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

JUN 20 1989

OFFICE OF  
WATER

MEMORANDUM

**SUBJECT:** Guidance for the Use of Conditional Approvals for State Water Quality Standards

**FROM:** Martha G. Prothro, Director *Martha Prothro*  
Office of Water Regulations and Standards (WH-551)

**TO:** Water Division Directors  
Regions I-X

Introduction

Concern has been expressed over the years from Regions, States, and other groups regarding our use of "conditional approvals" of State water quality standards. These are EPA approvals conditioned on the performance of specified actions on the part of a State in a timely manner. There is an implicit or explicit statement in the letter to the State that failure to satisfy the identified conditions will nullify the approval and lead to Federal promulgation action. Problems have arisen with inconsistent use of conditional approvals among the regions and with lack of follow-up actions to ensure that a State is responding in a timely manner to the conditions.

Statement of Policy

Unconditional approval or disapproval of State-adopted water quality standards within the statutory time limits is the preferred approach. Conditional approvals should be used only as a limited exception to this general policy for correcting minor deficiencies in State standards and only if a State provides assurance that it will submit corrections on a specified, written schedule. The conditional approval letter should state that if the State does not meet the specified conditions in a timely manner, the standards at issue will be deemed disapproved as of the date of the conditional approval. "In a timely manner" is defined, generally, as 90 days or less. If a State does not respond in a timely manner, the Region should notify the State that the standards at issue are deemed disapproved, and should request Headquarters to initiate a promulgation action.

Background

Section 303(c) of the Clean Water Act provides that a State, at least once in each three-year period, hold hearings for the

purpose of reviewing and revising, if necessary, its water quality standards. The Act also contains time limits of 60 days after submittal for EPA to notify the State that its standards are approved or 90 days after submittal to notify a State that its standards are disapproved. If a State does not take corrective action within 90 days of disapproval, EPA is required to propose Federal water quality standards. Adopting water quality standards is clearly a program that is primarily the responsibility of the States, with authority granted to EPA to approve/disapprove, and, in certain instances, to promulgate standards.

It has always been EPA policy to work with the States in a cooperative manner to establish water quality standards. Various guidance documents issued over the years describe a program in which regional staff works closely with the States throughout the standards development process to minimize the need for disapproval and potential promulgation. Most of the time this is successful.

Because promulgation of Federal standards is inherently a lengthy process, the use of conditional approvals evolved over the years as a mechanism to maintain the State-Federal relationship in establishing standards. When used properly, conditional approvals can result in standards that fully meet the requirements of the Act with minimal Federal intervention and promote smooth operation of the national program.

If used improperly, conditional approvals can result in unacceptable delays in establishing legally sufficient standards and leave EPA open to claims that we have failed to meet the statutory schedule for review and approval or disapproval of State standards and, as needed, promulgation of Federal standards. It is incumbent on a Region using a conditional approval to ensure that the necessary elements discussed below are met and that the State adheres to the schedule specified in the conditional approval letter. When a State fails to meet the agreed-upon schedule, EPA should initiate promulgation action. While the documentation for the proposed promulgation is being prepared, the Region should continue to work with the State to resolve the differences. Our promulgation procedure can be ended at any point in the process that a State adopts standards that meet the requirements of the Act. This should be more than adequate to cover any instance where a State is making a good faith effort to respond to the conditions but the process is taking longer than expected. Since conditional approvals are only to be used to correct minor deficiencies, this should not be a problem. Without question, a conditional approval should be the exception, not the rule, governing regional responses to State standards. Note that requests for clarification or additional information are not approval actions of any type.

### Legal Basis

This policy is modeled after that applied to EPA approval of State implementation plans (SIP) in the air program (see 44 F.R. 38583 July 2, 1979). See also Mississippi Commission on Natural Resources v. Costle, 625 F.2d 1269 (5th Cir.) 1980.

### Necessary Elements of Conditional Approval

First, conditional approvals are appropriate only for "minor deficiencies." Blatant disregard of Federal statutory or regulatory requirements or changes that will affect major permit issuance or reissuance are not minor deficiencies. In addition, the State's standards submission as a whole must be in substantial compliance with EPA's regulation. Major deficiencies must be disapproved to allow prompt Federal promulgation action.

Second, the State must commit, in writing, to a mutually satisfactory, negotiated schedule to correct the identified regulatory deficiencies in as short a time period as possible. The time allowed should bear a reasonable relationship to the required action. However, in consideration of the first element above it is expected that the time period for compliance normally will be 90 days or less. Headquarters concurrence in the schedule is required if it extends for more than three months.

### Additional Information

For additional information regarding this guidance, please call David K. Sabock, Chief, Standards Branch, 475-7315.