Chapter 3

Managing RCRA Permitting

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MANAGING RCRA PERMITTING

INTRODUCTION

Chapter 3 discusses the RCRA permitting process for DOE treatment, storage, or disposal (TSD) facilities in the context of the global task of environmental permitting and suggests ways to successfully manage the process. In contrast, Chapter 2, RCRA Permit Application, provided guidance on the content of the permit application.

Module 3-1 Planning for RCRA Permitting

This module addresses environmental permitting in situations where either a new TSD unit will be constructed or an existing unit that does not currently manage hazardous wastes or radioactive mixed wastes (RMW) will be converted into a TSD unit. Information is provided to assist DOE personnel in (1) determining whether activities at the planned unit require a RCRA permit, (2) ensuring that applicable non-RCRA requirements have been met, and (3) determining requisite public participation.

Module 3-2 RCRA Permit Application Processing

This module discusses the process of preparing the RCRA permit application and its review by the implementing regulatory agency. After DOE completes, signs, and submits the application, the regulator (EPA or an authorized state agency) checks it for completeness. If the permit application is not complete, the regulator must provide DOE with a written list of information still needed. When the application is complete, the regulator will notify DOE in writing, and the date of the notice becomes the effective date of the application. The regulator can request additional information after the effective date, but only to clarify, modify, or supplement previously submitted material, and such requests do not alter the prior completeness determination.

If DOE fails to complete an application after receiving a notice of deficiency, the regulator may deny the permit and take enforcement action against an operating unit for RCRA noncompliance, if appropriate. Such denial of a permit, however, does not preclude reapplication.

Module 3-3 RCRA Draft Permits

This module discusses (1) how the responsible regulatory agency decides what conditions to place in a draft RCRA permit, and (2) the administrative process whereby the responsible regulatory agency makes its final permit decision after either issuing a draft RCRA permit or denying a RCRA permit application.

The regulations dictate that certain conditions must appear in RCRA TSD permits (40 CFR 270.30 and 270.32). This module summarizes the nature of the mandated conditions and describes the required content of the administrative record that the

responsible agency must create to support the conditions. Also, this module covers how DOE personnel may possibly influence the content of conditions, since the responsible regulatory agency usually adopts standardized language for some required permit conditions, while others are crafted on a case-by-case basis.

The administrative process whereby the responsible regulatory agency makes its final permit decision includes a public comment period with an opportunity for public hearings. Then, if someone who submitted comments on the draft permit and/or participated in the public hearings objects to the final permit decision, the decision can be appealed. This module describes the public comment period, the mechanism for requesting a public hearing, and the basics for filing an appeal on the final permit decision. Suggestions for participation by DOE personnel are provided.

Module 3-4 Duration and Termination of Permits

This module discusses the requirements for complying with the conditions of a permit during its term and the procedures used for terminating permits.

MODULE 3-1: Planning for RCRA Permitting

If DOE is considering either constructing a new hazardous waste or RMW TSD unit, or converting a non-hazardous waste management unit into a hazardous waste or RMW TSD facility, DOE personnel should begin planning as soon as possible for the environmental permitting process. Early planning should establish a "permitting road map" and preliminary schedule. Exhibit 3-1 lists the major questions that will influence the road map and shape the schedule. Following the exhibit, Submodules 3-1-1 through 3-1-5 discuss the questions in greater detail.

EXHIBIT 3-1
EARLY PLANNING CHECKLIST

Submodule 3-1-1	**Does the unit require a RCRA permit?**
Submodule 3-1-2	**Does the unit require other environmental permits or approvals?**
Submodule 3-1-3	**What other State/Federal programs not themselves requiring permits can affect RCRA permitting?**
Submodule 3-1-4	**What review does the National Environmental Policy Act require?**
Submodule 3-1-5	**What public participation is needed?**

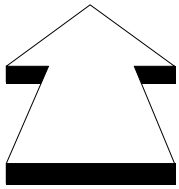
Submodule 3-1-1: DOES THE TSD UNIT REQUIRE A RCRA PERMIT?

RCRA requires permits for hazardous waste TSD units [RCRA 3005(a); 42 U.S.C. 6925(a)]. Hence, as DOE formulates plans for any such unit, Department personnel must first evaluate whether the unit will manage hazardous waste (as defined by 40 CFR part 261). To assist with the evaluation, DOE's Office of Environmental Policy and Assistance, RCRA/CERCLA Division (EH-413) (formerly EH-231), has published a guidance manual entitled "Definition of Solid and Hazardous Waste" [DOE/EH-273 (August 1992)] and an Information Brief entitled "Overview of the Identification of Hazardous Waste Under RCRA" (DOE/EH-231-007/1291).

Any unit that will manage hazardous waste as defined by 40 CFR 261 requires a RCRA permit, unless it is exempt

Even if DOE determines that a new or modified waste management unit will be a hazardous waste or RMW TSD unit, a RCRA permit may not be required if the proposed unit is exempt. Therefore, the second step in determining the need for a RCRA permit is evaluating the applicability of exemptions to the anticipated hazardous waste or RMW management activities.

A comprehensive list of exempt activities was given in the section of the Introduction describing the scope of this guidance document.



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If DOE personnel conclude that a planned hazardous waste TSD unit is not exempt, then preparations to apply for a RCRA permit should begin immediately.

Submodule 3-1-2: DOES THE UNIT REQUIRE PERMITS UNDER STATUTORY AUTHORITIES OTHER THAN RCRA?

This submodule summarizes implementing regulations concerning permits or licenses required by the Clean Air Act, the Clean Water Act, and the Atomic Energy Act. Suggestions are provided for complying with these permitting regulations and coordinating such compliance with preparation of the RCRA permit application. However, this information is not intended to be comprehensive. DOE personnel should also consult the applicable law and regulations, as well as pertinent guidance documents issued by DOE's Office of Environmental Policy and

Assistance (EH-41), other DOE organizations, or the responsible regulatory agency.

The Safe Drinking Water Act (SDWA; 42 U.S.C. 300 et seq.) protects drinking water sources by requiring permits for any underground injection that could endanger such sources. Underground injection control (UIC) permits are required before injecting any hazardous wastes. Nevertheless, this submodule does not cover UIC permits because no DOE hazardous waste or RMW underground injection facilities could be identified. Further, under Order DOE 5400.5 and proposed 10 CFR part 834, DOE is actively phasing out subsurface discharges of liquid wastes containing radionuclides.

Other laws identified by 40 CFR 270.3, "Considerations Under Other Federal Law," that may affect RCRA permitting, but do not themselves require permits, are discussed in Submodule 3-1-3.

CLEAN AIR ACT

The Clean Air Act (CAA), as amended in 1990, establishes three permitting programs:

- The Title V operating permit program;
- The prevention of significant deterioration (PSD) permit program; and
- The nonattainment area permit program.

Significantly, the CAA permitting programs are not mutually exclusive. Hence, a source of air pollutant emissions may be required to obtain all three permits. EPA and the States have not yet finalized the details of how this will work, but it seems likely that in States that implement all three programs, applicants will ultimately be able to consolidate the permit applications. However, if a State is implementing only one or two of the programs, with EPA implementing the remaining ones, applicants may be forced to file separate applications for the State-issued and EPA-issued permit(s). This is an area of significant recent change, and DOE personnel should consult their regulators.

Clean Air Act, Title V Operating Permits

Among other things, Title V of the Clean Air Act (42 U.S.C. 7661) prohibits operation of an air pollutant emission source without an operating permit. This provision was added to the CAA by the CAA Amendments of 1990. Operating permits are specifically required for the following sources, unless such sources are eligible for exemption [40 CFR 70.3(a)(1)-(5)]:

Sources Required to Obtain Title V Operating Permits

- Major sources
- Any source subject to NSPS
- Any source subject to NESHAPs
- Any source subject to acid rain reduction requirements or acid rain emission limitations
- Any other designated source

(1) Any major source as defined by 40 CFR 70.2. Eacn such source may be comprised of stationary sources that belong to a single major industrial grouping, and that together constitute: a major source of HAPs under Section 112 of the CAA, National Emission Standards for Hazardous Air Pollutants; a major stationary source of air pollutants as defined in Section 302 of the CAA, Definitions; or a major stationary source of specified air pollutants in a nonattainment area under part D of Title I of the CAA, Plan Requirements for Nonattainment Areas.

(2) Any source, including an area source (i.e., any stationary source of hazardous air pollutants that is not a major source of hazardous air pollutants), subject to Standards of Performance for New Stationary Sources (NSPS) set forth in 40 CFR part 60;

(3) Any source, including an area source, subject to National Emission Standards for Hazardous Air Pollutants (NESHAPS) set forth in 40 CFR parts 61 and 63;

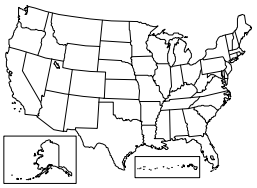
(4) Any affected source [i.e., a source containing one or more units that are subject to CAA, Title IV (42 U.S.C. 7651) acid rain reduction requirements or acid rain emission limitations]; and

(5) Any source in a source category designated by the EPA Administrator.

At least some DOE hazardous and mixed waste TSD units are likely to require Title V operating permits, because Section 112(b) of the CAA lists about 200 HAPs, including radionuclides. Because of the nature of the materials they will manage, DOE hazardous and mixed waste TSD units may emit one or more of these HAPs. Some units may

even emit enough HAPs and/or other regulated air pollutants (e.g., carbon monoxide, nitrogen oxides, sulfur dioxide, particulate matter, volatile organic compounds, mercury and lead) to be considered major sources.

Approved States will implement the Title V operating permit program



States are expected to administer the CAA operating permit program. EPA promulgated regulations establishing the minimum elements required for state operating permit programs on July 21, 1992 (57 FR 32250). Permit applications must be submitted to the State where the facility is located within 12 months after the date when an effective permit program has been established [40 CFR 70.5(a)(1)(i)].

Permit applications must be filed within 12 months of the effective date of the state program

If a State fails to submit an appropriate permit program for EPA approval, fails to adequately implement an approved program, or EPA believes the State does not issue adequate Title V permits to individual sources, EPA will implement a Federal operating permit program in that State pursuant to regulations (40 CFR part 71, subpart A) promulgated on July 1, 1996 (61 FR 34202).

Clean Air Act, Prevention of Significant Deterioration

The Prevention of Significant Deterioration (PSD) program imposes a construction permit requirement on new stationary emission sources and modifications to existing stationary sources if [40 CFR 52.21(i)]:

"Major" sources located in attainment or unclassifiable areas are required to obtain PSD permits

> (1) The source or modification is "major" [see 40 CFR 52.21(b)(1)] for any emitted pollutant that is regulated by the Clean Air Act; and
> (2) The source is located in an "attainment" or "unclassifiable" area for the pollutant emitted in "major" quantities (see 40 CFR part 81, subpart C).

