

procedural requirements applicable to all permit programs covered by these provisions. Subparts B through D supplement these general provisions with requirements that apply to only one or more of the programs. Subpart A describes the steps EPA will follow in receiving permit applications, preparing draft permits, issuing public notices, inviting public comment and holding public hearings on draft permits. Subpart A also covers assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of final permit decisions. Subpart B contains specific procedural requirements for RCRA permits. Subpart C contains definitions and specific procedural requirements for PSD permits. Subpart D contains specific procedural requirements for NPDES permits.

(c) Part 124 offers an opportunity for public hearings (see §124.12).

(d) This part is designed to allow permits for a given facility under two or more of the listed programs to be processed separately or together at the choice of the Regional Administrator. This allows EPA to combine the processing of permits only when appropriate, and not necessarily in all cases. The Regional Administrator may consolidate permit processing when the permit applications are submitted, when draft permits are prepared, or when final permit decisions are issued. This part also allows consolidated permits to be subject to a single public hearing under §124.12. Permit applicants may recommend whether or not their applications should be consolidated in any given case.

(e) Certain procedural requirements set forth in part 124 must be adopted by States in order to gain EPA approval to operate RCRA, UIC, NPDES, and 404 permit programs. These requirements are listed in §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA) and signaled by the following words at the end of the appropriate part 124 section or paragraph heading: *(applicable to State programs see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA))*. Part 124 does not apply to PSD permits issued by an approved State.

(f) To coordinate decisionmaking when different permits will be issued by EPA and approved State programs, this part allows applications to be jointly processed, joint comment periods and hearings to be held, and final permits to be issued on a cooperative basis whenever EPA and a State agree to take such steps in general or in individual cases. These joint processing agreements may be provided in the Memorandum of Agreement developed under §§123.24 (NPDES), 145.24 (UIC), 233.24 (404), and 271.8 (RCRA).

[48 FR 14264, Apr. 1, 1983, as amended at 54 FR 9607, Mar. 7, 1989; 54 FR 18785, May 2, 1989; 65 FR 30910, May 15, 2000]

#### § 124.2 Definitions.

(a) In addition to the definitions given in §§122.2 and 123.2 (NPDES), 501.2 (sludge management), 144.3 and 145.2 (UIC), 233.3 (404), and 270.2 and 271.2 (RCRA), the definitions below apply to this part, except for PSD permits which are governed by the definitions in §124.41. Terms not defined in this section have the meaning given by the appropriate Act.

*Administrator* means the Administrator of the U.S. Environmental Protection Agency, or an authorized representative.

*Application* means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved States," including any approved modifications or revisions. For RCRA, application also includes the information required by the Director under §§270.14 through 270.29 [contents of Part B of the RCRA application].

*Appropriate Act and regulations* means the Clean Water Act (CWA); the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act (RCRA); or Safe Drinking Water Act (SDWA), whichever is applicable; and applicable regulations promulgated under those statutes. In the case of an "approved State program" appropriate Act and regulations includes program requirements.

*CWA* means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act of Federal Pollution Control Act Amendments of 1972)

## § 124.2

## 40 CFR Ch. I (7-1-04 Edition)

Public Law 92-500, as amended by Public Law 95-217 and Public Law 95-576; 33 U.S.C. 1251 *et seq.*

*Director* means the Regional Administrator, the State director or the Tribal director as the context requires, or an authorized representative. When there is no approved State or Tribal program, and there is an EPA administered program, *Director* means the Regional Administrator. When there is an approved State or Tribal program, “Director” normally means the State or Tribal director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State or Tribal program. (For example, when EPA has issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval; see §123.1) In such cases, the term “Director” means the Regional Administrator and not the State or Tribal director.

*Draft permit* means a document prepared under §124.6 indicating the Director’s tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a “permit.” A notice of intent to terminate a permit and a notice of intent to deny a permit as discussed in §124.5, are types of “draft permits.” A denial of a request for modification, revocation and reissuance or termination, as discussed in §124.5, is not a “draft permit.” A “proposal permit” is not a “draft permit.”

*Environmental Appeals Board* shall mean the Board within the Agency described in §1.25(e) of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in RCRA, PSD, UIC, or NPDES permit appeals filed under this subpart, including informal appeals of denials of requests for modification, revocation and reissuance, or termination of permits under Section 124.5(b). An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation does not preclude the Environmental Appeals Board from referring an appeal or a motion under this subpart to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal

or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and the rules in this subpart referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

*EPA* (“EPA”) means the United States “Environmental Protection Agency.”

*Facility or activity* means any “HWM facility,” UIC “injection well,” NPDES “point source” or “treatment works treating domestic sewage” or State 404 dredge or fill activity, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, NPDES, or 404 programs.

*Federal Indian reservation* (in the case of NPDES) means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

*General permit* (NPDES and 404) means an NPDES or 404 “permit” authorizing a category of discharges or activities under the CWA within a geographical area. For NPDES, a general permit means a permit issued under §122.28. For 404, a general permit means a permit issued under §233.37.

*Indian Tribe* means (in the case of UIC) any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over a defined area. For the NPDES program, the term “Indian Tribe” means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

*Interstate agency* means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the “appropriate Act and regulations.”

*Major facility* means any RCRA, UIC, NPDES, or 404 “facility or activity”

## Environmental Protection Agency

## § 124.2

classified as such by the Regional Administrator, or, in the case of “approved State programs,” the Regional Administrator in conjunction with the State Director.

*Owner or operator* means owner or operator of any “facility or activity” subject to regulation under the RCRA, UIC, NPDES, or 404 programs.

