA programs, not to State programs

* Proposed at 43 FR 58946 (December 18, 1978), 43 FR 18506 (April 28, 1978), and 43 FR 29908 (July 11, 1978)

** Proposed at 44 FR 23738 (April 20, 1979)

*** Proposed at ___ FR ___ (July __, 1979)

so that the programs it administers are more effective in protecting the environment, less costly and more understandable. EPA, wherever possible, will consolidate its review of all permits required for a single facility under these permit programs. However, even where such consolidated review of multiple permits is not appropriate or possible, these regulations will provide consistent and predictable requirements for the various EPA permit programs.

While these regulations propose the requirements for State permit programs which may be substituted for an EPA program, they do not require States to consolidate their permitting activities. Nonetheless, these regulations should help States to coordinate and consolidate permitting if they wish by making the requirements for the various programs consistent and complementary.

This Guide introduces the concepts behind the consolidated permit approach. It also highlights the regulatory changes and benefits that are likely to result from consolidation. EPA encourages you, whether you are a State official or an interested citizen, to obtain and review the complete proposals and submit written comments for the record (see Section VII below). You are also invited to participate in hearings that have been scheduled on the proposed regulations. EPA will publish final regulations only after a careful review of comments, which are expected to play a major role in revising the proposed regulations

The proposed regulations are not engraved in stone. EPA is particularly interested in suggested changes which will make the programs covered by the regulations function more efficiently, make the transition to State administration smoother, and make the programs more susceptible to integration.

II. THE ADVANTAGES OF CONSOLIDATED PERMITTING

The aim of EPA's effort in consolidating permit regulations is to increase the quality of environmental protection while reducing the regulatory burden on industry and government by assuring that requirements are consistent and coordinated. Although the differing requirements of the various Acts create some irreducible differences, EPA has proposed, to the extent possible, one basic system for the processing of all permits.

Coordinating and consolidating the various permit programs fosters a more thorough awareness of all the significant waste discharges from a facility which, in turn, promotes a comprehensive approach to waste management. In the past, each permit program acted independently, without regard for how the imposition of controls affected discharges into other media. For example, NPDES limits on hazardous waste discharge may have encouraged certain facilities to dispose of these wastes into injection wells. Such practices merely shifted the problem from surface waters to underground aquifers, resulting in the contamination of drinking water supplies. EPA's effort aims toward a comprehensive residuals management through consolidated permitting.

Under the consolidated approach, those facilities which require multiple permits from EPA will be able to obtain these permits in a single process. The terms and conditions of the permits, the permit reviews, and public participation would all be based on the unified set of regulations for consolidated permitting. Moreover, the Agency has proposed to use a single application form for NPDES, RCRA, and UIC permits for any facility or source.

EPA believes that its consolidated permitting approach will encourage similar action at the State level, although consolidation by States is not required. States may apply for one program or for more than one, and they may do so at different times. At any time, a State may be administering some programs and EPA others. The proposed regulations merely facilitate consolidation to the extent that a State finds consolidation useful and feasible. Likewise, when administration of programs is divided between EPA and a State, the State may, but is not required to, enter into joint processing agreements with EPA.

III. THE STRUCTURE OF THE PROPOSED REGULATIONS

The consolidated regulations are divided into three Parts of Title 40 of the Code of Federal Regulations:

Part 122: Descriptions of the Permit Programs: NPDES, Hazardous Waste, UIC and 404

Part 123: State Program Requirements

Part 124: Procedures for Decision-Making

Each Part includes provisions which are generally applicable, as well as program-specific requirements. The general provisions are included in Subpart A of each Part. The additional requirements for each program are in the program-specific Subparts (B,C,D,E, or F).

The technical requirements and criteria for the programs are not contained in these regulations but are found elsewhere in the Code of Federal Regulations. For example, Part 122 does not specify how underground injection wells are to be constructed. These construction requirements

will be contained in 40 CFR Part 146. Nonetheless, Part 122 does require that UIC permits be written to assure compliance with these Part 146 requirements. Table I shows the relationship of these various regulations.

Part 122 generally describes the program requirements and gives definitions. The consolidated regulations use the same or consistent definitions for terms applicable to the NPDES, RCRA, UIC and section 404 programs to the extent allowed by law. For example, the term "hazardous waste", which is used in both the UIC and Hazardous Waste Management programs, is based on the definition contained in Section 3001 of RCRA. Likewise, the EPA process for applying for and issuing permits has been made consistent.