The PSD permit applications for some sources require only limited review. Sources for which full review is not required are listed in 40 CFR 52.21(i)(4)-(12). If a DOE hazardous or mixed waste TSD unit requires a PSD permit on the basis of the above criteria, the list should be consulted to verify the extent of review that the PSD permit application must support.

PSD permit, if needed, must be issued before construction starts.

EPA regulations do not establish a filing deadline for PSD permit applications. Nevertheless, the PSD permit, if required, must be issued before construction can begin. Therefore, the application should be submitted sufficiently early to allow for the regulator's completeness and technical reviews, public notice and comment regarding the draft permit, public hearing (if requested), and issuance of the final permit. These activities could take 18 months or longer, depending on the nature of the proposed unit, the extent of public interest, and the work load of the responsible agency staff. DOE personnel should consult the regulator concerning the time that should be allocated for processing a PSD application for new hazardous and mixed waste TSD units.

Clean Air Act, Nonattainment Areas

Some major fugitive sources are exempt from nonattainment area permitting.

If a new or modified hazardous or mixed waste TSD facility is located in a "nonattainment" area (40 CFR part 81, subpart C), the PSD program does not apply to any pollutant for which the area has been designated nonattainment. Instead, construction of major sources of those air pollutants is prohibited, unless the State issues nonattainment area permits in accordance with a fully approved State Implementation Plan (SIP) (40 CFR 52.24). However, if a source or modification will be major only because fugitive emissions are included in the emission calculation, it is exempt from nonattainment area permitting, unless it falls into one of several categories specified in the regulations [40 CFR 52.24(h)]. It is unlikely that any of the specified exempt categories would encompass a DOE hazardous or mixed waste TSD unit. Nevertheless, if DOE personnel determine that a TSD unit is exempt from nonattainment area permitting because its fugitive emissions cause it to be major, the list specifying exclusions from this permitting exemption should be examined.

As is the case with the PSD permit requirement, EPA has established no nonattainment area permit application deadline. Again, the regulator should be consulted regarding the length of time needed by the agency before the scheduled construction start date to process the application, including time for public notice and comment

on a draft permit, public hearing (if requested), and issuance of the final permit.

Clean Air Act, Summary

Exhibit 3-2 summarizes the CAA permitting program requirements.

EXHIBIT 3-2
CLEAN AIR ACT, SUMMARY

CAA PERMIT	NATURE OF PERMIT	SOURCES AFFECTED	APPLICATION FILING DEADLINE
TITLE V OPERATING PERMIT	Required for operation regardless of location's attainment status	● Major sources ● Any source subject to NSPS ● Any source subject to NESHAPs ● Any source subject to acid rain reduction requirements or acid rain emission limitations ● Any other designated source	Within 12 months of the effective date of the state implementing regulations
PREVENTION OF SIGNIFICANT DETERIORATION (PSD)	Required before construction in "attainment" and "unclassifiable" areas	All stationary sources or source modifications that are: (1) "major" for any regulated pollutant; and (2) located in an "attainment" or "unclassifiable" area	None specified, but processing may require 18 months or longer
NONATTAINMENT AREA	Required before construction in "non-attainment" areas	All stationary sources or source modifications located in areas that are "nonattainment" for one or more regulated pollutants for which the sources or modifications are "major," and that are subject to a fully approved State Implementation Plan (SIP)	None specified. Responsible regulatory agency should be consulted to determine length of time for processing

CLEAN WATER ACT

Clean Water Act, Section 402, National Pollutant Discharge Elimination System (NPDES)

Section 402 of the Clean Water Act, as amended, establishes the National Pollutant Discharge Elimination System (NPDES) program, requiring permits to discharge "pollutants" from any "point source" into "waters of the United States" [40 CFR 122.1(b)(1)]. In this context, "point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation,

landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff (40 CFR 122.2). With respect to hazardous and mixed waste TSD facilities, some pertinent examples of point sources requiring NPDES permits are listed below. This list is not comprehensive, and DOE personnel responsible for permitting should consult 40 CFR part 122.

Some examples of point sources needing NPDES permits

(1) Discharges from wastewater treatment facilities.

(2) Discharges of storm water, including among others, discharges associated with industrial activity [40 CFR 122.1(b)(2)(iv)].

(3) Any treatment works treating domestic sewage, regardless of whether pollutants will be discharged from a point source by the treatment works, unless all applicable requirements of Section 405(d) of the Clean Water Act (Disposal of Sewage Sludge) are included in another permit issued under RCRA; the Safe Drinking Water Act; the Marine Protection, Research and Sanctuaries Act of 1972; or the Clean Air Act; or an approved state permit program [40 CFR 122.1(b)(3)].

Some point sources are excluded from the requirement to obtain an NPDES permit. Pertinent examples of excluded point source discharges include:

Some examples of exclusions from NPDES permitting requirements

(1) Discharges of sewage, industrial wastes, or other pollutants into a publicly owned treatment works (POTW) [40 CFR 122.3(c)]. To qualify for this exclusion, the discharger may have to meet pretreatment standards. *NOTE:* This exclusion does not apply to discharges into privately owned or federally owned treatment works.

(2) Any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR part 300 (National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances) [40 CFR 122.3(d)].

(3) Discharges into a privately owned treatment works, unless a case-by-case determination is made otherwise [40 CFR 122.3(g) and 40 CFR 122.44(m)].

NPDES permit applications must be filed on standard forms

NPDES permit applications must be filed with EPA or the responsible state agency on standard forms provided by the agency. Forms have been developed by EPA covering general facility information for all dischargers (EPA Form 3510-1, often referred to as Form 1), additional information required for dischargers of process wastewater (EPA Form 3510-2C, often referred to as Form 2C), additional information required for dischargers of non-process wastewater (EPA Form 3510-2E, often referred to as Form 2E), additional information required for dischargers of storm water (EPA Form 3510-2F, often referred to as Form 2F), and additional information required for new sources (EPA Form 3510-2D, often referred to as Form 2D).

Form 1 must be filed when an NPDES permits is first sought for a DOE hazardous or mixed waste unit. If storm water is discharged, Form 2F must also be filed. Other forms are added depending on the nature of the expected discharges from the particular facility where the hazardous or mixed waste TSD unit is located. For purposes of evaluating which forms to file, "process wastewater" is water that comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, waste product, or wastewater (40 CFR 122.2). Facilities that do not discharge process wastewater include dischargers of sanitary waste, restaurant or cafeteria wastes, non-contact cooling water, or any other wastewater that is not process wastewater (see EPA Form 3510-2E, item III).

Deadline for NPDES permit application is180 days *before* discharge begins

Applications should be filed well in advance of the deadline

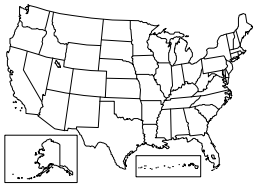
An application for an NPDES permit for a discharge starting after August 13, 1979, that is not a new source must be filed at least 180 days before the date on which discharge will begin, unless permission for a later filing date has been granted [40 CFR 122.21(c); see 40 CFR 122.29(a) and (b) regarding new source determinations]. However, EPA encourages submitting applications well in advance of the filing deadline. Sufficient time should be provided for the responsible agency to process the application, prepare a draft permit, issue public notice, receive comments, hold a hearing (if requested), and issue

a final permit. The time needed for these activities is highly variable and may extend to several years, depending on the complexity of the proposed unit, the extent of public interest, and the workload of agency personnel. DOE personnel should consult with the responsible agency regarding actual processing time needed.

No filing deadline for new source NPDES permit applications

No filing deadline exists for new source NPDES permit applications. However, if the regulator is EPA, that Agency must fulfill its National Environmental Policy Act (NEPA) responsibilities after the application is filed. Therefore, DOE personnel should consult EPA for advice on when to file so that processing of the application is likely to be completed by a date that supports DOE's anticipated construction schedule.

Consult with EPA or the responsible state agency



Similarly, DOE personnel should consult the responsible state agency for advice on when to file in States to which EPA has delegated NPDES permitting authority. While issuance of an NPDES permit by a State under a delegated program is not a Federal action subject to NEPA, state laws may impose NEPA-Like responsibilities on the responsible state agency.

Clean Water Act, Section 404, Dredge and Fill

CWA §404 permits are issued by the U.S. Army Corps of Engineers

The Clean Water Act, Section 404 program requires a permit for placing dredged or fill material into waters of the United States, including areas designated as wetlands. Certain placements of dredged or fill material are permitted under "nationwide" permits (see 33 CFR part 330), while others may be authorized under "regional" permits. Any placement of dredged or fill material not either exempt (see 33 CFR 323.4) or authorized by a nationwide or regional permit must obtain a case-by-case permit. The Section 404 permitting program is administered by the U.S. Army Corps of Engineers.

Seek Corps concurrence on the need for a CWA §404 permit

If construction of a TSD facility will involve dredging or filling activities, DOE personnel should evaluate whether a Section 404 permit is required and request concurrence on that determination from the U. S. Army Corps of Engineers.

Other Corps of Engineers approvals may also be required

DOE personnel should consider whether approval from the Corps might also be required under Section 9 of the Rivers and Harbors Act of 1899 for building dams and dikes in navigable waters of the United States (see 33 CFR part 321), or under Section 10 of the Rivers and Harbors Act of 1899 for placing structures or conducting work that would either be in or affect navigable waters of the United States (see 33 CFR part 322). However, few DOE hazardous waste or RMW TSD units are expected to require these approvals.

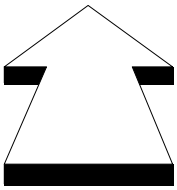
ATOMIC ENERGY ACT OF 1954

Most DOE facilities are exempt from NRC licensing under the AEA.

Under authority granted by the Atomic Energy Act of 1954 (AEA), as amended, the U.S. Nuclear Regulatory Commission (NRC) licenses and regulates civilian use of nuclear material to protect health, safety, and the environment. The AEA excludes most DOE facilities from NRC regulation [AEA §110(a); 42 U.S.C. 2140(a)]. However, the Energy Reorganization Act of 1974 [P.L. 93-438 (1974); 42 U.S.C. §5842] mandated that NRC would regulate a few, very specific DOE facilities, including any demonstration liquid metal fast breeder reactor, any other demonstration nuclear reactor, any facility for receiving and storing high-level

radioactive wastes, and any retrievable surface storage facility for high-level radioactive wastes. Most DOE mixed waste TSD units will not be among these types of facilities and, therefore, will not require NRC licenses. Instead, these units will be governed by DOE Orders. For this reason, no further information is provided here concerning NRC license applications.

