

**MANAGEMENT MEMO**

MANAGEMENT MEMO #93-HWMP 01

TITLE: PERMIT ASSISTANCE AND FEE FOR SERVICE PROGRAM

PROGRAM MANAGEMENT MANUAL VOLUME: HWMP (PERMIT)

SUBJECT CATEGORY: PERMIT PROCESS

AFFECTED PROGRAMS: HWMP  
ADMINISTRATIVE SERVICES  
ACCOUNTING  
OFFICE OF LEGAL COUNSEL

## ISSUE:

The purpose of this Management Memo is to establish a new industry assistance program in the Hazardous Waste Management Program (HWMP). This program includes pre-application assistance at no cost to the applicant, and optional consultation and permit processing functions to be paid for by applicants wishing to expedite the processing of their permits. Assembly Bill 3541 gives the Department of Toxic Substances Control (Department) authority to provide technical consultation over and above the Department's routine functions and allows reimbursement for consultative services at an established hourly rate.

## DISCUSSION:

A recent industry survey conducted by the HWMP shows ample evidence that permit application, permit modification, and closure plan preparation assistance is needed. The companies surveyed suggested that existing guidance was outdated and lacked clarity, pre-application meetings would be useful, and generally indicated a willingness to pay for consultative services if they contributed to a reduction in regulatory processing time and were cost effective.

In accordance with the Department's work priority setting process, permitting program resources are allocated to permitting projects based upon the relative environmental and public health value/priority of each project. Because the volume of pending permit requests continues to far exceed the workload that can be addressed by available resources, the Department is only able to accommodate the highest priority projects, leaving other projects to wait in a backlog status. The Department intends to offer an optional permit processing approach to facilities whose projects are backlogged while at the same time maintaining the existing level of resource dedication to the highest environmental priority projects.

ACTION:

Beginning in February 1993, the Department will offer to industry an expanded Industry Assistance Program that includes the following three separate elements:

- o Element One - pre-application assistance consisting of application guidance, pre-submittal meetings, and general technical assistance. These services will be provided at no cost to the applicant.
- o Element Two - consultative assistance in preparation of a technically complete application, permit modification or closure plan, including a draft California Environmental Quality Act (CEQA) initial study, if necessary. These services will be provided under a Memorandum of Understanding (MOU) and the applicant will be billed monthly for these services based on the Department's costs to provide them.
- o Element Three - permit determination processing consisting of a complete permit review and compliance with CEQA utilizing the Department's process, procedures, public participation requirements and standards. These services will be provided under a MOU and are paid for by billing the applicant monthly, based on the Department's costs to provide them. The applicant will initially provide an up-front payment equal to the amount of the activity fee applicable for the particular facility and permitting activity. Monthly billings against this payment will be made until the project is completed. If billings continue beyond the initial fee, a second fee will be negotiated. Any unbilled balance will be refunded at the conclusion of the project.

ELEMENT ONE

Pre-application assistance includes providing the HWMP's Permit Guidance Document for applicants and holding a meeting(s) with the applicant to discuss the Department's process, guidance and legal requirements relative to the proposed project.

Applicant meetings and communication will take place through the period of time that the draft permit is being developed to assure the applicant has a good understanding of the Department's regulatory requirements. Any company desiring to apply for a new permit, permit modification or closure plan will be offered this guidance/service. The regions will assign sufficient supervisory and technical staff to accommodate projected meeting needs to

implement Element One beginning immediately. The draft application guidance will be offered as-is, but will be replaced by the new permit and closure plan guidance being developed by the program improvement work group as soon as possible. This work group will also identify and provide each region with a copy of the interim guidance to be used now. Regions 3 and 4 will be offering an expanded version of Element One to include tiered permitting in the "REBUILD L.A." effort.

Marketing strategy - Element One permitting assistance will be made available to all requesting facilities immediately. Notification of these services will take place in two stages: 1) direct mail notifying all facilities of the program, and 2) focused contact with facilities each region expects to work on in the next 18 months. A program fact sheet will be provided to each region for this outreach effort. A separate preapplication outreach effort for tiered permitting facilities is already being implemented.

#### ELEMENT TWO

Element Two for standardized and full permit facilities is a collaborative effort between the applicant and the Department acting as a consultant, to produce a complete and thorough application and draft CEQA initial study. The Department and the applicant will enter into Element Two at the conclusion of Element One preapplication assistance activities and when the applicant has prepared a draft application on diskette(s) in "Wordperfect 5.1" software (IBM compatible). The electronic copy will be used to edit the "text" to meet the requirements of the Health and Safety Code and Title 22 of the California Code of Regulations.

