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

MAY 17 1983

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) *Janet Kelly*

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 achievable (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