



Thomas C. Jorling
Commissioner

March 14, 1988

MEMORANDUM

TO: Regional Water Engineers, Bureau Directors, Section Chiefs

FROM: Division of Water Technical and Operational Guidance Series (1.4.7)
SEWER MORATORIUM ON NEW CONNECTIONS TO POTW'S
(Originator: Bob Cronin and Rich Newman)

I. PURPOSE

The purpose of this TOGS is to provide guidance for imposing moratoria on new service connections to POTW's where the POTW's are not meeting the final effluent limits of their SPDES permits.

II. DISCUSSION

Circumstances can arise where POTW's in the State may not meet the final effluent limits of their SPDES permits and at the same time are accepting additional flow due to increased development within the service area. The effect of the inadequately treated wastewater discharge on the receiving water could be the impairment or potential impairment of its use. Through various enforcement mechanisms provided under Article 17 of the ECL and subsequent Commissioner's guidance, DEC has the ability and obligation to limit the detrimental effects of these discharges.

Actions involving sewer system extensions can be and are effectively dealt with on a case by case plan review basis and are not necessarily covered by this guidance.

One of the more drastic enforcement mechanisms available is the imposition of a sewer moratorium on new service connections to a POTW until such time that the discharge meets certain requirements. Use of such control has proven to be an effective measure in a number of instances throughout the state.

A sewer moratorium has both advantages and disadvantages from a community's viewpoint. The moratorium can be emplaced without imposing dollar penalties through formal enforcement thus not draining the community of potential plant construction monies, yet it does restrict the community's development until compliance can be achieved. This could be an incentive to the community to move aggressively towards compliance.

III. GUIDANCE

Circumstances are to be evaluated on a case-by-case basis to determine if a moratorium is to be invoked and, if invoked, the period the moratorium will be kept in effect.

A moratorium on new connections should be imposed when/where

- no treatment is provided (raw sewage discharges)
- or
- best use impairment will occur if additional connections are made
- or
- best use impairment already exists as a direct result of plant overload

A moratorium should be strongly considered in cases where

- a permittee currently exceeds final SPDES permit limitations
- or
- additional new connections would increase waste loads to the extent that existing final SPDES permit limitations would be exceeded
- or
- additional new connections may violate conditions of existing SUO's or present operation and maintenance problems relative to the POTW.

If above conditions exist, but the facts and merits of an individual situation warrant consideration or use of an alternative to a moratorium, such alternative action must be documented by the Regional Water Engineer.

Relief

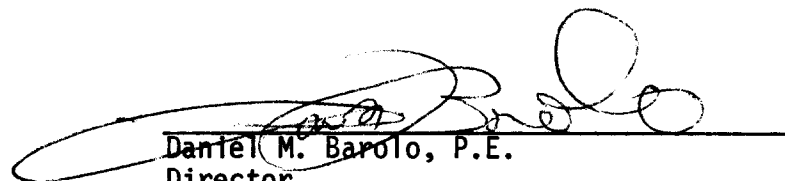
A moratorium should remain in effect until the POTW can demonstrate the ability to sustain operation in substantial compliance with its SPDES permit and that the increased loading will not have an adverse effect on the classified best use of the involved receiving water.

There are circumstances where limited relief from a moratorium may be appropriate (e.g. to eliminate an existing or potential public health nuisance or hazard; a demonstrated good faith effort to achieve compliance). The Regional Water Engineer should evaluate each request for relief on an individual basis and endorse such request only after he is satisfied that limited relief is in the best interest of public health and overall environmental welfare. The minimum documentation necessary to justify relief would be (1) a description of the quantity and type of waste to be introduced to the system; (2) an assessment of the capacity of the existing system to accept the additional flow without overloading the POTW (including the sewer system); and (3) an assessment of the effect of the additional discharge on the receiving water quality if permitted, and where appropriate, the overall environmental effect if not permitted to connect.

Implementation

Moratoriums on new connections are to be imposed through an order or modification of the SPDES permit (consistent with TOGS 1.4.2). Close coordination between the Division of Water staff in the Region and Central Office and DRA or the Regional Attorney, as appropriate, is essential to insure the enforcement instrument is implemented in a timely manner. Where the urgency for immediate action exists, such as irretrievable environmental damage, the Regional Water Engineer may impose a moratorium

by letter, pending the permit modification or issuance of the order. This would only be a temporary measure until the appropriate formal action is completed.



Daniel M. Barolo, P.E.
Director
Division of Water

cc: Dr. Banks
Mr. Pagano
Ms. Chrimes
Ms. Ballentine
Regional Engineers for Environmental Quality