Part 123 deals with State programs. It governs the process for obtaining EPA approval of State permit programs. It also governs the process for modification and withdrawal of State programs, and the requirements for administration of State programs. Most of the administrative requirements for State programs are identified by cross-referencing requirements from Parts 122 and 124. Only those provisions of Parts 122 and 124 which are specifically cross-referenced apply to the operation of State programs.

Consolidation of program regulations does not change the requirements for State administration of the programs in any of these areas. The regulations covering each program would be substantively the same whether or not they were published in a consolidated form. Publishing them together 1) creates common formats for similar components for obtaining EPA approval for State administration (for example, the Attorney General's Statement--see below); and 2) makes integration of the programs easier.

Part 124 governs the processing of permits issued under the consolidated regulations, including the EPA administrative appeals process. The procedures for administrative appeals are not applicable to State programs; however, some of the other permit processing requirements (e.g., the formulation of draft permits, public notice and comments, fact sheet requirements, etc.) are applicable to State programs.

IV. REQUIREMENTS FOR EPA'S APPROVAL OF STATE PROGRAMS

Each of the permit programs included in the consolidated regulations may be administered by a State instead of the Federal government. This accords with the Congressional mandate of each of the Federal statutes which shows a preference for State administration of permit programs.

There is no requirement in the proposed regulations for consolidation of NPDES, Section 404, UIC, and RCRA programs at the State level. States may seek approval to administer any program independent of administration of the other programs; thus, a State may administer one or more programs while EPA (or, the Corps in the case of the section 404 program) administers the others. Even if a State has program approval for all programs, consolidation is not mandatory. However, certain States have initiated similar programs for streamlining their environmental permit approval process. This trend is expected to continue in the future, and the proposed regulations are designed to encourage State program consolidation efforts.

To obtain program authority, States must ensure that their programs will comply both with the general program requirements and the additional program-specific requirements set forth in Part 123 and summarized below.

General Program Approval Requirements

To obtain EPA's approval to administer a permit program, a State must submit an application which includes a complete description of its proposed program, copies of applicable State laws, a Memorandum of Agreement with EPA's Regional Administrator, and a statement from the State Attorney General. The program description should detail how the State intends to operate its program. It should include information on the processes, priorities, and resources for permitting, compliance monitoring and enforcement. The Memorandum of Agreement details the working relationship between the State and EPA. The State Attorney General's statement should certify that the State has adequate legal authority to operate the proposed program under State law and in compliance with applicable EPA regulations.

These regulations propose a set of minimum requirements for each program, but States may impose more stringent controls as appropriate. One exception to this principle is the hazardous waste program where the law requires that State programs be consistent with the Federal program and the programs in other States. Also, States may not ban or seriously impede the movement of hazardous waste to permitted facilities.

States are expected to devote sufficient resources to assure adequate program operation. This includes an enforcement program with at least the same authorities for insuring compliance with all program requirements as are available to EPA, including civil penalties, criminal fines and injunctive relief. In addition, the proposed regulations require States to have at least the same maximum penalties as are available to EPA.

Upon receipt of a complete submission for approval of a State program, EPA's approval process is governed by the appropriate statute. Each of these are different so there cannot be one general program approval process; however, these regulations make the processes as consistent as possible within the constraints of the different Acts. The different processes are described in each of the program Subparts.

State Hazardous Waste Management Programs

State Hazardous Waste Management programs may be granted one of two types of approval. EPA may authorize the States to operate the program on an interim basis ("interim authorization") for up to two years. During this period, States need only control off-site or on-site hazardous waste disposal facilities to qualify for conducting the program. Control of all hazardous waste disposal (both on-site and off-site), treatment and storage facilities is required for full authorization of State programs. In addition, to obtain full approval the State program must control generators and transportors of hazardous waste under the manifest program. The manifest program uses forms to track the movement and ultimate disposal of hazardous wastes.

EPA may grant interim authorization to States that currently operate hazardous waste programs under State law. State programs need to be substantially equivalent to the Federal program promulgated by EPA in 40 CFR Part 250. As a condition for granting interim authorization, EPA will require the State to prepare an "authorization plan". This plan should describe the actions that the State will take to become eligible for full authorization (e.g., adding to or modifying State programs or laws, time schedule, etc.).

