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

OCT 29 1984

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Expediting Achievement of Water Quality Improvements by 301(h) Applicants

FROM: Alvin L. Alm
Deputy Administrator

TO: Regional Administrators
Regions I, II, III, IV, IX, X

I am deeply concerned that the opportunity to obtain secondary treatment modifications under section 301(h) of the Clean Water Act not be allowed to result in unnecessary delays by publicly owned treatment works in achieving compliance with the Clean Water Act. This memorandum establishes required actions to expedite compliance with the Clean Water Act, including achievement of necessary water quality improvements.

The actions to be taken address: 1) timely construction of facility improvements, 2) prompt issuance of permits following 301(h) decisions, 3) close coordination with the States, 4) timely completion of 301(h) applications. These actions are discussed in the attachment to this memorandum.

These requirements are for immediate implementation, with priority attention to be given to large 301(h) applicants needing construction to meet water quality objectives. Please be sure your staff is aware of the importance of these actions and the need for their prompt implementation. I would like to receive within the next 30 days your plans and schedules for implementing these actions. If your Region is already acting in accordance with the attached guidance, a simple statement to that effect will suffice.

Attachment

JLISHMAN/db/WH-546/755-9321/Rm. 2417/9/11/84

REQUIRED ACTIONS TO EXPEDITE 301(h) PROGRAM

1) CONSTRUCTION OF FACILITY IMPROVEMENTS: Applicants are to expeditiously proceed with proposed 301(h) facility improvements.

Many section 301(h) applicants, even if a 301(h) modification is approved, will need to complete planning, design, or construction activities for treatment works which are less than secondary. Where such activities are compatible with full secondary treatment systems, the applicant can continue planning, design, and construction without having to make a full commitment to secondary treatment. We must require applicants to proceed with all such activities pending the 301(h) decision. This is essential to assure that applicants continue to move ahead pending a 301(h) decision and will be able to promptly implement the facility improvements proposed in their 301(h) applications should a 301(h) variance be approved. This requirement will also assure ongoing progress towards secondary treatment, thus speeding compliance if the variance is denied.

In order to achieve this result, the compliance schedules for 301(h) applicants proposing facility improvements must be carefully reviewed and revisions made where necessary to establish appropriate milestones for construction of facility improvements proposed in their 301(h) applications. This review should be conducted with close coordination between your staff responsible for permits and construction grants as well as in cooperation with the relevant State. The objective is to identify construction related activities which should proceed pending the 301(h) decision and establish dates for their implementation. Once such a schedule has been established it should be embodied in an administrative order issued under section 309(a)(5)(A). Applicant compliance with the schedule should be closely monitored and enforcement actions brought where necessary to assure that construction activities common to the 301(h) facility improvements and secondary treatment are being implemented in a timely manner. Of course, applicants not needing construction will be expected to properly operate and maintain their facilities.

2) PROMPT ISSUANCE OF PERMITS: Final permits must be issued following final 301(h) approval. An enforceable compliance schedule should be promptly imposed following a final 301(h) denial.

a) 301(h) Approvals:

The need for prompt notice of draft 301(h) permits has been previously addressed in a memorandum of December 23, 1983, to the Water Management Division Directors from the Directors of Water Program Operations and Water Enforcement and Permits. As stated in that memorandum, in order to expedite administrative processing of tentative 301(h) approvals, the draft 301(h) modified permit must contain all the terms and conditions necessary to implement the tentative decision, including monitoring and toxics control program

requirements. The public notice of a draft permit containing the terms and conditions necessary in the final permit will speed up the process by: (1) potentially addressing all issues so as to avoid renoticing permits and, (2) help to identify potential issues which can facilitate public comments.

