



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

JUN 25 1980

MEMORANDUM

OFFICE OF ENFORCEMENT

n-80-7

SUBJECT: Writing NPDES BAT Permits in the Absence of
Promulgated Effluent Guidelines

TO : Regional Enforcement Division Directors
NPDES State Directors
Director, National Enforcement Investigations
Center (NEIC)

FROM : R. Sarah Compton, *R. Sarah Compton*
Deputy Assistant Administrator
for Water Enforcement (EN-336)

We are fast approaching the time when we must begin to issue BAT permits to control discharges of toxic pollutants. These permits must ensure achievement of BAT control as early as possible but in no event later than July 1, 1984. As provided in 40 CFR 122.64 (published at 45 FR 33342 on May 19, 1980), no permit issued to a primary industry discharger may be set to expire after June 30, 1981 unless the permit requires achievement of BAT control by the statutory deadline.

EPA's Effluent Guidelines Division is developing national BAT effluent guidelines under section 304(b) of the Clean Water Act for the primary industries. However, due to the complexity of the task, guidelines in some industries may not be published in final form by the time permits in those industries must be written. Therefore, we must prepare to issue some BAT permits on a case-by-case basis, using our best professional judgment (BPJ), as authorized by section 402(a)(1) of the Clean Water Act. Case-by-case permits issued prior to June 30, 1981 must contain reopener clauses. See 40 CFR 122.62(c).

According to the phase-in of the new NPDES application form (122.53(c)), the first applications with toxics testing data will be due in September 1980 of this year. (However, extensions of time to submit applications and toxics data are available in some cases - see table in Consolidated Permit Regulations, 45 FR 33443, May 19, 1980). The Revised Second Round Permits Policy, discussing timing of applications and permit issuance, is presently being drafted by my staff and will be distributed to EPA Regions and States in July 1980. Attachment 1 to this memorandum outlines a suggested schedule for issuing BAT permits as applications begin to come in. The schedule is designed to correspond to expected promulgation dates of BAT effluent guidelines, which are listed in Attachment 2.

Although we have begun to prepare to write case-by-case permit limits in the absence of guidelines, much work still needs to be done. Some of the tools necessary to do the job have been or are being developed by EPA Headquarters. These include:

1) New permit application regulations and forms requiring primary industries to test their process wastewater discharges for most or all of the 129 toxic pollutants (17 industries must test for all 129): Promulgated on May 19, 1980 as 40 CFR 122.53 (45 FR 33336).

2) The Treatability Manual compiling data on the removal of toxic pollutants from industrial discharges by particular technologies and associated costs: Preliminary edition already distributed to Regions and States for comment; workshops on use of manual held in February 1980; much expanded edition to be distributed to Regions and States for use in early September, 1980; Notice of Availability to general public in September 1980.

3) NPDES Best Management Practices (BMP) Guidance Document: Draft currently available to the public; formal comment period closes on July 21, 1980.

4) BCT Cost Comparison Guidance Manual: Distributed in draft to Regions and States in June 1980.

5) Biomonitoring Protocol Manual: Preliminary draft made available for comment in May 1978; final, substantially revised manual to be distributed to Regions and States in July 1980; Notice of Availability to general public in August or September 1980.

6) Section 311/402 Coordination Guidance Manual: To be distributed to Regions and States in draft by October 1980.

The documents listed above will provide basic tools for permit writers. But much more is needed to deal with the new and complex area of toxics permitting. We are suggesting a "two-pronged" approach in preparing to issue BAT permits when applicable guidelines have not been promulgated.

1) Designate contacts in EPA Headquarters to answer questions from the Regions and States on the Headquarters-developed guidance documents. Workshops with the Regions and States will be scheduled to discuss these documents (late Summer or Fall 1980), and a videotape is being prepared on the Treatability Manual. Technical staff of the Industrial Permits Branch, OWE, and of the National Enforcement Investigations Center in Denver will assist in specific permit and hearing cases when requested by Regional or State permitting staff. Mr. William Jordan, Chief, Industrial Permits Branch, will coordinate specific case support (202-426-7010). Other contacts for the guidance documents are listed in Attachment 3.

2) Establish industry-specific teams for priority industries. Specifically, we need to develop the capacity to use any available expertise to write particular permits. This requires all of us to pool our resources and share our expertise and experience with one another. This second part of the "two-pronged" effort is discussed further in the following paragraphs.

As a first step, we must identify permit writers in EPA Headquarters, EPA Regions and States who are experts in particular industries. We can then establish teams of experts for these industries. These teams could develop initial BAT permits in their industries and circulate these permits as models or samples to other Regions and States. In addition, all Regions and States could seek help from or share information with the teams. Further assistance could be obtained from the Office of Research and Development and from NEIC staff. Project officers in the Effluent Guidelines Division can also serve as consultants to these industry teams. The result will then be a communications network whereby any permit writer would have sample permits for the priority industries as well as active assistance available to help write difficult permits.