To obtain full authorization, the proposed regulations require State programs to control:

- ° The same universe of hazardous wastes as covered under EPA's criteria and listings under Section 3001 of RCRA, and proposed in 40 CFR Part 250, Subpart A;
- ° Hazardous waste generators and transporters, using standards that are as stringent as EPA proposed in 40 CFR Part 250, Subparts B and C, including recordkeeping, labeling, use of appropriate containers, reporting, and management of a waste tracking system using the Federal manifest format;
- ° Treatment, storage, and disposal facilities. Such facilities must not compromise the human health and environmental standards under proposed 40 CFR Part 250, Subpart D.

State UIC Programs

Under the Safe Drinking Water Act, States identified by EPA as needing a UIC program are "listed" in the Federal Register. Currently, 40 States have been listed and all States should be listed by May, 1980.

State UIC programs are intended to impose controls on well owners and operators. These requirements will be incorporated as terms and conditions in individual or area permits, or classwide rules. In general, UIC permits and rules will include terms and conditions covering:

- ° Essential construction features of wells;

- Allowable well operating conditions;
- Specifications for monitoring and testing well operations;
- Requirements for reporting operating results;
- Corrective actions to be taken to prevent fluid migration, and compliance schedules for taking these actions;
- Right of access to well records and facilities for the permitting agency;
- Requirements concerning permit review, modification, and termination.

Underground injection wells are divided into five classes. Each class includes wells with similar functions, construction, and operating features so that technical requirements can be applied consistently to the class. States may receive approval to administer their own UIC programs regulating either all ("full approval" or "primacy") or some ("partial approval") of the wells in the State. To obtain partial approval it is not necessary for a State to regulate every type of well which falls within one of the five classes. For example, a State may be partially approved to regulate only Frasch process wells so long as the State has authority to administer the whole regulatory program with respect to that type of well. Thus, it would not be acceptable for a State to regulate the permitting of those wells, and expect EPA to handle enforcement.

When a State is approved to administer a partial program, EPA will be responsible for administering the program over the other classes

of wells or the other types of wells within a class which are not covered by the State program. (In addition, EPA will be responsible for administering the UIC program on Indian lands.) However, a State must have a fully approved program, covering all wells found within the State, in order for it to continue to be eligible for EPA grants.

State NPDES Programs

In addition to the requirements of Subpart A, State NPDES programs are governed by Subpart D requirements. These set out both the State program approval process and the operational requirements for State programs. The NPDES State program requirements contained in this proposal are the same as those contained in the recently revised NPDES regulations (44 FR 32854, June 7, 1979).

State 404 Programs

The section 404 permit program, which regulates discharges of dredged or fill material under the Clean Water Act, is operated Federally by the Corps of Engineers. However, the law allows States to apply to EPA for section 404 authority for regulating all "non-navigable" waters within the State. The specific program approval requirements and application procedures for State section 404 programs were published in Part 123 of the NPDES final regulations on June 7, 1979 (44 FR 32854) and have been incorporated in Subparts A and E of the proposed consolidated regulations. In addition, the States are required to comply with the technical requirements of 40 CFR Part 230.

The administrative requirements for State section 404 programs are now included in Subpart E (sections 123.105 to 123.112). These sections propose: permit application content requirements; conditions and requirements for permits; general permits for dredge or fill operations having minimal environmental impacts; permit program exemptions; a simplified application procedure; permit review activities including public participation requirements; emergency procedures for processing permit applications; and compliance and violation reporting requirements.

The Army Corps of Engineers retains section 404 jurisdiction over certain waters within the State (i.e., "Phase I" or "traditionally navigable" waters) even after approval of a State program as provided in section 404(g) of the Clean Water Act. Therefore, the regulations require the State to enter into an agreement with the Corps precisely defining their respective jurisdictional coverage.

V. WHEN SHOULD STATES APPLY?

For Authority to Operate Their Hazardous Waste Program Under Federal Law

States may apply to EPA for authority to operate their Hazardous Waste Management programs under RCRA after EPA has formally promulgated its section 3001 regulations defining what substances are hazardous wastes. These were proposed on December 18, 1978. Interested States are encouraged to evaluate their legislation and regulations to determine the adequacy of their existing programs. EPA will not take formal action on State RCRA applications until the section 3001 regulations are issued in final form.

For Primary Enforcement Responsibility Under the Underground Injection Control Program

Once final UIC program regulations have been promulgated by EPA, a listed State may request primacy by preparing and submitting its UIC program plan to EPA within 270 days. States listed after these regulations are final have 270 days to request primacy. The time for submission may be extended an additional 270 days for good cause. EPA must complete action on the application within 90 days. States which are not listed may apply for primacy any time after final promulgation of the consolidated regulations. EPA must establish a UIC program for any listed State that does not assume primacy.

