



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

SEP 1 1978

MEMORANDUM

OFFICE OF ENFORCEMENT

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

n-78-11

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

*John T. R. R. R.*

SUBJECT: Suspended Solids Effluent Limitations for Publicly Owned  
Wastewater Treatment Ponds Followed by Other Treatment  
Elements

BACKGROUND

The final rule regarding suspended solids limitations for publicly owned wastewater treatment ponds was published in the Federal Register on October 7, 1977. This amendment to the Secondary Treatment Regulation (40 CFR 133) provided for a case-by-case adjustment of the suspended solids effluent limitations when a wastewater treatment pond is the sole secondary treatment process.

Region IV has raised the question, "May the suspended solids effluent limitation be adjusted for a wastewater treatment pond system that includes additional elements, such as a filter or microstrainer?"

ISSUE

It is understood that the more specific question is, "May a wastewater treatment pond system that includes additional elements, such as a filter or microstrainer, be allowed a suspended solids effluent limitation that exceeds 30 mg/l?"

DISCUSSION

Where an existing wastewater treatment pond is currently unable to achieve the BOD effluent limitation of 30 mg/l and the most cost-effective method of achieving compliance is to install additional unit

processes, (e.g., microstrainers, pressure filters, rock filters, etc.), it is permissible to adjust the suspended solids limitation to permit values which may be greater than 30 mg/l. There is very little data available to indicate the suspended solids effluent value that may be expected. However, the effluent should contain less suspended solids than the adjusted suspended solids limits established under 40 CFR 133.103(c) for ponds which are not followed by additional treatment elements.

When sufficient operation data has been accumulated, it may be necessary to establish a suspended solids effluent limitation for this subcategory of wastewater treatment ponds. This value may be derived by analyzing the performance data to determine the suspended solids in the effluent from systems that are concurrently achieving a BOD value of 30 mg/l or less. The only data that may be used for this analysis is that taken during periods when all elements of the system are functioning at design capacity.


Since the question of suspended solids adjustments for a wastewater treatment pond system of the type described above was not addressed during the development or comment period for the amendment to the regulation, it was not included in the criteria that a Regional Administrator or State Director may use to establish an adjusted value. The possibility of subcategories was recognized and addressed in the memorandum dated February 16, 1978, which provided guidance for implementing the amendment. The purpose of the amendment was to assure the continued availability of a cost-effective treatment process for small municipalities. If additional treatment elements will accomplish this, then in the interest of obtaining greater environmental benefits, wastewater treatment pond systems, followed by additional treatment elements, may be allowed an adjustment of the suspended solids limitation.

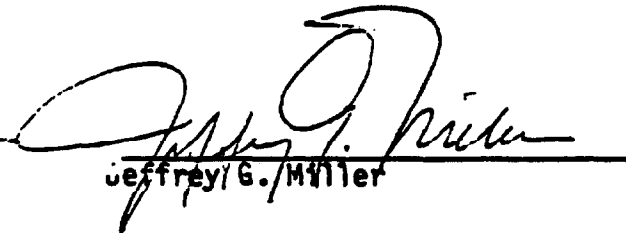
#### POLICY

Wastewater treatment pond systems that include additional elements such as filters or microstrainers may be considered for an adjustment of the suspended solids effluent limitation on a case-by-case basis, provided:

1. An adjusted suspended solids limitation has been established for waste stabilization ponds within the geographical area. The adjusted value must be determined according to the guidelines set out in 40 CFR 133.103(c).
2. Adjusted suspended solids effluent limitations cannot exceed those established pursuant to 40 CFR 133.103(c) for ponds which are not followed by additional treatment elements.

3. Suspended solids effluent limitations for an existing wastewater treatment pond system with existing additional elements must be either: 1) the values established pursuant to 40 CFR 133.103(c), or 2) the actual operation value, whichever is the lesser.
4. Where added unit processes to existing ponds are planned, an estimate is made of the suspended solids limitation that can reasonably be expected with the additional units.

  
John T. Rhett

  
Jeffrey G. Miller



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

JUN 16 1978

THE ADMINISTRATOR

n-78-8

MEMORANDUM

TO : Assistant Administrator for Enforcement (EN-329)  
Deputy Assistant Administrator for  
Water Enforcement (EN-335)  
Regional Administrators  
Regional Counsels  
Regional Enforcement Directors

SUBJECT: Ex Parte Contacts in NPDES Adjudicatory Hearing  
Decisions

This memorandum sets forth limitations on contacts among those EPA employees who are involved in preparing and issuing initial and final NPDES decisions of the Regional Administrator or the Administrator, and other Agency staff and persons outside EPA. Effective immediately, these requirements apply to all EPA employees involved in NPDES proceedings.

