UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 17 2018

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

NOW THE
OFFICE OF LAND AND
EMERGENCY MANAGEMENT

Mr. Rodney Huerter
Veolia North America
4760 World Houston Parkway, Suite 100
Houston, Texas 77032

Dear Mr. Huerter:

Thank you for your letter of October 4, 2018, requesting clarifications of our March 5, 2018, letter to Veolia North America regarding the definition of "owner or operator." Your letter describes a hypothetical set of facts about a "Company" and then, based on assuming those facts to be undisputed, asks whether the U.S. EPA (the Agency) would generally consider the Company to be an *operator* under 40 CFR 260.10, or an *owner or operator* under § 270.2.

The hypothetical set of facts about the Company are as follows:

- never owned a particular property in a state (the "*Site*"), or any facility located on the Site;
- never conducted any treatment, storage, or disposal of hazardous waste at the Site (and never used any contractor to treat, store, or dispose of any hazardous waste at the Site on behalf of the Company);
- is not seeking (and has no intention to ever seek) a permit to treat, store, or dispose of hazardous waste at the Site;
- never exercised "active and pervasive control over the overall operation of the facility"; and was never "in charge of [overall] plant operations on a day-to-day basis" at the Site;
- never caused or contributed to any contamination at the Site;
- never engaged in any of the activities that require "Special Forms of [RCRA] Permits" under subpart F of part 270, either with respect to the Site, or any other area in the United States that is subject to the RCRA jurisdiction of the Agency; and
- is not identified in the most current RCRA Subtitle C Site Identification Forms related to the Site, and is not identified as the current owner or operator of record of the Site in the Agency's RCRAInfo system or in any of the Agency's public web-based resources (e.g., Envirofacts).

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The questions from your letter are included here, followed by our response.

> Question 1: Based on the above-noted hypothetical facts, would the Agency generally consider the Company to be an "operator" of the Site under § 260.10 that is required to conduct RCRA corrective action or obligated to obtain a RCRA permit? (Yes or No)
>
> Question 2: Based on the above-noted hypothetical facts, would the Agency generally consider the Company to be an "owner or operator" under § 270.2 that is required to conduct RCRA corrective action or obligated to obtain a RCRA permit? (Yes or No)

Questions such as these are difficult to answer with certainty, as they are based on a hypothetical situation. Additionally, the letter *does not* present hypothetical, or actual, facts about activities that would call into question the status of the Company as an owner or operator. However, assuming the set of hypothetical facts presented is undisputed and the Company conducts no other activities that would otherwise trigger RCRA applicability criteria, the Agency would *generally* not consider the Company to be an operator under § 260.10 or an owner or operator under § 270.2. Please note that states authorized to implement the RCRA program may have more stringent requirements that may impact the Company's status under RCRA.

Thank you for your inquiry. If you have any questions, please contact Jeff Gaines of my staff at (703) 308-8655, or gaines.jeff@epa.gov.

Sincerely,

Barnes Johnson

Barnes Johnson, Director
Office of Resource Conservation and Recovery

October 4, 2018
(rev. to March 9, 2018 original)

Mr. Barnes Johnson
Director, Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
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Washington, D.C. 20460
via e-mail: johnson.barnes@Epa.gov

Dear Mr. Johnson:

Thank you for your letter dated March 5, 2018, (the "***Response***"), which responds to Veolia Water North America Operating Services, LLC's request for a clarification from the Agency regarding the definition of "owner or operator" set forth in 40 C.F.R. § 270.2 (the "***Definition***"). Veolia's request asks whether the Definition creates classifications of "owner" and "operator" that are different from the defined meaning of those terms under § 260.10. The Response confirms that "the Agency generally interprets the concept of what constitutes either an 'owner' or 'operator' **to be the same under either the definition in § 270.2 or 260.10**." [1] (Unless otherwise noted, all emphasis in quotations is added). The closing to the Response, however, states: "EPA does not consider the definitions, taken as a whole, to be identical." This closing statement appears to be related to the fact that the terms "owner" and "operator" under § 260.10 are each defined solely with respect to a "facility,"[2] while the definition of "owner or operator" under § 270.2 is defined with respect to "facility or activity."[3] The interaction between the two refer-

