



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

AUG 15 2003

OFFICE OF
WATER

MEMORANDUM

SUBJECT: National Pollutant Discharge Elimination System (NPDES) Permitting for Environmental Results Strategy

FROM: G. Tracy Mehan, III
Assistant Administrator

A handwritten signature in black ink, appearing to read "G. Tracy Mehan, III".

TO: Water Division Directors, Regions I – X

The NPDES program is integral to preserving and protecting our nation's waters. Over the past decade, interest in the program has increased with a corresponding increase in demands. The scope of regulated entities and environmental problems facing the program have become more numerous and broader in range. There is a growing need for resources to implement the Clean Water Act. Amidst these conditions, we are faced with many challenges in the Water Program. The National Water Quality Inventory 2000 Report to Congress indicates that of the nation's river and stream miles assessed, 39% are impaired. The NPDES permit backlog while improving, still persists. The integrity of the NPDES program has been raised as an issue in 19 petitions for EPA to withdraw program authorization in 12 States and an additional seven lawsuits have been brought. Because of these and other challenges, more than ever we need to build on past success, develop the tools needed to meet changing demands, and strategically manage the program into the future. To address these serious issues, we have developed the Permitting for Environmental Results Strategy to more efficiently and effectively manage the NPDES permit program with increased environmental focus.

The elements of this Strategy have been in development for over six months. Details of this Strategy were discussed at our Water Division Directors meeting in May, in numerous conference calls with you and your staff, and in workshop meetings and conference calls that have included both State and Regional staff. We plan to implement the Strategy beginning October 1, 2003. Over the next few weeks we will discuss the tools and processes with the States and with you during our September meeting and make adjustments as necessary. I look forward to your assistance in that process.

Elements of the Strategy

This Strategy presents a coordinated and integrated management system that when fully implemented will produce a program that is more efficient and focuses on environmental endpoints. The Strategy is an important element in an overall plan to meet the watershed restoration goals established in EPA's Strategic Plan. The primary components of the Strategy are listed below.

- **Program Results: Permit prioritization** - Identify the most environmentally significant permits and prioritize permit issuance within and among watersheds to maximize environmental benefits and optimize valuable resources.
- **Program Efficiency: Permit streamlining** - Identify and share best practices to increase efficiencies in permit issuance thus enabling resources to be applied where needed.
- **Program Integrity** - Implement tools to continually assess NPDES program performance and provide the necessary information and direction for making adjustments to program activities to correct problems and ensure continued success.

The Strategy also includes a detailed Communication and Outreach element that is integral to the implementation of the three primary components. We are working closely with the Office of Enforcement and Compliance Assurance on these efforts. Communication and outreach elements of the Strategy will ensure timely dissemination of information and training to maintain necessary expertise within the program. Once implemented, this management system will be reviewed annually to provide opportunity to make any necessary changes.

The Strategy is designed to support Goal 2 of EPA's new Strategic Plan and work within the Office of Water's (OW) watershed approach. The prioritization and streamlining components provide procedures to organize and better manage program implementation on a watershed basis. The integrity component provides the needed structure for effective program performance assessment.

Expectations

As partners administering the NPDES program, EPA and the States are working to improve the NPDES program by efficiently and effectively targeting resources to achieve the greatest environmental benefit. The Permitting for Environmental Results Strategy is designed to lead this effort by providing a system to reduce barriers to effective program implementation and achieve progress towards greater environmental benefits. I intend to pay close attention to the effectiveness of this implementation and discuss it with EPA Managers on a routine basis. As we move forward to implement the Strategy, the following action items are key:

For the Office of Wastewater Management (OWM):

- Fully develop the tools described in this Strategy in consultation with OECA, Regions and States.
- Work with EPA Regions and States to implement Strategy tools.
- Provide regular updates on Strategy implementation progress.
- Develop a prioritization process to identify high priority permits for workload planning. Priority permits will primarily be those for which requirements need to be revised in order to protect impaired or vulnerable waters.
- Share streamlining tools as successful approaches are identified among Regions and States.

