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A Guide to the Consolidated Permit Regulations



ABOUT THE NEW CONSOLIDATED PERMIT REGULATIONS

This Guide discusses the major purposes and significant features of the new final regulations consolidating the procedures which govern the processing of permits under the:

- o Hazardous Waste Management Program
- o Underground Injection Control Program
- o National Pollutant Discharge Elimination System
- o Section 404 (Dredge or Fill) State Programs
- o Prevention of Significant Deterioration Program

These regulations were published in the Federal Register in May 19, 1980. (45 F.R. 33290)

This Guide updates the Guide to the Proposed Consolidated Permit Regulations that was published in June 1979. (See the back cover of this pamphlet for more information on additional materials available on the final consolidated permit regulations.)

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A GUIDE TO THE CONSOLIDATED PERMIT REGULATIONS

I. INTRODUCTION

This guide discusses EPA's new final consolidated permit regulations that were published on May 19, 1980 in the Federal Register. Proposed consolidated permit regulations were published on June 14, 1979 (44 F.R. 34244).

MAJOR PURPOSES

o More effective environmental management

EPA is responsible for administering various permit programs, each of which is aimed at controlling a specific set of environmental problems. In many cases, however, a single industrial facility may require permits under more than one EPA permit program. In the past, different EPA staff have developed individual program requirements, and have reviewed permits for the same source separately. As EPA begins to implement three new programs -- Hazardous Waste Management, Underground Injection Control, and State 404 programs -- in addition to the existing regulatory programs, however, it has become essential to coordinate the development of permit program requirements and the review of permits wherever possible. Without this coordination, there would be great potential for ineffective and contradictory controls under the different programs. The regulations establish a framework which enables EPA to review and process multiple permits for the same facility or activity at the same time, and according to the same procedures.

o Reduction in the Regulatory Burden

The costs to the regulated community of applying for EPA permits can vary significantly, depending on the amount of information required to be submitted, the procedures for processing permits, and the time required to obtain permits. EPA has attempted to cut some of these costs by developing a standard permit application form for all of its permits programs, and by streamlining the procedures for processing permits. Where a

single facility or activity needs more than one EPA permit, EPA will collect all standard information on a single application form. The consolidated permit regulations also standardize the steps involved in processing permits, so that permittees do not have to learn different procedures for different permit programs. These uniform procedures will also enable EPA to process multiple permits for the same facility together, which should result in more consistent control requirements and could save time and money for industry.

o More effective use of Agency resources

Limited Agency resources can be used more effectively if permits are processed according to uniform procedures by the same permit processing staff. If the implementation of new permit programs is coordinated with existing programs, the incremental cost of administering the newer programs may be less than if the new programs were implemented independently. EPA has already provided a single point of contact within the Agency for new source permit processing. Centralized permit processing units are also being established in EPA's Regional offices. The consolidated permit regulations should enable more efficient and cost-effective use of EPA's resources to administer its permit programs.

PROGRAMS COVERED

These regulations consolidate requirements for the following five programs under four Federal environmental laws:

- o the Hazardous Waste Management (RCRA) program under the Resource Conservation and Recovery Act (RCRA);
- o the Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA);
- o the National Pollutant Discharge Elimination System (NPDES) program under the Clean Water Act (CWA);

- ° the Prevention of Significant Deterioration (PSD) program of the Clean Air Act (CAA), but only where EPA is the permitting authority and only to specify permit procedures; and
- ° State section 404 (Dredge or Fill) programs under the Clean Water Act (CWA).

ORGANIZATION

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

Part 122: EPA-Administered Permit Programs: NPDES, Hazardous Waste, and UIC

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).

Part 122 generally describes basic permit requirements and gives definitions for the RCRA, UIC and NPDES programs. Definitions are also provided for the 404 program. Part 122 establishes requirements for permit applications, permit duration, causes for modification or termination of permits, standard permit conditions, and other program requirements. Some of these these procedures are also made applicable to State programs, and are so identified both in Part 122 and Part 123.

Part 123 deals with State programs. It governs the process for obtaining EPA approval of State RCRA, UIC, NPDES and 404 programs, procedures for modification of State programs and for withdrawal of EPA program approval 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 listed in Part 123 apply to the operation of State programs.

Part 124 establishes the procedures for EPA processing 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) and are so identified both in Part 124 and in Part 123. This Part enables EPA to consolidate the processing of two or more permits required for the same facility or activity. Likewise, when both a State and EPA must act on permit applications, the regulations encourage joint processing and cooperation.

RELATION TO OTHER REGULATIONS

The consolidated permit regulations are basically procedural in nature. They do not include the technical criteria used by permit writers in establishing permit conditions. Each program has additional regulations governing these technical requirements. Table I lists these other regulations. (See page 6).

Proposed consolidated permit regulations and draft permit application materials were published in the Federal Register on June 14, 1979. The final regulations incorporate a number of changes resulting from comments received during the public comment period that ended on September 12, 1979. (See 44 F.R. 34244).

The consolidated permit regulations incorporate and take the place of final regulations for the NPDES program that were promulgated on June 7, 1979 as 40 CFR Parts 122, 123 and 124 (44 F.R. 32854).

