WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #6

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SECRETARY OF STATE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AGENCY: West Virginia Department of Energy TITLE NUMBER: 38

AMENDMENT TO AN EXISTING RULE: YES___, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: N/A

TITLE OF RULE BEING AMENDED: N/A

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 20

TITLE OF RULE BEING PROPOSED: State NPDES Regulations for Mines and Minerals

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) 761

SECTION 64-2-22a(3)(40), PASSED ON May 13, 1987.

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE FOLLOWING DATE: Pending Federal approval and Gubernatorial Proclamation.

Roger T. Hall

Roger T. Hall
Administrator

PROMULGATION HISTORY AND PREAMBLE TO THE DEPARTMENT OF ENERGY STATE NPDES REGULATIONS FOR MINES AND MINERALS

Promulgation History

On November 26, 1986, the Department of Energy filed in proposed form State NPDES regulations for mines and minerals. The comment period ran through January 10, 1987, on which date a public hearing was held and comments received. Subsequently, on January 12, 1987, the rules as amended after the hearing were filed with the Secretary of State and with the Legislative Rule-Making Review Committee. Following review by that Committee, the rules and regulations were modified in accordance with the comments of the Rule-Making Committee and refiled with the Secretary of State on February 20, 1987. On March 14, 1987, the West Virginia Legislature enacted legislation authorizing the promulgation of these rules. That authorizing legislation was effective 90 days from passage. In accordance with W. Va. Code §29A-3-13(a), on June 12, 1987, these final NPDES regulations were filed with the Secretary of State. In accordance with W. Va. Code §22A-3-40(e), these final rules shall become effective upon a proclamation by the Governor stating that final approval of the partial transfer of the National Pollutant Discharge Elimination System established under the Clean Water Act has been given by the Administrator of the United States Environmental Protection Agency, as provided and fixed by law.

required, or to be required, for all matters pertaining to coal and other mineral resources as are called for pursuant to West Virginia Code Chapter 20, Article 5 and West Virginia Code Chapter 20, Article 5A with regard to water pollution control for facilities involved in the exploration, development, production, recovery, utilization and preparation of coal and other mineral resources.

The Department jurisdiction over energy resources is primarily established by W. Va. Code §22-1-16 (1985 Repl. Vol.):

> Except as otherwise expressly provided in this chapter or in chapters twenty-two-a or twenty-two-b of this code, jurisdiction over the issuance of regulations, or any and all permits and other governmental authorizations required or to be required in all matters pertaining to the exploration, development, production, storage and recovery of coal, oil and gas, and other mineral resources in this state, including all safety, conservation, land, water, waste disposal, reclamation and environmental regulations, permits and authorizations called for pursuant to article 5, 5-a, 5-d, and 5-f, chapter twenty of this code, and the enforcement and implementation thereof is vested exclusively in the Department of Energy. The Department of Energy is hereby designated as the lead regulatory agency for this state for all purposes of federal legislation relating to such activities.

In addition to the general jurisdictional authorization to the Department of Energy, W. Va. Code §22A-3-40 also specifically transfers all powers, duties and responsibilities of the Department of Natural Resources to the Commissioner of the Department of Energy with respect to the NPDES program for coal mines, preparation plants and refuse and waste therefrom under

Preamble

On April 12, 1985, the West Virginia Legislature passed The West Virginia Energy Act making it effective 90 days from passage (July 11, 1985). The Act is codified at W. Va. Code §§22-1-1 through 22-13-3; 22A-1-1 through 22A-6-6; and 22B-1-1 through 22B-4-13 (1985 Repl.Vol.). In passing The West Virginia Energy Act, the Legislature found that there was a need for the consolidation of regulatory power under a single department of state government to, among other things, achieve "more efficient administration, avoid unnecessary delays in permitting and other matters, provide better and more expeditious enforcement and application of environmental and safety laws" with a view towards making the state's mineral development industry "more competitive with that in other energy producing states." W. Va. Code §22-1-2 (1985 Repl.Vol.).

In that Act, the Legislature found the public policy of the state to be to foster, encourage and promote the exploration for and the development, production, utilization and conservation of coal, oil and gas and other mineral resources of this state and at the same time protect the environment and enhance safety and health in these vital industries. W. Va. Code §22-1-2 (1985 Repl. Vol.). To achieve this end, the Department of Energy was created to consolidate rulemaking and permit issuance requirements in these industries.

The West Virginia Energy Act vested exclusive jurisdiction in the Department of Energy over the issuance of regulations or any and all permits and other governmental authorizations

Chapter 20, Article 5A of the Code, including related sewage treatment facilities and bath houses. The Commissioner is given the authority to issue, amend, transfer, renew or revoke all required permits for such facilities. This section has the effect of transferring authority for NPDES for coal mining facilities from the Department of Natural Resources to the Department of Energy, thereby eliminating any duplication of jurisdiction as between the two agencies over such point sources. The authority of the Commissioner under these statutory provisions becomes effective only upon a proclamation by the Governor stating that the final approval of the partial transfer of the NPDES system to the DOE has been given by the Administrator of the United States Environmental Protection Agency. The promulgation of these rules is an essential step in that process.

These state NPDES rules for the mines and minerals industry, designated Series 20, are meant to supercede the former regulations of the DNR and the State Water Resources Board with respect to such point sources. These rules deal only with NPDES requirements necessary for the transfer of delegation of that program from the Department of Natural Resources to the Department of Energy as outlined in 40 C.F.R. Part 123.

Similar NPDES regulations of the State Water Resources Board and the DNR Division of Reclamation were continued in effect by The West Virginia Energy Act until the Department of Energy promulgates approved superceding regulations. These regulations are part of the transition from the Reclamation Division of the DNR to the Department of Energy for purposes of permit issuance.

Based upon comments received during review of the proposed rules and later during review by the Legislative Rule-Making Review Committee, some changes were made to what are now the final rules. In most cases, the changes were only technical or for clarification. A few, however, were substantive and merit some comment as to the reason for and intent of the change.

The regulations essentially incorporate by reference all of the EPA regulations which are necessary to achieve delegation of the NPDES program for the mines and minerals industry. Some provisions, which are fully set out in the text of the rules, differ from the federal regulations or are in addition to those federal regulations, where state law requires deviations or the state prefers to include clarifying language. In addition, some provisions have been included which increase the flexibility of the Department of Energy in administering the permit program to take account of fact-specific cases or to deal with areas of regulatory control or permit conditions which have no counterpart EPA regulations, but which serve to improve the state program.

In connection with the conflict of interest provisions found in Section 3.4.1 of the final rules, it is made clear that both the Commissioner and any designated permit-issuing authority under these regulations are bound by the conflict of interest provisions. It is recognized that the Commissioner has the power to delegate permit-issuing authority under The Energy Act, but must do so to a person who meets the conflict of interest provisions as well.

With regard to Section 6.2.1, it is the intention of the Department that when dealing with toxic effluents that an obligation to "correct" the toxic effect will be interpreted to mean to take action necessary to reduce the toxicity of the effluent to such a level that it no longer produces the unacceptable toxic effect on biota in the receiving water.

The Department has also made it clear in Section 1.5 of the final rules that these rules supercede only the NPDES requirements of the rules of other agencies to the extent they apply to sources subject to the jurisdiction of the Commissioner. The provisions of the NPDES rules do not eliminate need for an owner or operator of a covered facility to secure any other Article 5A permit, other than NPDES, which may be lawfully required.

WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF ENERGY
DIVISION OF MINES AND MINERALS
CHAPTER 22-1, 22A-1, 22A-1A, 22A-3, 22A-4,
22A-5, 22A-6 and 20-5A
SERIES 20

Title: State National Pollutant Discharge Elimination System (NPDES) for Mines and Minerals

EXHIBIT OF CODE OF FEDERAL REGULATIONS PROVISIONS
INCORPORATED BY REFERENCE

WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF ENERGY
DIVISION OF MINES AND MINERALS
CHAPTER 22-1, 22A-1, 22A-1A, 22A-3, 22A-4,
22A-5, 22A-6 and 20-5A
SERIES 20

Title: State National Pollutant Discharge Elimination System (NPDES) for Mines and Minerals

Department of Energy
Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 2

Document Incorporated By Reference
40 C.F.R. §122.2

§122.2 Definitions.

The following definitions apply to Parts 122, 123, and 124. Terms not defined in this section have the meaning given by CWA. When a defined term appears in a definition, the defined term is sometimes placed in quotation marks as an aid to readers.

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a "discharge" or a related activity is subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved States," including any approved modifications or revisions.

Approved program or *approved State* means a State or interstate program which has been approved or authorized by EPA under Part 123.

Average monthly discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

Average weekly discharge limitation means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week.

Best management practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

BMPs means "best management practices."

Contiguous zone means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

Continuous discharge means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

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Reg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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40 C.F.R. §122.2

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117, 33 U.S.C. 1251 *et seq.*

CWA and regulations means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. In the case of an approved State program, it includes State program requirements.

Daily discharge means the "discharge of a pollutant" measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

Direct discharge means the "discharge of a pollutant."

Director means the Regional Administrator or the State Director, as the context requires, or an authorized representative. When there is no "approved State program," and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State program, "Director" normally means the State Director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State program. (For example, when EPA has issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval, see § 123.1.) In such cases, the term "Director" means the Regional Administrator and not the State Director.

Discharge when used without qualification means the "discharge of a pollutant."

Discharge of a pollutant means:

(a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or

(b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

Discharge Monitoring Report ("DMR") means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by "approved States" as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

DMR means "Discharge Monitoring Report."

Draft permit means a document prepared under § 124.6 indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in § 124.5, are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination, as discussed in § 124.5, is not a "draft permit." A "proposed permit" is not a "draft permit."

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 2

Document Incorporated By Reference
40 C.F.R. §122.2

Effluent limitations guidelines means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise "effluent limitations."

Environmental Protection Agency ("EPA") means the United States Environmental Protection Agency.

EPA means the United States "Environmental Protection Agency."

Facility or activity means any NPDES "point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

General permit means an NPDES "permit" issued under § 122.28 authorizing a category of discharges under the CWA within a geographical area.

Hazardous substance means any substance designated under 40 CFR Part 116 pursuant to section 311 of CWA.

Indirect discharger means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works."

Interstate agency means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the CWA and regulations.

Major facility means any NPDES "facility or activity" classified as such by the Regional Administrator, or, in the case of "approved State programs," the Regional Administrator in conjunction with the State Director.

Maximum daily discharge limitation means the highest allowable "daily discharge."

Municipality means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved managment agency under section 208 of CWA.

National Pollutant Discharge Elimination System (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an "approved program."

New discharger means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants;"

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) Which is not a "new source;" and

(d) Which has never received a finally effective NDPES permit for discharges at that "site."

This definition includes an "indirect discharger" which commences discharging into "waters of the United States" after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a "site" for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area or biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122(a) (1) through (10). An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 2

Document Incorporated By Reference
40 C.F.R. §122.2

(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or

(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

NPDES means "National Pollutant Discharge Elimination System."

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

Permit means an authorization, license, or equivalent control document issued by EPA or an "approved State" to implement the requirements of this part and Parts 123 and 124. "Permit" includes an NPDES "general permit" (§ 122.28). Permit does not include any permit which has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit."

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Point source means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

NOTE: Radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear materials. Examples of materials not covered include radium and accelerator-produced isotopes. *See Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976).

POTW means "publicly owned treatment works."

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al.* v. *Train*, 8 E.R.C. 2120 (D.D.C. 1976), *modified* 12 E.R.C. 1833 (D.D.C. 1979)); also listed in Appendix A of Part 122.

Privately owned treatment works means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a "POTW."

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Proposed permit means a State NPDES "permit" prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance by the State. A "proposed permit" is not a "draft permit."

Publicly owned treatment works ("POTW") means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State" or "municipality." This definition includes sewers, pipes, or other conveyances only if they convey

wastewater to a POTW providing treatment.

Recommencing discharger means a source which recommences discharge after terminating operations.

Regional Administrator means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

Schedule of compliance means a schedule of remedial measures included in a "permit", including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the CWA and regulations.

Secondary industry category means any industry category which is not a "primary industry category."

Secretary means the Secretary of the Army, acting through the Chief of Engineers.

Sewage from vessels means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under section 312 of CWA, except that with respect to commercial vessels on the Great Lakes this term includes graywater. For the purposes of this definition, "graywater" means galley, bath, and shower water.

Sewage sludge means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a "publicly owned treatment works." "Sewage" as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

Site means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

State Director means the chief administrative officer of any State or interstate agency operating an "approved program," or the delegated representative of the State Director. If responsibility is divided among two or more State or interstate agencies, "State Director" means the chief administrative officer of the State or interstate agency authorized to perform the particular procedure or function to which reference is made.

State/EPA Agreement means an agreement between the Regional Administrator and the State which coordinates EPA and State activities, responsibilities and programs including those under the CWA programs.

Total dissolved solids means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

Toxic pollutant means any pollutant listed as toxic under section 307(a)(1) of CWA.

Variance means any mechanism or provision under section 301 or 316 of CWA or under 40 CFR Part 125, or in the applicable "effluent limitations guidelines" which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on sections 301(c), 301(g), 301(h), 301(i), or 316(a) of CWA.

Waters of the United States or *waters of the U.S.* means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands;"

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.]

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

[Note 1.—At 45 FR 48620, July 21, 1980, the Environmental Protection Agency suspended until further notice in § 122.2, the last sentence, beginning "This exclusion applies" in the definition of "Waters of the United States." This revision continues that suspension.]

[Note 1 corrected by 50 FR 6940, February 19, 1985]

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Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 3.2.1

Document Incorporated By Reference
40 C.F.R. §122.3

§ 122.3 Exclusions.

The following discharges do not require NPDES permits:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or waters of the United States for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the United States which are regulated under section 404 of CWA.

(c) The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the United States are eliminated. (See also § 122.47(b)). This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other party not leading to treatment works.

(d) Any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR Part 1510 (The National Oil and Hazardous Substances Pollution Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

(e) Any introduction of pollutants from non point-source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in § 122.23, discharges from concentrated aquatic animal production facilities as defined in § 122.24, discharges to aquaculture projects as defined in § 122.25, and discharges from silvicultural point sources as defined in § 122.27.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the Director may otherwise require under § 122.44(m).

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 3.2.2

Document Incorporated By Reference
40 C.F.R. §122.4, except (h)

§ 122.4 Prohibitions (applicable to State NPDES programs, see § 123.25).

No permit may be issued:

(a) When the conditions of the permit do not provide for compliance with the applicable requirements of CWA, or regulations promulgated under CWA;

(b) When the applicant is required to obtain a State or other appropriate certification under section 401 of CWA and § 124.53 and that certification has not been obtained or waived;

(c) By the State Director where the Regional Administrator has objected to issuance of the permit under § 123.44;

(d) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States;

(e) When, in the judgment of the Secretary, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(f) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(g) For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of CWA;

(i) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of CWA, and for which the State or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

(1) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards.

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Document Incorporated By Reference
40 C.F.R. §122.5

§ 122.5 Effect of a permit.

(a) *Applicable to State programs, see § 123.25.* Except for any toxic effluent standards and prohibitions imposed under section 307 of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with sections 301, 302, 306, 307, 318, 403, and 405 of CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 122.62 and 122.64.

(b) *Applicable to State programs, See § 123.25.* The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

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§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

(a) *Duty to apply.* Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, except persons covered by general permits under § 122.28, excluded under § 122.3, or a user of a privately owned treatment works unless the Director requires otherwise under § 122.44(m), shall submit a complete application (which shall include a BMP program if necessary under 40 CFR 125.102) to the Director in accordance with this section and Part 124.

(b) *Who applies?* When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

(c)(1) *Time to apply.* Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180 day requirement to avoid delay. See also paragraph (k) of this section.

(d) *Duty to reapply.* (1) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

(2) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that:

(i) The Regional Administrator may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date; and

(ii) The Regional Administrator may grant permission to submit the information required by paragraphs (g)(7), (9), and (10) of this section after the permit expiration date.

(3) All applicants for EPA issued permits, other than POTWs and new sources, must complete Forms 1 and either 2b or 2c of the consolidated permit application forms to apply under section 122.21 and paragraphs (f), (g), and (h) of this section.

(e) *Completeness.* The Director shall not issue a permit before receiving a complete application for a permit except for NPDES general permits. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. For EPA administered NPDES programs, an application which is reviewed under § 124.3 is complete when the Director receives either a complete application or the information listed in a notice of deficiency.

(f) *Information requirements.* All applicants for NPDES permits shall provide the following information to the Director, using the application form provided by the Director (additional information required of applicants is set forth in paragraphs (g)–(k)) of this section.

(1) The activities conducted by the applicant which require it to obtain an NPDES permit.

(2) Name, mailing address, and location of the facility for which the application is submitted.

(3) Up to four SIC codes which best reflect the principal products or services provided by the facility.

(4) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

~~(5) Whether the facility is located on Indian lands.~~

(6) A listing of all permits or construction approvals received or applied for under any of the following programs:

(i) Hazardous Waste Management program under RCRA.

(ii) UIC program under SDWA.

(iii) NPDES program under CWA.

(iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(v) Nonattainment program under the Clean Air Act.

(vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.

(viii) Dredge or fill permits under section 404 of CWA.

(ix) Other relevant environmental permits, including State permits.

(7) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area. Group II storm water discharges, as defined in § 122.26(b)(3), are exempt from the requirements of paragraph (f)(7) of this section.

(8) A brief description of the nature of the business.

(9) For Group II storm water dischargers (as defined in § 122.26(b)(3)) only, a brief narrative description of:

(i) The drainage area, including an estimate of the size and nature of the area;

(ii) The receiving water; and

(iii) Any treatment applied to the discharge.

(g) *Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.* Existing manufacturing, commercial mining, and silvicultural dischargers applying for NPDES permits, except for those facilities subject to the requirements of § 122.21(h), shall provide the following information to the Director, using application forms provided by the Director.

[122.21(g) amended by 51 FR 26991, July 21, 1986]

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(1) *Outfall location.* The latitude and longitude to the nearest 15 seconds and the name of the receiving water.

(2) *Line Drawing.* A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under paragraph (g)(3) of this section. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(3) *Average flows and treatment.* A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and stormwater runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, "dye-making reactor", "distillation tower." For a privately owned treatment works, this information shall include the identity of each user of the treatment works.

(4) *Intermittent flows.* If any of the discharges described in paragraph (g)(3) of this section are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for stormwater runoff, spillage or leaks).

(5) *Maximum production.* If an effluent guideline promulgated under section 304 of CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility as required by *§ 122.45(b)(2).*

(6) *Improvements.* If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

(7) *Effluent characteristics.* Information on the discharge of pollutants specified in this paragraph. When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraphs (g)(7) (iii) and (iv) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours, and a minimum of one to four (4) grab samples may be taken for storm water discharges depending on the duration of the discharge. One grab sample shall be taken in the first hour (or less) of discharge with one additional grab sample taken in each succeeding hour of discharge up to a minimum of four grab samples for discharges lasting four or more hours. In addition, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

(i)(A) Every applicant must report quantitative data for every outfall for the following pollutants:

Biochemial Oxygen Demand (BOD_5)
Chemical Oxygen Demand
Total Organic Carbon
Total Suspended Solids
Ammonia (as N)
Temperature (both winter and summer)
pH

(B) The Director may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in paragraph (g)(7)(i)(A) of this section if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

(ii) Each applicant with processes in one or more primary industry category (see Appendix A to Part 122) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(A) The organic toxic pollutants in the fractions designated in Table I of Appendix D of this part for the applicant's industrial category or categories unless the applicant qualifies as a small business under paragraph (g)(8) of this section. Table II of Appendix D of this part lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromotography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes. [See Notes 2, 3, and 4 of this section.]

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(B) The pollutants listed in Table III of Appendix D of this part (the toxic metals, cyanide, and total phenols).

(iii)(A) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of Appendix D (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(B) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of Appendix D (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (g)(7)(ii) of this section, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under paragraph (g)(8) of this section is not required to analyze for pollutants listed in Table II of Appendix D (the organic toxic pollutants).

(iv) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of Appendix D of this part (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

(v) Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(A) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(B) Knows or has reason to believe that TCDD is or may be present in an effluent.

(8) *Small business exemption.* An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in paragraph (g)(7)(ii)(A) or (g)(7)(iii)(A) of this section to submit quantitative data for the pollutants listed in Table II of Appendix D of this part (the organic toxic pollutants):

(i) For coal mines, a probable total annual production of less than 100,000 tons per year.

(ii) For all other applicants, gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars).

(9) *Used or manufactured toxics.* A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The Director may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the Director has adequate information to issue the permit.

(11) *Biological toxicity tests.* An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last 3 years on any of the applicant's discharges or on a receiving water in relation to a discharge.

(12) *Contract analyses.* If a contract laboratory or consulting firm performed any of the analyses required by paragraph (g)(7) of this section, the identity of each laboratory or firm and the analyses performed.

(13) *Additional information.* In addition to the information reported on the application form, applicants shall provide to the Director, at his or her request, such other information as the Director may reasonably require to assess the discharges of the facility and to determine whether to issue an NPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

[New 122.21(h) added by 51 FR 26991, July 28, 1986]

(h) *Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only non-process wastewater.* Except for stormwater discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for NPDES permits which discharge only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the Director, using application forms provided by the Director:

(1) *Outfall location.* Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water.

(2) *Discharge date* (for new dischargers). Date of expected commencement of discharge.

(3) *Type of waste.* An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including

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sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available.

(4) *Effluent characteristics.* (i) Quantitative data for the pollutants or parameters listed below, unless testing is waived by the Director. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136. Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

(A) Biochemical Oxygen Demand (BOD_5).

(B) Total Suspended Solids (TSS).

(C) Fecal Coliform (if believed present or if sanitary waste is or will be discharged).

(D) Total Residual Chlorine (if chlorine is used).

(E) Oil and Grease.

(F) Chemical Oxygen Demand (COD) (if non-contact cooling water is or will be discharged).

(G) Total Organic Carbon (TOC) (if non-contact cooling water is or will be discharged).

(H) Ammonia (as N).

(I) Discharge Flow.

(J) pH.

(K) Temperature (Winter and Summer).

(ii) The Director may waive the testing and reporting requirements for any of the pollutants or flow listed in paragraph (h)(4)(i) of this section if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

(iii) If the applicant is a new discharger, he must complete and submit Item IV of Form 2e (see § 122.21(h)(4)) by providing quantitative data in accordance with that section no later than two years after commencement of discharge. However, the applicant need not complete those portions of Item IV requiring tests which he has already performed and reported under the discharge monitoring requirements of his NPDES permit.

(iv) The requirements of parts i and iii of this section that an applicant must provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of § 122.45(g) are met.

(5) *Flow.* A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for stormwater runoff, leaks, or spills).

(6) *Treatment System.* A brief description of any system used or to be used.

(7) *Optional Information.* Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining "net" credits pursuant to § 122.45(g).

(8) *Certification.* Signature of certifying official under § 122.22.

[New 122.21(k) added by 51 FR 26991, July 28, 1986]

(k) *Application requirements for new sources and new discharges.* New manufacturing, commercial, mining, and silvicultural dischargers applying for NPDES permits (except for new discharges of stormwater runoff or facilities subject to the requirements of § 122.21(h)) shall provide the following information to the Director, using application forms provided by the Director:

(1) *Expected outfall location.* The latitude and longitude to the nearest 15 seconds and the name of the receiving water.

(2) *Discharge dates.* The expected date of commencement of discharge.

(3) *Flows, Sources of Pollution, and Treatment Technologies.*—(i) *Expected treatment of wastewater.* Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged.

(ii) *Line drawing.* A line drawing of the water flow through the facility with a water balance as described in § 122.21(g)(2).

(iii) *Intermittent Flows.* If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for stormwater runoff, spillage, or leaks).

(4) *Production.* If a new source performance standard promulgated under section 306 of CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard as required by § 122.45(b)(2) for each of the first three years. Alternative estimates may also be submitted if production is likely to vary.

(5) *Effluent Characteristics.* The requirements in paragraphs (h)(4)(i), (ii), and (iii) of this section that an applicant must provide estimates of certain

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pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of § 122.45(g) are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass.

(i) Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The Director may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

(A) Biochemical Oxygen Demand (BOD).

(B) Chemical Oxygen Demand (COD).

(C) Total Organic Carbon (TOC).

(D) Total Suspended Solids (TSS).

(E) Flow.

(F) Ammonia (as N).

(G) Temperature (winter and summer

(H) pH.

(ii) Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of Appendix D of Part 122 (certain conventional and nonconventional pollutants).

(iii) Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

(A) The pollutants listed in Table III of Appendix D (the toxic metals, in the discharge from any outfall: Total cyanide, and total phenols);

(B) The organic toxic pollutants in Table II of Appendix D (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than $100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

(iv) The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

(A) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93–76–5);

(B) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93–72–1);

(C) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136–25–4);

(D) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299–84–3);

(E) 2,4,5-trichlorophenol (TCP) (CAS #95–95–4); or

(F) Hexachlorophene (HCP) (CAS #70–30–4);

(v) Each applicant must report any pollutants listed in Table V of Appendix D (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

(vi) No later than two years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of NPDES application Form 2c (see § 122.21(g)). However, the applicant need not complete those portions of Item V requiring tests which he has already performed and reported under the discharge monitoring requirements of his NPDES permit.

(6) *Engineering Report.* Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge.

(7) *Other Information.* Any optional information the permittee wishes to have considered.

(8) *Certification.* Signature of certifying official under § 122.22.

[Former 122.21(k) — (o) redesignated as (l) — (p) by 51 FR 26991, July 28, 1986]

(m) *Variance requests by non-POTWs.* A discharger which is not a publicly owned treatment works (POTW) may

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request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this paragraph:

(1) *Fundamentally different factors.* A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based, shall be made by the close of the public comment period under § 124.10. The request shall explain how the requirements of § 124.13 and 40 CFR Part 125, Subpart D have been met.

(2) *Non-conventional pollutants.* A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to section 301(g) of CWA because of certain environmental considerations, when those requirements were based on effluent limitation guidelines, must be made by:

(i) Submitting an initial request to the Regional Administrator, as well as to the State Director if applicable, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a section 301(c) or section 301(g) modification or both. This request must have been filed not later than:

(A) September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or

(B) 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977; and

(ii) Submitting a completed request no later than the close of the public comment period under § 124.10 demonstrating that the requirements of § 124.13 and the applicable requirements of Part 125 have been met.

(iii) Requests for variance from effluent limitations not based on effluent limitation guidelines need only comply with paragraph (1)(2)(ii) of this section and need not be preceded by an initial request under paragraph (1)(2)(i) of this section.

(3) *Delay in construction of POTW.* An extension under CWA section 301(i)(2) of the statutory deadlines in sections 301(b)(1)(A) or (b)(1)(C) of CWA based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978, or 180 days after the relevant POTW requested an extension under paragraph (m)(2) of this section, whichever is later, but in no event may this date have been later than December 25, 1978. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) *Innovative technology.* An extension under CWA section 301(k) from the statutory deadline of section 301(b)(2)(A) for best available technology based on the use of innovative technology may be requested no later than the close of the public comment period under § 124.10 for the discharger's initial permit requiring compliance with section 301(b)(2)(A). The request shall demonstrate that the requirements of § 124.13 and Part 125, Subpart C have been met.

(5) *Water quality related effluent limitations.* A modification under section 302(b)(2) of requirements under section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under § 124.10 on the permit from which the modification is sought.

(6) *Thermal discharges.* A variance under CWA section 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established under CWA Section 402(a)(1) or are based on water quality standards the request for a variance may be filed by the close of the public comment period under § 124.10. A copy of the request as required under 40 CFR Part 125, Subpart H, shall be sent simultaneously to the appropriate State or interstate certifying agency as required under 40 CFR Part 125. (See § 124.65 for special procedures for section 316(a) thermal variances.)

(o) *Expedited variance procedures and time extensions.* (1) Notwithstanding the time requirements in paragraphs (l) and (m) of this section, the Director may notify a permit applicant before a draft permit is issued under § 124.6 that the draft permit will likely contain limitations which are eligible for variances. In the notice the Director may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a complete request required under paragraph (1)(2)(ii) or (1)(2)(iii) of this section may request an extension. The extension may be granted or denied at the discretion of the Director. Extensions shall be no more than 6 months in duration.

(p) *Recordkeeping.* Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least 3 years from the date the application is signed.

NOTE 1: At 46 FR 2046, Jan. 8, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) and the corresponding portions of Item V-C of the NPDES application Form 2c as they apply to coal mines. This revision continues that suspension.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 4.2

Document Incorporated By Reference
40 C.F.R. §122.22

§ 122.22 Signatories to permit applications and reports (applicable to State programs, see § 123.25).

(a) *Applications.* All permit applications shall be signed as follows:

(1) *For a corporation:* by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who perfoms similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

NOTE: EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in § 122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under § 122.22(a)(1)(ii) rather than to specific individuals.

(2) *For a partnership or sole proprietorship:* by a general partner or the proprietor, respectively; or

(3) *For a municipality, State, Federal, or other public agency:* By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

(b) All reports required by permits, other information requested by the Director, and all permit applications submitted for Group II storm water discharges under § 122.26(b)(3) shall be signed by a person described in paragraph (a), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and

(3) The written authorization is submitted to the Director.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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40 C.F.R. §122.22

(c) *Changes to authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 4.4

Document Incorporated By Reference
40 C.F.R. §122.28 except §122.28 (b)(1) phrase "and §124.58 for EPA" and except §122.28(c)

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

(a) *Coverage.* The Director may issue a general permit in accordance with the following:

(1) *Area.* The general permit shall be written to cover a category of discharges described in the permit under paragraph (a)(2) of this section, except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

(i) Designated planning areas under sections 208 and 303 of CWA;

(ii) Sewer districts or sewer authorities;

(iii) City, county, or State political boundaries;

(iv) State highway systems;

(v) Standard metropolitan statistical areas as defined by the Office of Management and Budget;

(vi) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or

(vii) Any other appropriate division or combination of boundaries.

(2) *Sources.* The general permit may be written to regulate, within the area described in paragraph (a)(1) of this section, either:

(i) Storm water point sources; or

(ii) A category of point sources other than storm water point sources if the sources all:

(A) Involve the same or substantially similar types of operations;

(B) Discharge the same types of wastes;

(C) Require the same effluent limitation or operating conditions;

(D) Require the same or similar monitoring; and

(E) In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

(b) *Administration.* (1) *In general.* General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of Part 124 or corresponding State regulations. Special procedures for issuance are found at § 123.44 for States

(2) *Requiring an individual permit.* (i) The Director may require any person authorized by a general permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take action under this paragraph. Cases where an individual NPDES permit may be required include the following:

(A) The discharge(s) is a significant contributor of pollution as determined by the factors set forth at § 122.26(c)(2);

(B) The discharger is not in compliance with the conditions of the general NPDES permit;

(C) A change has occurred in the availability of demonstrated technolo-

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 44

Document Incorporated By Reference
40 C.F.R. §122.28, except §122.28 (b)(1) Phrase "and §124.58 for EPA" and except §122.28(c)

gy or practices for the control or abatement of pollutants applicable to the point source;

(D) Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit;

(E) A Water Quality Management plan containing requirements applicable to such point sources is approved; or

(F) The requirements of paragraph (a) of this section are not met.

(ii) *For EPA issued general permits only,* the Regional Administrator may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in paragraph (b)(2)(i) of this section, only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES permit the general permit as it applies to the individual permittee shall automatically terminate. The Director may grant additional time upon request of the applicant.

(iii) Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under §122.21, with reasons supporting the request, to the Director no later than 90 days after the publication by EPA of the general permit in the FEDERAL REGISTER or the publication by a State in accordance with applicable State law. The request shall be processed under Part 124 or applicable State procedures. The request shall be granted by issuing of any individual permit if the reasons cited by the owner or operator are adequate to support the request.

(iv) When an individual NPDES permit is issued to an owner or operator otherwise subject to a general NPDES permit, the applicability of the general permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit.

(v) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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Document Incorporated By Reference
40 C.F.R. §122.29

§ 122.29 New sources and new dischargers.

(a) *Definitions.* (1) "New source" and "new discharger" are defined in § 122.2. [See Note 2.]

(2) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(3) "Existing source" means any source which is not a new source or a new discharger.

(4) "Site" is defined in § 122.2;

(5) "Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(b) *Criteria for new source determination.* (1) Except as otherwise provided in an applicable new source performance standard, a source is a "new source" if it meets the definition of "new source" in § 122.2, and

(i) It is constructed at a site at which no other source is located; or

(ii) It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Director shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.

(2) A source meeting the requirements of paragraphs (b)(1) (i), (ii), or (iii) of this section is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger. See § 122.2.

(3) Construction on a site at which an existing source is located results in a modification subject to § 122.62 rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraph (b)(1) (ii) or (iii) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

(4) Construction of a new source as defined under § 122.2 has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous on-site construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation with a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under the paragraph.

(c) *Requirement for an Environmental Impact Statement.* (1) The issuance of an NPDES permit to new source:

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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(i) By EPA may be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 33 U.S.C. 4321 *et seq.* and is subject to the environmental review provisions of NEPA as set out in 40 CFR Part 6, Subpart F. EPA will determine whether an Environmental Impact Statement (EIS) is required under §122.21(k) (special provisions for applications from new sources) and 40 CFR Part 6, Subpart F;

(ii) By an NPDES approved State is not a Federal action and therefore does not require EPA to conduct an environmental review.