Additional information on potentially applicable DOE Orders is provided in Chapter 7, Integration with Other Laws.



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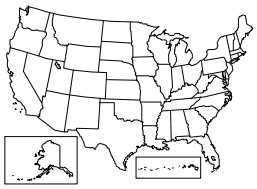
Pertinent requirements for obtaining NRC licenses for the few DOE mixed waste TSD units that require them are stipulated in 10 CFR part 50, “Domestic Licensing of Production and Utilization Facilities;” 10 CFR part 60, "Disposal of High-Level Radioactive Wastes in Geologic Repositories;" and 10 CFR part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-level Radioactive Wastes."

For the purpose of licensing of storage facilities, the NRC defines the term "high-level radioactive waste" as (1) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and (2) other highly radioactive material that the NRC determines by rule requires permanent isolation (10 CFR 72.3).

STATE LAWS

States can be authorized to implement permitting programs.



States can be authorized by EPA to implement the Clean Air Act Title V operating permit program, Clean Air Act PSD permit program, Clean Air Act nonattainment area permit program, Clean Water Act NPDES permit program, and RCRA TSD facility permit program. If a DOE facility requiring any of these permits for a hazardous waste TSD unit is located in a State to which authority for a portion, or all, of any of these programs has been

delegated, then DOE must seek the required permit(s) from the authorized State. If only a portion of a program has been delegated, it may be necessary for DOE to obtain the permit for the undelegated portion of the program from EPA.

Chapter 6, Federal/State Authority and Implementation, provides additional information concerning the interface between Federal and state authority under RCRA.

GO TO CHAPTER 6

States might also have separate permitting programs under state law.

States also sometimes enact independent state laws requiring that separate state permits be obtained for hazardous waste TSD units. Because such requirements vary from State to State, no attempt is made here to identify States where separate permits are required. DOE personnel should determine on a case-by-case basis whether any separate state permits are needed for a planned hazardous waste TSD unit.

Submodule 3-1-3: WHAT OTHER FEDERAL PROGRAMS THAT DO NOT REQUIRE PERMITS CAN AFFECT RCRA PERMITTING?

The following paragraphs briefly suggest steps for carrying out the requirements of the major Federal laws listed in 40 CFR 270.3, "Considerations under Federal Law," and incorporating the results into the RCRA permit application. The challenge for DOE personnel responsible for obtaining RCRA permits is to ensure that consideration of the requirements of each of these laws has been documented appropriately, either in the RCRA permit application or otherwise, so that issuance of a RCRA permit will not be delayed. This discussion is not intended to be comprehensive, and DOE personnel should consult the other laws covered and their implementing regulations, and to contact responsible regulatory agency personnel to ensure compliance.

The following laws are covered in this section:

- The Wild and Scenic Rivers Act (16 U.S.C. 1273, et seq.)
- The National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.)

- The Endangered Species Act (16 U.S.C. 1531, et seq.)
- The Coastal Zone Management Act [(16 U.S.C. 1451, et seq.)
- The Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.)

WILD AND SCENIC RIVERS ACT

The Wild and Scenic Rivers Act is designed to preserve and protect certain selected rivers and their immediate environments on the basis of their scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values. The Act lists specific streams and rivers that have been designated by Congress for protection and authorizes States to adopt similar lists. Section 7 of the Act prohibits any Federal agency from assisting, by licensing or otherwise, the construction of any water resources project that would have a direct adverse effect on the values for which a national wild and scenic river was established.

The term "water resources project" is not defined; however, it seems unlikely that many DOE hazardous waste or RMW TSD units would be considered water resources projects. Nevertheless, DOE personnel should take the following steps during preparation of a RCRA permit application to ensure that the permit is not delayed by considerations under the Wild and Scenic Rivers Act:

1. As soon as the project is conceived, consult the statutory listing of wild and scenic rivers to determine whether the proposed project will be located on, or in the watershed of, a listed river.

2. If the proposed project is located on, or in the watershed of, a listed river, DOE personnel should contact the Department of the Interior (DOI) [i.e., National Park Service (NPS)]. The purpose of the contact should be to identify responsible personnel, inform them of project plans, and convey DOE's interpretation of the applicability, if any, of the Wild and Scenic Rivers Act to the project.

3. If the project is located on, or in the watershed of, a listed river and the Wild and Scenic Rivers Act

applies, DOE should evaluate whether the project has the potential to directly and adversely affect the values for which the river was listed.[1] If the answer is yes, DOE should suggest and solicit feedback from the responsible NPS personnel on project features to mitigate the effect.

All DOE evaluations of the effects of the project on the listed river, as well as the effectiveness of mitigation measures, and interactions with the NPS personnel should be documented, and, if appropriate, copies of that documentation should be appended to the RCRA permit application.

NATIONAL HISTORIC PRESERVATION ACT

Section 106 of the National Historic Preservation Act requires a Federal agency with jurisdiction over a Federal, federally assisted, or federally licensed undertaking to: (1) consider the effects of the undertaking on properties included in or eligible for inclusion in the *National Register of Historic Places;* and (2) give the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. Regulations implementing Section 106 have been adopted as 36 CFR part 800, "Protection of Historic and Cultural Properties."

To ensure compliance with the National Historic Preservation Act, DOE personnel should take the following steps as soon as a plan for constructing or modifying a TSD unit or facility is conceived:

1. Determine whether any known historic properties are located in the area that will be affected by the proposed project. Pursuant to 36 CFR 800.4(a), this determination should be accomplished by:

    a. Contacting the office of the State Historic Preservation Officer (SHPO), explaining the

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[1] Listing of a wild and scenic river requires a determination of eligibility by the NPS). The eligibility determination is made on the basis of an eligibility report prepared by the NPS and subjected to public review and comment via a notice in the *Federal Register*. The values for which the river was listed can be determined by reviewing the pertinent *Federal Register* notices and/or the eligibility report.

location and nature of the project, and requesting information on any recorded archeological and historic sites within the affected area;

b. Performing a literature review and records search to identify any recorded archeological and historic sites within the affected area; and

c. Soliciting input from local governments, Indian tribes, public and private organizations, and others likely to have knowledge of or concerns with historic properties in the area.

2. Conduct a field survey of the affected area to identify previously unrecorded historic properties and collect enough information to evaluate the eligibility of any such properties for the *National Register of Historic Places* [36 CFR 800.4(b)].

3. In consultation with the SHPO, evaluate the historical significance of any historic properties (both previously known and newly identified) located within the affected area and take appropriate action regarding listing such properties on the National Register [36 CFR 800.4(c)].

4. If historic properties will be affected, consult with the SHPO to identify methods for avoiding or mitigating the effect (36 CFR 800.5).

5. Document all information collected, evaluations made, and interactions with the SHPO and append that documentation to the RCRA permit application.

ENDANGERED SPECIES ACT

Section 7 of the Endangered Species Act, as amended, requires Federal agencies to ensure, in consultation with the Secretary of the Interior [U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS)], that their actions are not likely to jeopardize the continued existence of any endangered species or threatened

species, or destroy the critical habitat of such species [16 U.S.C. 1536(a)(2)].

To ensure that the requirements of the Endangered Species Act are met, DOE personnel should take the following steps as soon as possible after deciding to plan any project involving construction or modification of a hazardous waste TSD unit or facility:

1. Contact the appropriate office of the USFWS or the NMFS, as well as the appropriate state wildlife agency, and request information concerning the potential occurrence in the vicinity to be affected by the proposed project of any federally listed and state listed endangered and threatened species, respectively [16 U.S.C. 1536(c)].

2. If the USFWS or the NMFS identifies any federally listed threatened or endangered species with the potential to occur within the vicinity of the proposed project, request a consultation with the USFWS or the NMFS [16 U.S.C. 1536(a)(2)].

3. Consult with the USFWS or the NMFS in scoping and preparing a biological assessment to evaluate whether any species potentially occurring within the vicinity of the proposed project are likely to be affected by the project [16 U.S.C. 1536(c)].

4. Submit the biological assessment to the USFWS or the NMFS and request a determination concerning the project (i.e., a determination of the project's impact, mitigative measures considered reasonable, and terms and conditions for implementing the mitigative measures) [16 U.S.C. 1536(b)].

5. Document all interactions with the USFWS or the NMFS and append such documentation, along with the biological assessment, if appropriate, to the RCRA permit application.

COASTAL ZONE MANAGEMENT ACT

The Coastal Zone Management Act is designed to preserve, protect, develop, and where possible, to restore or enhance, the resources of the nation's coastal zone [16 U.S.C. 1452(1)]. The Act requires Federal agencies that undertake development projects affecting the coastal zone to ensure that each project is, to the maximum extent practicable, consistent with the enforceable policies of the responsible State [16 U.S.C. 1456(c)(2)].

Implementing regulations have been adopted as 15 CFR part 930, subpart C, "Consistency for Federal Projects." Under such regulations, Federal agencies must (as soon as possible but at least 90 days before final approval of the proposed project) provide the State with a determination of consistency for any activity directly affecting the coastal zone [15 CFR 930.34(a)].

The Act also requires applicants for Federal permits to supply with the permit application a certification that the proposed project will comply with the enforceable policies of the State [16 U.S.C. 1456(c)(3)(A)]. The requirement for certification of compliance and consistency is implemented by 15 CFR part 930, subpart D, "Consistency for Activities Requiring a Federal License or Permit." Such certification must consist of the following statement [15 CFR 930.57(b)] supported by data and information specified in 15 CFR 930.58:

> The proposed activity complies with (name of State) approved coastal management program and will be conducted in a manner consistent with such program.

Upon receiving a certification of consistency, the responsible state agency must provide public notice and an opportunity for public hearing (15 CFR part 930.61 and 930.62). No license or permit shall be granted by the Federal agency until the State or its designated agency has concurred with the applicant's certification or until, by the State's failure to act, the concurrence is conclusively presumed, unless the Secretary of Commerce, on his/her own initiative or upon appeal by the applicant, finds, after

providing a reasonable opportunity for detailed comments from the Federal agency involved and from the State, that the activity is consistent with the objectives of the Coastal Zone Management Act or is otherwise necessary in the interest of national security [16 U.S.C. 1456(c)(3)(A)].

On the basis of the above requirements, if DOE plans to construct a hazardous waste or RMW treatment facility that could affect the coastal zone and requires a RCRA permit, the Coastal Zone Management Act requires the permit application to include a certification from DOE that the project will comply with the enforceable policies of the State in which the coastal zone will be affected [16 U.S.C. 1456(c)(2)]. If a hazardous waste or RMW treatment facility is planned that could affect the coastal zone but would not require a RCRA permit, then DOE must file a determination of consistency with the responsible State pursuant to 16 U.S.C. 1456(c)(3)(A).

