

March 30, 1999

MEMORANDUM

SUBJECT: EPA Controls Over RCRA Permit Renewals
Report No. E1DSF9-11-0002-9100115

FROM: Michael Simmons /s/
Deputy Assistant Inspector General
for Internal Audits

TO: Timothy Fields, Jr.
Acting Assistant Administrator for
Solid Waste and Emergency Response

Earlier this fiscal year, the Office of Inspector General (OIG) completed a survey of EPA controls over Resource Conservation and Recovery Act (RCRA) permit renewals in EPA Headquarters, Region 3, and two states. Office of Solid Waste (OSW) officials agreed that we had identified national issues that need to be addressed. They were willing to work with us to design solutions now, so no further audit work was necessary. This report describes our findings and the recommendations developed with the input of OSW officials.

We recognize that the Agency is committed to a goal of issuing initial permits to 90% of the facilities in its baseline by the year 2005 and that until that goal is achieved, issuing original permits will generally receive greater emphasis than renewals. This report is intended to highlight an area of growing importance and identify actions to assist EPA in preparing for its permit renewal efforts as all permits will need to be renewed on a regular basis as long as facilities remain in operation. Those actions include clearly defining EPA's oversight responsibilities, and obtaining current and complete data to monitor permit renewal operations. Without these actions, the

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Agency will not be able to determine whether states are properly renewing facility permits.

ACTION REQUIRED

Please provide my office with a written response to this report within 90 days of the date of this memorandum, in accordance with EPA Order 2750. For corrective actions planned but not yet implemented by your response date, include specific milestones to assist us in deciding whether to close this report.

BACKGROUND

EPA is responsible for providing oversight and annual grants to authorized state RCRA programs. Those states implement RCRA hazardous waste regulations. States and EPA regions negotiate the work that must be accomplished with grant funds, such as issuing and renewing permits.

Permits are the essential instruments for assuring compliance with environmental laws. They translate the legal requirements into specific provisions tailored to the facilities' individual operations. RCRA permits provide the owners and operators of facilities that treat, store, or dispose of hazardous waste with the legal authority to do so and help ensure that waste is handled in a manner that is protective of human health and the environment. According to statute, RCRA permits shall have a fixed term, not beyond ten years. A state may establish its permit term as short as three years. Permits must be renewed as long as a facility remains operational. The requirements for renewing a permit are established in the regulations.

At the beginning of fiscal year 1997, data indicated that nearly 80 percent of the almost 1900 facilities in the Agency's approximated universe had received at least their first permit. However, revised data an OSW official provided on March 19, 1999, indicated that approximately 65% of a smaller universe of facilities is fully permitted. That means more initial permits remain to be issued than expected. Thus, until the goal of permitting 90 percent of the facilities in the universe by 2005 is met, issuing initial permits will generally take precedence over renewals. OSW officials agree that much of the Agency's future workload will be permit renewals. By reviewing renewal operations today, the Agency will be in a better position to meet the challenges of tomorrow.

PURPOSE, SCOPE AND METHODOLOGY

We met with OSW officials to obtain their input as to what areas of inquiry would be most helpful to them in managing the permitting portion of their responsibilities.

Their interests primarily related to permit renewal and streamlining. While we provided the officials with summary information regarding their other interests, we focused our attention on evaluating the adequacy of EPA's controls over permit renewals: the policies, procedures, and practices in place.

We conducted our work in EPA Headquarters, Region 3, Pennsylvania, and West Virginia from June to November 1998, and assessed national data on selected permitting events. We collected background information on permitting, met with Agency and state officials, interviewed representatives of the regulated community, and contacted environmental interest groups. We reviewed previously issued permitting studies and their recommendations. This assignment was conducted in accordance with the 1994 Government Auditing Standards issued by the Comptroller General of the United States.

While the OIG has issued several reports on other aspects of the RCRA program and on other types of environmental permitting, we have issued no other reports on this subject.

FINDINGS

With its emphasis on issuing original permits, EPA does not yet have controls in place to effectively manage permit renewals. With neither clear oversight responsibilities, nor complete and accurate information, the Agency is not now in a position to monitor performance, identify problems or make improvements, nor will it be when the workload shifts. EPA officials were not aware of a situation in Pennsylvania where permits had been improperly renewed, resulting in exceeding the statutory term limit. When permits are not renewed in a timely manner, facilities may not be operating in accordance with the most recent environmental requirements and standards. As the permitting workload shifts from issuing initial permits to renewing existing permits, the Agency needs to develop the necessary controls to oversee this activity.

