



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

SEP 12 1978

MEMORANDUM

OFFICE OF ENFORCEMENT

n - 78 - 314

TO: Regional Enforcement Division Directors
NPDES State Directors

FROM: Deputy Assistant Administrator for Water Enforcement (EN-335)

SUBJECT: Variance Applications

The Administrator has signed regulations implementing section 301(j)(1)(B) of the Clean Water Act, time requirements for receiving a section 301(c) or 301(g) modification (Attachment A).

The enclosed regulation explains who is eligible and what is required. Essentially, industrial dischargers subject to promulgated effluent guidelines for best available technology requirements, must apply to the Environmental Protection Agency by September 25, 1978, or 270 days after promulgation of the guideline, whichever is later. Industries in 17 categories have the September 25, 1978, deadline. Regulations governing the procedures and criteria for granting economic (301(c)) and water quality (301(g)) modifications will not be promulgated by the statutory deadline for submission of applications for such variances. As a result this regulation is needed so that industries approaching the statutory deadline can protect their rights to a modification. The initial application needs only the name of the permittee, the permit and outfall number and whether the application is for a section 301(c) or 301(g) modification or both.

Unlike other types of modifications, the Clean Water Act does not enable the States to grant these modifications. However, for the States information, the regulation states that copies of applications should be sent to the NPDES State Directors.

Presently EPA intends to process the modification requests during permit reissuance. Despite the statutory requirement that applications be submitted 270 days after the promulgation of the applicable effluent guideline, EPA expects to require from the discharger the substantive information to support the modification during the public comment period for the draft permit. It would make little sense to require substantial information in a request for a modification under these sections now, when historical economic data or biological information would be outdated at the time the permit limitation would be imposed.

Although States cannot grant modifications, the statute calls for 301(g) determinations to be made with the concurrence of the State. The State certification (section 401) and State authority (section 510) provisions of the Clean Water Act also serve to involve the State in the section 301(c) determinations. Therefore, we will soon be sending you draft copies of the 301(c) and (g) regulations for comment.

Because we anticipated a late date for publication of the 301(j)(1)(B) regulations, I sent a letter on August 15, 1978, to trade associations in the 17 categories that have the September 25, 1978, deadline. That letter (Attachment B), notified them of what the regulation would contain.

In addition, we will mail several thousand letters to industries that might also be eligible (Attachment C). Included with that letter will be a post card that can simply be mailed back to the appropriate EPA Regional office. This mailing will be primarily to industries in non-NPDES States due to limited centralized information on addresses of NPDES State permittees. NPDES States may wish to assure coverage of all industries in the 17 categories, and for that reason a supply of post cards is enclosed with this memo to NPDES State Directors.

Several industries have already applied directly to EPA in Washington. We will send copies of those applications to the appropriate Regions and State Directors. Similarly, many 301(j)(1)(B) applicants may send applications only to State Directors. We ask the Directors to please forward them to the Regional Enforcement Division Director. We will consider applications received by State Directors by the deadline date as receipt by EPA.


It should be noted that the statute only allows modification for non-conventional pollutants. On July 28, 1978, the Agency proposed that oil and grease, phosphorus and COD be placed on the list of conventional pollutants. If that proposal becomes final, those pollutants will no longer be in the non-conventional category and the number of dischargers eligible for a variance will decrease sharply.

In addition, certain pollutants that are now considered non-conventional may be placed on the toxics list.

Because the substantive criteria for 301(c) and (g) have not yet been promulgated, the preamble to the 301(j)(1)(B) regulation states that EPA will mail copies of the 301(c) and (g) regulations to those who complied with 301(j)(1)(B). To facilitate mailing those regulations we ask the Regions to maintain an up-to-date listing of 301(j)(1)(B) applicants.

The listing should include the pollutants indicated in the variance request to enable deletion of those applicants that become ineligible because of a re-classification of pollutants.

If you have any questions, please contact Scott Slesinger, Permits Division (telephone 202-755-0750).