In either case, DOE personnel should follow these steps in dealings with the responsible state agency:

1. As early as possible after conceiving of the project, determine if the State in which land or water use, or natural resources that would be affected by the project are located has an approved coastal zone management program.

2. Review the State's approved coastal zone management program and evaluate whether the proposed project can comply with that program.

3. Contact a representative of the state agency responsible for implementation of the coastal zone management program. Discuss DOE's proposed project with the state agency representative and clarify the enforceable policies of the State's approved program with which the project must comply. Goals of the discussion should be to (1) inform state decision makers of the project so they will be prepared when asked (pursuant to the Coastal Zone Management Act [16 U.S.C. 1456(c)(3)(A)]) to concur with DOE's certification of compliance (15 CFR 930.60); and (2) identify any potential inconsistencies between the project and

the State's approved coastal zone management program so that such inconsistencies can be addressed or avoided.

4. If inconsistencies between the project and the State's approved coastal zone management program are identified, work with the responsible state personnel to establish conditions that if met would remove the inconsistency.

5. Document all interactions with responsible state personnel and append such documentation to the RCRA permit application, if appropriate.

FISH AND WILDLIFE COORDINATION ACT

Section 2 of the Fish and Wildlife Coordination Act requires Federal departments and agencies to consult with the USFWS and the appropriate state wildlife agency before proposing or approving the impounding, controlling, or diverting of any stream or other body of water [16 U.S.C. 662(a)]. It seems unlikely that DOE will propose impounding, controlling, or diverting a body of water in association with construction or modification of a hazardous waste or RMW TSD facility. Nevertheless, should such action occur, DOE personnel should take the following steps to ensure compliance with the Fish and Wildlife Coordination Act:

1. Prepare a brief description of the proposed project, explaining the proposed impoundment, controls, or diversion of the affected body of water. The description should also include aspects of the project design that will prevent loss of wildlife resources, or develop or improve such resources.

2. Discuss the description with the appropriate offices of the USFWS and the state wildlife agency, either in a meeting or on the telephone, and submit written materials, as requested.

3. Consult with the USFWS and the state wildlife agency personnel concerning recommendations they may have for enhancing the wildlife resource improvement and loss prevention plans.

4. Document all interactions with USFWS and state wildlife agency and append such documentation to the RCRA permit application, if appropriate.

Submodule 3-1-4: WHAT REVIEW DOES THE NATIONAL ENVIRONMENTAL POLICY ACT REQUIRE?

NEPA requires that a Federal agency prepare an EIS before taking any "major federal action significantly affecting the quality of the human environment" [NEPA §102(C), 42 U.S.C. 4332(C)]. To guide compliance, many Federal agencies have adopted NEPA implementing regulations. DOE's implementing regulations are located in 10 CFR part 1021.

For any RCRA hazardous or mixed waste TSD facility, the purpose of DOE's NEPA review is to inform decisionmaking on whether and how to site, construct, and operate the facility. Therefore, NEPA review should have been completed before any decision to proceed with permitting of a particular unit is made. For that reason, this guidance document assumes that any required NEPA review will not be performed in the same time frame as RCRA permitting activities. Notwithstanding, if it appears that RCRA permitting activities may be needed while a pertinent NEPA review is underway, responsible DOE or DOE contractor personnel should consider the limitations on actions during the NEPA process given in 40 CFR 1506.1. Also, for guidance on this or any other matter related to NEPA requirements, including the level of NEPA review, DOE or DOE contractor personnel responsible for RCRA permitting should consult with the appropriate NEPA Compliance Officer or DOE's Office of NEPA Policy and Assistance.

Submodule 3-1-5: WHAT PUBLIC PARTICIPATION IS NEEDED?

Any siting, construction or expansion, or operation of a hazardous waste TSD unit that requires a RCRA permit, a PSD permit, or an NPDES permit is subject to public participation requirements specified by EPA's Procedures for Decisionmaking (40 CFR part 124). NEPA or CERCLA public participation requirements may also apply. The challenge for DOE personnel responsible for permitting RCRA hazardous waste TSD facilities is to devise a plan for public participation that incorporates all pertinent requirements.

Almost all DOE sites already have a designated public liaison. Therefore, DOE personnel responsible for permitting of a hazardous or mixed waste TSD unit should consult with the designated public liaison to develop the most appropriate plan for public participation on a case-by-case basis. At a minimum, the plan must address EPA's RCRA public participation mandates which are summarized by Exhibit 3-3. For additional information on public participation the guidance documents listed after the Exhibit may be consulted.

EXHIBT 3 - 3
PUBLIC PARTICIPATION REQUIREMENTS FOR OBTAINING RCRA PERMITS

Event	Requirement [a] [b]
Prepare RCRA Part B application	● Hold at least one pre-application public meeting with 30 days advance notice [40 CFR 124.31(b) and (d)] ● EPA assesses need for information repository [40 CFR 124.33(b)] ● Establish information repository if notified by EPA to do so [40 CFR 124.33(b)] ● Notify public that information repository has been established [40 CFR 124.33(e)] ● Update repository information as appropriate [40 CFR 124.33(f)]
Submit RCRA Part B permit application	● EPA notifies public and state and local governments that application is available [40 CFR 124.32(b)] ● EPA places application in an accessible location [40 CFR 124.32(c)]
EPA issues draft RCRA permit or Notice of Intent to Deny	● EPA publishes fact sheet/statement of basis (40 CFR 124.7 and 124.8) ● EPA issues public notice of permit action and 45-day opportunity for comment and hearing requests (40 CFR 124.10) ● EPA holds public hearing (if requested), with 30-days advance notice (40 CFR 124.12)
EPA issues final RCRA permit, denial of permit, or permit modification	● EPA issues notice of decision (40 CFR 124.15) ● EPA responds to public comments (40 CFR 124.17)

NOTES:

a. Required public involvement activities are based on Federal RCRA regulations. If the RCRA program is administered by a State, the public involvement requirements may be different.

b. Unless otherwise indicated, DOE (as the applicant) completes the listed action. EPA recommends that applicants tailor actions to fit the diversity, character and culture of the affected community [EPA RCRA Public Participation Manual, p.3-2 (9/96)].

Public Participation in Environmental Restoration Activities (November 1991)

In 1991, guidance on public participation in decision-making associated with environmental restoration and waste management, particularly at sites subject to public participation requirements under CERCLA as amended by the 1986 Superfund Amendments and Reauthorization Act (SARA) was published by DOE's Office of Environmental Policy and Assistance, RCRA/CERCLA Division (EH-413, formerly EH-231). The guidance is entitled *Public Participation in Environmental Restoration Activities* [DOE/EH-0221 (November 1991)]. The document provides an overview of DOE's public participation program and summarizes the statutory and then-applicable regulatory requirements for public participation found in CERCLA, RCRA (corrective action) and NEPA. It further discusses the integration of CERCLA/RCRA, CERCLA/NEPA and State/Federal public participation standards under the regulations as they existed at that time. Although the emphasis is on cleanup actions, the guidance provides useful instructions that can also be applied to RCRA permitting situations.

Public participation guidance written for DOE's environmental restoration activities is instructive for RCRA permitting

Public Participation Policy for Environmental Restoration and Waste Management (October 1992)

In October 1992, DOE's Assistant Secretary for Environmental Management (EM) (formerly Assistant Secretary for Environmental Restoration and Waste Management) issued a statement of policy on public participation, declaring that the EM program's overall public participation goal is "to create an open and accessible decisionmaking process that results in decisions that are technically and economically feasible, environmentally sound, health and safety conscious, address public values and concerns, and can be implemented" ["Public Participation Policy for Environmental Restoration and Waste Management, U.S. Department of Energy" (October 1992)]. The policy lays out EM's public participation goal and objectives, includes definitions, discusses the need for public participation, and delineates roles and responsibilities of EM components, other DOE offices, and outside organizations.

Public Participation Guidance for Environmental Restoration and Waste Management (March 1993)

The policy statement was followed by the issuance of "Public Participation Guidance for Environmental Restoration and Waste Management" (March 1993), which emphasizes public participation planning. It advocates the establishment of EM

public participation planning teams at DOE Headquarters and at each Field Office or site (as appropriate) to plan and implement a coherent, comprehensive, coordinated EM public participation program for each EM site. It also describes a model for the planning process and the resultant public participation plans that will document EM's approach to involving the public in its program.

EM Public Participation Desk Reference (1994)

For easy reference, the EM Public Participation Policy Statement and Guidance were republished, along with the "EM Headquarters Public Participation Implementation Plan" in 1994 in the "EM Public Participation Desk Reference."

Site-Specific Advisory Board Guidance - Final" (January 1996)

The Federal Facilities Environmental Restoration Dialogue Committee (Keystone Committee) issued an Interim Report in February 1993, specifically recommending the creation of site-specific advisory boards (SSABs) as a means of involving stakeholders more directly in cleanup decisions. As a result of that report and several successes with site advisory groups, EM has embraced the idea of SSABs. Hence, SSABs are being established at major EM sites throughout the DOE complex. Also, a guidance document focusing on SSABs has been issued [DOE Office of Environmental Management, *Site-Specific Advisory Board Guidance - Final* (January 1996)]. DOE personnel responsible for obtaining RCRA permits should coordinate with these EM public participation programs as much as appropriate.

RCRA Public Participation Manual (September 1996)

In December 1995, EPA modified its RCRA regulatory requirements to include public participation earlier in the permitting process, expand public notice for significant events, and enhance the exchange of permitting information (see 60 FR 63417, December 11, 1995). Subsequently, a manual was developed which replaced and updated earlier EPA guidance on public participation [see *RCRA Public Participation Manual*, 1996 Edition (EPA530-R-96-007, September 1996)]. The *RCRA Public Participation Manual* reviews regulatory requirements and provides policy guidance to help implement the RCRA program. The 1996 *Manual* is intended to explain how public participation works in the RCRA

permitting process and how citizens, regulators, and industry can cooperate to make it work better. As such, the 1996 *Manual* is unlike earlier EPA guidance manuals on public participation, which were limited to outlining public participation procedures and the role of EPA and state program staff.

MODULE 3-2: RCRA Permit Application Processing

RCRA PERMIT APPLICATION PROCESSING

Notify regulatory agency of intent to apply for RCRA permit
|
Hold pre-application public meeting(s)
|
Formulate plan
|
Meet with regulators
|
Collect data and compile permit application
|
Meet with regulators
|
Submit signed application
|
Agency conducts completeness review
|
Agency gives written notice of completeness or deficiency
|
Correct deficiencies, if any
|
Complete application becomes effective on date of completeness notice
|
Agency may set project decision schedule
|
Agency conducts technical review
|
Agency requests additional information, if necessary
|
Agency may attend site visit
|
Agency issues draft permit, or denies permit
|
GO TO MODULE 3-3

This module discusses RCRA permit application processing and includes suggestions for interacting with the responsible regulatory agency before and during agency processing of the application. Information concerning the steps mandated by 40 CFR parts 124 and 270 for processing a RCRA permit application are also covered by this module. Finally, consolidated processing of RCRA, NPDES, and PSD permits is discussed.