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[1] This is consistent with language from an EPA order that addresses the term "operator" in the federal RCRA regulations. *See In re So. Timber Products, Inc.*, 3 E.A.D. 880, 890 (JO 1992) ("Sections 3004 and 3005 should be read together, and common terms should be given a common interpretation. Thus, whatever the meaning of the term 'operator,' anyone deemed to be an operator for purposes of the performance standards under RCRA § 3004 is also an operator for purposes of the RCRA permitting requirements under RCRA § 3005") (footnote omitted).

[2] "Section 260.10 defines 'operator' as 'the person responsible for the **overall operation of a facility**,' and 'owner' as 'the person who **owns a facility or part of a facility**.'" (Unless otherwise noted, all emphasis in quotations is added).

[3] "In section 270.2, the term 'owner or operator' is defined to mean 'the owner or operator of any **facility or activity subject to regulation under RCRA**.'" As noted in Veolia's original request, the phrase "owner ***and*** operator," instead of the section 270.2 defined term "owner ***or*** operator," is used in at least fourteen different regulations under part 270, including the "purpose and scope" provisions of §270.1. That suggests that each use of "owner ***and*** operator" in part 270 should be interpreted to mean "owner" and "operator" as those terms are defined under § 260.10.

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enced sentences in the Response prompts Veolia's request for a few additional clarifications from the Agency.

It may be helpful to first briefly address a couple of points that relate to the requests. First, the definitions set forth in § 270.2 only apply to "parts 270, 271 and 124." The regulations set forth under 40 C.F.R. Part 270 (the "Hazardous Waste Permit Program") implement the requirements of RCRA § 3005, 42 U.S.C. § 6925, which govern "permits for treatment, storage, or disposal of hazardous waste."[4] The regulations under part 271 (which govern the requirements for authorization of a state hazardous waste program) and part 124 (which govern agency procedures for "issuing, modifying, revoking and reissuing, or terminating all RCRA, UIC, PSD and NPDES" permits) do not address activities that require RCRA permits.

Second, the term "facility or activity" is not defined in § 260.10. And the term "activity" is not separately defined in § 270.2 or § 260.10, but is used in part 270. Thus, it seems to logically follow that "facility or activity" should be interpreted to mean "any HWM facility or any other facility or activity (including land or appurtenances thereto) that is subject to [**permitting**] regulation under the RCRA program."[5] And, in that light, the term "activity" appears to relate to either (1) treatment, storage, or disposal of hazardous waste by an owner or operator of a hazardous waste management facility, (2) a person conducting any of the other activities that require "Special Forms of [RCRA] Permits" under subpart F of part 270,[6] or (3) some combination thereof.

We believe the best way to address Veolia's follow-up clarifications while at the same time minimizing any drag on the Agency's time and resources is to provide a simple set of hypothetical facts followed by two "yes" or "no" questions. With that noted, we ask the Agency to consider the following hypothetical facts to be undisputed for the purpose of the brief questions that follow the bullet-pointed facts contained on the next page. The intent is to obtain responses solely limited to the identified hypothetical facts, so there is no need to explore myriad other hypothetical fact patterns that are not listed.

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4 *See also* 40 C.F.R. § 270.1(b) ("Six months after the initial promulgation of the part 261 regulations, **treatment, storage, or disposal of hazardous waste** by any person who has not applied for or received a RCRA permit is prohibited").

5 *See* 40 C.F.R. § 270.2 (definition of "facility or activity"). This interpretation is supported by other provisions within part 270. For example: (1) § 270.30 includes provisions that address "an activity **regulated by this permit**," and "the **permitted activity**"; (2) § 270.33 includes provisions that address "conducting **permitted activities**" and "permit applicant or permittee may cease conducting regulated activities"; and (3) § 270.41 references "alterations or additions to **the permitted facility or activity**"; *see also* Exhibit 1 (which provides additional supporting quotations from 1979–1980 Federal Register preambles that clarify the use of the terms "activity" or "activities" in part 270 mean activities that are subject to RCRA permit provisions).