EPA Regions and NPDES Authorized States:

- Develop approaches to implement the Strategy.
- Develop a candidate list of priority permits in each Region and State annually to be used as a basis for identifying permits to be issued in the upcoming year.
- Begin program integrity reviews in FY 2004 and complete them as soon as practicable.

I am very excited about this effort. I look forward to working closely with you and the States to overcome the challenges we face and protect and restore our nations' waters. If you have questions regarding this policy, please contact Linda Boornazian, Director, Water Permits Division at (202) 564-0221. I greatly appreciate your support and leadership in this effort.

Attachment

cc: Marianne L. Horinko, Acting Administrator
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NPDES Permitting for Environmental Results Strategy Goals and Approaches

The NPDES Permitting for Environmental Results Strategy describes goals, expected outcomes, and tools designed to help Regions and States in three key areas: permit prioritization, permit streamlining, and program integrity. The Office of Water (OW) will work with the Regions and States to develop and implement an effective and productive Permitting for Environmental Results Strategy. The Strategy will be reviewed annually and updated as needed.

As indicated in the cover memorandum, a key element for the implementation of this Strategy involves an effort on the part of the Regions and States to characterize and prioritize permit issuance. As part of the NPDES backlog reduction efforts, OW requested on March 31, 2000, that the Regions submit backlog reduction plans for themselves and from the authorized States. As an expansion of this effort, OW will request that the Regions and States annually develop a permit issuance prioritization strategy and where priority permits remain backlogged, an explanation of the barriers to permit issuance and plans to address them. This information will be part of the annual State program profile for each State described below.

Strategy Goals and Approaches

I. Program Results: NPDES Permit Prioritization

Many permits, but not all, need to be revised upon re-issuance to achieve environmental benefits. EPA believes that, with a well articulated permit prioritization process, Regions and States can establish a basis for focusing permitting resources on those permits that are likely to provide a significant environmental benefit. Once a process is established, data requirements to implement the process can be developed. The Watershed Approach, as described in the December 3, 2002 memorandum "Committing EPA's Water Program to Advancing the Watershed Approach" provides a framework to integrate data and characterization of the permit universe in order to prioritize and streamline permit issuance. Information about the impacts of permits enables permitting authorities to prioritize permit issuance within and among watersheds to maximize environmental benefits and valuable resources.

Goal: Permit Prioritization – Identify permits of high environmental significance based on linkages between permits and environmental attributes. EPA recognizes that there are many applications for prioritization tools. For example, permit prioritization may help address workload issues or prioritize permit issuance when combined with bundling groups of permits or applying other streamlining options.

Permit Screening Process – OW is working with Regions and States to develop a screening process designed to help permitting authorities efficiently prioritize permit issuance to optimize valuable resources. The screening process will focus primarily on actions related to

environmental significance and will include a set of criteria (e.g., change in water quality standards, source water protection, protection of threatened and endangered species, impaired waters) against which permits will be compared to develop a candidate list of priority permits. Regions and States will use this candidate list as the basis for discussions to determine a final list of priority permits annually. EPA and the States are developing a screening checklist to assist in this process.

Outcome: EPA will work with States annually to identify high priority permits based on criteria that primarily includes permits for which requirements need to be revised in order to protect impaired or vulnerable waters. A candidate list of priority permits in each State will be developed annually and will serve as the basis for identifying the priority permits the States will issue in the upcoming year.

Goal: Permit Data – Identify and secure critical data required to characterize the regulated universe and manage program implementation.

