

January 07, 2003

MEMORANDUM

SUBJECT: Watershed-Based National Pollutant Discharge Elimination System (NPDES) Permitting Policy Statement

FROM: G. Tracy Mehan, III /s/
Assistant Administrator

TO: Water Division Directors, Regions I - X

I am pleased to transmit to you the final Watershed-Based NPDES Permitting Policy Statement. The policy referenced in my December 3, 2002, memorandum on Advancing the Watershed Approach, represents an important aspect of EPA's commitment to watershed management and support for a holistic watershed approach to water quality management.

The policy describes the benefits of watershed-based permitting, and the implementing mechanisms for this component of the watershed approach, and how EPA will be encouraging an increase in the use of watershed-based NPDES permits over the next 12 months. Owing to the importance of NPDES permits and the potential benefits and efficiencies of this approach, I encourage you to work with your states to move watershed-based permitting from the concept stage to implementation stage.

If you have questions regarding this policy, please contact Robin Kime at (202) 564-5047. I greatly appreciate your support and leadership in this effort.

Attachment

cc: Christine Todd Whitman, Administrator
Linda Fisher, Deputy Administrator
Jessica Furey, Associate Administrator, Office of Policy, Economics, and Innovation
Regional Administrators
Office Directors, Office of Water

WATERSHED-BASED NPDES PERMITTING POLICY STATEMENT

Purpose

As outlined in Assistant Administrator for Water, G. Tracy Mehan's December 3, 2002, memo to EPA Office Directors and EPA Regions, EPA is committed to implement Office of Water programs through watershed management. EPA is issuing this policy statement to demonstrate the Agency's significant level of support for developing and issuing National Pollutant Discharge Elimination System (NPDES) permits on a watershed basis, and to further the objectives of the 1994 NPDES Watershed Strategy. For this Policy, watershed-based permitting is defined as an approach that produces NPDES permits that are issued to point sources on a geographic or watershed basis to meet watershed goals. This policy statement communicates EPA's policy on implementing NPDES permitting activities on a watershed basis, discusses the benefits of watershed-based permitting, presents an explanation of the process and several mechanisms to implement watershed-based permitting, and outlines how EPA will be encouraging watershed-based permitting.

A holistic watershed management approach provides a framework for addressing all stressors within a hydrologically defined drainage basin instead of viewing individual sources in isolation. Within a broader watershed management system, the watershed-based permitting approach is a tool that can assist with implementation activities. The utility of this tool relies heavily on a detailed, integrated and inclusive watershed planning process. Watershed planning includes monitoring and assessment activities that generate the data necessary for clear watershed goals to be established and permits to be designed to specifically address the goals.

Policy

EPA will build on the existing NPDES Watershed Strategy and previous activities to actively support and promote watershed-based NPDES permitting. Further, EPA will work to provide greater incentives and mechanisms necessary to undertake a more holistic and integrated approach to assessing water quality conditions, identifying and quantifying pollutant sources, developing and implementing efficient control practices, and working with stakeholders to the extent authorized by the Clean Water Act and implementing regulations. EPA will educate stakeholders about the benefits of watershed-based permitting, facilitate stakeholder involvement, and move watershed-based permitting from concept to implementation.

Benefits

EPA continues to support a holistic watershed approach to water quality management. The process for developing and issuing NPDES permits on a watershed basis is an important tool in water quality management. EPA believes that developing and issuing NPDES permits on a watershed basis can benefit all watershed stakeholders, from the NPDES permitting authority to local community

members. A watershed-based approach to point source permitting under the NPDES program may serve as one innovative tool for achieving new efficiencies and environmental results. EPA believes that watershed-based permitting can:

- lead to more environmentally effective results;
- emphasize measuring the effectiveness of targeted actions on improvements in water quality;
- provide greater opportunities for trading and other market based approaches;
- reduce the cost of improving the quality of the nation's waters;
- foster more effective implementation of watershed plans, including total maximum daily loads (TMDLs); and
- realize other ancillary benefits beyond those that have been achieved under the Clean Water Act (e.g., facilitate program integration including integration of Clean Water Act and Safe Drinking Water Act programs).

