

June 1979

C-3



A Guide to 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. The proposed regulations were published in the Federal Register on June 14, 1979.

TO OBTAIN COPIES OF THE REGULATIONS OR GUIDES

Write to:

U.S. Environmental Protection Agency
Public Information Center (PM 215)
401 M Street, S.W.
Washington, D.C. 20460

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A GUIDE TO PROPOSED CONSOLIDATED PERMIT REGULATIONS

"The Nations's investment in environmental cleanup must have the incentives and flexibility to allow our most important environmental goals to be achieved at the lowest cost. Unnecessary requirements which cause delays and increase costs will be removed. EPA will simplify and consolidate its permit programs to reduce paperwork, red tape and delays."

-- President Jimmy Carter, The
State of the Union Annual
Message to Congress, January
25, 1979

I. INTRODUCTION

EPA administers several major permit programs to control the disposal of various waste materials into the environment. Other permit programs are not currently in operation but will be initiated shortly. Each of these programs is established by separate statutes and accomplish their environmental goals in differing ways. If administered independently, these programs could overlap in their jurisdiction over the same facility, leave gaps or duplicate their coverage of regulated activities. After studying the relationships of these programs, EPA concluded that management economies and environmental benefits can be realized through greater coordination of its various permitting activities. The proposed consolidated permit regulations are intended to realize some of these benefits. They consolidate, to the extent possible, the regulations governing issuance of permits under five separate permit programs.*

*The substantive technical criteria and standards for the programs are unaffected. See summary in Table I.

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 issue permits, six months after regs are final
Underground Injection Control Program	UIC	well injection/protection of drinking water aquifers	Yes	Yes	Yes	Safe Drinking Water	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	Partly	Yes	No	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, do not apply 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)

The five programs covered by the regulations are listed below:

1) The Hazardous Waste Management Program (HWM), under the Resource Conservation and Recovery Act (RCRA), regulates the generation, transportation, and treatment, storage or disposal of hazardous waste;

2) The Underground Injection Control Program (UIC), under the Safe Drinking Water Act (SDWA), regulates underground injections into wells which could affect drinking water supplies;

3) The National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act (CWA), regulates the discharge of wastewater into surface waters of the United States;

4) The Dredge or Fill Program ("404 program"), under Section 404 of the Clean Water Act (CWA), regulates the discharge of dredged or fill material into waters of the United States; and

5) The Prevention of Significant Deterioration Program (PSD), under the Clean Air Act (CAA), regulates discharges of air pollutants and requires permits for new sources located in "attainment" areas.

As a result of the efforts of the EPA Permits Consolidation Task Force in the fall of 1978, the Agency concluded that coordination and consolidation of its permitting activities could produce significant benefits to the Agency and the public. The first major undertaking by the Agency consistent with the Task Force's recommendations was the development of the consolidated permit regulations. The proposal of these regulations, which appeared on June 14, 1979 in the Federal Register, Part II, (44 FR 34244), was the culmination of considerable Agency effort.

This Guide is intended to introduce you to the consolidated regulations, to discuss some of their principal features, and to encourage public comments.

In the same issue of the Federal Register (Part III), EPA has proposed a unified application form which will cover EPA permitting for all of these programs except the 404 program, for which the Corps of Engineers is the Federal permitting authority. (The proposed form appears along with proposed changes to the existing NPDES regulations. These changes are separate and not reflected in the NPDES regulations as they appear in the proposed consolidated regulations.) The consolidated application form is part of the same effort as the consolidated permit regulations, but only the consolidated regulations are discussed here. For details on the consolidated application form, a similar pamphlet entitled, "A Guide to the Consolidated Permit Application Form" (C-7) can be obtained from EPA as described inside the back cover of this Guide.

Table II outlines the organization of Parts II and III of the June 14 proposals in the Federal Register.