I am asking each Region and State agency to submit the names of any staff members who have developed expertise in particular industrial areas and would be willing to contribute substantial time to a team effort as described above. Please indicate the area of expertise. We are particularly interested in hearing from experts in the industries listed in Attachment 4.

The industries in Attachment 4 have been selected by considering several criteria. These are:

(1) The number of GC/MS fractions of organic toxic pollutants which each industry must sample and analyze under the new NPDES application regulations (40 CFR 122.53 (d)(7), 45 FR 33454, May 19, 1980);

(2) The currently expected promulgation date of the BAT effluent guideline for each industry (see Attachment 2);

(3) A somewhat subjective assessment of the national or regional significance of the industry;

(4) The number of dischargers in the industry; and

(5) The extent to which toxic pollutants are discharged by the industry.

Each industry was rated for each factor by a scoring system, as shown in Attachment 5. A total of 9 or more points resulted in listing an industry in Attachment 4.

In determining BAT limits in the absence of guidelines, permit writers will also need to determine that the limits which they set are economically achievable. ("BAT" means "best available technology economically achievable" (emphasis added).) We are considering developing guidance in this area. We need to receive suggestions as to what type of support would be most useful to you. Please submit the names of staff members who are acquainted with the problems in making economic achievability determinations and who have suggestions for appropriate guidance.

I am interested in your comments on these proposals. Are there other actions we should be taking? Is the rating system in Attachment 5 adequate? Are there other industries we should be focusing upon? I urge you to provide us with your comments by Friday, July 18, 1980.

Please address your response to Mr. William Jordan, Industrial Permits Branch Chief (EN-336), Office of Water Enforcement, 401 M Street, S.W., Washington, D.C. 20460, 202-426-7010. Call me (202-755-0440) or Bill if you have any questions.

Attachments

cc: Steven Reznick (RD-681)
Steven Schatzow (WH-551)
Roy Gamse (PM-219)
Jim Rogers (A-131)
Robert Schaffer (WE-552)

Schedule for Actions concerning
Issuance of BAT Permits

June 1980 Request EPA Regions and States, NEIC, and other EPA offices to appoint members for Industry-Specific Teams.

July Complete Designation of Industry Specific Team Members.
Preliminary Treatability Manual Available.

September New application form addressing toxic pollutants must be submitted by permittees whose current permits expire in December 1980, beginning the large-scale submissions of the new form. (Detailed schedule of new application submission to be discussed in Revised Second Round Permits Policy in July 1980.)

Revised Treatability Manual Available

June -
October Guidance Documents (e.g., BCT Cost Manual, Biomonitoring Protocol, 311/402 Coordination) available for Regional and State Review.

BAT Permit Issuance

October, 1980
- June, 1981

Issue permits as follows:

1. If final guidelines are promulgated: Issue BAT permit as expeditiously as possible; permit will not need reopener clause.
2. If final guidelines are not promulgated, but are expected to be promulgated by June 30, 1981 (see Attachment 2):
 - (a) Issue short-term permit, with reopener clause, to expire no later than June 30, 1981. Reopen permit to incorporate guideline if issued before June 30, 1981. If guideline is unexpectedly delayed beyond June 30, 1981, proceed to issue BAT permit using best professional judgment as prescribed in paragraph (3) below; or

(b) Under section 558(c) of the Administrative Procedures Act for Federal permits (and equivalent State law, if any, for State permits), allow current permit to expire but remain in effect by operation of law. Issue next permit when guideline is promulgated, except: if guideline is unexpectedly delayed beyond June 30, 1981, proceed to issue BAT permit using best professional judgment as described in paragraph (3) below.

3. If final guidelines are not promulgated, but are expected to be promulgated after June 30, 1981 (see Attachment 2):

Issue BAT permit, using best professional judgment aided by permit application, draft Development Documents, Treatability Manual, proposed guidelines, assistance of expert teams and other available information. Reopener clause is required. (Note: NPDES regulations allow issuance of short-term permits expiring no later than June 30, 1981. However, that approach is not recommended, since no benefits will result from delaying issuance of BAT permit until June 30, 1981 unless guideline is promulgated by June 30.)

July 1981

Continue to issue permits, working to eliminate backlog as well as to process new applications. Use guidelines if promulgated; otherwise use best professional judgment. No reopener clause is required.

Categories of Industries (grouped for convenience according to short-term permit expiration deadline: which applied under the original Second Round Permit Policy)

Group A: Short-term permits expire no later than 9/30/80 Expected final guideline (as of 6/20/80)

Timber Products Processing	11/80
Leather Tanning and Finishing	1/81
Steam Electric Power Plants	3/81
Petroleum Refining	5/81
Iron and Steel	8/81*

Group B: Expire no later than 12/31/80

Paint and Ink	4/81
Coal Mining	6/81
Ore Mining	7/81*
Printing and Publishing	11/81*
Nonferrous Metal	12/81*

Group C: Expire no later than 3/31/81

Inorganic Chemicals	2/81
Textile Mills	4/81
Pulp and Paper	6/81
Rubber Processing	Par. 8 **
Organic Chemicals	uncertain *
Plastic and Synthetic Materials	uncertain *

Group D: Expire no later than 6/30/81

Coil Coating	5/81
Foundries	7/81*
Porcelain Enamel	7/81*
Auto and other Laundries	8/81*
Photographic Supplies	8/81*
Pesticides	8/81*
Pharmaceuticals	8/81*
Aluminum Forming	9/81*
Electric and Electric Components	11/81*
Electroplating	11/81*
Mechanical Products	11/81*
Battery Manufacturing	11/81*
Copper Forming	12/81*
Adhesives and Sealants	Par. 8 **
Explosives Manufacturing	Par. 8 **
Soaps and Detergents	Par. 8 **
Gum and Wood Chemicals	Par. 8 **
Plastics Processing	Uncertain*

* Guideline is expected to be promulgated after June 30, 1981.

