



COALEX STATE COMPARISON REPORT - 174

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TOPIC: AGENCIES RESPONSIBLE FOR ISSUING SURFACE MINING AND NPDES PERMITS

INQUIRY: In other IMCC member states, are surface mining (SMCRA) and National Pollutant Discharge Elimination System (NPDES) permits issued by the same agency? Have any states delegated the responsibility for issuing NPDES permits to the agency that issues SMCRA permits?

SEARCH RESULTS: A telephone survey was conducted of 12 IMCC member states. The list of questions used in the survey and the responses follow.

SURVEY

[Where possible, please identify the most specific office, bureau or division within the relevant departments responsible for SMCRA and NPDES permitting.]

QUESTION NO.1

Is the office responsible for issuing SMCRA permits also the office responsible for issuing NPDES permits?

QUESTION NO. 2

Name the office(s) and department(s) responsible for issuing the two permits.

QUESTION NO. 3

Are there any arrangements (e.g., inter-departmental Memoranda Of Understanding or "MOUs"), for streamlining the issuing of permits, that is, has the office which issues SMCRA permits been delegated the authority to issue NPDES permits?

QUESTION NO. 4



Are there any MOUs between the state regulatory agencies and US Environmental Protection Agency (US EPA) on this issue?

QUESTION NO. 5

If SMCRA and NPDES permitting are handled by different state offices, how is enforcement of NPDES requirements handled?

RESPONSES

ALABAMA

1. SMCRA and NPDES permits are issued by different agencies.
2. SMCRA: Alabama Surface Mining Commission.
NPDES: Division of Water Quality; Department of Environmental Management.
3. There are no special arrangements between the two agencies for coordinating permitting other than the exchange of notification of permit filings.
4. There are no MOUs between the Alabama Surface Mining Commission and the US EPA.
5. This question was added after Alabama was surveyed.

ARKANSAS

1. SMCRA and NPDES permits are issued by different offices within the same department.
2. SMCRA: Surface Mining and Reclamation Division; Department of Pollution Control and Ecology.
NPDES: Water Division; Department of Pollution Control and Ecology.
3. There are no special coordination arrangements or delegation of responsibility between the Divisions regarding the issuing of the two permits. Arkansas issues general NPDES permits that cover surface mining applications. These permits have a shorter processing cycle.
4. The Department of Pollution Control and Ecology has been delegated the authority, from US EPA, to issued NPDES permits.
5. The Surface Mining and Reclamation Division is responsible for inspection and enforcement of both permits.

KENTUCKY

1. SMCRA and NPDES permits are issued by different departments.
2. SMCRA: Division of Permits; Department for Surface Mining Reclamation and Enforcement.
NPDES: Division of Water; Department for Environmental Protection.



3. There are no specific arrangements between the two departments for coordinating the issuance of SMCRA and NPDES permits. Kentucky issues general NPDES permits that cover most surface mining applications. These permits have a shorter processing cycle.
4. There are no MOUs between the Department for Surface Mining Reclamation and Enforcement and the US EPA. The Division of Water has "401 primacy".
5. [This question was added after Kentucky was surveyed.]

ILLINOIS

1. SMCRA and NPDES permits are issued by different agencies.
2. SMCRA: Land Reclamation Division; Department of Mines and Minerals (DMM).
NPDES: (Specific Division name unknown); Illinois Environmental Protection Agency.
3. SMCRA and NPDES permitting operations are separate; however, the agencies do try to coordinate their efforts.
4. There is no MOU between DMM and the US EPA.
5. Enforcement of NPDES requirements is incorporated into DMM's enforcement of SMCRA permits: if NPDES standards are violated, DMM can issue NOV's for failure to comply with NPDES requirements.

INDIANA

1. SMCRA and NPDES permits are issued by different departments.
2. SMCRA: Division of Reclamation; Department of Natural Resources (DNR).
NPDES: (Specific Division name unknown); Department of Environmental Management (DEM).
3. DNR and DEM are in the process of consolidating NPDES authority. When the two departments reach an agreement, they will request US EPA approval for their arrangement.
4. [See No. 3 above.]
5. At present, each department is responsible for its own inspection and enforcement. The samples DNR takes during inspection are sent to DEM. In practice, DNR enforces both permit requirements; however, in writing NOV's, DNR cites to state effluent standards through the SMCRA regulations.

