

## MEMORANDUM

**SUBJECT:** Permitting for Environmental Results: Permit Issuance and Priority Permits

**FROM:** James A. Hanlon, Director  
Office of Wastewater Management

**TO:** Water Division Directors, Regions I-X

In a memorandum dated August 15, 2003, G. Tracy Mehan, III, provided you with the “National Pollutant Discharge Elimination System (NPDES) Permitting for Environmental Results (PER) Strategy.” The memorandum described the Office of Water’s (OW) expectations for a program that is more efficient and focuses on environmental endpoints. The Strategy, as outlined in the memo, has three program components: Results, Efficiency, and Integrity. OW provided detailed information about the “Integrity” component in a memo sent on October 9, 2003. The “Efficiency” component of the strategy will be addressed in a subsequent memo following consultation over the coming months with Regional staff and the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) workgroup. Today’s memo focuses on permit prioritization under the “Results” component of the PER Strategy. Specifically, this memo asks Regions to work with their States during the annual planning process to develop a list of environmentally significant “priority permits” and establish a commitment to issue these permits as soon as possible. In FY05 we will begin tracking Regional performance with respect to issuance of priority permits and will use this measure to help us quantify efforts to reduce the backlog of environmentally significant permits. In addition, where overall permit issuance rates are low, we are asking Regions to work with States to develop permit issuance plans to focus on environmentally significant permits and ensure the integrity of core NPDES permit program implementation.

### **Identification and Tracking of “Priority Permits”**

The Results component of the PER strategy is designed to foster identification of the most environmentally significant permits, prioritize permit issuance within and among watersheds, maximize environmental benefits, and optimize the use of valuable resources. Over the past year we, the Regions, and the ASIWPCA workgroup have discussed various approaches to permit issuance in relation to environmental outcomes. Today’s memo is intended to begin implementation of the concepts outlined in those discussions. This approach encourages permitting authorities to efficiently manage their permit program resources, maintain overall permit issuance rates, and assure that the most environmentally significant permits are issued in a timely manner. This approach also supports the Agency’s strategic plan goals for improving impaired waters and encouraging watershed-based environmental controls.

To measure the success of the results/prioritization strategy, we have established two specific goals:

- 1) achieve and maintain a 90% overall permit issuance rate<sup>1</sup>, and
- 2) achieve a 95% issuance rate for priority permits, as scheduled<sup>2</sup>.

The first measure is a current and ongoing Annual Performance Goal (APG) under the Government Performance and Results Act (GPRA), and the second will become an APG in FY05. While the “priority permits” goal remains 95 percent, the approach for counting and tracking performance has continued to evolve.

Regions and States were comfortable focusing on environmentally significant permits and felt we should come up with ambitious schedules to issue them. However, they also recognized that many of the environmentally significant permits would take more than one year to bring to closure even with increased attention. The number of priority permits may vary significantly across permitting authorities, as may the complexity of the permits. Therefore, we should work with each NPDES authority to set the list of priority permits and the expectations for issuing them, and to set 95 percent of those scheduled each year as the Regional goal in support of the national goal.

NPDES authority-specific data in the PER Management Report will be the number of priority permits planned and issued during the fiscal year, rather than a percentage. Furthermore, performance will be measured relative to a schedule for priority permit issuance established by the Region and State. To track this measure, we will use information provided in the State/Regional submissions to populate a “planned issuance date” (federal fiscal year) field in the Permit Compliance System (PCS) database for each priority permit. We will then track and assess performance based on whether the priority permits were issued during the planned fiscal year. Substitutions may occur. Please note, however, that we will be asking for additional information for any schedule that extends beyond FY06. At the end of FY05, we will work with the Regions and States to evaluate the effectiveness of this goal and revise it if necessary for FY06 and beyond.

The first step in implementing this new performance measure is for Regions to clearly identify the individual and general “priority permits” for each of their States and establish an issuance schedule for each of these permits. As discussed with States and Regions, priority permits will be drawn from a candidate list of individual and general permits that have been expired for more than two years. Data from PCS indicate that there are approximately 5,000

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<sup>1</sup>The overall permit issuance rate is determined by calculating the ratio of facilities covered by current individual or general permits relative to the universe of facilities requiring permit coverage (this measure does not include “storm water-only” facilities).

