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

4 OCT 1976

OFFICE OF ENFORCEMENT

n-76-10

MEMORANDUM:

To: Regional Enforcement Directors
NPDES State Program Directors

Subject: Phase II Iron and Steel Effluent Guidelines --
Mahoning River Valley

In March of this year, EPA announced its decision to exempt steelmaking facilities in the Mahoning River Valley region of Ohio from nationwide BPT effluent limitations. BPT limitations for these facilities will be established by the State of Ohio. This decision was made after an intensive year-long economic study conducted by EPA and a consulting firm.

Numerous inquiries have come in since March relating to relief from the application of effluent guidelines for industrial facilities in other categories and other geographic regions. The purpose of this memorandum is to provide you with some information upon which to base your replies to such inquiries and to advise you that permit program policy pertaining to the use and application of effluent guidelines limitations has in no way been modified or amended as a result of the Mahoning Valley decision for Phase II Iron and Steel Manufacturing.

The special study of the Mahoning Valley came about as a result of public comments, received in response to proposed guidelines for Phase I iron and steelmaking, concerning significant employment reduction in the area. The decision to examine economic dislocation in this region came only after it became clear to EPA that physical and geographical characteristics of the region and the relationship between the steel industry and the regional economy were probably unique (see 41 FR at 12994, March 29, 1976). No action based upon these beliefs was taken at the time of the promulgation of Phase I guidelines on June 28, 1974, but was deferred until promulgation of Phase II guidelines on March 29, 1976.

At this point I want to emphasize that the relief provided Mahoning Valley steel facilities was part and parcel of the effluent guidelines development effort for the steel industry. As such, a detailed study was made of the particular circumstances confronting

these facilities and the comparative impacts on these as opposed to other plants and facilities in the steel industry. To date, no other geographical region or industrial category concentrated within such a region has been the subject of similar study and concern in connection with effluent guidelines or new source performance standards development. Moreover, we do not expect that any other area of the country will show the same concentration of similarly aged industry whose closure would so drastically impact the regional and national economics. Consequently, we do not expect that the Mahoning situation or solution will be duplicated in any other part of the country or in any other industrial category. It must be emphasized that the "Mahoning" decision was based upon EPA's analysis of the regional impact of regulations upon a group or category of plants and could not have been made had we been dealing with only one plant or basing our decision on plant-by-plant considerations.

Therefore, in replying to inquiries concerning relief from regional economic impact in permits for individual facilities, the following points must be taken into account:

- o Where effluent guidelines and/or new source performance standards have been promulgated for the pertinent industrial category, those guidelines and standards will be followed in the preparation of the permit.

- o Where "best engineering judgment" is applied in developing permit conditions and limitations, the requirements of section 402(a)(1) of the FWPCA, as interpreted by Decisions of the General Counsel, will be followed in determining the factors to be applied in a given case.

- o In either case above no regional economic factors will be considered in determining appropriate permit conditions unless so required by promulgated effluent guidelines applicable to the point source receiving the permit.

Attached are an example of a request for Mahoning-type relief submitted by a facility in Region I and our response. You may find the language and ideas helpful in responding to similar requests.

If there are further questions, please do not hesitate to call Bill Jordan in the Headquarters Permits Division or Bob Emmett in the Water Enforcement Division.

Stanley W. Legro

Stanley W. Legro

Attachments

RCBrowne:JBMolloy:lsy:EN-338:x58731:8/20/76
bcc: Jeff Miller, EN-335
OE Chron
Reading

ENVIRONMENTAL PROTECTION AGENCY

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9 JUL 1976

Honorable Edward M. Kennedy
United States Senate
Washington, D.C. 20510

Dear Senator Kennedy:

This is in response to your June 3 letter to Russell Train, Administrator of the Environmental Protection Agency (EPA), concerning the L. S. Starrett Company precision tool manufacturing facility in Athol, Massachusetts. Mr. Train referred your letter to me and asked that I respond to you directly. In order to address the issues raised in Mr. Starrett's letter to you of May 20, 1976, members of my staff were in touch with personnel in EPA's Regional Office in Boston and the Massachusetts Department of Natural Resources, Division of Water Pollution Control. While we appreciate the Company's concerns in this situation, we do not believe that those concerns warrant the relief sought, for reasons detailed below.

