



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

OFFICE OF
WATER

MEMORANDUM

SUBJECT: NPDES Permit Issuance Flexibility Policy in Watershed Permitting

FROM: Michael B. Cook, Director *Michael B. Cook*
Office of Wastewater Management

TO: Regional Water Program Directors (Region 1 - 10)

Purpose

The purpose of this memorandum is to follow-up on the NPDES Watershed Strategy issued on March 21, 1994, and to address one of the major watershed permitting implementation issues raised by Regions and States. Permitting authorities have expressed a need for flexibility in meeting permit issuance requirements during the transition to a watershed approach. EPA Headquarters recognizes the challenge involved in such an undertaking and has developed an outline of measures designed to help facilitate a smooth transition to a watershed permitting system.

Background

Currently, many permitting authorities issue major and minor NPDES permits on a five year cycle with priority afforded to individual permits, independent of the goals and priorities for the watershed in which it is located. In many cases, major permits must be given priority for time and resource commitments over minor permits simply because of their designation as majors, without regard to their relative environmental impact or importance. The NPDES Watershed Strategy emphasizes the need to revise the current implementation system and recognizes the importance of issuing permits within the context of a watershed management framework. Decisions about point source controls should be based on an overall assessment of environmental priorities and concerns within a basin. States accomplish this goal by developing a basin management plan and by assuring that permits are issued in accordance with the priorities and management strategies described in the plan. This type of permitting system emphasizes permit development for both major and minor permits that pose a significant environmental threat to a basin or watersheds within the basin. Also, it allows States to place the permitting program within the context of an overall statewide watershed management framework by coordinating



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permitting with other key water management programs. In order to facilitate this process, many permitting authorities choose to synchronize permit reissuance dates by basin such that all NPDES permits within a basin are reissued at approximately the same time.

Issue

EPA recognizes that many States will implement the NPDES Watershed Strategy in an incremental fashion. This process will require identifying and assessing all basins, setting goals and priorities for each basin, and developing and implementing management strategies designed to restore and protect water resources and meet the goals set for each basin. EPA recognizes that not all basins will receive the same level of attention, and that resources will be allocated based upon the needs of each basin. The time to move through an entire cycle of identification, assessment, priority setting, and management strategy development for each basin will vary from State to State. Therefore, the time required to develop a permit issuance system with synchronized permitting will vary from State to State. EPA expects that permit issuance backlogs will increase in the short term as permitting authorities administratively extend some expired permits to allow their reissuance dates to coincide with those of other permits in the same basin, but this backlog should decrease after the permitting authorities adopt and implement a watershed approach.

Policy

A permit issuance backlog for both major and minor permits will be acceptable in situations where the permitting authority shows demonstrated progress toward implementing a watershed permitting approach. A demonstration of progress will include:

- (1) Established Statewide geographic management units (i.e., major basins and watersheds or sub-basins nested within the major basins);
- (2) A cycle of activities for basins (e.g., monitoring, assessment, prioritization, management strategy development) and a schedule for implementation by basin; and
- (3) A plan and schedule for synchronized permit issuance or reissuance.

EPA expects that there will be some initial backlog while setting up and implementing a plan and schedule for synchronized permit issuance, but the permitting authority's plan and schedule must address and eliminate the initial permit backlog in a reasonable time period. In no case should this period exceed 10 years. The plan and schedule should be established in consultation with the respective EPA Regional office and should become part of the State/EPA Partnership Agreements.

EPA recognizes that the amount of backlog attributable to the initial years of implementing a watershed permitting system will vary from State to State since there are many

State-specific and site-specific factors that will affect this new approach to permitting. Therefore, we are not prescribing a specific percentage for allowable backlog. Rather, discussions of allowable backlog should be part of Partnership Agreements between each State and their respective EPA Regional office.

Minimizing and Reducing Backlog

In developing their permit issuance plans and schedules, permitting authorities should recognize that some permits may not need major revisions at time of reissuance. Also, there may be opportunities to develop and use general permits to relieve some of the permit issuance burden. Permitting authorities should include these opportunities in their basin plans and permit issuance schedules where appropriate.

New dischargers will need to be permitted within the synchronization system and, therefore, their first permit issuance may require a permit term considerably less than five years. In addition, some of the initial permit backlog associated with synchronizing permits may be relieved by reissuing some existing permits for less than a five year term. For example, some States have chosen to synchronize permits within a basin through a combination of short-term permit issuance (three to five years) and administrative extensions of less than three years.

EPA sent an earlier, draft version of this policy to Regional watershed permitting contacts for review and comment. They, in turn, provided copies to some States for review. Comments received from Regional and State personnel have been addressed in this final policy. Please share this policy with your States to make them aware of the continued emphasis on issuing permits in the context of a watershed management framework. The Permits Division at EPA Headquarters continues to work on guidance to assist you with integrating the NPDES program into an overall watershed management framework. Should you have any questions, please contact Deborah Nagle of my staff at 202-260-2656.