Tool #1: Permit Compliance System (PCS) Modernization (Integrated Compliance Information System (ICIS - NPDES) – Management of the NPDES program is supported by the Permit Compliance System (PCS). Since the last modernization of PCS in 1985, the NPDES program has evolved to include new program requirements and an expansion of the core NPDES program. These changes are not currently addressed in legacy PCS. The need for a modernized PCS to support the changing requirements of the NPDES program and to take advantage of modern computer technology is critical for effective management of the NPDES program. PCS modernization is part of the Office of Enforcement and Compliance Assurance's (OECA) larger modernization effort, the Integrated Compliance Information System (ICIS). Phase I of ICIS, implemented in 2002, established the core database and Web-based interface to support the federal enforcement and compliance program. ICIS - NPDES (formerly ICIS Phase II) will replace legacy PCS and will be integrated with ICIS Phase I. As PCS modernization moves forward, OW will continue to be an active partner in the design and development of ICIS - NPDES.

Outcome: Produce a new modern information management system that will not only provide access to accurate, real-time program data, but will also provide desktop tools to support permit applicants, permit writers, program managers, stakeholders, and the public.

Tool #2: Joint Memorandum from the Office of Wastewater Management and the Office of Compliance to State and Regional Enforcement and Water Program Directors Assessing PCS (Permit Compliance System) Data Quality Improvement – This memorandum will summarize our work with the States over the past several years to improve data quality in PCS and describes the next steps for the project. The memorandum reiterates the necessity of this information for operation and management of the NPDES program and summarizes the current status of PCS data. It also emphasizes the need for quality latitude/longitude data at the outfall level, noting that this type of data is essential for electronic tools such as the AskWATERS Permit

Characterization tool and eNPDES (both mentioned in this Strategy). The memorandum, scheduled to be issued in the Fall of 2003, will request that each Region work with their States to prepare a plan for improving PCS data quality.

Outcome: Obtain an increased quantity and quality of data, particularly locational data, critical to characterizing the NPDES permitted universe.

Goal: Permit Characterization – Accurately characterize the universe of NPDES permits relative to environmental attributes. OW recognizes that there are several approaches to permit characterization ranging from using computer applications to query national data (described below) to facility-level review of permits. OW will continue to work with co-regulators to explore the most effective methods for characterization.

Tool: AskWATERS: Permit Characterization – OW is developing “AskWATERS,” a web-based tool that allows users to better characterize the relationship between pollutant sources and stressors by linking a wide variety of environmental data sets. The Water Permits Division (WPD) is utilizing the AskWATERS application to provide specific linkages between current and expired NPDES permits and environmental attributes. The initial version of the Permit Characterization, available on the EPA Intranet at: <http://intranet.epa.gov/waters/tools/index.htm> identifies NPDES permits discharging to impaired waters throughout the United States. It also identifies permits that discharge the pollutants that are the listed cause of impairments. As additional national data become available, they will be added to the tool. Potential topics include identification of permits that discharge to waters where: EPA and/or State water quality standards have been recently revised; a public drinking water source is nearby; a fish consumption advisory is in effect etc.

Outcome: Highlight critical areas of concern among current and expired permits to help prioritize permit issuance and maximize environmental benefits.

II. Program Efficiency: NPDES Permit Streamlining

In light of increasing demands on the NPDES program, OW is working to help permitting authorities by facilitating streamlining in the permit issuance process and by providing a variety of tools and support to Regions and States. The December 3, 2002 memorandum from G. Tracy Mehan to Office Directors and Regional Water Division Directors “Committing EPA’s Water Program to Advancing the Watershed Approach” and the January 7, 2003 Watershed-based Permitting Policy Statement provides a clear Statement of EPA’s expectation that NPDES permits should be developed and issued through a process that yields permits containing requirements that are coordinated on a watershed basis and focus on watershed goals. As described in the Policy Statement, EPA believes that developing and issuing NPDES permits on a watershed basis can benefit all watershed stakeholders. In addition to increased environmental results, many of these benefits involve administrative efficiencies.

Goal: Permit Streamlining – Identify and promote best practices to increase efficiencies in permit issuance.