Submodule 3-2-1: RCRA PERMIT APPLICATION PROCESSING

If DOE plans a hazardous waste or RMW TSD unit requiring a RCRA permit, the first step will be notifying the responsible regulatory agency of intent to seek a RCRA permit. Next, at least one pre-application public meeting must be held, unless the unit qualifies for an emergency permit. Emergency permits do not require public participation.

The regulations do not mandate a format or specified content for the pre-application public meeting. The purpose of the meeting is to share information and concerns. DOE personnel responsible for RCRA permitting should consult the designated DOE public liaison before choosing a format. EPA recommends that regardless of format, the following topics be addressed at the meeting [*EPA RCRA Public Participation Manual*, 1996 Edition (EPA530-R-96-007, September 1996) p. 3-5]:

Topics for discussion at the Pre-application meeting

- Type of facility being planned;
- Location of facility;
- General processes involved and types of waste to be generated and managed; and
- Extent to which waste minimization and pollution prevention may supplement or replace waste treatment needs.

Public Notice of the Pre-application meeting

At some DOE sites, it may be appropriate to hold more than one pre-application meeting; the decision to do so should be made on a site-specific basis. Public notice of the one required pre-application meeting must be given at least 30 days before the date of the meeting in three ways [40 CFR 124.31(d)]:

- A newspaper display advertisement;
- A visible and accessible sign; and
- A broadcast media announcement.

A copy of the newspaper notice must be provided to the responsible regulatory agency, but no official documentation of the notice must be submitted. Instead, the documentation must be maintained at the site and be made available upon request.

While the format of the notice is flexible, in all media the notice must include the following [40 CFR 124.31(d)(2)]:

- The date, time, and location of the meeting;
- The purpose of the meeting;
- A brief description of the facility and proposed operations, including the address or a map of the facility location;
- A statement encouraging persons needing special access to contact the facility at least 72 hours before the meeting; and
- The name, address, and telephone number of a contact person.

Preparation of the RCRA permit application

The next step following the pre-application public meeting is to prepare a permit application, which has two parts. Part A provides basic information about the owner, operator, volumes and types of wastes managed, and facility at which the hazardous or mixed waste TSD units are, or will be, located. Part B provides details about the facility, the TSD processes

at the facility that involve the permitted units, the site hydrologic characteristics, the facility's operational plans (including hazard prevention plan, contingency plan, and personnel training plan), the closure and post-closure plans, the corrective action plan (if any) and the facility's compliance with environmental laws other than RCRA.

For more information on the content of Parts A and B of the application for a RCRA permit, go to Module 2-2, Information Required in a RCRA Permit Application.

GO TO Module 2-2

Part A of the RCRA permit application consists of a completed EPA Form 8700-23, "RCRA Part A Permit Application" (see Appendix I), or an equivalent state form, and the accompanying documents needed to portray or convey the information requested on the form.

For a new hazardous waste TSD facility, Parts A and B of the RCRA permit application are filed together [40 CFR 270.10(d)].

If a hazardous waste TSD unit is being added to an existing facility that already holds a RCRA TSD permit, then a permit modification request is required [40 CFR 270.41(a)(1)]. The modification request must include an update of the previously filed Part A application for the existing facility and a Part B application covering the new unit [40 CFR 270.42(c)].

For more information on modifying a RCRA permit, go to Chapter 4, RCRA Permit Modifications.

GO Chapter 4

Facilities that are in existence on the effective date of a law or regulation that reclassifies the materials they manage as hazardous waste also must file Part A applications [40 CFR 270.70(a)(2)]. Part B need not be filed for such facilities until the responsible regulatory agency requests it [40 CFR 270.10(a)].

For more information on permitting requirements for facilities that already exist when materials they manage are

GO TO CHAPTER 1

reclassified as hazardous waste, go to Chapter 1, Interim Status.

For more information on the requirements for interim status units to file Part B applications, go to Module 1-2, Part B Permit Application Deadlines and Loss of Interim Status (LOIS).

GO TO Module 1-2

Part B of the RCRA permit application has no pre-printed form. Instead, applicants must collect and analyze data, conduct studies, and prepare plans, as necessary, to meet the information requirements of 40 CFR 270.14 through 270.26. The results must then be presented either in a facility-specific format or in a State- or EPA Region-suggested format (if available).

For more information on the content of Part B of the RCRA permit application, go to Module 2-2, Information Required in a RCRA Permit Application.

GO TO Module 2-2

The format and content of the RCRA Part B application should be chosen to simplify completeness and technical adequacy determinations.

The most important goal in choosing a facility-specific format for Part B of the RCRA permit application should be to make evaluating the completeness and technical adequacy of the document as easy as possible for regulatory personnel.

Develop a plan and schedule.

DOE personnel should use the information presented in Chapter 2 to develop a plan and schedule for collecting data and producing the RCRA permit application so that a permit can be obtained within any applicable deadlines.

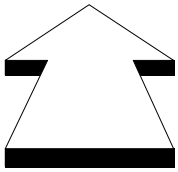
For more information on permit application deadlines, go to Module 2-1, Permit Application Deadlines for New Facilities.

GO TO Module 2-1

Development of the plan should involve identifying various studies that will be required to support not only a RCRA permit application, but other permit applications

as well. If warranted, additional time should be allotted for public participation.

For more information on requirements for public participation, go to Submodule 3-1-5, What Public Participation is Needed?



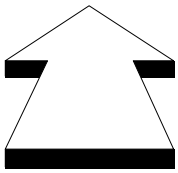
GO TO Submodule 3-1-5

Hold a kickoff meeting with regulators.

The plan, including the scope of each study, and schedule should be presented to EPA or the authorized State in an initial informational kickoff meeting as early as possible. The responsible regulatory agency should be asked for informal concurrence with the plan. While concurrence may not be given, important feedback can be obtained.

In some States, the State will have responsibility for only a portion of the RCRA permitting program. In such States, EPA will continue to play a significant role in RCRA permitting. If DOE locates a hazardous waste or RMW TSD unit in such a State, the kickoff meeting should involve both State and EPA regulators. If a joint meeting is not possible, then a meeting with each agency is advisable, and concurrence with the plan should be sought from both agencies.

For more information on Federal/State RCRA permitting authority, go to Chapter 6, Federal/State Authority and Implementation.



GO TO CHAPTER 6

After obtaining regulator concurrence with the permitting plan (if possible), DOE must collect data and prepare the permit application.

In the case of RMW TSD units, unless the responsible regulatory agency directs otherwise, DOE personnel responsible for RCRA permitting should prepare RCRA permit applications to address source, special nuclear, and byproduct materials contained in RMW only as necessary to clarify and justify management practices for RMW that differ from practices required or

recommended by EPA for other hazardous wastes. Examples of RMW management practices that might justifiably differ from those EPA requires for nonradioactive hazardous wastes include RMW inspection programs and RMW sampling and analysis programs that must comply with the principle of keeping radiation exposures "as low as reasonably achievable" (ALARA).

An authorized person must sign the RCRA permit application

When the application is ready to submit, it must be signed by an authorized individual [40 CFR 270.11(a)(3)] and submitted to the responsible appropriate regulatory agency (40 CFR 270.1). If possible, DOE should arrange a meeting with regulatory personnel to deliver the application and discuss the proposed unit.

The responsible regulatory agency reviews the application for completeness

Upon receiving the permit application, the responsible regulatory agency first reviews the application for "completeness." To be judged complete, the application must address all pertinent information requirements of 40 CFR parts 264 and 270 for the type of unit being proposed. Some EPA Regions have developed completeness checklists for use by Agency reviewers. An example of such a checklist developed by EPA Headquarters is provided in Appendix II.

The regulations require that the responsible regulatory agency finish the completeness determination for a new facility permit application (Parts A and B) within 30 days after receipt [40 CFR 124.3(c)]. For an application to modify an existing permit, the agency has up to 60 days to finish the completeness review (Part B) [40 CFR 124.3(c)].

If the application is not complete, a Notice of Deficiency (NOD) will be issued

If deficiencies are not corrected, the permit could be denied and enforcement action could result

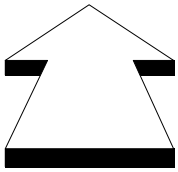
If the application is judged complete, the regulatory agency will notify DOE in writing and proceed with its technical review. If the application is not complete, a Notice of Deficiency (NOD) must be issued listing all missing information [40 CFR 124.3(c)]. DOE must either correct the deficiencies, or the permit could be denied and appropriate enforcement actions taken under statutory provisions, including RCRA §3008 [40 CFR 124.3(d)].

DOE personnel should openly communicate with the responsible regulatory agency during the completeness review process. If DOE disputes any deficiency listed by the regulatory agency in a NOD, the dispute should be informally resolved, if possible.

If the responsible agency denies, as a result of uncorrected application deficiencies, a permit application for a new hazardous waste or RMW TSD facility, or for modification of an existing permitted facility, reapplication is still possible. To reapply, the applicant must submit a new permit application, which will be reviewed on its own merits for completeness.

If the responsible agency denies, as a result of uncorrected application deficiencies, a permit application seeking a final permit for an interim status facility, interim status will be terminated and closure initiated.

For more information on termination of and closure during interim status, go to Module 1-1, Eligibility for Interim Status, and Module 1-2, Part B Permit Application Deadlines and Loss of Interim Status (LOIS).



GO TO Modules 1-1 and 1-2

The permit application becomes effective on the date notice of its completeness is issued

The permit application becomes effective on the date the responsible regulatory agency issues notice of the application's completeness [40 CFR 124.3(f)]. The regulations require the responsible agency to provide a project decision schedule no later than the permit application's effective date. The decision schedule must outline target dates by which the agency intends to [40 CFR 124.3(g)]:

- Complete a draft permit;
- Provide public notice; and
- Close public comment, including any public hearing.

The responsible regulatory agency is supposed to provide a project decision schedule, but seldom does

As a practical matter, responsible regulatory agencies seldom provide a project decision schedule. Therefore, if DOE wants a schedule, the Department should consider filing a written request. However, even then, the responsible agency may not oblige.

The responsible regulatory agency may request additional information during technical review

After the permit application is "complete," the responsible regulatory agency will perform a technical review, which serves as the basis for preparing a draft permit. During this review, the regulatory agency may request additional information to clarify, modify, or supplement the permit application. However, such requests do not render the application incomplete [40 CFR 124.3(c)].

