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STATE PROGRAM APPROVAL TO CONTROL DISCHARGES OF POLLUTANTS TO NAVIGABLE WATERS BY THE STATE OF HAWAII

Statement for Environmental Protection Agency
Public Hearing, 10 October 1974

By

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The following testimony has been prepared in cooperation with L. Stephen Lau and Reginald Young of the Water Resources Research Center of the University of Hawaii. It does not represent an official position of the University of Hawaii.

We would like to commend the Department of Health on the thoroughness of documentation provided for public review on their proposed plan for the administration of the National Pollution Discharge Elimination System (NPDES) permit program.

The request by the Department of Health to the Environmental Protection Agency for permission to administer the NPDES permit program is a proper and reasonable action. Issuance of permits and surveillance of discharges by the DOH is facilitated by the proximity of laboratory facilities and professional personnel to adequately monitor these discharges, and is enhanced by the staff's knowledge of local conditions. It seems clear that these needs can more rapidly, efficiently, and economically be attained through the facilities of the State Department of Health than through a Washington D.C.-San Francisco based federal agency. The recent reorganization of the Department of Health will facilitate the NPDES permit issuance and effluent discharge monitoring and enforcement activities.

In our review of the DOH NPDES program plan we find one section, Section VI: Permit Compliance Monitoring and Enforcement, in which we recommend a reconsideration of some of the proposed provisions.

Under item A, Compliance Monitoring, number 2, it is stated ". . . for all scheduled compliance monitoring of discharge facilities, the permittee shall be notified at least three (3) days prior to the date of inspection of sampling."

We seriously question the appropriateness of this "three day" notification period. It would appear that if inspections by the DOH are going to be required as is indicated in subheading a. Inspection of Facility, then the three-day notification period totally eliminates the value of this inspection as a verification of the effluent monitoring of the discharges. An unscrupulous permittee could discharge virtually anything, falsify his own monitoring report, and yet have an apparently "clean" effluent by the time scheduled for inspection by the DOH.

We suggest that inspections should take place without advance notice, or with just reasonable notice, and that the permit clearly establish a person or department responsible for assisting the DOH in this inspection, and legal authority be given to the DOH to enter the facility "during regular working hours for the purpose of conducting their inspection and effluent sampling."

In this regard the federal regulations concerning Inspections, Monitoring, and Entry, PL 92-500, title III Standards and Enforcement, Section 308(a) clause (B) states:

The Administrator or his authorized representative, upon presentation of his credentials:

(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under clause (A) of this subsection are located, and

(ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under clause (A) and sample any effluents which the owner or operator of such source is required to sample under such clause

Note there is no provision for advance notice of inspection. Furthermore under Title IV - Permits and Licenses, Sec. 402(a) which applies specifically to the NPDES permit program, we note in clause (B) the requirement: "To inspect, monitor, enter, and require reports to at least the same extent as required in Section 308 of this Act." The three day advance notice of inspection would be inconsistent with Section 402(a) clause (B) of the Federal Water Pollution Control Act.

Under the related section, subheading (a) Inspection of Facility and (b) Sampling and Analysis of Effluent, we suggest reconsideration of the proposed inspection and effluent monitoring schedule particularly with regard to the so-called "minor" discharges.

Currently the DOH proposal states "All minor dischargers shall be inspected at least once the first year and bi-annually thereafter." We realize that the Federal regulations regarding frequency of inspection of minor discharges is somewhat vague and thus the proposed biennial inspection is legally sufficient as regards to the NPDES permit program. We question, however, the efficacy of the proposed inspection schedule. We note that

the proposed inspection schedule. We note that currently there are numerous small sewer systems and other commercial and industrial discharges which would apparently fall within the "minor discharge" classification. The consequences of the so-called "minor" discharges of pollutants (less than 50,000 gallons per day) into the environment of small communities may be as undesirable as the pollution level of a major discharge into a large community environment. It seems quite plausible that the pollution level per capita or per incidence of effect might well be equal in both cases. We recommend serious consideration of requiring inspection of minor discharges at the same frequency as major, i.e. a minimum of once per year.

The DOH proposed regulations state "Sampling of minor discharge facilities shall be made when conditions indicate the need and when manpower and laboratory resources allow." We would strongly recommend the deletion of the phrase, "and when manpower and laboratory resources allow." If a need to sample the minor discharges is demonstrated based on the monitoring reports submitted by the permittees, unexplained variations in the ambient data as obtained at nearby water quality stations, or other obvious signals of pollution problems, then that need must be met. Manpower facilities and funding must be available to meet that need. Such a requirement is clearly stated in title 40, part 124.92 Inspection and Surveillance support of NPDES permits, "Any state or interstate agency participating in the NPDES shall have the funding, qualified personnel, and other resources necessary to support NPDES permits with inspection and surveillance procedures which will determine, independent of information supplied by applicants and permittees, compliance or non-compliance with applicable effluent standards and limitations, water quality standards, NPDES filing requirements, and issued NPDES permits or terms or conditions thereof."

We appreciate the opportunity to comment on the proposed DOH program to control discharges under the NPDES section (402) of the Water Pollution Control Act. We trust that our comments will receive due consideration.