6 The "Special Forms of [RCRA] Permits" include: emergency permits (§ 270.61); HW incinerator permits (§ 270.62); permits for land treatment demonstrations (§ 270.63); interim permits for UIC wells (§ 270.64); research, development and demonstration permits (§ 270.65); permits for boilers and industrial furnaces burning HW (§ 270.66).

For the following questions, assume the XYZ Company (the "***Company***"):

- never owned a particular property in a state (the "***Site***"), or any facility located on the Site;
- never conducted any treatment, storage, or disposal of hazardous waste at the Site (and never used any contractor to treat, store, or dispose of any hazardous waste at the Site on behalf of Company);
- is not seeking (and has no intention to ever seek) a permit to treat, store, or dispose of hazardous waste at the Site;
- never exercised "active and pervasive control over the overall operation of the facility";[7] and was never "in charge of [overall] plant operations on a day-to-day basis" at the Site;[8]
- never caused or contributed to any contamination at the Site;
- never engaged in any of the activities that require "Special Forms of [RCRA] Permits" under subpart F of part 270, either with respect to the Site, or any other area in the United States that is subject to the RCRA jurisdiction of the Agency; and
- is not identified in the most current RCRA Subtitle C Site Identification Forms related to the Site, and is not identified as the current owner or operator of record of the Site in the Agency's RCRAInfo system or in any of the Agency's public web-based resources (e.g., Envirofacts, etc.).

Question 1: Based on the above-noted hypothetical facts, would the Agency generally consider Company to be an "operator" of the Site under § 260.10 that is required to conduct RCRA corrective action or obligated to obtain a RCRA permit? (Yes or No) [9]

Question 2: Based on the above-noted hypothetical facts, would the Agency generally consider Company to be an "owner or operator" under § 270.2 that is re-

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[7] *Cf. In re Carbon Injection Sys. LLC*, Docket No. RCRA-05-2011-0009, at 7 (ALJ May 31, 2012) (Order on Motions for Accelerated Decision), *available at* https://yosemite.epa.gov/oa/rhc/epaadmin.nsf (enter "RCRA-05-2011-0009" in search box, then scroll to order dated "05/31/2012").

[8] *Cf. In re So. Timber Products, Inc.*, 3 E.A.D. 880, 886 (JO 1992).

[9] Veolia recognizes that the determination of whether an entity meets the definition of "operator" is a "fact-sensitive determination." *United States v. Envtl. Waste Ctrl., Inc.*, 698 F. Supp. 1422, 1429 (N.D. Ind. 1988); *cf. In re Thermex Energy Corp.*, 4 E.A.D. 68, 71 (EAB 1992) (ruling that whether the defendant was an operator for purposes of RCRA is an issue to be "determined at trial"). That is the reason for limiting the requested clarifications solely to "undisputed" hypothetical facts, and also using the "would the Agency generally consider" qualifier.

quired to conduct RCRA corrective action or obligated to obtain a RCRA permit? (Yes or No)

We believe that the requested concise answers to the above-noted questions will sufficiently clarify the interaction between the two referenced sentences in the Response for our purposes. We respectfully request an expedited response to this request for follow-up clarifications. Please do not hesitate to contact me if you have any questions, or would like for me to provide additional information (via my office phone: 832-300-5719; or email: Rodney.Huerter@veolia.com).

Sincerely

Rodney G. Huerter
VP & Senior Counsel

cc: Jeffrey Gaines, U.S. EPA, Gaines.jeff@Epa.gov

Attachment

Ex. 1 – "Facility or Activity" Linked to Permitting, Federal Register (1979–1980)

Ex. 1 – "Facility or Activity" Linked to Permitting, Federal Register (1979–1980)

These regulations allow greater coordination and cooperation in permit review and issuance between EPA and States with approved RCRA, UIC, NPDES, 404, or PSD programs in instances **where a single facility or activity requires permits** from both EPA and one or more State agencies.

