

Promoting Environmental Program Health and Integrity:

Principles and Best Practices for Oversight of State Permitting Programs

Introduction

The following set of principles and best practices for promoting state permitting program health and integrity reflects the outcomes of an assessment and consultation process that EPA initiated in response to a 2011 Inspector General's report. EPA focused its assessment efforts on three key permitting programs: the Clean Water Act's National Pollutant Discharge Elimination System (NPDES) program, the Clean Air Act Title V program, and the Resource Conservation and Recovery Act (RCRA) subtitle C program. After completing an initial assessment of legal authorities and oversight tools, EPA sought input from the state associations representing each media program's state permitting managers: the Association of Clean Water Administrators (ACWA), the National Association of Clean Air Agencies (NACAA), the Association of Air Pollution Control Agencies (AAPCA), and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). EPA also engaged the state environmental commissioners through the Environmental Council of States (ECOS).

Vision

Establish principles and best practices for efficient and effective oversight of environmentally protective permitting programs while building the State – EPA relationship through high levels of trust, communication, and collaboration.

Purpose

1. Using these principles, EPA and the States will improve the oversight system to optimize collaboration and accountability to ensure our continued success.
2. These principles are guideposts for how EPA and the states will, consistent with the legal structure of each media program:
 - Consult with each other so that each partner can make an early and meaningful contribution toward environmental goals.
 - Collaborate to not only share information, but actively work together to develop innovative approaches that leverage resources to achieve our environmental and human health goals.
 - Cooperate with each other as partners with shared accountability for consistently delivering environmental protection nationwide balanced with recognition and respect for variations across environmental media programs and across Regions and states.
3. These principles and practices are intended to guide the evolution of existing oversight tools and to enable each media program to align with these principles over time.

Principles

There is common interest in coming into alignment with these principles over time. Issues unique to each program (including legal structure and available resources) will influence the pace at which that alignment occurs and the form that it takes. The principles are:

- The EPA/State program oversight process will be accomplished through clear, accurate, up-to-date, efficient, and effective policies, guidance, training, and tools for both EPA and state staff. States will be evaluated against requirements applicable at the time of the evaluation.
- EPA will work with states to routinely review state-developed permits and state permit programs in accordance with established guidance to ensure legal authority, effective implementation, and national consistency.
- EPA and state program authorities will use information gained through the oversight process to identify and implement necessary program improvements.
- Environmental results, as expressed in EPA's National Program Manager (NPM) guidance, annual commitments, and agreed-to priorities with the states, will provide the primary basis for yearly oversight activities.
- EPA and the states will use established vehicles, wherever possible, (e.g., state grant commitments, annual state workplans) to identify, document, and address performance issues.
- We will look to continue to improve oversight programs over time with careful consideration of the perspectives of EPA and states.

Best Practices

These best practices are suggested methods to help permitting programs continue to enhance the efficiency and effectiveness of their oversight consistent with the principles listed above.

1. EPA can develop, keep current, and make readily available on-line policies, guidance, and tools that guide EPA's review of state-developed permits and permitting programs. Examples include:
 - a. Maintaining checklists for preparing and reviewing permits and performing program reviews.
 - b. Summarizing and sharing novel/controversial issues and potential approaches for use in future permit reviews.

2. Establish and maintain a strong collaborative environment between EPA and state permitting programs by considering implementation of the following tools for collaboration:
 - a. Anticipate, plan for, and hold substantive communications well in advance of complex/controversial permits going to public notice so as to avoid surprises and permit issuance delays. To the extent practical, States and EPA should strive to incorporate identification of permits to be reviewed as part of their annual work-planning cycles.
 - b. Hold regular conference calls with states to provide the national perspective, communicate new policies, and promote consistency and cross-fertilization of good ideas.
 - c. Share best practices with all permitting authorities.
 - d. Commit to regular meetings (face-to-face or by phone, as appropriate) between regional offices and their states.
 - e. EPA will make results from program reviews available to the states and post them to the internet along with state comments on the report.
 - f. Ensure that follow-up on identified issues is performed in a timely manner.

3. Enhance the effectiveness and efficiency of oversight by striving to:
 - a. Target reviews to focus on the most environmentally significant permits and state-specific challenges, and review fewer routine/non-controversial permits. Routine reviews will not encompass in-depth reconsideration of permitting programs' foundational documents (e.g., program authorizations, memoranda of agreement). EPA will make states aware when and if such reconsideration is warranted.
 - b. Respect and use existing state/regional relationships.
 - c. Conduct permit/program reviews at routine intervals, but with sufficient flexibility to acknowledge each state's past performance, known ongoing problems, and resource constraints and adapt review intervals accordingly.
 - d. Allow flexibility in reporting requirements when permissible and appropriate.
 - e. Use lean tools where possible to reduce the resources needed for oversight.
 - f. Plan continually for future challenges/opportunities, while leveraging/incorporating new approaches and technologies (e.g., E-Enterprise innovations).
 - g. Commit to ongoing education and training programs for EPA and state permitting staff on EPA regulations and policies, tools for permit development, and

expectations for program and permit submissions to EPA. Continuous training efforts and timeframes for delivery should consider new permitting requirements, staffing changes, and available resources. States and EPA should regularly discuss educational and training needs and resources.

- h. Institute strategies for retaining institutional knowledge.
 - i. Ensure Program Guidance looks forward to future challenges and opportunities
4. Where appropriate, EPA and States may pilot a team approach that includes participants from other EPA Regions and/or States for permit and program reviews. This could increase staff expertise, enhance overall productivity and awareness of trends in other programs, and increase accountability and objectivity. Under such an arrangement, review team members should work together to arrange the selection and travel of peer reviewers. After completing pilot phase reviews that include other EPA Regions and/or States, EPA and States should both assess and refine such procedures.