The Act provides for a comprehensive program through which all industrial dischargers are to achieve best practical control technology currently available by July 1, 1977. This technology is defined in terms of national effluent limitations guidelines for various industrial categories, which are to be promulgated by the Administrator under section 304(b) of the Federal Water Pollution Control Act (the Act). The permit issued to the Company was based on effluent guidelines promulgated for the industrial subcategory appropriate to the Company's operations. Although the effluent guidelines provide for exceptions for facilities entailing significantly different factors from facilities considered in developing the guidelines, the L. S. Starrett Company has not made a showing that such fundamentally different factors exist with respect to its operations. Instead, these effluent guidelines, as well as any additional, more stringent requirements dictated by water quality standards, were applied to L. S. Starrett Company as they are applied to individual dischargers pursuant to the National Pollutant Discharge Elimination System (NPDES) permit program. In accordance with the regulations implementing the NPDES, which provide for extensive public participation and due process protections, a permit is generally issued

after negotiations with the discharger. Even after the determination to issue a permit is made, the permittee may request a formal adjudicatory hearing on the requirements in the permit.

Under this program, NPDES permit number MA 001350 was issued by the EPA to the L. S. Starrett Company on September 20, 1974. Following issuance of the permit the L. S. Starrett Company did not formally object to the conditions of the permit by requesting an adjudicatory hearing. Thus, the permit went into effect without challenge. It should be noted that Massachusetts has a permit program which, although it has not been approved pursuant to section 402 of the Act, is substantially similar to the NPDES permit program. Consequently, EPA and Massachusetts have entered into an agreement for issuing joint permits satisfying both Federal and State requirements. The subject permit was issued jointly pursuant to this agreement and could not effectively be modified without action by both EPA and the State. We understand that Massachusetts does not believe that the permit should be modified. Even in the absence of such a joint agreement, the State would have to concur with the conditions of a permit proposed to be issued or modified by EPA, pursuant to section 401 of the Act.

Upon learning that best practical control technology would cost the Company more than anticipated, Mr. Starrett requested a modification of his permit. On April 22, 1976, a meeting was held and attended by representatives of Massachusetts and the EPA during which it was explained to Mr. Starrett that a modification in terms of an exception to national effluent limitations guidelines could not be made. However, because of the State's delay in the approval of the engineering plans an "informal modification" in the compliance schedule, postponing for three months the interim due date for completed plans, was granted. Since that meeting, Mr. Starrett has been repeatedly advised of his duty under the permit to meet national standards by July 1, 1977.

Despite the continuing position of EPA and the mandate of the law, Mr. Starrett is still seeking an exception to the application of national effluent limitations to the Starrett Company. Mr. Starrett bases his contention on three arguments. First, Mr. Starrett argues that the discharge from his operation does not affect water quality. Second, Mr. Starrett contends that the imposition of best practical control technology on the Company's facility is not cost-effective. Third, he asserts that the circumstances of the L. S. Starrett Company warrant an exception to the application of national standards as accorded in the case of the Mahoning Valley steel companies. None of these arguments, however, is supported by the letter or the spirit of the law.

With respect to the first argument, in passing the current Act, Congress repudiated the prior law's sole reliance on water quality standards to achieve clean water. Under sections 301(b)(1)(A) and (C), direct dischargers are required to conform to both technology based effluent limitations guidelines and water quality standards, whichever are stricter. Thus, in the present situation, even if the L. S. Starrett Company discharge cannot be shown to be damaging the water quality of Millers River as Mr. Starrett alleges, the point source effluent standards must be met. It should also be noted that water quality standards are largely irrelevant to the discharger in question. Water quality standards, as they presently exist, are designed primarily to reflect the pollution effects of organic pollutants. The pollutants associated with the Company's discharge are primarily non-organic, heavy metals.

