



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

APR 28 1976

OFFICE OF ENFORCEMENT

n-76-1

MEMORANDUM

Subject: NPDES Permit Authorization to Discharge

From: Deputy Assistant Administrator for Water Enforcement

To: Regional Enforcement Director, Region V

This is in response to your March 17 memorandum requesting Headquarters' policy on the following issue:

"[W]hether an NPDES permit constitutes an authorization to discharge only specific parameters limited or monitored in the permit or a general authorization to discharge all parameters subject only to the limitations contained in the permit."

Answer

Headquarters policy, as well as the clear language contained in the standard permit form [EPA Form 3320-4 (10-73)], provides for a general authorization to discharge subject only to the conditions and limitations contained in the permit.

Discussion

Every standard permit issued by EPA provides that the named discharger is "authorized to discharge from a [named] facility . . . to [named] receiving waters . . . in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts I, II, III hereof." In addition to effluent limitations specified in Part I and any special requirements set forth in Part III each general authorization to discharge is subject to the general conditions set forth in Part II. Those general conditions which tend to restrict the general authorization to discharge are the following:

A.1. Change in Discharge - requires notice of facility expansions, production increases or process modifications resulting in any different or increased discharges of pollutants even if such changes do not violate the permit effluent limitations.

A.3. Facility Operation - requires the permittee to maintain his treatment facilities or systems in good working order and operate them as efficiently as possible.

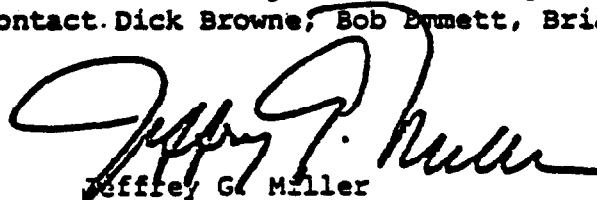
A.5. Bypassing all bypassing is prohibited except under certain circumstances.

It is believed that the above general conditions, along with the installation and proper operation of treatment systems designed to achieve compliance with effluent limitations based upon BPT and water quality standards requirements should adequately limit the general authorization to discharge. Should information which suggests otherwise subsequently become available (e.g., discovery of the presence of toxic substances such as PCBs in the discharge), the permit may be modified for cause in accordance with general condition B.4. ("Permit Modification").

The few permits issued under the NPDES's predecessor permit program, the Refuse Act Permit Program, authorized only those parameters identified in the permit. This approach was rejected by EPA during the early development phases of the NPDES because it is impossible to identify and rationally limit every chemical or compound present in a discharge of pollutants. Compliance with such a permit would be impossible and anybody seeking to harass a permittee need only analyze that permittee's discharge until determining the presence of a substance not identified in the permit. The permittee then would be in technical violation of his permit.

Because we believe the approach adopted in the NPDES Permit Form 3320 is valid we recommend against inserting in permits the language identified by Walter A. Romanek in his January 22, 1976, memorandum (attached). Although it may be appropriate in special cases to employ narrative language in addition to the Part II general conditions in order to further restrict the general authorization to discharge, as a routine matter such practices should be avoided.

I believe the above statement of policy is consistent with that provided to your staff by Dick Browne and Barry Shanoff. If you have any further questions please contact Dick Browne, Bob Emmett, Brian Molloy, or me.

  
Jeffrey G. Miller

Enclosure

cc: Roy Harsch, Enforcement Division, Region V