



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

n-80-2

JAN 18 1980

OFFICE OF ENFORCEMENT

MEMORANDUM

TO: Regional Enforcement Division Directors
NPDES State Directors

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

SUBJECT: Applicability of Revised NPDES Regulations to Permits
Currently Being Processed

There have been a number of telephone inquiries from the Regions regarding the applicability of the final NPDES regulations to permits currently being processed. This memorandum is to confirm in writing the information and guidance we have been providing over the last few months on the effective dates and applicability of various portions of the new regulations.

On August 13, 1979, Parts 122 (general program requirements), 123 (State program requirements), Subpart H of Part 124 (eviodentiary hearing requirements), and most of Part 125 (technical standards and criteria) of the revised National Pollutant Discharge Elimination System (NPDES) regulations (44 FR 32854, June 7, 1979) went into effect. The remaining provisions of Part 124 went into effect on October 13, 1979 (see §124.135) and apply only to processing of draft permits put on public notice after that date. (The effective date for Subpart K of Part 125, concerning best management practices "BMPs" was delayed until supporting guidance materials become available; see 44 FR 47063, August 10, 1979.)

The approach being taken for implementing the new regulations for permits that were being processed when the regulations went into effect is similar to the approach taken in §124.135, which provides for a phase-in of the new requirements. This approach should minimize the disruption of ongoing permitting activity. Permit processing which has gone as far as issuance of public notice of the availability of a draft permit on or before August 12, 1979, may continue to be processed under the old NPDES regulations. Thus, when a draft permit (put on public notice prior to August 13, 1979) included permit terms and conditions based on the old regulations, the permit may be made final based on the old regulations. However the permit writer, in his or her discretion, may elect to apply the new regulations in formulating

the provisions of the final permit. You are encouraged to use the new regulations where a clear benefit would be gained by doing so. Permits which had not reached the public notice stage before August 13, 1979, should be processed under the new regulations.

State programs are to implement the new requirements to the extent they are authorized to do so. Any State which lacks authority to implement all applicable portions of the new regulations will have to modify its program in accordance with §123.62. Because the consolidated permit regulations will make several changes in the NPDES provisions, these modifications should await publication of the final consolidated regulations in April. EPA will soon publish a Federal Register notice suspending the compliance deadlines for approved State NPDES programs in §123.62.

If you have any questions or specific situations which are not adequately addressed by this guidance, please get in touch with me (202)755-0440 or call Frank Hall, Acting Director, Permits Division at (202)755-2545.


Leonard A. Miller