Consolidated Permit Regulations, Final Rule, 45 Fed. Reg. 33290, 33291/1 (May 19, 1980).

Part 124—Establishes the procedures to be followed in making permit decisions under the RCRA hazardous waste, UIC, PSD, and NPDES programs. It includes procedures for public participation, for consolidated review and issuance of two or more **permits to the same facility or activity**, and for appealing permit decisions. Most requirements in Part 124 are only applicable where EPA is the permit issuing authority. However, Part 123 requires States to comply with some of the Part 124 provisions, such as the basic public participation requirements of permit issuance.

45 Fed. Reg. at 33291/3.

Owner or operator. This definition remains unchanged. Some commenters sought clarification of what happens when the owner and operator are not the same, and expressed concern that requirements of the permit program might, by virtue of this definition, be imposed on **landowners who have no involvement in operation of a permitted activity. To address this concern**, we have amended § 122.4, application for a permit, to provide that the operator is responsible for obtaining a permit and complying with it when ownership and operation are split. However, RCRA applications must be signed both by the owner and the operator. The requirements of a RCRA permit bind both the "owner" and the "operator" of the permitted facility, while the requirements of other permits subject to this Part bind only the permit holder.

The reasons for this approach are explained in the preamble to the regulations implementing section 3004 of RCRA. Briefly, this approach has been chosen because there is at least one provision of the 3004 regulations that only the owner can comply with—the one requiring insertion of a notation in the deed to the property in question. It also may be materially more difficult to implement and enforce the closure and financial responsibility provisions of the regulations if the owner is not bound, since in at least some of those cases the site may have been abandoned and the "operator" may be difficult to determine. Joint responsibility will also provide more incentive to comply with the requirements of the RCRA program. Finally, the legislative history suggests that both owner and operator should be bound.

To ensure that both the owner and the operator understand their joint responsibility, EPA is requiring both the owner and the operator to sign the permit application. In adopting this approach, however, EPA has no intention to require both owner and operator to take all or even most compliance actions in tandem. EPA will regard compliance by either owner or operator with any given obligation under the permit as sufficient for both of them. EPA anticipates that in most cases the operator will take the lead role in complying with all but the few conditions that only the owner can satisfy. The owner is free to make arrangements with the operator by contract or otherwise to assure itself that the operator will take most actions necessary for compliance activities beyond that. Nonetheless, EPA considers both parties responsible for compliance with the regulations.

45 Fed. Reg. at 33295/2–3.

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Proposed §122.7(c) required the permittee to reapply if it wished to **continue regulated activities after expiration of the permit**. This requirement has been merged with final § 122.4(a).

45 Fed. Reg. at 33299/3 (addressing 40 C.F.R. § 122.4).

New § 122.7 and the corresponding subpart sections referred to above set forth all conditions which do not vary from permit to permit. The mechanism for including **permit conditions which do vary depending on the facility or activity** in question is provided in 122.8 (proposed § 122.13),

45 Fed. Reg. at 33302/2.

EPA agrees that it can not prohibit **activities which are in compliance with a permit**.

45 Fed. Reg. at 33304/1.

In the case of all **other changes to the facility or activity contemplated by the permittee**, advance reporting is required only where noncompliance is anticipated (§ 122.7(1)(2)).

45 Fed. Reg. at 33306/1.

When a **facility or activity has permits under two or more programs**. proposed § 122.9 (now § 122.14) provided that a "cross-review" of each issued permit would have been conducted **every time another permit for that facility or activity was issued, modified, reissued, or terminated**.

45 Fed. Reg. at 33308/1; *see also id.* at 33487/1 (40 C.F.R. § 124.4(a)(1))

Obviously, **if a permittee will cease activities, many permit requirements which apply only to operating facilities will not have to be complied with after cessation**. Such requirements, to the extent that it would not cause harm to the environment, many also be relaxed during the period leading up to cessation when the permittee is firmly committed to the cessation course.

