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Commissioner

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M E M O R A N D U M

TO: Regional Water Engineers, Bureau Directors,
Section Chiefs

SUBJECT: Division of Water Technical and Operational Guidance
Series (1.4.1)
WATER INTEGRATED COMPLIANCE STRATEGY SYSTEM (WICSS)
(Originator: Robert Cronin)

I. PURPOSE:

The purpose of this guidance is to establish criteria for identifying priority violations against the State's water resources and to establish procedures to assure integrated compliance responses to these violations take place in a timely manner and that conditions are established to prevent recurrence.

II. DISCUSSION:

Factors which determine priorities for the Division of Water's resources are: protection of public health and safety; protection of water quality and intended best use of the

State's waters; and assurance of adequate water quantity.

Responses to priority violations should differentiate between those violations which are more effectively dealt with by a direct single action and those more effectively dealt with by comprehensive strategies which integrate available and appropriate resources to restore compliance and prevent recurrence.

III. GUIDANCE:

A. Policy

Priority violations described in Section III.B. of this memorandum will be identified and responded to in accordance with Section III.C. The strategies developed will be facility or waterbody specific, depending on the criteria met, and will detail the compliance-directed activities which the Department will undertake in order to meet the goals and objectives of protecting the State's water resources. Priority for the use of program and legal resources will be given to those cases where a comprehensive strategy has been developed through the WICSS process as described in Section III. D. below.

(Emergency situations, which require immediate action to respond to an imminent threat to life health, property, or natural resources, will receive the highest priority for the use of program and legal resources.)

B. Criteria for establishing priority violations

If a water related situation meets any of the following criteria it will be considered a **priority violation**.

SPDES

1. A public health or potential public health problem or a contravention of intended use or water quality standards (surface or ground) has been documented and attributed to a wastewater discharge situation.
2. A discharge does not have a valid SPDES permit and is required to have one.
3. A discharge is known or suspected to be contributing to the degradation of groundwater quality in an identified aquifer area where standards are marginally met or would be in the absence of the discharge.
4. A discharger is in violation of a major milestone contained in a compliance schedule of a SPDES permit or executed order.

5. A discharge of a specific non-toxic parameter has exceeded the technical review criteria (TRC) of 1.4 times the required effluent limitation in any two months of a six-consecutive-month period or has exceeded the required permit effluent limitation in any four months of a six-consecutive-month period. For discharges into groundwater designated as a sole source or primary aquifer, these criteria may be made more stringent, on a case-by-case basis, by the Regional Water Engineer.
6. A discharge of a specific toxic parameter has exceeded the TRC of 1.2 times the required effluent limitation in any two months of a six-consecutive-month period, or has exceeded the required permit effluent limitation in any four months of a six - consecutive - month period. For discharges into groundwater designated as a sole source or primary aquifer, a reported discharge of a specific toxic parameter has exceeded 1.2 times the required effluent limitation in any one month or has exceeded the required permit effluent limitation in any two months of a six consecutive month period. These criteria may be made more stringent or applied to a principal aquifer, on a case-by-case basis, by the Regional Water Engineer.
7. A discharge to a surface water body, classified as suitable for water supply for drinking without being subjected to treatment equal to coagulation, sedimentation and filtration, has exceeded 1.4 times the permitted effluent limit (TRC) of a non-toxic parameter in any one month, or the permitted effluent limit in any two months of a six-consecutive-month period.
8. A discharge to a surface water, body classified as suitable for water supply for drinking without being subjected to treatment equal to coagulation, sedimentation and filtration, has exceeded the permitted effluent limit of a specific toxic parameter in any one month.
9. A discharge to a water body under the jurisdiction of an inter-governmental agency, joint compact, memorandum of understanding, or some other specific agreement which has associated promulgated water quality standards (e.g. ISC, IJC), exceeds 1.4 times the permitted effluent limit (TRC) for a specific non-toxic parameter in any one month, or the required permit effluent limitation in any two months of a six- consecutive-month period.
10. A discharge to a water body under the jurisdiction of an inter-governmental agency, joint compact,

memorandum of understanding, or some other specific agreement which has associated promulgated water quality standards (e.g. ISC, IJC), exceeds 1.2 times the permitted effluent limit (TRC) for a specific toxic parameter in any one month, or the required permit effluent limitation in any two months of a six- consecutive-month period.