Several courts have now held that the hearing required by Section 402(a) of the Clean Water Act must be "on the record," triggering the formal adjudication requirements of the Administrative Procedure Act. Seacoast Anti-Pollution League v. Costle, No. 77-1284 (1st Cir. Feb. 15, 1978); United States Steel Corp. v. Train, 556 F.2d 822 (7th Cir. 1977); Marathon Oil Co. v. EPA, 564 F.2d 1253 (9th Cir. 1977). Among these requirements is that embodied in the Government in the Sunshine Act, Pub. L. 94-409, 90 Stat. 1241 (Sept. 13, 1976), prohibiting EPA decision-makers in formal APA hearings from engaging in ex parte discussions of the merits with "interested persons outside the agency." 5 U.S.C. §557(d). The APA also requires that no one involved in "investigative or prosecuting functions" may "participate or advise in the decision, recommended decision, or agency review . . ." 5 U.S.C. §554(d).

It is not clear that Agency enforcement staff involved in NPDES adjudicatory hearings are performing "investigative or prosecuting functions." However, EPA should adopt a policy that not only complies with the law, but avoids even the appearance of unfairness. Accordingly, I am setting out the following requirements.

When these Requirements Apply

Consistent with the Sunshine Act, all the requirements in this memorandum are applicable from the date public notice of an evidentiary hearing is published under 40 C.F.R. §125.36(c)(4), until the date of final Agency action on the permit application.

Requirements Applicable to Regional Administrators and their Assistants

Regional Administrators and staff members selected to assist them in writing an NPDES decision will refrain from ex parte discussions of the merits of the proceeding with any interested person outside the Agency. They should also refrain from any such discussions with the Assistant Administrator for Enforcement or his staff, and the Regional Enforcement Director and his staff.

The term "interested person outside the agency" appears in the Sunshine Act, and refers generally to anyone who has a stake in the outcome of the proceedings greater than a member of the general public. The term includes, for instance, all parties to the hearing and their competitors, public officials (including elected representatives such as mayors, Senators, and Congressmen), environmental and other interest groups, and companies, organizations or associations with some special interest in the issues (for example, the Chamber of Commerce or industry trade associations).

The Water Quality Division of the Office of General Counsel has been assigned to be available to assist me, the Deputy Administrator, or any judicial officer in preparing final decisions in NPDES proceedings. Accordingly, the Regional Administrator and his staff, and Regional enforcement staff, may not discuss the merits of the case with an attorney in that Division.

However, to avoid total isolation of the Regional Administrator and his staff from assistance, one or two attorneys in the Water Quality Division will be designated by the Associate General Counsel for Water to serve as Special Counsel to advise them in preparing decisions. Such attorneys may not advise me or my staff in NPDES decisions. Currently, Barry Malter (FTS 755-0760) and Nancy Othmer (FTS 755-0433) are serving in that capacity.

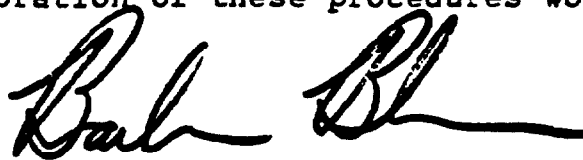
#### Administrator and his Staff

The Administrator (and the Deputy Administrator, when she is Acting Administrator for the purpose of making a final decision on an NPDES appeal), and any judicial officer assigned to assist us in preparing an NPDES decision, will, like Regional Administrators, refrain from ex parte discussions of the merits of the proceeding with all "interested persons outside the Agency," and Enforcement staff. We will, where necessary, call upon other Agency personnel, including the General Counsel and her staff, excluding any attorneys designated as Special Counsel to assist Regional Administrators.

#### Procedures in case of Departure from these Requirements

Occasionally these requirements may be abrogated through inadvertence. Or, if a Congressman or Senator requests a briefing on a pending matter (see 5 U.S.C. §557(d)(2)), discussions otherwise proscribed by this memorandum may be unavoidable. In any case where such a discussion occurs, the substance of the discussion must be promptly reduced to writing, and a copy served upon all parties to the proceeding.

I have asked the Assistant Administrator for Enforcement and the General Counsel to review applicable NPDES regulations to see to what extent incorporation of these procedures would be appropriate.



for Douglas M. Costle