(2) An EIS prepared under this paragraph shall include a recommendation either to issue or deny the permit.

(i) If the recommendation is to deny the permit, the final EIS shall contain the reasons for the recommendation and list those measures, if any, which the applicant could take to cause the recommendation to be changed;

(ii) If the recommendation is to issue the permit, the final EIS shall recommend the actions, if any, which the permittee should take to prevent or minimize any adverse environmental impacts;

(3) The Regional Administrator, to the extent allowed by law, shall issue, condition (other than imposing effluent limitations), or deny the new source NPDES permit following a complete evaluation of any significant beneficial and adverse impacts of the proposed action and a review of the recommendations contained in the EIS or finding of no significant impact.

(4)(i) No on-site construction of a new source for which an EIS is required shall commence before final Agency action in issuing a final permit incorporating appropriate EIS-related requirements, or before execution by the applicant of a legally binding written agreement which requires compliance with all such requirements, unless such construction is determined by the Regional Administrator not to cause significant or irreversible adverse environmental impact. The provisions of any agreement entered into under this paragraph shall be incorporated as conditions of the NPDES permit when it is issued.

(ii) No on-site construction of a new source for which an EIS is not required shall commence until 30 days after issuance of a finding of no significant impact, unless the construction is determined by the Regional Administrator not to cause significant or irreversible adverse environmental impacts.

(5)(i) The commencement of on-site construction in violation of paragraph (c) of this section shall constitute grounds for denial of a permit.

(ii) The permit applicant must notify the Regional Administrator of any on-site construction which begins before the times specified in paragraph (c)(4) of this section. If on-site construction begins in violation of this paragraph, the Regional Administrator shall advise the owner or operator that it is proceeding with construction at its own risk, and that such construction activities constitute grounds for denial of a permit. The Regional Administrator may seek a court order to enjoin construction in violation of this paragraph.

(d) *Effect of compliance with new source performance standards.* (The provisions of this paragraph do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this paragraph.)

(1) Except as provided in paragraph (d)(2) of this section, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under section 301(b)(2) of CWA for the soonest ending of the following periods:

(i) Ten years from the date that construction is completed;

(ii) Ten years from the date the source begins to discharge process or

other nonconstruction related wastewater; or

(iii) The period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954.

(2) The protection from more stringent standards of performance afforded by paragraph (d)(1) of this section does not apply to:

(i) Additional or more stringent permit conditions which are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under section 307(a) of CWA; or

(ii) Additional permit conditions in accordance with § 125.3 controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

(3) When an NPDES permit issued to a source with a "protection period" under paragraph (d)(1) of this section will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of section 301 and any other then applicable requirements of CWA immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than 3 years before the expiration of the protection period.

(4) The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under § 122.47(a)(2).

(5) After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 5.1

Document Incorporated By Reference
40 C.F.R. §122.41, execpt §122.41 (a),(2),§122.41(i),§122.41 (j)(5), §122.41(k)(2),and §122.41(1)(3)

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).

The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in § 122.42. All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

(a) *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

(b) *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(e) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(f) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(g) *Property rights.* This permit does not convey any property rights of any kind or any exclusive privilege.

(h) *Duty to provide information.* The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

(j) *Monitoring and records.* (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

(3) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

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22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 5.1

Document Incorporated By Reference
40 C.F.R. §122.41, except §122.41 (a)(2), §122.41(i), §122.41 (j)(5), §122.41(k)(2), and §122.41(l)(3)

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(4) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

(k) *Signatory requirement.* (1) All applications, reports, or information submitted to the Director shall be signed and certified. (See § 122.22)

(l) *Reporting requirements.* (1) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in § 122.29(b); or

(ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under § 122.42(a)(1).

(2) *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(4) *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR).

(ii) If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

(iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

(5) *Compliance schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) *Twenty-four hour reporting.* (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becames aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipat-

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Document Incorporated By Reference
40 C.F.R. §122.41, execpt §122.41
(a)(2), §122.41(i), §122.41
(j)(5), §122.41(k)(2), and
§122.41(l)(3)

ed time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See § 122.41(g).

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. (See § 122.44(g).)

(iii) The Director may waive the written report on a case-by-case basis for reports under paragraph (l)(6)(ii) of this section if the oral report has been received within 24 hours.

(7) *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs (l) (4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6) of this section.

(8) *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

(m) *Bypass*—(1) *Definitions.* (i) Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) "Severe property damage" means ubstantial physical damage to proper-y, damage to the treatment facilities hich causes them to become inoper-ble, or substantial and permanent ss of natural resources which can asonably be expected to occur in the bsence of a bypass. Severe property amage does not mean economic loss used by delays in production.

(2) *Bypass not exceeding limitations.* he permittee may allow any bypass occur which does not cause effluent itations to be exceeded, but only if also is for essential maintenance to sure efficient operation. These bypasses are not subject to the provisions of paragraphs (m)(3) and (m)(4) of this section.

(3) *Notice*—(i) *Anticipated bypass.* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(ii) *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass as required in paragraph (l)(6) of this section (24-hour notice).

(4) *Prohibition of bypass.* (i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph (m)(3) of this section.

(ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph (m)(4)(i) of this section.

(n) *Upset*—(1) *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit ef-

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Leg. Rule, 22-1, 22A-1, 22A-1A,
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40 C.F.R. §122.41, execpt §122.41 (a)(2), §122.41(i), §122.41 (j)(5), §122.41(k)(2), and §122.41(1)(3)

fluent limitations if the requirements of paragraph (n)(3) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(3) *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated; and

(iii) The permittee submitted notice of the upset as required in paragraph (1)(6)(ii)(B) of this section (24 hour notice).

(iv) The permittee complied with any remedial measures required under paragraph (d) of this section.

(4) *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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Document Incorporated By Reference
40 C.F.R. §122.42(a)

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

The following conditions, in addition to those set forth in § 122.41, apply to all NPDES permits within the categories specified below:

(a) *Existing manufacturing, commercial, mining, and silvicultural dischargers.* In addition to the reporting requirements under § 122.41(l), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:

(1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) One hundred micrograms per liter (100 μg/l);

(ii) Two hundred micrograms per liter (200 μg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 μg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol, and one milligram per liter (1 mg/l) for antimony;

(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with § 122.21(g)(7); or

(iv) The level established by the Director in accordance with § 122.44(f).

(2) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) Five hundred micrograms per liter (500 μg/l);

(ii) One milligram per liter (1 mg/l) for antimony;

(iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with § 122.21(g)(7).

(iv) The level established by the Director in accordance with § 122.44(f).

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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Document Incorporated By Reference
40 C.F.R. §122.61

§ 122.61 Transfer of permits (applicable to State programs, see § 123.25).

(a) *Transfers by modification.* Except as provided in paragraph (b) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under § 122.62(b)(2)), or a minor modification made (under § 122.63(d)), to identify the new permittee and incorporate such other requirements as may be necessary under CWA.

(b) *Automatic transfers.* As an alternative to transfers under paragraph (a) of this section, any NPDES permit may be automatically transferred to a new permittee if:

(1) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in paragraph (b)(2) of this section;

(2) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

(3) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under § 122.63. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b)(2) of this section.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 6.1

Document Incorporated By Reference
40 C.F.R. §122.43

§122.43 Establishing permit conditions (applicable to State programs, see § 123.25).

(a) In addition to conditions required in all permits (§§ 122.41 and 122.42), the Director shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of CWA and regulations. These shall include conditions under §§ 122.46 (duration of permits), 122.47(a) (schedules of compliance), 122.48 (monitoring), and for EPA permits only 122.47(b) (alternates schedule of compliance) and 122.49 (considerations under Federal law).

(b)(1) For a State issued permit, an applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. For a permit issued by EPA, an applicable requirement is a statutory or regulatory requirement (including any interim final regulation) which takes effect prior to the issuance of the permit (except as provided in § 124.86(c) for NPDES permits being processed under Subpart E or F of Part 124). Section 124.14 (reopening of comment period) provides a means for reopening EPA permit proceedings at the discretion of the Director where new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. For State and EPA administered programs, an applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in § 122.62.

(2) New or reissued permits, and to the extent allowed under § 122.62 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in §§ 122.44 and 122.45.

(c) *Incorporation.* All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 6.2

Document Incorporated By Reference
40 C.F.R. §122.44, execpt §122.44 (j), (n), (o) and (p)

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

In addition to the conditions established under § 122.43(a), each NPDES permit shall include conditions meeting the following requirements when applicable.

(a) *Technology-based effluent limitations and standards* based on effluent limitations and standards promulgated under section 301 of CWA or new source performance standards promulgated under section 306 of CWA, on case-by-case effluent limitations determined under section 402(a)(1) of CWA, or on a combination of the two, in accordance with § 125.3. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of § 122.29(d) (protection period).

(b) *Other effluent limitations and standards* under sections 301, 302, 303, 307, 318 and 405 of CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Director shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition. See also § 122.41(a).

(c) *Reopener clause:* for any discharger within a primary industry cat-

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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Document Incorporated By Reference
40 C.F.R. §122.44, execpt §122.44
(j),(n),(o) and (p)

egory (see Appendix A), requirements under section 307(a)(2) of CWA as follows:

(1) On or before June 30, 1981: (i) If applicable standards or limitations have not yet been promulgated, the permit shall include a condition stating that, if an applicable standard or limitation is promulgated under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

(ii) If applicable standards or limitations have been promulgated or approved, the permit shall include those standards or limitations. (If EPA approves existing effluent limitations or decides not to develop new effluent limitations, it will publish a notice in the FEDERAL REGISTER that the limitations are "approved" for the purpose of this regulation.)

(2) On or after the statutory deadline set forth in section 301(b)(2) (A), (C), and (E) of CWA, any permit issued shall include effluent limitations to meet the requirements of section 301(b)(2) (A), (C), (D), (E), (F), whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits need not incorporate the clause required by paragraph (c)(1) of this section.

(3) The Director shall promptly modify or revoke and reissue any permit containing the clause required under paragraph (c)(1) of this section to incorporate an applicable effluent standard or limitation under sections 301(b)(2) (C) and (D), 304(b)(2) and 307(a)(2) which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(d) *Water quality standards and State requirements:* any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 of CWA necessary to:

(1) Achieve water quality standards established under section 303 of CWA;

(2) Attain or maintain a specified water quality through water quality related effluent limits established under section 302 of CWA;

(3) Conform to the conditions to a State certification under section 401 of the CWA that meets the requirements of § 124.53 when EPA is the permitting authority. If a State certification is stayed by a court of competent jurisdiction or an appropriate State board or agency, EPA shall notify the State that the Agency will deem certification waived unless a finally effective State certification is received within sixty days from the date of the notice. If the State does not forward a finally effective certification within the sixty day period, EPA shall include conditions in the permit that may be necessary to meet EPA's obligation under section 301(b)(1)(C) of the CWA;

(4) Conform to applicable water quality requirements under section 401(a)(2) of CWA when the discharge affects a State other than the certifying State;

(5) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under Federal or State law or regulations in accordance with section 301(b)(1)(C) of CWA;

(6) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under section 208(b) of CWA;

(7) Incorporate section 403(c) criteria under Part 125, Subpart M, for ocean discharges;

(8) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 40 CFR Part 125, Subpart D;

(9) Incorporate any other appropriate requirements, conditions, or limitations (other than effluent limitations) into a new source permit to the extent allowed by the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* and section 511 of the CWA, when EPA is the permit issuing authority. (See § 122.29(c)).

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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40 C.F.R. §122.44, execpt §122.44 (j),(n),(o) and (p)

(e) *Toxic pollutants.* Limitations established under paragraphs (a), (b), or (d) of this section, to control pollutants meeting the criteria listed in paragraph (e)(1) of this section. Limitations will be established in accordance with paragraph (e)(2) of this section. An explanation of the development of these limitations shall be included in the fact sheet under § 124.56(b)(1)(i).

(1) Limitations must control all toxic pollutants which the Director determines (based on information reported in a permit application under § 122.21(g)(7) or (10) or in a notification under § 122.42(a)(1) or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c); or

(2) The requirement that the limitations control the pollutants meeting the criteria of paragraph (e)(1) of this section will be satisfied by:

(i) Limitations on those pollutants; or

(ii) Limitations on other pollutants which, in the judgment of the Director, will provide treatment of the pollutants under paragraph (e)(1) of this section to the levels required by § 125.3(c).

(f) *Notification level.* A "notification level" which exceeds the notification level of § 122.42(a)(1)(i), (ii) or (iii), upon a petition from the permittee or on the Director's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c)

(g) *Twenty-four hour reporting.* Pollutants for which the permittee must report violations of maximum daily discharge limitations under § 122.41(l)(6)(ii)(C) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(h) *Durations* for permits, as set forth in § 122.46.

(i) *Monitoring requirements.* In addition to § 122.48, the following monitoring requirements:

(1) To assure compliance with permit limitations, requirements to monitor:

(i) The mass (or other measurement specificed in the permit) for each pollutant limited in the permit,

(ii) The volume of effluent discharged from each outfall;

(iii) Other measurements as appropriate; including pollutants in internal waste streams under § 122.45(i), pollutants in intake water for net limitations under § 122.45(f); frequency, rate of discharge, etc., for noncontinuous discharges under § 122.45(e); and pollutants subject to notification requirements under § 122.42(a).

(iv) According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under that part, and according to a test procedure specified in the permit for pollutants with no approved methods.

(2) Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(k) *Best management practices* to control or abate the discharge of pollutants when:

(1) Authorized under section 304(e) of CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

(2) Numeric effluent limitations are infeasible, or

(3) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of CWA.

(l) *Reissued permits.* (1) Except as provided in paragraph (l)(2) of this section when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.62).

(2) When effluent limitations were imposed under section 402(a)(1) of CWA in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, this paragraph shall apply unless:

(i) The discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by the subsequently promulgated effluent limitation guidelines);

(ii) In the case of an approved State, State law prohibits permit conditions more stringent than an applicable effluent limitation guideline;

(iii) The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (section 301(b)(2)(E) of CWA);

(iv) The circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.62; or

(v) There is increased production at the facility which results in significant reduction in treatment efficiency, in which case the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads, but in no event shall permit limitations be less stringent than those required by subsequently promulgated standards and limitations.

(m) *Privately owned treatment works.* For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this part. Alternatively, the Director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Director's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

(q) *Navigation.* Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with § 124.58.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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Document Incorporated By Reference
40 C.F.R. §122.45 except §122.45
(b)(1)and (b)(2)(ii)(A)(2)

§ 122.45 Calculating NPDES permit conditions (applicable to State NPDES programs, see § 123.25).

(a) *Outfalls and discharge points.* All permit effluent limitations, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under § 122.44(j)(2) (BMPs where limitations are infeasible) and paragraph (l) of this section (limitations on internal waste streams).

(b) *Production-based limitations.* (1) ~~In the case of POTWs, permit limitations, standards, or prohibitions shall be calculated based on design flow.~~

(2)(i) Except in the case of POTWs or as provided in paragraph (b)(2)(ii) of this section, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

(ii)(A)(*1*) The Director may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(*2*) *For the automotive manufacturing industry* only, the Regional Administrator shall, and the State Director may establish a condition under paragraph (b)(2)(ii)(A)(*1*) of this section if the applicant satisfactorily demonstrates to the Director at the time the application is submitted that its actual production, as indicated in paragraph (b)(2)(i) of this section, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(B) If the Director establishes permit conditions under paragraph (b)(2)(ii)(A) of this section:

(*1*) The permit shall require the permittee to notify the Director at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

(*2*) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Director under paragraph (b)(2)(ii)(B)(*1*) of this section, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

(*3*) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(c) *Metals.* All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as defined in 40 CFR Part 136 unless:

(1) An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or

(2) In establishing permit limitations on a case-by-case basis under § 125.3, it is necessary to express the limitation on the metal in the dissolved or valent

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Leg. Rule, 22-1, 22A-1, 22A-1A,
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40 C.F.R. §122.45 except §122.45
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~~ma~~ total form to carry out the provisions of the CWA; or

(3) All approved analytical methods for the metal inherently measure only its dissolved form (*e.g.*, hexavalent chromium).

(d) *Continuous discharges.* For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

(1) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(2) Average weekly and average monthly discharge limitations for POTWs.

(e) *Non-continuous discharges.* Discharges which are not continuous, as defined in § 122.2, shall be particularly described and limited, considering the following factors, as appropriate:

(1) Frequency (for example, a batch discharge shall not occur more than once every 3 weeks);

(2) Total mass (for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);

(3) Maximum rate of discharge of pollutants during the discharge (for example, not to exceed 2 kilograms of zinc per minute); and

(4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (¼ kilogram) of zinc in any discharge).

(f) *Mass limitations.* (1) All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:

(i) For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

(ii) When applicable standards and limitations are expressed in terms of other units of measurement; or

(iii) If in establishing permit limitations on a case-by-case basis under § 125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(2) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

(g) *Pollutants in intake water.* (1) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

(i) The applicable effluent limitations and standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis; or

(ii) The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(2) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(3) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(4) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Director may waive this requirement if he finds that no environmental degradation will result.

(5) This section does not apply to the discharge of raw water clarifier

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Leg. Rule, 22-1, 22A-1, 22A-1A,
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40 C.F.R. §122.45 except §122.45
(b)(1)and(b)(2)(ii)(A)(2)

sludge generated from the treatment of intake water.

(h) *Internal waste streams.* (1) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by § 122.44(i) shall also be applied to the internal waste streams.

(2) Limits on internal waste streams will be imposed only when the fact sheet under § 124.56 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible (for example, under 10 meters of water), the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(i) *Disposal of pollutants into wells, into POTWs or by land application.* Permit limitations and standards shall be calculated as provided in § 122.50.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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Document Incorporated By Reference
40 C.F.R. §122.46

122.46 Duration of permits (applicable to State programs, see § 123.25).

(a) NPDES permits shall be effective
r a fixed term not to exceed 5 years.
(b) Except as provided in § 122.6, the
rm of a permit shall not be extended
modification beyond the maximum
ration specified in this section.
(c) The Director may issue any
rmit for a duration that is less than
e full allowable term under this sec-
n.
(d) A permit may be issued to expire
or after the statutory deadline set
th in section 301(b)(2) (A), (C), and
(July 1, 1984), if the permit in-
des effluent limitations to meet the
uirements of section 301(b)(2) (A),
, (D), (E) and (F), whether or not
licable effluent limitations guide-
lines have been promulgated or ap-
proved.

(e) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (d) of this section is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
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40 C.F.R. §122.47

§ 122.47 Schedules of compliance.

(a) *General (applicable to State programs, see § 123.25).* The permit may, when appropriate, specify a schedule of compliance leading to compliance with CWA and regulations.

(1) *Time for compliance.* Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

(2) The first NPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

(3) *Interim dates.* Except as provided in paragraph (b)(1)(ii) of this section, if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 1 year.

(ii) If the time necessary for completion of any interim requirement (such as the construction of a control facili-

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40 C.F.R. §122.47

ty) is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

NOTE: Examples of interim requirements include: (a) Submit a complete Step 1 construction grant (for POTWs); (b) let a contract for construction of required facilities; (c) commence construction of required facilities; (d) complete construction of required facilities.

(4) *Reporting.* The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if paragraph (a)(3)(ii) is applicable.

(b) *Alternative schedules of compliance.* An NPDES permit applicant or permittee may cease conducting regulated activities (by terminating of direct discharge for NPDES sources) rather than continuing to operate and meet permit requriements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting permitted activities before non-compliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirements, no later than the statutory deadline;

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements no later than the statutory deadline.

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under paragraph (b)(3)(i) of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the board of directors of a corporation.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 6.6

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40 C.F.R. §122.48

§ 122.48 Requirements for recording and reporting of monitoring results (applicable to State programs, see § 123.25).

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in § 122.44. Reporting shall be no less frequent than specified in the above regulation.

Department of Energy
Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 6.7

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40 C.F.R. §122.50

§ 122.50 Disposal of pollutants into wells, into publicly owned treatment works or by land application (applicable to State NPDES programs, see § 123.25).

(a) When part of a discharger's process wastewater is not being discharged into waters of the United States or contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the United States, applicable effluent standards and limitations for the discharge in an NPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(1) If none of the waste from a particular process is discharged into waters of the United States, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(2) In all cases other than those described in paragraph (a)(1) of this section, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the United States, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under Part 125, Subpart D to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

$$P = \frac{E \times N}{T}$$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total wastestream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.

(b) Paragraph (a) of this section does not apply to the extent that promulgated effluent limitations guidelines:

(1) Control concentrations of pollutants discharged but not mass; *or*

(2) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(c) Paragraph (a) of this section does not alter a discharger's obligation to meet any more stringent requirements established under §§ 122.41, 122.42, 122.43, and 122.44.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 7.1

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40 C.F.R. §122.62

§ 122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 122.41), receives a request for modification or revocation and reissuance under § 124.5, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in paragraphs (a) and (b) of this section for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See § 124.5(c)(2). If cause does not exist under this section or § 122.63, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in § 122.63 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in Part 124 (or procedures of an approved State program) followed.

(a) *Causes for modification.* The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

NOTE: Certain reconstruction activities may cause the new source provisions of 122.29 to be applicable.

(2) *Information.* The Director has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For NPDES general permits (§ 122.28) this cause includes any information indicating that cumulative effects on the environment are unacceptable.

(3) *New regulations.* The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

(i) For promulgation of amended standards or regulations, when:

(A) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under Part 133; and

(B) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a State action with regard to a water quality standard on which the permit condition was based; and

(C) A permittee requests modification in accordance with § 124.5 within ninety (90) days after FEDERAL REGISTER notice of the action on which the request is based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with § 124.5 within ninety (90) days of judicial remand.

(iii) For changes based upon modified State certifications of NPDES permits, see § 124.55(b).

(4) *Compliance schedules.* The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an NPDES compliance schedule be modified to extend beyond an applicable CWA statutory deadline. See also § 122.63(c) (minor modifications) and paragraph (a)(14) of this section (NPDES innovative technology).

(5) When the permittee has filed a request for a variance under CWA section 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a) or for "fundamental-

ly different factors" within the time specified in § 122.21 or § 125.27(a).

(6) *307(a) toxics.* When required to incorporate an applicable 307(a) toxic effluent standard or prohibition (see § 122.44(b)).

(7) *Reopener.* When required by the "reopener" conditions in a permit, which are established in the permit under § 122.44(b) (for CWA toxic effluent limitations) or 40 CFR 403.10(e) (pretreatment program).

(8)(i) *Net limits.* Upon request of a permittee who qualifies for effluent limitations on a net basis under § 122.45(h).

(ii) When a discharger is no longer eligible for net limitations, as provided in § 122.45(h)(1)(ii)(B).

(9) *Pretreatment.* As necessary under 40 CFR 403.8(e) (compliance schedule for development of pretreatment program).

(10) *Failure to notify.* Upon failure of an approved State to notify, as required by section 402(b)(3), another State whose waters may be affected by a discharge from the approved State.

(11) *Non-limited pollutants.* When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c).

(12) *Notification levels.* To establish a "notification level" as provided in § 122.44(f).

(13) *Compliance schedules.* To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under section 202(a)(3) of CWA for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under section 202(a)(2). In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

(14) When the permit becomes final and effective on or after August 19, 1981, if the permittee shows good cause for the modification, to conform to changes respecting the following regulations issued under the Settlement Agreement dated November 1, 1981, in connection with *Natural Resources Defense Council v. EPA*, No. 80-1607 and consolidated cases:
§ 122.41(c) and (d).

(15) When the permittee's effluent limitations were imposed under section 402(a)(1) of the CWA and the permittee demonstrates operation and maintenance costs that are totally disproportionate from the operation and maintenance costs considered in the development of a subsequently promulgated effluent limitations guideline, but in no case may the limitations be made less stringent than the subsequent guideline.

(16) To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

(17) When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under section 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

(18) When the permit becomes final and effective on or after March 9, 1982, and the permittee applies for the modification no later than January 24, 1985, if the permittee shows good cause in its request and that it qualifies for the modification, to conform to changes respecting the following regulations issued under that Settlement Agreement:

40 CFR 122.45(b)
40 CFR 122.45(c)
40 CFR 122.50

(b) *Causes for modification or revocation and reissuance.* The following are causes to modify or, alternatively, revoke and reissue a permit:

(1) Cause exists for termination under § 122.64, and the Director determines that modification or revocation and reissuance is appropriate.

(2) The Director has received notification (as required in the permit, see

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22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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40 C.F.R.§122.62

§122.41(l)(3)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (§122.61(b)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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40 C.F.R. §122.63

§ 122.63 Minor modifications of permits.

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part 124. Any permit modification not processed as a minor modification under this section must be made for cause and with Part 24 draft permit and public notice as required in § 122.62. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 20 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

(d) Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.

(e)(1) Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have pollution control equipment installed and in operation prior to discharge under § 122.29.

(2) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

(f) When the permit becomes final and effective on or after March 9, 1982, conform to changes respecting §§ 122.41(e), 122.41(l), 122.41(m)(4)(i)(B), 122.41(n)(3)(i) and 122.42(a) issued September 26, 1984.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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40 C.F.R. §122.64

§ 122.64 Termination of permits (applicable to State programs, see § 123.25).

(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(4) A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

(b) The Director shall follow the applicable procedures in Part 124 or State procedures in terminating any NPDES permit under this section.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 7.4

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40 C.F.R. §122 Appendix A

APPENDIX A—NPDES PRIMARY INDUSTRY CATEGORIES

Any permit issued after June 30, 1981 to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of section 301(b)(2)(A), (C), (D), (E) and (F) of

CWA, whether or not applicable effluent limitations guidelines have been promulgated. See §§ 122.44 and 122.46.

Industry Category

Adhesives and sealants
Aluminum forming
Auto and other laundries
Battery manufacturing
Coal mining
Coil coating
Copper forming
Electrical and electronic components
Electroplating
Explosives manufacturing
Foundries
Gum and wood chemicals
Inorganic chemicals manufacturing
Iron and steel manufacturing
Leather tanning and finishing
Mechanical products manufacturing
Nonferrous metals manufacturing
Ore mining
Organic chemicals manufacturing
Paint and ink formulation
Pesticides
Petroleum refining
Pharmaceutical preparations
Photographic equipment and supplies
Plastics processing
Plastic and synthetic materials manufacturing
Porcelain enameling
Printing and publishing
Pulp and paper mills
Rubber processing
Soap and detergent manufacturing
Steam electric power plants
Textile mills
Timber products processing

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Leg. Rule, 22-1, 22A-1, 22A-1A,
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Appendix D—NPDES Permit Application Testing Requirements (§ 122.21)

Table I—Testing Requirements for Organic Toxic Pollutants by Industrial Category for Existing Dischargers

Industrial category	GC/MS Fraction[1]			
	Volatile	Acid	Base/neutral	Pesticide
Adhesives and Sealants	*	*	*	
Aluminum Forming	*	*	*	
Auto and Other Laundries	*	*	*	*
Battery Manufacturing	*		*	
Coal Mining	*	*	*	*
Coil Coating	*	*	*	
Copper Forming	*	*	*	
Electric and Electronic Components	*	*	*	*
Electroplating	*	*	*	
Explosives Manufacturing		*	*	
Foundries	*	*	*	
Gum and Wood Chemicals	*	*	*	*
Inorganic Chemicals Manufacturing	*	*	*	
Iron and Steel Manufacturing	*	*	*	
Leather Tanning and Finishing	*	*	*	*
Mechanical Products Manufacturing	*	*	*	
Nonferrous Metals Manufacturing	*	*	*	*
Ore Mining	*	*	*	*
Organic Chemicals Manufacturing	*	*	*	*
Paint and Ink Formulation	*	*	*	*
Pesticides	*	*	*	*
Petroleum Refining	*	*	*	*
Pharmaceutical Preparations	*	*	*	
Photographic Equipment and Supplies	*	*	*	*
Plastic and Synthetic Materials Manufacturing	*	*	*	*
Plastic Processing	*			
Porcelain Enameling	*		*	*
Printing and Publishing	*	*	*	*
Pulp and Paper Mills	*	*	*	*
Rubber Processing	*	*	*	
Soap and Detergent Manufacturing	*	*	*	
Steam Electric Power Plants	*	*	*	
Textile Mills	*	*	*	*
Timber Products Processing	*	*	*	*

[1] The toxic pollutants in each fraction are listed in Table II
*Testing required.

Table II—Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GS/MS)

Volatiles

1V acrolein
2V acrylonitrile
3V benzene
5V bromoform
6V carbon tetrachloride
7V chlorobenzene
8V chlorodibromomethane
9V chloroethane
10V 2-chloroethylvinyl ether
11V chloroform
12V dichlorobromomethane
14V 1,1-dichloroethane
15V 1,2-dichloroethane
16V 1,1-dichloroethylene
17V 1,2-dichloropropane
18V 1,3-dichloropropylene
19V ethylbenzene
20V methyl bromide
21V methyl chloride
22V methylene chloride
23V 1,1,2,2-tetrachloroethane
24V tetrachloroethylene
25V toluene
26V 1,2-trans-dichloroethylene
27V 1,1,1-trichloroethane
28V 1,1,2-trichloroethane
29V trichloroethylene
31V vinyl chloride

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Leg. Rule, 22-1, 22A-1, 22A-1A,
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Acid Compounds

1A 2-chlorophenol
2A 2,4-dichlorophenol
3A 2,4-dimethylphenol
4A 4,6-dinitro-o-cresol
5A 2,4-dinitrophenol
6A 2-nitrophenol
7A 4-nitrophenol
8A p-chloro-m-cresol
9A pentachlorophenol
10A phenol
11A 2,4,6-trichlorophenol

Base/Neutral

1B acenaphthene
2B acenaphthylene
3B anthracene
4B benzidine
5B benzo(a)anthracene
6B benzo(a)pyrene
7B 3,4-benzofluoranthene
8B benzo(ghi)perylene
9B benzo(k)fluoranthene
10B bis(2-chloroethoxy)methane
11B bis(2-chloroethyl)ether
12B bis(2-chloroisopropyl)ether
13B bis (2-ethylhexyl)phthalate
14B 4-bromophenyl phenyl ether
15B butylbenzyl phthalate
16B 2-chloronaphthalene
17B 4-chlorophenyl phenyl ether
18B chrysene
19B dibenzo(a,h)anthracene
20B 1,2-dichlorobenzene
21B 1,3-dichlorobenzene
22B 1,4-dichlorobenzene
23B 3,3'-dichlorobenzidine
24B diethyl phthalate
25B dimethyl phthalate
26B di-n-butyl phthalate
27B 2,4-dinitrotoluene
28B 2,6-dinitrotoluene
29B di-n-octyl phthalate
30B 1,2-diphenylhydrazine (as azobenzene)
31B fluroranthene
32B fluorene
33B hexachlorobenzene
34B hexachlorobutadiene
35B hexachlorocyclopentadiene
36B hexachloroethane
37B indeno(1,2,3-cd)pyrene
38B isophorone
39B napthalene
40B nitrobenzene
41B N-nitrosodimethylamine
42B N-nitrosodi-n-propylamine
43B N-nitrosodiphenylamine
44B phenanthrene
45B pyrene
46B 1,2,4-trichlorobenzene

Pesticides

1P aldrin
2P alpha-BHC
3P beta-BHC
4P gamma-BHC
5P delta-BHC
6P chlordane
7P 4,4'-DDT
8P 4,4'-DDE
9P 4,4'-DDD
10P dieldrin
11P alpha-endosulfan
12P beta-endosulfan
13P endosulfan sulfate
14P endrin
15P endrin aldehyde
16P heptachlor
17P heptachlor epoxide
18P PCB-1242
19P PCB-1254
20P PCB-1221
21P PCB-1232
22P PCB-1248
23P PCB-1260
24P PCB-1016
25P toxaphene

TABLE III: OTHER TOXIC POLLUTANTS (METALS AND CYANIDE) AND TOTAL PHENOLS

Antimony, Total
Arsenic, Total
Beryllium, Total
Cadmium, Total
Chromium, Total
Copper, Total
Lead, Total
Mercury, Total
Nickel, Total
Selenium, Total
Silver, Total
Thallium, Total
Zinc, Total
Cyanide, Total
Phenols, Total

TABLE IV—CONVENTIONAL AND NONCONVENTIONAL POLLUTANTS REQUIRED TO BE TESTED BY EXISTING DISCHARGERS IF EXPECTED TO BE PRESENT

Bromide
Chlorine, Total Residual
Color
Fecal Coliform
Fluoride
Nitrate-Nitrite
Nitrogen, Total Organic
Oil and Grease
Phosphorus, Total
Radioactivity
Sulfate
Sulfide
Sulfite
Surfactants
Aluminum, Total
Barium, Total
Boron, Total
Cobalt, Total
Iron, Total

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Magnesium, Total
Molybdenum, Total
Manganese, Total
Tin, Total
Titanium, Total

TABLE V—TOXIC POLLUTANTS AND HAZARDOUS SUBSTANCES REQUIRED TO BE IDENTIFIED BY EXISTING DISCHARGERS IF EXPECTED TO BE PRESENT

Toxic Pollutants

Asbestos

Hazardous Substances

Acetaldehyde
Allyl alcohol
Allyl chloride
Amyl acetate
Aniline
Benzonitrile
Benzyl chloride
Butyl acetate
Butylamine
Captan
Carbaryl
Carbofuran
Carbon disulfide
Chlorpyrifos
Coumaphos
Cresol
Crotonaldehyde
Cyclohexane
2,4-D (2,4-Dichlorophenoxy acetic acid)
Diazinon
Dicamba
Dichlobenil
Dichlone
2,2-Dichloropropionic acid
Dichlorvos
Diethyl amine
Dimethyl amine
Dintrobenzene
Diquat
Disulfoton
Diuron
Epichlorohydrin
Ethion
Ethylene diamine
Ethylene dibromide
Formaldehyde
Furfural
Guthion
Isoprene
Isopropanolamine Dodecylbenzenesulfonate
Kelthane
Kepone
Malathion
Mercaptodimethur
Methoxychlor
Methyl mercaptan
Methyl methacrylate
Methyl parathion
Mevinphos
Mexacarbate
Monoethyl amine
Monomethyl amine
Naled
Napthenic acid
Nitrotoluene
Parathion
Phenolsulfanate
Phosgene
Propargite
Propylene oxide
Pyrethrins
Quinoline
Resorcinol
Strontium
Strychnine
Styrene
2,4,5-T (2,4,5-Trichlorophenoxy acetic acid)
TDE (Tetrachlorodiphenylethane)
2,4,5-TP [2-(2,4,5-Trichlorophenoxy) propanoic acid]
Trichlorofan
Triethanolamine dodecylbenzenesulfonate
Triethylamine
Trimethylamine
Uranium
Vanadium
Vinyl acetate
Xylene
Xylenol
Zirconium

EDITORIAL NOTES: The Environmental Protection Agency has suspended the requirements of §122.21(g)(7)(ii)(A) and Table I of Appendix D as they apply to certain industrial categories. The suspensions are as follows:

a. At 46 FR 2046, Jan. 8, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) as it applies to coal mines.

b. At 46 FR 22585, Apr. 20, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) and the corresponding portions of Item V-C of the NPDES application Form 2c as they apply to:

1. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (Subpart C—Low water use processing of 40 CFR Part 410), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

2. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (Subpart B of 40 CFR Part 440), and testing and reporting for all four fractions in all other subcategories of this industrial category.

3. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

c. At 46 FR 35090, July 1, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) and the corresponding portions of Item V-C of

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Leg. Rule, 22-1, 22A-1, 22A-1A,
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the NPDES application Form 2c as they apply to:

1. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (Subpart D) and Rosin-Based Derivatives Subcategory (Subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454), and testing and reporting for the pesticide and base/netural fractions in all other subcategories of this industrial category.
2. Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.
3. Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.
4. Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories (Subparts J and U) of the Pulp and Paper industry (40 CFR Part 430); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (Subpart Q), Dissolving Kraft (Subpart F), and Paperboard from Waste Paper (Subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (Subpart H), Semi-Chemical (Subparts B and C), and Nonintegrated-Fine Papers (Subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (Subpart I), Dissolving Sulfite Pulp (Subpart K), Groundwood-Fine Papers (Subpart O), Market Bleached Kraft (Subpart G), Tissue from Wastepaper (Subpart T), and Nonintegrated-Tissue Papers (Subpart S).
5. Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

This revision continues these suspensions.

For the duration of the suspensions, therefore, Table I effectively reads:

TABLE I—TESTING REQUIREMENTS FOR ORGANIC TOXIC POLLUTANTS BY INDUSTRY CATEGORY

Industry category	GC/MS fraction[1]			
	Volatile	Acid	Neutral	Pesticide
Adhesives and sealants	(1)	(1)	(1)	
Aluminum forming	(1)	(1)	(1)	
Auto and other laundries	(1)	(1)	(1)	(1)
Battery manufacturing	(1)		(1)	
Coal mining				
Coil coating	(1)	(1)	(1)	
Copper forming	(1)	(1)	(1)	
Electric and electronic compounds	(1)	(1)	(1)	(1)
Electroplating	(1)	(1)	(1)	

TABLE I—TESTING REQUIREMENTS FOR ORGANIC TOXIC POLLUTANTS BY INDUSTRY CATEGORY—Continued

Industry category	GC/MS fraction[1]			
	Volatile	Acid	Neutral	Pesticide
Explosives manufacturing		(1)	(1)	
Foundries	(1)	(1)	(1)	
Gum and wood (all subparts except D and F)	(1)	(1)		
Subpart D—tall oil rosin	(1)	(1)	(1)	
Subpart F—rosin-based derivatives	(1)	(1)	(1)	
Inorganic chemicals manufacturing	(1)	(1)	(1)	
Iron and steel manufacturing	(1)	(1)	(1)	
Leather tanning and finishing	(1)	(1)	(1)	
Mechanical products manufacturing	(1)	(1)	(1)	
Nonferrous metals manufacturing	(1)	(1)	(1)	(1)
Ore mining (applies to the base and precious metals/Subpart B)		(1)		
Organic chemicals manufacturing	(1)	(1)	(1)	(1)
Paint and ink formulation	(1)	(1)	(1)	
Pesticides	(1)	(1)	(1)	(1)
Petroleum refining	(1)			
Pharmaceutical preparations	(1)	(1)	(1)	
Photographic equipment and supplies	(1)	(1)	(1)	
Plastic and synthetic materials manufacturing	(1)	(1)	(1)	(1)
Plastic processing	(1)			
Porcelain enameling				
Printing and publishing	(1)	(1)	(1)	(1)
Pulp and paperboard mills—see footnote [3]				
Rubber processing	(1)	(1)	(1)	
Soap and detergent manufacturing	(1)	(1)	(1)	
Steam electric power plants	(1)	(1)		
Textile mills (Subpart C—Greige Mills are exempt from this table)	(1)	(1)	(1)	
Timber products processing	(1)	(1)	(1)	(1)

[1] Testing required.
[2] The pollutants in each fraction are listed in Item V-C.
[3] Pulp and Paperboard Mills:

Subpart [2]	GS/MS fractions			
	VOA	Acid	Base/neutral	Pesticides
A	*	(1)	*	(1)
B	*	(1)	*	*
C	*	(1)	*	*
D	*	(1)	*	*
E	(1)	(1)	*	(1)

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 7.4

Document Incorporated By Reference
40 C.F.R. Appendix D

	Subpart [3]	GS/MS fractions			
		VOA	Acid	Base/neutral	Pesticides
	F	(1)	(1)	(1)	(1)
	G	(1)	(1)	(1)	(1)
	H	(1)	(1)	(1)	(1)
	I	(1)	(1)	(1)	(1)
	J	(1)	(1)	(2)	(1)
	K	(1)	(1)	(1)	(1)
	L	(1)	(1)	(1)	(1)
	M	(1)	(1)	(1)	(1)
	N	(1)	(1)	(1)	(1)
	O	(1)	(1)	(1)	(1)
	P	(1)	(1)	(1)	(1)
	Q	(1)	(1)	(1)	(2)
	R	(1)	(1)	(1)	(1)
	S	(1)	(1)	(1)	(1)
	T	(1)	(1)	(1)	(1)
	U	(1)	(1)	(1)	(1)

[1] Must test.
[2] Do not test unless "reason to believe" it is discharged.
[3] Subparts are defined in 40 CFR Part 430.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.1

Document Incorporated By Reference
40 C.F.R. §124.3

§124.3 Application for a permit.

(a) *Applicable to State programs, see §123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).* (1) Any person who requires a permit under the RCRA, UIC, NPDES, or PSD programs shall complete, sign, and submit to the Director an application for each permit required under §§ 270.1 (RCRA), 144.1 (UIC), 40 CFR 52.21 (PSD), and 122.1 (NPDES). Applications are not required for RCRA permits by rule (§ 270.60), underground injections authorized by rules (§§ 144.21 through 144.26), NPDES general permits (§ 122.28) and 404 general permits (§ 233.37).

(2) The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. See §§ 270.10, 270.13 (RCRA), 144.31 (UIC), 40 CFR 52.21 (PSD), and 122.21 (NPDES).

(3) Permit applications (except for PSD permits) must comply with the signature and certification requirements of §§ 122.22 (NPDES), 144.32 (UIC), 233.6 (404), and 270.11 (RCRA).

(b) [Reserved]

(c) The Regional Administrator shall review for completeness every application for an EPA-issued permit. Each application for an EPA-issued permit submitted by a new HWM facility, a new UIC injection well, a major PSD stationary source or major PSD modification, or an NPDES new source or NPDES new discharger should be reviewed for completeness by the Regional Administrator within 30 days of its receipt. Each application for an EPA-issued permit submitted by an existing HWM facility (both Parts A and B of the application), existing injection well or existing NPDES source should be reviewed for completeness within 60 days of receipt. Upon completing the review, the Regional Administrator shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Regional Administrator shall list the information necessary to make the application complete. When the application is for an existing HWM facility, an existing UIC injection well or an existing NPDES source, the Regional Administrator shall specify in the notice of deficiency a date for submitting the necessary information. The Regional Administrator shall notify the applicant that the application is complete upon receiving

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.1

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40 C.F.R. §124.3

this information. After the application is completed, the Regional Administrator may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provision including RCRA section 3008, SDWA sections 1423 and 1424, CAA section 167, and CWA sections 308, 309, 402(h), and 402(k).

(e) If the Regional Administrator decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and a date shall be scheduled.

(f) The effective date of an application is the date on which the Regional Administrator notifies the applicant that the application is complete as provided in paragraph (c) of this section.

(g) For each application from a major new HWM facility, major new UIC injection well, major NPDES new source, major NPDES new discharger, or a permit to be issued under provisions of § 122.28(c), the Regional Administrator shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. (This paragraph does not apply to PSD permits.) The schedule shall specify target dates by which the Regional Administrator intends to:

(1) Prepare a draft permit;

(2) Give public notice;

(3) Complete the public comment period, including any public hearing;

(4) Issue a final permit; and

(5) In the case of an NPDES permit, complete any formal proceedings under Subpart E or F.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.2

Document Incorporated By Reference
40 C.F.R. §124.5 except last four sentences in §124.5(b) and except (f) and (g)

§124.5 Modification, revocation and reissuance, or termination of permits.

(a) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* Permits (other than PSD permits) may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in § 122.62 or § 122.64 (NPDES), 144.39 or 144.40 (UIC), 233.14 or 233.15 (404), and 270.41 or 270.43 (RCRA). All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the Director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(c) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* (1) If the Director tentatively decides to modify or revoke and reissue a permit under §§ 122.62 (NPDES), 144.39 (UIC), 233.14 (404), or 270.41 (RCRA), he or she shall prepare a draft permit under § 124.6 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.

(2) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(3) "Minor modifications" as defined in §§ 122.63 (NPDES), 144.41 (UIC), 233.16 (404), and 270.42 (RCRA) are not subject to the requirements of this section.

(d) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* If the Director tentatively decides to terminate a permit under §§ 122.64 (NPDES), 144.40 (UIC), 233.15 (404), or 270.43 (RCRA), he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 124.6. In the case of EPA-issued permits, a notice of intent to terminate shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibility to an approved State under §§ 123.24(b)(1) (NPDES), 145.24(b)(1) (UIC), or 271.8(b)(6) (RCRA).

(e) When EPA is the permitting authority, all draft permits (including notices of intent to terminate) prepared under this section shall be based on the administrative record as defined in § 124.9.

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Reg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.3

Document Incorporated By Reference
40 C.F.R. §124.6, except last two sentences of §124.6(e)

§ 124.6 Draft permits.

(a) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).*) Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit (except in the case of State section 404 permits for which no draft permit is required under § 233.39) or to deny the application.

(b) If the Director tentatively decides to deny the permit application, he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. See § 124.6(e). If the Director's final decision (§ 124.15) is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (d) of this section.

(c) (*Applicable to State programs, see §§ 123.25 (NPDES) and 233.26 (404).*) If the Director tentatively decides to issue an NPDES or 404 general permit, he or she shall prepare a draft general permit under paragraph (d) of this section.

(d) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).*) If the Director decides to prepare a draft permit, he or she shall prepare a draft permit that contains the following information:

(1) All conditions under §§ 122.41 and 122.43 (NPDES), 144.51 and 144.42 (UIC, 233.7 and 233.8 (404, or 270.30 and 270.32 (RCRA) (except for PSD permits)));

(2) All compliance schedules under §§ 122.47 (NPDES), 144.53 (UIC), 233.10 (404), or 270.33 (RCRA) (except for PSD permits);

(3) All monitoring requirements under §§ 122.48 (NPDES), 144.54 (UIC), 233.11 (404), or 270.31 (RCRA) (except for PSD permits); and

(4) For:

(i) RCRA permits, standards for treatment, storage, and/or disposal and other permit conditions under § 270.30;

(ii) UIC permits, permit conditions under § 144.52;

(iii) PSD permits, permit conditions under 40 CFR § 52.21;

(iv) 404 permits, permit conditions under §§ 233.7 and 233.8;

(v) NPDES permits, effluent limitations, standards, prohibitions and conditions under §§ 122.41 and 122.42, including when applicable any conditions certified by a State agency under § 124.55, and all variances that are to be included under § 124.63.

(e) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).*) All draft permits prepared by EPA under this section shall be accompanied by a statement of basis (§ 124.7) or fact sheet (§ 124.8), and shall be based on the administrative record (§ 124.9), publicly noticed (§ 124.10) and made available for public comment (§ 124.11).

epartment of Energy
ivision of Mines and Minerals
eg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.4

Document Incorporated By Reference
40 C.F.R. §124.7

§ 124.7 Statement of basis.

EPA shall prepare a statement of basis for every draft permit for which a fact sheet under § 124.8 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

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eg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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Document Incorporated By Reference
40 C.F.R. §124.8

§ 124.8 Fact sheet.

(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)

(a) A fact sheet shall be prepared for every draft permit for a major HWM, UIC, 404, or NPDES facility or activity, for every 404 and NPDES general permit (§§ 233.37 and 122.28), for every NPDES draft permit that incorporates a variance or requires an explanation under § 124.56(b), and for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

(b) The fact sheet shall include, when applicable:

(1) A brief description of the type of facility or activity which is the subject of the draft permit;

(2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

(3) For a PSD permit, the degree of increment consumption expected to result from operation of the facility or activity.

(4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9 (for EPA-issued permits);

(5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(6) A description of the procedures for reaching a final decision on the draft permit including:

(i) The beginning and ending dates of the comment period under § 124.10 and the address where comments will be received;

(ii) Procedures for requesting a hearing and the nature of that hearing; and

(iii) Any other procedures by which the public may participate in the final decision.

(7) Name and telephone number of a person to contact for additional information.

(8) For NPDES permits, provisions satisfying the requirements of § 124.56.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.6

Document Incorporated By Reference
40 C.F.R. §124.9

§ 124.9 Administrative record for draft permits when EPA is the permitting authority.

(a) The provisions of a draft permit prepared by EPA under § 124.6 shall be based on the administrative record defined in this section.

(b) For preparing a draft permit under § 124.6, the record shall consist of:

(1) The application, if required, and any supporting data furnished by the applicant;

(2) The draft permit or notice of intent to deny the application or to terminate the permit;

(3) The statement of basis (§ 124.7) or fact sheet (§ 124.8);

(4) All documents cited in the statement of basis or fact sheet; and

(5) Other documents contained in the supporting file for the draft permit.

(6) For NPDES new source draft permits only, any environmental assessment, environmental impact statement (EIS), finding of no significant impact, or environmental information document and any supplement to an EIS that may have been prepared. NPDES permits other than permits to new sources as well as all RCRA, UIC and PSD permits are not subject to the environmental impact statement provisions of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4321.

(c) Material readily available at the issuing Regional Office or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this section, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.

(d) This section applies to all draft permits when public notice was given after the effective date of these regulations.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.7

Document Incorporated By Reference
40 C.F.R. §124.10, except (a)(1), (iv) and (v); 124.10(c)(1)(vi) and (vii), and 124.10(d)(1)(viii) and (d)(2)(iv).

§ 124.10 Public notice of permit actions and public comment period.

(a) *Scope.* (1) The Director shall give public notice that the following actions have occurred:

(ii) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)*). A draft permit has been prepared under § 124.6(d);

(iii) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404) and 271.14 (RCRA)*). A hearing has been scheduled under § 124.12, Subpart E or Subpart F;

(vi) An NPDES new source determination has been made under § 122.29.

(2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under § 124.5(b). Written notice of that denial shall be given to the requester and to the permittee.

(3) Public notices may describe more than one permit or permit actions.

(b) *Timing (applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* (1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this section shall allow at least 30 days for public comment. For RCRA permits only, public notice shall allow at least 45 days for public comment. For EPA-issued permits, if the Regional Administrator determines under 40 CFR Part 6, Subpart F that an Environmental Impact Statement (EIS) shall be prepared for an NPDES new source, public notice of the draft permit shall not be given until after a draft EIS is issued.

(2) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

(c) *Methods (applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* Public notice of activities described in paragraph (a)(1) of this section shall be given by the following methods:

(1) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits);

(i) The applicant (except for NPDES and 404 general permits when there is no applicant);

(ii) Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD, NPDES or 404 permit for the same facility or activity (including EPA when the draft permit is prepared by the State);

(iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and other appropriate government authorities, including any affected States;

(iv) For NPDES and 404 permits only, any State agency responsible for plan development under CWA section 208(b)(2), 208(b)(4) or 303(e) and the U.S. Army Corps of Engineers, the

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.7

Document Incorporated By Reference
40 C.F.R. §124.10, except (a)(i), (iv) and (v); 124.10(c)(1)(iv) and (vii), and 124.10(d)(1)(viii and (d)(2)(iv).

U.S. Fish and Wildlife Service and the

(v) For NPDES permits only, any ner identified in the permit applica- tion of a privately owned treatment works;

(viii) Persons on a mailing list devel- ped by:

(A) Including those who request in riting to be on the list;

(B) Soliciting persons for "area lists" rom participants in past permit pro- eedings in that area; and

(C) Notifying the public of the op- ortunity to be put on the mailing list hrough periodic publication in the ublic press and in such publications s Regional and State funded newslet- rs, environmental bulletins, or State w journals. (The Director may pdate the mailing list from time to me by requesting written indication f continued interest from those sted. The Director may delete from e list the name of any person who ils to respond to such a request.)

(ix)(A) To any unit of local govern- ent having jurisdiction over the area here the facility is proposed to be lo- ited; and (B) to each State agency aving any authority under State law ith respect to the construction or op- ation of such facility.

(2)(i) For major permits and NPDES d 404 general permits, publication a notice in a daily or weekly news- per within the area affected by the cility or activity; and for EPA-issued NPDES general permits, in the FEDERAL REGISTER;

NOTE: The Director is encouraged to provide as much notice as possible of the NPDES of 404 draft general permit to the facilities or activities to be covered by the general permit.

(ii) For all RCRA permits, publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

(3) When the program is being administered by an approved State, in a manner constituting legal notice to the public under State law; *and*

(4) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(d) *Contents (applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA))*—(1) *All public notices.* All public notices issued under this part shall contain the following minimum information:

(i) Name and address of the office processing the permit action for which notice is being given;

(ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of NPDES and 404 draft general permits under §§ 122.28 and 233.37;

(iii) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for NPDES or 404 general permits when there is no application.

(iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application; and

(v) A brief description of the comment procedures required by §§ 124.11 and 124.12 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.7

Document Incorporated By Reference
40 C.F.R. §124.10, except (a)(i), (iv) and (v); 124.10(c)(1)(vi) and (vii), and 124.10(d)(1)(viii) and (d)(2)(iv)

procedures by which the public may participate in the final permit decision.

(vi) For EPA-issued permits, the location of the administrative record required by § 124.9, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant is available as part of the administrative record.

(vii) For NPDES permits only, a general description of the location of each existing or proposed discharge point and the name of the receiving water. For draft general permits, this requirement will be satisfied by a map or description of the permit area. For EPA-issued NPDES permits only, if the discharge is from a new source, a statement as to whether an environmental impact statement will be or has been prepared.

(A) The purpose of the proposed activity (including, in the case of fill material, activities intended to be conducted on the fill), a description of the type, composition, and quantity of materials to be discharged and means of conveyance; and any proposed conditions and limitations on the discharge;

(B) The name and water quality standards classification, if applicable, of the receiving waters into which the discharge is proposed, and a general description of the site of each proposed discharge and the portions of the site and the discharges which are within State regulated waters;

(C) A description of the anticipated environmental effects of activities conducted under the permit;

(D) References to applicable statutory or regulatory authority; and

(E) Any other available information which may assist the public in evaluating the likely impact of the proposed activity upon the integrity of the receiving water.

(ix) Any additional information considered necessary or proper.

(2) *Public notices for hearings.* In addition to the general public notice described in paragraph (d)(1) of this section, the public notice of a hearing under § 124.12, Subpart E, or Subpart F shall contain the following information:

(i) Reference to the date of previous public notices relating to the permit;

(ii) Date, time, and place of the hearing;

(iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures and

(e) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)*). In addition to the general public notice described in paragraph (d)(1) of this section, all persons identified in paragraphs (c)(1) (i), (ii), (iii), and (iv) of this section shall be mailed a copy of the fact sheet or statement of basis (for EPA-issued permits), the permit application (if any) and the draft permit (if any).

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vision of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.8

Document Incorporated By Reference
40 C.F.R. §124.11

§ 124.11 Public comments and requests for public hearings.

(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).) During the public comment period provided under § 124.10, any interested person may submit written comments on the draft permit or the permit application for 404 permits when no draft permit is required (see § 233.39) and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in § 124.17.

Department of Energy
Division of Mines and Minerals
Reg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.9

Document Incorporated By Reference
40 C.F.R. §124.12, except (a)(3) and (e)

§ 124.12 Public hearings.

(a) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* (1) The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit(s);

(2) The Director may also hold a public hearing at his or her discretion, whenever for instance, such a hearing might clarify one or more issues involved in the permit decision;

(4) Public notice of the hearing shall be given as specified in § 124.10.

(b) Whenever a public hearing will be held and EPA is the permitting authority, the Regional Administrator shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(c) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under § 124.10 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public.

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Reg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.10

Document Incorporated By Reference
40 C.F.R. §124.14, except (a)(3)

§ 124.14 Reopening of the public comment period.

(a)(1) The Regional Administrator may order the public comment period reopened if the procedures of this paragraph could expedite the decision-making process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Regional Administrator's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date, not less than sixty days after public notice under paragraph (a)(2) of this section, set by the Regional Administrator. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than twenty days after the date set for filing of the material, set by the Regional Administrator.

(2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of § 124.14(a) shall apply.

(4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they shall be granted under § 124.10 to the extent they appear necessary.

(b) If any data information or arguments submitted during the public comment period, including information or arguments required under § 124.13, appear to raise substantial new questions concerning a permit, the Regional Administrator may take one or more of the following actions:

(1) Prepare a new draft permit, appropriately modified, under § 124.6;

(2) Prepare a revised statement of basis under § 124.7, a fact sheet or revised fact sheet under § 124.8 and reopen the comment period under § 124.14; or

(3) Reopen or extend the comment period under § 124.10 to give interested persons an opportunity to comment on the information or arguments submitted.

(c) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under § 124.10 shall define the scope of the reopening.

(d) For RCRA, UIC, or NPDES permits, the Regional Administrator may also, in the circumstances described above, elect to hold further proceedings under Subpart F. This decision may be combined with any of the actions enumerated in paragraph (b) of this section.

(e) Public notice of any of the above actions shall be issued under § 124.10.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.11

Document Incorporated By Reference
40 C.F.R. §124.15(a)

§ 124.15 Issuance and effective date of permit.

(a) After the close of the public comment period under § 124.10 on a draft permit, the Regional Administrator shall issue a final permit decision. The Regional Administrator shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a RCRA, UIC, or PSD permit or for contesting a decision on an NPDES permit or a decision to terminate a RCRA permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.12

Document Incorporated By Reference
40 C.F.R. §124.17

§ 124.17 Response to comments.

(a) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* At the time that any final permit decision is issued under § 124.15, the Director shall issue a response to comments. States are only required to issue a response to comments when a final permit is issued. This response shall:

(1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(2) Briefly describe and respond to all significant comments on the draft permit or the permit application (for section 404 permits only) raised during the public comment period, or during any hearing.

(b) For EPA-issued permits, any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in § 124.18. If new points are raised or new material supplied during the public comment period, EPA may document its response to those matters by adding new materials to the administrative record.

(c) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* The response to comments shall be available to the public.

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Reg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.13

Document Incorporated By Reference
40 C.F.R. §124.18

§ 124.18 Administrative record for final permit when EPA is the permitting authority.

(a) The Regional Administrator shall base final permit decisions under § 124.15 on the administrative record defined in this section.

(b) The administrative record for any final permit shall consist of the administrative record for the draft permit and:

(1) All comments received during the public comment period provided under § 124.10 (including any extension or reopening under § 124.14);

(2) The tape or transcript of any hearing(s) held under § 124.12;

(3) Any written materials submitted at such a hearing;

(4) The response to comments required by § 124.17 and any new material placed in the record under that section;

(5) For NPDES new source permits only, final environmental impact statement and any supplement to the final EIS;

(6) Other documents contained in the supporting file for the permit; and

(7) The final permit.

(c) The additional documents required under paragraph (b) of this section should be added to the record as soon as possible after their receipt or publication by the Agency. The record shall be complete on the date the final permit is issued.

(d) This section applies to all final RCRA, UIC, PSD, and NPDES permits when the draft permit was subject to the administrative record requirements of § 124.9 and to all NPDES permits when the draft permit was included in a public notice after October 12, 1979.

(e) Material readily available at the issuing Regional Office, or published materials which are generally available and which are included in the administrative record under the standards of this section or of § 124.17 ("Response to comments"), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments.

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Reg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.14

Document Incorporated By Reference
40 C.F.R. §124.20

§ 124.20 Computation of time.

(a) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(b) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.

(c) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(d) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time.

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Reg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.15

Document Incorporated By Reference
40 C.F.R. §124.51(b)

§ 124.51 Purpose and scope.

(b) Decisions on NPDES variance requests ordinarily will be made during the permit issuance process. Variances and other changes in permit conditions ordinarily will be decided through the same notice-and-comment and hearing procedures as the basic permit.

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ivision of Mines and Minerals
eg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.16

Document Incorporated By Reference
40 C.F.R. §124.52

§ 124.52 Permits required on a case-by-case basis.

(a) Various sections of Part 122, Subpart B allow the Director to determine, on a case-by-case basis, that certain concentrated animal feeding operations (§ 122.23), concentrated aquatic animal production facilities (§ 122.24), separate storm sewers (§ 122.26), and certain other facilities covered by general permits (§ 122.28) that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(b) Whenever the Regional Administrator decides that an individual permit is required under this section, the Regional Administrator shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit under § 122.21 within 60 days of notice. The question whether the initial designation was proper will remain open for consideration during the public comment period under § 124.11 or § 124.118 and in any subsequent hearing.

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ivision of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.17

Document Incorporated By Reference
40 C.F.R. §124.56, except 124.56(d)

§ 124.56 Fact sheets.

(Applicable to State programs, see § 123.25 (NPDES).) In addition to meeting the requirements of § 124.8, NPDES fact sheets shall contain the following:

(a) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard provisions as required under § 122.4 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

(b)(1) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

(i) Limitations to control toxic pollutants under § 122.44(e);

(ii) Limitations on internal waste streams under § 122.45(i); or

(iii) Limitations on indicator pollutants under §125.3(g).

(iv) Limitations set on a case-by-case basis under § 125.3 (c)(2) or (c)(3).

(2) For every permit to be issued to a treatment works owned by a person other than a State or municipality, an explanation of the Director's decision on regulation of users under § 122.44(m).

(c) When appropriate, a sketch or detailed description of the location of the discharge described in the application; and

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.18

Document Incorporated By Reference
40 C.F.R. §124.57(a)

§ 124.57 Public notice.

(a) *Section 316(a) requests (applicable to State programs, see § 123.25).* In addition to the information required under § 124.10(d)(1), public notice of an NPDES draft permit for a discharge where a CWA section 316(a) request has been filed under § 122.21(l) shall include:

(1) A statement that the thermal component of the discharge is subject to effluent limitations under CWA section 301 or 306 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 or 306;

(2) A statement that a section 316(a) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under section 316(a) and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and

(3) If the applicant has filed an early screening request under § 125.72 for a section 316(a) variance, a statement that the applicant has submitted such a plan.

Document Incorporated By Reference
40 C.F.R. §124.59

§ 124.59 Conditions requested by the Corps of Engineers and other government agencies.

(Applicable to State programs, see § 123.25 (NPDES).) (a) If during the comment period for an NPDES draft permit, the District Engineer advises the Director in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advised the Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this part. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the NPDES permit for the duration of that stay.

(b) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other State or Federal agency with jurisdiction over fish, wildlife, or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of § 122.47 and of the CWA.

(c) In appropriate cases the Director may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

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eg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.20

Document Incorporated By Reference
40 C.F.R. S124.62

§ 124.62 Decision on variances.

(Applicable to State programs, see § 123.25 (NPDES).)

(a) The Director may grant or deny requests for the following variances (subject to EPA objection under § 123.44 for State permits):

(1) Extensions under CWA section 301(i) based on delay in completion of a publicly owned treatment works;

(2) After consultation with the Regional Administrator, extensions under CWA section 301(k) based on the use of innovative technology; or

(3) Variances under CWA section 316(a) for thermal pollution.

(b) The State Director may deny, or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

(1) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;

(2) A variance based on the economic capability of the applicant under CWA section 301(c);

(3) A variance based upon certain water quality factors under CWA section 301(g); or

(4) A variance based on water quality related effluent limitations under CWA section 302(b)(2).

(c) The Regional Administrator may deny, forward, or submit to the EPA Deputy Assistant Administrator for Water Enforcement with a recommendation for approval, a request for a variance listed in paragraph (b) of this section that is forwarded by the State Director, or that is submitted to the Regional Administrator by the requester where EPA is the permitting authority.

(d) The EPA Deputy Assistant Administrator for Water Enforcement may approve or deny any variance request submitted under paragraph (c) of this section. If the Deputy Assistant Administrator approves the variance, the Director may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under § 124.64.

Sec. 9

Subpart A—Criteria and Standards for Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Act

125.1 Purpose and scope.

This subpart establishes criteria and standards for the imposition of technology-based treatment requirements in permits under section 301(b) of the Act, including the application of EPA promulgated effluent limitations and case-by-case determinations of effluent limitations under section 402(a)(1) of the Act.

125.2 Definitions.

For the purposes of this part, any reference to "the Act" shall mean the Clean Water Act of 1977 (CWA). Unless otherwise noted, the definitions in Parts 122, 123 and 124 apply to this part.

[45 FR 33512, May 19, 1980]

§ 125.3 Technology-based treatment requirements in permits.

(a) *General.* Technology-based treatment requirements under section 301(b) of the Act represent the minimum level of control that must be imposed in a permit issued under section 402 of the Act. (See §§ 122.41, 122.42 and 122.44 for a discussion of additional or more stringent effluent limitations and conditions.) Permits shall contain the following technology-based treatment requirements in accordance with the following statutory deadlines:

(1) For POTW's, effluent limitations based upon:

(i) Secondary treatment—from date of permit issuance; and

(ii) The best practicable waste treatment technology—not later than July 1, 1983; and

(2) For dischargers other than POTW's except as provided in § 122.29(d), effluent limitations requiring:

(i) The best practicable control technology currently available (BPT)—from date of permit issuance;

(ii) For conventional pollutants, the best conventional pollutant control technology (BCT)—not later than July 1, 1984;

(iii) For all toxic pollutants referred to in Committee Print No. 95-30, House Committee on Public Works and Transportation, the best available technology economically achievable (BAT) — not later than July 1, 1984;

(iv) For all toxic pollutants other than those listed in Committee Print No. 95-30, effluent limitations based on the BAT not later than three years after the date such effluent limitations are incorporated into an NPDES permit; and

(v) For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT not later than three years after the date such effluent limitations are incorporated into an NPDES permit, or July 1, 1984, whichever is later, but in no case later than July 1, 1987.

(b) *Statutory variances and extensions.* (1) The following variances from technology-based treatment requirements are authorized by the Act and may be applied for under § 122.21;

(i) For POTW's, a section 301(h) marine discharge variance from secondary treatment (Subpart G);

(ii) For dischargers other than POTW's;

(A) A section 301(c) economic variance from BAT (Subpart E);

(B) A section 301(g) water quality related variance from BAT (Subpart F); and

(C) A section 316(a) thermal variance from BPT, BCT and BAT (Subpart H).

(2) The following extensions of deadlines for compliance with technology-based treatment requirements are authorized by the Act and may be applied for under § 124.53:

(i) For POTW's a section 301(i) extension of the secondary treatment deadline (Subpart J);

(ii) For dischargers other than POTW's:

(A) A section 301(i) extension of the BPT deadline (Subpart J); and

(B) A section 301(k) extension of the BAT deadline (Subpart C).

(c) *Methods of imposing technology-based treatment requirements in permits.* Technology-based treatment requirements may be imposed through one of the following three methods:

(1) Application of EPA-promulgated effluent limitations developed under section 304 of the Act to dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been remanded or withdrawn. However, in the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variances from these effluent limitations under § 122.21 and Subpart D of this part.