For NPDES Operating Authority

States applying for NPDES approval may do so at any time. EPA has 90 days to make a decision regarding approval.

For Authority to Operate Section 404 Programs

States may apply at any time to EPA to conduct the section 404 program in certain waters within their jurisdiction.

Applications will be reviewed by EPA and other government agencies before a decision to approve or deny is made. EPA is limited to 120 days to make its determination whether to approve the State program.

VI. EPA RESPONSIBILITIES AFTER PROGRAM APPROVAL

Once a State receives EPA approval to conduct an NPDES, RCRA, UIC, or section 404 program, the State assumes the responsibility for insuring that all program standards and requirements are met. However, EPA retains the responsibility to oversee State programs. This includes:

- ° Taking independent enforcement action against violators of permit conditions or other program requirements;
- ° Requiring revisions in State programs to conform to changes in statutes, regulations, etc.;
- ° Withdrawing approval of State programs for good cause;
- ° Reviewing certain State-issued permits and recommending changes in permit terms or conditions, and in the case of NPDES and section 404 programs, vetoing proposed State permits which do not comply with Federal requirements.

VII. SOME APPROACHES TO STATE IMPLEMENTATION

The proposed regulations require States to meet certain minimum requirements for operating each program. Neither the proposed regulations nor EPA policies demand that States consolidate their administration of these programs. On the contrary, the proposed regulations allow State governments complete freedom either to do nothing or adapt their existing permit programs to develop innovative permitting approaches to suit needs within their jurisdictions.

A number of States already have initiated programs to coordinate and/or consolidate their environmental review and permitting activities. Some of these strive to coordinate the permitting actions of independent State agencies. Others are aimed at consolidating the State's permitting strategies and resources. Some of the more prominent examples are described below.

The Clearinghouse Approach

Several States have established clearinghouse mechanisms to simplify the application process and to coordinate action by State agencies. Permit applicants are requested to complete a master application form, which is then circulated to all participating State agencies to determine the applicant's need for various permits. Participating State agencies are given a limited time to respond and to indicate the need for hearings. A permits coordinator "funnels" information back and forth between the applicant and State permitting agencies during the decision-making period. The States of Washington, Oregon, Maryland, and California have adopted similar approaches for their permitting.

One-Stop Permit Service

To facilitate the permitting of new sources, several States have initiated "one-stop" permit service centers. These centers can be information offices located throughout the State, as in the State of Washington, or a special new projects office or siting council. Functions vary between States, but in general these one-stop centers perform the following services:

- ° Advising applicants about the permit requirements they will need to fulfill;

- ° Obtaining the necessary applications and checklists for the developer;
- ° Assisting applicants in interpreting and completing application forms and checklists;
- ° Coordinating and keeping track of State agency actions on permits to eliminate duplications;
- ° Scheduling joint agency hearings on permit applications. Notifying the public about proposed and final permit and licensing actions.

Uniform Permit Procedures

Certain States have enacted legislation which requires some or all State permitting agencies to have uniform permitting procedures, including uniform application forms, draft permit reviews, public hearings and comments, permit decision-making and appeal procedures, and time limits for agency action. The States of California, Vermont, and Maryland have recently adopted such uniform Statewide procedures.

VIII. ABOUT PUBLIC COMMENTS AND PARTICIPATION IN HEARINGS

EPA welcomes public comments on the proposed consolidated regulations. Please forward them by September 12, 1979, to:

Edward A. Kramer (A-2)
Permits Division (EN-336)
401 M Street, S.W.
Washington, D.C. 20460

EPA is interested in assuring that the proposed consolidated permit regulations are subject to public scrutiny and comment. In many ways the proposed regulations attempt to strike a balance between the specific goal of the individual programs with the goal of developing uniform requirements. Many issues are left unresolved or were resolved knowing that public reaction would be crucial to formulation of a final position. The Agency is interested in receiving comments on all aspects of these regulations including their overall form and structure, areas where further consolidation could be beneficial, areas where consolidation went too far, and areas where consolidation results in confusion. People interested in submitting comments should read both the regulations themselves and the preamble discussion accompanying them.

The public is also invited to participate in hearings that have been scheduled on the proposed consolidated regulations during July. The hearings will also be on the proposed consolidated application form and the technical standards for the UIC program (40 CFR 146). They will be held in Dallas, Chicago, Seattle, and Washington, D.C. For further details, contact Ms. Judy Shaffer at the above office, telephone 202-755-0750. Comments and hearings will play a major role in determining the shape of the final regulations.