Department staff will identify the application deficiencies, send the applicant a Notice of Deficiency and, through a series of scheduled meetings, work with the applicant to make the required changes to the application. The process of editing will be performed on an IBM compatible PC running MS/DOS and Wordperfect 5.1 software. The editing will be performed in the same manner as a legislative bill analysis. Deleted language will be "overstricken" with slashes (/) and new language additions will be bold printed and underlined. Each deletion or addition of language will be footnoted. The footnotes will explain the reasons for the changes and provide pertinent regulatory citations; the date the change/meeting occurred; and the name(s) of the Department staff and applicant's representative. This part of the process is crucial to success for both parties. Meetings should occur frequently and may only focus on a few

issues each time. Results must be achieved at each meeting. If critical permit information cannot be provided then the deficiency must be noted along with a footnote that recommends either a compliance schedule, permit condition, denial for that activity/unit/or waste stream, or if necessary, the denial of the permit. Should the applicant disagree with any change made during the process, the applicant's right to comment during the public comment period is not restricted, and they may also elect to withdraw from this process and receive a refund of any portion of a payment made for which the Department has not performed the work.

Certain changes to the application must be performed solely by the applicant and submitted to the Department. These include revised blueprints, drawings, schematic diagrams, charts, engineer certifications, etc. These items will also be noted in the text of the application as "revised" and footnoted.

This collaborative approach between the Department and applicant of editing the application to improve its regulatory content accomplishes several positive things. One, the Department staff and the applicant meet frequently to work through the application, identifying and resolving deficiencies in the application in a timely fashion. Second, using computer word processing technology will accelerate the process of changing the documents. Third, the "bill analysis" concept of editing the application creates the core of the Administrative Record. This will enable the reader (public) to observe and better understand each required change and the Department's role in permit review and approval. This should lead to fewer misunderstandings and challenges to the permit application's technical content. However, the Department maintains the public's and the applicant's rights to comment/object to the required changes during the public comment period. All other rights to appeal the decision are also preserved.

The completion of Element Two produces a technically complete application and a draft initial study complying with CEQA that meet the regulatory requirements to begin public review and the decision making processes. The Department and the applicant may then initiate Element Three - The final processing of a permit decision and CEQA review under the Fee for Service concept.

Element Two will be offered to any applicant with a new permit application, permit renewal application, permit modification or closure plan already prepared, but which due to the Department's higher environmental priorities, will reside in

a backlog status and not be processed in the near future. The applicant will be required to enter into an MOU setting forth the conditions of Element Two and the cost recovery provisions. A model MOU will be provided to the regions and OLC will assist the regions with MOU negotiations. Element Two targets the regional backlogs and is the primary mechanism to eliminate those backlogs.

The collaborative approach between the Department and the applicant of editing applications to improve their regulatory content as prescribed in Element Two has a very significant set of benefits for all standardized and full permit facilities. Therefore, this approach will be used for all applications filed after July 1, 1993. This includes all projects scheduled for work in the regional work plans that are undergoing application review. However, since applicants whose facilities are listed in the regional work plans pay an activity fee upon filing their applications, no MOU or additional fees for service will be required.

Marketing Strategy - The regions will assign a minimum of two staff to pilot two closure plan approvals through Element Two. The regions will select projects and initiate MOU negotiations by March 1, 1993 with the goal of completing them by July 1, 1993. As the Department gains experience in implementing this new program, regional permit chiefs may offer Element Two to other facilities, if both parties see an advantage in doing so. At the beginning of fiscal year 1993/94, the regions will expand the use of Element Two by offering this service to the standardized and full permit facility universe.

### ELEMENT THREE

Element Three is the formal acceptance and processing of the technically complete permit application, renewal, modification or closure plan that has gone through the Element Two process and is of too low a priority to be addressed by regional permitting resources. This element will be performed by a permit writer who did not assist the applicant in preparing the application. However, when practical the permit application review will be conducted within the same organization unit. This element will focus on CEQA compliance, public participation and completing the decision processes in the same manner as for all other permit applications that have technical completeness determinations.

Existing statutes require the payment of permit fees when the Department accepts an application and CEQA allows the Department to charge applicants for the costs of performing the

CEQA review process. In the third element, the Department and the applicant will enter into a MOU that describes staff costs and CEQA cost recovery. A model MOU will be provided to the regions and OLC will assist the regions with MOU negotiations. The Department will require an advance payment to begin Element Three that is equivalent to the normally required permit activity fee. The Department's costs for technical work will be billed against the advance funding monthly at an hourly rate. The MOU language for CEQA cost recovery will include language to separately bill CEQA work on a monthly basis. The MOU will also include a method for negotiating additional payments if the work exceeds the Department's normal workload standards.

Marketing Strategy - The regions will offer this permit processing option to all facilities that complete Element Two and who are not listed as priority work in the regional work plans. The Department may phase in Element Three workload subject to the availability of resources.

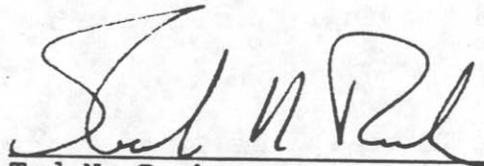
CONTACT:

Permit Streamlining Branch  
Watson Gin  
(916) 322-3501  
CALNET 492-3501

Surveillance & Enforcement  
Region 3  
Scott Simpson  
(818) 567-3029  
CALNET 628-3029

Office of Legal Counsel  
Colleen Murphy  
(916) 323-2667  
CALNET 473-2667

FEB. 8 1993  
Date



Ted N. Rauh  
Acting Deputy Director  
Hazardous Waste Management Program