



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

OFFICE OF ENFORCEMENT

MEMORANDUM

TO: Regional Administrators
ATTN: Water Division Directors
Enforcement Division Directors

FROM: Deputy Assistant Administrator for Water Program Operations (WH-546)
Deputy Assistant Administrator for Water Enforcement (EN-335)

SUBJECT: Municipal Wastewater Treatment Ponds

As you know, a change to the secondary treatment regulation (40 CFR 133) is being developed. The amendment will provide authority to make exceptions to the suspended solids limit in the permits for municipal ponds with a capacity of one million gallons per day or less. A copy of the current draft of this regulation is attached.

The draft regulation requires that any adjustment to pond suspended solids be based on the best pond technology for a given area. "Best waste stabilization pond technology" means a statewide or area-wide suspended solids value determined by the permitting authority. The value would be equal to the effluent suspended solids concentrations achieved 90 percent of the time by a representative sample of ponds in the same area. These ponds would have to meet the secondary treatment BOD requirements.

Numerous groups have been briefed on this proposed change and there is virtually unanimous agreement with this approach. Because it seems highly likely that the regulation will be changed, we need to consider very carefully projects involving municipal ponds in the construction grants program. The approaches to permitting and enforcement must also recognize the impending change. Accordingly the following guidance is provided:

1. Where the project is to upgrade a pond solely to meet secondary treatment and would not be necessary if the regulation is revised, Step 2 and 3 grants should be deferred until the regulation is revised. Action should then be based on the final form of the regulation.

2. Constraints on building new ponds for secondary treatment should be relaxed provided there is reasonable assurance they will meet the revised regulation. Awarding of grants in this manner is provided for in 40 CFR 35 which provides for grants for segments of Step 3 treatment works construction. In the event that 40 CFR 133 is not amended for ponds, devices for the removal of suspended solids can be added on to ponds funded in accordance with this provision.

3. Pending final promulgation of the amendment to 40 CFR 133 regarding pond suspended solids, permitting priorities should be adjusted as follows for all POTWs that would be affected by the proposed Special Consideration:

- a) POTWs that do not have a permit should be given lowest priority for issuance;
- b) POTWs that have expiring permits should be given lowest priority for reissuance; and
- c) Modifications should be delayed and condensed into a single action whenever possible.

Final effluent limitations in permits are not to be written according to the proposed amendment unless and until it is finally promulgated. Although it may be appropriate to write interim effluent limitations to reflect it.

4. Contemplated enforcement action against a POTW for a violation of suspended solids limits in the permit should consider whether: a) it is reasonable to expect that the POTW will be eligible for the Special Consideration when it becomes effective, and b) the suspended solids violation is so great as to exceed the limits that are likely to result from the application of the proposed Special Consideration. In the interest of reasonableness and best utilization of available resources, lower priorities should be given to enforcement in situations likely to be remedied by the amendment to 40 CFR 133.

5. The process of determining "best waste stabilization pond technology" may be initiated by the Regional Water Divisions now, wherever it is anticipated that the proposed Special Consideration will be applied. A first step should be to review the data available and arrange any needed additional testing. Although initial work may begin on determinations of "best waste stabilization pond technology," final determinations must await promulgation of the proposed amendment and more detailed guidance that will be developed by the Office of Water Program Operations as the proposal moves toward finalization in

the Federal Register. These determinations should be closely coordinated with the Enforcement Division in the Regions to assure the establishment of readily enforceable conditions and compatibility with the NPDES permitting process.

6. Preliminary contacts with NPDES states should be made to alert them to the potential amendment and any needed technical work leading to the establishment of "best waste stabilization pond technology" that may be anticipated. Joint efforts with all the States are encouraged in view of both the enforcement and construction grants implications.

If this approach should cause any problems in your Region, please let us know.

John T. Rhett

Jeffrey G. Miller

Attachment

[Section 304(d)(1) and 301(b)(1)(B) of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1342, 1345, and 1361)].

Date:

Administrator

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Section 133.103 is amended by adding paragraph (c) as follows:

133.103 Special Considerations

(c) The Regional Administrator (or, if appropriate, the State subject to EPA approval) is authorized to adjust the minimum levels of effluent quality set forth in paragraphs (b)(1), (b)(2) and (b)(3) of 133.102 for any publicly owned treatment works, to conform to the suspended solids concentrations achievable with best waste stabilization pond technology, provided that: (1) waste stabilization ponds are the sole process for secondary treatment; (2) the maximum facility design capacity is one million gallons per day or less; and (3) operation and maintenance data indicate that the requirements of paragraphs (b)(1), (b)(2) and (b)(3) of 133.102 cannot be achieved. The term "best waste stabilization pond technology" means a suspended solids value, determined by the Regional Administrator (or, if appropriate, the State subject to EPA approval), which is equal to the effluent concentration achieved 90 percent of the time within a State or appropriate contiguous geographical area by waste stabilization ponds that are achieving the levels of effluent quality established for biochemical oxygen demand in 133.102(a).