EPA's Oversight Responsibilities Have Not Been Clearly Defined

The Agency, in recent years, has been focusing more on developing partnerships with the Regions and states, and less on its oversight functions. The 1998/1999 RCRA Implementation Plan (RIP), the national program guidance, established guiding principles and general permitting priorities, but did not communicate specific expectations for Headquarters or the regions regarding basic permitting program maintenance. No guidance has described how regions will monitor state permitting operations, nor how EPA Headquarters will oversee regional performance. The EPA and state officials, as well as the industry representatives we met with, all agreed some clarification of roles and responsibilities would be helpful.

This is particularly true in the area of permit renewals which have not been given much emphasis with little having been done to plan for adequate oversight.

The Agency has not collected baseline data, nor established any standards/guidelines for how long an original or renewed permit should take to issue. Without this data, EPA cannot identify states having overall permitting problems, nor can it identify states doing well with their permitting in order to foster best practices. This is an essential component of effective oversight.

EPA Lacks Complete and Accurate Permitting Data

Grant provisions document agreements between the Region and authorized states for managing the RCRA program. All provisions of the two grants we reviewed as part of this survey, however, were not being adhered to by the states, nor enforced by Region 3. Both grants contained provisions requiring the states to supply RCRIS data. The Pennsylvania and West Virginia grants specifically requested data on *all* permitting events (emphasis added.) Permitting events are the various dates and decisions that may occur throughout the term of a permit. In the RCRIS data element dictionary, 19 events related to operating permits were identified as “core,” or necessary for oversight of the RCRA program. Neither West Virginia nor Pennsylvania provided data on all “core” permitting events, much less all permitting actions that occurred, as agreed to in the grants.

RCRIS does not contain complete, accurate data on the two states. Pennsylvania officials used their judgement in deciding what data to submit to the Region 3 contractors who enter the State’s information. We were told that the contractor has not always entered all the data that was submitted, or made changes requested by the State. West Virginia chose to enter seven events, three of which are “core.” State employees enter this State’s data, but they also told us that they have had problems with the Region 3 contractor incorrectly changing data that had been entered properly.

To gain an understanding beyond Region 3, we reviewed national data on selected “core” events. The “permit expires” date was one of the events we reviewed as critical for managing renewals. The Agency estimates that over 1400 permits have been issued to facilities across the country, yet only 86 expiration dates were in RCRIS. At least five of those 86 dates were inaccurate, predating the RCRA program. For three of EPA’s ten regions, not a single expiration date for any permit issued was entered in the system. Data for the other selected events, such as the date the permit application was received, was not complete in the system, either. Neither Headquarters nor Region 3 officials have asked states to provide the missing data, nor during our fieldwork did Headquarters have information on the length of state permit

terms which would allow a calculation of expiration dates, as long as the effective date of the permit was available.

In 1995, the U.S. General Accounting Office concluded that RCRIS was difficult to use and that it contained unreliable data. Since December 1997, EPA has recognized RCRIS as an Agency-level weakness. While there are plans to address the weakness and ultimately replace this system, the Agency needs to obtain key data to effectively manage permit renewals. We are aware that some Regions and states have created their own alternative information systems to maintain programmatic data because of problems with RCRIS. Region 3 had not. In the 1998/1999 RIP, EPA committed to relying upon RCRIS to manage the program. Milestones for the replacement-system portion of correcting the weakness have begun to slip. The replacement-system plans have met with delays and resource difficulties.

At the time of our fieldwork, neither Headquarters nor Region 3 had information on the status of the national or regional permitting universe. EPA officials did not have basic programmatic data such as the actual number of facilities in the permitting universe, the number of facilities with original permits, the number needing renewal, etc. Headquarters officials now believe they have better information on the numbers of facilities in the universe and those with original permits. At the state level, such information was readily available in West Virginia's central office, although in Pennsylvania, it had to be gathered from the State's six regional offices.