(2) On a case-by-case basis under section 402(a)(1) of the Act, to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors listed in § 125.3(c) and shall consider:

(i) The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information; and

(ii) Any unique factors relating to the applicant.

[*Comment:* These factors must be considered in all cases, regardless of whether the permit is being issued by EPA or an approved State.]

(3) Through a combination of the methods in paragraphs (d)(1) and (2) of this section. Where promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutants, other aspects or activities are subject to regulation on a case-by-case basis in order to carry out the provisions of the Act.

(4) Limitations developed under paragraph (d)(2) of this section may be expressed, where appropriate, in terms of toxicity (e.g., "the LC_{50} for fat head minnow of the effluent from outfall 001 shall be greater than 25%"). *Provided,* That is shown that the limits reflect the appropriate requirements (for example, technology-based or water-quality-based standards) of the Act.

(d) In setting case-by-case limitations pursuant to § 125.3(c), the permit writer must consider the following factors:

(1) *For BPT requirements:* (i) The total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application;

(ii) The age of equipment and facilities involved;

(iii) The process employed;

(iv) The engineering aspects of the application of various types of control techniques;

(v) Process changes; and

(vi) Non-water quality environmental impact (including energy requirements).

(2) *For BCT requirements:* (i) The reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;

(ii) The comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources;

(iii) The age of equipment and facilities involved;

(iv) The process employed;

(v) The engineering aspects of the application of various types of control techniques;

(vi) Process changes; and

(vii) Non-water quality environmental impact (including energy requirements).

(3) *For BAT requirements:* (i) The age of equipment and facilities involved;

(ii) The process employed;

(iii) The engineering aspects of the application of various types of control techniques;

(iv) Process changes;

(v) The cost of achieving such effluent reduction; and

(vi) Non-water quality environmental impact (including energy requirements).

(e) Technology-based treatment requirements are applied prior to or at the point of discharge.

(f) Technology-based treatment requirements cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:

(1) The technology-based treatment requirements applicable to the discharge are not sufficient to achieve the standards;

(2) The discharger agrees to waive any opportunity to request a variance under section 301 (c), (g) or (h) of the Act; and

(3) The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(g) Technology-based effluent limitations shall be established under this Subpart for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

(h)(1) The Director may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollution control technology (BCT), or a limit for a nonconventional pollutant which shall not be subject to modification under section 301 (c) or (g) of the Act where:

(i) Effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant, or

(ii)(A) The limitation reflects BAT-level control of discharges of one or more toxic pollutants which are present in the waste stream, and a specific BAT limitation upon the toxic pollutant(s) is not feasible for economic or technical reasons;

(B) The permit identifies which toxic pollutants are intended to be controlled by use of the limitation; and

(C) The fact sheet required by § 124.56 sets forth the basis for the limitation, including a finding that compliance with the limitation will result in BAT-level control of the toxic pollutant discharges identified in paragraph (h)(1)(ii)(B) of this section, and a finding that it would be economically or technically infeasible to directly limit the toxic pollutant(s).

(2) The Director may set a permit limit for a conventional pollutant at a level more stringent than BCT when:

(i) Effluent limitations guidelines specify the pollutant as an indicator for a hazardous substance, or

(ii)(A) The limitation reflects BAT-level control of discharges (or an appropriate level determined under section 301(c) or (g) of the Act) of one or more hazardous substance(s) which are present in the waste stream, and a specific BAT (or other appropriate) limitation upon the hazardous substance(s) is not feasible for economic or technical reasons;

(B) The permit identifies which hazardous substances are intended to be controlled by use of the limitation; and

(C) The fact sheet required by § 124.56 sets forth the basis for the

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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Document Incorporated By Reference
40 C.F.R. Subpart A, Part 125

limitation, including a finding that compliance with the limitations will result in BAT-level (or other appropriate level) control of the hazardous substances discharges identified in paragraph (h)(2)(ii)(B) of this section, and a finding that it would be economically or technically infeasible to directly limit the hazardous substance(s).

(iii) Hazardous substances which are also toxic pollutants are subject to paragraph (h)(1) of this section.

(3) The Director may not set a more stringent limit under the preceding paragraphs if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutant(s) or hazardous substance(s) controlled by the limit were limited directly.

(4) Toxic pollutants identified under paragraph (h)(1) of this section remain subject to the requirements of § 122.42(a)(1) (notification of increased discharges of toxic pollutants above levels reported in the application form).

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[44 FR 32948, June 7, 1979, as amended at 45 FR 33512, May 19, 1980; 48 FR 14293, Apr. 1, 1983, 49 FR 38052, Sept. 26, 1984; 50 FR 6941, Feb. 19, 1985]

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Leg. Rule, 22-1, 22A-1, 22A-1A,
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Document Incorporated By Reference
40 C.F.R. Subpart C, Part 125

bpart C—Criteria for Extending Compliance Dates for Facilities installing Innovative Technology Under Section 301(k) of the Act

ource: 49 FR 25981, June 25, 1984, unless erwise noted.

§ 125.20 Purpose and scope.

This subpart establishes the criteria and procedures to be used in determining whether an industrial discharger will be granted a compliance extension for the installation of an innovative technology.

§ 125.21 Statutory authority.

Section 301(k) provides that the Administrator (or a State with an approved NPDES program, in consultation with the Administrator) may grant a compliance extension for BAT limitations to a discharger which installs an innovative technology. The innovative technology must produce either a significantly greater effluent reduction than that achieved by the best available technology economically achievable (BAT) or the same level of treatment as BAT at a significantly lower cost. The Administrator is authorized to grant compliance extensions to no later than July 1, 1987.

§ 125.22 Definitions.

(a) The term "innovative technology" means a production process, a pollution control technique, or a combination of the two which satisfies one of the criteria in § 125.23 and which has not been commercially demonstrated in the industry of which the requesting discharger is a part.

(b) The term "potential for industry-wide application" means that an innovative technology can be applied in two or more facilities which are in one or more industrial categories.

(c) The term "Significantly greater effluent reduction than BAT" means that the effluent reduction over BAT produced by an innovative technology is significant when compared to the effluent reduction over best practicable control technology currently available (BPT) produced by BAT.

(d) The term "significantly lower cost" means that an innovative technology must produce a significant cost advantage when compared to the technology used to achieve BAT limitations in terms of annual capital costs and annual operation and maintenance expenses over the useful life of the technology.

§ 125.23 Request for compliance extension.

The Director shall grant a compliance extension to no later than July 1, 1987 to a discharger that demonstrates:

(a) That the installation and operation of its proposed innovative technology at its facility will result in a significantly greater effluent reduction than BAT and has the potential for industry-wide application; or

(b) That the installation and operation of its proposed innovative technology at its facility will result in the same effluent reduction as BAT at a significantly lower cost and has the potential for industry-wide application.

§ 125.24 Permit conditions.

The Director may include any of the following conditions in the permit of a discharger to which a compliance extension beyond July 1, 1984 is granted:

(a) A requirement that the discharger report annually on the installation, operation, and maintenance costs of the innovative technology;

(b) Alternative BAT limitations that the discharger must meet as soon as possible and no later than July 1, 1987 if the innovative technology limitations that are more stringent than BAT are not achievable.

[49 FR 25981, June 25, 1984; 49 FR 28560, July 13, 1984]

§ 125.25 Signatories to request for compliance extension.

(a) All section 301(k) requests must be signed in accordance with the provisions of 40 CFR 122.22.

(b) Any person signing a request under paragraph (a) of this section shall make the following certification:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(c) A professional engineer shall certify that the estimates by the applicant of the costs for the BAT control equipment and for the innovative technology are made in accordance with good engineering practice and represent, in his judgment, the best information available. The Director may waive the requirements for certification under this subsection if, in his opinion, the cost of such certification is unreasonable when compared to the annual sales of the applicant.

§ 125.26 Supplementary information and recordkeeping.

(a) In addition to the information submitted in support of the request, the applicant shall provide the Director, at his or her request, such other information as the Director may reasonably require to assess the performance of cost of the innovative technology.

(b) Applicants shall keep records of all data used to complete the request for a compliance extension for the life of the permit containing the compliance extension.

§ 125.27 Procedures.

(a) The procedure for requesting a section 301(k) compliance extension is contained in §§ 124.62 and 124.63. In addition, notwithstanding § 122.21(1)(4), the Director may accept applications for such extensions after the close of the public comment period on the permit if the applicant can show that information necessary to the development of the innovation was not available at the time the permit was written and that the innovative technology can be installed and operated in time to comply with the July 1, 1987 deadline.

(b) The procedure for appealing a decision on a request for a compliance extension is contained in §§ 124.60 and 124.64.

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Subpart D—Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A), 301(b)(2) (A) and (E) of the Act

125.30 Purpose and scope.

(a) This subpart establishes the criteria and standards to be used in determining whether effluent limitations alternative to those required by promulgated EPA effluent limitations guidelines under sections 301 and 304 of the Act (hereinafter referred to as "national limits") should be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This subpart applies to national limitations promulgated under sections 301 and 304 of the Act, except for the BPT limits contained in 40 CFR 423.12 (steam electric generating point source category).

(b) In establishing national limits, EPA takes into account all the information it can collect, develop and solicit regarding the factors listed in sections 304(b) and 304(g) of the Act. In some cases, however, data which could affect these national limits as they apply to a particular discharge may not be available or may not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the national limits, and make them either more or less stringent as they apply to certain dischargers within an industrial category or subcategory. This will only be done if data specific to that discharger indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to a discharger's facilities, equipment, processes or other facilities related to the discharger are fundamentally different from the factors considered during development of the national limits may request a fundamentally different factor variance under § 122.21(l)(1). In addition, such a variance may be proposed by the Director in the draft permit.

(Secs. 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 as amended by the Clean Water Act of 1977, Pub. L. 95-217 (the "Act"); Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[44 FR 32948, June 7, 1979, as amended at 45 FR 33512, May 19, 1980; 46 FR 9460, Jan. 28, 1981; 47 FR 52309, Nov. 18, 1982; 48 FR 14293, Apr. 1, 1983]

§ 125.31 Criteria.

(a) A request for the establishment of effluent limitations under this subpart (fundamentally different factors variance) shall be approved only if:

(1) There is an applicable national limit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested; and

(2) Factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limits; and

(3) The request for alternative effluent limitations or standards is made in accordance with the procedural requirements of Part 124.

(b) A request for the establishment of effluent limitations less stringent than those required by national limits guidelines shall be approved only if:

(1) The alternative effluent limitation or standard requested is no less stringent than justified by the fundamental difference; and

(2) The alternative effluent limitation or standard will ensure compliance with sections 208(e) and 301(b)(1)(C) of the Act; and

(3) Compliance with the national limits (either by using the technologies upon which the national limits are based or by other control alternatives) would result in:

(i) A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

(ii) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits.

(c) A request for alternative limits more stringent than required by national limits shall be approved only if:

(1) The alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and

(2) Compliance with the alternative effluent limitation or standard would not result in:

(i) A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

(ii) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits.

(d) Factors which may be considered fundamentally different are:

(1) The nature or quality of pollutants contained in the raw waste load of the applicant's process wastewater;

[*Comment:* (1) In determining whether factors concerning the discharger are fundamentally different, EPA will consider, where relevant, the applicable development document for the national limits, associated technical and economic data collected for use in developing each respective national limit, records of legal proceedings, and written and printed documentation including records of communication, etc., relevant to the development of respective national limits which are kept on public file by EPA.

(2) Waste stream(s) associated with a discharger's process wastewater which were not considered in the development of the national limits will not ordinarily be treated as fundamentally different under paragraph (a) of this section. Instead, national limits should be applied to the other streams, and the unique stream(s) should be subject to limitations based on section 402(a)(1) of the Act. See § 125.2(c)(2).]

(2) The volume of the discharger's process wastewater and effluent discharged;

(3) Non-water quality environmental impact of control and treatment of the discharger's raw waste load;

(4) Energy requirements of the application of control and treatment technology;

(5) Age, size, land availability, and configuration as they relate to the discharger's equipment or facilities; proc-

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eases employed; process changes; and engineering aspects of the application of control technology;

(6) Cost of compliance with required control technolgy.

(e) A variance request or portion of such a request under this section shall not be granted on any of the following grounds:

(1) The infeasibility of installing the required waste treatment equipment within the time the Act allows.

[*Comment:* Under this section a variance request may be approved if it is based on factors which relate to the discharger's ability ultimately to achieve national limits but not if it is based on factors which merely affect the discharger's ability to meet the statutory deadlines of sections 301 and 307 of the Act such as labor difficulties, construction schedules, or unavailability of equipment.]

(2) The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in paragraph (d) of this section;

[*Comment:* Review of the Administrator's action in promulgating national limits is available only through the judicial review procedures set forth in section 509(b) of the Act.]

(3) The discharger's ability to pay for the required waste treatment; or

(4) The impact of a discharge on local receiving water quality.

(f) Nothing in this section shall be construed to impair the right of any State or locality under section 510 of the Act to impose more stringent limitations than those required by Federal law.

§ 125.32 Method of application.

(a) A written request for a variance under this subpart shall be submitted in duplicate to the Director in accordance with Part 124, Subpart F.

(b) The burden is on the person requesting the variance to explain that:

(1) Factor(s) listed in § 125.31(b) regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The requester should refer to all relevant material and information, such as the published guideline regulations development document, all associated technical and economic data collected for use in developing each national limit, all records of legal proceedings, and all written and printed documentation including records of communication, etc., relevant to the regulations which are kept on public file by the EPA;

(2) The alternative limitations requested are justified by the fundamental difference alleged in paragraph (b)(1) of this section; and

(3) The appropriate requirements of § 125.31 have been met.

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Subpart E—Criteria for Granting Economic Variances From Best Available Technology Economically Achievable Under Section 301(c) of the Act—[Reserved]

Subpart F—Criteria for Granting Water Quality Related Variances Under Section 301(g) of the Act—[Reserved]

Subpart G—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

AUTHORITY: Clean Water Act, secs. 301, 304, 501, Pub. L. 92-500, 86 Stat. 816, *as amended by*, Pub. L. 95-217, 91 Stat. 1566, *as amended by*, Pub. L. 97-117, 95 Stat. 1623 (33 U.S.C. 1311, 1314, 1361)

SOURCE: 47 FR 53675, Nov. 26, 1982, unless otherwise noted.

§ 125.56 Scope and purpose.

This Subpart establishes the criteria to be applied by EPA in acting on section 301(h) requests for modifications to the secondary treatment requirements. It also establishes special permit conditions which must be included in any permit incorporating a section 301(h) modification of the secondary treatment requirements. ("section 301(h) modified permit").

§ 125.57 Law governing issuance of a section 301(h) modified permit.

(a) Section 301(h) of the Clean Water Act provides that:

The Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of section (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that:

(1) There is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

(2) Such modified requirements will not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities, in and on the water;

(3) The applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) Such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) All applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) To the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(7) There will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters.

(b) Section 301(j)(1) of the Clean Water Act provides that:

Any application filed under this section for a modification of the provisions of:

(A) Subsection (b)(1)(B) under subsection (h) of this section shall be filed not later than the 365th day which begins after the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981;

(c) Section 22(e) of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, Pub. L. 97-117, provides that:

The amendments made by this section shall take effect on the date of enactment of this Act, except that no applicant, other than the city of Avalon, California, who applies after the date of enactment of this Act for a permit pursuant to subsection (h) of section 301 of the Federal Water Pollution Control Act which modifies the requirements of subsection (b)(1)(B) of section 301 of such Act shall receive such permit during the one-year period which begins on the date of enactment of this Act.

§ 125.58 Definitions.

For the purpose of this subpart:

(a) "Administrator" means the EPA Administrator or a person designated by the EPA Administrator.

(b) "Altered discharge" means any discharge other than a current discharge or improved discharge, as defined in this regulation.

(c) "Applicant" means an applicant for a section 301(h) modified permit. Large applicants have populations contributing to their POTWs equal to or more than 50,000 people or average dry weather flows of 5.0 millions gallons per day (mgd) or more; small applicants have contributing populations of less than 50,000 people and average dry weather flows of less than 5.0 mgd. For the purposes of this definition the contributing population and flows shall be based on projections for the end of the five year permit term. Average dry weather flows shall be the average daily total discharge flows for the maximum month of the dry weather season.

(d) "Application" means a final application previously submitted in accordance with the June 15, 1979, section 301(h) regulations (44 FR 34784) or an application submitted between December 29, 1981 and December 29, 1982. It does not include a preliminary application submitted in accordance with the June 15, 1979, section 301(h) regulations.

(e) "Application questionnaire" means EPA's "Applicant Question-

naire for Modification of Secondary Treatment Requirements". Individual questionnaires for small applicants and for large applicants are published as Appendix A and Appendix B to this subpart, respectively.

(f) "Balanced, indigenous population" means an ecological community which:

(1) Exhibits characteristics similar to those of nearby, healthy communities existing under comparable but unpolluted environmental conditions; or

(2) May reasonably be expected to become re-established in the polluted water body segment from adjacent waters if sources of pollution were removed.

(g) "Current discharge" means the volume, composition, and location of an applicant's discharge as of anytime between December 27, 1977, and December 29, 1982, as designated by the applicant.

(h) "Improved discharge" means the volume, composition and location of an applicant's discharge following:

(1) Construction of planned outfall improvements, including, without limitation, outfall relocation, outfall repair, or diffuser modification; or

(2) Construction of planned treatment system improvements to treatment levels or discharge characteristics; or

(3) Implementation of a planned program to improve operation and maintenance of an existing treatment system or to eliminate or control the introduction of pollutants into the applicant's treatment works.

(i) "Industrial source" means any source of nondomestic pollutants regulated under section 307 (b) or (c) of the Clean Water Act which discharges into a POTW.

(j) "Modified discharge" means the volume, composition and location of the discharge proposed by the applicant for which a modification under section 301(h) of the Act is requested. A modified discharge may be a current discharge, improved discharge, or altered discharge.

(k) "Nonindustrial source" means any source of pollutants which is not an industrial source.

(l) "Ocean waters" means those coastal waters landward of the baseline of the territorial seas, the deep waters of the territorial seas, or the waters of the contiguous zone.

(m) "Pesticides" means demeton, guthion, malathion, mirex, methoxychlor and parathion.

(n) "Public water supplies" means water distributed from a public water system.

(o) "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. This term includes (1) any collection, treatment, storage and distribution facilities under the control of the operator of the system and used primarily in connection with the system, and (2) any collection or pretreatment storage facilities not under the control of the operator of the system which are used primarily in connection with the system.

(p) "Publicly owned treatment works" (POTW) means a treatment works, as defined in section 212(2) of the Act, which is owned by a State, municipality or intermunicipal or interstate agency.

(q) "Saline estuarine waters" means those semi-enclosed coastal waters which have a free connection to the territorial sea, undergo net seaward exchange with ocean waters, and have salinities comparable to those of the ocean. Generally, these waters are near the mouth of estuaries and have cross-sectional annual mean salinities greater than twenty-five (25) parts per thousand.

(r) "Secondary treatment" means the term as defined in 40 CFR Part 133.

(s) "Shellfish, fish and wildlife" means any biological population or community that might be adversely affected by the applicant's modified discharge.

(t) "Stressed waters" means those receiving environments in which an applicant can demonstrate to the satisfaction of the Administrator, that the absence of a balanced, indigenous population is caused solely by human perturbations other than the applicant's modified discharge.

(u) "Toxic pollutants" means those substances listed in 40 CFR 401.15.

(v) "Water quality standards" means applicable water quality standards which have been approved, left in effect, or promulgated under section 303 of the Clean Water Act.

(w) "Zone of initial dilution" (ZID) means the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards.

§ 125.59 General.

(a) *Basis for application.* An application under this subpart shall be based on a current, improved, or altered discharge into ocean waters or saline estuarine waters

(b) *Prohibitions.* No section 301(h) modified permit shall be issued:

(1) Where such issuance would not assure compliance with all applicable requirements of this subpart and Part 122;

(2) For the discharge of sewage sludge; and

(3) where such issuance would conflict with applicable provisions of State, local, or other Federal laws or Executive Orders. This includes compliance with the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*; the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*; and Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*

(c) *Applications.* Each applicant for a modified permit under this subpart shall submit an application to EPA signed in compliance with 40 CFR 122.6(a)(3) which shall contain:

(1) A signed, completed NPDES Application Standard form A, Parts I, II, III;

(2) A completed Application Questionnaire;

(3) The following certification:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document(s) and, based on my inquiry of those individuals immediately responsible for obtaining the information, I am convinced that the information is true, accurate

and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(d) *Revisions to applications.* (1) POTWs which submitted applications in accordance with the June 15, 1979, Regulations (44 FR 34784) may revise their applications one time following a tentative decision to propose changes to treatment levels and/or outfall and diffuser location and design in accordance with § 125.59(e)(2)(i); and

(2) Other applicants may revise their applications one time following a tentative decision to propose changes to treatment levels and/or outfall and diffuser location and design in accordance with § 125.59(e)(3)(i). Revisions by such applicants which propose downgrading treatment levels and/or outfall and diffuser location and design must be justified on the basis of substantial changes in circumstances beyond the applicant's control since the time of application submission.

(3) Applicants authorized or requested to submit additional information under § 125.59(f) may submit a revised application in accordance with § 125.59(e)(2)(ii) where such additional information supports changes in proposed treatment levels and/or outfall location and diffuser design. The opportunity for such revision shall be in addition to the one-time revision allowed under § 125.59(d) (1) and (2).

(4) POTWs which revise their applications must:

(i) Modify their NPDES form and Application Questionnaire as needed to assure that the information filed with their application is correct and complete;

(ii) Provide additional analysis and data as needed to demonstrate compliance with this subpart;

(iii) Obtain new State determinations under §§ 125.60(b)(2) and 125.63(b); and

(iv) Provide the certification described in paragraph (c)(3) of this section.

(e) *Deadlines and distribution*—(1) *Applications.* (i) The original and one copy of an application must be submitted to the appropriate EPA Regional Administrator no later than December 29, 1982, and one copy to the Office of Marine Discharge Evaluation, WH-546, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC. 20460.

(ii) A copy of the application must be provided to the State and interstate agency(s) authorized to provide certification/concurrence under §§ 124.53 to 124.55 on or before the date of the application is submitted to EPA.

(2) *Revisions to applications.* (i) Applicants desiring to revise their applications under § 125.59(d) (1) or (2) must:

(A) Submit to the appropriate Regional Administrator a letter of intent to revise their application and a copy to the Office of Marine Discharge Evaluation either within 45 days of the date of EPA's tentative decision on their original application, or within 45 days of promulgation of this provision if a tentative decision has already been made, whichever is later. Following receipt by EPA of a letter of intent, further EPA proceedings on the tentative decision under 40 CFR Part 124 will be stayed.

(B) Submit the revised application as described for new applications in § 125.59(e)(1) either within one year of the date of EPA's tentative decision on their original application or within one year of promulgation of this provision if a tentative decision has already been made, whichever is later.

(ii) Applicants desiring to revise their applications under § 125.59(d)(3) must submit the revised application as described for new applications in § 125.59(e)(1) of this part concurrent with submission of the additional information under § 125.59(f).

(3) State determination deadline. State determinations, as required by § 125.60(b)(2) and § 125.63(b) shall be filed by the applicant with the appropriate Regional Administrator, no later than 90 days after submission of the application or revision to EPA. Extensions to this deadline may be provided by EPA upon request. However, EPA will not begin review of the application or revision until a favorable State determination is received by EPA.

(f)(1) The Administrator may authorize or request an applicant to submit additional information by a specified date not to exceed one year from the date of authorization or request.

(2) Applicants seeking authorization to submit additional information on current/modified discharge characteristics, water quality, biological conditions or oceanographic characteristics must:

(i) Demonstrate that they made a diligent effort to provide such information with their application and were unable to do so, and

(ii) Submit a plan of study, including a schedule, for data collection and submittal of the additional information. EPA will review the plan of study and may require revisions prior to authorizing submission of the additional information.

(g) *Decisions on section 301(h) modifications.* (1) The decision to grant or deny a section 301(h) modification shall be made by the Administrator and shall be based on the applicant's demonstration that it has met all the requirements of §§ 125.59 through 125.65.

(2) No section 301(h) modified permit shall be issued until the appropriate State certification/concurrence is granted or waived pursuant to § 124.54 or if the State denies certification/concurrence pursuant to § 124.54.

(3) In the case of a modification issued to an applicant in a State administering an approved permit program under 40 CFR Part 123, the State Director may:

(i) Revoke an existing permit as of the effective date of the EPA issued section 301(h) modified permit; and

(ii) Cosign the section 301(h) modified permit, if the Director has indicated an intent to do so in the written concurrence.

(4) Any section 301(h) modified permit shall:

(i) Be issued in accordance with the procedures set forth in 40 CFR Part 124, except that, because section 301(h) permits may only be issued by EPA, the terms "Administrator or a person designated by the Administrator" shall be substituted for the term "Director" as appropriate; and

(ii) Contain all applicable terms and conditions set forth in 40 CFR Part 122 and § 125.67.

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(5) Appeals of section 301(h) determinations shall be governed by the procedures in 40 CFR Part 124.

(6) At the expiration of the section 301(h) modified permit, the POTW should be prepared to support the continuation of the modification based on studies and monitoring performed during the life of the permit. Upon a demonstration meeting the statutory criteria and requirements of this subpart, the permit may be renewed under the applicable procedures of 40 CFR Part 124.

§ 125.60 Existence of and compliance with applicable water quality standards.

(a) There must exist a water quality standard or standards applicable to the pollutant(s) for which a section 301(h) modified permit is requested, including:

(1) Water quality standards for biochemical oxygen demand or dissolved oxygen;

(2) Water quality standards for suspended solids, turbidity, light transmission, light scattering or maintenance of the euphotic zone; and

(3) Water quality standards for pH.

(b) The applicant must:

(1) Demonstrate that the modified discharge will comply with the above water quality standard(s); and

(2) Provide a determination signed by the State or interstate agency(s) authorized to provide certification under §§ 124.53 and 124.54 that the proposed modified discharge will comply with applicable provisions of State law including applicable water quality standards. This determination shall include a discussion of the basis for the conclusion reached.

§ 125.61 Attainment or maintenance of water quality which assures protection of public water supplies, the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities.

(a) *Physical characteristics of discharge.* (1) The applicant's outfall and diffuser must be located and designed to provide adequate initial dilution, dispersion and transport of wastewater to meet all applicable water quality standards at and beyond the boundary of the zone of initial dilution:

(i) During periods of maximum stratification and

(ii) During other periods when discharge characteristics, water quality, biological seasons, or oceanographic conditions indicate more critical situations may exist.

(2) Following initial dilution, the partially diluted wastewater and particulates must be transported and dispersed so as not to affect water use areas adversely (including recreational and fishing areas) and areas of biological sensitivity.

(b) *Impact of discharge on public water supplies.* (1) The applicant's modified discharge must allow for the attainment or maintenance of water quality which assures protection of public water supplies.

(2) The applicant's modified discharge must not:

(i) Prevent a planned or existing public water supply from being used, or from continuing to be used, as a public water supply; or

(ii) Have the effect of requiring treatment over and above that which would be necessary in the absence of such discharge in order to comply with local, and EPA drinking water standards.

(c) *Biological impact of discharge.* (1) The applicants modified discharge must allow for the attainment or maintenance of water quality which assures protection and propagation of a balanced indeginous population of shellfish, fish, and wildlife.

(2) A balanced, indigenous population of shellfish, fish and wildlife must exist:

(i) Immediately beyond the zone of initial dilution of the applicant's modified discharge and;

(ii) In all other areas beyond the zone of initial dilution where marine life is actually or potentially affected by the applicant's modified discharge.

(3) Conditions within the zone of initial dilution must not contribute to extreme adverse biological impacts, including, but not limited to, the destruction of distinctive habitats of limited distribution, the presence of disease epicenters, or the stimulation of phytoplankton blooms which have adverse effects beyond the zone of initial dilution.

(4) In addition, for modified discharges into saline estuarine water:

(i) Benthic populations within the zone of initial dilution must not differ substantially from the balanced, indigenous populations which exist immediately beyond the boundary of the zone of initial dilution;

(ii) The discharge must not interfere with estuarine migratory pathways within the zone of initial dilution; and

(iii) The discharge must not result in the acumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within the zone of initial dilution.

(d) *Impact of discharge on recreational activities.* (1) The applicant's modified discharge must allow for the attainment or maintenance of water quality which allows for recreational activities beyond the zone of initial dilution, including, without limitation, swimming, diving, boating, fishing, and picnicking and sports activities along shorelines and beaches.

(2) There must be no Federal, State, or local restrictions on recreational activities within the vicinity of the applicant's modified outfall unless such restrictions are routinely imposed around sewage outfalls. This exception shall not apply where the restriction would be lifted or modified, in whole or in part, if the applicant were discharging a secondary treatment effluent.

(e) Additional requirements for applications based on improved or altered discharges. An application for a section 301(h) modified permit on the basis of an improved or altered discharge must include:

(1) A demonstration that such improvements or alterations have been thoroughly planned and studied and can be completed or implemented expeditiously;

(2) Detailed analyses projecting changes in average and maximum monthly flow rates and composition of the applicant's discharge which are expected to result from proposed improvements or alterations.

(3) The assessements required by paragraphs (a) through (d) of this section based on its current discharge:

(4) A detailed analysis of how the applicant's planned improvements or alterations will comply with the requirements of paragraphs (a) through (d) of this section.

(f) *Stressed waters.* If an applicant believes that its failure to meet the requirements of paragraphs (a) through (e) of this section is attributable to conditions resulting from human perturbations other than its modified discharge (including, without limitation, other municipal or industrial discharges, nonpoint source runoff and the applicant's previous discharges), the applicant must demonstrate, to the satisfaction of the Administrator, that its modified discharge does not or will not:

(1) Contribute to, increase, or perpetuate such stressed conditions;

(2) Contribute to further degradation of the biota or water quality if the level of human perturbation from other sources increases; and

(3) Retard the recovery of the biota or water quality if the level of human perturbation from other sources decreases.

§ 125.62 Establishment of a monitoring program.

(a) *General requirements.* (1) The applicant must:

(i) Have a monitoring program designed to provide data to evaluate the impact of the modified discharge on the marine biota, demonstrate compliance with applicable water quality standards, and measure toxic substances in the discharge;

(ii) Describe the sampling techniques, schedules and locations (including appropriate control sites), analytical techniques, quality control and verification procedures to be used in the monitoring program;

(iii) Demonstrate that it has the resources necessary to implement the program upon issuance of the modified permit and to carry it out for the life of the modified permit; and

(iv) Determine the frequency and extent of the monitoring program taking into consideration the applicant's rate of discharge, quantities of toxic pollutants discharged, and potentially significant impacts on receiving water quality, marine biota, and designated water uses.

(2) The Administrator may require revision of the proposed monitoring program before issuing a modified permit and during the term of any modified permit.

(b) *Biological monitoring program.* The biological monitoring program for both small and large applicants shall provide data adequate to evaluate the impact of the modified discharge on the marine biota.

(1) Biological monitoring shall include to the extent practicable:

(i) Periodic surveys of the biological communities and populations which are most likely affected by the discharge to enable comparisons with baseline conditions described in the application and verified by sampling at the control stations/reference sites during the periodic surveys;

(ii) Periodic determinations of the accumulation of toxic pollutants and pesticides in organisms and examination of adverse effects, such as disease, growth abnormalities, physiological stress or death;

(iii) Sampling of sediments in areas of solids deposition in the vicinity of the ZID, in other areas of expected impact, and at appropriate reference sites to support the water quality and biological surveys and to measure the accumulation of toxic pollutants and peticides; and

(iv) Where the discharge would affect commercial or recreational fisheries, periodic assessments of the conditions and productivity of fisheries.

(2) Small applicants are not subject to the requirements of paragraphs (b)(1) (ii) through (iv) of this section if they discharge at depths greater than 10 meters and can demonstrate through a suspended solids deposition analysis that there will be negligible seabed accumulation in the vicinity of the modified discharge.

(3) For applicants seeking a section 301(h) modified permit based on:

(i) A current discharge, biological monitoring shall be designed to demonstrate ongoing compliance with the requirements of § 125.61(c);

(ii) An improved discharge or altered discharge other than outfall relocation, biological monitoring shall provide baseline data on the current impact of the discharge and data which demonstrate, upon completion of improvements or alterations, that the requirements of § 125.61(c) are met; or

(iii) An improved or altered discharge involving outfall relocation, the biological monitoring shall:

(A) Include the current discharge site until such discharge ceases; and

(B) Provide baseline data at the relocation site to demonstrate the impact of the discharge and to provide the basis for demonstrating that requirements of § 125.61(c) will be met.

(c) *Water quality monitoring program.* The water quality monitoring program shall to the extent practicable:

(1) Provide adequate data for evaluating compliance with applicable water quality standards;

(2) Measure the presence of toxic pollutants which have been identified or reasonably may be expected to be present in the discharge.

(d) *Effluent monitoring program.* In addition to the requirements of 40 CFR Part 122, to the extent practicable, monitoring of the POTW effluent shall provide quantitative and qualitative data which measure toxic substances and pesticides in the effluent and the effectiveness of the toxics control program.

§ 125.63 Effect of discharge on other point and nonpoint sources.

