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GOVERNOR OF HAWAII

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STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HAWAII 96801

December 15, 1972

In reply, please refer to:
File: EH-SE

Mr. Paul DeFalco, Jr.
Regional Administrator
Environmental Protection Agency, Region IX
100 California Street
San Francisco, California 94111

Dear Mr. DeFalco:

Subject: Request for Interim Authorization

In accordance with our understanding of the new Federal Water Pollution Legislation, the State of Hawaii hereby requests interim authorization to issue permits for discharges into the navigable waters within the jurisdiction of this State under the National Pollutant Discharge Elimination System, as provided in Section 402(a) of the Federal Water Pollution Control Act Amendments of 1972 (hereafter called "the Act"). This letter of request sets forth certain information and assurances regarding our State permit program.

We have examined our statutes and regulations, and pending further legal analysis we believe we have the basic authority to issue permits containing effluent limitations, abatement schedules, and monitoring requirements called for by the Act. We can establish and include in permits effluent limitations requiring the application of "best practicable control technology currently available" for industrial sources and secondary treatment for municipal sources, or compliance with applicable water quality standards, whichever is more stringent, by July 1977. We in Hawaii define secondary treatment as follows:

> "Secondary treatment means that treatment process or system which will reduce the BOD concentration of sewage by at least 85 per cent, except that where the effluent is discharged offshore at depths in the Pacific Ocean waters in which it can be demonstrated to the Administrator that a significant BOD concentration is environmentally acceptable or desirable, then the excess of BOD concentration over that which is environmentally acceptable or desirable shall be removed."

We intend to administer the issuance of permits consistent with the above definition. We understand that all previously issued and outstanding State permits must be examined and will have to be reissued to fulfill the requirements of the Act. We will undertake to carry out the interim permitting authority and to impose the foregoing requirements of the Act in permits which we are able to issue during the interim period.

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The Files

Richard O'Connell, Director, Enforcement Division

Meeting with Hawaii Department on Health on NPDES Permit Program

The meeting was held at the Health Department offices on November 15, 1972. The following were in attendance:

H. Minet, Hawaii Department of Health
S. Soneda, Hawaii Department of Health
D. Tulang, Hawaii Department of Health
R. Marland, Office of Environmental Quality, State of Hawaii
A. Goda, Assistant Attorney General, State of Hawaii
C. Seeley, EPA
R. O'Connell, EPA

I explained the provisions of the law regarding interim authorization and program approval whereby the state could issue NPDES permits. I described in detail the requirements to be met by the State to obtain interim authorization.

Marland said that this permit program will result in the termination of the sugar industry in Hawaii because of the stringency of the effluent guidelines (now in draft form) and the marginal economic condition of the sugar industry. He said that a number of sugar companies intend to close down their operations and to convert their land to urban development. He said they were simply looking for an excuse to do so. Our requirements for waste water treatment would provide the companies with that excuse. The first companies to do this would probably be the Oahu Sugar Company and the Wailua Sugar Company, both located on the Island of Awahu. The next ones to take this step would probably be on Kauai and on the Hamakua Coast of the big island of Hawaii according to Marland.

Marland said that the State of Hawaii does not have the necessary uthority to impose best practical treatment (or "treatment for treatment's ske") on the sugar industry and that he would not recommend that the overnor ask the Legislature for that authority in view of the effects he pects it would have on the sugar industry. For the same reason, he not think the Legislature would grant that authority.

CONCURRENCES

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I pointed out to Marland that under the new Federal law best practicable treatment would be imposed on all industries in the State of Hawaii by EPA if not by the State and in light of that fact, he ought to reconsider his position on the matter.

Subsequently at a later time and at a different place Marland told me that the State would probably request interim authority and program approval to issue permits under the new Federal Act. He said "We'll tell you a bunch of lies." He stated that they would not impose best practicable treatment as described in the EPA effluent guidelines but would impose best practicable treatment as they view it. He referred me to a paper prepared by Dr. Doak Cox, University of Hawaii, describing the meaning of best practicable treatment which he would recommend be used by the State of Hawaii. From that viewpoint, best practicable means "best" from the standpoint of overall public welfare. This approach is not necessarily consistent with the approach taken by EPA in the preparation of effluent guidelines.

I told Dr. Marland that unless the State of Hawaii agreed to impose secondary treatment on municipalities and best practicable treatment on industries, in both cases as defined by the Administrator, that the State would not be given authority to issue NPDES permits. Dr. Marland said, in that event, the State of Hawaii would contest in court the issuance of any permits in that State by EPA.

As a result of these discussions it is not clear at this time whether or not the State will request interim authorization or what statements they would make in their requests and whether or not EPA would be in a position to grant interim authorization when requested.

(In subsequent discussions with Mr. Fred Gross, Manager of the Wailua Sugar Company, I asked him if his company had any intention of terminating its sugar cane operations and converting their land to urban development. Mr. Gross said there was no truth whatsoever to that statement. He stated further that his company had discharged no waste waters since 1948 and he did not expect the new Federal Water Pollution Control legislation to have any significant effect on his company.)

cc: Regional Administration
PIO

Reading File
RO'Connell/A/239 159,229
11/29/72

FILE 853