

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D C 20460

OFFICE OF
ENFORCEMENT AND GENERAL COUNSEL

MEMORANDUM

To: David Morell
OAWP Municipal Permits Coordinator

From: Acting Deputy General Counsel

Subject: Intermittent Streams

We have your memorandum of August 27, 1973, together with Bob Sansom's March 20, 1973 memorandum and Walt Gilbert's draft memorandum, concerning issuance of permits and establishment of water quality standards for intermittent streams.

There are two questions involved: 1) for what intermittent streams must NPDES discharge permits be issued; and 2) for what intermittent streams must water quality standards be established?

1. Under the FWPCA, permits must be issued (with exceptions not pertinent here) for discharges into "navigable waters." Mr. Quarles' memorandum of February 6, 1973 (copy attached) interprets the phrase "navigable waters" as used in the FWPCA, listing the following six categories of waters as being included:


- (1) All navigable waters of the United States;
- (2) Tributaries of navigable waters of the United States;
- (3) Interstate waters;
- (4) Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes;
- (5) Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce; and
- (6) Intrastate lakes, rivers, and streams which are utilized for industrial purposes by industries in interstate commerce.

Where a stream has substantial flow during some seasons of the year, it would fall under category (1) in Mr. Quarles' memorandum. Where there is only short-term runoff in a normally dry stream bed, category (1) would not apply, but categories (2) or (3) would apply if the runoff reaches a navigable water or crosses a State line. Categories (4) and (5) are self-explanatory. Category (6) would not normally apply to a municipal permit.

In short, NPDES permits should be required for all municipal discharges into intermittent streams unless the stream is normally dry, has only short-term runoff which does not reach a navigable water or cross a State line, and there is no use of the stream by interstate travelers or for other interstate commercial purposes.

2. Generally, water quality standards should be established for all waters for which NPDES permits are required. However, where the stream would not support aquatic life even absent any permitted discharge, we do not interpret the FWPCA to require establishment of water quality standards.

3. We agree with the assertion in Mr. Sansom's March 20 memorandum that the short discharge channels of treatment plants containing only effluent are not subject to establishment of water quality standards.



Robert V. Zener

~~Enclosure~~

cc: John Rhett
All Regional Counsel
Dave Mowday, Region IX