



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

JUL 12 1978

OFFICE OF ENFORCEMENT

n-78-9

MEMORANDUM:

TO : Regional Administrators
Directors, Approved NPDES State Programs

FROM : Assistant Administrator
for Enforcement (EN-329)

SUBJECT: Policies for Reissuing Industrial
NPDES Permits

On May 16, 1978 the Administrator sent a memorandum to you entitled "Reissuing NPDES Permits to Sources Affected by the NRDC Consent Agreement." He indicated in that memorandum that policies and guidance would soon be supplied to aid in the reissuance of the next round of industrial NPDES permits. These policies and guidance have been completed and are enclosed for your use.

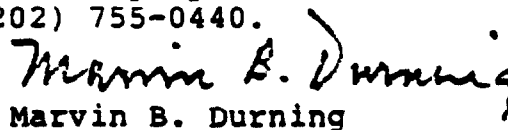
These second round permit policies are specifically designed to achieve the 1984 requirement of the 1977 Clean Water Act in the most orderly manner possible. They represent the product of extensive consultation between my staff and the regional and state personnel who will be responsible for carrying them out. Many of our draft views and recommendations were altered as a result of our discussions with you, and I believe that the resulting policies will provide a sound framework for issuing the next round of NPDES permits.

The attached document is designed to compliment the forthcoming revisions to the NPDES permit program regulations at 40 CFR Parts 122 through 125, and to be consistent with the recent NPDES regulations published at 43 Federal Register 22160 (May 23, 1978). A summary of the prior policies superceded by these second round permit policies appears in Appendix E to the attached policy document, and several relevant opinions recently prepared by the Office of General Counsel of EPA appear in Appendix G.

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Since the second round permits policies and guidance are complex, my staff will be available at your request to meet with you and your staffs to more fully explain the subject. To make such meetings more productive, I suggest that states which desire such a meeting should first contact the appropriate EPA regional office and arrange a combined meeting.

If you desire a meeting with my staff, or if any problems arise in applying the attached policies, please call Mr. Jeffrey G. Miller, Deputy Assistant Administrator for Water Enforcement (202) 755-0440.


Marvin B. Durning

Attachment

cc: Regional Enforcement Division Directors

SECOND ROUND PERMITS POLICY

June 1978

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(A copy of this policy may be requested)



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

AUG 4 1977

THE ADMINISTRATOR

n-78 -10

SUBJECT: "Ex Parte" Contacts in EPA Rulemaking

FROM: The Administrator

TO: Addressees

In this memorandum I set forth the guidelines all EPA employees should follow in discussing the merits of proposed rules with interested persons outside the Agency during the period between proposal and promulgation. The Deputy Administrator and I and our immediate staffs will also observe these guidelines.

The General Counsel has recently informed you that such conversations might result in a rule being held illegal if they took place without notice and opportunity for other interested persons to participate. That advice was based on a recent decision of the United States Court of Appeals for the District of Columbia Circuit. Home Box Office Inc. v. FCC, D. C. Cir. No. 75-1280 (decided March 25, 1977). A subsequent opinion by the same court has moderated that legal danger substantially. Action for Children's Television v. FCC, D. C. Cir. No. 74-2005 (decided July 1, 1977).

However, the legal danger has not disappeared. More fundamentally, I do not believe that EPA should base or appear to base its regulatory decisions on information or arguments presented informally that do not appear on the public record. Accordingly, I am establishing the following guidelines.

Behavior during crucial period between Proposal and Promulgation

During the period between proposal and promulgation of a rule all employees may and should be encouraged to respond to inquiries about the rule; explain how it would work, and attend public meetings of interested groups (such as trade association conventions).

During this period agency employees may (and often should) hold meetings with interested persons for the purpose of better understanding any technical scientific and engineering issues involved or discussing

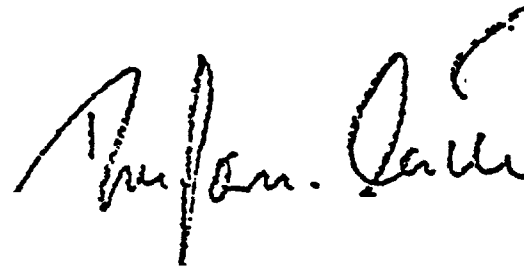
the broader questions involved. In all cases, however, a written summary of the significant points made at the meetings must be placed in the comment file.

This requirement applies to every form of discussion with outside interested persons whether at a trade association meeting, at EPA, or over the telephone as long as the discussion is significant. The memorandum should be prepared and forwarded within two or three days of the meeting at the latest. All new data or significant arguments presented at the meeting should be reflected in the memorandum. Discussions of generalities or simple explanations of how the rule would work need not be included.

I will continue to explore with the General Counsel's office and others whether further actions to ensure that we provide full notice and opportunity for comment in all our procedures are necessary.

ADDRESSEES

Deputy Administrator
Assistant Administrators
Deputy Assistant Administrators
Office Directors
Regional Administrators
Associate General Counsels
Regional Counsels

A handwritten signature in dark ink, appearing to read "Rufus L. Call". The signature is written in a cursive, flowing style with a large initial 'R' and a long, sweeping underline.