Tool: Issue Report on Administrative Practices for NPDES Permit Streamlining – Document research on current practices and legal authorities for specific permit issuance processes, types of permits and administrative improvements that facilitate time savings and emphasize environmental results. Examples of such administrative efficiencies to be researched include bundling groups of permits through administrative procedures, expanded use of watershed-based permits, general permits, and use of “permit-by-rule.”

Outcome: Issue a report describing administrative efficiencies that may be realized within the current regulatory scheme. Convey to permitting authorities EPA-approved permit streamlining mechanisms. Document use and effectiveness of streamlining practices.

Goal: EPA Support and Technical Assistance – Provide targeted support to EPA Regions and States to facilitate efficient program implementation. Mechanisms for support include electronic tools, guidance, and contract vehicles.

Tool #1: Electronic Tools – OW developed and will continue to improve upon several electronic tools to improve the NPDES permitting process. Additionally, OW will work to ensure that NPDES program needs are being included in the development of many Agency-wide tools.

- **eNPDES** - This electronic permit writing tool is designed to help develop water quality based effluent limits in permits and permit fact sheets. This effort is under development with a beta version planned for release by December 2003. The next phase of eNPDES will include links to allow data to be pulled from the Storage and Retrieval System for National Water Data (STORET) and modernized PCS.
- **Permit Application Software System (PASS)** - PASS is an electronic NPDES application form design to improve application quality and reduce burden on applicants. This system is designed to be compatible with EPA and most State data systems, serving as a step towards electronic submission of NPDES permit applications. PASS was released in Fall of 2002 and is currently in use in 13 States. PASS is located on-line at: <http://cfpub1.epa.gov/npdes/permitissuance/pass.cfm>.
- **eNOI** – This tool enables on-line completion of applications for storm water construction, industrial, and no exposure application and termination forms. This effort is under development and is expected to be available in September 2003. Future enhancements to eNOI involve the inclusion of Combined Animal Feeding Operations (CAFOs).
- **Permit Scanning** – Beginning in June 2003, EPA began making available to the public electronic versions of permits and fact sheets for major facilities as they are issued or re-

issued with the goal of having all major permits represented after five years. The project will continue indefinitely so that the most current versions of permits are available. This availability will enable permit writers to easily see how their counterparts in other States have approached a variety of issues. Permits are available on-line at:
<http://cfpub1.epa.gov/npdes/permitissuance/permitscanning.cfm>

Outcome: Electronic tools will enable permit writers to more efficiently draft and issue permits. These tools will have a resource saving benefit to NPDES permitting programs, and are being designed to ultimately function in an integrated manner to serve as a more automated permitting program system.

Tool #2: Watershed-based Permitting Case Studies – To implement NPDES permitting within a watershed approach, OW is working with Regions, States, and permittees to identify examples of watershed-based permits. Examples of watershed-based permitting are being documented and pilot studies have been developed to test different approaches for implementing watershed-based permitting. As the pilots produce results, the information generated is added to a series of case studies. The case studies are condensed into fact sheets, reviewed periodically and updated as appropriate. All case study information is posted on the EPA's website at:
<http://cfpub.epa.gov/npdes/wqbasedpermitting/wsp permitting.cfm>.

Outcome: Facilitate wider adoption of efficiencies gained through watershed-based permitting by providing public access to real-world examples including lessons learned, successes, challenges, actual permits and fact sheets, networking opportunities etc.

Tool #3: Watershed-Based Permitting Guidance – OW will issue two guidance documents for use in implementing watershed-based permitting; the first implementation guidance will be issued in September 2003 and a more detailed supplement to this will be issued in FY 2004. The more detailed document will serve as a technical guide to developing watershed-based permits.

Outcome: Identify opportunities and provide guidance for watershed-based permitting.

Tool #4: Blanket Purchase Agreement (BPA) – The BPA is a multiple contract award vehicle established in 2002. It enables EPA and States to directly tailor contract assistance to their specific permit program needs. This vehicle supports States through direct exchange of Clean Water Act §106 funds for “in-kind” contract assistance. Services for all aspects of watershed management are provided including: NPDES permitting, monitoring, non-point source program implementation, and implementation of the Total Maximum Daily Loads program. The BPA serves as long-range contract support with an unlimited dollar ceiling. States are consistently using this contract capacity.