Site visits can be helpful

A site visit during the technical review can be very helpful to permit writers. DOE personnel should offer such visits to the responsible regulatory agency early in the technical review period. Whether or not DOE offers a site visit, the regulations require DOE to schedule such a visit if the responsible agency notifies DOE that it is necessary [40 CFR 124.3(e)].

Responsible regulatory agency may issue a draft permit, or deny the permit application

As the final step of processing a RCRA permit application, the responsible regulatory agency will either issue a draft permit or deny the permit application. However, if the application proposes constructing more than one hazardous waste TSD unit, the responsible agency is allowed to act on the units separately. Therefore, in such circumstances, the regulatory agency may issue a draft permit for one or more proposed units, while simultaneously dening the permit application for the remaining proposed units.

If the permit application covers some, but not all, interim status units at an existing facility, issuance of a permit, or denial of the application, will not affect the interim status of other units at the facility for which permits have not yet been issued or denied [40 CFR 270.1(c)(4)].

Submodule 3-2-2: CONSOLIDATION OF PERMIT APPLICATION PROCESSING

Under certain conditions, EPA regulations allow the responsible regulatory agency to consolidate processing of a facility's applications for permits under more than one statute. The permit application reviews that may be consolidated include RCRA TSD permit, NPDES permit, Underground Injection Control permit, and PSD permit. DOE personnel responsible for obtaining RCRA permits should determine whether this consolidation of processing is available for any hazardous or RMW unit requiring more than one of these permits, and whether such consolidation would be advantageous.

Decide whether consolidated processing would be advantageous

DOE may recommend consolidated processing

If one agency (either EPA or an authorized State) is responsible for issuing all of the permits eligible for consolidation, the responsible agency has discretion to consolidate the processing or not [40 CFR 124.4(c)(1)]. If EPA and an authorized State each have responsibility for one or more, but not all, of the permits eligible for consolidation, the responsible agencies must agree to consolidate the processing [40 CFR 124.4(c)(2)]. However, in either case, DOE is allowed to recommend whether permit application

processing should be consolidated or not [40 CFR 124.4(c)(3)]. If consolidation would delay issuance of the PSD permit for a DOE facility for more than one year from the effective date of the application under 40 CFR 124.3(f), the responsible agencies are not allowed to consolidate processing unless DOE consents in writing [40 CFR 124.4(e)].

Consequences of consolidated processing

If permit application processing is consolidated, the responsible agencies would prepare the affected draft permits at the same time [40 CFR 124.4(a)(1)]. Also, the statements of basis (required under 40 CFR 124.7 for EPA-issued permits only) or fact sheets (40 CFR 124.8), administrative records (required under 40 CFR 124.9 for EPA-issued permits only), public comment periods (40 CFR 124.10), and any public hearings (40 CFR 124.12) on those permits should also be prepared simultaneously. Nevertheless, final permits can be issued separately if joint processing would result in unreasonable delay in the issuance of one or more of the permits [40 CFR 124.4(a)(2)].

For existing facilities, the responsible regulatory agency is allowed to assign expiration dates when new or renewed permits eligible for consolidation are issued so that they coincide with expiration dates of existing eligible permits. The purpose of this procedure is to arrange for all permits to expire simultaneously so that processing of subsequent applications for permit renewals can be consolidated.

MODULE 3-3: Draft RCRA Permits

Following its technical review of a RCRA permit application, the responsible regulatory agency will either issue a draft permit or deny the application [40 CFR 124.6(a)]. This module discusses the administrative process whereby the regulatory agency makes its final permit decision after either issuing a draft RCRA permit or denying a RCRA permit application. The public comment process, public hearing process and permit decision appeals process are covered.

Submodule 3-3-1: CONTENT AND SUPPORT FOR DRAFT RCRA PERMIT

The draft permit must contain conditions as specified by the regulations

All draft RCRA permits must contain the following conditions, either stated expressly, or incorporated by reference:

- Conditions mandated by 40 CFR 270.30, Conditions applicable to all permits (Exhibit 3-4); and

EXHIBIT 3-4
PERMIT CONDITIONS MANDATED BY 40 CFR 270.30

The following permit conditions are mandated by 40 CFR 270.30:

- Duty to comply
- Duty to reapply
- Not a defense for noncompliance that halt or reduction of activity would be required to comply
- Acts to minimize releases and prevent harm required during noncompliance
- Proper operation and maintenance required
- Effect of permit actions
- Property rights
- Duty to provide information
- Inspection and entry
- Monitoring and records
- Signatory requirements
- Reporting requirements

- Conditions mandated by 40 CFR 270.32, Establishing Permit Conditions (Exhibit 3-5).

EXHIBIT 3-5
PERMIT CONDITIONS MANDATED BY 40 CFR 270.32

The following permit conditions are mandated by 40 CFR 270.32:

- Duration of the permit (40 CFR 270.50)
- Schedule of compliance [40 CFR 270.33(a)]
- Monitoring requirements (40 CFR 270.31)
- Alternative schedule of compliance (i.e., schedule for cessation of operation) [40 CFR 270.33(b)] (for EPA-issued permits only)
- Conditions mandated by other Federal laws (40 CFR 270.3) (for EPA-issued permits only)
- Site-specific conditions delineating compliance with applicable provisions of 40 CFR parts 264 and 266 through 268 (which includes provisions for corrective action)
- Other conditions needed to protect human health and the environment

In addition to the standard conditions required in all permits, RCRA permits for new hazardous waste incinerators must also contain the following [40 CFR 270.62(a)]:

Special permit conditions for hazardous waste incinerators

- Conditions applicable during the time required to bring the incinerator to a point of operational readiness, including, but not limited to, allowable waste feeds and operating conditions; and
- Conditions applicable during the trial burn.

After completion of the trial burn, a hazardous waste incinerator permit must be modified to incorporate conditions reflecting the results of the trial burn [40 CFR 270.62(c)]

A notice of intent to deny is processed like a draft permit

If the responsible regulatory agency decides to deny a permit application, it must issue a notice of intent to deny, rather than a draft permit. However, such notice is a type of draft permit, and is processed like any other draft permit [40 CFR 124.6(b)].

Draft permit or notice of intent to deny must be based on administrative record

All provisions of the draft permit or notice of intent to deny must be based on the administrative record (Exhibit 3-6) [40 CFR 124.6(e)].

EXHIBIT 3-6
COMPONENTS OF THE ADMINISTRATIVE RECORD

The following are required components of the administrative record for a RCRA permit:

- Permit application, if required, and supporting data
- Draft permit or notice of intent to deny
- Statement of basis or fact sheet
- All documents cited in statement of basis or fact sheet, unless they are generally available and were specifically cited in the statement of basis or fact sheet
- Other supporting documents contained in the responsible agency's file

(40 CFR 124.9)

Each draft permit and notice of intent to deny must be accompanied by either a fact sheet or a statement of basis

When a draft permit is prepared, the responsible regulatory agency must prepare either a statement of basis or a fact sheet to explain the draft permit [40 CFR 124.6(e)]. A fact sheet is required for every major hazardous waste management facility draft permit (Exhibit 3-7) (40 CFR 124.8). A statement of basis (Exhibit 3-8) is required for any draft permit not requiring a fact sheet (40 CFR 124.7).

When the responsible regulatory agency prepares a draft permit for a major hazardous waste management facility, the agency must provide a copy of the fact sheet to the applicant. If others desire copies of the fact sheet, they must make a request to the agency (40 CFR 124.8).

EXHIBIT 3-7
CONTENTS OF FACT SHEET

The following information must be included in the contents of the statement of basis for a RCRA permit:

- Brief description of permit conditions
- Brief statement of reasons for permit conditions

(40 CFR 124.7)

EXHIBIT 3-8

The following information must be included in the fact sheet for a draft RCRA permit:

- Brief presentation of principal facts
- List of significant factual, legal, methodological and policy questions considered
- Any of the following information that applies:
  - Brief description of permitted facility or activity
  - Type and quantity of managed wastes
  - Annotated summary of permit condition bases
  - Justifications for granting or denying variances from or alternatives to required standards
  - Outline of procedures for reaching a final permit decision, including procedures whereby the public submits comments, requests a hearing, or otherwise participates in agency decision-making
  - Name and telephone number of agency contact person

(40 CFR 124.8)

CONTENTS OF STATEMENT OF BASIS

Submodule 3-3-2: CAN DOE AFFECT DRAFT PERMIT CONTENT?

Within the dictates of 40 CFR 270.30 and 270.32, permit writers at the responsible regulatory agency have considerable latitude to include site-specific RCRA permit conditions. Therefore, DOE personnel should communicate regularly with the responsible agency during the time the draft permit is being prepared.

Discussed below are specific suggestions for communications that could result in more informed development of permit conditions by agency permit writers. These consultation activities will be most successful if DOE has already engaged the responsible agency in dialogue concerning the proposed hazardous waste management units as recommended in Modules 3-1, Planning for RCRA Permitting, and 3-2, RCRA Permit Application Processing.

DOE personnel should implement any suggested communication activity listed below only after careful evaluation of site-specific factors that may influence the implementation approach. For example, if a DOE facility has an established public participation plan that addresses communications with the responsible regulatory agency, the

plan must be considered before proceeding with any communication suggestions below. Other site-specific factors that could affect the way DOE personnel choose to implement these suggestions include the DOE facility's past relationship with the responsible regulatory agency and the size, budget, and expertise of the regulatory agency staff.

Suggestions for communicating with responsible regulatory agency during draft permit preparation

- Submit suggested site-specific permit conditions with the RCRA Part B permit application.
- Discuss suggestions for site-specific permit conditions with the responsible regulatory agency staff at a meeting held in conjunction with submitting the RCRA Part B permit application.
- If a permit modification is being requested, submit a "marked-up" copy of the existing RCRA permit, clearly indicating where the permit should be changed to reflect the proposed modification, and suggesting unit-specific permit conditions.
- Contact the permit writer occasionally during the responsible agency's technical review of the RCRA Part B permit application to see if there are questions, or if additional information would be helpful.
- Be responsive to requests for information from the responsible regulatory agency.
- If additional information has been requested, contact the permit writer to see if a meeting would be helpful in addition to providing the requested information.
- After submitting additional information, contact the permit writer to ensure that the agency's questions have been fully answered.
- When the draft permit is issued, submit comments and supporting materials during the public comment period if any issues have not been resolved during the responsible agency's technical review.

Submodule 3-3-3: PUBLIC COMMENTS

The responsible regulatory agency must give public notice and provide for at least a 45-day comment period

The responsible regulatory agency must notify the public (including the applicant) when a draft permit has been

prepared or a notice of intent to deny a permit application has been issued (Exhibit 3-9). At least 45 days must be allowed for the public to file comments and request a public hearing (40 CFR 124.10).