Headquarters officials were under the impression that Regional officials had the information on their permitting universe. This expectation was not communicated to Region 3 and the Region did not have the data. Along the same lines, Region 3 officials suggested we contact the states to get such information, not knowing whether or not the states had the data collected. West Virginia did, Pennsylvania did not. Pennsylvania officials, for instance, did not know how many, if any, renewals their regions had processed.

EPA does not have the information to identify facilities with expired permits or those with permits that have been improperly renewed, since it is not collecting expiration dates or dates of renewal application received. Permit terms may not be extended by modification, according to the regulations. Properly applying for renewal, on the other hand, does allow the facility to continue operating under the existing permit terms until a renewal decision is made. One state official told us that his office had not renewed any permits; however, it had extended the terms of a few, when the facilities requested permit modifications. According to the official, the State regional counsel's office curtailed that improper practice. EPA, however, was not aware of that situation, as it would have been had the Agency collected the data necessary for program oversight.

EPA Is Not Positioned To Monitor Performance

Without information such as the date permit application was received and the date the permit expires in its system, the Agency can not identify the universe of facilities with permits that have been, need to be, or soon will need to be renewed, which would be the first step in performance monitoring. EPA is also not collecting current performance data by not ensuring that the aforementioned information is accurately entered.

RCRA permits shall have a fixed term, not beyond ten years, in accordance with the law, but permits at times are given terms longer than 10 years. Regulations specify that in order for a permit to continue, the facility must submit a complete renewal application at least 180 days prior to the expiration of the original permit. From what limited data we could obtain, it appears that states are not reissuing permits within the 180-day window. Renewing the permits within that time would be desirable in light of the statutory requirement for a fixed term. Some permits are continued according to regulation; however, others are not, as described in the previous section of this report. The Agency is not tracking this issue.

The information we gathered indicates that permitting time frames vary widely. In West Virginia, the three renewals that had been completed took 450 to 1090 days to process. The two Pennsylvania renewals were in process approximately 714 to 812 days. During our fieldwork, the renewals in progress in both states had been on-going from 115 to 975 days. We also reviewed information regarding permit processing time that 16 states provided in 1996 to a team the Administrator charged with environmental permit reform. The data which primarily represented performance standards, not necessarily actual performance, covered a range of 150 days plus public notice (45 days plus hearing, if necessary) to 760 days. The information had not been analyzed by the team or any EPA representative.

When a permit is continued according to regulation, the facility operates under the conditions specified in its existing permit until the renewal decision is made. Some changes in operating requirements must be implemented as they are issued; e.g., Land Disposal Restrictions under the Hazardous and Solid Waste Amendments. Other regulatory changes that occurred during the permit term may not have been incorporated into the existing permit, allowing facilities to postpone compliance with newer and often stricter standards during the renewal process, which may take years. However, as noted above, the Agency is not in a position to know whether the requirements for renewal are being met, or whether they are appropriate.

CONCLUSIONS

While EPA has placed, and will continue to place, a great deal of emphasis on issuing original RCRA permits to facilities treating, storing, or disposing of hazardous waste, the Agency has not yet established the necessary controls for guiding operations now that more than half of the original permits are issued and the first round of renewals are coming due. EPA has no plan for addressing renewals. The Agency needs to establish basic controls and gather basic programmatic information to begin monitoring permit renewal activities.

AGENCY COMMENTS AND OIG RESPONSE

In lieu of formal written comments on our draft report, OSW officials chose to provide oral comments. The officials provided updated information, and requested various changes throughout the report. They agreed with the overall message of the report and the intent of the recommendations. We revised the draft as appropriate.

RECOMMENDATIONS

We recommend that the Acting Assistant Administrator for Solid Waste and Emergency Response direct the Acting Director, Office of Solid Waste to:

- 1.) Issue a guidance memorandum for management of RCRA permit renewals to EPA regions and the states that addresses:
 - the value of Federal oversight,
 - the oversight responsibilities of Headquarters and regions, and
 - the growing importance of permit renewals.
- 2.) Ensure that EPA regions and/or the states:
 - a. enter key permitting data in RCRIS which include at a minimum:
 - the date the permit application (part B) was received,
 - the date the permit was issued, and
 - the date the permit expires; and
 - b. use the data to ensure that facilities are not allowed to operate under permits that have expired or been improperly renewed.

Report Distribution

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