EC-P-1998-112

VI.B.31.

"ENFORCEMENT INITIATIVE FOR FAILURE TO ADEQUATELY IMPLEMENT APPROVED LOCAL PRETREATMENT PROGRAMS", dated February 1, 1989.

1001

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FEB 1 1989

MEMORANDUM

SUBJECT: Enforcement Initiative for Failure to Adequately Implement Approved Local Pretreatment Programs

FROM: James R. Elder, Director
Office of Water Enforcement and Permits (EN-335)

Edward E. Reich
Deputy Assistant Administrator
for Civil Enforcement (LE-133)

TO: Regional Water Management Division Directors
Regional Counsels

As part of our continuing policy to seek improvement in the pretreatment implementation efforts of approved local pretreatment programs on a national basis, we have decided to initiate a nationally-coordinated failure-to-implement pretreatment program enforcement initiative. This initiative will address inadequate implementation efforts of local pretreatment programs by taking formal enforcement actions against noncomplying POTWs in every Region within a specific timeframe.

Effective implementation of approved pretreatment programs by municipalities is critical to controlling the discharge of toxic pollutants to surface waters; protecting the substantial financial investment in POTWs; protecting POTW worker health and safety; and preventing the contamination of sludge. Yet, data from the most recent QNCR report indicates that over 250 POTWs were reported for various aspects of inadequate pretreatment program implementation. Preliminary data from the Pretreatment Permits and Enforcement Tracking System (PPETS) indicates that approximately 47% of POTWs with approved local pretreatment programs may be in violation of one or more of the three pretreatment reportable noncompliance (RNC) criteria related to issuance of control mechanisms, inspections, or adequacy of

enforcement against significant industrial users in significant noncompliance (SNC). Given the fact that 90% of the pretreatment programs have been approved for at least three years, we believe that these POTWs have had adequate time to fully implement their programs.

Thus, we believe a national enforcement initiative is both appropriate and necessary to ensure that approved local pretreatment programs are fully implemented across the country. We consider such an enforcement initiative as our top water quality enforcement priority for this year. On January 17 and 18, Bill Jordan and John Lyon held conference calls with your Compliance and Regional Counsel Branch Chiefs and there was general support from all the Regions for this enforcement initiative. In fact, several Regions already had designated pretreatment enforcement as their top priority.

The initiative will include both administrative penalty orders (APOs) and civil judicial actions, but we would like to see each Region contribute at least one civil judicial referral to the initiative. Regions which directly oversee larger numbers of approved local pretreatment programs should contribute additional referrals and administrative penalty orders. States which have received approval to administer pretreatment programs are invited to participate in this initiative, with State Attorneys General filing civil judicial cases in State courts. Where appropriate, Regions and States should include key industrial users which are violating pretreatment standards and requirements as part of a POTW civil referral or proposed APOs.

EPA Regions are requested to provide EPA Headquarters with a proposed list of POTW candidates (including those in States with approved pretreatment programs) for this enforcement initiative. Among the criteria which the Regions should consider in the selection of candidates are the following:

- The POTW has been listed on the QNCR for pretreatment violations for more than two quarters,
- The POTW has discharges which impact near-coastal waters and enforcement would support the Agency's Near Coastal Water Initiative,
- The POTW exceeded one or more of the pretreatment RNC criteria or other specific requirements in their permit or approved program (The magnitude of such exceedances should also be considered.), or

- The POTW has unresolved TRC or chronic effluent violations (including heavy metal effluent violations) which appear to be related to inadequate pretreatment implementation.

All candidates should have an NPDES permit which, at a minimum, requires implementation of the approved pretreatment program. Also, the approved program should provide an adequate statement of program requirements.

Upon review of the Regions' list of candidates, Headquarters may inquire about additional POTW enforcement candidates as appropriate. EPA Headquarters staff will be available for two-day Regional visits (as necessary) to provide a better opportunity for face-to-face discussion of POTW enforcement candidates and details of the initiative.

Key dates in the schedule for this initiative are shown below:

o 2/6-3/1/89	Review of QNCR, PPETS, etc. by Region
o 3/3/89	Submission of POTW candidates (designated as probable referrals or APOs) to EPA Headquarters by Regions
o 3/6-4/7/89	Dialogue, negotiation, and two-day visits (as necessary) to Regions to discuss and confirm candidates
o 3/20-5/31/89	Preparation of referral/APO packages by Regions
o 4/3-6/2/89	Submission of referrals and APOs (as appropriate) by Regions to EPA Headquarters

o 4/3-7/7/89	Headquarters review of referrals and APOs (as appropriate) and subsequent referral of civil cases to the Department of Justice
o 4/3-8/18/89	Civil judicial cases filed by the Department of Justice and proposed APOs issued
o 8/31/89	National press release regarding the initiative (will include similar cases filed and APOs issued since 1/1/89)

Regarding APOs, please note that Headquarters review of APOs will only be required for those Regions which have not yet fulfilled the concurrence requirements identified in the guidance on administrative penalties issued on August 27, 1987. Regarding referrals, neither Headquarters nor the Department of Justice will stockpile or hold cases expressly to fit the proposed filing window but will continue to move the cases through the system.

Documents such as the August 4, 1988 "Guidance on Bringing Enforcement Actions Against POTWs for Failure to Implement Pretreatment Programs" and the December 22, 1988 "Guidance on Penalty Calculations for POTW Failure to Implement an Approved Pretreatment Program" should be utilized in this initiative as well as in other formal enforcement actions for failure to implement.

In regard to past civil referrals and APOs for failure to implement, for the purpose of this initiative, Headquarters will credit the Regions with civil referrals which are still in the review pipeline but not yet filed.

In a related matter, a preliminary review of PPETS indicates that data is still missing for the following large cities: Boston, Buffalo, Detroit, St. Louis, Phoenix, Tucson, San Francisco, Honolulu, Seattle, and Portland. Regions should make every effort to provide such data as soon as possible, but no later than March 6, 1989.

Thank you for your cooperation in this effort. If you have any questions or concerns in regard to this enforcement initiative, please contact Jim Elder (FTS-475-8488) or Bill Jordan (FTS-475-8304) in OWEP or John Lyon (FTS-475-8177) in OECM. If your staff wishes to discuss specific details of the initiative, including the selection process, proposed Regional visits, merits of a potential case, etc., please contact either Andy Hudock (FTS-382-7745) or David Hindin (FTS-475-8547) of our respective staffs.

cc: Rebecca Hanmer, OW
David Buente, DOJ
Cynthia Dougherty, OWEP
Susan Lepow, OGC
Regional Counsel Water Branch Chiefs
Regional Compliance Branch Chiefs
Regional Pretreatment Coordinators/Liaisons