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

OFFICE OF
WATER

Mary Jo M. Aiello, Chief
Bureau of Pretreatment and Residuals
Wastewater Facilities Regulation Program (CN 029)
New Jersey Department of Environmental
Protection and Energy
Trenton, NJ 08625-0029

Dear Ms. Aiello:

Thank you for your letter of January 25, 1993, to Jeffrey Lape of my staff regarding the New Jersey Department of Environmental Protection and Energy's (the Department) proposed policy on waivers from pH limits applicable to industrial discharges to Publicly Owned Treatment Works (POTWs). Subject to the qualifications stated below, your proposed policy is consistent with the federal regulations.

Your letter relates to the application of 40 CFR 401.17, which allows facilities that employ continuous pH monitoring to exceed certain pH limits one percent of the time. Your letter correctly notes that 40 CFR 401.17 applies only to discharges to surface waters, but inquires whether an analogous policy could be applied to discharges to POTWs.

We believe an analogous policy could be applied to discharges to POTWs, subject to several restrictions. First, the federal pretreatment regulations contain a specific prohibition against discharges with a pH below 5.0, from which no waivers are allowed unless the treatment works is specifically designed to accommodate such discharges (40 CFR 403.5(b)(2)). Your letter correctly acknowledges that, except for such specifically designed treatment works, waivers below this minimum limit would not be consistent with federal regulations. Second, although federal pretreatment regulations do not include an upper pH limit applicable to all discharges, some categorical pretreatment standards do so. Waivers from the requirements of those categorical standards would not be allowed unless expressly permitted by the standards themselves.

Third, a POTW may not grant a waiver from a local limit if such waiver would cause pass through or interference. Since local limits are based on considerations at each POTW, it would not be appropriate to institute a waiver of local limits that applies statewide regardless of conditions at individual POTWs.

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So long as POTWs act consistently with their obligations not to allow pass through or interference, however, they might implement waivers that apply either more or less frequently than the 1% you propose. Of course, if it wishes, the State could cap all waivers at 1% and thereby be more stringent than Federal law, which requires no cap.

We note that, if a POTW wishes to provide waivers from pH limits that are technically-based and are part of the POTW's Approved Pretreatment Program, the POTW will have to modify its Approved Pretreatment Program accordingly. The Department should consider for each POTW whether the adoption of this policy is a "change to local limits, which result in less stringent local limits" and therefore requires a formal modification under 40 CFR 403.18(c)(1)(ii), or whether it constitutes a clarification of the POTW's existing local limits.

I hope that this response addresses your concerns. If you have any questions or would like to discuss this further, please call me at (202) 260-5850 or Louis Eby at (202) 260-2991.

Sincerely,

Cynthia C. Dougherty

Cynthia C. Dougherty, Director
Permits Division