As to his second argument, that the imposition of best practical control technology on the Starrett facility is not cost-effective, Mr. Starrett's position is untenable. Under section 304(b) of the Act, the Administrator promulgated national effluent limitation standards to be met by categories of industrial facilities to achieve best practical control technology. In developing these standards, the Administrator must consider, among other factors, "the total cost of application of technology in relation to the effluent reduction benefits to be achieved." However, this cost factor is "not [to] be considered at the time of the application of an effluent limitation to an individual point source within [a category]." A Legislative History of the Water Pollution Control Act Amendments of 1972, January 1973, p. 172. In addition, the United States Circuit Court of Appeals for the Third Circuit, held in American Iron and Steel Institute v. EPA, that

> "while costs were intended to be given greater weight in defining "BPCTCA" [Best Practical Control Technology Currently Available], it is clear that even with that 1977 standard, the cost of compliance was not a factor to be given primary importance. Furthermore, Congress clearly intended that the Administrator consider costs on a class or category basis, rather than as [sic] a plant-by-plant basis. As Senator Muskie stated in support of the House-Senate Conference Committee Report: . . .
>
> > 'The Conferees agreed upon this limited cost-benefit analysis in order to maintain uniformity within a class and category of point sources subject to effluent

> limitations and to avoid imposing on the Administrator any requirement to consider the location of sources within a category or to ascertain water quality impact of effluent controls, or to determine the economic impact of controls on any individual plant in a single community.' . . .

With respect to the overall impact of the legislation, Congress clearly contemplated that cleaning up the nation's waters might necessitate the closing of some marginal plants. As Senator Bentsen stated:

> 'There is no doubt that we will suffer some disruption in our economy because of our efforts; many marginal plants may be forced to close.'

In sum, while it is clear that the Administrator must consider cost, some amount of economic disruption was contemplated as a necessary price to pay in the effort to clean up the nation's waters, and the Administrator was given considerable discretion in weighing costs." 8 ERC 1321 at 1334 and 1335.

Thus, it is clear that Congress intended economic factors be considered in the development of national effluent limitations, but that they not be considered in assessing compliance by individual facilities with those limitations.

With respect to the third argument, the Mahoning River Valley Region is a unique case, unlikely to be duplicated. In that case effluent limitations guidelines were specifically established under section 304 of the Act for iron and steel plants within a particular regional area, which allowed those few operations to meet less strict standards. Authority for determining the need for special regional effluent guidelines was found in the discretionary powers of the Administrator under section 304(b)(2)(B) of the Act. However, the Administrator's decision carefully, and purposely, limits the application of this exception. In the Mahoning River Valley the economic

posture of the industrial plants and the regional ramifications of EPA enforcement were important determinants. The plants were economically marginal and negatively profitable before the addition of pollution costs, and it was estimated that some 25,000 jobs in the steel making facilities in question would be lost or seriously affected if compliance with national guidelines were enforced. Indeed, enforcement of the national effluent guidelines would have caused the closing of several steel plants and led to severe regional economic dislocations of national importance. It was consideration of these significant external costs in relation to an entire region that resulted in the determination to develop regional guidelines. These factors in the Mahoning River Valley case which led to the Administrator's decision are simply not present in Mr. Starrett's situation. Thus, there is no possibility that the parameters of the Mahoning determination could be expanded to include the Starrett Company. It should also be noted that the facts cited by the Company do not indicate a great likelihood of any economic dislocation. The costs as associated with the capital requirements of installing pollution control technology would appear to approximate one to two weeks' payroll for an operation of its size. Costs of this magnitude represent an investment in pollution abatement commensurate with other manufacturing facilities of this type.

In sum, modification of the L. S. Starrett Company discharge permit is contrary to the law as passed by Congress and implemented by EPA. Establishing effluent limits based on the availability of technology to abate pollution, rather than on the ability of rivers and streams to assimilate it, is one of the most fundamental and important aspects of the Act. It would be an abdication of EPA's pollution control responsibilities to find that exceptions could be made based on economic exigencies.

I assure you that we are aware of and attentive to Mr. Starrett's particular difficulties and will continue to assist him in every way to meet the requirements of the law. The Regional Administrator in Boston, Mr. John McGlennon, would be pleased to meet with Mr. Starrett at any time to discuss L. S. Starrett Company's pollution abatement problems. However, in working on this matter, EPA must continue to implement the Act and support established policies for strong and uniform application of national effluent standards.

I hope you find this letter responsive to your and Mr. Starrett's questions. If you have any more questions or comments please do not hesitate to call or write.