When the applicant will not be revising its 301(h) application following a tentative approval, the draft permit generally should incorporate terms and conditions implementing the tentative approval, including a compliance schedule. The tentative approval should be noticed along with the draft permit. During the review process Regional 301(h) personnel should coordinate with Regional permitting personnel in order to keep them apprised of the review status and identify and resolve issues which might hamper preparation and issuance of permits. It is critical that 301(h) decisions are promptly translated into specific and enforceable permit requirements. However, up to 60 days may be taken if essential to allow time to coordinate permit details with the States for large 301(h) applicants.

b) 301(h) Denials:

For 301(h) applicants which are not currently in compliance with secondary treatment requirements, it will be necessary to take the actions set forth below following a 301(h) denial. Once a decision has been made to tentatively deny a 301(h) application, and the applicant will not be revising its 301(h) application, the applicant's existing permit and compliance schedule, if any, should be reviewed to determine if it is necessary to reissue the permit or change the compliance schedule. Following a final 301(h) denial, any new or amended compliance schedule requirements must be embodied in an administrative order. In addition, any pending 301(i) request should be promptly acted upon.

Unless a 301(i) extension has been granted, permits for 301(h) applicants are assumed to already embody requirements for secondary treatment (or better based upon water quality standards) and to require compliance by July 1, 1977. Based upon this assumption, following a final 301(h) denial for facilities which are not in compliance with existing secondary treatment permits, an administrative order should be issued establishing a new compliance schedule or amending a previous compliance schedule as necessary to establish an expeditious schedule for compliance with secondary treatment.

If the secondary treatment permit has already expired but continues under the Administrative Procedure Act or State law, whichever is applicable, reissuance of a secondary treatment permit should be undertaken as consistent with permitting priorities. However, an administrative order as described above should be promptly issued.

Where an existing permit which requires secondary has expired, and for some reason is not continued under applicable law, then a draft secondary treatment permit should be promptly noticed.

As described above, a compliance schedule should be embodied in an administrative order accompanying the final secondary treatment permit. If the Region is responsible for issuing the secondary permit (i.e., non-NPDES State) and the applicant will not be revising its 301(h) application after a tentative 301(h) denial, processing of the draft secondary treatment permit and tentative 301(h) denial should be consolidated if possible to reduce the time period from a 301(h) decision to an effective permit.

Where the State is responsible for the secondary treatment permit, the Region should encourage the State to take any necessary action following the 301(h) denial. This means encouraging the State to issue an administrative order incorporating an updated compliance schedule and to issue a permit should an expired permit not continue.

3) CLOSE COORDINATION WITH STATES: State determinations should be promptly obtained and tentative denials issued if the State determination is unfavorable.

301(h) approvals are subject to State concurrence, and the 301(h) regulations provide that prior to EPA review of the application the States are to provide determinations as to compliance with State law (including water quality standards) and impacts on other sources. Where the State determination is unfavorable, the application is to be tentatively denied without further EPA review. As stated in a memorandum of March 14, 1984, from the Director of the Office of Water Program Operations to Region II (cc to 301(h) Regions), the Regions should work closely with the States to obtain these determinations as rapidly as possible and immediately issue a tentative denial if the State determination is unfavorable. In those instances where the State determination unequivocally provides that secondary treatment is required, the tentative denial should advise the applicant that it will not be allowed to revise its application since such a State denial precludes any level of treatment below secondary. This will avoid fruitless revisions by applicants which are obviously unsuited for a 301(h) waiver.

In order to facilitate obtaining State determinations, the Regions should work closely with the State when reviewing applicant plans of study to assure that data necessary to allow the State to make its determination is provided. When establishing schedules for data submission, information necessary for the State determination should generally be scheduled for earliest submission. The data from such submissions should be promptly sent to the State in order to expedite the State's review.

4) TIMELY COMPLETION OF APPLICATIONS: Applicants which do not timely complete their applications in accordance with the requirements in data requests should be tentatively denied.

The need to require prompt completion of 301(h) applications has been previously addressed in the December 23, 1983, memorandum referred to above. That memorandum requested the Regions to write applicants with deficient applications and require their completion

in accordance with a schedule established by the Region. The Regions must follow up on these requests by reviewing the status of appl t compliance and promptly issuing tentative denials for applicants which failed to comply with the terms of the request. Because suc tentative denials are based on lack of sufficient information to review the applicant's 301(h) proposal, these applicants are not to be afforded an opportunity to revise their application following such a denial.