<sup>2</sup>The issuance rate for priority permits will be calculated (on a national and Regional basis) as the percentage of priority permits that were actually issued during the federal fiscal year relative to the number of permits scheduled to be issued in that fiscal year (as established in the State/Regional priority permit submissions).

individual permits that meet this “two year” criterion (Note: comprehensive national data are not available on the expiration status of NPDES general permits). Our expectation is that Regions will **work with States over the next several months, during the annual planning process, and provide us with a final priority permits list and an issuance schedule by July 31, 2004.** The schedules should encourage issuance of priority permits as soon as possible and our expectation is that most if not all FY05 priority permits should be issued within two years (i.e., prior to 9/30/2006). **If the proposal includes a schedule beyond FY06 for any priority permit, the submission should clearly describe the obstacle(s) to issuing that permit and, where applicable, an assessment of the resources or actions that would enable this permit to be issued more quickly.** The list for each NPDES authority should include:

- A discussion of the rationale and/or criteria used to identify priority permits, including an explanation of why other candidate permits (i.e., those expired greater than two years) were not considered high priority;
- the NPDES permit number of each selected permit;
- An indication of which criteria caused each permit to be included on the list, and;
- A “planned issuance date” (federal fiscal year) for each selected permit.
- Obstacles and actions needed for priority permits that are not planned for issuance by the end of FY 06

Please note that in previous discussions we indicated that permits awaiting initial issuance (“pending permits”) might also be included in the universe of priority permits. Based on subsequent conversations, several States and Regions noted that many of these pending permits are artifacts of incorrect permit tracking data in PCS or reflect incomplete applications, and are not “environmentally significant.” We acknowledge these concerns and have decided to address pending permits as a data quality issue. We will, however, continue to track pending permits as a component of the PER Management Report and will continue to include pending permits in our overall permit backlog tracking (as has been the practice since 1999). Several States also commented that permits should not be considered “pending” if the application submitted by a new facility is incomplete; thus, preventing the permit from being developed. To accommodate this situation, States and Regions may submit a list of “pending” permits in PCS (by NPDES permit number) where there is an incomplete application. These will be flagged in PCS and will not be considered as “pending” for tracking purposes. They will also not be included in the backlog calculations. However, any States/Regions providing a list must provide a plan to periodically update the information and identify when applications become “complete.” The operational details of this process will be established on a Region-by-Region or State-by-State basis, as needed. After completing PCS data clean up efforts, we will reassess the significance of the pending permit universe and may reconsider including pending permits in the priority permits discussions in the future.

Over the past few months, we have worked with States and Regions to identify a variety of criteria for selecting environmentally significant priority permits. For example, priority permits could include permits that need to be revised and reissued to address significant impacts,

changes or issues such as:

- Potential impacts to an impaired or threatened waterbody
- Potential impacts to a drinking water resource
- New or revised water quality standards
- New or revised effluent limitations guidelines
- National program priorities (e.g., Combined Sewer Overflow, Concentrated Animal Feeding Operations)
- Protection of a threatened or endangered species
- Significant changes to a facility's operations, treatment, or effluent characteristics
- Public concerns or environmental justice issues.

We strongly support existing State and Regional prioritization efforts that use environmental significance criteria, like those noted above, and we expect all Regions and States to select priority permits using this type of approach. To encourage these State and Regional efforts, we plan to compile and share information with other permitting authorities through the ASIWPCA workgroup process.

The Water Permits Division has also developed two web-based characterization tools that allow permitting authorities to “pre-screen” potential environmentally significant permits using data available in national databases. Specifically, the tools allow users to identify permits that potentially discharge to a listed water (based on spatial proximity) and which potentially discharge a pollutant that might contribute to the impairment. We recognize that the usefulness of these tools is currently limited due to data quantity and quality issues in PCS and other data systems. However, we believe the tools will become much more useful over the coming years as we add new data layers and as States and Regions populate and maintain complete and accurate data in PCS and other national data systems. A more complete discussion of the characterization process and access to the web-based characterization tools are available at: [http://intranet.epa.gov/waters/tools/index\\_pcs.html](http://intranet.epa.gov/waters/tools/index_pcs.html).