MARYLAND

1. SMCRA and NPDES permits are issued by different departments.
2. SMCRA: Bureau of Mines; Water Resources Administration; Department of Natural Resources (DNR).
NPDES: Hazardous and Solid Waste Management Division; Department of the Environment (DOE).
3. There are no special coordination arrangements between the two departments.
4. There is no MOU between DNR and US EPA.
5. Each department has responsibility for inspecting and enforcing its permit requirements. Until recently, however, DNR enforced both SMCRA and NPDES permit standards.



OHIO

1. SMCRA and NPDES permits are issued by different agencies.
2. SMCRA: Division of Reclamation; Department of Natural Resources (DNR).
NPDES: Division of Water Pollution Control; Ohio Environmental Protection Agency (Ohio EPA).
3. A MOU between DNR and Ohio EPA gives the Division of Reclamation the authority to issue Permits To Install (PTIs). The MOU does not extend to the issuing of NPDES permits.
4. There is no MOU between DNR and US EPA.
5. Ohio EPA is responsible for providing both agencies with NPDES monitoring data. DNR has the jurisdiction to enforce both SMCRA and NPDES standards.

OKLAHOMA

1. SMCRA and NPDES permits are issued by different agencies.
2. SMCRA: Department of Mines.
NPDES: US EPA; Oklahoma Department of Health and Oklahoma Water Resources Board
3. There is no specific coordination between the Department of Mines and the Water Resources Board with regard to NPDES permits for mining operations. At present, Oklahoma surface mining operators have to apply to the US EPA for NPDES permits. US EPA works jointly with the two state agencies. Responsibility is divided according to the facilities to be permitted. A bill, now in the Oklahoma legislature, more clearly defines the roles of the two agencies responsible for NPDES permits. Once that bill is signed into law, Oklahoma hopes to get primacy from the US EPA for issuing NPDES permits.
4. [See No. 3 above.]
5. Each agency enforces its own permit requirements.

PENNSYLVANIA

1. One office issues both SMCRA and NPDES permits. NPDES and SMCRA permit requirements are integrated into a single permit. The published notification of a request for a SMCRA permit also addresses NPDES publication requirements. Non-mining related NPDES permits are issued by another Bureau in the same department.
2. SMCRA & Mining NPDES: Bureau of Mining and Reclamation; Department of Environmental Resources Non-mining: Bureau of Water Quality Management.
NPDES: Department of Environmental Resources.
3. At present, the Bureaus coordinate their activities informally. An inter-bureau MOU should be completed shortly which define each Bureau's responsibilities more clearly.
4. There is a MOU between Pennsylvania and the EPA which addresses mining issues.
5. This question was added after Pennsylvania was surveyed.



TEXAS

1. SMCRA and NPDES permits are issued by different agencies.
2. SMCRA: Surface Mining Division; Texas Railroad Commission.
NPDES: Texas Water Commission.
3. All SMCRA permit applications are submitted to the Water Commission for review and comment prior to approval.
4. There is no MOU between the Texas Railroad Commission and the US EPA.
5. There is a MOU between the Railroad Commission and the Water Commission with regard to enforcement. NPDES standards are incorporated into the SMCRA permit. The Railroad Commission can impose additional requirements, e.g., for monitoring water quality, over and above what the NPDES permit requires. The actual enforcement is duplicative - each agency enforces its own requirements.

VIRGINIA

1. One office is responsible for issuing both SMCRA and NPDES permits.
2. SMCRA: Division of Mined Land Reclamation.
NPDES: Department of Mines, Minerals and Energy.
3. The Virginia State Water Control Board and the US EPA have a MOU which permits the delegation of authority to issue NPDES permits for surface mining applications only to the Division of Mined Land Reclamation.
4. [See No. 3 above.]
5. The Division enforces both permits.

WEST VIRGINIA

1. SMCRA and NPDES permits are issued by different agencies.
2. SMCRA: Mines and Minerals Section; Division of Energy (DOE).
NPDES: Water Resources Division; Department of Natural Resources (DNR).
3. In an attempt to place regulation of coal mining under one agency's jurisdiction, the transfer of NPDES permit responsibility from DNR to DOE began but has not been completed. Although DOE processes the NPDES, as well as the SMCRA, permit applications, DNR is required to sign the NPDES permits before they are issued.
4. DOE and DNR have been operating under a MOU with US EPA, however, the official transfer of authority from the US EPA to DOE has not yet been finalized.
5. DOE enforces SMCRA and NPDES standards.

ATTACHMENTS

- A. 47 FR 47216 (OCTOBER 22, 1982). Final rule. 30 CFR Parts 816 and 817: Water Quality Standards and Effluent Limitations.