Outcome: Streamline permit program management using the support and skills available through this vehicle.

III. NPDES Program Integrity

The purpose of the Program Integrity element of this Strategy is to implement a management system that provides EPA and States with improved capability to examine the performance of the NPDES program as well as other water and enforcement related activities. It provides a vehicle for States and Regions to showcase their strengths and enables them to identify and address shortfalls in a timely manner. Such a management system improves confidence in program implementation. This confidence will foster public acceptance of the use of more efficient processes including prioritization and streamlining. In addition, program oversight will be conducted in a more focused way.

Goal: NPDES Program Integrity - Implement a management system that will enable EPA and States to regularly assess the integrity of the NPDES program as well as other water and enforcement related activities on a national, regional, and State-specific level and to improve overall program performance.

Tool #1: Data Management and Reporting Systems – Implement effective mechanisms for the collection, reporting and tracking of key NPDES programmatic data to assess and improve program integrity.

- **Self-Assessment Questionnaires**: One of the questionnaires is directed toward the Regions and focuses on the oversight of State NPDES programs. The other questionnaire is directed toward the permitting authority and addresses the following: program administration, legal authorities, permit issuance, trends in compliance monitoring and enforcement actions, NPDES program innovations, program implementation, vulnerabilities, and environmental outcomes. Resources may be provided to assist States, where requested, in completing the information.
- **Management report**: This report provides a State-by-State summary of performance trends in NPDES and other NPDES-related water programs. The report is based primarily on data readily available from existing databases and reports. It provides a snapshot of State performance in four areas: (1) program administration; (2) program implementation; (3) compliance monitoring and enforcement; (4) environmental outcomes. While the report gives indications of program performance, it does not give a comprehensive view of the program and should be used in conjunction with the other information.
- **State NPDES NPDES Program Profiles**: The State profiles summarize how well each State is managing its NPDES program. The profiles highlight State innovations and successes toward more efficient or effective management of the NPDES program. The profiles are based primarily on data gathered for the Management report and the NPDES program self-assessments conducted by Regions and States.

- Withdrawal Petition Database: The NPDES program has 20 petitions in 13 States and seven lawsuits to withdraw NPDES authorization of authorized programs. Until recently, OW lacked a complete understanding as to whether the petitions were being addressed in a consistent manner and how frequently they were being addressed. To address this, a protocol was established in May 2000 for Regions to standardize a time frame to address petitioner concerns. OW also developed a management tool for tracking withdrawal petitions. In May 2003, OW launched a Web-based withdrawal petition management tool to track withdrawal petitions.

Tool #2: Performance Assessment and Feedback Mechanisms – In order for EPA to direct resources and efforts to areas that improve program integrity, OW will assess the impact and results of this Strategy’s tools and goals and will determine if any changes need to be made to the process. OECA is currently working with EPA Regions and State Commissioners to identify appropriate compliance and enforcement program performance standards across all media programs. Once this effort is completed, modifications to the initial compliance and enforcement components of the Program Integrity Project may be necessary. Specific plans for this measurement are currently under development; comments and suggestions are welcome.

Tool #3: NPDES Program Oversight Guidance – The NPDES State Program Guidance has not been updated since its creation in April 1986. The Guidance does not address areas created or modified by the 1987 Clean Water Act amendments. In addition to increasing penalties for noncompliance, the amendments also carved out the permit program for storm water discharges from industrial sources and municipalities, created the federal sludge management program, and deemed that Indian tribes could be treated as “States” under the Act. Since 1987, there have been a number of regulatory changes made to reflect the amendments, and a variety of court cases that have affected the NPDES program. Because most States (all but five) already have approved NPDES programs, the focus of updating the Guidance will be on program operations and the working relationship between Regions and States. WPD plans to issue the updated Guidance based on feedback received from States and Regions through completed self-assessment questionnaires and State profiles in FY 2005.

