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

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April 27, 1977

OFFICE OF ENFORCEMENT

MEMORANDUM

TO: Regional Enforcement Directors

SUBJECT: Enforcement of 1977 Deadline Violations Against Major Industrial Dischargers

As you are all aware, the first important date in the enforcement of the Federal Water Pollution Control Act Amendments of 1972 (the Act) will soon be at hand. Sections 301(b)(1)(B) and (C) establish July 1, 1977, as the date by which compliance must be achieved with the requirements of State water quality standards and the requirements of best practicable control technology currently available (BPT) for industrial dischargers. We have attempted to formulate policies which deal equitably with dischargers who cannot meet the 1977 deadline through no fault of their own. On June 3, 1976, I sent you a policy memorandum describing the use of Enforcement Compliance Schedule Letters (ECSLs) in situations where the discharger has been progressing in good faith.

There can be no doubt that the Agency must pursue vigorous enforcement actions against those dischargers not qualifying for ECSLs, if the credibility of these key portions of the Act is to be maintained. We have determined that mere remedial actions, such as administrative orders, are generally inappropriate when dealing with violations of this statutory date. The primary legal mechanism for enforcement of the July 1, 1977, deadline should be a referral to the United States Attorney for civil or criminal proceedings.

Given the large number of expected violators and the need for prompt Agency action after July 1, 1977, it is necessary for each Region to evaluate and prepare such civil and criminal actions as may be appropriate for referral to the United States Attorney. At the earliest practicable

time, a meeting should take place with the United States Attorney of each affected jurisdiction to discuss enforcement strategy and priorities in the filing of these cases. To some extent the Agency must accommodate the particular preferences of the United States Attorney without sacrificing the objects of the proposed enforcement action. The standardized referral package can be used for each case, which should include a statement of the statutory basis of liability, the elements of the offense (the discharge, of pollutants, from a point source, into navigable waters) and the anticipated defenses. Affidavits should accompany the package so that summary judgments can be sought in civil actions. In order that we will be able to act swiftly to enforce the 1977 date, it is crucial that technical preparation of these cases begin immediately, with individual referral packages prepared in May and June.

In addition, NPDES States would be expected to take timely and similarly appropriate enforcement actions. If States cannot give adequate assurances that such actions will be taken, the Region should prepare referral packages for those cases as well. In most cases, the issuance of Notices of Violation would be appropriate before referral.

In the past, we often have used the consent order to resolve enforcement cases with a minimal expenditure of Agency time and resources. It should be made clear to the United States Attorney, however, that consent orders for violation of the July 1, 1977, deadline will not be acceptable unless accompnaied by a substantial penalty. I am also circulating a policy memorandum on the factors appropriate for consideration in the determination of a penalty. This policy memorandum should also be used to determine the general adequacy of penalties assessed by States when they enforce NPDES permits.

So that the Administrator and I can be fully aware of the Agency's plans for and progress toward enforcement of the 1977 deadline and the Agency's litigation strategy in each case, please prepare and submit for my review by May 31, 1977, a summary report of anticipated enforcement actions against major industrial dischargers. That report should include: (1) a list of major dischargers not expected to meet the 1977 deadline, ranked in order of importance; (2) a brief description of the nature of the anticipated violations; (3) expected date of compliance with BPT; and (4) an enforcement action timetable for each case.

As I am sure you are aware, release of these reports could clearly deprive dischargers of their rights to a fair and impartial trial on the merits. Consequently, these reports should be marked "CONFIDENTIAL" and should be treated as such by all employees involved in their preparation and use.

While I realize that these actions will place a strain on Enforcement Division personnel, it is essential that the 1977 deadline be enforced vigorously. Please let me know if there is anything I can do to expedite these cases, or to relieve your administrative burden.

/s/

Stanley W. Legro