(a) No modified discharge may result in any additional pollution control requirements on any other point or nonpoint source.

(b) The applicant shall obtain a determination from the State or interstate agency(s) having authority to establish wasteload allocations indicating whether the applicant's discharge will result in an additional treatment, pollution control, or other requirement on any other point or nonpoint sources. The State determination shall include a discussion of the basis for its conclusion.

§ 125.64 Toxics control program.

(a) *Chemical analysis.* (1) The applicant shall submit at the time of application a chemical analysis of its cur-

rent discharge for all toxic pollutants and pesticides as defined in § 125.58 (u) and (m). The analysis shall be performed on two 24 hour composite samples (one dry weather and one wet weather). Applicants may supplement or substitute chemical analyses if composition of the supplemental or substitute samples typifies that which occurs during dry and wet weather conditions.

(2) Unless required by the State, this requirement shall not apply to any small section 301(h) applicant which certifies that there are no known or suspected sources of toxic pollutants or pesticides and documents the certification with an industrial user survey as described by 40 CFR 403.8(f)(2).

(b) *Identification of sources.* The applicant shall submit at the time of application an analysis of the known or suspected sources of toxic pollutants or pesticides identified in § 125.64(a). The applicant shall to the extent practicable categorize the sources according to industrial and nonindustrial types.

(c) *Industrial pretreatment requirements.* (1) An applicant which has known or suspected industrial sources of toxic pollutants shall have an approved pretreatment program, or shall develop an approved pretreatment program by July 1, 1983, or the date established in their NPDES permit, whichever is earlier. *See,* 40 CFR Part 403.

(2) This requirement shall not apply to any applicant which has no known or suspected industrial sources of toxic pollutants or pesticides and so certifies to the Administrator.

(3) The pretreatment program or proposed compliance schedule submitted by the applicant under this section shall be subject to revision as required by the Administrator prior to issuing any section 301(h) modified permit and during the term of any such permit.

(4) Implementation of all existing pretreatment requirements and authorities must be maintained through the period of development of any additional pretreatment requirements that may be necessary to comply with the requirements of this subpart.

(d) *Nonindustrial source control program.* (1) The applicant shall submit a proposed public education program designed to minimize the entrance of nonindustrial toxic pollutants and pesticides into its POTW(s) which shall be implemented no later than 18 months after issuance of a 301(h) modified permit.

(2) The applicant shall also develop and implement additional nonindustrial source control programs on the earliest possible schedule. This requirement shall not apply to a small applicant which certifies that there are no known or suspected water quality, sediment accumulation, or biological problems related to toxic pollutants or pesticides in its discharge.

(3) The applicant's nonindustrial source control programs under paragraph (d)(2) of this section shall include the following schedules which are to be implemented no later than 8 months after issuance of a 301(h) modified permits:

(i) A schedule of activities for identifying nonindustrial sources of toxic pollutants and pesticides; and

(ii) A schedule for the development and implementation of control programs, to the extent practicable, for nonindustrial sources of toxic pollutants and pesticides.

(4) Each proposed nonindustrial source control program and/or schedule submitted by the applicant under this section shall be subject to revision as determined by the Administrator prior to issuing any section 301(h) modified permit and during the term of any such permit.

EDITORIAL NOTE: Industrial use survey portion of paragraph (a)(2) of § 125.64, published at 47 FR 53675, Nov. 26, 1982, contains information collection requirements which will not be effective until OMB approval has been obtained.

125.65 Increase in effluent volume or amount of pollutants discharged.

(a) No modified discharge may result in any new or substantially increased discharges of the pollutant to which the modification applies above the discharge specified in the section 301(h) modified permit.

(b) Where pollutant discharges are attributable in part to combined sewer overflows, the applicant shall minimize existing overflows and prevent increases in the amount of pollutants discharged;

(c) The applicant shall provide projections of effluent volume and mass loadings for any pollutants to which the modification applies in 5 year increments for the design life of its facility.

§ 125.66 [Reserved]

§ 125.67 Special conditions for section 301(h) modified permits.

Each section 301(h) modified permit issued shall contain, in addition to all applicable terms and conditions required by 40 CFR Part 122, the following:

(a) Effluent limitations and mass loadings which will assure compliance with the requirements of this subpart;

(b) A schedule or schedules of compliance for:

(1) Pretreatment program development required by § 125.64(c);

(2) Nonindustrial toxics control program required by § 125.64(d); and

(3) Control of combined sewer overflows required by § 125.65.

(c) Monitoring program requirements that include:

(1) Biomonitoring requirements of § 125.62(b);

(2) Water quality requirements of § 125.62(c);

(3) Effluent monitoring requirements of § 125.62(d).

(d) Reporting requirements that include the results of the monitoring programs required by paragraph (c) of this section at such frequency as prescribed in the approved monitoring program.

APPENDIX A—SMALL APPLICANT QUESTIONNAIRE FOR MODIFICATION OF SECONDARY TREATMENT REQUIREMENTS

I. Introduction

This questionnaire is to be used by small applicants for modification of secondary treatment requirements under section 301(h) of the Clean Water Act (CWA). A small applicant has a contributing population to its wastewater treatment facility of less than 50,000 and a projected average dry weather flow of less than 5.0 million gallons

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22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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per day (mgd, 0.22m³/sec) [40 CFR 125.58(c)].

The questionnaire is in two sections, a general information and basic requirements section and a technical evaluation section. Satisfactory completion of this questionnaire is necessary to enable EPA to determine whether the applicant's modified discharge meets the criteria of section 301(h) and EPA regulations (40 CFR Part 125, Subpart G).

Where applicants diligently try but are unable to collect and submit all the information at the time of application, EPA requires that a plan of study for gathering and submitting the data be provided with the application. 40 CFR 125.59(f) states the procedures governing such post-application data collection activities.

Most small applicants should be able to complete the questionnaire using available information. However, small POTWs with low initial dilution discharging into shallow waters or waters with poor dispersion and transport characteristics, discharging near distinctive and susceptible biological habitats, or discharging substantial quantities of toxics should anticipate the need to collect additional information and/or conduct additional analyses to demonstrate compliance with section 301(h) criteria. Such small applicants are directed to the related sections in Parts II and III of the large applicant questionnaire and must answer the relevant questions of these sections. If there are questions in this regard, applicants should contact the appropriate EPA Regional Office for guidance.

Guidance for responding to this questionnaire is provided by the revised section 301(h) Technical Support Document. Where available information is incomplete and the applicant needs to collect additional data during the period it is preparing the application, EPA encourages the applicant to consult with EPA prior to data collection and submission of its application. Such consultation, particularly if the applicant provides a plan of study, will help assure that the proper data are gathered in the most efficient manner.

II. General Information and Basic Data Requirements

Applicants should answer all questions; where your response to a question is "yes", "no", or "not applicable" explain the basis for your response. Where your answer indicates that you cannot meet a regulatory or statutory criterion, discuss why you believe you qualify for a section 301(h) variance.

A. *Treatment System Description:*

1. Are you applying for a modification based on a current discharge, improved discharge, or altered discharge as defined in 40 CFR 125.58? [40 CFR 125.59(a)]

2. Description of the Treatment/Outfall System [40 CFR 125.61(a) and 125.61(e)]

a. Provide detailed descriptions and diagrams of the treatment system and outfall configuration which you propose to satisfy the requirements of section 301(h) and 40 CFR Part 125, Subpart G. What is the total discharge design flow upon which this application is based?

b. Provide a map showing the geographic location of the proposed outfall(s) (i.e., discharge). What is the latitude and longitude of the proposed outfall(s)?

c. For a modification based on an improved or altered discharge, provide a description and diagram of your current treatment system and outfall configuration. Include the current outfall's latitude and longitude if different from the proposed outfall.

3. Effluent Limitations and Characteristics [40 CFR 125.60(b) and 125.61(e)(2)]

a. Identify the final effluent limitations for five-day biochemical oxygen demand (BOD5), suspended solids, and pH upon which your application for a modification is based:

BOD5 ——— mg/l
Suspended solids ——— mg/l
pH ——— (range)

b. Provide available data on the following effluent characteristics for your current discharge as well as for the modified discharge if different from the current discharge:

—Flow (m³/sec): minimum; average dry weather; average wet weather; maximum; annual average.
—BOD5 (mg/l) for the following plant flows: minimum; average dry weather; average wet weather; maximum; annual average.
—Suspended solids (mg/l) for the following plant flows: minimum; average dry weather; average wet weather; maximum; annual average.
—Toxic pollutants and pesticides (μg/l): list each identified toxic pollutant and pesticide.
—pH: minimum and maximum.
—Dissolved oxygen (mg/l, prior to chlorination) for the following plant flows: minimum; average dry weather; average wet weather; maximum; annual average.
—Immediate dissolved oxygen demand (mg/l).

4. Effluent Volume and Mass Emissions [40 CFR 125.61(e)(2) and 125.65]

a. Provide analyses showing projections of effluent volume (annual average, m³/sec) and mass loadings (mt/year) of BOD5 and suspended solids for the design life of your treatment facility in five-year increments. If the application is based upon an improved or altered discharge, the projections must be provided with and without the proposed improvements or alterations.

b. Provide projections for the end of your five year permit term for (1) the treatment facility contributing population and (2) the average daily total discharge flow for the maximum month of the dry weather season.

5. Average Daily Industrial Flow (m³/sec) [40 CFR 125.64] Provide or estimate the average daily industrial inflow to your treatment facility for the same time increments as in question II. A. 4. a. of this appendix.

6. Combined Sewer Overflows [40 CFR 125.65(b)]

a. Does (will) your collection and treatment system include combined sewer overflows?

b. If yes, provide a description of your plan for minimizing combined sewer overflows to the receiving water.

7. Outfall/Diffuser Design. Provide available data on the following for your current discharge as well as for the modified discharge, if different from the current discharge: [40 CFR 125.61(a)(1)]

—Diameter and length of the outfall(s) (meters)
—Diameter and length of the diffuser(s) (meters)
—Angle(s) of port orientations from horizontal (degrees)
—Port diameter(s) in meters and the orifice contraction coefficient(s), if known
—Vertical distance in meters from mean lower low water (or mean low water) surface and outfall port(s) centerline (meters)
—Number of ports
—Port spacing (meters)
—Design flow rate for each port, if multiple ports are used (m³/sec)

B. *Receiving Water Description:*

1. Are you applying for a modification based on a discharge to the ocean or to a saline estuary (40 CFR 125.58(q))? [40 CFR 125.59(a)]

2. Is your current discharge or modified discharge to stressed waters? If yes, what are the pollution sources contributing to the stress? [40 CFR 125.61(f)]

3. Provide a description and available data on the seasonal circulation patterns in the vicinity of your current and modified discharge(s). [40 CFR 125.61(a)]

4. Ambient Water Quality Conditions During the Period(s) of Maximum Stratification.

a. Provide available data on the following in the vicinity of the current discharge location and for the modified discharge location if different from the current discharge: [40 CFR 125.60(b)(1)]

—Dissolved oxygen (mg/l)
—Suspended solids (mg/l)
—pH
—Temperature (°C)

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—Salinity (ppt)
—Transparency (turbidity, percent light transmittance)
—Other significant parameters (eg. nutrients, toxic pollutants and pesticides, fecal coliforms)

b. Are there other periods when receiving water quality conditions may be more critical than the period(s) of maximum stratification? If so, describe these other critical periods and provide the data requested in 4.a. for the other critical periods. [40 CFR 125.61(a)(1)]

C. Biological Conditions:

1. a. Are distinctive habitats of limited distribution (such as kelp beds or coral reefs) located in areas potentially affected by the modified discharge? [40 CFR 125.61(c)]

b. If yes, provide available information on types, extent, and location of habitats.

2. a. Are commercial or recreational fisheries located in areas potentially affected by the modified discharge? [40 CFR 125.61(c)]

b. If yes, provide available information on types, location, and value of fisheries.

D. State and Federal Laws [40 CFR 125.60]:

1. Are there water quality standards applicable to the following pollutants for which a modification is requested:

—Biochemical oxygen demand or dissolved oxygen?
—Suspended solids, turbidity, light transmission, light scattering, or maintenance of the euphotic zone?
—pH of the receiving water?

2. If yes, what is the water use classification for your discharge area? What are the applicable standards for your discharge area for each of the parameters for which a modification is requested? Provide a copy of all applicable water quality standards or a citation to where they can be found.

3. Will the modified discharge [40 CFR 125.59(b)(3)]:

—Be consistent with applicable State coastal zone management program(s) approved under the Coastal Zone Management Act as amended, 16 U.S.C. 1451 *et seq.*? (*See*, 16 U.S.C. 1456(c)(3)(A)).
—Be located in a Marine sanctuary designated under Title III of the marine Protection, Research and Sanctuaries Act (MPRSA) as amended, 16 U.S.C. 1431 *et seq.* or in an estuarine sanctuary designated under the Coastal Zone Management Act as amended, 16 U.S.C. 1461? If located in a marine sanctuary designated under Title III of the MPRSA, attach a copy of any certification or permit required under regulations governing such marine sanctuary (*See*, U.S.C. 1432(f)(2)).
—Be consistent with the Endangered Species Act as amended, 16 U.S.C. 1531 *et seq*? Provide the names of any threatened or endangered species that inhabit or obtain nutrients from waters that may be affected by the modified discharge. Identify any critical habitat that may be affected by the modified discharge and evaluate whether the modified discharge will affect threatened or endangered species or modify a critical habitat (*See*, 16 U.S.C. 1536(a)(2)).

4. Are you aware of any State or Federal Laws or regulations (other than the Clean Water Act or the three statutes identified in item 3 above) or an Executive Order which is applicable to your discharge? If yes, provide sufficient information to demonstrate that your modified discharge will comply with such law(s), regulation(s), or order(s). [40 CFR 125.59(b)(3)]

III. Technical Evaluation

Answers to the following questions will be used to assess the effects of the modified discharge. The responses will be used by the State agency(s) in their determination (as required by 40 CFR 125.60(b)(2) and 125.63(b)) and by EPA in preparing its decision on the applicant's request for a section 301(h) variance.

Your answers to the following questions must be supported by data and responses from Section II of this questionnaire. The analyses and calculations required below must show the input data for all calculations. Applicants should answer all questions; where your answer to a question is "yes", "no" or "not applicable" explain the basis for your response. Where your answer indicates that you cannot meet a regulatory or statutory criterion, discuss why you believe you qualify for a variance.

If EPA decides to check calculations in an application, the formulas and methods provided in the revised section 301(h) Technical Support Document may be used for that purpose. If applicants use methods other than those provided in the Technical Support Document, such methods must be described by the applicant.

A. Physical Characteristics of Discharge (40 CFR 125.61(a)).

1. What is the lowest initial dilution for your current and modified discharge(s) during (1) the period(s) of maximum stratification? and (2) any other critical period(s) of discharge volume/composition, water quality, biological seasons, or oceanographic conditions?

2. What are the dimensions of the zone of initial dilution for your modified discharge(s)?

3. Will there be significant sedimentation of suspended solids in the vicinity of the modified discharge?

B. Compliance with Applicable Water Quality Standards: [40 CFR 125.60(b) and 125.61(a)]

1. What is the concentration of dissolved oxygen immediately following initial dilution for the period(s) of maximum stratification and any other critical period(s) of discharge volume/composition, water quality, biological seasons, or oceanographic conditions?

2. What is the farfield dissolved oxygen depression and resulting concentration due to BOD exertion of the wastefield during the period(s) of maximum stratification and any other critical period(s)?

3. What is the increase in receiving water suspended solids concentration immediately following initial dilution of the modified discharge(s)?

4. Does (will) the modified discharge comply with applicable water quality standards for:

—Dissolved oxygen?
—Suspended solids or surrogate standards?
—pH?

5. Provide the determination required by 40 CFR 125.60(b)(2) or, if the determination has not yet been received, a copy of a letter to the appropriate agency(s) requesting the required determination.

C. Impact on Public Water Supplies [40 CFR 125.61(b)]:

1. Is there a planned or existing public water supply (desalinization facility) intake in the vicinity of the current or modified discharge?

2. If yes,

(a) What is the location of the intake(s) (latitude and longitude)?

(b) Will the modified discharge(s) prevent use of the intake(s) for public water supply?

(c) Will the modified discharge(s) cause increased treatment requirements for the public water supply(s) to meet local, State, and EPA drinking water standards?

D. Biological Impact of Discharge [40 CFR 125.61(c)]:

1. Does (will) a balanced indigenous population of shellfish, fish, and wildlife exist:

(a) Immediately beyond the ZID of the current and modified discharge(s)?

(b) In all other areas beyond the ZID where marine life is actually or potentially affected by the current and modified discharge(s)?

2. Have distinctive habitats of limited distribution been impacted adversely by the current discharge and will such habitats be impacted adversely by the modified discharge?

3. Have commercial or recreational fisheries been impacted adversely (e.g., warnings, restrictions, closures, or mass mortalities) by the current discharge and will they be impacted adversely by the modified discharge?

4. For discharges into saline estuarine waters: [40 CFR 125.61(c)(4)]

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22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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(a) Does or will the current or modified discharge cause substantial differences in the benthic population with the ZID and beyond the ZID?

(b) Does or will the current or modified discharge interfere with migratory pathways within the ZID?

(c) Does or will the current or modified discharge result in bioaccumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within the ZID?

5. For improved discharges, will the proposed improved discharge(s) comply with the requirements of 40 CFR 125.61(a) through 125.61(d)? [40 CFR 125.61(e)].

6. For altered discharge(s), will the altered discharge(s) comply with the requirements of 40 CFR 125.61(a) through 125.61(d)? [40 CFR 125.61(e)]

7. If your current discharge is to stressed waters, does or will your current or modified discharge: [40 CFR 125.61(f)]

(a) Contribute to, increase, or perpetuate such stressed condition?

(b) Contribute to further degradation of the biota or water quality if the level of human perturbation from other sources increases?

(c) Retard the recovery of the biota or water quality if human perturbation from other sources decreases?

E. *Impacts of Discharge on Recreational Activities:* [40 CFR 125.61(d)]

1. Describe the existing or potential recreational activities likely to be affected by the modified discharge(s) beyond the zone of initial dilution.

2. What are the existing and potential impacts of the modified discharge(s) on recreational activities? Your answer should include, but not be limited to, a discussion of fecal coliforms.

3. Are there any Federal, State or local restrictions on recreational activities in the vicinity of the modified discharge(s)? If yes, describe the restrictions and provide citations to available references.

4. If recreational restrictions exist, would such restrictions be lifted or modified if you were discharging a secondary treatment effluent?

F. *Establishment of a Monitoring Program* 40 CFR 125.62):

(1) Describe the biological, water quality, and effluent monitoring programs which you propose to meet the criteria of 40 CFR 125.62.

(2) Describe the sampling techniques, schedules, and locations, analytical techniques, quality control and verification procedures to be used.

(3) Describe the personnel and financial resources available to implement the monitoring programs upon issuance of a modified permit and to carry it out for the life of the modified permit.

G. *Effect of Discharge on Other Point and Nonpoint Sources:* (40 CFR 125.63).

1. Does (will) your modified discharge(s) cause additional treatment or control requirements for any other point or nonpoint pollution source(s)?

2. Provide the determination required by 40 CFR 125.63(b) or, if the determination has not yet been received, a copy of a letter to the appropriate agency(s) requesting the required determination.

H. *Toxics Control Program* [40 CFR 125.64]

1. a. Do you have any known or suspected industrial sources of toxic pollutants and pesticides?

b. If no, provide the certification required by 40 CFR 125.64(a)(2).

c. If yes, provide the results of wet and dry weather effluent analyses for toxic pollutants and pesticides.

d. Provide an analysis of known or suspected industrial sources of toxic pollutants and pesticides identified in (1)(c) above.

2. Do you have an approved industrial pretreatment program?

a. If yes, provide the date of EPA approval.

b. If no, and if required by 40 CFR Part 403 to have an industrial pretreatment program, provide a proposed schedule for development and implementation of your industrial pretreatment program to meet the requirements of 40 CFR Part 403.

3. Describe the public education program you propose to minimize the entrance of nonindustrial toxic pollutants and pesticides into your treatment system.

4. a. Are there any known or suspected water quality, sediment accumulation, or biological problems related to toxic pollutants or pesticides from your modified discharge(s)?

b. If no, provide the certification required by 40 CFR 125.64(d)(2) together with available supporting data.

c. If yes, provide a schedule for development and implementation of nonindustrial toxics control programs to meet the requirements of 40 CFR 125.64(d)(3).

(Approved by the Office of Management and Budget under control number 2000-0427)

[47 FR 53675, Nov. 26, 1982, as amended at 48 FR 31404, July 8, 1983]

Appendix B—Large Applicant Questionnaire for Modification of Secondary Treatment Requirements

I. Introduction

This questionnaire is to be used by large applicants for modification of secondary treatment requirements under section 301(h) of the Clean Water Act (CWA). A large applicant has a population contributing to its wastewater treatment facility of at least 50,000 or a projected average dry weather flow of its discharge of at least 5.0 million gallons per day (mgd, 0.22 m^3/sec) [40 CFR 125.58(c)].

The questionnaire is in two sections, a general information and basic requirements section and a technical evaluation section. Satisfactory completion of this questionnaire is necessary to enable EPA to determine whether the applicant's modified discharge meets the criteria of section 301(h) and EPA regulations (40 CFR Part 125, Subpart G).

Where applicants diligently try but are unable to collect and submit all the information at the time of application, EPA requires that a plan of study for gathering and submitting the data be provided with the application. 40 CFR 125.59(f) states the procedures governing such post-application data collection activities.

Guidance for responding to the questions is provided by the Revised Section 301(h) Technical Support Document. Where available information is incomplete and the applicant needs to collect additional data during the period it is preparing the application, EPA encourages the applicant to consult with EPA prior to data collection and submission of its application. Such consultation, particularly if the applicant provides a plan of study, will help assure that the proper data are gathered in the most efficient manner.

II. General Information and Basic Data Requirements

Applicants should answer all questions; where your response to a question is "yes", "no", or "not applicable" explain the basis for your response. Where your answer indicates that you cannot meet a regulatory or statutory criterion, discuss why you believe you qualify for a section 301(h) variance.

A. *Treatment System Description:*

1. Are you applying for a modification based on a current discharge, improved discharge, or altered discharge as defined in 40 CFR 125.58? [40 CFR 125.59(a)]

2. Description of the Treatment/Outfall System [40 CFR 125.61(a) and 125.61(e)]

a. Provide detailed descriptions and diagrams of the treatment system and outfall configuration which you propose to satisfy the requirements of section 301(h) and 40 CFR Part 125, Subpart G. What is the total discharge design flow upon which this application is based?

b. Provide a map showing the geographic location of the proposed outfall(s) (i.e., discharge). What is the latitude and longitude of the proposed outfall(s)?

c. For a modification based on an improved or altered discharge, provide a de-

scription and diagram of your current treatment system and outfall configuration. Include the current outfall's latitude and longitude, if different from the proposed outfall.

3. Effluent Limitations and Characteristics [40 CFR 125.60(b) and 125.61(e)(2)]

a. Identify the final effluent limitations for five-day biochemical oxygen demand (BOD5), suspended solids, and pH upon which your application for a modification is based:

BOD5 —— mg/l
Suspended solids —— mg/l
pH —— (range)

b. Provide data on the following effluent characteristics for your current discharge as well as for the modified discharge if different from the current discharge:

Flow (m^3/sec): minimum; average dry weather; average wet weather; annual average; maximum.

BOD5 (mg/l) for the following plant flows: minimum; average dry weather; average wet weather; maximum; annual average.

Suspended solids (mg/l) for the following plant flows: minimum; average dry weather; average wet weather; maximum; annual average.

Toxic pollutants and pesticides (ug/l): list each identified toxic pollutant and pesticide.

pH: minimum and maximum.

Dissolved oxygen (mg/l, prior to chlorination) for the following plant flows: minimum; average dry weather; average wet weather; maximum; annual average.

Immediate dissolved oxygen demand (mg/l)

4. Effluent Volume and Mass Emissions [40 CFR 125.61(e)(2) and 125.65]

a. Provide detailed analyses showing projections of effluent volume (annual average, m^3/sec) and mass loadings (mt/year) of BOD5 and suspended solids for the design life of your treatment facility in five-year increments. If the application is based upon an improved or altered discharge, the projections must be provided with and without the proposed improvements or alterations.

b. Provide projections for the end of your five year permit term for (1) the treatment facility contributing population and (2) the average daily total discharge flow for the maximum month of the dry weather season.

5. Average Daily Industrial Flow (m^3/sec) [40 CFR 125.64] Provide or estimate the average daily industrial inflow to your treatment facility for the same time increments as in question II. A. 4. a. of this Appendix B.

6. Combined Sewer Overflows [40 CFR 125.65(b)]

a. Does (will) your collection and treatment system include combined sewer overflows?

b. If yes, provide a description of your plan for minimizing combined sewer overflows to the receiving water.

7. Outfall/Diffuser Design. Provide the following data for your current discharge as well as for the modified discharge, if different from the current discharge: [40 CFR 125.61(a)(1)]

Diameter and length of the outfall(s) (meters)

Diameter and length of the diffuser(s) (meters)

Angle(s) of port orientations from horizontal (degrees)

Port diameter(s) in meters and the orifice contraction coefficient(s), if known.

Vertical distance in meters from mean lower low water (or mean low water) surface and outfall port(s) centerline (meters)

Number of ports

Port spacing (meters)

Design flow rate for each port, if multiple ports are used (m^3/sec)

B. *Receiving Water Description:*

1. Are you applying for a modification based on a discharge to the ocean or to a saline estuary (40 CFR 125.58(q))? [40 CFR 125.59(a)]

2. Is your current discharge or modified discharge to stressed waters? If yes, what are the pollution sources contributing to the stress? [40 CFR 125.61(f)]

3. Provide a description and data on the seasonal circulation patterns in the vicinity of your current and modified discharge(s). [40 CFR 125.61(a)]

4. Oceanographic Conditions in the Vicinity of the Current and Proposed Modified Discharge(s).

Provide data on the following: [40 CFR 125.61(a)]

Lowest ten percentile current speed (m/sec)

Predominant current speed (m/sec) and direction (true) during the four seasons

Period(s) of maximum stratification (months)

Period(s) of natural upwelling events (duration and frequency, months)

Density profiles during period(s) of maximum stratification

5. Ambient Water Quality Conditions During the Period(s) of Maximum Stratification: at the zone of initial dilution (ZID) boundary, at other areas of potential impact, and at control stations: [40 CFR 125.61(a)(2)]

a. Provide profiles (with depth) on the following for the current discharge location and for the modified discharge location, if different from the current discharge:

BOD5 (mg/l)
Dissolved oxygen (mg/l)
Suspended solids (mg/l)
pH
Temperature (°C)
Salinity (ppt)

Transparency (turbidity, percent light transmittance)

Other significant parameters (e.g., nutrients, toxic pollutants and pesticides, fecal coliforms)

b. Are there other periods when receiving water quality conditions may be more critical than the period(s) of maximum stratification? If so, describe these other critical periods and provide the data requested in 5.a. for the other critical period(s). [40 CFR 125.61(a)(1)]

6. Provide data on steady state sediment dissolved oxygen demand and dissolved oxygen demand due to resuspension of sediments in the vicinity of your current and modified discharge(s) (mg/l/day).

C. *Biological Conditions:*

1. Provide a detailed description of representative biological community (eg. plankton, macrobenthos, demersal fish, etc.) in the vicinity of your current and modified discharge(s): Within the ZID, at the ZID boundary, at other areas of potential, discharge-related impact, and at reference (control) sites. Community characteristics to be described shall include (but not be limited to) species composition; abundance; dominance and diversity; spatial/temporal distribution; growth and reproduction; disease frequency; trophic structure and productivity patterns; presence of opportunistic species; bioaccumulation of toxic materials; and the occurrence of mass mortalities.

2. a. Are distinctive habitats of limited distribution (such as kelp beds or coral reefs) located in areas potentially affected by the modified discharge? [40 CFR 125.61(c)]

b. If yes, provide information on type, extent, and location of habitats.

3. a. Are commercial or recreational fisheries located in areas potentially affected by the discharge? [40 CFR 125.61(c)]

b. If yes, provide information on types, location, and value of fisheries.

D. *State and Federal Laws* [40 CFR 125.60]:

1. Are there water quality standards applicable to the following pollutants for which a modification is requested:

Biochemical oxygen demand or dissolved oxygen?

Suspended solids, turbidity, light transmission, light scattering, or maintenance of the euphotic zone?

pH of the receiving water?

2. If yes, what is the water use classification for your discharge area? What are the applicable standards for your discharge area for each of the parameters for which a modification is requested? Provide a copy of all applicable water quality standards or a citation to where they can be found.

3. Will the modified discharge: [40 CFR 125.59(b)(3)]

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Be consistent with applicable State coastal zone management program(s) approved under the Coastal Zone Management Act as amended, 16 U.S.C. 1451 *et seq.*? (*See*, 16 U.S.C. 1456(c)(3)(A))

Be located in a marine sanctuary designated under Title III of the Marine Protection, Research and Sanctuaries Act (MPRSA) as amended, 16 U.S.C. 1431 *et seq.* or in an estuarine sanctuary designated under the Coastal Zone Management Act as amended, 16 U.S.C. 1461? If located in a marine sanctuary designated under Title III of the MPRSA, attach a copy of any certification or permit required under regulations governing such marine sanctuary (*See*, 16 U.S.C. 1432(f)(2)).

Be consistent with the Endangered Species Act as amended, 16 U.S.C. 1531 *et seq.*? Provide the names of any threatened or endangered species that inhabit or obtain nutrients from waters that may be affected by the modified discharge. Identify any critical habitat that may be affected by the modified discharge and evaluate whether the modified discharge will affect threatened or endangered species or modify a critical habitat (*See*, 16 U.S.C. 1536(a)(2)).

4. Are you aware of any State or Federal Laws or regulations (other than the Clean Water Act or the three statutes identified in item 3 above) or an Executive Order which is applicable to your discharge? If yes, provide sufficient information to demonstrate that your modified discharge will comply with such law(s), regulations, or order(s). [40 CFR 125.59(b)(3)]

III. Technical Evaluation

Answers to the following questions will be used to assess the effects of the modified discharge. The responses will be used by the State agency(s) in their determination (as required by 40 CFR 125.60(b)(2) and 125.63(b)), and by EPA in preparing its decision on the applicant's request for a section 301(h) variance.

Your answers to the following questions must be supported by data and responses from Section II of this questionnaire. The analyses and calculations required below must show the input data for all calculations. Applicants should answer all questions; where your answer to a question is "yes", "no", or "not applicable", explain the basis for your response. Where your answer indicates that you cannot meet a regulatory or statutory criterion, discuss why you believe you qualify for a variance.

If EPA decides to check calculations in an application, the formulas and methods provided in the revised section 301(h) Technical Support Document may be used for that purpose. If applicants use methods other than those provided in the Technical Support Document, such methods must be described by the applicant.

A. *Physical Characteristics of Discharge* [40 CFR 125.61(a)]: 1. What is the critical initial dilution for your current and modified discharge(s) during (1) the period(s) of maximum stratification? and (2) any other critical period(s) of discharge volume/composition, water quality, biological seasons, or oceanographic conditions?

2. What are the dimensions of the zone of initial dilution for your modified discharge(s)?

3. What are the effects of ambient currents and stratification on dispersion and transport of the discharge plume/wastefield?

4. Sedimentation of suspended solids.

a. What fraction of the modified discharge's suspended solids will accumulate within the vicinity of the modified discharge?

b. What are the calculated area(s) and rate(s) of sediment accumulation within the vicinity of the modified discharge(s) ($g/m^2/yr$)?

c. What is the fate of settleable solids transported beyond the calculated sediment accumulation area?

B. *Compliance with Applicable Water Quality Standards* [40 CFR 125.60(b) and 125.61(a)]:

1. What is the concentration of dissolved oxygen immediately following initial dilution for the period(s) of maximum stratification and any other critical period(s) of discharge volume/composition, water quality, biological seasons, or oceanographic conditions?

2. What is the farfield dissolved oxygen depression and resulting concentration due to BOD exertion of the wastefield during the period(s) of maximum stratification and any other critical period(s)?

3. What are the dissolved oxygen depressions and concentrations due to steady sediment demand and resuspension of sediments?

4. What is the increase in receiving water suspended solids concentration immediately following initial dilution of the modified discharge(s)?

5. What is the change in receiving water pH immediately following initial dilution of the modified discharge(s)?

6. Does (will) the modified discharge comply with applicable water quality standards for:

Dissolved oxygen?
Suspended solids or surrogate standards?
pH?

7. Provide the determination required by 40 CFR 125.60(b)(2) or, if the determination has not yet been received, a copy of a letter to the appropriate agency(s) requesting the required determination.

C. *Impact on Public Water Supplies* [40 CFR 125.61(b)].

1. Is there a planned or existing public water supply (desalinization facility) intake in the vicinity of the current or modified discharge?

2. If yes,

a. What is the location of the intake(s) (latitude and longitude)?

b. Will the modified discharge(s) prevent use of the intake(s) for public water supply?

c. Will the modified discharge(s) cause increased treatment requirements for the public water supply(s) to meet local, State, and EPA drinking water standards?