TABLE I: Coverage and Format

Name	Abbrev.	Coverage	Consolidated in			Act	Technical Requirements
			122	123	124		
Hazardous Waste Management Program	RCRA	generation, transportation, treatment, storage, disposal of hazardous waste	Yes	Yes	Yes	Resource Conservation & Recovery Act (RCRA) 42 USC §6901	40 CFR 260-266
Underground Injection Control Program	UIC	well injection/ protection of drinking water aquifers	Yes	Yes	Yes	Safe Drinking Water Act (SDWA) 42 USC §300f	40 CFR 146
National Pollutant Discharge Elimination System	NPDES	discharge of wastewater into waters of the U.S.	Yes	Yes	Yes	Clean Water Act (CWA) 33 USC §1251	40 CFR 125, 129, 133, & Subchapter N
Dredge or Fill Program	404	discharge of dredged or fill material into waters of U.S.	Partly	Yes	Partly	Clean Water Act (CWA) 33 USC §1251	40 CFR 230
Prevention of Significant Deterioration	PSD	emission of pollutants from sources in clean air areas	No	No	Yes	Clean Air Act (CAA) 42 USC §7401	40 CFR 52

II. MAJOR CONCEPTS OF CONSOLIDATED PERMITTING

STREAMLINED PERMITTING

The consolidated permit regulations and consolidated application forms provide a framework for processing multiple EPA permits for the same facility or activity together. Applicants need only provide standard standard information once on a single form; information needed for specific program considerations is collected on forms that have been developed for each program. Where appropriate, EPA will consolidate draft permits, public notices, public hearings and administrative records for the permits needed for the facility or activity. By consolidating review of the various permits, both EPA and the public will have an opportunity to make a comprehensive assessment of necessary environmental controls. This should result in more consistent and efficient control requirements for the regulated facility or activity.

The regulations also provide for expedited permitting under certain circumstances. Where no comments are received during the public comment period on a draft permit, a permit may become effective immediately upon issuance of the final permit instead of the usual 30 days after issuance. In addition, EPA will prepare a "project decision schedule" for permit applications for major new facilities, setting target dates for the processing of the permit. This schedule should help both industry and EPA to plan more accurately for the construction and operation of the facility.

FIXED TERM PERMITS/PERMIT AS A SHIELD

Most permits under the consolidated permit regulations are issued for fixed terms, and are subject to periodic review and reissuance. This approach provides greater certainty to the permittee that permit requirements will not change significantly during the permit term, while at the same time allowing for periodic review and revision to reflect changing needs and technological developments. All RCRA and Class I UIC permits, NPDES, and 404 will be issued with maximum five or ten year terms under section 122.9. Class II and III UIC wells may receive permits for up to the

life of the facility. EPA-issued fixed-term NPDES, 404, RCRA, and Class I UIC permits offer several advantages to permittees: First, these permits are not subject to open-ended upgrading to meet new standards during the permit term. Only where the permittee requests modification to reflect new EPA standards will such modifications be made, except under limited circumstances for NPDES and 404 permits. Any adjustments of this nature will normally be made at the time of permit reissuance. Second, EPA-issued fixed-term permits also protect a complying permittee from enforcement against the requirements of RCRA or SDWA, except for imminent hazard actions under section 7003 of RCRA. Because Class II and III UIC wells are not otherwise subject to regular review proceedings, these permits may be modified to reflect new technical standards, and do not operate as a shield for purposes of enforcement.

EPA AND THE STATES

The consolidated permit regulations establish requirements for State programs which can be approved by EPA to operate the RCRA, UIC, NPDES and 404 programs if they meet certain criteria. Each of the Federal statutes establishing these programs 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 Army Corps of Engineers). The consolidated permit regulations establish minimum requirements for obtaining EPA approval of State programs.

Consolidation of program regulations does not change the requirements for State administration of the programs. Publishing them together creates common formats for State program submissions and should encourage State efforts to make permit programs more efficient if a State wishes to undertake these activities. There is no requirement in the regulations, however, for consolidation of RCRA, UIC, NPDES or 404 programs at the State level. Certain States have initiated similar programs for streamlining their environmental permit approval process, and the consolidated permit regulations are designed to encourage additional efforts in these and other States. The regulations are also designed to encourage coordination of permit processing activities between EPA and one or

more State agencies, particularly where the same facility needs both Federal and State permits.

THE ROLE OF THE PUBLIC IN CONSOLIDATED PERMITTING

EPA is committed to providing the public with opportunities to participate in permit program decision-making. The consolidated permit regulations strengthen this commitment by establishing predictable points of public involvement under any of the covered permit programs. These opportunities for public involvement include:

- o Commenting on draft permits
- o Participating in public hearings on permits
- o Appealing EPA permit decisions
- o Commenting on State programs prior to EPA approval
- o Bringing citizen suits against permittees to enforce permit conditions or against EPA for failure to comply with a statutory requirement
- o Notifying EPA of permit violations, or of other potential violations

III. WHAT CONSOLIDATION WILL NOT DO

Consolidation will NOT do the following:

- o It will not require States to consolidate or reorganize their permitting functions -- although it now may be easier for them to do so if they wish.
- o It will not make the 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 responsibilities.

- o It will not make substantive environmental requirements easier to meet -- although it will, we hope, make them clearer and more consistent.
- o It will not make the process for obtaining an EPA permit simple -- but it will make it possible to learn one set of procedures for most dealings with EPA.
- o 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.

