



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

*Letter Re - Cont Modify "Expired" permit*

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NOV 26 2003

Mr. Bradley M. Campbell, Commissioner  
New Jersey Department of Environmental Protection  
401 East State Street  
P.O. Box 402  
Trenton, New Jersey 08625-0402

*Interim Response  
sent out on 9/13/03  
R2-0301001  
copy of signed original  
sent to Jackie [unclear]  
on 12/2/03*

Dear Commissioner Campbell:

Thank you for your letter dated August 22, 2003, requesting that EPA revisit the Agency's position that expired National Pollutant Discharge Elimination System (NPDES) permits that are administratively continued may not be modified. EPA's position on this issue remains unchanged. The Agency's longstanding position is that if the State wishes to modify a permit, the State must either modify a permit within its term or reissue an expired permit that has been administratively continued. The basis for this position follows.

Section 402 of the Clean Water Act (the Act), 33.U.S.C. § 1342, allows the Administrator to approve a State NPDES permit program submission if adequate legal authority exists in the laws of the State for among other things, permits to be issued "for fixed terms not exceeding five years." When a permit is administratively continued, the life of the permit is not extended, only the effectiveness of the permit's terms is extended.

EPA's regulations on "Modification or revocation and reissuance of permits," 40 CFR § 122.62, state that if certain causes for modification exist, "permits may be modified *during their terms*" (emphasis added). When these regulations were promulgated, the Agency, in the preamble, distinguished "modification" from "revocation and reissuance" and "termination" by explaining that "modification is used where existing permit conditions are changed but the permit expiration date remains the same." 44 FR 32867, 32868. In a Federal Register notice on September 26, 1984 for amendments to the NPDES Regulations, EPA further stated that "Permits which have expired cannot be modified. While expired permits may be continued in effect beyond the permit terms under the Administrative Procedure Act and 40 CFR § 122.6, these permits may only be changed by reissuance." 49 FR 37998.

EPA commends and encourages the New Jersey Department of Environmental Protection (the Department) for considering the promotion of effluent reuse. In order for the Department to incorporate the appropriate reuse provisions into New Jersey Pollutant Discharge Elimination System (NJPDDES) permits, however, the Department, in accordance with EPA's position on this issue, will either have to modify NJPDDES permits within their terms or reissue NJPDDES permits that have expired.

Should you have any further questions or comments on this matter, please contact Eric Schaaf, the Deputy Regional Counsel at (212) 637-3107.

Sincerely,

*Kathleen Callahan*

for Jane M. Kenny  
Regional Administrator