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

MAY 17 [redacted]

OFFICE OF WATER

MEMORANDUM

SUBJECT: Section 301(g) Variance Requests

TO: Regional Water Management Division Directors

FROM: for Martha G. Prothro, Director
Permits Division (EN-336)

The Permits Division has recently been notified by several Regions of receipt of Section 301(g) (Clean Water Act) water quality variance requests for facilities in the iron and steel and inorganic chemicals industrial categories. Questions have also been raised concerning the use of the draft 301(g) application form and technical guidance manual which I distributed to you for comment on October 25, 1982 (Attachment I - Transmittal Memo). Before addressing these questions, the procedures for 301(g) requests are briefly discussed as well as industries likely to request 301(g) variances.

As you know, according to the Clean Water Act (CWA), Section 301(j)(1)(B), an initial request for a 301(g) variance must be submitted to EPA by the applicant no later than 270 days after promulgation of the applicable best available technology economically achieveable (BAT) guideline. Initial requests that were received by the Regions in September 1978, in response to those guidelines promulgated before December 1977 are also valid, in accordance with section 301(j)(1)(A) of the CWA. The procedures for processing these requests can be found in the National Pollutant Discharge Elimination System, sections 122.21(l) and (n) of the April 1, 1983 Environmental Permit Regulations (48 FR 14146).

With these deadlines for 301(g) requests there could be a significant number of such requests in the immediate future. Attachment II provides a listing of the type of industry most likely to request a variance and when to expect the initial request. The list also gives the number of major facilities in each category, but we expect only a fraction of these to request 301(g) variances.

In terms of the application form and guidance that should be used for 301(g) requests, we recommend using the draft application form and guidance mentioned above. However, you should assure the applicant that there is no obligation to use the draft application form and guidance, and that until final regulations and guidance are published, decisions on 301(g) variances will be conducted on a best professional judgment (BPJ) basis.

You should note that, based on Regional and Headquarters comments received from last year's request, we are in the process of revising the 301(g) regulation and technical guidance manual. The major changes are: 1) developing procedural and technical consistency with Section 301(h), where applicable; 2) eliminating the Cancer Assessment Group (CAG) list and the bioconcentration factor (BCF) as two criteria in the human health assessment; and 3) eliminating a proposed EPA mixing zone policy. We do not anticipate many changes to the 301(g) application form.

The revised technical guidance manual which will be available this summer will address impact to public water supplies, recreational activities, and point and nonpoint sources in much the same manner as the 301(h) regulation. For the human health assessment, we will delete the BCF and CAG list review and ask the applicant to generally follow the criteria outlined by EPA in the methodology for deriving human health criteria (45 FR 79347) while EPA headquarters (ORD) will review each 301(g) human health assessment. With regard to mixing zones, EPA recommends using mixing zones designated in the State water quality standards or in certain situations, site-specific, State-determined mixing zones.

The target date for publishing the proposed regulation is October, 1983. The current plan is to keep the technical guidance manual and application form in draft, and separate from the regulation which will cover the procedural aspects of the 301(g) process.

If you have any questions please have someone on your staff call me 8/755-2545 or Bob Cantilli at 8/426-7035.

Attachments

Attachment I

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

OFFICE OF WATER

OCT 25 1982

MEMORANDUM

SUBJECT: Review of Draft 301(g) Regulation, Preamble, Application Form and Technical Guidance Manual

TO: Regional Water Management Division Directors

FROM: Martha G. Prothro, Director
Permits Division (EN-336) Martha Prothro

Attached for your review and comment are drafts of the Section 301(g) regulation and preamble, application form and technical guidance manual. These materials are early drafts developed by staff that we hope to have prepared by December 31, 1982, for internal Office of Water review. We are soliciting Regional Office input at this time to assure that Regional concerns regarding the 301(g) regulation are considered early in the development process and to provide a document for interim use on 301(g) considerations. Section 301(g) of the Clean Water Act provides a variance from Best Available Technology Economically Achievable (BAT) requirements for nonconventional pollutants if an applicant can prove that treatment less stringent than BAT will not result in water quality that interferes with the maintenance of a balanced population of fish, shellfish, and wildlife or impacts recreation, public drinking water supplies, other point and nonpoint source treatment controls or human health.

Section 301(g) requires consideration of a number of complex factors in order to qualify for variance consideration. To address these factors the draft regulation emphasizes the use of EPA water quality criteria numbers and the EPA methodology for deriving criteria numbers. The draft regulation provides, in large part, that a 301(g) variance request is evaluated by making a comparison between the most stringent water quality criterion number for the nonconventional pollutant(s) and the concentration of the nonconventional pollutant(s) attained at the edge of a State or EPA-approved mixing zone. If the concentration of the

nonconventional pollutant exceeds the EPA water quality criterion number at the edge of the mixing zone, the variance will be denied. The regulation also requires consideration of the potential for bioaccumulation of the nonconventional pollutant and whether the pollutant is a carcinogen. Other factors such as recreation, public drinking sources and point and nonpoint source treatment impacts must also be weighed before a variance is granted.

Please comment not only on the specifics of this draft but also on whether additional or different factors should be considered for 301(g) regulation. Provide comments to Permits Division by no later than November 19, 1982. If you have any questions concerning the draft regulation, application form or technical guidance manual, please call Bill Jordan, Chief, NPDES Technical Support Branch, (8/426-7010) or Bob Cantilli of his staff at (8/426-7035).

cc: Regional Permit Branch Chief
301(g) Work Group Members

Attachment II

Primary Industries Eligible for 301(g) Variances

Industry	Pollutant/s	Final Reg	Initial Req. Date*	# of Majors**
Aluminum Forming	Aluminum	7/83	4/84	102
Coil Coating	Iron/Aluminum	11/82	8/83	19
Electrical Components	Fluoride	3/83	12/83	17
Foundries	4AAP(total phenols)	8/83	5/84	25
Inorganic Chemicals	Chlorine Fluoride COD	6/82	3/83	45
Iron and Steel	Ammonia 4AAP(total phenols)	5/82	2/83	149
Nonferrous metals	Fluoride Aluminum Ammonia	1/84	10/84	130
Pesticides	COD/many pesticides	12/83	9/84	125
Steam Electric	Chlorine	11/82	8/83	662
			Total:	1274

*Initial request must be submitted 270 days after promulgation of guideline. 40 CFR 122.21(n)(2) authorizes a 6 month extension to submit a completed 301(g) request.

**The Agency received 2400 initial requests for variances in 1978 which includes both major and minor permits.