AR-37

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

SEP 25 1987

OFFICE OF WATER

MEMORANDUM

SUBJECT: Plan for Resolution of Fundamentally Different Factors and Section 301(g) Variance Requests

FROM: James R. Elder, Director
Office of Water Enforcement and Permits (EN-335)

TO: William A. Whittington, Director
Office of Water Regulations and Standards (WH-551)

Susan G. Lepow
Associate General Counsel for Water (LE-132W)

Water Management Division Directors, Regions I - X

As of June 30, 1987, there were 33 applications for fundamentally different factors (FDF) variances pending in either the Environmental Protection Agency (EPA) or in a State agency; of the pending requests, 24 were from direct dischargers and nine were from indirect dischargers. The Clean Water Act requires us to resolve these pending requests by February 1, 1988. In addition, we expect to receive FDF variance requests from facilities that will be covered by the organic chemicals point source category effluent guidelines.

At this time, there are 34 applications for section 301(g) variances pending in either EPA or in a State agency; of these pending requests, at least four will require my concurrence on model decisions, while 30 will not require Headquarters' concurrence. (However, decisions on several of these requests cannot be issued until a model decision is issued.) The Clean Water Act requires EPA to resolve these pending requests by February 4, 1988.

In our review of and negotiations on Regional commitments for FY 1988, I was disturbed to discover that many of the Regional Water Management Division Directors were unaware of the backlog of pending FDF and section 301(g) variances in their Regions and the statutory deadlines for resolution of these requests that were contained in the Water Quality Act of 1987 (WQA). Congress is interested in both our substantive decisions and the time that it takes for us to issue decisions. My staff has prepared a plan and schedules for resolution of FDF and section 301(g) variance requests. In most cases, our realistic assessment is that the

pending request will not be resolved within the statutory deadline. I am providing a copy of the plan and schedules to you for your review and comment. If you see ways to expedite the variance decisions, please let us know. We will otherwise regard these schedules as the Agency's official timetable for action on pending requests.

FDF Variances

In section 306 of the WQA, Congress established various statutory provisions regarding FDF variances. Included in these provisions is a requirement that EPA submit a semi-annual status report to Congress on FDF variances and a requirement that EPA issue decisions on FDF variance requests within 180 days. On August 18, 1987, Martha Prothro provided a draft copy of the status report for the period ending June 30, 1987 to the Regional Water Management Division Directors. A final version of the report was provided to Congress on September 9, 1987.

We have prepared uniform schedules and flowcharts for resolution of any new FDF variance requests from direct or indirect dischargers (copies attached). The schedules provide for different timetables for FDFs that are determined to be nationally significant and require Headquarters' concurrence. These schedules indicate that EPA must be very efficient to resolve any FDF variance requests within the 180-day time period provided by Congress. (These schedules do not take into account the time a State may take in evaluating a request.) However, I expect that these schedules will be adhered to once EPA receives a request. In addition, EPA must require the State to act quickly on a request.

I have also developed schedules for resolving all pending FDF variance requests. Copies of the list of five FDF variance requests that were resolved in July and August, along with the schedules for both direct and indirect dischargers are attached. The schedules contain a notation of the next step, the lead office (either Headquarters or the Region) and a projected final resolution date. In certain cases, there is some additional time provided for compliance with the next step; this has been done in an attempt to develop realistic schedules for resolution of the existing backlog. (However, I expect to use the time periods provided in the uniform schedules for subsequent steps.) Finally, I have listed the staff in Permits Division, Industrial Technology Division, Office of General Counsel and the Regional Offices responsible for each request.

Section 301(g) Variances

In section 302 of the WQA, Congress limited the availability of section 301(g) variances to five listed non-conventional pollutants or those subsequently listed by EPA and established a requirement that EPA issue decisions on section 301(g) variance requests within 365 days.

I have also attached schedules for resolving all pending section 301(g) variance requests; these schedules were developed after consultation with Regional staff. The schedules contain specific dates for various steps for the four model section 301(g) decisions and the final resolution dates for the 30 requests for which the Regional Administrator has complete decision making authority.