45 Fed. Reg. at 33310/3.

It is EPA's position as a matter of law that the **privileges associated with a permit attach only to the person authorized to conduct permitted activities** and are not inherently assignable.

45 Fed. Reg. at 33313/3.

Second, for RCRA facilities and UIC wells injecting hazardous wastes, EPA has determined that in all cases it will be necessary to modify the permits upon transfer of ownership or operational control of a **permitted facility or activity**.

45 Fed. Reg. at 33314/1.

If permits could not be modified for such reasons then **permits would have to be written to prohibit all activities not specifically limited in the permit**. With such a requirement permittees would never be sure **what the scope of permissible activities is under their permits**.

45 Fed. Reg. at 33314/3.

Fourth (see § 122.15(a)(4), proposed § 122.9(e)(3)), **standards and regulations covering the permitted activity may have changed since issuance of the permit**. As part of its attempt to provide permittees with maximum certainty and protection from regulatory change during the terms of their permits, EPA has limited this cause to instances when modification is requested by the permittee. This limitation formerly applied only to NPDES permits; it is now applicable to all fixed tern permits.

45 Fed. Reg. at 33315/1–2.

Inclusions and Exclusions. Paragraph 122.21(d) (proposed § 122.21(c)) lists some **activities and facilities which are included and excluded from the RCRA permit application requirement**. The inclusions are not an exhaustive list, but focus attention on **certain activities which may also have permits** under other EPA programs.

45 Fed. Reg. at 33320/1 (addressing 40 C.F.R. § 122.21).

Against this background, EPA believes that there can be little question of its ability to issue a permit by rule to facilities where the **activities that a RCRA permit would regulate** are for the most part already regulated under another EPA permit and the only purely RCRA-related provisions are those that are not site-specific and do not need to be particularized in an individual permit.

45 Fed. Reg. at 33325/3 (addressing 40 C.F.R. § 122.26).

While consolidating permit procedures is not mandatory, it is encouraged **whenever a facility or activity requires permits** under more than one statute.

45 Fed. Reg. at 33405/1.

A **new facility or activity which requires a permit** under more than one statute must obtain all required permits before construction can begin.

45 Fed. Reg. at 33406/2.

The completeness of any application for a permit shall be judged independently of the status of any other **permit application or permit for the same facility or activity**.

45 Fed. Reg. at 33424/3.

States authorized to administer the RCRA, UIC, NPDES or 404 programs may continue either EPA (or Corps of Engineers) or State-issued permits until the effective date of the new permits, if State law allows. **Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit**.

45 Fed. Reg. at 33425/2 (40 C.F.R. § 122.5).

Duty to reapply. **If the permittee wishes to continue an activity regulated by this permit** after the expiration date of this permit, the permittee must apply for and obtain a new permit.

45 Fed. Reg. at 33425/3 (40 C.F.R. § 122.7(b)).

Duty to halt or reduce activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce **the permitted activity** in order to maintain compliance with the conditions of this permit.

45 Fed. Reg. at 33425/3 (40 C.F.R. § 122.7(c)).

Anticipated noncompliance. The permittee shall give advance notice to the Director of any **planned changes in the permitted facility or activity** which may result in noncompliance with permit requirements.

45 Fed. Reg. at 33426/2 (40 C.F.R. § 122.7(*l*)(2)).

Alterations. There are **material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance** which justify the application of permit conditions that are different or absent in the existing permit.

45 Fed. Reg. at 33429/1 (40 C.F.R. § 122.15(a)(1)).

The following are causes for terminating a permit during its term, or for denying a permit renewal application: . . . A determination that **the permitted activity** endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination

45 Fed. Reg. at 33429–30 (40 C.F.R. § 122.16(a)(3)).

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for **changes in the permitted activity** listed in this section, without following the procedures of Part 124.