D. *Biological Impact of Discharge* [40 CFR 125.61(c)]:

1. Does (will) a balanced indigenous population of shellfish, fish, and wildlife exist:

a. Immediately beyond the ZID of the current and modified discharge(s)?

b. In all other areas beyond the ZID where marine life is actually or potentially affected by the current and modified discharge(s)?

2. Have distinctive habitats of limited distribution been impacted adversely by the current discharge and will such habitats be impacted adversely by the modified discharge?

3. Have commercial or recreational fisheries been impacted adversely by the current discharge (e.g., warnings, restrictions, closures, or mass mortalities) or will they be impacted adversely by the modified discharge?

4. Does the current or modified discharge cause the following within or beyond the ZID: [40 CFR 125.61(c)(3)]

a. Mass mortality of fishes or invertebrates due to oxygen depletion, high concentrations of toxics or other conditions?

b. An increased incidence of disease in marine organisms?

c. An abnormal body burden of any toxic material in marine organisms?

d. Any other extreme, adverse biological impacts?

5. For discharges into saline estuarine waters: [40 CFR 125.61(c)(4)]

a. Does or will the current or modified discharge cause substantial differences in the benthic population within the ZID and beyond the ZID?

b. Does or will the current or modified discharge interfere with migratory pathways within the ZID?

c. Does or will the current or modified discharge result in bioaccumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within the ZID?

6. For improved discharges, will the proposed improved discharge(s) comply with the requirements of 40 CFR 125.61(a) through 125.61(d)? [40 CFR 125.61(e)]

7. For altered discharge(s), will the altered discharge(s) comply with the requirements of 40 CFR 125.61(a) through 125.61(d)? [40 CFR 125.61(e)]

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8. If your current discharge is to stressed waters, does or will your current or modified discharges: [40 CFR 125.61(f)]

a. Contribute to, increase, or perpetuate such stressed condition?

b. Contribute to further degradation of the biota or water quality if the level of human perturbation from other sources increases?

c. Retard the recovery of the biota or water quality if human perturbation from other sources decreases?

E. *Impacts of Discharge on Recreational Activities* [40 CFR 125.61(d)]:

1. Describe the existing or potential recreational activities likely to be affected by the modified discharge(s) beyond the zone of initial dilution.

2. What are the existing and potential impacts of the modified discharge(s) on recreational activities? Your answer should include, but not be limited to, a discussion of fecal coliforms.

3. Are there any Federal, State or local restrictions on recreational activities in the vicinity of the modified discharge(s)? If yes, describe the restrictions and provide citations to available references.

4. If recreational restrictions exist, would such restrictions be lifted or modified if you were discharging a secondary treatment effluent?

F. *Establishment of a Monitoring Program* (40 CFR 125.62):

1. Describe the biological, water quality, and effluent monitoring programs which you propose to meet the criteria of 40 CFR 125.62.

2. Describe the sampling techniques, schedules, and locations, analytical techniques, quality control and verification procedures to be used.

3. Describe the personnel and financial resources available to implement the monitoring programs upon issuance of a modified permit and to carry it out for the life of the modified permit.

G. *Effect of Discharge on Other Point and Nonpoint Sources* (40 CFR 125.63):

1. Does (will) your modified discharge(s) cause additional treatment or control requirements for any other point or nonpoint pollution source(s)?

2. Provide the determination required by 40 CFR 125.63(b) or, if the determination has not yet been received, a copy of a letter to the appropriate agency(s) requesting the required determination.

H. *Toxics Control Program* (40 CFR 125.64):

1. a. Do you have any known or suspected industrial sources of toxic pollutants or pesticides?

b. If no, provide the certification required by 40 CFR 125.64(c)(2).

2. Provide the results of wet and dry weather effluent analyses for toxic pollutants and pesticides as required by 40 CFR 125.64(a)(1).

3. Provide an analysis of known or suspected industrial sources of toxic pollutants and pesticides identified in 2. above.

4. Do you have an approved industrial pretreatment program?

a. If yes, provide the date of EPA approval.

b. If no, and if required by 40 CFR Part 403 to have an industrial pretreatment program, provide a proposed schedule for development and implementation of your industrial pretreatment program to meet the requirements of 40 CFR Part 403.

5. Describe the public education program you propose to minimize the entrance of nonindustrial toxic pollutants and pesticides into your treatment system.

6. Provide a schedule for development and implementation of a nonindustrial toxics control program to meet the requirements of 40 CFR 125.64(d)(3).

(Approved by the Office of Management and Budget under control number 2000-0427)

[47 FR 53675, Nov. 26, 1982, as amended at 48 FR 31404, July 8, 1983]

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Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 9

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40 C.F.R. Subpart H, Part 125

Subpart H—Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Act

§ 125.70 Purpose and scope.

Section 316(a) of the Act provides that:

"With respect to any point source otherwise subject to the provisions of section 301 or section 306 of this Act, whenever the owner or operator of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the projection [sic] and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose an effluent limitation under such sections on such plant, with respect to the thermal component of such discharge (taking into account the interaction of such thermal component with other pollutants), that will assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on that body of water."

This subpart describes the factors, criteria and standards for the establishment of alternative thermal effluent limitations under section 316(a) of the Act in permits issued under section 402(a) of the Act.

§ 125.71 Definitions.

For the purpose of this subpart:

(a) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under section 316(a) and this subpart.

(b) "Representative important species" means species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish and wildlife in the body of water into which a discharge of heat is made.

(c) The term "balanced, indigenous community" is synonymous with the term "balanced, indigenous population" in the Act and means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modifications. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with section 301(b)(2) of the Act; and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to section 316(a).

§ 125.72 Early screening of applications for section 316(a) variances.

(a) Any initial application for a section 316(a) variance shall include the following early screening information:

(1) A description of the alternative effluent limitation requested;

(2) A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;

(3) A general description of the type of data, studies, experiments and other information which the discharger intends to submit for the demonstration; and

(4) Such data and information as may be available to assist the Director in selecting the appropriate representative important species.

(b) After submitting the early screening information under paragraph (a) of this section, the discharger shall consult with the Director at the earliest practicable time (but not later than 30 days after the application is filed) to discuss the discharger's early screening information. Within 60 days after the application is filed, the discharger shall submit for the Director's approval a detailed plan of study which the discharger will undertake to support its section 316(a) demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: Biological, hydrographical and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies; representative important species; and other relevant information. In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the Director shall either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the Director subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger may provide any additional information or studies which the discharger feels are appropriate to support the demonstration.

(c) Any application for the renewal of a section 316(a) variance shall include only such information described

in paragraphs (a) and (b) of this section and § 124.73(c)(1) as the Director requests within 60 days after receipt of the permit application.

(d) The Director shall promptly notify the Secretary of Commerce and the Secretary of the Interior, and any affected State of the filing of the request and shall consider any timely recommendations they submit.

(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making such demonstrations.

(f) If an applicant desires a ruling on a section 316(a) application before the ruling on any other necessary permit terms and conditions, (as provided by § 124.65), it shall so request upon filing its application under paragraph (a) of this section. This request shall be granted or denied at the discretion of the Director.

NOTE: At the expiration of the permit, any discharger holding a section 316(a) variance should be prepared to support the continuation of the variance with studies based on the discharger's actual operation experience.

[44 FR 32948, June 7, 1979, as amended at 45 FR 33513, May 19, 1980]

§ 125.73 Criteria and standards for the determination of alternative effluent limitations under section 316(a).

(a) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the satisfaction of the director that such effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made. This demonstration must show that the alternative effluent limitation desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made.

(b) In determining whether or not the protection and propagation of the affected species will be assured, the Director may consider any information contained or referenced in any applicable thermal water quality criteria and thermal water quality information published by the Administrator under section 304(a) of the Act, or any other information he deems relevant.

(c) (1) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such demonstrations shall show:

(i) That no appreciable harm has resulted from the normal component of the discharge (taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge has been made; or

(ii) That despite the occurrence of such previous harm, the desired alternative effluent limitations (or appropriate modifications thereof) will nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made.

(2) In determining whether or not prior appreciable harm has occurred, the Director shall consider the length of time in which the applicant has been discharging and the nature of the discharge.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 9

Document Incorporated By Reference
40 C.F.R. Subpart J, Part 125

Subpart J—Criteria for Extending Compliance Dates Under Section 301(i) of the Act

§ 125.90 Purpose and scope.

Under section 301(i) (1) and (2) of the Act, extensions of the 1977 statutory deadline for compliance with certain treatment requirements may be granted by the Director through permit issuance or modification. This subpart establishes criteria for granting these extensions and the method for incorporating these extensions into permits issued under section 402(a) of the Act.

§ 125.91 Definition.

For purposes of this subpart, "construction" includes any one of the following: Preliminary planning to determine the feasibility of treatment works; engineering, architectural, legal fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items *Provided* That completion of the facility and attainment of operational level by no later than July, 1, 1983, is a reasonable expectation.

§ 125.92 Requests for permit modification and issuance under section 301(i)(1) of the Act.

Any owner or operator of a publicly owned treatment works (POTW) that requires construction to achieve limitations under section 301(b)(1)(B) or 301(b)(1)(C) of the Act may request modification or issuance of a permit extending the date for compliance with these limitations in accordance with the provisions of § 122.21(m).

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act; 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[45 FR 33513, May 19, 1980, as amended at 48 FR 14293, Apr. 1, 1983]

§ 125.93 Criteria for permit modification and issuance under section 301(i)(1) of the Act.

No request for a permit modification or issuance under section 301(i)(1) shall be granted unless the Director finds that the POTW requires construction to achieve limitations under section 301(b)(1)(B) or 301(b)(1)(C) of the Act and did not complete construction for either of the following reasons:

(a) The issuance of a notice to proceed under a construction contract for any segment of Step 3 project work (or if notice to proceed is not required, the execution of the construction contract) occurred before July 1, 1977, but construction could not physically be completed by July 1, 1977, despite all expeditious efforts of the POTW (see initiation of construction as defined in 40 CFR 35.905 for Step 3); or

(b) Federal financial assistance was not available, or was not available in time for construction required to achieve these limitations, and the POTW did not in any significant way contribute to this unavailability or delay.

§ 125.94 Permit terms and conditions under section 301(i)(1) of the Act.

(a) All permits modified or issued by the Director under section 301(i)(1) of the Act shall contain at a minimum the following permit terms and conditions:

(1) The shortest reasonable schedule of compliance for achievement of limitations under section 301(b)(1) (B) and (C) but in no event later than July 1, 1983. This schedule shall be based upon the earliest date that Federal financial assistance will be available and construction can be completed and on any additional information submitted by the POTW or otherwise available.

(i) When a facility plan has been approved in accordance with 40 CFR Part 35, Subpart E, this schedule shall contain dates certain for the completion of actions leading toward the attainment of statutory treatment limitations.

(ii) When the POTW has not completed Step 1 of the construction grants process in accordance with 40 CFR Part 35, Subpart E, this schedule shall contain a date certain for the submission of a facility plan (completion of Step 1) upon which date the permit should be set to expire. In this case, in order to assure compliance by the POTW by July 1, 1983, the following requirements must be met:

(A) Certification by the State, based on its one or five year project priority list developed pursuant to 40 CFR 35.915(c), that funding will be available in time to ensure compliance by July 1, 1983; and

(B) Reporting once a year (if necessary) by the POTW as to its progress in obtaining Federal funding.

[*Comment:* EPA recognizes that the date for submission of the facility plan may not take into account all the uncertainties of the Step 1 planning process. Because of the uncertainties inherent in the Step 1 planning process, EPA recommends that section 301(i)(1) requests (and permit issuance) for projects that are presently in Step 2 or 3 should be acted on *before* requests from projects in Step 1. When Federal funding in the form of a Step 2 construction grant award is made available, and the Step 1 permit has expired, the permit is to be reissued containing a date certain schedule derived from the facility plan and coordinated with the State Project Priority List.]

(2) A statement ensuring compliance with requirements under section 201 (b) through (g) of the Act consistent with the terms of the POTWs construction grant.

(3) Abatement practices and interim effluent limitations reflecting optimum operation and maintenance of the existing facilities. These shall include:

(i) Adequate operator staffing and training;

(ii) Adequate laboratory and process controls; and

(iii) Effluent limitations derived from reports of operation and maintenance inspections conducted by EPA or the State, or other guidance.

[*Comment:* Only in exceptional circumstances should in-depth plant evaluations be conducted, e.g., when existing information does not represent the true capabilities of the plant.]

(4) Interim effluent limitations reflecting other non-capital intensive measures for increased pollution control. This shall include any possible minor facility modifications such as piping changes, additional metering and instrumentation or the use of skimming and vacuuming equipment. When an existing POTW is currently violating limitations imposed under section 301(b)(1)(C) of the Act, interim effluent limitations shall be established to minimize adverse water quality impact; these limitations shall not be made less stringent or allow more

pollutants to be discharged than are currently being discharged during the term of an extension granted under section 301(i)(1) of the Act.

(b) If a POTW has industrial users, any permit issued or modified by the Director under section 301(i)(1) shall contain any terms and conditions necessary to ensure compliance with 40 CFR Part 403.

§ 125.95 Requests for permit modification or issuance under section 301(i)(2) of the Act.

Any owner or operator of a point source other than a POTW that will not achieve the requirements of section 301(b)(1) (A) and (C) of the Act because it was scheduled to discharge into a POTW that is presently unable to accept the discharge without construction, may request modification or issuance of a permit extending the date of compliance with these limitations in accordance with the provisions of § 122.21(i).

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[45 FR 33513, May 19, 1980, as amended at 48 FR 14293, Apr. 1, 1983]

§ 125.96 Criteria for permit modification or issuance under section 301(i)(2) of the Act.

No request for a permit modification or issuance under section 301(i)(2) of the Act shall be granted unless the Director finds that the discharger has failed to achieve the requirements of section 301(b)(1) (A) and (C) of the Act because it was scheduled to discharge into a POTW that is presently unable to accept the discharge without construction, and:

(a) The discharger has indicated an intent to discharge into the POTW before July 1, 1977, in one of the following ways:

(1) The discharger was issued a permit before July 1, 1977, based upon a discharge into a POTW;

(2) The discharger had a binding contractual obligation before July 1, 1977, (enforceable against the discharger) to discharge into a POTW. Contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this paragraph.

(3) A construction grant application made by the POTW before July 1, 1977, clearly demonstrated that the discharger was to discharge into the POTW; or

(4) Engineering plans, architectural plans or working drawings prepared for the POTW before July 1, 1977, clearly demonstrated the discharger was to discharge into the POTW. Plans and drawings, such as those accompanying a bona fide application for a Federal construction grant, are sufficient only to the extent that they were truly representative of the intent of the discharger and the POTW;

(b) The Director finds that the discharger has acted in good faith in its efforts to effectuate discharge into the POTW and to minimize or abate pollution prior to discharge into the POTW. This shall include the following findings:

(1) Failure of the discharger to meet the July 1, 1977, deadline was for reasons beyond its control;

(2) A history of a high degree of commitment to meet the requirements of the Act as manifested by cooperation with the State or EPA in attempting to resolve disputed issues;

(3) No history of unjustified delay;

(4) No past serious or intentional violations of the Act; and

(5) All reasonable measures are being taken to expedite compliance.

[*Comment:* The Director may also consider whether the discharger has operated its facilities competently and responsibly and the extent to which the discharger has completed the necessary prerequisites to having its waste treated by the POTW.]

(c) The POTW will be in operation and available to the discharger July 1, 1983;

(d) The POTW will be able to meet secondary treatment and water quality standard effluent limitations by July 1, 1983, after receiving the waste from the discharger;

(e) The discharger and the POTW have entered into an enforceable contract providing that:

(i) The discharger agrees to discharge its waste to the POTW;

(ii) The POTW agrees to accept and treat that waste by a date certain; and

(iii) The discharger agrees to pay all user charges and industrial cost recovery charges required under section 204 of the Act; and

(f) In the case of a discharge into an existing POTW, such POTW has been granted an extension under section 301(i)(1) of the Act.

§ 125.97 Permit terms and conditions under section 301(i)(2) of the Act.

All permits modified or issued by the Director under section 301(i)(2) of the Act shall contain at a minimum the following permit terms and conditions:

(a) The shortest reasonable schedule of compliance leading to discharge into the POTW, not to extend beyond the earliest date practicable for compliance, or beyond the final compliance date of any extension granted to the appropriate POTW under section 301(i)(1) of the Act, but in no event later than July 1, 1983. This schedule shall be based upon the earliest date by which the appropriate POTW can receive the waste from the discharger and the discharger can complete the necessary prerequisites to having its waste treated by that POTW.

(b) Achievement of effluent limitations and standards under section 301(b)(1)(A) and (C) of the Act by the same final date in the schedule established in paragraph (a) of this section in the event that the permittee does not discharge its wastes to the POTW by the date established under paragraph (a) of this section.

(c) Abatement practices and interim effluent limitations reflecting optimum operation and maintenance of the discharger's existing facilities. These shall include:

(1) Effective performance of facility design removals;

(2) Adequate operator staffing and training; and

(3) Adequate laboratory and process control.

(d) Interim effluent limitations reflecting other non-capital intensive measures for increased pollution control.

(e) Requirements to meet applicable toxic effluent standards and prohibitions after they are promulgated under section 307(a) of the Act.

(f) Requirements to ensure compliance with:

(1) Pretreatment requirements imposed by the POTW pursuant to any extension granted to the POTW under section 301(i)(1);

(2) Any State or local pretreatment requirements; and

(3) Pretreatment standards as promulgated under section 307(b) of the Act.

[*Comment:* The legislative history cites the following example: "[I]f an industry is planning on participating in a municipal system which will not be available until January 1983, that industry would still have to install and operate pretreatment facilities within the time specified for compliance at the time the applicable pretreatment standard was promulgated and in no event later than three years from the date of said promulgation. Thus, if the pretreatment regulations are promulgated March 1, 1979, and require compliance within two years, that industry would be required to comply by March 1, 1981." H.R. Rep. No. 95-830, 95th Cong., 1st Sess., 12712 (daily ed. Dec. 6, 1977).]

(g) Any water conservation requirements necessary to carry out the provisions of the Act or imposed by the POTW pursuant to the contract executed between the discharger and the POTW.

[*Comment:* The existence of such a contract is a prerequisite to granting an extension under section 301(i)(2)(B) of the Act and § 125.96(e).]

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Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 9

Document Incorporated By Reference
40 C.F.R. Subpart K, Part 125

Subpart K—Criteria and Standards for Best Management Practices Authorized Under Section 304(e) of the Act

§ 125.100 Purpose and scope.

This subpart describes how best management practices (BMPs) for ancillary industrial activities under section 304(e) of the Act shall be reflected in permits, including best management practices promulgated in effluent limitations under section 304 and established on a case-by-case basis in permits under section 402(a)(1) of the Act. Best management practices authorized by section 304(e) are included in permits as requirements for the purposes of section 301, 302, 306, 307, or 403 of the Act, as the case may be.

§ 125.101 Definition.

"Manufacture" means to produce as an intermediate or final product, or by-product.

§ 125.102 Applicability of best management practices.

Dischargers who use, manufacture, store, handle or discharge any pollutant listed as toxic under section 307(a)(1) of the Act or any pollutant listed as hazardous under section 311 of the Act are subject to the requirements of this Subpart for all activities which may result in significant amounts of those pollutants reaching waters of the United States. These activities are ancillary manufacturing operations including: Materials storage areas; in-plant transfer, process and material handling areas; loading and unloading operations; plant site runoff; and sludge and waste disposal areas.

§ 125.103 Permit terms and conditions.

(a) Best management practices shall be expressly incorporated into a permit where required by an applicable EPA promulgated effluent limitations guideline under section 304(e);

(b) Best management practices may be expressly incorporated into a permit on a case-by-case basis where determined necessary to carry out the provisions of the Act under section 402(a)(1). In issuing a permit containing BMP requirements, the Director shall consider the following factors:

(1) Toxicity of the pollutant(s);

(2) Quantity of the pollutant(s) used, produced, or discharged;

(3) History of NPDES permit violations;

(4) History of significant leaks or spills of toxic or hazardous pollutants;

(5) Potential for adverse impact on public health (e.g., proximity to a public water supply) or the environment (e.g., proximity to a sport or commerical fishery); and

(6) Any other factors determined to be relevant to the control of toxic or hazardous pollutants.

(c) Best management practices may be established in permits under paragraph (b) of this section alone or in combination with those required under paragraph (a) of this section.

(d) In addition to the requirements of paragraphs (a) and (b) of this section, dischargers covered under § 125.102 shall develop and implement a best management practices program in accordance with § 125.104 which prevents, or minimizes the potential for, the release of toxic or hazardous pollutants from ancillary activities to waters of the United States.

§ 125.104 Best management practices programs.

(a) BMP programs shall be developed in accordance with good engineering practices and with the provisions of this subpart.

(b) The BMP program shall:

(1) Be documented in narrative form, and shall include any necessary plot plans, drawings or maps;

(2) Establish specific objectives for the control of toxic and hazardous pollutants.

(i) Each facility component or system shall be examined for its potential for causing a release of significant amounts of toxic or hazardous pollutants to waters of the United States due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc.

(ii) Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of toxic or hazardous pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of toxic or hazardous pollutants which could be discharged from the facility as a result of each condition or circumstance;

(3) Establish specific best management practices to meet the objectives identified under paragraph (b)(2) of this section, addressing each component or system capable of causing a re-

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lease of significant amounts of toxic or hazardous pollutants to the waters of the United States;

(4) The BMP program: (i) May reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the Act and 40 CFR Part 151, and may incorporate any part of such plans into the BMP program by reference;

[*Comment:* EPA has proposed section 311(j)(1)(c) regulations (43 FR 39276) which require facilities subject to NPDES to develop and implement SPCC plans to prevent discharges of reportable quantities of designated hazardous substances. While Subpart K requires only procedural activities and minor construction, the proposed 40 CFR Part 151 (SPCC regulations) are more stringent and comprehensive with respect to their requirements for spill prevention. In developing BMP programs in accordance with Subpart K, owners or operators should also consider the requirements of proposed 40 CFR Part 151 which may address many of the same areas of the facility covered by this Subpart.]

(ii) Shall assure the proper management of solid and hazardous waste in accordance with regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) (40 U.S.C. 6901 *et seq*). Management practices required under RCRA regulations shall be expressly incorporated into the BMP program; and

(iii) Shall address the following points for the ancillary activities in § 125.102:

(A) Statement of policy;
(B) Spill Control Committee;
(C) Material inventory;
(D) Material compatibility;
(E) Employee training;
(F) Reporting and notification procedures;
(G) Visual inspections;
(H) Preventive maintenance;
(I) Housekeeping; and
(J) Security.

[*Comment:* Additional technical information on BMPs and the elements of a BMP program is contained in a publication entitled "NPDES Best Management Practices Guidance Document." Copies may be obtained by written request to Edward A. Kramer (EN-336), Office of Water Enforcement, Environmental Protection Agency, Washington, DC. 20460.]

(c)(1) The BMP program must be clearly described and submitted as part of the permit application. An application which does not contain a BMP program shall be considered incomplete. Upon receipt of the application, the Director shall approve or modify the program in accordance with the requirements of this subpart. The BMP program as approved or modified shall be included in the draft permit (§ 124.6). The BMP program shall be subject to the applicable permit issuance requirements of Part 124, resulting in the incorporation of the program (including any modifications of the program resulting from the permit issuance procedures) into the final permit.

(2) Proposed modifications to the BMP program which affect the discharger's permit obligations shall be submitted to the Director for approval. If the Director approves the proposed BMP program modification, the permit shall be modified in accordance with § 122.62, provided that the Director may waive the requirements for public notice and opportunity for hearing on such modification if he or she determines that the modification is not significant. The BMP program, or modification thereof, shall be fully implemented as soon as possible but not later than one year after permit issuance, modification, or revocation and reissuance unless the Director specifies a later date in the permit.

NOTE: A later date may be specified in the permit, for example, to enable coordinated preparation of the BMP program required under these regulations and the SPCC plan required under 40 CFR Part 151 or to allow for the completion of construction projects related to the facility's BMP or SPCC program.

(d) The discharger shall maintain a description of the BMP program at the facility and shall make the description available to the Director upon request.

(e) The owner or operator of a facility subject to this subpart shall amend the BMP program in accordance with the provisions of this subpart whenever there is a change in facility design, construction, operation, or maintenance which materially affects the facility's potential for discharge of significant amounts of hazardous or toxic pollutants into the waters of the United States.

(f) If the BMP program proves to be ineffective in achieving the general objective of preventing the release of significant amounts of toxic or hazardous pollutants to those waters and the specific objectives and requirements under paragraph (b) of this section, the permit and/or the BMP program shall be subject to modification to incorporate revised BMP requirements.

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6027, 6974)

[44 FR 32948, June 7, 1979, as amended at 45 FR 33513, May 19, 1980; 48 FR 14293, Apr. 1, 1983]

Sec. 10

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 10

Document Incorporated By Reference
40 C.F.R. Part 133

PART 133—SECONDARY TREATMENT REGULATION

Sec.
133.100 Purpose.
133.101 Definitions.
133.102 Secondary treatment.
133.103 Special considerations.
133.104 Sampling and test procedures.
133.105 Treatment equivalent to secondary treatment.

Authority: ...

§ 133.100 Purpose.

This part provides information on the level of effluent quality attainable through the application of secondary or equivalent treatment.

§ 133.101 Definitions.

Terms used in this part are defined as follows:

(a) *"7-day average."* The arithmetic mean of pollutant parameter values for samples collected in a period of 7 consecutive days.

(b) *"30-day average."* The arithmetic mean of pollutant parameter values of samples collected in a period of 30 consecutive days.

(c) *"Act."* The Clean Water Act (33 U.S.C. 1251 *et seq.*, as amended).

(d) *"BOD."* The five day measure of the pollutant parameter biochemical oxygen demand (BOD).

(e) *"$CBOD_5$."* The five day measure of the pollutant parameter carbonaceous biochemical oxygen demand ($CBOD_5$).

(f) *"Effluent concentrations consistently achievable through proper operation and maintenance."* (1) For a given pollutant parameter, the 95th percentile value for the 30-day average effluent quality achieved by a treatment works in a period of at least two years, excluding values attributable to upsets, bypasses, operational errors, or other unusual conditions, and (2) a 7-day average value equal to 1.5 times the value derived under paragraph (f)(1) of this section.

(g) *"Facilities eligible for treatment equivalent to secondary treatment."* Treatment works shall be eligible for consideration for effluent limitations described for treatment equivalent to secondary treatment (§ 133.105), if:

(1) The BOD_5 and SS effluent concentrations consistently achievable through proper operation and maintenance (§ 133.101(f)) of the treatment works exceed the minimum level of the effluent quality set forth in §§ 133.102(a) and 133.102(b),

(2) A trickling filter or waste stabilization pond is used as the principal process, and

(3) The treatment works provide significant biological treatment of municipal wastewater.

(h) *"mg/l."* Milligrams per liter.

(i) *"NPDES."* National Pollutant Discharge Elimination System.

(j) *"Percent removal."* A percentage expression of the removal efficiency across a treatment plant for a given pollutant parameter, as determined from the 30-day average values of the raw wastewater influent pollutant concentrations to the facility and the 30-day average values of the effluent pollutant concentrations for a given time period.

(k) *"Significant biological treatment."* The use of an aerobic or anaerobic biological treatment process in a treatment works to consistently achieve a 30-day average of a least 65 percent removal of BOD_5.

(l) *"SS."* The pollutant parameter total suspended solids.

(m) "Significantly more stringent limitation" means BOD_5 and SS limitations necessary to meet the percent removal requirements of at least 5 mg/l more stringent than the otherwise applicable concentration-based limitations (e.g., less than 25 mg/l in the case of the secondary treatment limits for BOD_5 and SS), or the percent removal limitations in §§ 133.102 and 133.105, if such limits would, by themselves, force significant construction or other significant capital expenditure.

(n) "State Director" means the chief administrative officer of any State or interstate agency operating an "approved program," or the delegated representative of the State Director.

§ 133.102 Secondary treatment.

The following paragraphs describe the minimum level of effluent quality attainable by secondary treatment in terms of the parameters—BOD_5, SS and pH. All requirements for each parameter shall be achieved except as provided for in §§ 133.103 and 133.105.

(a) *BOD_5.*

(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 BOD_5 and the levels of the effluent quality specified in paragraphs (a)(1), (a)(2) and (a)(3), the parameter $CBOD_5$ may be substituted with the following levels of the $CBOD_5$ 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.

(3) 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.

[49 FR 37006, Sept. 20, 1984; 49 FR 40405, Oct. 16, 1984]

§ 133.103 Special considerations.

(a) *Combined sewers.* Treatment works subject to this part may not be capable of meeting the percentage removal requirements established under §§ 133.102(a)(3) and 133.102(b)(3), or §§ 133.105(a)(3) and 133.105(b)(3) during wet weather where the treatment works receive flows from combined sewers (*i.e.*, sewers which are designed to transport both storm water and sanitary sewage). For such treatment works, the decision must be made on a case-by-case basis as to whether any attainable percentage re-

moval level can be defined, and if so, what the level should be.

(b) *Industrial wastes.* For certain industrial categories, the discharge to navigable waters of BOD_5 and SS permitted under sections 301(b)(1)(A)(i), (b)(2)(E) or 306 of the Act may be less stringent than the values given in §§ 133.102(a)(1), 133.102(a)(4)(i), 133.102(b)(1), 133.105(a)(1), 133.105(b)(1) and 133.105(e)(1)(i). In cases when wastes would be introduced from such an industrial category into a publicly owned treatment works, the values for BOD_5 and SS in §§ 133.102(a)(1), 133.102(a)(4)(i), 133.102(b)(1), 133.105(a)(1), 133.105(b)(1), and 133.105(e)(1)(i) may be adjusted upwards provided that: (1) The permitted discharge of such pollutants, attributable to the industrial category, would not be greater than that which would be permitted under sections 301(b)(1)(A)(i), 301(b)(2)(E) or 306 of the Act if such industrial category were to discharge directly into the navigable waters, and (2) the flow or loading of such pollutants introduced by the industrial category exceeds 10 percent of the design flow or loading of the publicly owned treatment works. When such an adjustment is made, the values for BOD_5 or SS in §§ 133.102(a)(2), 133.102(a)(4)(ii), § 133.102(b)(2), 133.105(a)(2), 133.105(b)(2), and 133.105(e)(1)(ii) should be adjusted proportionately.

(c) *Waste stabilization ponds.* The Regional Administrator, or, if appropriate, State Director subject to EPA approval, is authorized to adjust the minimum levels of effluent quality set forth in § 133.105 (b)(1), (b)(2), and (b)(3) for treatment works subject to this part, to conform to the SS concentrations achievable with waste stabilization ponds, provided that: (1) Waste stablization ponds are the principal process used for secondary treatment; and (2) operation and maintenance data indicate that the SS values specified in § 133.105 (b)(1), (b)(2), and (b)(3) cannot be achieved. The term "SS concentrations achievable with waste stabilization ponds" means a SS value, determined by the Regional Administrator, or, if appropriate, State Director subject to EPA approval, which is equal to the effluent concentration achieved 90 percent of the time within a State or appropriate contiguous geographical area by waste stabilization ponds that are achieving the levels of effluent quality for BOD_5 specified in § 133.105(a)(1). [cf. 43 FR 55279].

(d) *Less concentrated influent wastewater for separate sewers.* The Regional Administrator or, if appropriate, State Director is authorized to substitute either a lower percent removal requirement or a mass loading limit for the percent removal requirements set forth in §§ 133.102(a)(3), 133.102(a)(4)(iii), 133.102(b)(3), 102.105(a)(3), 133.105(b)(3) and 133.105(e)(1)(iii) provided that the permittee satisfactorily demonstrates that: (1) The treatment works is consistently meeting, or will consistently meet, its permit effluent concentration limits but its percent removal requirements cannot be met due to less concentrated influent wastewater, (2) to meet the percent removal requirements, the treatment works would have to achieve significantly more stringent limitations than would otherwise be required by the concentration-based standards, and (3) the less concentrated influent wastewater is not the result of excessive I/I. The determination of whether the less concentrated wastewater is the result of excessive I/I will use the definition of excessive I/I in 40 CFR 35.2005(b)(16) plus the additional criterion that inflow is nonexcessive if the total flow to the POTW (i.e., wastewater plus inflow plus infiltration) is less than 275 gallons per capita per day.

[49 FR 37006, Sept. 20, 1984, as amended at 50 FR 23387, June 3, 1985; 50 FR 36880, Sept. 10, 1985]

§ 133.104 Sampling and test procedures.

(a) Sampling and test procedures for pollutants listed in this part shall be in accordance with guidelines promulgated by the Administrator in 40 CFR Part 136.

(b) Chemical oxygen demand (COD) or total organic carbon (TOC) may be substituted for BOD_5 when a long-term BOD:COD or BOD:TOC correlation has been demonstrated.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 10

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40 C.F.R. Part 133

§ 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 (§ 133.101(g)) in terms of the parameters—BOD_5, 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 § 133.103, or paragraphs (d), (e) or (f) of this section.

(a) *BOD_5.* (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 § 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 § 133.102(c) shall be met.