EXHIBIT 3-9
METHODS BY WHICH RESPONSIBLE AGENCY GIVES PUBLIC NOTICE
(40 CFR 124.10)

METHOD	RECIPIENTS
Mail notice.	Applicant Federal, State and Local agencies Persons on mailing list
Publication of notice in newspaper of general circulation.	Persons potentially affected
Broadcast of notice over local radio stations.	Persons potentially affected
Other methods reasonably calculated to give actual notice (e.g., press releases).	Persons potentially affected
NOTE: When an authorized State administers the RCRA program, the notice method must constitute legal notice to the public under state law	

Any interested person, including the applicant, can file comments and request a hearing

During the public comment period, any interested person (including the applicant) is allowed to submit written comments on a draft permit or notice of intent to deny (40 CFR 124.11) and can request a hearing [40 CFR 124.10(d)(1)(v)]. Comments must:

- Raise all reasonably ascertainable issues;
- Submit all reasonably available arguments; and
- Be accompanied by copies of any supporting material that is not either already part of the administrative record for the same permit application proceeding, or consisting of state or Federal statutes or regulations or other generally available reference materials (40 CFR 124.13).

DOE should submit comments concerning unresolved issues to preserve right to appeal, but resolution without commenting is preferred

As previously mentioned, DOE should submit comments and supporting materials during the public comment period if any issues have not been resolved during the responsible agency's review of a DOE application for a RCRA permit or permit modification. Preferably, DOE will have resolved all issues

before the draft permit is published for comment, but if not, commenting is necessary to preserve appeal rights.

Additional time for commenting can be granted to someone who needs it

If a potential commenter demonstrates a need, the responsible regulatory agency may grant additional time for filing comments (40 CFR 124.13).

When the responsible regulatory agency issues its final permit decision, it must respond to all significant comments received during the public comment period. The response must indicate changes made to the draft permit because of the comments, and the reasons for the changes (40 CFR 124.17).

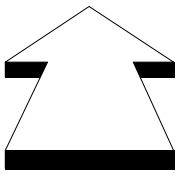
Submodule 3-3-4: PUBLIC HEARINGS

Under some circumstances a public hearing is mandatory. Otherwise, the responsible agency has discretion.

If the responsible regulatory agency receives, during the public comment period, written opposition to a draft RCRA permit accompanied by a hearing request, a hearing must be held [40 CFR 124.12(a)(3)]. A hearing must also be held if the responsible agency receives sufficient requests for a hearing to indicate significant public interest in the draft permit, even if written opposition is not stated [40 CFR 124.12(a)(1)]. Any other time, the responsible agency has discretion to hold a public hearing if doing so would clarify any issues involved in the permit decision [40 CFR 124.12(a)(2)].

Clearly, DOE can influence, to some degree, whether or not a public hearing occurs through an effective public participation program.

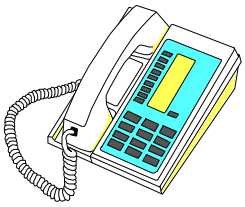
For more information on required and suggested public participation activities during the RCRA permitting process, go to Submodule 3-1-5, What Public Participation Is Needed?



GO TO Submodule 3-1-5

30 days prior notice of hearing is required

If a public hearing will be held, the regulatory agency must give members of the public at least 30 days advance notice of the hearing date, time, and place [40 CFR 124.10(b)(2) and (d)(2)].



DOE has the right to request a hearing during the public comment period. However, there are probably very few

situations in which DOE should do so. Therefore, if a DOE manager responsible for RCRA permitting believes DOE should request a public hearing concerning a draft RCRA permit, permit modification, or permit denial, the manager should first consult the responsible DOE Headquarters Program office and the appropriate DOE Field Counsel's office to determine the proper course of action.

Public hearings are usually non-adjudicatory

Most public hearings concerning RCRA permitting decisions are non-adjudicatory. In other words, they are not held for the purpose of fact-finding or settling rights. Instead, they provide an opportunity for the regulatory agency to receive oral or written comments from the public.[2] However, unlike informal public meetings, which serve a similar purpose, a public hearing is supervised by a hearing officer [40 CFR 124.12(b)], a court reporter prepares a written transcript [40 CFR 124.12(d)], and little two-way communication occurs between the responsible agency and the public. The applicant or permittee is not required to participate in the hearing, but has the option to present comments.

DOE managers responsible for RCRA permitting activities should consider presenting an oral statement at any public hearing concerning a RCRA permit or permit modification. Facility-specific circumstances will influence whether DOE chooses to present oral comments. If a DOE facility has a strong public participation program and has communicated extensively with the responsible agency during preparation of the permit application and during the agency's review of the application, then it may be less appropriate to make oral comments at a hearing.

Holding a public hearing automatically extends the public comment period through the end of the hearing

Submodule 3-3-5: REOPENING PUBLIC COMMENT

If a public hearing is held, the public comment period is automatically extended until the close of the hearing. Additional time for the public to comment beyond the close of the hearing can be added if the hearing officer announces it at the hearing [40 CFR 124.12(c)].

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[2] The responsible agency has discretion to use the non-adversarial fact-finding panel procedures specified by 40 CFR part 124, subpart F instead, if the agency believes an adjudicatory proceeding would be appropriate, or if the commenter requesting the hearing submits information demonstrating the existence of genuine issues of material fact as required by 40 CFR 124.114(a)(1)-(4).

Sometimes the public comment period can be reopened, but the scope is limited and the procedures are different

After the initial public comment period ends, the responsible regulatory agency can yet again ask for public comment if it appears that the permit decision will be contested and an additional chance for the public to comment could expedite the decision-making process [40 CFR 124.14(a)]. However, comments made during the reopened comment period must be limited in scope to the substantial new questions that caused the reopening [40 CFR 124.14(c)]. Also, during the reopened public comment period, the procedures are different than during the initial comment period. This time, a period of at least 60 days is provided for comment. During that period, persons who believe the responsible regulatory agency's proposed permit decision is inappropriate must submit all reasonably available factual grounds supporting their position, including all supporting material. Then, a period of at least 20 days is provided for anyone to respond to the material filed during the first 60 days [40 CFR 124.14(a)(1)]. If the proceedings are complicated, longer time periods can be granted to prepare comments and responses if requested by a commenter [40 CFR 124.14(a)(4)].

If the public comment period is reopened, DOE should carefully consider whether to comment and should monitor any comments and supporting materials filed by others. If appropriate, DOE should respond to the comments of others during the 20-day response period. The decision to comment or respond to the comments of others must be made based on facility-specific factors. Again, DOE managers responsible for RCRA permitting activities should seek input from the responsible DOE Headquarters Program office and the appropriate DOE Field Counsel's office.

After the public comment period closes, the responsible regulatory agency issues its final permit decision

After the public comment period is closed, the responsible regulatory agency issues a final permit decision (a final decision to issue, deny, modify, revoke and reissue, or terminate a permit). Notice of the final permit decision must be sent to the applicant, individuals and entities that submitted written comments during the comment period, and anyone else who asked to be notified. The final permit decision notice must include reference to the procedures for appealing a decision [40 CFR 124.15(a)].

Submodule 3-3-6: PERMIT DECISION APPEALS

This submodule describes how EPA-issued RCRA permit decisions are appealed. If a State is the responsible regulatory agency, the appeal procedure may be different. Therefore, DOE personnel with responsibility for permitting RCRA hazardous waste and RMW TSD units in authorized States should review applicable state permit decision appeal procedures.

Only persons who comment during the public comment period or participate in the public hearing can appeal the final permit decision

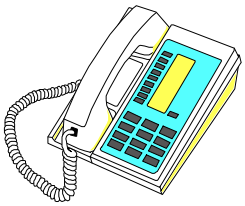
Only issues raised during the public comment period can be raised in an appeal

Only persons who commented during the public comment period or who participated in the public hearing can appeal the final permit decision. This requirement applies to the applicant, as well as members of the general public. Also, only issues raised during the public comment period can be appealed, unless a permit condition that changed between the draft and final decisions is challenged [40 CFR 124.19(a)].

To appeal, a petition must be filed within 30 days after receiving the final decision notice

To initiate an administrative appeal, a petition must be filed with the EPA Environmental Appeals Board within 30 days after the final decision notice is received, unless an alternative date is specified in the notice [40 CFR 124.19(a)]. The Environmental Appeals Board may also decide on its own initiative to review a final permit decision [40 CFR 124.19(b)].

Since DOE managers responsible for RCRA permitting should communicate openly with all responsible regulatory agencies during the RCRA permitting process, a final permit decision should seldom warrant an appeal by DOE. However, if the responsible DOE manager believes DOE should appeal, the responsible DOE Headquarters Program office and appropriate DOE Field Counsel's office should be consulted.



The final permit is effective 30 days after the final decision notice, unless an appeal is granted

In case of an appeal, the effectiveness of final permit conditions depends on the status of the facility

If no administrative appeal of a final decision to issue a RCRA permit is initiated, then the final permit becomes effective 30 days after the final decision notice. However, if an appeal is granted, the effectiveness of the final permit conditions will depend on the status of the facility, as follows:

- If the facility is new (an entirely new facility or a new unit at an existing facility), none of the permit conditions will be effective during the appeal process, and the new facility cannot begin construction pending completion of the appeal [40 CFR 124.16(a)(1)].

- If the facility is existing, but has no permit (e.g., an existing facility or unit with interim status), then contested permit conditions and non-severable[3] uncontested conditions do not become effective until the appeal process is completed. While an appeal is pending, the facility must comply with applicable interim status regulations and any severable uncontested provisions of the new permit [40 CFR 124.16(a)(1) and (2)].

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[3] A permit condition is "non-severable" if it cannot be carried out independently. For example, a permit condition requiring retention of monitoring records is non-severable because it cannot be executed without another permit condition requiring monitoring. Hence, if the monitoring requirement is contested, both the monitoring requirement and the requirement to retain monitoring records would be ineffective during the appeal process.

- If the facility has an existing permit, then contested and non-severable uncontested conditions of the new permit are not effective until the appeal process is completed. While an appeal is pending, the facility must continue to comply with any conditions of its existing permit that would be replaced by the ineffective conditions of the new permit, unless complying with the existing conditions would be technologically incompatible with complying with other conditions of the new permit that are not appealed [40 CFR 124.16(c)]. The facility also must comply with any severable uncontested provisions of the new permit.

