



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

MEMORANDUM

SUBJECT: Signatories to Department of Defense Permit Applications

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TO: Regional Administrators
Regions I-X

Purpose

This memorandum identifies who must sign Department of Defense (DoD) permit applications for four permit programs:

- o National Pollutant Discharge Elimination System (NPDES), 40 CFR Part 122
- o Underground Injection Control (UIC), 40 CFR Part 144
- o State Dredge or Fill "404" (404), 40 CFR Part 233
- o Hazardous Waste Management (HWM), 40 CFR Part 270

Exception

Government-Owned Contractor-Operated (GOCO) facilities that require permits under any of the four permit programs listed above are not covered since they present significantly different issues than were considered during the development of this guidance.

Development

This document has been developed in conjunction with staff of DoD and the four permit programs involved. Attachment A contains the regulatory language for corporate and Federal signatories to permit applications. Attachment B contains a discussion of the criteria used to develop this guidance.

Background

In compliance with a settlement agreement arising from litigation of the Consolidated Permit Regulations, EPA modified corporate signatory requirements and established requirements for Federal agencies under the NPDES, UIC, State 404, and HWM permit programs (48 FR 39611, September 1, 1983; §§122.22, 144.32, 233.6, 270.11). In the preamble to the September 1 rule, EPA gave two examples of how the signatory regulations were to be applied to Federal agencies. In essence, the proper signatory level for Federal permit applicants is that comparable to EPA's Regional Administrator.

However, because DoD has no geographical division of responsibility that parallels EPA's Regional Administrators, the EPA Regional Offices are not clear who they should accept as a proper DoD signatory. The confusion is compounded because DoD lines of authority and responsibility for the management and budgeting of environmental activities are complex and difficult to follow. This problem first surfaced in regard to several permits in the HWM permit program, but applies to the four permit programs.

Issue Resolution

The acceptable signatory for DoD permit applications is the Installation Commander of a rank of O6 or higher, if the installation employs more than 250 persons and authority to sign permit applications has been assigned or delegated to the Installation Commander in accordance with applicable DoD procedures. If an Installation Commander does not meet these requirements, the permit application must be signed by a superior officer who meets the requirements.

In addition, where a tenant is present on the installation and has authority or responsibility for any aspect of the regulated activity, the Tenant Commander (rank of O6 or higher) must also sign the application. The Tenant Commander must also employ more than 250 persons and have been assigned or delegated authority to sign permit applications in accordance with applicable DoD procedures. Again, if the Tenant Commander does not meet these requirements, the permit application must be signed by a superior officer meeting the requirements.

Nothing in this guidance precludes applicable delegated States from requiring signatories to DoD permit applications to conform to more stringent State requirements.

Implementation

EPA Responsibilities:

EPA will inform each of its Regional Offices and applicable delegated States of this guidance.

Permit authorities will keep both the notification of changes in personnel and the DoD directive discussed below in the appropriate permit file.

DoD Responsibilities:

DoD will inform all Installation Commanders and Tenant Commanders conducting regulated activities of their responsibilities under this guidance.

In some situations, DoD has allowed low level officials to sign the permit applications for existing permits. DoD will notify the permit authority of the appropriate personnel, as identified in this guidance, to ensure that the proper signatories are included in the existing permit file.

Since in the past, the authority and responsibility for all activities required during the conduct of regulated DoD facilities (e.g., planning, management, budget, and compliance activities) has been unclear, DoD will develop the appropriate delegation procedures to implement this guidance. This guidance will clarify the responsible party or parties for conducting regulated activities. DoD will furnish this delegation directive to the permit authority in order that it may be appended to the permit file. DoD will delegate the authority and responsibility to sign permit applications in accordance with DoD procedures prior to future permit issuance.

In addition, for any replacement of personnel at the Installation Commander or Tenant Commander level during the term of the permit, DoD will notify the permit authority of the change and furnish the name of the new person(s) responsible for the regulated activities.

Attachments

ATTACHMENT A

Corporate Signatory Language

40 CFR §§122.22(a)(1), 144.32(a)(1), 233.6(a)(1), 270.11(a)(1) reads:

"For a corporation: by a responsible corporate officer. For the purposes of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures."

Federal Signatory Language

40 CFR §§122.22(a)(3), 144.32(a)(3), 233.6(a)(3), 270.11(a)(3) reads:

"For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA)."