(d) *Alternative State requirements.* Except as limited by paragraph (f) of this section, and after notice and opportunity for public comment, the Regional Administrator, or, if appropriate, State Director subject to EPA approval, is authorized to adjust the minimum levels of effluent quality set forth in paragraphs (a)(1), (a)(2), (b)(1) and (b)(2) of this section for trickling filter facilities and in paragraphs (a)(1) and (a)(2) of this section for waste stabilization pond facilities, to conform to the BOD_5 and SS effluent concentrations consistently achievable through proper operation and maintenance (§ 133.101(f)) by the median (50th percentile) facility in a representative sample of facilities within a State or appropriate contiguous geographical area that meet the definition of facilities eligible for treatment equivalent to secondary treatment (§ 133.101(g)).

(The information collection requirements contained in this rule have been approved by OMB and assigned control number 2040-0051.)

(e) *$CBOD_5$* limitations:

(1) Where data are available to establish $CBOD_5$ limitations for a treatment works subject to this section, the NPDES permitting authority may substitute the parameter $CBOD_5$ for the parameter BOD_5 In §§ 133.105(a)(1), 133.105(a)(2) and 133.105(a)(3), on a case-by-case basis provided that the levels of $CBOD_5$ effluent quality are not less stringent than the following:

(i) The 30-day average shall not exceed 40 mg/l.

(ii) The 7-days average shall not exceed 60 mg/l.

(iii) The 30-day average percent removal shall not be less than 65 percent.

(2) Where data are available, the parameter $CBOD_5$ may be used for effluent quality limitations established under paragraph (d) of this section. Where concurrent BOD effluent data are available, they must be submitted with the CBOD data as a part of the approval process outlined in paragraph (d) of this section.

(f) *Permit adjustments.* Any permit adjustment made pursuant to this part may not be any less stringent than the limitations required pursuant to § 133.105(a)-(e). Furthermore, permitting authorities shall require more stringent limitations when adjusting permits if: (1) For existing facilities the permitting authority determines that the 30-day average and 7-day average BOD_5 and SS effluent values that could be achievable through proper operation and maintenance of the treatment works, based on an analysis of the past performance of the treatment works, would enable the treatment works to achieve more stringent limitations, or

(2) For new facilities, the permitting authority determines that the 30-day average and 7-day average BOD_5 and SS effluent values that could be achievable through proper operation and maintenance of the treatment works, considering the design capability of the treatment process and geographical and climatic conditions, would enable the treatment works to achieve more stringent limitations.

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Reg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 10

Document Incorporated By Reference
40 C.F.R. Chapter I, Subchapter N
Part 401

PART 401—GENERAL PROVISIONS

Sec.
401.10 Scope and purpose.
401.11 General definitions.
401.12 Law authorizing establishment of effluent limitations guidelines for existing sources, standards of performance for new sources and pretreatment standards of new and existing sources.
401.13 Test procedures for measurement.
401.14 Cooling water intake structures.
401.15 Toxic pollutants.
401.16 Conventional pollutants.
401.17 pH Effluent limitations under continuous monitoring.

AUTHORITY: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307 (b) and (c) and 316(b) of the Federal Water Pollution Control Act, as amended (the "Act"), 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317 (b) and (c) and 1326(c); 86 Stat. 816 et seq.; Pub. L. 92-500, unless otherwise noted.

SOURCE: 39 FR 4532, Feb. 1, 1974, unless otherwise noted.

§ 401.10 Scope and purpose.

Regulations promulgated or proposed under Parts 402 through 699 of this subchapter prescribe effluent limitations guidelines for existing sources, standards of performance for new sources and pretreatment standards for new and existing sources pursuant to sections 301, 304 (b) and (c), 306 (b) and (c), 307 (b) and (c) and 316(b) of the Federal Water Pollution Control Act, as amended (the "Act"), 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317 (b) and (c) and 1326(b); 86 Stat. 816; Pub. L. 92-500. Point sources of discharges of pollutants are required to comply with these regulations, where applicable, and permits issued by States or the Environmental Protection Agency (EPA) under the National Pollutant Discharge Elimination System (NPDES) established pursuant to section 402 of the Act must be conditioned upon compliance with applicable requirements of sections 301 and 306 (as well as certain other requirements). This Part 401 sets forth the legal authority and general definitions which will apply to all regulations issued concerning specific classes and categories of point sources under Parts 402 through 699 of this subchapter which follow. In certain instances the regulations applicable to a particular point source category or subcategory will contain more specialized definitions. Except as provided in § 401.17, in the case of any conflict between regulations issued under this Part 401 and regulations issued under Part 402 through 499 of this subchapter, the latter more specific regulations shall apply.

(Secs. 301, 304, 306 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et. seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217))

[39 FR 4532, Feb. 1, 1974, as amended at 47 FR 24537, June 4, 1982]

§ 401.11 General definitions.

For the purposes of Parts 402 through 699 of this subchapter:

(a) The term "Act" means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., 86 Stat. 816, Pub. L. 92-500.

(b) The term "Administrator" means the Administrator of the United States Environmental Protection Agency.

(c) The term "Environmental Protection Agency" means the United States Environmental Protection Agency.

(d) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(e) The term "new source" means any building, structure, facility or installation from which there is or may be the discharge of pollutants, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under section 306 of the Act which will be applicable to such source if such standard is thereafter promul-

gated in accordance with section 306 of the Act.

(f) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water. It does not mean (1) sewage from vessels or (2) water, gas or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well, used either to facilitate production or for disposal purposes, is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in degradation of ground or surface water resources.

(g) The term "pollution" means the man-made or man induced alteration of the chemical, physical, biological and radiological integrity of water.

(h) The term "discharge of pollutant(s)" means: (1) The addition of any pollutant to navigable waters from any point source and (2) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source, other than from a vessel or other floating craft. The term "discharge" includes either the discharge of a single pollutant or the discharge of multiple pollutants.

(i) The term "effluent limitation" means any restriction established by the Administrator on quantities, rates, and concentrations of chemical, physical, biological and other constituents which are discharged from point sources, other than new sources, into navigable waters, the waters of the contiguous zone or the ocean.

(j) The term "effluent limitations guidelines" means any effluent limitations guidelines issued by the Administrator pursuant to section 304(b) of the Act.

(k) The term "standard of performance" means any restriction established by the Administrator pursuant to section 306 of the Act on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are or may be discharged from new sources into navigable waters, the waters of the contiguous zone or the ocean.

(l) The term "navigable waters" includes: All navigable waters of the United States; tributaries of navigable waters of the United States; interstate waters; intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce; and intrastate lakes, rivers, and streams which are utilized for industrial purposes by industries in interstate commerce.

(m) The terms "state water pollution control agency," "interstate agency," "State," "municipality," "person," "territorial seas," "contiguous zone," "biological monitoring," "schedule of compliance," and "industrial user" shall be defined in accordance with section 502 of the Act unless the context otherwise requires.

(n) The term "noncontract cooling water" means water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product or finished product.

(o) The term "noncontact cooling water pollutants" means pollutants present in noncontact cooling waters.

(p) The term "blowdown" means the minimum discharge of recirculating water for the purpose of discharging materials contained in the water, the further buildup of which would cause concentration in amounts exceeding limits established by best engineering practice.

(q) The term "process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

(r) The term "process waste water pollutants" means pollutants present in process waste water.

(s) The following abbreviations shall have the following meanings: (1) "BOD5" means five-day biochemical oxygen demand; (2) "COD" means

chemical oxygen demand; (3) "TOC" means total organic carbon; (4) "TDS" means total dissolved solids; (5) "TSS" means total suspended non-filterable solids; (6) "kw" means kilowatt(s); (7) "kwh" means kilowatt hour(s); (8) "Mw" means megawatt(s); (9) "Mwh" means megawatt hour(s); (10) "hp" means horsepower; (11) "mm" means millimeter(s); (12) "cm" means centimeter; (13) "m" means meter(s); (14) "in." means inch; (15) "ft" means foot (feet); (16) "l" means liter(s); (17) "cu m" means cubic meter(s); (18) "k cu m" means 1000 cubic meter(s); (19) "gal" means gallon(s); (20) "cu ft" means cubic foot (feet); (21) "mg" means milligram(s); (22) "g" means gram(s); (23) "kg" means kilogram(s); (24) "kkg" means 1000 kilogram(s); (25) "lb" means pound(s); (26) "sq m" means square meter(s); (27) "ha" means hectare(s); (28) "sq ft" means square foot (feet); and (29) "ac" means acre(s).

§ 401.12 Law authorizing establishment of effluent limitations guidelines for existing sources, standards of performance for new sources and pretreatment standards of new and existing sources.

(a) Section 301(a) of the Act provides that "except as in compliance with this section and sections 302, 306, 307, 318, 402 and 404 of this Act, the discharge of any pollutant by any person shall be unlawful."

(b) Section 301(b) of the Act requires the achievement by not later than July 1, 1977, of effluent limitations for point sources, other than publicly owned treatment works, which require the application of the best practicable control technology currently available as determined by the Administrator pursuant to section 304(b)(1) of the Act. Section 301(b) also requires the achievement by not later than July 1, 1983, of effluent limitations for point sources, other than publicly owned treatment works, which require the application of the best available technology economically achievable which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(2) of the Act.

(c) Section 304(b) of the Act requires the Administrator to publish regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of the best practicable control technology currently available and the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods and other alternatives.

(d) Section 304(c) of the Act requires the Administrator, after consultation with appropriate Federal and State agencies and other interested persons to issue information on the process, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants to implement standards of performance under section 306 of the Act.

(e) Section 306(b)(1)(B) of the Act requires the Administrator, after a category of sources is included in a list published pursuant to section 306(b)(1)(A) of the Act, to propose regulations establishing Federal standards of performances for new sources within such category. Standards of performance are to provide for the control of the discharge of pollutants which reflect the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(f) Section 307(b) provides that the Administrator shall establish pretreatment standards which shall prevent the discharge of any pollutant into publicly owned treatment works which pollutant interferes with, passes through untreated, or otherwise is incompatible with such works.

(g) Section 307(c) of the Act provides that the Administrator shall promulgate pretreatment standards for sources which would be "new sources" under section 306 (if they were to discharge pollutants directly to navigable

waters) at the same time standards of performance for the equivalent category of new sources are promulgated.

(h) Section 316(b) of the Act provides that any standard established pursuant to section 301 or section 306 of the Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

(i) Section 402(a)(1) of the Act provides that the Administrator may issue permits for the discharge of any pollutant upon condition that such discharge will meet all applicable requirements under sections 301, 302, 306, 307, 308 and 403 of this Act. In addition, section 402(b)(1)(A) of the Act requires that permits issued by States under the National Pollutant Discharge Elimination System (NPDES) established by the Act must apply, and insure compliance with any applicable requirements of sections 301, 302, 306, 307 and 403 of the Act.

§ 401.13 Test procedures for measurement.

The test procedures for measurement which are prescribed at Part 136 of this chapter shall apply to expressions of pollutant amounts, characteristics or properties in effluent limitations guidelines and standards of performance and pretreatment standards as set forth at Parts 402 through 699 of this subchapter, unless otherwise specifically noted or defined in said parts.

§ 401.14 Cooling water intake structures.

The location, design, construction and capacity of cooling water intake structures of any point source for which a standard is established pursuant to section 301 or 306 of the Act shall reflect the best technology available for minimizing adverse environmental impact, in accordance with the provisions of Part 402 of this chapter.

(Sec. 501(a) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1326(b) and 1261(a))

[41 FR 17389, Apr. 26, 1976]

§ 401.15 Toxic pollutants.

The following comprise the list of toxic pollutants designated pursuant to section 307(a)(1) of the Act:

1. Acenaphthene
2. Acrolein
3. Acrylonitrile
4. Aldrin/Dieldrin[1]
5. Antimony and compounds[2]
6. Arsenic and compounds
7. Asbestos
8. Benzene
9. Benzidine[1]
10. Beryllium and compounds
11. Cadmium and compounds
12. Carbon tetrachloride
13. Chlordane (technical mixture and metabolites)
14. Chlorinated benzenes (other than dichlorobenzenes)
15. Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane)
16. Chloroalkyl ethers (chloroethyl and mixed ethers)
17. Chlorinated naphthalene
18. Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
19. Chloroform
20. 2-chlorophenol
21. Chromium and compounds
22. Copper and compounds
23. Cyanides
24. DDT and metabolites[1]
25. Dichlorobenzenes (1,2-, 1,3-, and 1,4-dichlorobenzenes)
26. Dichlorobenzidine
27. Dichloroethylenes (1,1-, and 1,2-dichloroethylene)
28. 2,4-dichlorophenol
29. Dichloropropane and dichloropropene
30. 2,4-dimethylphenol
31. Dinitrotoluene
32. Diphenylhydrazine
33. Endosulfan and metabolites
34. Endrin and metabolites[1]
35. Ethylbenzene
36. Fluoranthene
37. Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis(dichloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
38. Halomethanes (other than those listed elsewhere; includes methylene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane

[1]Effluent standard promulgated (40 CFR Part 129).

[2]The term "compounds" shall include organic and inorganic compounds.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
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39. Heptachlor and metabolites
40. Hexachlorobutadiene
41. Hexachlorocyclohexane
42. Hexachlorocyclopentadiene
43. Isophorone
44. Lead and compounds
45. Mercury and compounds
46. Naphthalene
47. Nickel and compounds
48. Nitrobenzene
49. Nitrophenols (including 2,4-dinitrophenol, dinitrocresol)
50. Nitrosamines
51. Pentachlorophenol
52. Phenol
53. Phthalate esters
54. Polychlorinated biphenyls (PCBs)[1]
55. Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
56. Selenium and compounds
57. Silver and compounds
58. 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)
59. Tetrachloroethylene
60. Thallium and compounds
61. Toluene
62. Toxaphene[1]
63. Trichloroethylene
64. Vinyl chloride
65. Zinc and compounds

[44 FR 44502, July 30, 1979, as amended at 46 FR 2266, Jan. 8, 1981; 46 FR 10724, Feb. 4, 1981]

§ 401.16 Conventional pollutants.

The following comprise the list of conventional pollutants designated pursuant to section 304(a)(4) of the Act:

1. Biochemical oxygen demand (BOD)
2. Total suspended solids (nonfilterable) (TSS)
3. pH
4. Fecal coliform
5. Oil and grease

[44 FR 44503, July 30, 1979; 44 FR 52685, Sept. 10, 1979]

§ 401.17 pH Effluent limitations under continuous monitoring.

(a) Where a permittee continuously measures the pH of wastewater pursuant to a requirement or option in a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to section 402 of the Act, the permittee shall maintain the pH of such wastewater within the range set forth in the applicable effluent limitations guidelines, except excursions from the range are permitted subject to the following limitations:

(1) The total time during which the pH values are outside the required range of pH values shall not exceed 7 hours and 26 minutes in any calendar month; and

(2) No individual excursion from the range of pH values shall exceed 60 minutes.

(b) The Director, as defined in § 122.3 of this chapter, may adjust the requirements set forth in paragraph (a) of this section with respect to the length of individual excursions from the range of pH values, if a different period of time is appropriate based upon the treatment system, plant configuration or other technical factors.

(c) For purposes of this section, an "excursion" is an unintentional and temporary incident in which the pH value of discharge wastewater exceeds the range set forth in the applicable effluent limitations guidelines.

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(Oct. 9, 1986)

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

Sec.

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Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 10

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Part 403, as amended by 51 Fed. Reg. 36368
(Oct. 9, 1986)

Sec.

AUTHORITY: Sec. 54(c)(2) of the Clean Water Act of 1977 (Pub. L. 95-217), secs. 204(b)(1)(C), 208(b)(2) (C)(iii), 301(b)(1)(A)(ii), 301(b)(2) (A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92-500), as amended by the Clean Water Act of 1977.

SOURCE: 46 FR 9439, Jan. 28, 1981, unless otherwise noted.

EDITORIAL NOTE: NOMENCLATURE CHANGE TO PART 403 APPEARS AT 51 FR 20430, JUNE 4, 1986.

§ 403.1 Purpose and applicability.

(a) This part implements sections 204(b)(1)(C), 208(b)(2) (C)(iii), 301(b)(1)(A)(ii), 301(b)(2) (A)(ii), 301(h)(5) and 301(i)(2), 304 (e) and (g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act as amended by the Clean Water Act of 1977 (Pub. L. 95-217) or "The Act." It establishes responsibilities of Federal, State, and local government, industry and the public to implement National Pretreatment Standards to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works (POTWs) or which may contaminate sewage sludge.

(b) This regulation applies: (1) To pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined below in § 403.3; (2) to POTWs which receive wastewater from sources subject to National Pretreatment Standards; (3) to States which have or are applying for National Pollutant Discharge Elimination System (NPDES) programs approved in accordance with section 402 of the Act; and (4) to any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which Discharge to a sewer which is not connected to a POTW Treatment Plant.

(c) The deadlines for submission of category determination requests (§ 403.6(a)), baseline monitoring reports (§ 403.12), fundamentally different factors variance requests (§ 403.13), and applications for net/gross adjustments (§ 403.15) are extended ninety days for integrated facilities subject to the electroplating pretreatment standards (40 CFR Part 413), industrial users subject to the inorganic chemicals pretreatment standards promulgated on June 29, 1982 (47 FR 28260; 40 CFR Part 415) and industrial users subject to the iron and steel pretreatment standards (40 CFR Part 420).

[46 FR 9439, Jan. 28, 1981, as amended at 48 FR 2776, Jan. 21, 1983]

§ 403.2 Objectives of general pretreatment regulations.

By establishing the responsibilities of government and industry to implement National Pretreatment Standards this regulation fulfills three objectives: (a) To prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; (b) to prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and (c) to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

§ 403.3 Definitions.

For the purpose of this regulation:

(a) Except as discussed below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this regulation.

(b) The term "Act" means Federal Water Pollution Control Act, also

known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

(c) The term "Approval Authority" means the Director in an NPDES State with an approved State pretreatment program and the appropriate Regional Administrator in a non-NPDES State or NPDES State without an approved State pretreatment program.

(d) The term "Approved POTW Pretreatment Program" or "Program" or "POTW Pretreatment Program" means a program administered by a POTW that meets the criteria established in this regulation (§§ 403.8 and 403.9) and which has been approved by a Regional Administrator or State Director in accordance with § 403.11 of this regulation.

(e) The term "Director" means the chief administrative officer of a State or Interstate water pollution control agency with an NPDES permit program approved pursuant to section 402(b) of the Act and an approved State pretreatment program.

(f) The term "Water Management Division Director" means one of the Directors of the Water Management Divisions within the Regional offices of the Environmental Protection Agency or this person's delegated representative.

(g) The term "Indirect Discharge" or "Discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the Act.

(h) The term "Industrial User" or "User" means a source of Indirect Discharge.

(i) The term "Interference" means an inhibition or disruption of the POTW, its treatment processes or operations, or its sludge processes, use or disposal which is a cause of or significantly contributes to either a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or to the prevention of sewage sludge use or disposal by the POTW in accordance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II more commonly referred to as the Resource Conservation and Recovery Act (RCRA) and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, and the Toxic Substances Control Act. An Industrial User significantly contributes to such a permit violation or prevention of sludge use or disposal in accordance with above-cited authorities whenever such User:

(1) Discharges a daily pollutant loading in excess of that allowed by contract with the POTW or by Federal, State or local law;

(2) Discharges wastewater which substantially differs in nature or constituents from the User's average Discharge; or

(3) Knows or has reason to know that its Discharge, alone or in conjunction with Discharges from other sources, would result in a POTW permit violation or prevent sewage sludge use or disposal in accordance with the above-cited authorities as they apply to the POTW's selected method of sludge management.

(j) The term "National Pretreatment Standard," "Pretreatment Standard," or "Standard" means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to § 403.5.

(k) The term "New source" means any building, structure, facility, or installation from which there is or may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section.

(l) The terms "NPDES Permit" or "Permit" means a permit issued to a POTW pursuant to section 402 of the Act.

(m) The term "NPDES State" means a State (as defined in 40 CFR 122.2) or Interstate water pollution control agency with an NPDES permit pro-

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(Oct. 9, 1986)

"40 CFR 122.3" in paragraph (m) to read "40 CFR 122.2", and revising paragraph (f), effective July 7, 1986. For the convenience of the user, the superseded paragraph (f) is set forth as follows:

§ 403.3 Definitions.

* * * * *

(f) The term "Enforcement Division Director" means one of the Directors of the Enforcement Divisions within the Regional offices of the Environmental Protection Agency or this person's delegated representative.

* * * * *

§ 403.4 State or local law.

Nothing in this regulation is intended to affect any Pretreatment Requirements, including any standards or prohibitions, established by State or local law as long as the State or local requirements are not less stringent than any set forth in National Pretreatment Standards, or any other requirements or prohibitions established under the Act or this regulation. States with an NPDES permit program approved in accordance with section 402 (b) and (c) of the Act, or States requesting NPDES programs, are responsible for developing a State pretreatment program in accordance with § 403.10 of this regulation.

§ 403.5 National pretreatment standards: prohibited discharges.

(a) *General prohibitions.* Pollutants introduced into POTW's by a non-domestic source shall not Pass Through the POTW or Interfere with the operation or performance of the works. These general prohibitions and the specific prohibitions in paragraph (b) of this section apply to all non-domestic sources introducing pollutants into a POTW whether or not the source is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.

(b) *Specific prohibitions.* In addition, the following pollutants shall not be introduced into a POTW:

(1) Pollutants which create a fire or explosion hazard in the POTW;

(2) Pollutants which will cause corrosive structural damage to the POTW, but in no case Discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such Discharges;

(3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in Interference;

(4) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW.

(5) Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW Treatment Plant exceeds 40°C (104°F) unless the Approval Authority, upon request of the POTW, approves alternate temperature limits.

(c) *When specific limits must be developed by POTW.* (1) POTW's developing POTW Pretreatment Programs pursuant to § 403.8 shall develop and enforce specific limits to implement the prohibitions listed in paragraphs (a) and (b) of this section.

(2) All other POTW's shall, in cases where pollutants contributed by User(s) result in Interference or Pass-Through, and such violation is likely to recur, develop and enforce specific effluent limits for Industrial User(s), and all other users, as appropriate, which, together with appropriate changes in the POTW Treatment Plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's NPDES permit or sludge use or disposal practices.

(3) Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

(d) *Local limits.* Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with paragraph (c) above, such limits shall be deemed Pretreatment Standards for the purposes of section 307(d) of the Act.

(e) *EPA and State enforcement actions.* If, within 30 days after notice of an Interference or Pass Through violation has been sent by EPA or the

NPDES State to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, EPA or the NPDES State may take appropriate enforcement action.

(f) *Compliance deadlines.* Compliance with the provisions of this section is required beginning on March 16, 1981, except for paragraph (b)(5) of this section which must be complied with by August 25, 1981.

[46 FR 9439, Jan. 28, 1981, as amended at 51 FR 20430, June 4, 1986]

EFFECTIVE DATE NOTE: At 51 FR 20430, June 4, 1986, § 403.5, was amended, effective July 7, 1986.

§ 403.6 National Pretreatment Standards: Categorical standards.

National Pretreatment Standards specifying quantities or concentrations of pollutants or pollutant properties which may be Discharged to a POTW by existing or new Industrial Users in specific industrial subcategories will be established as separate regulations under the appropriate subpart of 40 CFR Chapter I, Subchapter N. These Standards, unless specifically noted otherwise, shall be in addition to the general prohibitions established in § 403.5 of this part.

(a) *Category Determination Request*—(1) *Application Deadline.* Within 60 days after the effective date of a Pretreatment Standard for a subcategory under which an Industrial User may be included, the Industrial User or POTW may request that the Water Management Division Director or Director, as appropriate, provide written certification on whether the Industrial User falls within that particular subcategory. If an existing Industrial User adds or changes a process or operation which may be included in a subcategory, the existing Industrial User must request this certification prior to commencing discharge from the added or changed processes or operation. A New Source must request this certification prior to commencing discharge. Where a request for certification is submitted by a POTW, the POTW shall notify any affected Industrial User of such submission. The Industrial User may provide written comments on the POTW submission to the Water Management Division Director or Director, as appropriate, within 30 days of notification.

(2) *Contents of Application.* Each request shall contain a statement:

(i) Describing which subcategories might be applicable; and

(ii) Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Any person signing the application statement submitted pursuant to this section shall make the following certification:

I have personally examined and am familiar with the information submitted in the attached document, and I hereby certify under penalty of law that this information was obtained in accordance with the requirements of § 403.6(a). Moreover, based upon my inquiry of those individuals immediately responsible for obtaining the information reported herein, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(3) *Deficient requests.* The Water Management Division Director or Director will only act on written requests for determinations that contain all of the information required. Persons who have made incomplete submissions will be notified by the Water Management Division Director or Director that their requests are deficient and, unless the time period is extended, will be given 30 days to correct the deficiency. If the deficiency is not corrected within 30 days or within an extended period allowed by the Water Management Division Director or the Director, the request for a determination shall be denied.

(4) *Final decision.* (i) When the Water Management Division Director or Director receives a submittal he or she will, after determining that it contains all of the information required by paragraph (2) of this section, consider the submission, any additional evidence that may have been requested, and any other available information relevant to the request. The Water Management Division Director or Director will then make a written determination of the applicable sub-

category and state the reasons for the determination.

(ii) Where the request is submitted to the Director, the Director shall forward the determination described in this paragraph to the Water Management Division Director who may make a final determination. The Water Management Division Director may waive receipt of these determinations. If the Water Management Division Director does not modify the Director's decision within 60 days after receipt thereof, or if the Water Management Division Director waives receipt of the determination, the Director's decision is final.

(iii) Where the request is submitted by the Industrial User or POTW to the Water Management Division Director or where the Water Management Division Director elects to modify the Director's decision, the Water Management Division Director's decision will be final.

(iv) The Water Management Division Director or Director, as appropriate, shall send a copy of the determination to the affected Industrial User and the POTW. Where the final determination is made by the Water Management Division Director, he or she shall send a copy of the determination to the Director.

(5) *Requests for hearing and/or legal decision.* Within 30 days following the date of receipt of notice of the final determination as provided for by paragraph (a)(4)(iv) of this section, the Requester may submit a petition to reconsider or contest the decision to the Regional Administrator who shall act on such petition expeditiously and state the reasons for his or her determination in writing.

(b) *Deadline for Compliance With Categorical Standards.* Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR Chapter I, Subchapter N. Direct Dischargers with NPDES permits modified or reissued to provide a variance pursuant to section 301(i)(2) of the Act shall be required to meet compliance dates set forth in any applicable categorical Pretreatment Standard. Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in § 403.3(k). Compliance with categorical Pretreatment Standards for New Sources will be required upon promulgation.

(c) *Concentration and mass limits.* Pollutant discharge limits in categorical Pretreatment Standards will be expressed either as concentration or mass limits. Wherever possible, where concentration limits are specified in standards, equivalent mass limits will be provided so that local, State or Federal authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical Pretreatment Standards shall apply to the effluent of the process regulated by the Standard, or as otherwise specified by the standard.

(d) *Dilution prohibited as substitute for treatment.* Except where expressly authorized to do so by an applicable categorical Pretreatment Standard, no Industrial User shall ever increase the use of process water or, in any other way, attempt to dilute a Discharge as a partial or complete substitute for adequate treatment to achieve compliance with a categorical Pretreatment Standard. The Control Authority (as defined in § 403.12(a)) may impose mass limitations on Industrial Users which are using dilution to meet applicable Pretreatment Standards or in other cases where the imposition of mass limitations is appropriate.

(e) *Combined wastestream formula.* Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the Control Authority, as defined in § 403.12(a), or by the Industrial User with the written concurrence of the Control Authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the Control Authority or Industrial User shall calculate both an alternative daily maximum value using the daily maximum value(s) specified in

the appropriate categorical Pretreatment Standard(s) and an alternative consecutive sampling day average value using the monthly average value(s) specified in the appropriate categorical Pretreatment Standard(s). The Industrial User shall comply with the alternative daily maximum and monthly average limits fixed by the Control Authority until the Control Authority modifies the limits or approves an Industrial User modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An Industrial User must immediately report any such material or significant change to the Control Authority. Where appropriate new alternative categorical limits shall be calculated within 30 days.

(1) *Alternative limit calculation.* For purposes of these formulas, the "average daily flow" means a reasonable measure of the average daily flow for a 30-day period. For new sources, flows shall be estimated using projected values. The alternative limit for a specified pollutant will be derived by the use of either of the following formulas:

(i) *Alternative concentration limit.*

$$C_T = \left(\frac{\sum_{i=1}^{N} C_i F_i}{\sum_{i=1}^{N} F_i}\right)\left(\frac{F_T - F_D}{F_T}\right)$$

where

C_T = the alternative concentration limit for the combined wastestream.

C_i = the categorical Pretreatment Standard concentration limit for a pollutant in the regulated stream i.

F_i = the average daily flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D = the average daily flow (at least a 30-day average) from (a) boiler blowdown streams and non-contact cooling streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial Users regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination, or (b) sanitary wastestreams where such streams are not regulated by a categorical Pretreatment Standard, or (c) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the *NRDC* v. *Costle* Consent Decree (12 ERC 1833) for one or more of the following reasons (see Appendix D):

(1) The pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));

(2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));

(3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or

(4) The wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).

F_T = The average daily flow (at least a 30-day average) through the combined treatment facility (includes F_i, F_D and unregulated streams).

N = The total number of regulated streams.

(ii) *Alternative mass limit.*

$$M_T = \left(\sum_{i=1}^{N} M_i\right)\left(\frac{F_T - F_D}{\sum_{i=1}^{N} F_i}\right)$$

where

M_T=the alternative mass limit for a pollutant in the combined wastestream.
M_i=the categorical Pretreatment Standard mass limit for a pollutant in the regulated stream i (the categorical pretreatment mass limit multiplied by the appropriate measure of production).
F_i=the average flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.
F_D=the average daily flow (at least a 30-day average) from (a) boiler blowdown streams and non-contact cooling streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial Users regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination, or (b) sanitary wastestreams where such streams are not regulated by a categorical Pretreatment Standard, or (c) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the *NRDC* v. *Costle* Consent Decree (12 ERC 1833) for one or more of the following reasons (see Appendix D):
(1) the pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));
(2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));
(3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or
(4) the wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).
F_T=the average flow (at least a 30-day average) through the combined treatment facility (includes F_i, F_D and unregulated streams).
N=the total number of regulated streams.

(2) *Alternate limits below detection limit.* An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.

(3) *Self-monitoring.* Self-monitoring required to insure compliance with the alternative categorical limit shall be as follows:

(i) The type and frequency of sampling, analysis and flow measurement shall be determined by reference to the self-monitoring requirements of the appropriate categorical Pretreatment Standard(s);

(ii) Where the self-monitoring schedules for the appropriate Standards differ, monitoring shall be done according to the most frequent schedule;

(iii) Where flow determines the frequency of self-monitoring in a categorical Pretreatment Standard, the sum of all regulated flows (F_i) is the flow which shall be used to determine self-monitoring frequency.

[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 21037, May 17, 1984; 49 FR 31224, Aug. 3, 1984; 51 FR 20430, June 4, 1986; 51 FR 23760, July 1, 1986]

EFFECTIVE DATE NOTE: At 51 FR 20430, June 4, 1986, (see also a correction document to § 403.6 published at 51 FR 23760, July 1, 1986) § 403.6, was amended by revising paragraphs (a)(1), (2) and (b) and by removing the words "long-term average value(s)" and "long-term average limits" from paragraph (e) and inserting, in their place, the words "monthly average value(s)," and "monthly average limits", respectively effective July 7, 1986. For the convenience of the user, the superseded paragraphs (a)(1), (2) and (b) are set forth as follows:

§ 403.6 National Pretreatment Standards: Categorical standards.

* * * * *

(a) *Category determination request*—(1) *Application deadline.* Within 60 days after the effective date of a Pretreatment Standard for a subcategory under which an Industrial User may be included, or within 60 days after the FEDERAL REGISTER notice announcing the availability of the technical development document for that subcategory, whichever is later, the existing Industrial User or POTW may request that the Enforcement Division Director or Director, as appropriate, provide written certification on whether the Industrial User falls within that particular subcategory. A new source must request this certification prior to commencing discharge. Where a request for certification is submitted by a POTW, the POTW shall notify any affected Industrial User of such submission. The Industrial User may provide written comments on the

POTW submission to the Enforcement Division Director or Director, as appropriate, within 30 days of notification.

(2) *Contents of application.* Each request shall contain a statement:

(i) Describing which subcategories might be applicable; and

(ii) Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Each such statement shall contain an oath stating that the facts contained therein are true on the basis of the applicant's personal knowledge or to the best of his information and belief.

* * * * *

(b) *Deadline for compliance With categorical standards.* Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR Chapter I, Subchapter N but in any case no later than July 1, 1984. Direct Discharges with NPDES permits modified or reissued to provide a variance pursuant to section 301(i)(2) of the Act shall be required to meet compliance dates set forth in any applicable categorical Pretreatment Standard. Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in § 403.3(k). Compliance with categorical Pretreatment Standards for New Sources will be required upon promulgation.

* * * * *

§ 403.7 Removal credits.

(a) *Introduction*—(1) *Definitions.* For the purpose of this section:

(i) "Removal" means a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal as used in this subpart shall not mean dilution of a pollutant in the POTW.

(ii) "Sludge Requirements" shall mean the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA) (including Title II more commonly referred to as the Resource Conservation Recovery Act (RCRA) and State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of SWDA); the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.