IV. THE CONSOLIDATED PERMIT PROCESS

The consolidated permit regulations specify procedures which must be followed by applicants, EPA and States for processing permits. States are required to follow EPA's procedures for draft permits, fact sheets, public notice, public comment and responding to these comments. States are not required to follow EPA procedures for maintaining an administrative record or for administrative appeals. State law governs the process for administrative appeals.

Charts depicting the basic permit process, and EPA procedures for permit appeals are shown on Figures 1 and 2 respectively (see insert).

WHO MUST APPLY FOR A PERMIT?

Because each permit program is aimed at a different (but often related) type of environmental problem, the requirement to obtain a permit under each program varies according to the Federal statutory requirements:

Under the NPDES program, any owner or operator of a source that discharges pollutants into the waters of the United States must have a permit. However,

certain sources are not required to obtain an NPDES permit, including:

- o Irrigation return flows
- o Vessels when being used for transportation (non-transportation uses of vessels may require a permit)
- o Discharges of dredged or fill material which are regulated by section 404 of the Clean Water Act
- o Agricultural and silvicultural operations producing pollutants through runoff. (Permits are required for discharges from concentrated animal feeding operation, certain fish farms, aquaculture projects, and certain silvicultural activities.)

Under the Hazardous Waste Management Program, any person who owns or operates a facility for the treatment, storage or disposal of hazardous waste must have a permit.

Under the Underground Injection Control Program, five classes of wells are regulated either by permit or rule:

- Class I: (1) wells which inject hazardous waste, other than Class IV wells.
(2) other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing an underground source of drinking water within one quarter mile of the well bore.
- Class II: wells which inject fluids in connection with oil and gas production, but not including the storage of gas.
- Class III: wells which inject fluids for the extraction of minerals or energy.

- Class IV: wells used to dispose of hazardous wastes or radioactive wastes into or above a formation which contains an underground source of drinking water within one quarter mile of the well.
- Class V: injection wells not included in Classes I, II, III, or IV, including wells used to store gas.

Under State Section 404 (Dredge or Fill) programs, any discharge of dredged or fill material into the waters of the United States, other than in waters that are actually used or are susceptible to use for transportation of water-borne commerce and their adjacent wetlands (the Corps of Engineers retains exclusive jurisdiction over these waters), requires a permit unless it falls within the exceptions provided under section 404 of the Clean Water Act.

Under the Prevention of Significant Deterioration Program, a permit is required for any new major emitting facility in an area which is meeting any national ambient air quality standards and the facility emits or has the potential to emit more than 100 or 250 tons (depending on source category) per year of any air pollutant.

WHAT MUST AN APPLICANT SUBMIT?

Applicants must submit an appropriate State or EPA application form. EPA has developed a new set of permit application forms, as a part of the Agency permits consolidation initiative. Form 1 will be used for any RCRA, UIC, NPDES or PSD permit issued by EPA. Forms 2 through 5 collect information specific to these individual permit programs, and must be completed as appropriate depending on the nature of the applicant's facility or activity. Forms 1, 2b, 2c and 3 were published in the Federal Register on the same date as the consolidated regulations were published. They are currently available. The remaining forms are being developed and will be published in the Federal Register and made available for use in 1981. A complete list of the consolidated permit application forms follows, including highlights on forms that are presently available:

- Form 1 - RCRA, UIC, NPDES and PSD permits
This form requires identification of the applicant and general information (including the use of maps) showing the various pathways by which the facility releases pollutants to the environment. This will promote a unified examination of the applicant's total residual waste stream. This form also helps the applicant determine which additional forms to submit.
- Form 2a - NPDES Publicly Owned Treatment Works
- Form 2b - NPDES Animal Feedlots
This is a special simplified form to be used by animal feedlots and fish hatcheries to apply for NPDES permits. (In most cases, small facilities are exempted entirely from NPDES permit requirements.)
- Form 2c - NPDES Existing Industrials
All existing (currently discharging) industrial dischargers seeking to renew their NPDES permits must submit this form. The form requires information on the applicant's water discharge operations, and requires applicants in 34 industries to test their process wastewater discharges for some or all of a list of 129 toxic pollutants (according to a table in the instructions). This will help EPA and applicants identify and control the toxic pollutants.
- Form 2d - NPDES New Industrials
- Form 3 - RCRA facilities
This form ("Part A" of RCRA application) will be used by facilities that treat, store or dispose of hazardous waste to obtain interim status under RCRA and

to apply for RCRA permits. Information requested on this form includes identification of all hazardous wastes handled by the facility, an estimate of the amount of wastes, and the methods used to handle the wastes. EPA will require facilities having interim status to submit additional information ("Part B") to apply for a permit. Because narrative information is required for Part B, EPA has not developed a form; but the requirements are listed in 40 CFR Part 122 Subpart B.

Form 4 - UIC injection wells

Form 5 - PSD sources

WHERE SHOULD THE APPLICATION BE SENT?

If EPA is the permitting authority, applications should be filed with EPA's appropriate Regional Office. Where the State has an approved RCRA, UIC, NPDES or 404 program, applicants should use State forms and submit them to the appropriate State agency. Notice of EPA approval of a State program will be published in the Federal Register.

THE ROLE OF THE PUBLIC IN PERMIT DECISIONS

The public has a number of opportunities to become involved in permit decision-making. The major points in the process which affect the public are described below and in Part 124 of the consolidated permit regulations. Figures 1 and 2 also depict the procedures for permit processing and appeals.

