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

OCT 13 1977

OFFICE OF ENFORCEMENT
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MEMORANDUM

TO: Regional Administrators
Approved NPDES State Directors

FROM: Deputy Assistant Administrator for Water Enforcement (EN-335)

SUBJECT: Policy Regarding the Inclusion in Permits of Effluent Parameters More Stringent Than or Additional to Those Based on Secondary Treatment or Effluent Guidelines

The secondary treatment standard (municipal dischargers) and effluent guidelines (non-municipal dischargers) provide a minimum base from which to determine permit effluent limitations. The Office of Enforcement has received several requests for guidance regarding the inclusion in permits of effluent parameters more stringent than or in addition to these minimum requirements. In order to address these requests in a comprehensive manner, this policy describes the full range of situations where more stringent or additional parameters may be applied to municipal and non-municipal dischargers.

I. Municipal Dischargers

A. General Policy

Ordinarily, effluent limitations in an NPDES permit for a municipal discharger should be consistent with the parameters for BOD, SS, and pH which constitute secondary treatment, and should be limited to those parameters (See 40 CFR 133.102).

B. Exceptions

Effluent limitations in addition to or more stringent than those promulgated in 40 CFR 133.102 are appropriate in the following circumstances:

a. Where such effluent limits are necessary to achieve best practicable waste treatment technology (BPWTT) pursuant to sections 301(b)(2)(B) and 201(g) of the Act;

b. To achieve water quality standards established under section 303 of the Act or to attain or maintain a specified water quality through water quality related effluent limits established under section 302;

c. To conform to the conditions of a State certification under section 401 of the Act;

d. To incorporate any requirements established pursuant to Federal or State law or regulations in accordance with section 301(b)(1)(C) of the Act;

e. To be consistent with the requirements of a Water Quality Management plan pursuant to section 208(e) of the Act;

f. To incorporate any requirements or limitations as necessary pursuant to NEPA where construction grants are involved;

g. To incorporate standards promulgated under section 307(a) of the Act;

h. To incorporate section 403(c) criteria established for ocean discharges;

i. To incorporate limits for toxic pollutants, particularly to protect downstream water supplies or to address ambient levels of those pollutants;

j. Where the character of the wastes discharged indicates that an additional parameter or parameters other than those based on secondary treatment are significant (particularly to reflect pretreatment requirements on contributing industries or treatment by other than a conventional secondary system), and must be addressed on a case-by-case basis.

C. Discussion

The exceptions listed in sections (a) through (i) above should be sufficiently clear that no further explanation is warranted. For reference in this regard, however, Decision of the General Counsel No. 14 is attached.

Exception (j) envisions a facility which, while municipally-owned, handles discharges of substances incompatible in normal secondary treatment systems. In these situations, the facility actually falls outside of the circumstances contemplated by EPA's secondary treatment standards (40 CFR 133.102). In general, both those standards and the language of the Act [section 301(b)(1)(B)] are based on the assumption that the facility is a normal secondary treatment system and that the pollutant character of the discharge is primarily BOD and suspended solids, with other incompatible wastes being removed through proper pretreatment. However, in its explanation of the intended use of the secondary treatment standards, EPA expressly indicated that additional permit limitations are appropriate on a case-by-case basis where this assumption proves to be unfounded.

> It should be noted that it is intended that permits will be issued to publicly owned treatment works which may impose effluent limitations applicable to pollutants other than biochemical oxygen demand, suspended solids, pH, and fecal coliform. Such limitations will reflect and take into consideration pretreatment requirements that may be imposed upon specific discharges pursuant to section 307, and such pretreatment requirements will take into account levels of reductions which will be attainable by a given municipal treatment by secondary treatment. [38 F.R. 10642 (April 30, 1973)].

The authority to include such additional limitations is based on section 402(a) of the Act (see Decision of the General Counsel No. 33, Issue III, attached).

This approach to POTW effluent limitations is particularly significant in dealing with a POTW handling industrial wastes. A clear example of such a POTW is one serving an industrial park, which may primarily handle plating wastes rather than BOD and suspended solids. In fact, a facility of this sort is a hybrid, neither purely industrial nor purely municipal in the character of its wastes, but classified municipal by the fortuity of municipal ownership. In these circumstances, additional limitations based upon the particular character of the influent and applicable effluent guidelines should be imposed as an NPDES permit requirement.

Additional parameters may also be significant where non-secondary pollutants, such as lead or mercury, are contained in the waste material treated by the POTW as the result of runoff and other "indirect" sources.

II. NON-MUNICIPAL (INDUSTRIAL) DISCHARGERS

A. General Policy

Ordinarily, effluent limitations in an NPDES permit for an industrial discharger should be consistent with the parameters established in applicable national effluent guidelines, and should be limited to those parameters. Less stringent effluent limitations may be included in a permit only through the use of established variance mechanisms, including those available under section 301(c) of the Act.

B. Exceptions

Effluent limitations on parameters in addition to or more stringent than those contained in promulgated national effluent guidelines are appropriate only in the following circumstances:

a. To achieve water quality standards established under section 303 of the Act or to attain or maintain a specified water quality through water quality related effluent limits established under section 302;

b. To conform to the conditions of a state certification under section 401 of the Act;

c. To incorporate any requirements established pursuant to Federal or State law or regulations, in accordance with section 301(b)(1)(C) of the Act;

d. To be consistent with the requirements of a Water Quality Management plan pursuant to section 208(e) of the Act;

e. To incorporate standards promulgated under section 307(a) of the Act;

f. To incorporate any other requirement or limitations into a new source permit as necessary pursuant to NEPA;

g. To comply with section 403(c) criteria established for ocean discharges;

h. To incorporate limits for toxic pollutants, particularly to protect downstream water supplies or to address ambient levels of those pollutants;

i. Where a parameter not included in promulgated effluent guidelines is important and its control on a case-by-case basis pursuant to section 402(a)(1) is necessary to carry out the provisions of the Act;

j. Where a variance to best practicable control technology (BPT) effluent guidelines in the form of additional or more stringent parameters is warranted by "fundamentally different factors."

C. Discussion

It should be noted that more stringent effluent limitations are not to be applied in first round permits for exemplary facilities solely because the facilities have achieved effluent limitations better than those set forth in the guidelines. The presence of exemplary plants is essential to the guidelines development because these facilities and their pollution control methods are investigated as a basis for the determination of the degree of pollution control which can be achieved. Placing effluent limitations on an exemplary facility more stringent than required by the effluent guideline solely because the facility has exceeded the guideline to which it contributed is inequitable and may be detrimental to future technological development. However, there may be cases involving second round permits where the conditions in the original permit are more stringent than those required by subsequently promulgated effluent guidelines. This situation is not addressed by this policy but is under consideration as one of the many issues related to the issuance of second round permits.

Copies of OGC's Decisions Nos. 14 and 54, which provide a legal discussion for allowing permit limits more stringent than those provided in the EPA effluent guidelines and standards, are attached for further reference.

Jeffrey G. Miller

Attachments

cc: Regional Enforcement Division Directors
Regional Permit Branch Chiefs