TABLE II

ORGANIZATION OF PARTS II AND III OF THE
FEDERAL REGISTER OF JUNE 14, 1979

Part II: Proposed Consolidated Permit Regulations

	Page
Preamble	34244
Regulations	34267

Part III:

A: Public Notice of Draft Consolidated Permit Application Form

	<u>Page</u>
Preamble	34346
Forms	34351
Instructions	34366

B: Proposed NPDES Regulation Controlling the Discharge of Toxic Pollutants

	<u>Page</u>
Preamble	34393
Regulations	34414

The format for the consolidated regulations is divided into three Parts of Title 40 of the Code of Federal Regulations (CFR):

- Part 122: Program Descriptions
- Part 123: State Program Requirements
- Part 124: Procedures for Decision-Making

Each Part has a general Subpart A which contains requirements that apply to all the programs. Additional Subparts supplement these general provisions with requirements which apply only to one of the programs. This use of Subparts illustrates the fact that, although the regulations have been consolidated to the extent possible, complete unity cannot be achieved -- because of the differing requirements of the statutes which these regulations implement and the differing kinds of pollution problems which they address. Other examples of incomplete unification appear in differences between Parts. Thus, the PSD program appears only in Part 124 because only EPA processing of PSD permits has been consolidated; the PSD permit program and the provisions for its administration by States remain separate from the programs consolidated in Parts 122 and 123; and, consequently, the general Subpart A in each of those two Parts does not apply to the PSD program either. Similarly, Part 124 has no 404 program Subpart because on the

Federal level the 404 program is administered by the Corps of Engineers and is not subject to EPA procedures applicable to other programs. However, certain requirements of Part 124 have been made applicable to State administration of 404 programs by incorporating them into the 404 section (Subpart E of Part 123.

II. THE RATIONALE FOR CONSOLIDATION

These proposed regulations are an important element of an ongoing Agency effort to consolidate and make uniform the procedures applicable to EPA-administered permit programs and the requirements for State assumption of permit administration. They follow the recommendations of the Permits Consolidation Task Force which began work in October, 1978. Other consolidation possibilities are under consideration and may be implemented in the future. Expected benefits from this effort include:

- ° Environmental benefits through more comprehensive management and control of wastes or residuals, and elimination of gaps in managing these wastes.
- ° Reduced burden on the regulated community through elimination of overlapping or duplicative informational or regulatory requirements.
- ° Institutional and resource benefits within EPA -- and, optimistically, State Permit issuing authorities -- through more efficient use of personnel and more comprehensive environmental analyses.

On the other hand, consolidation will NOT do the following:

- ° It will not require States to consolidate or reorganize their permitting procedures --

although it now may be easier for them to do so if they wish.

- ° It will not make the permitting programs identical in the ways they are administered -- but States coming to EPA for program authority will now have available a more uniform and accessible procedure for requesting and assuming permitting responsibilities.
- ° It will not make substantive environmental requirements easier to meet -- although it will, we hope, make them clearer and more consistent.
- ° It will not make the procedure for EPA permitting simple -- but it will make it possible to learn one set of procedures for most dealings with EPA.
- ° It will not necessarily enable one-stop permitting in all cases, since in most instances one or more of the programs will still be administered Federally while others will be administered by the State -- but provision for joint Federal/State processing of permit applications should enable joint processing in many cases.

Environmental Benefits

A frequent shortcoming of pollution control programs has been that the solution to one pollution problem resulted in the creation of another one somewhere else -- either by dumping the pollution in someone else's backyard or by disposing of it in one medium, such as an open dump, rather than another, such as the air. The various permit programs that have been established to abate pollution have not all been implemented at the same time. As a result there have been gaps in coverage. With the publication of the consolidated regulations, some of these gaps will be filled. An integrated approach to

permitting discharges into the environment is now possible. For example, NPDES discharge limits imposed independently may have encouraged certain facilities to dispose of their wastes into injection wells, which could merely shift the problem from surface waters to underground aquifers. Through consolidated permitting, the UIC program can control its injection to prevent underground leakage into drinking water sources, while the NPDES program continues to regulate discharges into surface waters.