** Guideline will not be promulgated, based on paragraph 8 of the NRDC Settlement Agreement; present regulations are adequate.

Guidance Document Contacts

<u>Guidance Document</u>	<u>Contact Person</u>	<u>Telephone Number*</u>
1. NPDES Application Form	Fanny Knox Dov Weitman	426-7010
2. Treatability Manual	Bill Chang Gail Goldberg	426-7035
3. NPDES Best Management Practices Guidance Document	Hap Thron	426-7010
4. BCT Cost Comparison Guidance Manual	Tom Lavery	426-7010
5. Biomonitoring Protocol Manual	Bruce Newton Rick Brandes	426-7010
6. Section 311/402 Coordination Manual	Dov Weitman Allen Danzig	426-7010

* Use FTS or area code 202 as appropriate.

Categories For Industry Teams

Coal Mining
Electrical Products
Electroplating
Inorganic Chemicals
Iron and Steel
Mechanical Products
Nonferrous Metals
Ore Mining
Organic Chemicals
Pesticides
Petroleum Refining
Plastics and Synthetics
Pulp and Paper
Steam Electric Generating Plants
Textiles
Timber Products

PRIMARY INDUSTRIES BAT/BEJ PRIORITIES MATRIX

"Attachment 5"

Industrial Category	No. of GC/MS Fractions	Effluent Guidelines Availability Date	National/Regional Significance	Direct Discharger	Organic Pollutant Occurrence	Total	Ranking/Score
Adhesives	2	1	0	1	2	6	Organic Chem. 14
Aluminum Form.	2	2	0	1	2	7	Coal Mining 13
Auto/Laundries	3	2	0	1	1	7	Electroplating 12
Battery Mfr	1	3	0	1	1	6	Plastics & Syn. 12
Coal Mining	3	1	3	3	3	13	Electric Prod. 11
Coil Coating	2	1	0	1	1	5	Iron and Steel 11
Copper Form.	2	2	0	1	1	6	Mechanical Prod. 11
Electric Prod.	3	3	0	3	2	11	Nonferrous Mfr 11
Electroplating	2	3	3	3	1	12	Pesticides 10
Explosive Mfr	1	1	0	1	1	4	Pulp & Paper 10
Foundries	2	2	0	3	1	8	Steam Electric 10
Gum & Wood	3	1	0	1	1	6	Timber Products 10
Inorganic	2	1	3	2	1	9	Inorganics 9
Iron & Steel	2	2	3	3	1	11	Ore Mining 9
Leather	3	1	1	1	2	8	Petroleum Ref. 9
Mechanical Prod.	2	3	0	3	3	11	Textiles 9
Nonferrous Mfr	3	3	1	1	3	11	Foundries 8
Ore Mining	3	2	1	2	1	9	Leather 8
Organic Chem.	3	3	3	2	3	14	Pharmaceutical 8
Paint & Ink	3	1	0	1	2	7	Rubber 8
Pesticides	3	2	3	1	1	10	Aluminum Form. 7
Petroleum Ref.	3	1	3	1	1	9	Auto/Laundries 7
Pharmaceutical	2	2	1	1	2	8	Paint & Ink 7
Photo supplies	3	2	0	1	1	7	Photo Supplies 7
Plastic & Syn.	3	3	3	1	2	12	Plastic Process 7
Plastic Process	1	1	1	3	1	7	Adhesives 6
Porcelain	2	2	0	1	1	6	Battery Mfr 6
Printing	3	1	0	1	1	6	Copper Form. 6
Pulp & Paper	3	2	3	1	1	10	Gum & Wood 6
Rubber	2	1	1	3	1	8	Porcelain 6
Soaps	2	1	0	1	1	5	Printing 6
Steam Electric	2	1	3	3	1	10	Coil Coating 5
Textiles	3	1	3	1	1	9	Soaps 5
Timber Products	3	3	1	1	2	10	Explosive Mfr 4

KEY 1 - May 19, 1980 FR (45 FR 33454); 4 fractions = 3, 3f. = 2, 2 or 1f. = 1
2 - before 6/81 = 1; 6/81 - 9/81 = 2; after 9/81 = 3
3 - National = 3, Regional = 1; other = 0
4 - <500 = 1, 500-1000 = 2, >1000 = 3
5 - <5-1, 6-15 = 2, >15 = 3