11. A discharge from a facility identified on the DEC Multi-media Pollution Prevention Facilities List exceeds 1.2 times the permitted effluent limit (TRC) for a specific toxic parameter in any one month or exceeds the required permit effluent limitation in any two months of a six-consecutive-month period.
12. A permitted discharge is in violation of the general or special conditions of its SPDES permit such as; failure to implement a pretreatment program, failure to properly submit required reports, unapproved bypassing of treatment processes, failure to implement a BMP or Pollution Prevention plan, etc. It should be noted that coverage under any General Permit issued by the Department to cover N/SPDES requirements, such as for industrial or municipal stormwater control, carry the same liabilities for violations as any individual SPDES permit.
13. An inspection, sampling program, or pretreatment program audit has identified SPDES violations for the discharge which conflict with routine reported monitoring information.
14. Any discharge to a waterbody which has been assigned a Discharge Restriction Category where such discharge is in contradiction to the established water quality criteria for that waterbody.

Ambient Water Quality

15. A waterbody, or its fishing resource, is identified through a Rotating Intensive Basin Study (RIBS) or by application of Biological Impairment Criteria for Flowing Waters in New York State or in the Priority Waterbody List (PWL) as having an impairment of best use caused by a known, or unknown, source of contamination.

[Criteria for establishing relative priority for an action concerning a PWL situation must include factors such as severity of impairment, documentation and technical knowledge, resolvability, considerations such as available resources, legal and financial aspects,

mandates, internal/ external concerns, and public perception.]

Dam Safety

16. Inspection of a dam indicates remedial action is necessary in order to prevent loss of life or serious property damage and owner refuses to cooperate in a timely manner (see TOGS 3.1.2).

Flood Control

17. Inspection of a reported encroachment on State Maintained Flood Control Lands reveals a violation of Article 16-0107 sub. 13, is determined not to be permitted under 6NYCRR Part 501, and the owner refuses to remove, or modify, the encroachment to a permissible standard in a timely manner.

Coastal Erosion Management

18. Inspection of construction, land modification, or related activity in an identified Coastal Erosion Hazard Area regulated by the Department reveals that, (a) it is a Regulated Activity [6NYCRR 505.2(hh)] for which no permit was issued, or (b) the activity is in violation of a permit granted under Section 505.6 and the owner refused to comply with the appropriate permitting requirements or the conditions and standards contained in a Coastal Erosion Management Permit.

Water Supply

19. Installation of a new or modified water supply system without a valid permit.
20. Operation of a new or modified water supply system without final Department approval.
21. Violation of any condition contained in an issued water supply permit.
22. Installation or modification of a well without an approved Long Island well permit or operation of a well in violation of an issued Long Island well permit.

C. **Response to a Priority Violation**

All violations should be responded to in a timely manner to prevent them from recurring. Limited Division resources force us to direct our first efforts against

those violations which have the potential to cause the greatest environmental damage. These **priority violations** will be priority subjects of water program compliance efforts. The **WICSS** process will establish priorities for compliance actions, technical assistance, and, if appropriate, enforcement in response to these priority violations. Because all DOW programs compete for similar resources, the Bureau of Watershed Compliance Programs (BWCP) is responsible for coordinating program priorities between Central Office and the Regions related to priority violation response, and is the focal point to assure compliance-directed activities through the WICSS process. Each DOW Bureau is responsible for applying the criteria in III.B. for determining priority violations within its area of primary program management, selecting appropriate actionable cases, developing strategies, and implementing follow-up through active participation in the WICSS process.

BWCP, even when not the lead Bureau for applying the criteria in III.B., will assume responsibility for managing the WICSS process (see III.D.) and tracking strategy implementation.

Identification of priority violations and development of compliance strategies will be accomplished as follows:

SPDES: The Bureau of Watershed Compliance Programs, through its oversight of various aspects of the SPDES surveillance program (discharger self-monitoring, regulatory sampling, inspection, compliance schedule monitoring, etc.), will identify any violation meeting the criteria designated in Section III. B. above as a priority violation. Regional Water Engineers, through implementation of the various aspects of the SPDES surveillance program, may also identify such violations. Priority violations will be discussed among the Regional Water Engineer, associated regional staff, and a BWCP representative at the quarterly WICSS meeting and appropriate responses determined.

Where a priority violation poses a threat to public health or where irretrievable environmental damage is likely, the Regional Water Engineer will initiate an immediate response with assistance provided by BWCP as requested. The Regional Water Engineer may also take an immediate response if such response is necessary to minimize environmental damage or protect the best intended use of the resource. This initial response will be reflected in any further development of a compliance strategy through the WICSS process.