In addition to closing loopholes, consolidation of permitting programs provides an opportunity to harmonize the programs and make them consistent, rational, and integrated. Where review of permit applications for discharges into each medium is done independently, there is potential for ineffective and contradictory control over the same facility. When the review of all permit applications for a given facility is coordinated, the various control options and trade-offs can be considered, and more beneficial control requirements imposed. Although coordination is constrained by statutory requirements limiting the choice of certain trade-offs between programs, the integrated approach to permitting can often reap benefits. For example, the burden of complying with RCRA requirements for safely disposing of hazardous wastes might cause some disposers to avoid those requirements by injecting the wastes underground without regulation. This would be possible because control of underground injection is not required until EPA "lists" a State under the Safe Drinking Water Act as needing a UIC program. Some States might therefore still allow unregulated well injection at a time when RCRA requirements were applied. One benefit of the consolidation effort is that this inconsistency in timing has been detected and EPA is moving to list the remaining States as needing UIC programs by 1980 when State RCRA programs are expected to begin operating.

Reduction in Regulatory Burden

From the standpoint of the regulated community, the costs of applying for EPA permits can vary depending on whether the information for all permit requirements is collected and reported together, or on several different and possibly duplicative application forms. The future use of a single application form for EPA-issued permits should reduce the paperwork and increase efficiency in processing permits. Consolidation of procedural requirements, such as during the issuance of draft or final permits, or by providing for joint processing when permitting is divided between a State and EPA, can be followed when efficiencies would result. Access to the regulations will be easier since they will be published in one place, and the consolidated format for the regulations should make it easier to locate and understand the basic procedural requirements of all programs. One-stop permitting and total waste stream review should make it less likely for applicants to be caught between conflicting pollution abatement and control requirements.

Institutional and Resource Benefits

From the standpoint of the EPA, limited resources and staff can be used more effectively if programs are coordinated and duplication eliminated. EPA has recently provided a single point of contact within the Agency for new source permit processing. By October, 1979, the Agency will also be establishing centralized permit-writing units in EPA Regions. Permitting of the approximately 70,000 dischargers under the NPDES program, the estimated 30,000 permittees under the RCRA program, the estimated 500 major and thousands of minor and area permittees under the UIC program, and EPA permitting under the PSD program can thus proceed more efficiently under coordinated procedures by the same processing unit. Another institutional benefit is realized through

greater communication between various programs which up to this point have operated somewhat independently of each other.

III. RELATION TO OTHER REGULATIONS

The proposed consolidated regulations do not include the technical criteria used by permit writers in establishing permit terms and conditions. While they describe the permit system in detail, including a description of how terms and conditions are derived, each of the programs has additional regulations governing technical requirements. For example, the consolidated regulations specify that, under the NPDES program, dischargers must achieve, at a minimum, certain technology-based levels of waste treatment. However, these regulations do not specify what this minimum level of treatment is for any given discharger. The effluent limitations guidelines contained elsewhere in the Agency's regulations (40 CFR Subchapter N) specify, for given industrial categories or subcategories, what level of treatment is required. Likewise, other Parts of the CFR specify such things as construction and operation requirements for injection wells (40 CFR 146), testing methods and criteria defining what wastes are "hazardous" (40 CFR 250) and criteria for judging whether certain discharges of fill material are acceptable (40 CFR 230). Basically, the consolidated regulations specify the procedural requirements for obtaining permits, but not the technical terms of those permits.

IV. STRUCTURE OF THE REGULATIONS

The consolidated regulation will be incorporated into three Parts of Title 40 of the Code of Federal Regulations. Part 122 generally describes the programs and the permit system. Part 123 governs the minimal requirements for State programs as well as the process for approval, modification and withdrawal of State programs by EPA. Part 124 includes the procedural requirements for permit processing and for appealing permit decisions.