After administrative remedies are exhausted, anyone who filed a petition for appeal can seek judicial review

The Federal administrative appeal process ends (i.e., administrative remedies are exhausted) when [40 CFR 124.19(f)(1)]:

- The EPA Environmental Appeals Board denies review;
- The EPA Environmental Appeals Board issues a decision, other than a remand[4]; or
- EPA issues a second final permit after complying with a prior remand order, unless the remand order specified that the second final permit could also be appealed.

If EPA is the responsible regulatory agency, after the administrative appeal process ends, any person, except another Federal executive agency (e.g., DOE), who filed a petition for appeal may seek judicial review of the outcome of the administrative appeal in Federal court [40 CFR 124.19(e)]. If DOE disagrees with the decision of the EPA Environmental Appeals Board, the only available recourse would involve appeal by the Secretary of Energy to the President.

As mentioned at the beginning of this submodule, if a State is the responsible regulatory agency, the appeal procedures related to RCRA permit decisions will be different. DOE personnel responsible for permitting RCRA hazardous waste and RMW TSD units in an authorized State should become familiar with the procedures in that State.

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[4] A "remand" would send the contested permit condition(s) back to EPA for reconsideration.

MODULE 3-4: Duration and Termination of RCRA Permits

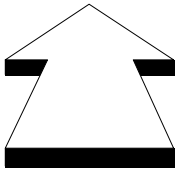
This module discusses the requirements for complying with the conditions of a permit during its term and the procedures used for terminating permits.

Submodule 3-4-1: RCRA PERMIT COMPLIANCE REQUIREMENTS

During a RCRA permit's term, compliance with all conditions is required, unless an emergency permit applies

Compliance is required with all conditions of a final RCRA permit during its term, unless noncompliance has been authorized by an emergency permit [40 CFR 270.30(a)].

For more information on emergency permits, go to Module 5-1, Emergency Permits.



GO TO Module 5-1

If a RCRA permit is expiring (or has already expired), and a timely permit renewal application has been filed, the conditions of the expired or expiring permit continue in force until the effective date of a new permit [40 CFR 270.51(a)(1)]. Hence, compliance with the conditions of the expired or expiring permit is still required. The responsible regulatory agency may deal with noncompliance during this period, using any or all of the following actions:

- Initiate enforcement on the basis of the expired or expiring permit condition [40 CFR 270.51(c)(1)].
- Issue a notice of intent to deny permit renewal. Then, if permit renewal is denied, operation of the facility must cease or the facility will be subject to enforcement for operating without a permit [40 CFR 270.51(c)(2)].
- Issue a new permit containing appropriate conditions (removing the noncompliance) [40 CFR 270.51(c)(3)].
- Take other authorized action, as appropriate [40 CFR 270.51(c)(4)].

Permit expiration and cessation of operations do not excuse compliance with certain RCRA requirements

Guidance on how DOE should respond to enforcement actions is beyond the scope of this manual. Nevertheless, DOE managers should be aware that even if a DOE RCRA permit

expires and operations cease, DOE still must comply with certain RCRA requirements, including corrective action, closure, post-closure care, and record keeping.

Submodule 3-4-2: RCRA PERMIT TERMINATION

A RCRA permit may terminate at the end of its term according to its own conditions if a timely renewal application is not filed [40 CFR 270.10 (h)].

For more information on renewing RCRA permits, go to Module 2-4, Reapplication.

GO TO Module 2-4

A RCRA permit terminates if it is not renewed or if the responsible regulatory agency determines that a cause for termination exists

The responsible regulatory agency may terminate a RCRA permit during its term either at the request of an interested person (including the permitee) or upon the agency's own initiative [40 CFR 124.5(a)]. However, unless the termination is requested by the permittee, a RCRA permit can only be terminated during its term for one of the causes listed in 40 CFR 270.43 (Exhibit 3-10).

EXHIBIT 3-10
CAUSES FOR TERMINATING
A RCRA PERMIT DURING ITS TERM
(40 CFR 270.43)

Unless the termination is requested by the permitee, the responsible regulatory agency may terminate a RCRA permit during its term only for one of the following causes:

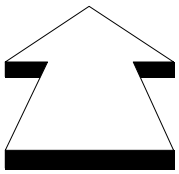
- Noncompliance with any permit condition, unless noncompliance has been authorized by an emergency permit (see Module 5-1, Emergency Permits)
- Failure to fully disclose relevant facts during the permit application process, or misrepresentation of relevant facts at any time
- Endangerment of human health or the environment that can be remedied only by terminating the permit

NOTE: These are also causes for denying permit renewal applications (see Module 2-4, Reapplication)

As is true for permit expiration, even if a DOE RCRA permit is terminated and operations cease, DOE still must comply with certain RCRA requirements, including corrective action, closure, post-closure care and record keeping.

Requests to terminate a permit must be filed with the responsible regulatory agency. If that agency is EPA, and EPA agrees that termination would be appropriate, then a notice of intent to terminate will be issued. A notice of intent to terminate, just like a notice of intent to deny a permit application, is handled as a type of draft permit. If the notice of intent to terminate is initiated by EPA at the request of the permittee, it will be processed according to the same procedures used to process draft RCRA permits.

For more information on the procedure for processing draft RCRA permits, go to Module 3-3, Draft RCRA Permits.



GO TO Module 3-3

However, if the notice of intent to terminate is initiated by EPA for one of the causes listed on Exhibit 3-10, then it will be processed according to the formal hearing procedures in 40 CFR part 124, subpart E.

If the responsible regulatory agency is a state agency, the procedure for processing a notice of intent to terminate may be different. DOE managers responsible for RCRA permitting in authorized States should review applicable state requirements.

If EPA decides that a request to terminate is not justified, the requester must be sent a brief written response giving the reason for the decision (notice of decision). Denials of requests to terminate RCRA permits do not require public notice, comment, or hearings, but if EPA is the responsible agency, the decision can be informally appealed to the EPA Environmental Appeals Board by a letter briefly setting out the relevant facts [40 CFR 124.5(b)].

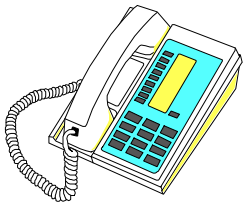
If the appeal is granted, the Board will consider the evidence and may [40 CFR 124.5(b)]:

- Direct EPA to begin termination proceedings; or

- Direct EPA to modify, or revoke and reissue the permit.

If EPA does not approve a request to terminate a RCRA permit and the requester does not appeal, the permit and requirements for compliance continue as before.

DOE managers responsible for RCRA permitting should contact the responsible DOE Headquarters Program office and the appropriate DOE Field Counsel's office immediately upon receiving notice of a request by anyone other than DOE for termination of a DOE facility's RCRA permit.



REFERENCES

Statutes

Atomic Energy Act of 1954, P.L. 83-703, as amended.

Clean Air Act, P.L. 90-148, as amended, Title IV (Acid Deposition Control).

Clean Air Act, P.L. 90-148, as amended, Title V (Permits).

Clean Water Act, as amended by the Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500.

Coastal Zone Management Act of 1972, P.L. 92-583, as amended.

Endangered Species Act, P.L. 93-205, as amended.

Energy Reorganization Act of 1974, P.L. 93-438, as amended.

Federal Water Pollution Control Act, P.L. 92-500, as amended.

Fish and Wildlife Coordination Act, P.L. 85-624, as amended.

National Environmental Policy Act, P.L. 91-190, as amended.

National Historic Preservation Act, P.L. 89-655, as amended.

Resource Conservation and Recovery Act, P.L. 94-580, as amended.

Wild and Scenic Rivers Act, P.L. 90-542, as amended.

Regulations

10 CFR Part 30, “Nuclear Regulatory Commission Rules of General Applicability to Domestic Licensing of Byproduct Material.”

10 CFR Part 40, “Nuclear Regulatory Commission Regulations on Domestic Licensing of Source Material.”

10 CFR Part 70, “Nuclear Regulatory Commission Regulations on Domestic Licensing of Special Nuclear Material.”

10 CFR Part 72, “Nuclear Regulatory Commission Regulations on Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste.”

10 CFR Part 1021, “Department of Energy National Environmental Policy Act Implementing Procedures.”

15 CFR Part 930, “National Oceanic and Atmospheric Administration Regulations on Federal Consistency with Approved Coastal Management Programs.”

33 CFR Parts 321, “Army Corps of Engineers Permit Regulations for Dams and Dikes.”
33 CFR Part 322, “Army Corps of Engineers Permit Regulations for Structures.”
33 CFR Part 323, “Army Corps of Engineers Permit Regulations for Dredged Materials.”
33 CFR Part 330, “Army Corps of Engineers Nationwide Permit Program Regulations.”

36 CFR Part 800, “Advisory Council on Historic Preservation Regulations on Protection of Historic and Cultural Properties.”

40 CFR Part 52, “EPA Regulations on Approval and Promulgation of Implementation Plans.”
40 CFR Part 60, “EPA Regulations on Standards of Performance for New Stationary Sources.”
40 CFR Part 61, “EPA Regulations on National Emission Standards for Hazardous Air Pollutants.”
40 CFR Part 63, “EPA Regulations on Nationalo Emission Standards for Hazardous Air Pollutants for Source Categories.”
40 CFR Part 70, “EPA Regulations on State Operating Permit Programs.”
40 CFR Part 81, “EPA Regulations Designating Areas for Air Quality Planning.”
40 CFR Part 122, “EPA Regulations on State Certification of Activities Requiring a Federal License or Permit.”
40 CFR Part 124, “EPA Procedures for Decisionmaking.”
40 CFR Part 270, “EPA Administered Permit Programs: The Hazardous Waste Permit Program.”
40 CFR Part 1506, “Council on Environmental Quality Regulations on Other Requirements of NEPA.”

Federal Register

57 FR 32250 (July 21, 1992), “Final Rule: Operating Permit Program.”

60 FR 63417 (December 11, 1995), “Final Rule: RCRA Expanded Public Participation.”

61 FR 34202 (July 1, 1996), “Final Rule: Federal Operating Permits Program.”

61 FR 63122, 63223 (November 29, 1996), “Environmental Protection Agency Semiannual Regulatory Agency, Radionuclide Major Source Definition (RIN: 2060-AD60).”

Other Publications

U.S. Department of Energy, *Public Participation in Environmental Restoration Activities* (DOE/EH-0221, November 1991).

U.S. Department of Energy, "Public Participation Policy for Environmental Restoration and Waste Management" (October 1992).

U.S. Department of Energy, "Public Participation Guidance for Environmental Restoration and Waste Management" (March 1993).

U.S. Environmental Protection Agency, *RCRA Public Participation Manual* (EPA530-R-96-007, September 1996).

U.S. Department of Energy, *Public Participation Desk Reference* (1994).

U.S. Department of Energy, “Site-Specific Advisory Board Guidance - Final” (January 1996).

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