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

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OFFICE OF
WATER

MEMORANDUM

SUBJECT: Public Notice of Tentative Section 301(g)
Decisions and Draft NPDES Permits

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

TO: Water Management Division Directors,
Regions I-X

It has recently come to my attention that we need to remind States and Regional Offices of the proper procedures for public notice of draft NPDES permits while section 301(g) variance decisions are pending. Section 301(g) requests are not handled the same way as other variances because the Clean Water Act has special provisions governing the decision process.

Section 301(g) variance requests pose a number of special difficulties. The findings are difficult to make and to justify, the administrative requirements are burdensome, and perhaps most importantly, the installation of necessary pollution control equipment is often delayed. We are sensitive to these problems and have even sought amendments to the Clean Water Act to help solve them. In the meantime, the issuance of permits remains a top priority, but they must be permits which meet the requirements of the law.

EPA or an NPDES State may reissue an NPDES permit to a §301(g) applicant prior to issuing a tentative decision on a section 301(g) variance, provided the permit conforms with 40 CFR §122.44 and other applicable regulations. The permit may contain both the applicable BAT limitations and Proposed Modified Effluent Limitations (PMELs) that may apply if a §301(g) variance is ultimately approved for the non-conventional pollutant(s). However, unless a stay is granted under section 301(j)(2) of the Clean Water Act, the permit must require that the discharger comply with the BAT limitations until a final decision to grant the variance is made. (Currently, all §301(g) variance approvals must be issued by EPA headquarters.) Although section 301(j)(2) requires that, in order to issue a stay of the BAT limits in question, there must be a strong showing that the

§301(g) variance will be granted, Regions have the authority to grant such stays and should do so formally in appropriate cases.

Should an NPDES State propose to issue a permit that is inconsistent with the above, EPA should comment accordingly. If the NPDES State proceeds to issue the permit, then you should exercise your veto powers under 40 CFR §123.44. The presumption that national BAT effluent guidelines limitations apply must be preserved.

For your information, I have attached a copy of the public notice for EPA's tentative decision to grant a section 301(g) variance to Weirton Steel Corporation. Public notice of permits involving section 301(g) variances should normally include a brief description of the section 301(g) process. The draft permit and accompanying fact sheet should contain a detailed description of the variance request including a comparison of BPT, BAT, and PMELs for the non-conventional pollutant(s) limited in the permit.

Should you have any questions concerning this matter please call me at FTS 755-2545 or have your staff call Steve Bugbee at FTS 382-5596.

Attachment

Public Notice

Environmental Protection Agency
Region III
Water Management Division
841 Chestnut Street
Philadelphia, PA 19107

West Virginia Dept. of
Natural Resources
1201 Greenbrier Street
Charleston, WV 25306

Public Notice No. PN WV-008-CM
Public Notice Date: March 15, 1985

ACTION: Notice of tentative decision to grant, pursuant to Section 301(g) of the Clean Water Act, a variance from BAT for the non-conventional pollutants ammonia (N) and phenol (4AAP) for :

Weirton Steel Corporation
Weirton, West Virginia
NPDES Permit No. WV0003336

SUMMARY: Weirton Steel Corporation, pursuant to Sections 301(g) and 301(j)(1)(B) of the Clean Water Act (CWA) requested a variance from the best available technology economically achievable (BAT) treatment requirements for the non-conventional pollutants ammonia(N) and phenol (4AAP) discharged from its sinter and blast furnace operations through outfall 002 (monitored internally at outfall 102) to the Ohio River. Weirton Steel Corporation is a semi-integrated facility producing iron and steel products. The discharge at outfall 002 consists of the wastewaters from the sinter and blast furnace operations, which is monitored and limited internally at outfall 102; wastewaters from miscellaneous sources; and non-contact cooling water, which accounts for about 90% of the total discharge volume of 120 million gallons per day.

Section 301(g) of the CWA authorizes the Environmental Protection Agency (EPA) to modify the BAT requirements for non-conventional pollutants provided a satisfactory demonstration is made that, among other factors, such modification will not interfere with the attainment of water quality which shall assure the protection of public water supplies and aquatic life, and will not pose an unacceptable risk to human health or the environment.

The West Virginia Department of Natural Resources (DNR) reviewed Weirton Steel Corporation's application and recommended to EPA that the variance be approved. The proposed modified effluent limitations (PMELs), which would be in effect should the variance be granted, compare with the best practicable technology currently available (BPT) and BAT limitations as follows (in lbs/day):

	<u>BPT</u>	<u>BAT</u>	<u>PMEL</u>
Ammonia (N), 30-day Average	1109	118	1109
Daily Maximum	3325	354	3325
Phenol (4AAP), 30-day Average	43	1.2	5.5
Daily Maximum	129	2.4	11.0

The PMELs are reflective of existing discharge conditions and will meet the applicable West Virginia water quality standards at the edge of the mixing zone. EPA's review of the available information indicates that the water quality standards are protective of aquatic life and human health. EPA has analyzed the merits of Weirton Steel Corporation's variance request and believes that it satisfies all of the statutory criteria. Therefore, EPA, in conformance with the tentative decision of the Director of the Office of Water Enforcement and Permits, is today proposing to grant Weirton Steel Corporation's request for a Section 301(g) variances for ammonia(N) and phenol(4AAP).

The DNR proposed a draft NPDES permit for Weirton Steel Corporation on August 13, 1984 (Public Notice No. C-105-84). The associated fact sheet discussed the variance request and presented both BAT limitations and PMELs. DNR intends to issue a final permit before EPA issues a final decision on the variance. The permit will contain both BAT limitations and PMELs. Weirton Steel Corporation is required to comply with the BAT limitations, unless EPA issues a final decision to grant its variance request.

Procedures for Final Determination

Interested persons may submit written comments on the Tentative Decision to grant the Section 301(g) variance to the EPA Regional Administrator within (30) days of the date of this public notice at the address cited below. Comments should be specific and include the basis and relevant facts upon which they are based. Anyone who is interested in commenting on this tentative decision should be aware of the obligation to raise issues and to provide supporting information for consideration during this public comment period in order to raise those issues in a subsequent appeal (40 CFR §124.76). All comments will be considered in the formulation of a final decision on this variance.

A public hearing on this tentative decision will be held if significant public interest in a public hearing is expressed. Interested persons should submit their requests for a public hearing along with their issues of concern.

Following the close of public comment, EPA will make a final decision on Weirton Steel Corporation's Section 301(g) variance request. Within 30 days following the issuance of EPA's final decision any interested person may request a hearing with respect to issues raised for consideration during the public comment period (40 CFR §124.76). An appeal of the final decision on the variance may be made under 40 CFR Part 124 Subparts F or F.

The application, Tentative Decision, Tentative Decision Support Document and administrative record are available for review at EPA's Region III office at the address below. A copying service is available at a reasonable fee.

Addresses: All comments regarding the Tentative Decision submitted on or before 30 days after publication of this notice will be considered by EPA and should be sent to Alvin R. Morris (3WM00), Director, Water Management Division, U.S. Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107.

For further information regarding this variance decision and requests for copies of the Tentative Decision and Tentative Decision Support Document, contact Mr. Terry N. Oda, U.S. Environmental Protection Agency, Water Management Division, 841 Chestnut Street, Philadelphia, PA 19107 (Telephone No. 215/597-8911).