Citizen's Guides for the programs covered by the consolidated regulations have been prepared. Persons interested in a detailed description of a particular program should consult the appropriate Guide (see back cover). The following will concentrate on the requirements shared by all programs covered in the Part under discussion.

Part 122: Program Descriptions

Subpart A of Part 122 provides both general and program-specific definitions for the EPA administration of RCRA hazardous waste, SDWA underground injection control, and CWA NPDES programs. In addition, all Subparts of Part 122 describe basic program requirements for these three programs, including application requirements, standard permit conditions, permittee monitoring and reporting requirements and other requirements. Both the general Subpart (A) and the appropriate individual Subpart must be consulted for a full description of any program.

Certain of these requirements are made applicable, as indicated in Part 123, to State programs which operate in lieu of EPA programs after receiving EPA approval. In the case of section 404, State programs take over dredge or fill permitting authority from the Corps of Engineers in waters that are not traditionally navigable (so-called "Phase II and III waters").

Consolidation of the definitions makes it possible, in some cases, to provide common definitions for the four programs; where this is not possible, differences in the definitions can be highlighted. For example, the term "Underground Drinking Water Source" appears in both the UIC and RCRA programs, and a single definition is given.

Part 122 specifies the basic requirements for the writing of permits that are applicable to all three EPA programs. The following are discussed:

- ° the duration of permits;
- ° the grounds upon which EPA may act to modify, revoke and reissue, or terminate permits;
- ° conditions applicable to all permits;
- ° requirements for schedules of compliance to be written into permits to ensure that statutory deadlines for pollution control are met; and
- ° requirements for monitoring and reporting.

Each of the individual Subparts may require additional, program-specific elements in any of the above areas. For example, the HWM Subpart divides permit application information requirements into two parts so that existing facilities may qualify for "interim" compliance status under RCRA. The other programs do not divide their permit information submissions in this way. As another example, the UIC Subpart divides injection wells into five classes and sets forth differing permit requirements for each. The overlap between RCRA and UIC, occurring when "hazardous wastes" are injected, is covered by regulating the wells under UIC, but imposing additional RCRA-derived requirements (e.g., closing the manifest cycle) through the UIC Subpart. This is the kind of harmonizing of different statutory programs which is seen as a principal benefit of consolidation of permit regulations.

Part 123: State Program Requirements

Each of the Federal statutes establishing the permit programs covered by the consolidated regulations contains a clear preference for

allowing the States to administer the programs in lieu of EPA (or, in the case of 404 programs, in lieu of the Corps of Engineers). Part 123 describes what States must do in order to obtain approval of their programs by EPA and the minimal requirements for administering their programs after getting approval. Likewise, the process for revising and withdrawing State programs is contained in Part 123.

An application for program approval must be submitted by the Governor of the State and must contain:

- ° a complete description of the State program;
- ° copies of program forms;
- ° copies of State statutes and regulations;
- ° an Attorney General's Statement (certifying that the State program is valid under State law and meets Federal requirements); and
- ° a Memorandum of Agreement with the Regional Administrator outlining the relationships between EPA and the State after program approval.

State 404 programs must also include a Memorandum of Agreement with the Corps of Engineers defining their respective program responsibilities (this agreement is necessary since Section 404(g) of the Clean Water Act says that the Corps retains 404 permitting authority over certain waters even after State program approval). Each of the Federal statutes provides for a different process for EPA review and approval of State programs, detailed in the individual Subparts.

The requirements for the administration of State permit programs after EPA approval are also contained in Part 123. These requirements are, for the most part, imposed on States by cross-referencing applicable Sections of Parts 122 and 124. Generally speaking, States are free to impose more stringent requirements than those specified by EPA. (One exception to this is certain aspects of the hazardous waste program, i.e., States may not ban the importation of hazardous waste nor may they adopt requirements inconsistent with the Federal or other approved State programs.) Only those sections of Parts 122 and 124 which are cross-referenced in Part 123 are applicable to State programs.