ATTACHMENT B

SIGNATORIES TO DEPARTMENT OF DEFENSE PERMIT APPLICATIONS

Discussion

The Department of Defense (DoD) is headed by the Secretary of Defense, a Cabinet level appointment. Reporting directly to the Secretary are the Secretaries of the three Military Departments (Army, Navy and Air Force). The Military Departments are organized into varying numbers of Major Commands that are functional alignments rather than geographical divisions. Subordinate to the Major Commands are the Installation Commanders; the numbers of installations in each Major Command vary widely. In the DoD chain-of-command, the Installation Commander is responsible to one Major Command. Each Installation Commander is expected to establish the necessary organizational structure to fulfill the Major Command's function (i.e., training, air defense, etc.).

Also reporting directly to the Secretary of Defense are the Directors of the 12 Defense Agencies. The Defense Agencies have varying management structures -- some geographical and some functional. Defense Agencies do not have independent installations; rather, Defense Agencies' activities are tenants on installations operated by the Military Departments.

Since the heads of the Military Departments, the Defense Agencies and the Major Commands are centrally located within the Pentagon, they are not directly responsible for the implementation of systems necessary to gather complete and accurate permit application information. In addition, the Major Commands are far removed from the operation and management of day-to-day environmental activities on individual installations.

Generally, the Installation Commander holds a rank of O6, which is a Colonel (Army and Air Force) or a Captain (Navy). The Installation Commander is responsible for operating pollution control facilities on the installation. He is also responsible for planning and for anticipating the need for new pollution abatement projects. However, some installations have tenants that share responsibility for pollution control. One example is the Defense Logistics Agency (DLA) that shares responsibility for the handling and storage of DoD hazardous wastes with the Installation Commander. The budgets for both the Installation Commander and Tenant Commander(s) are subject to approval from their major commands, their Military Departments and eventually the Congress.

DoD installations usually cover hundreds of acres and provide complete support for thousands of civilian and military personnel and military families living on the installation. The Installation Commander oversees, controls and manages complete communities that consist of such things as housing, stores, gas stations, utilities, waste treatment facilities, dining halls, fire and police departments, warehouses, motor pools, runways and hospitals.

A review of the organization of DoD indicates that the Installation Commander fulfills the literal requirement of the signatory regulation promulgated on September 1, 1983. Defense installations are the principal geographic unit of DoD and the Installation Commander has responsibility for its overall operation. However, since DoD is not organized primarily into large geographic units similar to EPA's Regional Offices, it is important to ensure that the overall intent of the signatory provision is applied.

Providing relief similar to corporations was the basis for relaxation of the Federal signatory provision on September 1, 1983; therefore, a comparison to the signatory provision for corporations is appropriate. Specifically, the preamble to the September 1 rule acknowledges such a comparison stating, "(w)here a Federal official has policy or decision-making authority for facilities under his widespread jurisdiction comparable to that of a 'responsible corporate officer,' that official would be authorized to sign permit applications" (48 FR 39613). Under the corporate signatory provision a "responsible corporate officer" includes:

- o "the manager of one or more manufacturing, production or operating facilities employing more than 250 persons ... if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures." (40 CFR §§122.22, 144.32, 233.6, 270.11)

The preamble explains that this criterion is designed to ensure that "plant managers ... have sufficient authority to direct the affairs of their facilities." Other important criteria include:

- o the "ability to direct the activities of the corporation so as to ensure that necessary systems are established or actions taken to gather complete and accurate information" and
- o the ability to "make management decisions which govern the operation of the regulated facility." (48 FR 39613)

DoD Installation Commanders fulfill the criteria of the signatory provision in that:

1. The intent of the provision is to "provide relief from the economic and administrative burdens of having ... top executive officers personally sign and be familiar with the numerous permit applications for all ... operations" (48 FR 39613).
2. Most Defense installations employ thousands of military and civilian personnel who are responsible to the Installation Commander. Therefore, Installation Commanders fulfill the criteria for facilities employing more than 250 persons.
3. The Installation Commander directs the affairs of the installation and is directly responsible for the implementation of systems necessary to gather complete and accurate permit application information.
4. The Installation Commander makes day-to-day management decisions involving the operation of and the planning and budgeting for activities that ensure compliance with Federal, State, and local environmental laws and regulations.

EPA's acceptance of the Installation Commander as the proper signatory under the NPDES, UIC, State 404, and HWM permit programs is conditioned upon the establishment by DoD of a clear directive to Installation Commanders and Tenant Commanders that they are delegated or assigned responsibility to sign permit applications and that they are legally required to comply with the terms of the permit.