



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

JAN 7 1983

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Fundamentally Different Factors Variances for Iron and Steel Facilities

TO: Steven Schatzow, Director
Office of Water Regulations and Standards (WH-551)

Bruce M. Diamond, Acting Associate General Counsel
Water and Solid Waste Division (A-131)

FROM: Bruce R. Barrett, Director *Bruce R. Barrett*
Office of Water Enforcement and Permits (EN-335)

Regional permit writers have requested a decision regarding procedures for determining wholly disproportionate costs for fundamentally different factors (FDF) variance requests by iron and steel facilities. Specifically, the question raised is: Will "wholly disproportionate costs" be determined and applied on a total plant or subcategory basis?

As you know I need this question answered because as Director, Office of Water Enforcement and Permits, I approve or deny FDF variance requests approved by the Regional Administrator. My initial reaction is that it is appropriate to deal with the issue of wholly disproportionate costs for FDF variance requests for iron and steel facilities on a subcategory basis. Your reaction to this position is necessary before making the final decision and I believe the decision should be made now, as opposed to waiting for the submission of a specific variance request.

Wholly disproportionate costs should be dealt with on a subcategory basis, as opposed to a total plant basis, because of the process composition of many iron and steel facilities and because of the subcategorization of the effluent limitations guidelines regulation (guidelines). A large portion of iron and steel facilities are integrated steel mills which are comprised of several operations which are regulated by numerous subcategories under the guidelines. The cost of complying with the iron and steel guidelines was developed based on model wastewater treatment systems for

each level of treatment for each subcategory. Due to this procedure for developing costs by subcategory, and the fact that many iron and steel facilities are regulated under numerous subcategories, it seems appropriate to deal with wholly disproportionate costs for FDF variance requests for iron and steel facilities on a subcategory basis.

It should be noted, however, that EPA's position in past cases, which has been upheld in Georgia-Pacific Corporation v. U.S. E.P.A., 671 F.2d 1235 (9th Cir. 1982), has been to evaluate FDF variances based on the facility as a whole (thus requiring FDF variance requests to be evaluated on a total plant basis). I believe this previous position can be distinguished from the situation present in the iron and steel industry. The typical industrial facility, including the situation present in Georgia-Pacific, involves only one subcategory. In contrast, the typical integrated steel mill involves several subcategories at a single plant site.

Further, EPA's method in dealing with the issue of alternative effluent limitations for 21 central treatment facilities seems to support determining wholly disproportionate costs on a subcategory basis. In this case, EPA is dealing with some central treatment facilities that treat wastewater from only portions of facilities, as opposed to the entire facility.

Thank you for your assistance in this matter. Please submit your comments by January 21, 1983. Call me (755-9187) or have your staff call Gary Hudiburgh (755-0750) if there are any questions.

cc: Water Management Division Directors, Regions I-X
Director, NEIC