We will also continue to support the ASIWPCA workgroup in the development and use of a “screening tool” checklist that can be used to evaluate the environmental significance of individual expired or expiring permits. We will provide a copy of the latest draft of the checklist to the Regional NPDES Program Managers in the coming weeks for their consideration. Lastly, several States have indicated that they will choose to consider all expired individual permits as “priority permits.” This is certainly consistent with our overall goal and is an acceptable alternative. In this instance, we would flag and track as “priority permits” all permits in that State that have been expired greater than two years. If permits remain expired after two years in these States, the State will need to identify if they are environmentally significant. If they are environmentally significant, then these permits will be discussed in the next year's prioritization discussions.

### **Maintaining Overall Permit Issuance Rates**

In addition to the establishment of a priority permit list for performance tracking under GPRA, we are asking the Regions to develop and provide us with a “Permit Issuance Plan” for

any NPDES permitting authority (State or Region) where the overall permit issuance rate (for majors and minors) generally fell below 70 percent over the previous six months. A list of States/Territories that are currently below the 70 permit issuance threshold is provided in **Attachment 1**. This plan should provide a list of the specific permits planned for issuance during the year, a rationale for the selection of priority permits, a timeline for meeting each of the permit issuance goals, an assessment of obstacles and solutions, and an identification of the staff or contractor needs and resources to implement the plan. These plans should ensure that each State meets the goal of 90 percent issuance by the end of FY05. If the Region believes that the 90% goal is not achievable, we ask that the Region and State consult with headquarters staff. We are asking that the Regions **submit the plans following their annual planning discussions with States, but no later than August 31, 2004.**

As in previous permit issuance plans, we continue to support approaches that allow a short term delay in the issuance of permits where such delays are needed to implement a rotating-basin watershed approach. To accommodate the implementation of a rotating-basin approach, States and Regions may submit a list of permits where delayed issuance is warranted to sequence permits on a watershed basis, and these permits will not be considered as “expired” for tracking purposes. The list of permits should provide a “planned issuance date” (federal fiscal year) which will be entered into PCS to track performance and ensure that these permits are not delayed indefinitely.

The objective of the Permit Issuance Plan is to establish a management system that ensures a sound base permitting program, provides States and Regions the needed flexibility to set and meet their permit issuance goals, and ensures that resources are focused first on the environmentally significant (priority) permits. Further, the Permit Issuance Plan should provide a process to enable EPA and the States to regularly characterize and assess permit issuance on a national, regional, and NPDES authority-specific basis, to describe approaches that are effective for maintaining high issuance rates of priority permits, to effectively address program shortfalls in a timely manner, and to identify and resolve potential problems as part of an ongoing management system. We will assess progress at the end of FY05 and if goals are not achieved, we will assess additional steps to resolve permit issuance concerns.

In summary, we look forward to working with you on the Permit Issuance/Priority Permit effort and anticipate your submission of the following items:

- Priority Permits Plan for each NPDES Authority 7/31/2004
- Overall Permit Issuance/Backlog Reduction Plan\* 8/31/2004  
\* Only for States with permit issuance rates below 70%
- List of incomplete applications for new facilities\*\* As needed - 8/31/2004  
\*\* not counted in permit backlog
- List of permits delayed due to rotating basins\*\* As needed - 8/31/2004  
\*\* not counted in permit backlog

We will continue to work with your staff and the ASIWPCA workgroup to further develop our priority permitting strategy to gather real-world success stories and streamlining practices for permit issuance. These topics will be addressed in subsequent memos based on the information developed during the workgroup process. If you have questions regarding the permit issuance

and prioritization component of the PER Strategy, please contact Linda Boornazian, Director, Water Permits Division at (202) 564-0221.

Attachment

cc: Ben Grumbles, Acting Assistant Administrator, Office of Water  
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Robbie Savage, ASWIPCA

# **Attachment 1**

**States with Overall Permit Issuance Rates  
Less than 70 Percent**

**States with Less than 70 Percent Current Permits**  
(February 2004)

<b>State</b>	<b>EPA Region</b>	<b>Permits - % current</b>
Massachusetts	1	53.3
Maine	1	67.1
New Hampshire	1	53.6
Rhode Island	1	44.3
Puerto Rico	2	55.4
Virgin Islands	2	36.3
Delaware	3	66.1
Illinois	5	63.8
New Mexico	6	67.6
Missouri	7	68.8
Nebraska	7	52.5
Montana	8	64.7
South Dakota	8	62.7
Idaho	10	43.4
Oregon	10	39.0

\* Percent current is calculated for all major and minor facilities covered by individual and general NPDES permits (excluding storm water facilities).