



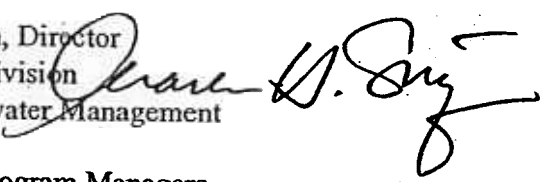
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 4 2000

OFFICE OF  
WATER

**MEMORANDUM**

**SUBJECT:** NPDES State Program Withdrawal Petitions - Response Procedures and Status Update

**FROM:** Charles H. Sutfin, Director  
Water Permits Division  
Office of Wastewater Management 

**TO:** Water Permits Program Managers  
Regions I-X

The purpose of this memorandum is to establish procedures for Regions to respond to NPDES State Program withdrawal petitions. As many of you are aware, there has been a steady increase in the number of these petitions in the past several years to where there are 17 currently outstanding. We are finding that often national environmental organizations bring petitions in multiple Regions. Also, petitions from different Regions can wind up in the same Federal Circuit Court. These factors point to a need for responding on a nationally consistent basis.

I believe these procedures will enhance EPA's efforts to resolve these petitions in a constructive manner. The approach outlined in Attachment 1 establishes a framework for timely written acknowledgment of receipt of petitions and for holding follow-up meetings and discussions. Since Regions are already undertaking most, if not all, of these activities, I do not believe the approach will add significantly to the workload of staff handling petition matters. For existing withdrawal petitions, the time frames may not be applicable; however, Regions should follow the central principles of the protocol, such as keeping the petitioners well informed as to the status of the informal investigation and keeping States accountable for timely responses. I invite your feedback on these procedures, particularly as your staff gains experience in implementing them.

Also, this memorandum includes a summary intended to track the status of ongoing petitions (Attachment 2). Through periodic updates, I believe this summary will keep both Headquarters and Regional Offices informed. I would, therefore, request that you send updated information to Howard Rubin of my staff by May 22, 2000. Howard can be reached by telephone (202/260-2051) or via e-mail ([Rubin.Howarde@epa.gov](mailto:Rubin.Howarde@epa.gov)). He will distribute an updated summary following revision.

In addition, my staff is currently working with the Headquarters' Office of Administration and Resources Management to revise the current delegation of authority for the NPDES withdrawal petition process. We are finalizing a revision to the EPA Delegations Manual to grant authority to the

Regional Administrators to deny NPDES withdrawal petitions when a Region determines such denial is warranted. The Region's decision to deny a petition would require Headquarters concurrence. I believe that this delegation revision will improve the efficiency of the petition evaluation process. Authority to grant a petition (and thus formally initiate NPDES State program withdrawal proceedings) will remain with the Administrator.

Thank you for your time and assistance in managing this important area of the NPDES program.

#### Attachments

cc: Michael B. Cook, OWM  
Susan Lepow, OGC  
Randy Hill, OGC  
Michael Le Desma, OGC  
Van Housman, OECA  
Rick Garmen, OARM  
Water Permits Program Managers, Regions I-X

|              |                |
|--------------|----------------|
| Region I:    | Roger Janson   |
| Region II:   | Walter Andrews |
| Region III:  | Lori Reynolds  |
| Region IV:   | Doug Mundrick  |
| Region V:    | Rebecca Harvey |
| Region VI:   | Jack Ferguson  |
| Region VII:  | Mary Mindrup   |
| Region VIII: | Stephen Tuber  |
| Region IX:   | Terry Oda      |
| Region X:    | Bob Robichaud  |

#### ORC attorneys, Regions I-X:

|              |  |
|--------------|--|
| Region I:    | Carl Dierker   |
| Region II:   | Warren Llewellyn                                       |
| Region III:  | Christopher Day; Daniel Isales; Doug Snyder            |
| Region IV:   | Kevin Smith  |
| Region V:    | Bert Frey ; Maria Gonzalez ; Gary Prichard; Steve Jann |
| Region VI:   | Barbara Pace   |
| Region VII:  | Rupert Thomas; Becky Dolph; Patricia Miller            |
| Region VIII: | Peggy Livingston                                       |
| Region IX:   | Marcela VonVacano                                      |
| Region X:    | Adan Schwartz; David Allnutt                           |

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**Attachment 1**

**PETITIONS FOR WITHDRAWAL OF STATE NPDES PROGRAMS  
RECOMMENDED RESPONSE PROCEDURES**

***NOTE: The time frames set forth in this document are recommended only. They should be adjusted as necessary to accommodate competing agency priorities, taking into account the nature and extent of any interest prejudiced by delay, and bearing in mind that petitions alleging a credible threat to human health and welfare should generally receive higher priority.***

**1) Regional acknowledgment upon receipt of petition – (15 business days from receipt of the petition):**

Write a short acknowledgment letter and send it to Petitioner(s)

Send a copy of acknowledgment letter and petition to ORC, HQ Office of Wastewater Management -- Water Permits Division (OWM-WPD), and HQ Office of General Counsel -- Water Law Office (OGC).