Jeffrey G. Miller

Attachments

cc: Regional Permit Branch Chiefs



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

AUG 15 1978

OFFICE OF ENFORCEMENT

The Environmental Protection Agency is scheduled to issue interim final regulations concerning applications for variances. The requirements will directly affect a large number of your members. Because some dischargers must apply by September 25, 1978, I thought this pre-promulgation notice would give you an opportunity to advise your members of what the Agency expects to require.

The Act allows variances from best available technology economically achievable based on the economic conditions of the particular facility [section 301(c) of the Clean Water Act] or based on the lack of environmental necessity of the specified limitations [section 301(g)]. Variances are allowed only from limitations on non-conventional pollutants. The Act also requires applicants to apply by September 25, 1978, if an applicable effluent guideline was promulgated before the enactment of the Clean Water Act [section 301(j)(1)(B)]. The enclosed list identifies each particular industrial subcategory eligible for a variance that must comply with September 25, 1978, statutory deadline.

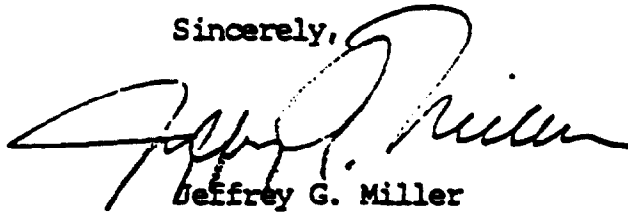
Dischargers who intend to apply for a variance must notify the Regional Office and the Director of the State program in States that issue NPDES permits. The information we need is simply to identify the discharger and the variance requested. Hence we need the discharger's:

- (1) Name;
- (2) present permit number;
- (3) outfall number;
- (4) effluent guideline subject to the request; and
- (5) whether the discharger is applying for a 301(c) or 301(g) variance or both.

The regulations detailing the evidence that will be needed to justify a variance have not been promulgated. Dischargers will not have to submit any documentation in support of a variance before those regulations are in force.

If you have any questions, please contact Scott Slesinger of my staff (202-755-0750). Once the interim regulation is ready for publication we will send you a copy.

Sincerely,



Jeffrey G. Miller
Deputy Assistant Administrator
for Water Enforcement



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

SEP 12 1978

OFFICE OF ENFORCEMENT

NPDES Permit Holder:

Some industrial dischargers of wastewater will be eligible for modifications from certain Clean Water Act requirements. You may be one of those dischargers.

The enclosed regulation explains who is eligible and what is required. Section 301(j)(1)(B) of the Clean Water Act requires that industrial dischargers subject to promulgated effluent guidelines for best available technology requirements must apply to the Environmental Protection Agency (EPA) by September 25, 1978, or 270 days after promulgation of the guideline, whichever is later, to be eligible for a modification of control requirements.

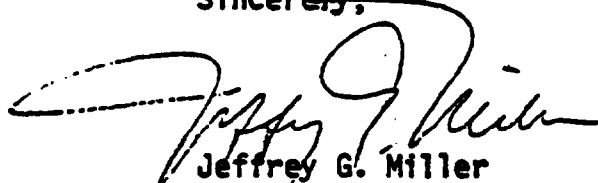
The Act allows modifications from best available technology economically achievable based on the economic conditions of the particular facility or based on the lack of environmental necessity of the specified limitation. Variances are available only from limitations on non-conventional pollutants (see Appendix A to the regulation).

Industrial dischargers subject to the September 25, 1978, deadline that wish to apply must do so by contacting the appropriate EPA Regional office (office addresses are enclosed). At this time, the only information needed is your name, your permit and outfall numbers, the applicable effluent guideline and the type of variance requested. For your convenience we have enclosed a post card which can be completed and returned to the appropriate EPA Regional office.

The regulations detailing the evidence that will be needed to justify a variance have not yet been promulgated. Those submitting a request for a variance will be sent a copy of the substantive requirements for a variance once they are published.

If you have any questions about these requirements or this letter, please contact the appropriate EPA Regional office or Scott Slesinger, Environmental Protection Agency, Permits Division (EN-336), 401 M Street, SW, Washington, DC 20460 (telephone 202-755-0750).

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey G. Miller", is written over a horizontal line.

Jeffrey G. Miller
Deputy Assistant Administrator
for Water Enforcement

~~Enclosures~~