DRAFT PERMITS (§124.6)

When EPA or an approved State receives an application that meets requirements, it may tentatively decide

to deny the permit application or prepare a draft permit. Both actions are subject to public review.

Draft permits can also be used to modify, terminate, or deny a permit, or to issue an NPDES or 404 general permit.

FACT SHEET OR STATEMENT OF BASIS (§124.7, 124.8)

EPA is required to prepare a fact sheet or statement of basis for each draft permit. A fact sheet is required for draft permits covering major RCRA, UIC, NPDES or 404 facilities or activities, those having widespread public interest, or those which raise major issues. In addition, 404 and NPDES general permits and NPDES draft permits incorporating a variance require fact sheets. The fact sheet provides an explanation of how the draft permit conditions were developed. States are also required to prepare fact sheets under §123.7. A statement of basis is required for all other permits. It presents, in less detail, the legal and technical bases for the permit limits. States are not required to prepare statements of basis.

Both the statement of basis and the fact sheet are important components of EPA's administrative record. These documents may be sent to the applicant, interested State and Federal agencies, and on request to the public.

THE ADMINISTRATIVE RECORD (§124.9)

The regulations require EPA to rely on the official file, called the administrative record, to develop permit conditions. The administrative record includes the application, any required State certification, draft permit, statement of basis or fact sheet, supporting documents, and correspondence. The record is open to the public for inspection and copying. These administrative record requirements are not imposed on the States, because they follow their own established procedures.

PUBLIC NOTICE REQUIREMENTS (§124.10)

The regulations require EPA and the States to notify the public regarding proposed permit actions, including: preparation of a draft permit; public hearings relating to any permit action; EPA NPDES new source determinations; and certain other permit actions.

PUBLIC COMMENT AND HEARINGS (§§124.11; 124.12; 124.14)

The public notice must provide interested persons with a minimum of 30 days to comment on the draft permit or 30 days notice before a hearing.

The regulations require that a public hearing be held whenever, on basis of request, substantial public interest is shown. In addition, the permit-issuing authority may schedule a hearing on its own initiative (§124.12).

For EPA-issued permits, public comment takes on added significance under the new regulations. All parties, including applicants, are now required to raise objections or provide relevant information at public hearings or by the close of any public comment period. However, approved States may have different requirements for raising objections.

EPA may elect to reopen the public comment period when substantial new questions concerning permits arise, or to allow additional comment on requests for variances or permit modifications (§124.14).

FINAL PERMIT (§124.15)

After the close of the public comment period, EPA issues a final permit. Applicants, interested parties, and affected States are notified of their right to appeal or contest the permit. If no comments are received during the public comment period, the final permit becomes effective immediately upon issuance. Otherwise, there is a 30 day waiting period before the final permit takes effect, to allow time for appeals.

HEARINGS/APPEALS ON FINAL PERMITS (§124.20, 124.74, 124.114)

Three different types of hearings or appeals are provided in the regulations to contest requirements in EPA-issued permits. However, approved State programs have their own procedures for hearings and appeals.

1) Appeal to the Administrator (RCRA, UIC, and PSD)

A RCRA, UIC or PSD permit may be appealed by filing a petition for review by the Administrator of EPA within 30 days after the final permit is issued. In most cases, there will be no formal hearing where a RCRA, UIC or PSD permit is appealed.

2) Nonadversary Panel Hearings (NPDES, and other closely related permits)

NPDES permits that constitute "initial licensing" are subject to the Nonadversary Panel Hearing requirements of Subpart F of Part 124 of the regulations. Where RCRA, UIC or PSD permits have been consolidated with an NPDES permit that is to be processed under Subpart F, all permits will be processed together, except where this would result in missing the one year statutory deadline for a PSD permit.

3) Evidentiary Hearings (NPDES, and closely related RCRA and UIC permits)

Other NPDES permits may be contested through the Evidentiary Hearing procedures of Subpart E of Part 124. The termination of RCRA permits will also be processed according to these procedures. In addition, UIC and RCRA permits closely linked to the conditions of an NPDES permit may, under certain limited circumstances, be contested through a formal evidentiary hearing under Subpart E.

CONSOLIDATION OF PERMIT ISSUANCE PROCEDURES (§124.4)

Where the same facility or activity requires a permit under two or more of the RCRA, UIC, NPDES or PSD permit programs, the regulations allow EPA to consolidate permit processing of these permits so that all

relevant aspects of the facility or activity can be reviewed at the same time. EPA will generally use this new provision to develop more effective and consistent controls, or where greater efficiency would be achieved by combining permit review procedures. Section 124.4 allows EPA to consolidate draft permits, public notices, public hearings, and administrative records of related permits. States are also encouraged to consolidate issuance procedures for State permits, and to consider joint permit processing with EPA, where appropriate.

V. PUBLIC COMMENTS ON THE PROPOSED CONSOLIDATED PERMIT REGULATIONS

After the close of the public comment period, the comments in the June 14 proposal were catalogued by each section of the proposed rule. EPA's staff devoted almost one staff year of effort in reading, analyzing, tabulating, summarizing, and responding to the public comments, in the process of developing the final regulations.