*Permit* means an authorization, license, or equivalent control document issued by EPA or an “approved State” to implement the requirements of this part and parts 122, 123, 144, 145, 233, 270, and 271. “Permit” includes RCRA “permit by rule” (§270.60), UIC area permit (§144.33), NPDES or 404 “general permit” (§§270.61, 144.34, and 233.38). Permit does not include RCRA interim status (§270.70), UIC authorization by rule (§144.21), or any permit which has not yet been the subject of final agency action, such as a “draft permit” or a “proposed permit.”

*Person* means an individual, association, partnership, corporation, municipality, State, Federal, or Tribal agency, or an agency or employee thereof.

*RCRA* means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended by Pub. L. 95-609, 42 U.S.C. 6901 *et seq.*).

*Regional Administrator* means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

*Schedule of compliance* means a schedule of remedial measures included in a “permit,” including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the “appropriate Act and regulations.”

*SDWA* means the Safe Drinking Water Act (Pub. L. 95-523, as amended by Pub. L. 95-1900; 42 U.S.C. 300f *et seq.*).

*Section 404 program or State 404 program or 404* means an “approved State program” to regulate the “discharge of dredged material” and the “discharge of fill material” under section 404 of the Clean Water Act in “State regulated waters.”

*Site* means the land or water area where any “facility or activity” is phys-

ically located or conducted, including adjacent land used in connection with the facility or activity.

*State* means one of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (except in the case of RCRA), the Commonwealth of the Northern Mariana Islands, or an Indian Tribe that meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State (except in the case of RCRA).

*State Director* means the chief administrative officer of any State, interstate, or Tribal agency operating an approved program, or the delegated representative of the State director. If the responsibility is divided among two or more States, interstate, or Tribal agencies, “State Director” means the chief administrative officer of the State, interstate, or Tribal agency authorized to perform the particular procedure or function to which reference is made.

*State Director* means the chief administrative officer of any State or interstate agency operating an “approved program,” or the delegated representative of the state Director. If responsibility is divided among two or more State or interstate agencies, “State Director” means the chief administrative officer of the State or interstate agency authorized to perform the particular procedure or function to which reference is made.

*UIC* means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an “approved program.”

(b) For the purposes of part 124, the term *Director* means the State Director or Regional Administrator and is used when the accompanying provision is required of EPA-administered programs and of State programs under §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA). The term *Regional Administrator* is used when the accompanying provision applies exclusively to EPA-issued permits and is not applicable to State programs under these sections. While States are not required to implement these latter provisions,

### § 124.3

### 40 CFR Ch. I (7-1-04 Edition)

they are not precluded from doing so, notwithstanding use of the term “Regional Administrator.”

[48 FR 14264, Apr. 1, 1983; 48 FR 30115, June 30, 1983, as amended at 49 FR 25981, June 25, 1984; 53 FR 37410, Sept. 26, 1988; 54 FR 18785, May 2, 1989; 57 FR 5335, Feb. 13, 1992; 57 FR 60129, Dec. 18, 1992; 58 FR 67983, Dec. 22, 1993; 59 FR 64343, Dec. 14, 1994; 65 FR 30910, May 15, 2000]

#### § 124.3 Application for a permit.

(a) *Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).* (1) Any person who requires a permit under the RCRA, UIC, NPDES, or PSD programs shall complete, sign, and submit to the Director an application for each permit required under §§ 270.1 (RCRA), 144.1 (UIC), 40 CFR 52.21 (PSD), and 122.1 (NPDES). Applications are not required for RCRA permits by rule (§ 270.60), underground injections authorized by rules (§§ 144.21 through 144.26), NPDES general permits (§ 122.28) and 404 general permits (§ 233.37).

(2) The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. See §§ 270.10, 270.13 (RCRA), 144.31 (UIC), 40 CFR 52.21 (PSD), and 122.21 (NPDES).

(3) Permit applications (except for PSD permits) must comply with the signature and certification requirements of §§ 122.22 (NPDES), 144.32 (UIC), 233.6 (404), and 270.11 (RCRA).

(b) [Reserved]

(c) The Regional Administrator shall review for completeness every application for an EPA-issued permit. Each application for an EPA-issued permit submitted by a new HWM facility, a new UIC injection well, a major PSD stationary source or major PSD modification, or an NPDES new source or NPDES new discharger should be reviewed for completeness by the Regional Administrator within 30 days of its receipt. Each application for an EPA-issued permit submitted by an existing HWM facility (both Parts A and B of the application), existing injection well or existing NPDES source or sludge-only facility should be reviewed for completeness within 60 days of receipt. Upon completing the review, the Regional Administrator shall notify the applicant in writing whether the

application is complete. If the application is incomplete, the Regional Administrator shall list the information necessary to make the application complete. When the application is for an existing HWM facility, an existing UIC injection well or an existing NPDES source or “sludge-only facility” the Regional Administrator shall specify in the notice of deficiency a date for submitting the necessary information. The Regional Administrator shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Regional Administrator may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provision including RCRA section 3008, SDWA sections 1423 and 1424, CAA section 167, and CWA sections 308, 309, 402(h), and 402(k).

(e) If the Regional Administrator decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and a date shall be scheduled.

(f) The effective date of an application is the date on which the Regional Administrator notifies the applicant that the application is complete as provided in paragraph (c) of this section.

(g) For each application from a major new HWM facility, major new UIC injection well, major NPDES new source, major NPDES new discharger, or a permit to be issued under provisions of § 122.28(c), the Regional Administrator shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. (This paragraph does not apply to PSD permits.) The schedule shall specify target dates by which the Regional Administrator intends to:

- (1) Prepare a draft permit;
- (2) Give public notice;