Explanation of the Process and Mechanisms to Implement Watershed-Based Permitting

Watershed-based permitting is a process that ultimately produces NPDES permits that are issued to point sources on a geographic or watershed basis. In establishing point source controls in a watershed-based permit, the permitting authority may focus on watershed goals, and consider multiple pollutant sources and stressors, including the level of nonpoint source control that is practicable. In general, there are numerous permitting mechanisms that may be used to develop and issue permits within a watershed approach. The most common approach currently used in many states is to re-issue NPDES permits according to a five-year rotating basin schedule. Each source receives an individual permit and the permits are issued based on basin or watershed management areas. This process allows permittees to compare their permits with other dischargers in the same area and facilitates sharing data to arrive at the most appropriate limits. Some other permit approaches currently available include:

Watershed-based General Permit - Common Sources. An NPDES permitting authority would develop and issue this type of general permit to a category of point sources within a watershed, such as all publicly owned treatment works (POTWs) or all confined animal feeding operations (CAFOs) or all storm water discharges from municipal separate storm sewer systems. This is similar to current general permits, except that the geographic area covered by the permit would correspond to the watershed boundary. The most significant difference between a traditional general permit and the watershed-based general permit for common sources would be permit requirements that reflect watershed-specific water quality standards.

Watershed-based General Permit - Collective Sources. Unlike the watershed-based general permit described above, this type of permit would address all point sources within the watershed or alternatively, several subcategories of point sources within the watershed. This type of permit would be similar to the multi-sector general permit for storm water discharges associated with industrial activity with requirements being tied to categories and subcategories of discharges. Again, the distinguishing

feature of this type of permit would be geographic coverage based on the watershed-boundaries and the permit requirements reflecting watershed-specific water quality standards.

Watershed-based Individual Permit - Multiple Permittees. Similar to the approach used for Phase I MS4s with multiple permittees, this type of permit would allow several point sources within a watershed to apply for and obtain permit coverage under an individual permit.

Integrated Municipal NPDES Permit. This type of permit would bundle all NPDES permit requirements for a municipality (e.g., storm water, combined sewer overflows, biosolids, pretreatment, etc.) into a single municipal permit. While this type of permit would focus on municipal boundaries rather than watershed boundaries, the analysis in developing permit requirements would reflect watershed-specific water quality standards.

These are not all the possible mechanisms that may be used. EPA and states may consider other possible approaches that are consistent with the NPDES regulations and the Clean Water Act (CWA).

How EPA will Be Encouraging Watershed-Based NPDES Permitting

EPA is developing a framework for watershed-based NPDES permitting. It will be supported by a targeted communications approach focused on informing key stakeholders about the variety of tools developed by EPA to implement a watershed-based permitting approach. Over the next 12 months, EPA anticipates developing and issuing guidance addressing different aspects of the watershed-based permitting approach, including general implementation issues, technical tools and approaches, and procedural considerations. EPA will also be researching and documenting case studies that demonstrate different approaches for watershed-based permitting. EPA will maintain and periodically update the list of case studies.

This policy expresses EPA's support for watershed-based NPDES permitting. Implementation of watershed-based permitting will be governed by existing requirements of the CWA and EPA's NPDES implementing regulations. Those CWA provisions and regulations contain legally binding requirements. This document does not substitute for those provisions or regulations. The recommendations in this memorandum are not binding; the permitting authority may consider other approaches consistent with the CWA and EPA regulations. When EPA makes a permitting decision, it will make each decision on a case-by-case basis and will be guided by the applicable requirements of the CWA and implementing regulations, taking into account comments and information presented at that time by interested persons regarding the appropriateness of applying these recommendations to the particular situation. EPA may change this guidance in the future.