MOST COMMONLY ADDRESSED ISSUES

Almost every section of the proposed consolidated permit regulations drew substantive comments. The preambles to the final regulations and application forms discuss all these comments and explain EPA's analysis and decisions. A synopsis of 12 issues which are representative of major concerns for a large number of commenters is provided below, with citations to the final regulations.

1. Complexity of the regulations.

Proposed and Comment: Many commenters indicated that the proposed consolidated regulations were too complex and difficult to use.

Response: EPA agreed with these comments and has taken a number of steps to make the regulations easier to use and less confusing. Tables and charts have been added and many editorial and format changes have been made to help clarify the regulations. Each Part to the regulations contains "roadmap" sections to assist the reader. EPA also will prepare program-specific packages which contain the appropriate parts of the regulations

for persons interested in only one program. Other materials that explain the regulations are listed on the back cover of this guide.

2. Duration and review of permits (Sections 122.9 and 122.15)

Proposal and Comment: The proposal provided that RCRA and UIC permits would be issued for terms up to the life of the facility, and would also be subject to mandatory review every five years, in order to ensure effective periodic review of the conditions of RCRA and UIC permits. NPDES and 404 permits would be issued for terms that do not exceed five years, as required under the Clean Water Act. When a facility or activity had permits under two or more programs, however, a "cross-review" of each issued permit would have been conducted any time a permit for that facility or activity was issued, modified, reissued or terminated. The proposal provided that modification or revocation and reissuance of a permit could be based upon a related change to another permit issued to the same facility or activity. This issue received a large number of public comments stressing the need for certainty in permit conditions and the need to prevent frequent reopening and revision of permits.

Response: EPA made significant changes to these requirements. The final regulations revise the proposal by establishing fixed-term permits for all RCRA permits and for Class I UIC permits. Accordingly, permit reissuance, not permit modification, will be the primary mechanism for adjusting permit requirements. Also, the grounds for permit modification have been narrowed in order to provide a maximum amount of security to permittees during the term of the permit. Under the new approach, all RCRA facilities and all Class I UIC wells will be issued permits for up to ten years duration. Wells for enhanced recovery and special process mining (Class II and III) will still receive permits for up to the life of the facility. Because the permit is the vehicle for applying statutory requirements, holders of these fixed-term permits who comply with permit requirements will not be subject, for the most part, to enforcement under the SDWA or RCRA.

3. Timing of permit issuance (Section 124.4)

Proposal and Comment: The proposal provided that if a facility needed more than one permit, the permit applications could be delayed at the initiative of the applicant so that they could be submitted at one time. The proposal also provided that EPA could consolidate the draft permits, public hearings, administrative record and other requirements of processing permits for a single facility. Many commenters objected to these provisions, fearing that the consolidated procedures could hold down issuance to the pace of the slowest permit. Most felt that consolidation of processing should only be at the option of the applicant.

Response: EPA has deleted the proposed provision which allowed applicants to delay submitting their applications in order to consolidate them with applications under other permit programs, in response to many adverse comments by the regulated community. EPA has retained the provisions allowing EPA to consolidate various steps in processing permits, despite a number of adverse comments. This is an optional mechanism to be applied on a case by case basis by EPA Regional staff when a more comprehensive review of a multiple permit facility is appropriate and when efficiencies and economies will result.

4. Signatories (Section 122.6)

Proposal and Comment: The proposal required that corporate vice-presidents sign and certify that they have personally examined and are familiar with the information in the permit application and believe the information to be true, accurate, and complete based on inquiry of the individuals responsible for obtaining the information. Many commenters objected to this provision as being unduly burdensome on corporate vice presidents.

Response: EPA continues to believe that senior corporate executives should have knowledge of and be responsible for the corporation's compliance with environmental laws. The permit application certification requirement for corporations has therefore not been changed. As in the proposal, however, other

reports and information required to be submitted by corporations may be signed by individuals authorized by senior corporate executives. In addition, the exception for Class II wells is retained in the final regulations.

5. Transfers (Section 122.14)

Proposal and Comment: The Proposal required that permits could be transferred only if written notice were given to the appropriate EPA or State Director containing a specific date for transfer of permit responsibility and if the Director failed to object to the transfer. Transfer was a cause for modification or termination of the permit. Many commenters objected that the grounds for disapproving a transfer were vague, that the list of normal grounds for terminating or modifying a permit ought to be sufficient, and that if there were to be additional grounds applicable to permit transfers they ought to be included in the section listing all causes.

Response: EPA continues to believe that the rights associated with a permit attach only to the person authorized through the permit and are not freely transferable. While retaining some features contained in the proposal, the transfer of permit provisions have been extensively redrafted in response to comments. The final regulations provide that NPDES permits and permits for UIC wells not injecting hazardous waste may be transferred automatically, if a written agreement for transfer of permit responsibilities is sent to the Director. For UIC facilities, the new permittee must also demonstrate that the requirements for financial responsibility will be met. The Director does have the right to require that a new permit application be submitted, or to require that the permit be modified to reflect the change in ownership. The permit may also be modified to reflect the new aspects of the operation or for any other cause following the transfer.

For all other activities covered by the regulations, including RCRA facilities and UIC wells injecting hazardous wastes, however, all permits must be modified upon transfer of ownership or operational control of a permitted facility. This is necessary because these permits contain conditions that are personal to the permittee, such as closure and post-closure plans, the

contingency plan and provisions for financial responsibility. Most of these UIC and RCRA permits will therefore require modification and a new permit application to reflect the new ownership. However, certain transfers may only require processing through the "minor modification" provisions of §122.17. The transfer provisions are applicable to State programs under §123.7.

