



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

OFFICE OF ENFORCEMENT

MEMORANDUM

SUBJECT: Determining Whether Revisions to State NPDES Programs Made to Authorize the Issuance of General Permits are Substantial

TO: Enforcement Division Directors, Regions I-X  
NPDES State Directors

FROM: R. Sarah Compton  
Deputy Assistant Administrator  
for Water Enforcement (EN-335)

In a recent memorandum dated December 31, 1980 we set forth procedures to be followed in approving NPDES States' authority to administer general permit programs. Since distribution of that memorandum, we have received numerous complaints regarding EPA's decision to uniformly characterize as substantial every revision of an NPDES State program made to authorize the issuance of general permits. Several States and Regions objected that the need for public comment triggered by this decision would unnecessarily delay the implementation of general permit programs in approved NPDES States. In response to this concern we have re-examined this decision and propose the following change:

Amended Processing Procedures

An approved NPDES State's plan to implement a general permit program will continue to be processed as a revision to the State's NPDES program requiring compliance with the procedures outlined in 40 CFR §123.13. However, these revisions of State NPDES programs need not uniformly be treated as substantial revisions. The determination whether a program revision is substantial will be made by the Regional Administrator. In making this determination the Regional Administrator should consider several factors. Among these are the scope of the intended general permit program in terms of the size and nature of the sources or activities covered and the anticipated environmental effect of the program, the sensitivity of the State's receiving waters, the State's statutory

and regulatory authority for administering a general permit program, and any description of the proposed program provided by the State. Where the Regional Administrator does determine that an NPDES program revision is substantial, public notice must be issued by the Region and an opportunity for public comment provided as required by 40 CFR §123.13(b)(2).

Regional offices should continue to follow the remainder of the program revision procedures established in the memorandum of December 31, 1980. Thus, after examining the State's Attorney General's statement and any other documents which may have been determined to be necessary, and after the public comment period where a program revision is determined to be substantial, an Action Memorandum should be sent from the Regional Administrator to the Administrator recommending action on the State's plan to administer a general permit program. A program revision will become effective when an approval letter is signed and transmitted by the Administrator.

If you have questions concerning this change please contact Karen Wardzinski of my staff at 8-755-0750.