Subpart E of Part 123 contains all the unique requirements for State 404 programs. Since EPA never processes 404 permits, but only approves State assumption of 404 authority, it was decided to include all the unique requirements for State 404 programs, including program descriptions and procedures for decision-making, in one Subpart. Thus, Subpart E contains provisions on who must apply for permits, what terms and conditions are to be included, permit review by the public and other government agencies, and the general permit program.

States are expected to maintain enforcement programs to assure compliance with State program requirements. This includes both a program of compliance monitoring to detect violations of permit terms and requirements and the ability to act on violations that are detected. The proposed regulations would require States to have at least the same legal sanctions for permit violations available under State law as are available to EPA.

Each of the Federal statutes provides for different sanctions, and consequently the requirements for the States vary between the programs.

Generally, States should be able to impose civil penalties and criminal fines, and seek injunctive relief. The maximum penalties and fines recoverable by the State must be at least the same as the maximum amounts recoverable by EPA. In addition, each of the Federal statutes involved gives EPA enforcement rights even after approval of a State program.

Part 124: Procedures for Decision-Making

This Part establishes the procedures for EPA issuance of NPDES, RCRA, UIC, and PSD permits. Some of these procedures, particularly those affording basic public participation, are also made applicable to State programs (including the 404 program) through inclusion in Part 123. In general, after a person requiring a permit files an application, a draft permit is prepared accompanied by a "statement of basis" (or a more detailed "fact sheet" for major facilities or where the draft permit is the subject of widespread public interest or raises major issues) explaining the terms and conditions in the permit and any major issues. This information is designed to provide the public with what it needs to decide whether to make comments during the 30-day "comment period" or to request a hearing. Issues not raised during the comment period are not subject to administrative or judicial appeal. If there is sufficient interest, a public hearing is held under procedures set forth in detail in this Part. After the close of the comment period a final permit is issued (including responses to all comments) with notice to affected parties, who then have 30 days to appeal the terms of the permit to the Administrator of EPA. All permit decisions are made on the basis of an "administrative record" which insures that all information considered is identified and publicly available for comment. Only after this appeal has been exhausted may relief be sought in the courts.

Part 124 provides that permit processing can be consolidated when the permits are submitted, when draft permits are issued, when public hearings are held, and when final permits are issued. Likewise, when both a state and EPA must act on permit applications, provisions are made to facilitate joint processing and cooperation. Similarly, when an applicant needs two or more permits under NPDES, RCRA or UIC it may wait up to 180 days (or 2 1/2 years upon permission) to consolidate its filings. Administrative appeals of RCRA, UIC or PSD permits can also be consolidated; and issues raised concerning these programs can be consolidated when either evidentiary or panel hearings are requested under the NPDES program as well. (Panel hearings are non-adversarial hearings applicable only to initial permitting of NPDES facilities; see "A Guide to New Regulations for NPDES" (C-1).) Consolidations by EPA are always optional upon a determination that efficiencies would result. Likewise, States are not required to consolidate their procedures.

V. PUBLIC COMMENTS

EPA is now 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 goals 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 (See Table II).
Copies of the proposed regulations may be obtained
from:

U.S. Environmental Protection Agency
Public Information Center (PM-215)
401 M Street, S.W.
Washington, D.C. 20460

Public comments on the proposed regulations
will be accepted for a 90-day period ending
September 12, 1979. Comments should be sent
to:

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

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.

ABOUT THIS GUIDE

This Guide is one in a series of pamphlets which describe various EPA permit programs. The full series includes:

- . A Guide to New Regulations for NPDES (C-1)
- . A Guide to the Underground Injection Control Program (C-2)
- . A Guide to Proposed Consolidated Permit Regulations (C-3)
- . A Guide for States on Proposed Consolidated Permit Regulations (C-4)
- . A Guide to the Hazardous Waste Management Program (C-5)
- . A Guide to the Dredge or Fill Permit Program (C-6)
- . A Guide to the Consolidated Application Form (C-7)

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