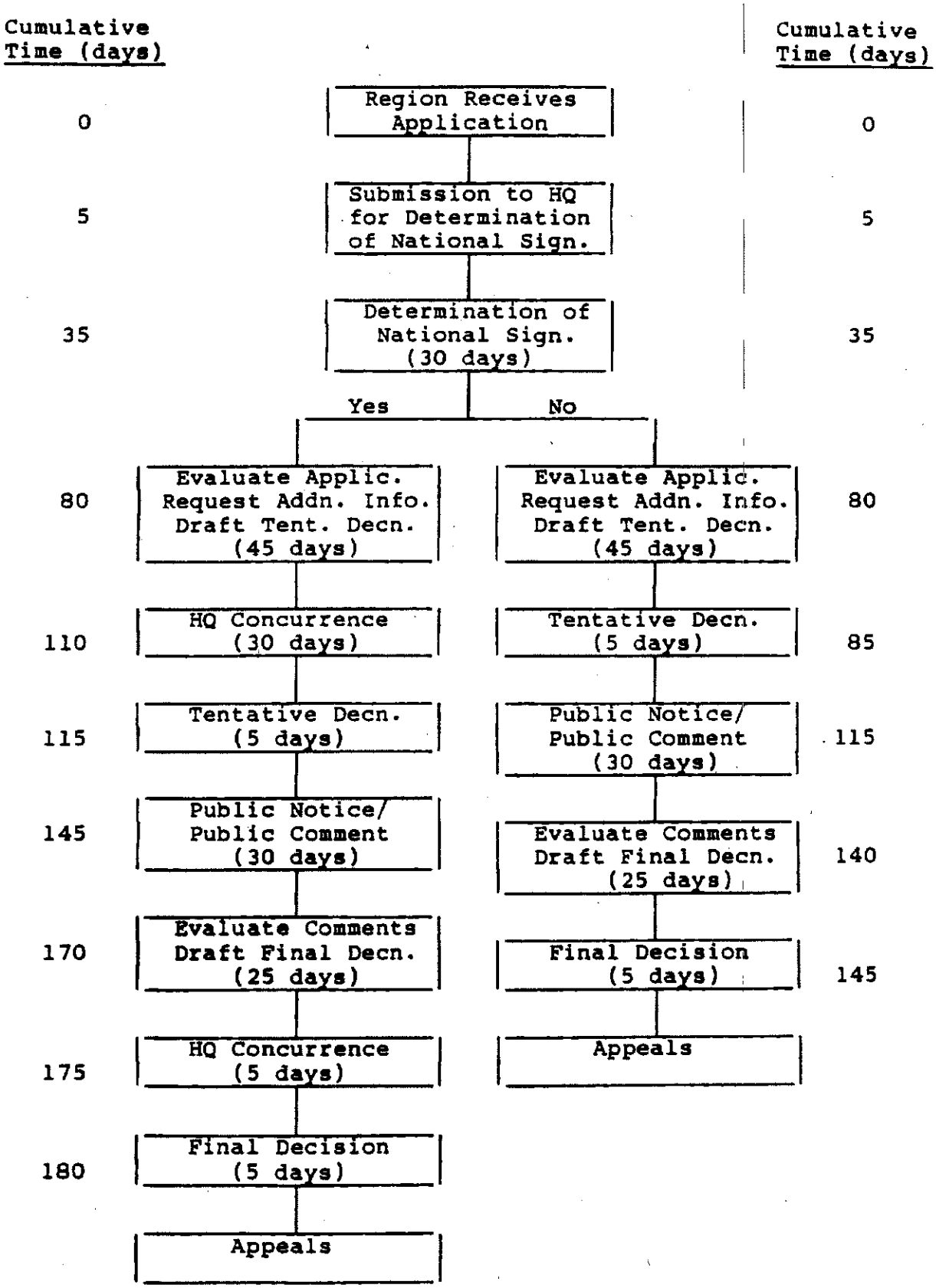
Management Involvement

I am asking that managers in the appropriate Headquarters' Divisions become involved earlier to resolve staff disagreements and/or assign priority to expediting these decisions as necessary. To help resolve issues and delays, we expect to schedule periodic meetings of the line managers, with participation by the Regions by phone, to discuss any outstanding issues and our overall progress on FDF and section 301(g) variance resolution. Finally, I will ask for periodic briefings to discuss our progress.

I am soliciting your comments on this plan, the model schedules and the specific schedules for which you have lead responsibility. I welcome any comments, corrections or suggestions you may have. I request that you provide your comments and suggestions to me by October 5, 1987. When this plan and the schedules are finalized, I will implement the resolution of FDF and section 301(g) variance requests according to these materials. If you have any questions, or wish to discuss this matter, please call me (FTS 475-8488) or have your staff contact the Permits Division staff contacts who are Gary Hudiburgh (FDF) (FTS 475-9531) or Margarete Heber (301(g)) (FTS 475-9530).

Attachments

Schedule and Flowchart for Regional Resolution of NPDES FDF Variance Requests



Schedule and Flowchart for Regional Resolution of Pretreatment FDF Variance Requests