



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

16 MAY 1978

THE ADMINISTRATOR

4-78-5

MEMORANDUM

TO: Regional Administrators
Directors, Approved NPDES State Programs

SUBJECT: Reissuing NPDES Permits to Sources Affected
by the NRDC Consent Agreement

For the past several months, the Office of Water Enforcement has been developing policies and guidance to aid in the reissuance of the next round of NPDES permits. One of the foremost concerns in developing these policies was to incorporate the requirements of the settlement agreement in Natural Resources Defense Council, Inc. et. al. v. Train (8 ERC 2120 D.D.C. 1976) into our NPDES program in the most orderly manner possible. This agreement, among other things, requires us to shift our emphasis from regulating traditional pollutants to limiting toxic pollutants in permits issued to sources in 21 industrial categories.

On June 20, 1977 I established initial policies in a memorandum to you entitled "Structuring NPDES Enforcement Priorities in Light of the NRDC Consent Agreement." Preliminary versions of a comprehensive policy for reissuing second round permits were discussed with state and regional representatives at a series of meetings held around the country in November 1977. Final second round permits policies are expected in the very near future, and other guidance to help implement other aspects of the new amendments will follow soon thereafter.

The 1977 amendments to the Federal Water Pollution Control Act embody much of the philosophy and codify some of the requirements of the NRDC agreement. For this reason, the general second round permits policies established to date remain unchanged. One of the procedures established in my June 20 memorandum, however, should be revised.

The June 20 memorandum stated that "reissuing permits for sources covered by the NRDC consent agreement to include BAT limitations should not be regarded as a high priority item until guidelines become available in FY 79." The June 20 memorandum then directed that this policy be implemented by issuing short term permits, setting "the expiration date of the permit . . . at one year following the date that the applicable new BAT guideline is scheduled to be promulgated under the terms of the NRDC agreement."

This procedure for issuing permits to sources affected by the NRDC consent agreement could lead to future problems if the promulgation of a new BAT guideline is delayed for any reason beyond the schedule established in the consent agreement. Such delays could result in the expiration of a short term permit before a new permit can be prepared and issued, causing enforcement and administrative difficulties. To account for this possibility, therefore, the expiration date of short term permits issued to sources in primary industries prior to the promulgation of new BAT guidelines should be set at a date which is eighteen months past the date that the applicable BAT effluent guideline is scheduled to be promulgated. This is a change from the June 20 memorandum, which specified a twelve month overlap. This added time will provide the necessary degree of flexibility.

Many state and EPA representatives have urged us to revise the present short term permits policy to allow the use of long term permits which would be reopened to reflect new BAT requirements no matter when they are promulgated. This approach is unacceptable, however, since the reopener clause in such long term permits may not be triggered if new BAT guidelines are not promulgated (for example, new BAT guidelines will not be promulgated if no toxic pollutants are found or if existing regulations provide the necessary degree of control). If the reopener clause in long term permits cannot be triggered, then these BPT level permits will expire shortly before July 1, 1984, and thus will not assure that BCT and BAT will be installed by the statutory deadlines.

The reopener clause required by the NRDC consent agreement, together with other pertinent requirements, will be promulgated in the Federal Register in the very near future. At the same time, proposed regulations will appear which set requirements for issuance of permits to sources in industries affected by the NRDC agreement prior to the promulgation of new BAT guidelines. EPA regional offices are directed to issue short term permits to these sources which incorporate the reopener clause and which expire eighteen months following the scheduled promulgation of new BAT guidelines (appropriate expiration dates for the 21 industries affected by the NRDC agreement will appear in the same Federal Register proposal). Somewhat broader requirements are set for issuance of permits by NPDES States, although these States are strongly urged to follow the short term permit approach.

I want to emphasize that these policies affect only those sources in the 21 industries identified in the NRDC consent agreement that may be affected by the new BAT guidelines for toxic pollutants. This change in permit issuance procedure in no way affects EPA's commitment to publish guidelines in a manner consistent with the NRDC consent agreement and the 1977 Clean Water Act. Further, it remains our policy to incorporate these guidelines into permits as expeditiously as possible in order to assure compliance with all statutory deadlines.

The policies established in my June 20 memorandum were prepared prior to the appointment of Marvin B. Durning as Assistant Administrator for Enforcement. Now that Mr. Durning has become familiar with our permits program, I have asked him to be responsible for directing this program. Accordingly, future guidance and policy affecting the issuance of second round permits will be established by the Assistant Administrator for Enforcement.

I trust that this change in policy will be helpful to regional and state NPDES programs. If this presents any unusual problems or if you have any questions, please call Mr. Jeffrey G. Miller, Deputy Assistant Administrator for Water Enforcement (755-0440).


Douglas M. Costle