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

OCT 03 1980

OFFICE OF ENFORCEMENT

MEMORANDUM

SUBJECT: NPDES Evidentiary Hearing Management Program

TO: Regional Enforcement Division Directors

FROM: R. Sarah Compton
Deputy Assistant Administrator
for Water Enforcement (EN-335)

On March 7, 1979, responsibility for managing the NPDES evidentiary (formerly adjudicatory) hearing program was transferred from the Enforcement Division to the Permits Division. With the evidentiary hearing program the Permits Division gained responsibility for:

- developing a strategy for resolving evidentiary hearings
- providing guidance on granting and denying evidentiary hearings
- providing specific case support */
- maintaining an evidentiary hearing tracking system
- processing proposed stipulations settling evidentiary hearings

Until now, no written procedures for carrying out these activities have been directed to the Regions. Discussion of these procedures is outlined in the following paragraphs.

However, before discussing hearing program policy, I wish to emphasize the importance of processing pending cases as expeditiously as possible. It is essential that you

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*/ Legal case support was reestablished on September 10, 1980, as an Enforcement Division responsibility.

aggressively resolve the existing backlog of cases so that permittees will complete, at the earliest possible date, all measures necessary to achieve BPT. The backlog must be eliminated in anticipation of another series of hearing requests which we expect as second round permits are issued. Pending hearings, and the issues which they have raised, will not necessarily become moot upon the filing of a hearing request for review of second round BCT or BAT permits. We should push for attaining BPT and then be prepared to handle the second round of hearing requests as they are filed.

Strategy for Resolving Evidentiary Hearings

Several attempts have been made to develop a strategy for resolving pending evidentiary hearings. However, with permits expiring and emphasis being placed on enforcement case resolution, developing this strategy for resolution of evidentiary hearings was never completed. However, we are still considering the following actions for resolving the large number of upcoming hearing requests:

1. Narrow the scope of, or deny as many unfounded requests as can be justified. Guidance for granting and denying evidentiary hearings is now being prepared by Robin Conrad in the Permits Division. The initial draft guidance document is expected shortly.

2. Categorize the issues raised, code these issues and incorporate these codes into the Evidentiary Hearing Tracking System. Automation of these issues (through use of codes) could allow us to keep a running tally of issues and allow categorizing such issues and ultimately aid in providing uniform response to requests and uniform resolution to issues adjudicated.

3. After categorizing and summarizing the issues, a centralized evidentiary hearing team, made up of technical and legal staff (and economists), could be established to address these common issues.

Specific Case Support

Even though management of the evidentiary hearing program was transferred to the Permits Division, specific legal case support has been reestablished as a responsibility of the Legal Branch, Water Enforcement Division.

Evidentiary Hearing System Report (formerly "Adjudicatory" Hearing System Report)

Recently we have discussed improvements to the computerized Evidentiary Hearing System Report (EHSR), which has not been updated since June 1978; and we are considering three approaches to providing a current hearing status:

- Use the present system and format and periodically update the report.
- Eliminate data elements of little benefit and replace them with more useful ones before updating the report.
- Develop a completely new tracking system that is more efficient and flexible.

Several aspects of the Headquarters NPDES evidentiary hearing program, as well as regional hearing programs, will have to be considered before a decision is made on which route to follow. In the meantime, we still would like to track evidentiary hearings. In the summer of 1978, Bridget Crawford of the Industrial Permits Branch requested (by phone) the number of pending hearings in each region, their SIC codes, and related issues. From this information, she developed a status report on all pending NPDES evidentiary hearings. Once again we want to request this type of information to enable the "Crawford" report to be updated. For your convenience, attached is a questionnaire that, when completed by your office, covers all areas necessary for updating the report.

Stipulations Review Procedures

Even though the final Consolidated Regulations are silent on Deputy Assistant Administrator (DAA) approval of stipulations settling NPDES evidentiary hearings, the review and approval of stipulations for major dischargers only will continue at Headquarters. This review procedure is a continuation of existing policy except that stipulations for minor dischargers no longer require Headquarters' approval. Stipulations will continue to be signed by the Chief, Industrial Permits Branch (until we reorganize). Since settling evidentiary hearings for majors is of primary concern, it is important that the review and approval of stipulations to such hearings be well managed. Also, we anticipate an increasing flow of stipulations for Headquarters approval because of the many new hearing requests that are expected in the coming months. We do not anticipate any delays in Headquarters.

Stipulations submitted for Headquarters approval will still be examined for their legal and technical accuracy and ability to meet certain compliance standards. This review process has proven to be an effective method of screening stipulations for possible errors due to oversights, lack of coordination, and misjudgment. Generally, once Headquarters has received a stipulation package, the proposed stipulation can be reviewed and returned to the Region within fifteen working days. However, in certain cases additional time is needed.

So that stipulations can be reviewed and returned to the Regions with minimal delay, these procedures should be followed:

1. Forward the proposed stipulation package to:

   Bridget C. Crawford (EN-336)
   Evidentiary Hearing Clerk
   Permits Division, Industrial Permits Branch
   Environmental Protection Agency
   401 M Street, S.W.
   Washington, D. C. 20460

2. The stipulation package should contain:

   a. A cover memorandum to the Chief, Industrial Permits Branch that explains the proposed changes to the permit, reasons for those changes, and includes the name and phone number of the regional contact who is familiar with the stipulation.

   b. A copy of the permit (and the revised permit if part of the stipulation).

   c. The original copy of the proposed stipulation signed by appropriate regional officials.

   d. A copy of the evidentiary hearing request.

   e. Any background data that would have bearing on the review and approval of the stipulation.

If all reviewers concur with the proposed stipulation, it is returned to the Chief, Industrial Permits Branch, for final review and signature and then returned to the Region for further processing. In cases where an issue is raised with regard to provisions of a stipulation, the Headquarter's staff member raising the issue will telephone the appropriate regional contact and attempt a verbal resolution. If agreement cannot be reached, the Industrial Permits Branch Chief will review the issues in question and determine whether the stipulation should be returned to the Region for revision. If this determination is made, the Regional Enforcement Division Director will be requested to resubmit the stipulation to Headquarters with suggested changes. However, if the stipulation is resubmitted to Headquarters without suggested changes, and still does not meet with the approval of the Industrial Permits Branch Chief, a review by the Deputy Assistant Administrator for Water Enforcement will be requested. If the DAA for Water Enforcement concurs with the decision of the Industrial Permits Branch Chief, the stipulation will be returned to the Region unsigned and accompanied by a formal nonapproval memorandum.

I hope that this memorandum will provide sufficient guidance for getting stipulations processed in an organized and timely manner. As the program moves ahead, you will receive further guidance or information on managing the evidentiary hearing process, revising the Evidentiary Hearing Tracking System, how specific case support will be provided, the grounds for granting and denying evidentiary hearing requests, the development of policy for resolving hearings, and training with regard to evidentiary and non-adversary panal hearing procedures.

Please provide us with your comments. Call me (FTS 755-0440) or Bill Jordan, Chief Industrial Permits Branch (FTS 426-7010) if there are any questions.

Attachment

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PENDING NP/ JDICATORY HEARINGS - STATUS AS OF 9/1/80

PERMITTEE	PERMIT #	MAJOR/ MINOR	FACILITY TYPE	DATE OF HEARING REQUEST	DATE PERMIT EXPIRES	DATE OF PREHEARING CONFERENCE