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

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3 JUN 1977

OFFICE OF ENFORCEMENT

MEMORANDUM

To: Regional Administrators

Subject: Enforcement Against Industrial Dischargers Scheduled to Discharge to Presently Unavailable Publicly Owned Treatment Works

A number of industrial dischargers will fail to achieve the statutory July 1, 1977, deadline for best practicable control technology (BPT) because their permits contemplated ultimate hookup to a publicly owned treatment works (POTW) that will be unavailable or to which a connection will be unavailable on July 1, 1977. Since the factual situations will vary considerably, no one approach will be appropriate for handling every case; rather, this memorandum offers general guidance for formulating approaches in individual cases.

Assuming there are no human health or welfare problems associated with the continued direct discharge of process wastes, it would not appear equitable or cost-effective to require a potential user of a POTW to construct a separate pollution control facility if the municipal facility will be available in the near future. Accordingly, if the potential user and the municipal facility meet the following criteria, the Regional Offices should generally exercise forbearance in enforcement:

a. The municipal facility has completed its Step 2 planning and has applied for Step 3 funding with Step 3 funding being available no later than the end of FY 1978.

b. The potential user and the municipality have executed a contract (binding on both parties) to have the waste treated by the municipality.

c. The potential user has either presently completed all necessary prerequisites to having its

waste treated by the municipality, or adheres to a schedule to do so by any mandated deadlines, such as those outlined in its permit or d. below. Necessary prerequisites include compliance with applicable pretreatment standards and other pretreatment conditions established in its permit, payment of fees, installation of private connecting sewerage, etc.

d. Where municipal collection systems must be extended to enable the potential user to utilize the municipality's treatment plant, such extensions will occur by July 1, 1979, or by the expected completion of treatment plant construction, whichever is later, assuming compliance with the requirements of subparagraph a.

Where an industrial discharger meets the criteria outlined above and also meets the criteria established in my memorandum of June 3, 1976, for the issuance of an ECSL, an ECSL should be issued.

If an industrial discharger does not meet the criteria outlined above, the Regional Offices should generally initiate an enforcement action to require the industrial discharger to proceed with the construction of its own BPT facilities.

There may be cases in which the industrial discharger meets the criteria outlined above but in which expeditious tie-in appears doubtful because the municipality is not proceeding expeditiously to construct the POTW. In these cases the municipality should be a potential target for enforcement. In enforcement against the municipality consideration should be given to taking joint or concurrent enforcement action against the municipality and industrial dischargers (some minors as well as all majors) which are scheduled to tie in to the POTW and which have not received ECSLs. Such actions should cause a number of industrial dischargers to prod a lethargic municipality toward compliance. The possibility of such industrial dischargers installing their own treatment systems and continuing to discharge directly, rather than discharging to the municipal system and paying resulting user charges, should provide additional incentive for prompt municipal action. In either event, such joint or concurrent enforcement activity should provide the municipality's compliance efforts with an added impetus.

In determining a course of action against industrial dischargers proposing to tie in to POTWs, consideration should be given to the relation between the magnitude of the industrial flow and the POTW's flow. Thus in a case where an industry's waste will constitute substantially all of the POTW's flow, the POTW will essentially serve as a shield to protect the industry from Federal enforcement, and Federal construction grant funds could be freed for more effective use elsewhere by constructing a smaller POTW to treat the remaining sanitary flow. Absent overriding considerations to the contrary, enforcement should be initiated against the industry to require it to proceed with the construction of its own BPT facilities under these circumstances.

Questions on this policy should be directed to Brian Molloy at 755-8731.

Stanley W. Legro

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