6. Interim authorization (Part 123, Subpart F)

Proposal and Comment: Section 3006 of RCRA provides that States may be granted a two year "interim authorization" to administer RCRA programs which are "substantially equivalent" to the Federal program, to allow time for States with existing hazardous waste programs to develop programs capable of receiving final authorization without imposing separate and parallel Federal requirement. The proposal provided that States needed to control either on-site or off-site disposal of hazardous wastes to be eligible for interim authorization. A manifest system would not have to be implemented during the interim authorization period unless the State already had the authority to do so. Comments on the proposed requirements reflected a wide range of views; some argued that requirements should be flexible to facilitate State assumption of program administration, while others argued that stricter standards were necessary to ensure national uniformity and protection of the environment equal to that provided by the Federal program.

Response: EPA has made the requirements for interim authorization more explicit, taking into account existing State efforts to control hazardous wastes. States must now control both on-site and off-site treatment, storage and disposal of hazardous waste to receive interim authorization, except where a type of facility does not exist in the State on the date of interim authorization. Also, the States now are required to have a manifest system. However, in order to accommodate the fact that many States do not have existing authority to implement a manifest system, the manifest system may be run by EPA during the interim period. Finally, States must control a universe of hazardous wastes which is "nearly identical" to the hazardous wastes regulated by the Federal program.

Because the Federal program is to become effective in two phases, the final regulations allow for two corresponding phases of interim authorization. "Phase I" will cover generator and transporter requirements and preliminary facility standards. "Phase II" will cover permitting of hazardous waste treatment, storage, and disposal facilities. EPA gave advance notice of this phasing of interim authorization in the January 29, 1980 Federal Register (45 F.R. 6752).

7. State enforcement authority (Section 123.9)

Proposal and Comments: The proposal required States to have the ability to seek civil penalties and criminal fines for the same offenses and in the same amounts as EPA under the RCRA, UIC, NPDES, and 404 programs. States were also required to have the ability to obtain injunctive relief when necessary. Many States objected on the grounds that their laws did not provide for this authority and that they would have difficulty in obtaining new authority. Commenters also objected to the requirement that States collect civil penalties in accordance with EPA's penalty policy, as interfering with the States' enforcement discretion.

Response: EPA has changed the final regulations to reduce the minimum level of fines for States, but still requires, in most cases, the same enforcement mechanisms as EPA. An exception is made for Class II wells under the UIC program: States may substitute pipeline (production) severance for criminal enforcement concerning these oil and gas wells. Another exception is made for State hazardous waste programs: States must have authority to imprison violators up to six months for certain criminal offenses. EPA believes it is necessary that minimum levels of fines be established to assure national consistency and equal treatment by States during enforcement actions. States also must have the same array of enforcement tools as EPA so that State programs are sufficiently flexible to handle different violations in different ways.

EPA has not changed the penalty policy requirements. Although States are required to follow the penalty

policy, this does not require a State to have any particular statutory language or regulations, and there is a great deal of flexibility in the application of these provisions. EPA believes that the penalty policy is an important Agency initiative and can not be truly effective unless applied with some degree of uniformity nationwide.

8. Minor drainage (Section 123.92)

Proposal and Comment: Section 404 of the CWA states that certain farming, silvicultural and ranching activities, including "minor drainage," are not subject to the requirement to obtain a permit. A large number of commenters objected to the proposed definition of "minor drainage" on the grounds that it was too narrow and generally limited the exemptions to activities which were already outside the scope of section 404.

Response: In light of inconsistent legislative history and the large number of comments, the definition of minor drainage has been revised to more clearly and specifically allow for the exemption of certain agricultural and silvicultural activities with minimal adverse impact on the environment.

9. Best Management Practices for 404 (Section 123.92)

Proposal and Comments: The Clean Water Act of 1977 exempted the construction or maintenance of farm roads, forest roads or temporary roads for moving mining equipment from the requirements of section 404, if these roads were constructed and maintained in accordance with best management practices (BMPs). The proposed specification of these minimum standard BMPs received more comments than any other issue. Commenters' objections fell into two basic categories: (1) that it is not appropriate or legal for EPA to prescribe a set of nationwide BMPs for State 404 programs; and (2) that EPA could not require BMPs that controlled, to any extent, aspects of road construction not directly involving the discharge of dredged or fill material.

Response: EPA continues to believe that specification of nationally applicable minimum basic measures

is the best way of assuring that the objectives of section 404(f)(1)(E) will be met. The list of BMP requirements has been revised, however, to focus more narrowly upon environmentally protective measures that are directly linked to the methodology and siting of discharges for road construction. These measures will help reduce adverse impacts of road construction in or adjacent to waters of the United States.

10. Regulation of Oil and Gas wells

Proposal and Comments: Many commenters questioned the need for regulations governing oil and gas wells classified as Class II wells under the UIC program. These commenters cited sections of the SDWA prohibiting regulations interfering with oil and gas production unless necessary to assure that underground sources of drinking water will not be endangered by injections.