Sincerely yours,

JGM for

Stanley W. Legro
Assistant Administrator
for Enforcement

United States Senate

6-3-76

Respectfully referred to:

Mr. John A.S. McGlennon,
Regional Administrator
Environmental Protection Agency

Because of the desire of this office to be responsive to all inquiries and communications, [illegible] consideration of the attached is [illegible]sted. Your findings and views, in [illegible]licate form, along with return of the enclosure, will be appreciated by

Edward M. Kennedy
U.S.S.

Form #2

OFFICE OF HON. EDWARD M. KENNEDY
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Copy to Mr. Donald Wynne

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Starrett

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May 20, 1976

Hon. Edward P. Boland
2111 Rayburn House Office Building
Washington, D. C. 20515

Dear Congressman Boland:

We have a real problem with the EPA and I'm asking you if you can help us in our present situation. As I will relate below, we have over the years taken care of the discharges from our plant into the Millers River in one manner or another. Now the EPA is forcing on us a tremendous expenditure which we do not think is justified.

We had a meeting with the State Division of Water Pollution Control and also with EPA on Thursday, April 22. The purpose of the meeting was to ask that the equipment that we now have to take care of our plating room discharges be declared the best practical treatment, or to exempt us from spending the considerable amounts of money to meet what the EPA is calling the best practical treatment, to be in operation by July of 1977. We were turned down, mostly on the excuse that they in Boston did not have power to make any changes such as we requested.

Here is the background. First of all, we employ approximately 1,200 people in Athol, the largest single employer in the town, the population of which is approximately 12,000. Our business is primarily making precision tools, for which electroplating is a necessary operation, but electroplating is not our main business, so we cannot be compared with those companies whose primary operation is plating. Over the years we have certainly acted in good faith in that for many years before environmental protection became popular we had embarked upon a program of doing everything we thought necessary to clean up the Millers River ourselves, and we have spent quite a bit of money over the years doing this. Ten years ago, in 1966 - again before environmental protection was a big issue - we asked the Massachusetts Department of Public Health, Division of Sanitary Engineering, to come up and check us out to see if what we had done was in their opinion satisfactory for river quality. At that time they said it was.

Since then more stringent rules have been applied to the river and about 1972, at an initial cost of about $27,000 and a current annual cost of at least $9,000, we installed and put in a treatment plant for our electroplating discharge.

The current status of the Millers River is that it is classified as a B river, meaning suitable for swimming and fishing. Even though discharges both upstream and downstream from us do not allow the river to meet this classification at present, what is going into the river from our plant does allow this classification to be met. Our consultants, Tighe & Bond, advise us that the river is not being affected by our discharge, and both the EPA and the Massachusetts Division agree to this. A more costly and complex treatment plant is not cost-effective and should not be forced upon us.

What the EPA is falling back on is that part of the law that specifies certain limits of point source discharge readings taken right at the discharge itself, with no consideration being given to the quality of the river itself. We say that simply to single out point source is arbitrary and certainly not cost-effective. As a further example, the steel mills in Ohio's Mahoning Valley have been told to put in the best available treatment that meets water quality standards in the river, not at the point source, and we should be accorded the same standards.

What we are talking about for money is a first year cost of approximately $200,000. $31,000 of this is the current estimated annual operating and maintenance cost, which of course will increase with time. The rest of it is in moving, building, and engineering costs. We think this is a tremendous economic burden to put on us for no demonstrated advantage. We think the thrust behind environmental controls as applied to rivers is the quality of the river itself, not simply control of point source regardless of its effect upon the river or economic effect on the company involved.

Specifically I would like to know if the law that EPA has specified limits of point source discharge is actually part of the law as passed by Congress or were these limits promulgated by the EPA themselves under authority from Congress but not actually passed by Congress themselves. Secondly, and more important, what can you do to help the people in our Company by having what we are currently doing called the best practical treatment, or according us the same privilege as the steel mills in Ohio's Mahoning Valley and basing any effect of our discharge on the quality of the river itself.

Because EPA has put us under the gun with relatively short timetables, which will involve spending considerable money, we would like to know if you feel any favorable action can be made on this.

Sincerely,