45 Fed. Reg. at 33430/1 (40 C.F.R. § 122.17).

Overview of the RCRA Permit Program. Not later than 90 days after the promulgation or revision of regulations in 40 CFR Part 261 (identifying and listing hazardous wastes) all generators and transporters of hazardous waste, and all owners or operators of hazardous waste treatment, storage, or disposal facilities must file a notification of that activity under section 3010. Six months after the initial promulgation of the Part 261 regulations, **treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a RCRA permit is prohibited**.

45 Fed. Reg. at 33432/2 (40 C.F.R. § 122.21(c)).

Whenever an existing facility or activity requires additional permits under one or more of the statutes covered by these regulations, the permitting authority may coordinate the expiration dates) of the new permit(s) with the expiration date(s) of the existing permit(s) so that all permits expire simultaneously.

45 Fed. Reg. at 33487/1 (40 C.F.R. § 124.4(b).

The Director may consolidate permit processing at his or her discretion **whenever a facility or activity requires all permits either from EPA or from an approved State**.

45 Fed. Reg. at 33487/1–2 (40 C.F.R. § 124.4(c)(1)).

The fact sheet shall include, when applicable: (1) A brief **description of the type of facility or activity which is the subject of the draft permit**;

45 Fed. Reg. at 33488/2 (40 C.F.R. § 124.8(b)).

All public notices issued under this Part shall contain the following minimum information: . . .

> (ii) Name and address of the permittee or permit applicant and, if different, of **the facility or activity regulated by the permit**, except in the case of NPDES and 404 draft general permits under §§ 122.59 and 123.95;
>
> (iii) A **brief description of the business conducted at the facility or activity described in the permit application or the draft permit**, for NPDES or 404 general permits when there is no application.

45 Fed. Reg. at 33489/3 (40 C.F.R. § 124.10(d)).

Quotes from Proposed Consolidated Permits Rule (Federal Register dated June 14, 1979)

Follow on Next Page

Proposed Part 124 establishes the procedures to be followed in making permit decisions under the RCRA hazardous waste, UIC, PSD and NPDES permit programs, including procedures to enable public participation in permit decisions, consultation with State and Federal agencies, procedures for **consolidated review and issuance of two or more permits to the same facility or activity**, and mechanisms for appeal from permit decisions.

Consolidated Permit Regulations (Proposed), 44 Fed. Reg. 34244, 34246/1 (June 14, 1979)

Relationships Between Programs. The programs covered in these regulations overlap one another in two different ways. The first type of overlap occurs **where different activities associated with a single source require permits** under two or more of the programs covered by these regulations. For example, a facility may store hazardous waste in surface facilities, inject some of its waste into the ground, and have a discharge of other waste into surface waters. The basic reason for proposing these consolidated regulations is to assure that permit decisions are consistent, and that the procedures for permit issuance are efficient and coherent.

The second type of overlap occurs where the **same activity is regulated** under two or more of the statutes authorizing these regulations. For example, **disposal of hazardous waste** by well injection **must have a permit** under section 3005(a) of RCRA, a permit under section 1421(b) of SDWA and, if located in a State with an approved NPDES program, a permit under section 402(b)(1)(D) of the CWA.

44 Fed. Reg. at 34246/1–2.

The Agency believes that the proposed regulations will have a positive environmental Impact by providing more comprehensive environmental review of facilities which require EPA permits under the NPDES, PSD, RCRA or UIC permit programs, particularly **where two or more of these permits may be required for the same facility or activity**.

44 Fed. Reg. at 34247/2.

However, to insure a regular review of permits particularly where a RCRA, UIC, or 404 **permit is issued to a facility or activity** that requires an NPDES permit, **review of each permit issued for a given facility or activity** is required each time another permit for the same facility is modified, reissued or terminated.

44 Fed. Reg. at 34249/1.

In addition, this option would enable continuing EPA **review of State-issued permits for the same facility or activity**, if the requirement were made applicable to States.