Response: EPA continues to reject the interpretation that the SDWA prohibits regulation of Class II wells. However, the scope of coverage of Class II wells has been changed to move the regulation of the storage of natural gas and other gaseous hydrocarbons from Class II to Class V wells. Other hydrocarbon storage (e.g. in liquid form) will remain under Class II wells. EPA has made this change because it believes that in most cases the underground storage of natural gas poses no threat to underground sources of drinking water. This type of storage will nevertheless be regulated under Class V through an authorization by rule.

The regulations also contain the following provisions to avoid any undue burden: authorization by rule for existing Class II wells for the life of the well; lifetime permits for new Class II wells; additional time (three years) for compliance with construction requirements; area permitting for entire well fields; allowance for new wells within an area permit to be installed prior to notice to the Director; and elimination of the area of review and corrective action requirements for existing Class II wells.

11. Application-based requirements for NPDES (Sections 122.15(a)(5), 122.61(a) and 122.62(e))

Proposal and Comment: The proposal would have limited all NPDES permittees to discharging no more than five times the level of all pollutants reported in their permit applications. Commenters objected that the limits were illegal, technically unsupportable, and that they imposed too great a burden for the stated objectives.

Response: Application-based limits have been replaced by application-based reporting requirements and permit modification, and by a requirement that permits control all significant toxic pollutants.

12. Application form testing requirements for NPDES (Section 122.53(d))

Proposal and Comment: All primary industries plus two secondary industries would be required to test one 72-hour composite sample of process wastewater effluents for 129 toxic pollutants. Commenters objected that requirements were burdensome and unnecessary, because many toxic pollutants could not be expected to be present. On the other hand, many commenters felt that in addition to chemical testing, some biological toxicity testing should be required.

Response: Based on data available through effluent guidelines development, EPA has specified selected categories of pollutants for primary industries to test, using 24 hour composite samples. Biological toxicity testing is not routinely required because such information will not be useful in all cases.

OTHER MATERIALS ABOUT PERMITS CONSOLIDATION

In addition to this pamphlet, other publications and materials are available or are being developed on EPA's permits consolidation program:

- o Agricultural Activities and Consolidated Permitting
- o Building State Solid and Hazardous Waste Management Program: Everybody's Responsibility (SW-831)(C-5)
- o Hazardous Waste: A Guide for Obtaining A Facility Permit from EPA (SW-765)(C-5)
- o A Guide to the Underground Injection Control Program
- o A Guide to the Dredge or Fill Program
- o EPA Videotape on Permits Consolidation (available on a loan basis from EPA Headquarters and 10 Regional Offices)
- o Reprints of the regulations containing requirements applicable to only one program. (e.g., reprint of RCRA program requirements)

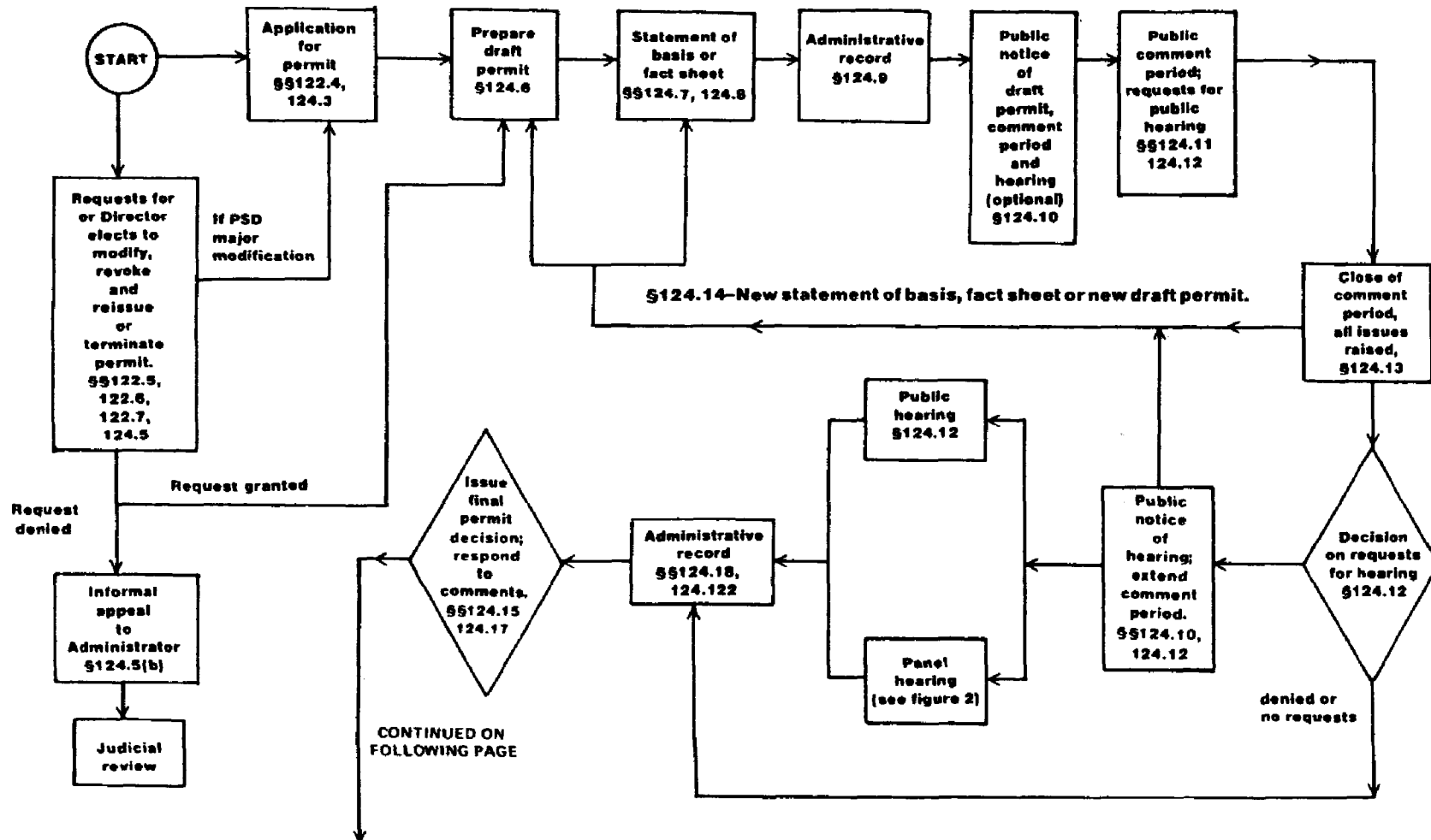
For further information on these additional materials, write to:

