

PPC 9541.1984(05)

TRANSFER OF FEDERAL RCRA PERMITS TO AUTHORIZED STATES AND  
COMPLIANCE WITH 40 CFR 124.10(e)

13 JUN 1984

MEMORANDUM

SUBJECT: Transfer of Federal RCRA Permits to Authorized States  
and Compliance with 40 CFR 124.10(e)

FROM: Truett V. DeGeare, Chief  
State Programs Branch

TO: Hazardous Waste Branch Chiefs, Region I-X

Recently, there has been some confusion over whether Federal RCRA permits continue in States which receive Phase II or final authorization. This policy was explained in PIG-82-5, dated August 5, 1982, with regard to interim authorization (copy attached). The same policy applies to final authorization.

The receipt of final authorization is not contingent upon the State assuming permit responsibility for those RCRA permits issued by EPA; nor is the granting of authorization cause for termination of an EPA-issued permit. EPA-issued permits continue in force until terminated under 40 CFR §270.43 for cause (e.g., noncompliance by the permittee) or transferred by agreement between the permittee and EPA as provided in §271.8(b)(6). (See also §124.5(d).) The State must eventually issue a State RCRA permit or assume responsibility to administer the Federal permit if it has the authority to do so; however, it does not have to do so immediately as a condition of receiving authorization.

Another permit issue which has arisen recently is failure to comply with 40 CFR §124.10(e). That section requires a copy of the fact sheet or statement of basis, the permit application and the draft permit to be mailed to all persons identified in §124.10(c)(1)(i)-(iv). An EPA-issued permit has been challenged for failure to comply with §124.10(e)

(RCRA appeal No.83-5 In the Matter of Waste Technologies Industries). In that case, the State of West Virginia claimed that it was unlawfully prevented from filing timely comments on a permit application because the Region failed to give it certain supporting documents. It was entitled to receive those documents (draft permit and permit application) as an "affected State" under §124.10(c)(1)(iii). The Administrator remanded the matter to the Regional Administrator for the limited purpose of reopening the public comment period.

Please observe this requirement and remind States with Phase II or final authorization to comply with it as well. If you have any questions on these issues, please call Deborah Wolpe at 382-2222.

Attachment

cc: Bruce Weddle  
State Programs Branch  
Gail Cooper, OGC  
Susan Schmedes