Outcome: The NPDES program management integrity system will be established. There are three components to this system: self-assessments of individual State and Regional NPDES programs, the National Water Program Management Report, and State NPDES program profiles. This information will be made available to the public. Once fully implemented, this system will enable States and Regions to showcase their strengths and address program vulnerabilities in a timely manner.

Communications and Outreach

The Permitting for Environmental Results Strategy relies on communications to ensure that EPA and co-regulator staff and managers have the information they need to successfully

implement the NPDES program. Through a variety of mechanisms, OW will provide and coordinate dissemination of key program information. Also, training will be provided on the most current topics and tools necessary to foster efficient and informed NPDES permit issuance.

Goal: NPDES Communications – Provide a variety of communications tools and activities including training and outreach to help attain Permitting for Environmental Results Goals.

Tool #1: Training – EPA recognizes that an important aspect of efficient program implementation is reliance on a well-trained permitting staff. Recent reports from Regions and States indicate a high rate of staff turnover. To alleviate the resulting problems, OW will provide training on the latest tools and innovative permitting approaches.

- Basic NPDES Permit Writers' Training Course – OW will continue to provide training to permit writers on the basic regulatory framework and technical considerations that support the development of wastewater discharge permits as required under the NPDES program. Training will also be provided to non-technical EPA Headquarters staff and managers to facilitate information sharing and program integration.
- Training/Outreach for Experienced Permit Writers – OW will provide an annual forum to facilitate communication and information exchange on the most current NPDES issues among experienced permit writers. This face-to-face exchange is an important aspect to maintaining a strong knowledge base among permit writers particularly when faced with emerging and often cross-program issues.
- Third Party Training – OW realizes that the regulated community needs training similar to training provided for permitting authorities. However, the specific information needed by permittees is very different from information needed by permit writers. Permit writers develop permits daily and need to be well versed on the development and issuance process. In contrast, permittees apply for and receive a permit only once every five years, and therefore permit issuance is only one limited activity in the life of the permit. The permittee is more focused on implementation of the permit and maintaining compliance. We will work with the Water Environment Federation and the Center for Environmental Innovation to develop a training course designed to help increase permittees knowledge of the program and help foster an atmosphere of cooperation. Once the permittee understands the program and how the data are used, permit issuance should be less contentious.

Outcome: Create a variety of efficiencies in the permit issuance process by maintaining and supporting a well-informed/trained group of permit writers and permittees.

Tool #2: Outreach and Communication – OW will work to strengthen NPDES programs by providing outreach and fostering communication among co-regulators. These efforts are

designed to promote an accurate, real-time picture of the integrity of State authorized programs, both individually and nationally.

- Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) CWA 104(b)(3) Cooperative Agreement Work Group Communications: OW will maintain ongoing communications with the ASIWPCA Permitting for Environmental Results Workgroup. This workgroup was established by a CWA 104(b)(3) Cooperative Agreement and has several goals that are related to the goals of this Strategy. We will use this forum to help ensure successful implementation of the Permitting for Environmental Results Strategy.

Outcome: Strengthen nationwide NPDES program implementation through improved communication and understanding among managers of the NPDES program.

- Regional Liaisons: Headquarters liaisons to each Region will serve in several capacities to foster communication between Regions and Headquarters (HQ). For example, they will share information such as weekly reports currently produced by each HQ NPDES Branch as well as other materials useful for routine program management. Liaisons will also assist with program integrity efforts by facilitating attention from HQ management on policy issues in need of this attention. Also, liaisons will assist in the preparation and distribution of materials related to the NPDES program for use in Regional reviews conducted by HQ and other senior manager visits to the Regions.

Outcome: Liaisons will improve communications between EPA Regions and HQ by working with their Regional counterparts to provide a systematic information exchange regarding implementation of the NPDES program.