✓ ***NOTE:*** *If the petition raises environmental equity issues, the petition should be forwarded immediately to the Headquarters' Office of Civil Rights (Civil Rights Act Title VI allegations) and the Headquarters' Office of Environmental Justice for appropriate action. All other issues will remain with the Region for appropriate action.*

✓ ***NOTE:*** *If the petition raises enforcement issues, a copy of the acknowledgment letter and petition also should be sent to the Office of Enforcement and Compliance Assurance's Office of Regulatory Enforcement – Water Division (OECA-WED).*

✓ ***NOTE:*** *If the petition raises issues that affect other program offices, a copy of the acknowledgment letter and petition should be sent to the affected program- and legal offices in Headquarters and the Region.*

Contact the relevant State agency

✓ Initial courtesy contact to State agency is to inform them that a petition has been received by EPA.

✓ Contact with State can be informally by telephone or by letter.

**2) Follow-up meeting -- (30 working days from receipt of the petition):**

Hold a meeting or conference call with the Petitioner(s) and State agency

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representatives to discuss the petition's allegations.

- ✓ Preferably, this meeting should be held jointly between the State agency representative and the Petitioner(s) to clarify issues alleged in the petition.
- ✓ If either the State or the Petitioner(s) identifies other stakeholders who should be included in discussions (e.g., industry group, community group), a follow-up meeting should be held with all parties and stakeholders present.

New issues may surface in the course of these meetings. In such instances, the Region should request that the petitioner resubmit any substantial new or revised claims in writing. In some cases it may be appropriate to recommend that the Petitioner withdraw its petition pending revision.

Make every effort to assist the State and Petitioner(s) to resolve their concerns jointly without necessitating an EPA investigation and commencement of formal withdrawal proceedings.

- ✓ If meetings succeed in producing a resolution to the Petitioner's satisfaction, the Region should request the Petitioner(s) to send a letter to EPA (preferably to the original petition addressee) stating that the matter has been resolved to the Petitioner's satisfaction and that the petition is withdrawn.
- ✓ If a petition is not withdrawn, EPA will have to render a decision on the petition using the following process.

### **3) Informal investigation:**

The objective is to gather adequate information to reach a preliminary assessment, see (4), below. This stage may be reached where meetings fail to produce a resolution to the Petitioner's claims.

An informal investigation may include, but is not necessarily limited to, the following steps:

- ✓ ORC may prepare a letter outlining what additional information EPA needs from the State in order to determine whether to initiate withdrawal proceedings. ORC should consult with Headquarters program and legal staff in the preparation of any such letter.
- ✓ The letter should include a reasonable date by which a response from the State is expected.
- ✓ If the State fails to respond or responds without supplying the needed information, the Region may send additional letters of inquiry. These letters should include a request for response within a reasonable period of time. If a

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State proves unable or unwilling to provide the information requested, it may be necessary to continue the informal investigation without the requested State input.

**Complex petitions:** Complex petitions include, but are not limited to, those which involve multiple petitions, a request for withdrawal of multiple environmental programs, or which raise issues of national significance or legal complexity. Complex petitions may require a longer response time that could invite a suit claiming that EPA has unreasonably delayed action on the petition. **It is important to maintain communication with Petitioners regarding the status of a complex petition, including the reason for any delay, so that a petitioner does not erroneously conclude that EPA has unreasonably delayed action on its petition.**

### 4) Preliminary Assessment - **(90 days after receipt of final State response):**

The objective is to make a preliminary assessment regarding the need to initiate withdrawal proceedings.

- ✓ The Regional Administrator may recommend that the Administrator initiate withdrawal proceedings under 40 C.F.R. § 123.64.
- ✓ The Regional Administrator may seek a one-time delegation of authority to deny a petition for program withdrawal. To initiate procedures for a one-time delegation of authority, Regions should contact HQ Office of Wastewater Management -- Water Permits Division (OWM-WPD). *NOTE: Office of Water recently proposed a Delegations Manual revision whereby Regions will be given the standing authority to deny withdrawal petitions, with appropriate Headquarters concurrence. Formal notification of such a delegation will be sent to the Regions once it has been finalized.*