44 Fed. Reg. at 34249/2.

Permitting Requirements-Special Categories. These proposed regulations would not impose the detailed permit requirements of Subpart B upon **several categories of HWM facilities**, where EPA is the permit-issuing authority. **Two classes of facilities**, health care facilities and experimental facilities, would be required to obtain a **"special permit" in lieu of the regular permit** described above. **Three other classes of facilities**, special waste facilities, publicly owned treatment works accepting wastes 'under a manifest or other delivery document and barges or other vessels accepting waste under a manifest or delivery document for ocean disposal, **would be regulated under a "permit by rule" mechanism**. Finally, injection wells which dispose of hazardous wastes and certain solid waste management facilities which accept small amounts of hazardous wastes would not fall under the permitting requirements of these regulations. States approved by EPA to administer hazardous waste programs are also authorized, but not required, to regulate such facilities in the same manner as EPA.

44 Fed. Reg. at 34252/1–2.

Where these regulations require that certain activities be covered by permit. . . . .

44 Fed. Reg. at 34257/3.

The regulations provide explicitly for joint issuance of draft permits for a **facility or activity which requires permits under more than one statute**, joint comment periods, and joint hearings.

44 Fed. Reg. at 34265/2.

Where related permit provisions are contested under NPDES, RCRA, UIC or PSD **permits for the same facility or activity**, these provisions may be consolidated in the NPDES evidentiary hearing to facilitate decision-making on the related issues.

44 Fed. Reg. at 34266/1.

The Regional Administrator may make a determination to deny the application for a new permit in accordance with the procedures specified in Part 124. The **owner or operator would then be required to cease the activities authorized by the permit** or be subject to enforcement action for operating without a permit.

44 Fed. Reg. at 34273/3 (40 C.F.R. § 122.7(c)(3)(ii)).

Where permits under two or more programs under this Part are issued for a single facility or activity, the Director shall review all **the permits issued for that facility or activity** whenever any one of the permits is reviewed pursuant to paragraph (a], or any one of the permits expires pursuant to § 122.8 or is terminated under § 122.10 . . . . The permit shall specify a date for review under this section whenever the date of expiration of another permit for the same facility or activity is available.

44 Fed. Reg. at 34274/1–2 (40 C.F.R. § 122.9(b)).

Cause for modification or revocation and reissuance exists: . . . **Where modification, revocation and reissuance or termination of another permit issued to the same facility or activity requires a modification or revocation and reissuance of the permit**;

44 Fed. Reg. at 34274/3 (40 C.F.R. § 122.9(e)(5)).

Where an applicant for an EPA issued UIC or **RCRA permit chooses to cease conducting regulated activities rather than taking steps to meet permit control requirements**, the Director may establish two alternative schedules of compliance in the permit:

44 Fed. Reg. at 34276/3 (40 C.F.R. § 122.31(b) (addressing UIC permit requirements).

This Subpart defines the **types of activities subject to authorization by permit or rule**, and sets forth the specific elements applicable to either type of authorization.

44 Fed. Reg. at 34276/3 (40 C.F.R. § 122.12(b)).

Where appropriate, provisions for joint processing of permits by the State and EPA, for **facilities or activities which require permits** from both EPA and the State under different programs.

44 Fed. Reg. at 34301/1 (40 C.F.R. § 123.6(b)(5)).

If **several activities are grouped in one general permit** their similarity should be established when the general permit is proposed.

44 Fed. Reg. at 34317/3 (40 C.F.R. § 123.106(a)).

Activities not requiring permits.

44 Fed. Reg. at 34318/2 (40 C.F.R. § 123.107).

Except as provided for RCRA permit applications (Part A only) under § 122.23, **any facility or activity requiring a permit** under two or more of the RCRA, UIC or NPDES programs which will be issued entirely by EPA may postpone the filing date for any application for such a permit to consolidate it with another application which has a later filing date . . .

44 Fed. Reg. at 34322/3 (40 C.F.R. § 124.4(a)).

The public notice for general permits shall also include: . . . A brief **description of the types of activities or operations to be covered by the general permit**

44 Fed. Reg. at 34330/3 (40 C.F.R. § 124.58(b)(2)(i)).