Ambient Water Quality: The Bureau of Watershed Management and the Bureau of Watershed Assessment & Research, as well as regional offices, are responsible

for maintaining information on the contaminated segments, through RIBS or the Priority Waterbody List, relative to the assessment of use impairment, severity, types of pollutants causing impairment, and probable source of pollutants. For non-SPDES sources of pollutants, the regions, in concert with these bureaus, will consider the resolvability of the impairment and, where practicable, select cases and develop and implement strategies to restore the waterbody to its best intended use. Such strategies should, as appropriate, include performing intensive water quality surveys, conducting fish flesh studies for waters with suspected significant pollutant bioaccumulation, and managing efforts by local and regional organizations (e.g., Water Quality Coordinating Committees, EMC's, SCS, Cooperative Extension, etc.).

Dam Safety: The Bureau of Flood Protection is responsible for conducting inspections of dams throughout New York State. Where a priority violation is identified as a result of an inspection or otherwise, the Bureau of Flood Protection, in consultation with the Regional Water Engineer, will develop a compliance strategy to assure the appropriate remedial action is accomplished.

Flood Control: When a priority violation is identified, the Bureau of Flood Protection will, in consultation with the Regional Water Engineer, develop a compliance strategy to assure that appropriate action is taken to remove the encroachment, or modify it to make it permissible.

Coastal Erosion Management: When a priority violation is identified, the Bureau of Flood Protection will assist the Regional Water Engineer in the development of a proposed compliance strategy for consideration by the Division of Regulatory Services and other affected Regional programs.

Water Supply: Priority violations in the area of water supply will be identified by the Bureau of Watershed Regulatory Controls or the Regional Water Engineer. Where other than a direct single action is appropriate to resolve the violation, the Bureau of Watershed Regulatory Controls, in communication with the RWE, will develop compliance strategies to resolve the violations and assure prudent use of the water resource.

D. WICSS Process

The Water Integrated Compliance Strategy System (WICSS) process begins with the identification of priority violations as described in Section III. B., and the subsequent case selection and development of a corrective strategy consistent as described in the Section III. C.

responses above. It is a formal process by which the Division establishes its priorities for compliance follow-up actions, including technical assistance, and any necessary enforcement.

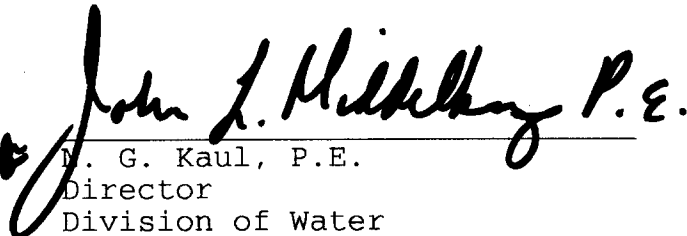
Each strategy will be facility specific or waterbody specific depending on the type of priority violation and will be structured to achieve resolution of the violation(s) by the most effective approach. Acceptable strategies may include such actions as technical assistance, voluntary compliance, increased surveillance, permit modification (where allowable), development and implementation of BMP's, acquiring financial assistance, modification of land use, or formal enforcement.

Near the beginning of each quarter, the BWCP conducts meetings in both the Central Office and each Regional Office to discuss priority violations, assists in developing compliance strategies, and receives updated information on cases currently in the WICSS process. BWCP distributes an agenda to each bureau prior to the scheduled meeting and identifies any issues it is aware that need to be discussed. At the Central Office meeting, the respective bureaus are to identify new cases to be entered into the WICSS process, to update BWCP on fulfillment of strategy elements for ongoing cases, and to remove cases where priority violations have been resolved.

After the Central Office meeting, a representative of BWCP will meet with each Regional Water Engineer and appropriate regional staff to review and finalize the preliminary strategies and develop priorities for enforcement actions. A final strategy will typically contain a specific schedule for accomplishment of various actions leading to compliance/resolution of the violation(s). These meetings, besides adding new cases, will also serve as the forum to update cases currently in WICSS and remove cases where the desired resolution has been accomplished.

Priorities for enforcement actions must be given to DOW commitments such as, but not limited to, the DEC/EPA Water Enforcement Agreement, DEC/NYCDEP Watershed Memorandum of Understanding (MOU), and the Great Lakes Enforcement Strategy. In cases where a situation meets the criteria for a Priority Violation under Section III. B. by definition, but is not a potential for environmental threat, nor is it amenable to a technology based resolution, the final strategy may recognize this by establishing it as a low priority violation. In order to maintain a Statewide consistency, a low priority designation must be mutually agreed to by the Regional Water Engineer and BWCP with concurrence by the responsible Bureau under the Section III. C. responses.

A "WICSS Control Sheet" will serve as the vehicle which documents the current WICSS strategy. Division of Water staff will implement and monitor confirmed strategies in accordance with approved procedures.


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Director
Division of Water

cc: TOGS Distribution List
(Attached)