Permits Division EN-336
Office of Water Enforcement
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

To obtain additional copies of this guide and the regulations, write to:

Library Services MD-35
U.S. Environmental Protection Agency
Research Triangle Park, N.C. 27711

**Figure 1-Conventional
EPA Permitting Procedures**



EPA Appeal Procedures

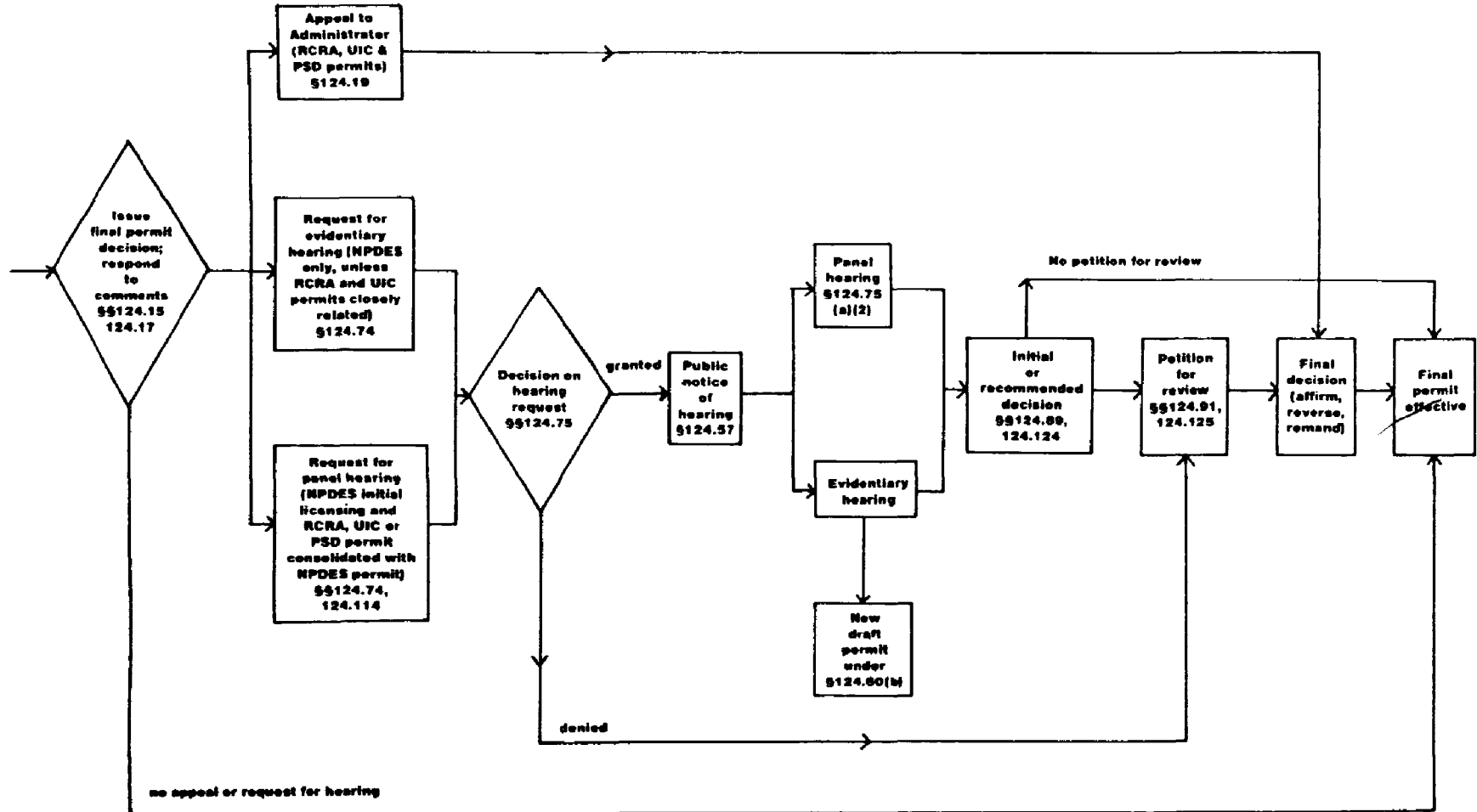


Figure 2-Non-Adversary Panel Procedures

