

Office of

The City Attorney
City of San Diego
MEMORANDUM
236-6220

DATE: August 11, 1993

TO: Councilmember Valerie Stallings

FROM: City Attorney

SUBJECT: Administrative Modification of Secondary Treatment Standards

You asked for a brief note on whether the Administrator of the E.P.A. could redefine secondary treatment under the Clean Water Act. The Administrator may do so pursuant to the following:

1. The Clean Water Act does specify "secondary treatment." 33 U.S.C. 1311(b)(1)(B) provides:
 - (b) Timetable for achievement of objectives. In order to carry out the objective of this Act there shall be achieved --
...
(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 203 of this Act (33 USCS Section 1283) prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 304(d)(1) of this Act (33 USCS Section 1314(d)(1)). . . . emphasis added
2. Section 33 U.S.C. 1314(d) does direct the Administrator to define secondary treatment after consulting with specified agencies:

(d) Secondary treatment information; alternative waste treatment management techniques; innovative and alternative wastewater treatment processes; facilities deemed equivalent of secondary treatment. (1) The Administrator, after consultation with appropriate Federal and State agencies and other interested parties, shall publish within sixty days after enactment of this title (enacted Oct. 18, 1972) (and from time to time thereafter) information, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, on the degree of effluent reduction attainable through the application of secondary treatment. Emphasis added.

3. Pursuant to this authority, the Administrator has defined "secondary treatment" as follows:

Section 133.102 Secondary treatment.

The following paragraphs describe the minimum level of effluent quality attainable by secondary treatment in terms of the parameters -- BOD, SS and pH. All requirements for each parameter shall be achieved except as provided for in Sections 133.103 and 133.105.

(a) BODs.

- (1) The 30-day average shall not exceed 30 mg/l.
- (2) The 7-day average shall not exceed 45 mg/l.
- (3) The 30-day average percent removal shall not be less than 85 percent.
- (4) At the option of the NPDES permitting authority, in lieu of the parameter BODs and the levels of the effluent quality specified in paragraphs (a)(1), (a)(2) and (a)(3), the parameter CBODs may be substituted with the following levels of CBODs effluent quality provided:
 - (i) The 30-day average shall not exceed 25 mg/l.
 - (ii) The 7-day average shall not exceed 40 mg/l.
 - (iii) The 30-day average percent removal shall not be less than 85

- percent.
- (b) SS.
 - (1) The 30-day average shall not exceed 30 mg/l.
 - (2) The 7-day average shall not exceed 45 mg/l.
 - (2) The 30-day average percent removal shall not be less than 85 percent.
 - (c) pH. The effluent values for pH shall be maintained within the limits of 6.0 to 9.0 unless the publicly owned treatment works demonstrates that:
 - (1) Inorganic chemicals are not added to the waste stream as part of the treatment process; and
 - (2) contributions from industrial sources do not cause the pH of the effluent to be less than 6.0 or greater than 9.0.

40 Code of Federal Regulations 133.102.

4. The plain language of 33 U.S.C. 1311(b)(1)(B) permits the Administrator to revisit this definition, albeit in "consultation" with "appropriate" agencies.

- a. The Clean Water Act amendments of 1981 singled out such biological facilities as oxidation ponds, lagoons, ditches and trickling filters as equivalent to secondary treatment and Section 33 U.S.C. 1314(d)(4) permitted the Administrator to "provide guidance" for such facilities which resulted in modified removal levels.

Section 133.105 Treatment equivalent to secondary treatment.

This section describes the minimum level of effluent quality attainable by facilities eligible for treatment equivalent to secondary treatment (Section 133.101(g)) in terms of the parameters -- BODs, SS and pH. All requirements for the specified parameters in paragraphs (a), (b) and (c) of this section shall be achieved except as provided for in Section 133.103, or paragraphs (d), (e) or (f) of this section.

- (a) BODs.

- (1) The 30-day average shall not exceed 45 mg/l.
 - (2) The 7-day average shall not exceed 65 mg/l.
 - (3) The 30-day average percent removal shall not be less than 65 percent.
- (b) SS. Except where SS values have been adjusted in accordance with Section 133.103(c):
- (1) The 30-day average shall not exceed 45 mg/l.
 - (2) The 7-day average shall not exceed 65 mg/l.
 - (3) The 30-day average percent removal shall not be less than 65 percent.
- (c) pH. The requirements of Section 133.102(c) shall be met.

40 C.F.R. 133.105 (Note both BOD and SS were increased)
Hence the E.P.A. Administrator does have the ability to revisit secondary treatment definitions although this is permissive and not unilateral since it has to be done in "consultation" with "appropriate" agencies.
Since this authority is only permissive and not mandatory, we still believe the safest source of relief for Point Loma is legislation mandating specified effluent standards or directing the Administrator to develop effluent guidelines specifically for deep ocean dischargers.

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