(2) *General.* Any POTW receiving wastes from an Industrial User to which a categorical Pretreatment Standard(s) applies may, at its discretion and subject to the conditions of this section, grant removal credits to reflect removal by the POTW of pollutants specified in the categorical Pretreatment Standard(s). The POTW may grant a removal credit equal to or, at its discretion, less than its consistent removal rate. Upon being granted a removal credit, each affected Industrial User shall calculate its revised discharge limits in accordance with paragraph (a)(4) of this section. Removal credits may only be given for indicator or surrogate pollutants regulated in a categorical Pretreatment Standard if the categorical Pretreatment Standard so specifies.

(3) *Conditions for authorization to give removal credits.* A POTW is authorized to give removal credits only if the following conditions are met:

(i) *Application.* The POTW applies for, and receives, authorization from the Approval Authority to give a removal credit in accordance with the requirements and procedures specified in paragraph (e) of this section.

(ii) *Consistent removal determination.* The POTW demonstrates and continues to achieve consistent removal of the pollutant in accordance with paragraph (b) of this section.

(iii) *POTW local pretreatment program.* The POTW has an approved pretreatment program in accordance with and to the extent required by Part 403; provided, however, a POTW which does not have an approved pretreatment program may, pending approval of such a program, conditionally give credits as provided in paragraph (d) of this section.

(iv) *Sludge requirements.* The granting of removal credits will not cause

the POTW to violate the local, State and Federal Sludge Requirements which apply to the sludge management method chosen by the POTW. Alternatively, the POTW can demonstrate to the Approval Authority that even though it is not presently in compliance with applicable Sludge Requirements, it will be in compliance when the Industrial User(s) to whom the removal credit would apply is required to meet its categorical Pretreatment Standard(s) as modified by the removal credit. If granting removal credits forces a POTW to incur greater sludge management costs than would be incurred in the absence of granting removal credits, the additional sludge management costs will not be eligible for EPA grant assistance.

(v) *NPDES permit limitations.* The granting of removal credits will not cause a violation of the POTW's permit limitations or conditions. Alternatively, the POTW can demonstrate to the Approval Authority that even though it is not presently in compliance with applicable limitations and conditions in its NPDES permit, it will be in compliance when the Industrial User(s) to whom the removal credit would apply is required to meet its categorical Pretreatment Standard(s), as modified by the removal credit provision.

(4) *Calculation of revised discharge limits.* Revised discharge limits for a specific pollutant shall be derived by use of the following formula:

$$y = \frac{x}{1-r}$$

where:

x=pollutant discharge limit specified in the applicable categorical Pretreatment Standard

r=removal credit for that pollutant as established under paragraph (b) of this section (percentage removal expressed as a proportion, i.e., a number between 0 and 1)

y=revised discharge limit for the specified pollutant (expressed in same units as x)

(b) *Establishment of Removal Credit; Demonstration of Consistent Removal.* A POTW may be authorized to grant a removal credit that does not exceed its consistent removal rate. In order to demonstrate consistent removal, the POTW shall, for each pollutant with respect to which removal credit authorization is sought, collect influent and effluent data and calculate consistent removal in accordance with the following requirements. As a condition of retaining removal credit authorization, the POTW's consistent removal must continue to be equal to or greater than the removal credit.

(1) *Number of samples.* At least twelve representative samples of influent and effluent shall be taken at approximately equal intervals throughout one full year. Upon concurrence of the Approval Authority, a POTW may utilize an historical data base either in lieu of or as a supplement to these twelve samples. In order to be approved, the historical data base must be representative of the yearly and seasonal conditions to which the POTW is subject and be representative of the POTW's performance for at least one year. As an alternative to the above, a POTW, upon concurrence of the Approval Authority, may utilize an alternative sampling design, as long as the alternative design provides for samples to be taken at times which are representative of the POTW's normal operating conditions and the different seasonal conditions to which the POTW is subject.

(2) *Method of Sampling.* The POTW must use the composite sampling method unless the grab sampling method is more appropriate. A description of these methods and suggestions on when each method should be used are included in Appendix E as guidance.

(3) *Method of Analysis for Pollutants.* The POTW shall analyze the samples for pollutants in accordance with the analytical techniques prescribed in 40 CFR Part 136. If 40 CFR Part 136 does not contain analytical techniques for the pollutant in question, or if the Approval Authority determines that Part 136 analytical techniques are inappropriate, the analysis shall be performed using validated analytical methods or any other applicable analytical procedures approved by the Approval Authority, including procedures suggested by the POTW.

(4) *Calculation of Consistent Removal.* (i) The consistent removal, denoted by r, for a specific pollutant shall be the difference between the average concentrations of the pollutant in the influent of the POTW, denoted by I, and the average concentrations of the pollutant in the effluent of the POTW, denoted by E, divided by the average concentrations of the pollutant in the influent, denoted by I, as follows:

$$r = \frac{I-E}{I}$$

The average concentrations of the pollutant in the influent and effluent shall be calculated by taking the arithmetic average of all influent and effluent data, respectively. In calculating consistent removal under the subparagraph, all sample data must be used.

(ii) If a pollutant is only measurable in some of the influent and effluent samples (including the situation where it is not measurable in any effluent samples) and the POTW elects to calculate consistent removal in accordance with paragraph (b)(4)(i), influent and effluent observations below the limit of detectability should be assigned a value equal to the limit of detectability. In calculating consistent removal under paragraph (b)(4)(i), all sample data, including those set at the limit of detectability, must be used.

(iii) If a pollutant is only measurable in some influent and effluent samples (including the situation where it is not measurable in any effluent samples) and the POTW elects not to calculate consistent removal in accordance with paragraph (b)(4)(i) of this section, or if a pollutant is not measurable in any of the influent samples (in which case the sample data may not be used to calculate consistent removal in accordance with paragraph (b)(4)(i)) of this section, the POTW may (A) use historical data as provided in paragraph (b)(1) of this section to calculate consistent removal, or (B) upon the concurrence of the Approval Authority, the POTW may use data from treatability studies, demonstrated removal at similar treatment facilities or provide some other alternative means to demonstrate its consistent removal.

(iv) For purposes of this paragraph, "measurable" refers to the ability of the analytical method to quantify as well as identify the presence of the pollutant in question. "Limit of detectability" refers to the lowest limit at which the analytical method can quantify the pollutant in question.

(c) *Provisional credits.* For pollutants which are not being discharged currently (i.e., new or modified facilities, or production changes) the POTW may apply for authorization to give removal credits prior to the initial discharge of the pollutant. Consistent removal shall be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities where the quality and quantity of influent are similar. Within 18 months after the commencement of discharge of pollutants in question, consistent removal must be demonstrated pursuant to the requirements of paragraph (b) of this section. If, within 18 months after the commencement of the discharge of the pollutant in question, the POTW cannot demonstrate consistent removal pursuant to the requirements of paragraph (b) of this section, the authority to grant provisional removal credits shall be terminated by the Approval Authority and all Industrial Users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority.

(d) *Exception to POTW Pretreatment Program Requirement.* A POTW required to develop a local pretreatment program by § 403.8 may conditionally give removal credits pending approval of such a program in accordance with the following terms and conditions:

(1) All Industrial Users who are currently subject to a categorical Pretreatment Standard and who wish conditionally to receive a removal credit must submit to the POTW the information required in § 403.12(b)(1)

through (7) (except new or modified industrial users must only submit the information required by § 403.12(b)(1) through (6)), pertaining to the categorical Pretreatment Standard as modified by the removal credit. The Industrial Users shall indicate what additional technology, if any, will be needed to comply with the categorical Pretreatment Standard(s) as modified by the removal credit;

(2) The POTW must have submitted to the Approval Authority an application for pretreatment program approval meeting the requirements of §§ 403.8 and 403.9 in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's NPDES permit, but in no case later than July 1, 1983, where no permit deadline exists;

(3) The POTW must:

(i) Compile and submit data demonstrating its consistent removal in accordance with paragraph (b) of this section;

(ii) Comply with the conditions specified in paragraph (a)(3) of this section; and

(iii) Submit a complete application for removal credit authority in accordance with paragraph (e) of this section;

(4) If a POTW receives authority to grant conditional removal credits and the Approval Authority subsequently makes a final determination, after appropriate notice, that the POTW failed to comply with the conditions in paragraphs (d)(2) and (3) of this section, the authority to grant conditional removal credits shall be terminated by the Approval Authority and all — ndustrial Users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority.

(5) If a POTW grants conditional removal credits and the POTW or the Approval Authority subsequently makes a final determination, after appropriate notice, that the Industrial User(s) failed to comply with the conditions in paragraph (d)(1) of this section, the conditional credit shall be terminated by the POTW or the Approval Authority for the non-complying Industrial User(s) and the Industrial User(s) to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority. The conditional credit shall not be terminated where a violation of the provisions of this paragraph results from causes entirely outside of the control of the Industrial User(s) or the Industrial User(s) had demonstrated substantial compliance.

(6) The Approval Authority may elect not to review an application for conditional removal credit authority upon receipt of such application, in which case the conditionally revised discharge limits will remain in effect until reviewed by the Approval Authority. This review may occur at any time in accordance with the procedures of § 403.11, but in no event later than the time of any pretreatment program approval or any NPDES permit reissuance thereunder.

(e) *POTW application for authorization to give removal credits and Approval Authority review*—(1) *Who must apply.* Any POTW that wants to give a removal credit must apply for authorization from the Approval Authority.

(2) *To whom application made.* An application for authorization to give removal credits (or modify existing ones) shall be submitted by the POTW to the Approval Authority.

(3) *When to apply.* A POTW may apply for authorization to give or modify removal credits at any time.

(4) *Contents of the Application.* An application for authorization to give removal credits must be supported by the following information:

(i) *List of pollutants.* A list of pollutants for which removal credits are proposed.

(ii) *Consistent Removal Data.* The data required pursuant to paragraph (b) of this section.

(iii) *Calculation of revised discharge limits.* Proposed revised discharge limits for each affected subcategory of Industrial Users calculated in accordance with paragraph (a)(4) of this section.

(iv) *Local Pretreatment Program Certification.* A certification that the POTW has an approved local pretreatment program or qualifies for the exception to this requirement found at paragraph (d) of this section.

(v) *Sludge Management Certification.* A specific description of the POTW's current methods of using or disposing of its sludge and a certification that the granting of removal credits will not cause a violation of the sludge requirements identified in paragraph (a)(3)(iv) of this section.

(vi) *NPDES Permit Limit Certification.* A certification that the granting of removal credits will not cause a violation of the POTW's NPDES permit limits and conditions as required in paragraph (a)(3)(v) of this section.

(5) *Approval Authority Review.* The Approval Authority shall review the POTW's application for authorization to give or modify removal credits in accordance with the procedures of § 403.11 and shall, in no event, have more that 180 days from public notice of an application to complete review.

(6) *EPA review of State removal credit approvals.* Where the NPDES State has an approved pretreatment program, the Regional Administrator may agree in the Memorandum of Agreement under 40 CFR 123.24(d) to waive the right to review and object to submissions for authority to grant removal credits. Such an agreement shall not restrict the Regional Administrator's right to comment upon or object to permits issued to POTW's except to the extent 40 CFR 123.24(d) allows such restriction.

(7) Nothing in these regulations precludes an Industrial User or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization.

(f) *Continuation and withdrawal of authorization*—(1) *Effect of authorization.* (i) Once a POTW has received authorization to grant removal credits for a particular pollutant regulated in a categorical Pretreatment Standard it may automatically extend that removal credit to the same pollutant when it is regulated in other categorical standards, unless granting the removal credit will cause the POTW to violate the sludge requirements identified in (a)(3)(iv) of this section or its NPDES permit limits and conditions as required by (a)(3)(v). If a POTW elects at a later time to extend removal credits to a certain categorical Pretreatment Standard, industrial subcategory or one or more Industrial Users that initially were not granted removal credits, it must notify the Approval Authority.

(2) *Inclusion in POTW permit.* Once authority is granted, the removal credits shall be included in the POTW's NPDES Permit as soon as possible and shall become an enforceable requirement of the POTW's NPDES permit. The removal credits will remain in effect for the term of the POTW's NPDES permit, provided the POTW maintains compliance with the conditions specified in paragraph (f)(4) of this section.

(3) *Compliance monitoring.* Following authorization to give removal credits, a POTW shall continue to monitor and report on (at such intervals as may be specified by the Approval Authority, but in no case less than once per year) the POTW's removal capabilities. A minimum of one representative sample per month during the reporting period is required, and all sampling data must be included in the POTW's compliance report.

(4) *Modification or withdrawal of removal credits.* (i) Compliance with the conditions in paragraph (a)(3)(iii) through (v) of this section may be examined by the Approval Authority whenever it elects and must, at the very least, be examined whenever the POTW's NPDES permit is reissued. If the Approval Authority determines, on the basis of compliance monitoring reports or other information available to it, that the conditions specified in paragraphs (a)(3)(iii)-(v) of this section are not being met, the Approval Authority shall withdraw the POTW's

authority to grant removal credits or modify those credits in accordance with the procedures specified in paragraph (iii) of this section.

(ii) If, during the term of the POTW's NPDES permit, the Approval Authority determines that the POTW's consistent removal rate is consistently and substantially lower than the removal credit specified in the POTW's NPDES permit, the Approval Authority shall either withdraw the POTW's authority to grant removal credits or modify those credits in accordance with the procedures specified in paragraph (f)(4)(iii) of this section.

(iii) If the Approval Authority tentatively determines, under paragraph (f)(4)(i) or (ii) of this section, that the withdrawal of a POTW's authority to grant removal credits or modification of those credits is warranted, the Approval Authority shall, in accordance with the procedures specified in § 403.11(b) (1) and (2) of this section, issue a public notice, provide a public comment period of at least 30 days and provide an opportunity for interested persons to request a public hearing. The mailing list for the public notice shall include, at a minimum, the POTW and Industrial Users to whom revised discharge limits have been applied. If the Approval Authority finally determines to withdraw the POTW's authority to grant removal credits or to modify those removal credits the POTW is authorized to grant, it shall notify the POTW, all Industrial Users to whom revised limits have been applied and each person who has requested individual notice of its decision and the basis for that decision. Notice shall also be published in the same newspaper as the original notice of the tentative determination was published. Following such notice and modification or withdrawal, all Industrial Users to whom revised discharge limits have been applied shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical Pretreatment Standard(s), as appropriate, and shall achieve compliance with such limits within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority.

(g) *Removal credits in State-run pretreatment programs under § 403.10(e).* Where an NPDES State with an approved pretreatment program elects to implement a local pretreatment program in lieu or requiring the POTW to develop such a program (as provided in § 403.10(e)), the POTW will not be required to develop a pretreatment program as a precondition to obtaining authorization to give removal credits. The POTW will, however, be required to comply with the other conditions of paragraph (a)(3) of this section.

[49 FR 31221, Aug. 3, 1984, as amended at 51 FR 20430, June 4, 1986]

EFFECTIVE DATE NOTE: At 51 FR 20430, June 4, 1986, in § 403.7 paragraph (d)(1) was amended by correcting the spelling of "additional" and paragraph (d)(2) was corrected by changing "in not case later than July 1, 1983" to read "in no case later than July 1, 1983", effective July 7, 1986.

§ 403.8 POTW pretreatment programs: Development by POTW.

(a) *POTWs required to develop a pretreatment program.* Any POTW (or combination of POTWs operated by the same authority) with a total design flow greater than 5 million gallons per day (mgd) and receiving from Industrial Users pollutants which Pass Through or Interfere with the operation of the POTW or are otherwise subject to Pretreatment Standards will be required to establish a POTW Pretreatment Program unless the NPDES State exercises its option to assume local responsibilities as provided for in § 403.10(e). The Regional Administrator or Director may require that a POTW with a design flow of 5 mgd or less develop a POTW Pretreatment Program if he or she finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant in order to prevent Interference with the POTW or Pass Through.

(b) *Deadline for Program approval.* A POTW which meets the criteria of

paragraph (a) of this section must receive approval of a POTW Pretreatment Program no later than 3 years after the reissuance or modification of its existing NPDES permit but in no case later than July 1, 1983. POTW's whose NPDES permits are modified under section 301(h) of the Act shall have a Pretreatment Program within less than 3 years as provided for in 40 CFR Part 125, Subpart G (47 FR 53666 (November 26, 1982)). The POTW Pretreatment Program shall meet the criteria set forth in paragraph (f) of this section and will be administered by the POTW to ensure compliance by Industrial Users with applicable Pretreatment Standards and Requirements.

(c) *Incorporation of approved programs in permits.* A POTW may develop an appropriate POTW Pretreatment Program any time before the time limit set forth in paragraph (b) of this section. If (1) the POTW is located in a State which has an approved State permit program under section 402 of the Act and an approved State pretreatment program in accordance with § 403.10, or (2) the POTW is located in a State which does not have an approved permit program under section 402 of the Act, the POTW's NPDES Permit will be reissued or modified by the NPDES State or EPA, respectively, to incorporate the approved Program conditions as enforceable conditions of the Permit. If the POTW is located in an NPDES State which does not have an approved State Pretreatment program, the approved POTW Pretreatment Program shall be incorporated into the POTW's NPDES Permit as provided for in § 403.10(d). The modification of a POTW's NPDES Permit for the purposes of incorporating a POTW Pretreatment Program approved in accordance with the procedures in § 403.11 shall be deemed a minor Permit modification subject to the procedures in 40 CFR 122.63.

(d) *Incorporation of compliance schedules in permits.* If the POTW does not have an approved Pretreatment Program at the time the POTW's existing Permit is reissued or modified, the reissued or modified Permit will contain the shortest reasonable compliance schedule, not to exceed three years or July 1, 1983, whichever is sooner, for the approval of the legal authority, procedures and funding required by paragraph (f) of this section. Where the POTW is located in an NPDES State currently without authority to require a POTW Pretreatment Program, the Permit shall incorporate a modification or termination clause as provided for in § 403.10(d) and the compliance schedule shall be incorporated when the Permit is modified or reissued pursuant to such clause.

(e) *Cause for reissuance or modification of Permits.* Under the authority of section 402(b)(1)(C) of the Act, the Approval Authority may modify, or alternatively, revoke and reissue a POTW's Permit in order to:

(1) Put the POTW on a compliance schedule for the development of a POTW Pretreatment Program where the addition of pollutants into a POTW by an Industrial User or combination of Industrial Users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

(2) Coordinate the issuance of a section 201 construction grant with the incorporation into a permit of a compliance schedule for POTW Pretreatment Program;

(3) Incorporate a modification of the permit approved under section 301(h) or 301(i) of the Act;

(4) Incorporate an approved POTW Pretreatment Program in the POTW permit; or

(5) Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit.

(6) Incorporate the removal credits (established under § 403.7) in the POTW permit.

(f) *POTW pretreatment program requirements.* A POTW Pretreatment Program shall meet the following requirements:

(1) *Legal authority.* The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of sections 307

(b) and (c), and 402(b)(8) of the Act and any regulations implementing those sections. Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the POTW to:

(i) Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its NPDES permit;

(ii) Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;

(iii) Control, through permit, contract, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements;

(iv) Require (A) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements and (B) the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in § 403.12;

(v) Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under § 403.12(m) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;

(vi)(A) Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. In cases where State law has authorized the municipality or POTW to pass ordinances or other local legislation, the POTW shall exercise such authorities in passing legislation to seek and assess civil or criminal penalties for noncompliance by Industrial Users with Pretreatment Standards and Requirements. POTW's without such authorities shall enter into contracts with Industrial Users to assure compliance by Industrial Users with Pretreatment Standards and Requirements. An adequate contract will provide for liquidated damages for violation of Pretreatment Standards and Requirements and will include an agreement by the Industrial User to submit to the remedy of specific performance for breach of contract.

(B) Pretreatment Requirements which will be enforced through the remedies set forth in paragraph (f)(1)(vi)(A) of this section, will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; or any reporting requirements imposed by the POTW or these regulations. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any Discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected Industrial Users and an opportunity to respond) to halt or prevent any Discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The Approval Authority shall have authority to seek judicial relief for noncompliance by Industrial Users when the POTW has acted to seek such relief but has sought a penalty which the Approval

Authority finds to be insufficient. The procedures for notice to dischargers where the POTW is seeking *ex parte* temporary judicial injunctive relief will be governed by applicable state or federal law and not by this provision; and

(vii) Comply with the confidentiality requirements set forth in § 403.14.

(2) *Procedures.* The POTW shall develop and implement procedures to ensure compliance with the requirements of a Pretreatment Program. At a minimum, these procedures shall enable the POTW to:

(i) Identify and locate all possible Industrial Users which might be subject to the POTW Pretreatment Program. Any compilation, index or inventory of Industrial Users made under this paragraph shall be made available to the Regional Administrator or Director upon request;

(ii) Identify the character and volume of pollutants contributed to the POTW by the Industrial Users identified under paragraph (f)(2)(i) of this section. This information shall be made available to the Regional Administrator or Director upon request;

(iii) Notify Industrial Users identified under paragraph (f)(2)(i) of this section, of applicable Pretreatment Standards and any applicable requirements under sections 204(b) and 405 of the Act and Subtitles C and D of the Resource Conservation and Recovery Act.

(iv) Receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in § 403.12;

(v) Randomly sample and analyze the effluent from Industrial Users and conduct surveillance and inspection activities in order to identify, independent of information supplied by Industrial Users, occasional and continuing noncompliance with Pretreatment Standards. The results of these activities shall be made available to the Regional Administrator or Director upon request;

(vi) Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices required under § 403.12, or indicated by analysis, inspection, and surveillance activities described in paragraph (f)(2)(v) of this section. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and

(vii) Comply with the public participation requirements of 40 CFR Part 25 in the enforcement of National Pretreatment Standards. These procedures shall include provision for at least annually providing public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of Industrial Users which, during the previous 12 months, were significantly violating applicable Pretreatment Standards or other Pretreatment Requirements. For the purposes of this provision, a significant violation is a violation which remains uncorrected 45 days after notification of noncompliance; which is part of a pattern of noncompliance over a twelve month period; which involves a failure to accurately report noncompliance; or which resulted in the POTW exercising its emergency authority under paragraph (f)(1)(vi)(B) of this section.

(3) *Funding.* The POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in paragraphs (f)(1) and (2) of this section. In some limited circumstances, funding and personnel may be delayed where (i) the POTW has adequate legal authority and procedures to carry out the Pretreatment Program requirements described in this section, and (ii) a limited aspect of the Program does not need to be implemented immediately (see § 403.9(b)).

[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 31224, Aug. 3, 1984; 51 FR 20429, 20430, June 4, 1986; 51 FR 23759, July 1, 1986]

EFFECTIVE DATE NOTE: At 51 FR 20429, 20430, June 4, 1986 (see also a correction document to § 403.8 published at 51 FR 23760, July 1, 1986) § 403.8, was amended by changing the reference to "(44 FR 34783 (1979))" in paragraph (b) to read "(47 FR 53666 (November 26 1982))"; by correcting the spelling of the word "injunctive" in the second sentence of paragraph (f)(1)(vi)(A); by changing "paragraph (f)(1)(iv)(B)" to read "paragraph

(f)(1)(vi)(B) in paragraph (f)(2)(vii); and by revising paragraph (c), effective July 7, 1986. For the convenience of the user, the superseded paragraph (c) is set forth as follows:

§ 403.8 POTW pretreatment programs: Development by POTW.

* * * * *

(c) *Incorporation of approved programs in permits.* A POTW may develop an approvable POTW Pretreatment Program any time before the time limit set forth in paragraph (b) of this section. If (1) the POTW is located in a State which has an approved State permit program under section 402 of the Act and an approved State pretreatment program in accordance with § 403.10; or (2) the POTW is located in a State which does not have an approved permit program under section 402 of the Act; the POTW's NPDES Permit will be reissued or modified by the NPDES State or EPA, respectively, to incorporate the approved Program conditions as enforceable conditions of the Permit. If the POTW is located in an NPDES State which does not have an approved State pretreatment program, the approved POTW Pretreatment Program shall be incorporated into the POTW's NPDES Permit as provided for in § 403.10(d).

* * * * *

§ 403.9 POTW pretreatment programs and/or authorization to revise pretreatment standards: submission for approval.

(a) *Who approves Program.* A POTW requesting approval of a POTW Pretreatment Program shall develop a program description which includes the information set forth in paragraphs (b)(1) through (4) of this section. This description shall be submitted to the Approval Authority which will make a determination on the request for program approval in accordance with the procedures described in § 403.11.

(b) *Contents of POTW program submission.* The program description must contain the following information:

(1) A statement from the City Solicitor or a city official acting in a comparable capacity (or the attorney for those POTWs which have independent legal counsel) that the POTW has authority adequate to carry out the programs described in § 403.8. This statement shall:

(i) Identify the provision of the legal authority under § 403.8(f)(1) which provides the basis for each procedure under § 403.8(f)(2);

(ii) Identify the manner in which the POTW will implement the program requirements set forth in § 403.8, including the means by which Pretreatment Standards will be applied to individual Industrial Users (e.g., by order, permit, ordinance, contract, etc.); and,

(iii) Identify how the POTW intends to ensure compliance with Pretreatment Standards and Requirements, and to enforce them in the event of noncompliance by Industrial Users;

(2) A copy of any statutes, ordinances, regulations, contracts, agreements, or other authorities relied upon by the POTW for its administration of the Program. This Submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW Pretreatment Program if approved;

(3) A brief description (including organization charts) of the POTW organization which will administer the Pretreatment Program. If more than one agency is responsible for administration of the Program the responsible agencies should be identified, their respective responsibilities delineated, and their procedures for coordination set forth; and

(4) A description of the funding levels and full- and part-time manpower available to implement the Program;

(c) *Conditional POTW program approval.* The POTW may request conditional approval of the Pretreatment Program pending the acquisition of funding and personnel for certain elements of the Program. The request for conditional approval must meet the requirements set forth in paragraph (b) of this section except that the requirements of paragraph (b) of this section, may be relaxed if the Submission demonstrates that:

(1) A limited aspect of the Program does not need to be implemented immediately;

(2) The POTW had adequate legal authority and procedures to carry out those aspects of the Program which will not be implemented immediately; and

(3) Funding and personnel for the Program aspects to be implemented at a later date will be available when needed. The POTW will describe in the Submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the Approval Authority will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the POTW Pretreatment Program and any removal allowances granted to the POTW, may be modified or withdrawn.

(d) *Content of removal allowance submission.* The request for authority to revise categorical Pretreatment Standards must contain the information required in § 403.7(d).

(e) *Approval authority action.* Any POTW requesting POTW Pretreatment Program approval shall submit to the Approval Authority three copies of the Submission described in paragraph (b) of this section, and, if appropriate, (d) of this section. Upon a preliminary determination that the Submission meets the requirements of paragraph (b) and, if appropriate, (d), of this section, the Approval Authority shall:

(1) Notify the POTW that the Submission has been received and is under review; and

(2) Commence the public notice and evaluation activities set forth in § 403.11.

(f) *Notification where submission is defective.* If, after review of the Submission as provided for in paragraph (e) of this section, the Approval Authority determines that the Submission does not comply with the requirements of paragraph (b) or (c), and, if appropriate, paragraph (d), of this section, the Approval Authority shall provide notice in writing to the applying POTW and each person who has requested individual notice. This notification shall identify any defects in the Submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of paragraphs (b), (c), and, if appropriate, paragraph (d) of this section.

(g) *Consistency with water quality management plans.* (1) In order to be approved the POTW Pretreatment Program shall be consistent with any approved water quality management plan developed in accordance with 40 CFR Parts 130, 131, as revised, where such 208 plan includes Management Agency designations and addresses pretreatment in a manner consistent with 40 CFR Part 403. In order to assure such consistency the Approval Authority shall solicit the review and comment of the appropriate 208 Planning Agency during the public comment period provided for in § 403.11(b)(1)(ii) prior to approval or disapproval of the Program.

(2) Where no 208 plan has been approved or where a plan has been approved but lacks Management Agency designations and/or does not address pretreatment in a manner consistent with this regulation, the Approval Authority shall nevertheless solicit the review and comment of the appropriate 208 planning agency.

§ 403.10 Development and submission of NPDES State pretreatment programs.

(a) *Approval of State Programs.* No State NPDES program shall be approved under section 402 of the Act after the effective date of these regulations unless it is determined to meet the requirements of paragraph (f) of this section. Notwithstanding any other provision of this regulation, a State will be required to act upon those authorities which it currently possesses before the approval of a State Pretreatment Program.

(b) *Deadline for requesting approval.* Any NPDES State with a permit program approved under section 402 of the Act prior to December 27, 1977, which requires modification to conform to the requirements set forth in paragraph (f) of this section will be required to submit a request for approval of a modified program (hereafter State Pretreatment Program approval) by March 27, 1979 unless an

NPDES State must amend or enact a law to make required modifications, in which case the NPDES State shall request State Pretreatment Program approval by March 27, 1980.

(c) *Failure to request approval.* The EPA shall exercise the authorities available to it to apply and enforce Pretreatment Standards and Requirements until the necessary implementing action is taken by the State. Failure of a State to seek approval of a State Pretreatment Program as provided for in paragraph (b) and failure of an approved State to administer its State Pretreatment Program in accordance with the requirements of this section constitutes grounds for withdrawal of NPDES program approval under section 402(c)(3) of the Act.

(d) *Modification clause in POTW permits prior to submission deadline.* (1) Before the submission deadline for State Pretreatment Program approval set forth in paragraph (b) of this section, any Permit issued to a POTW which meets the requirements of § 403.8(a) by an NPDES State without an approved State pretreatment program shall include a modification clause. This clause will require that such Permits be promptly modified or, alternatively, revoked and reissued after the submission deadline for State Pretreatment Program approval set forth in paragraph (b) of this section to incorporate into the POTW's Permit an approved POTW Pretreatment Program or a compliance schedule for the development of a POTW Pretreatment Program according to the requirements of §§ 403.8 (b) and (d) and 403.12(h). The following language is an acceptable clause for the purposes of this paragraph:

> This permit shall be modified, or alternatively, revoked and reissued, by September 27, 1979 (or September 27, 1980, as appropriate) to incorporate an approved POTW Pretreatment Program or a compliance schedule for the development of a POTW Pretreatment Program as required under section 402(b)(8) of the Clean Water Act and implementing regulations or by the requirements of the approved State Pretreatment Program, as appropriate.

(2) All Permits subject to the requirements of paragraph (d)(1) of this section which do not contain the modification clause referred to in that paragraph will be subject to objection by EPA under section 402(d) of the Act as being outside the guidelines and requirements of the Act.

(3) Permits issued by an NPDES State after the Submission deadline for State Pretreatment Program approval (set forth in paragraph (b) of this section) shall contain conditions of an approved Pretreatment Program or a compliance schedule for developing such a program in accordance with §§ 403.8 (b) and (d) and 403.12(h).

(e) *State Program in lieu of POTW Program.* Notwithstanding the provision of § 403.8(a), a State with an approved Pretreatment Program may assume responsibility for implementing the POTW Pretreatment Program requirements set forth in § 403.8(f) in lieu of requiring the POTW to develop a Pretreatment Program. However, this does not preclude POTW's from independently developing Pretreatment Programs.

(f) *State Pretreatment Program requirements.* In order to be approved, a request for State Pretreatment Program Approval must demonstrate that the State Pretreatment Program has the following elements:

(1) *Legal authority.* The Attorney General's Statement submitted in accordance with paragraph (g)(1)(i) shall certify that the Director has authority under State law to operate and enforce the State Pretreatment Program to the extent required by this part and by 40 CFR 123.27. At a minimum, the Director shall have the authority to:

(i) Incorporate POTW Pretreatment Program conditions into permits issued to POTW's; require compliance by POTW's with these incorporated permit conditions; and require compliance by Industrial Users with Pretreatment Standards;

(ii) Ensure continuing compliance by POTW's with pretreatment conditions incorporated into the POTW Permit through review of monitoring reports submitted to the Director by the POTW in accordance with § 403.12 and ensure continuing compliance by Industrial Users with Pretreatment Standards through the review of self-monitoring reports submitted to the

POTW or to the Director by the Industrial Users in accordance with § 403.12;

(iii) Carry out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the POTW, compliance or noncompliance by the OTW with pretreatment conditions incorporated into the POTW Permit; and carry out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the Industrial User, whether the Industrial User is in compliance with Pretreatment Standards;

(iv) Seek civil and criminal penalties, and injunctive relief, for noncompliance by the POTW with pretreatment conditions incorporated into the POTW Permit and for noncompliance with Pretreatment Standards by Industrial Users as set forth in § 403.8(f)(1)(vi). The Director shall have authority to seek judicial relief for noncompliance by Industrial Users even when the POTW has acted to seek such relief (e.g., if the POTW has sought a penalty which the Director finds to be insufficient);

(v) Approve and deny requests for approval of POTW Pretreatment Programs submitted by a POTW to the Director;

(vi) Deny and recommend approval of (but not approve) requests for Fundamentally Different Factors variances submitted by Industrial Users in accordance with the criteria and procedures set forth in § 403.13; and

(vii) Approve and deny requests for authority to modify categorical Pretreatment Standards to reflect removals achieved by the POTW in accordance with the criteria and procedures set forth in §§ 403.7, 403.9 and 403.11.

(2) *Procedures.* The Director shall have developed procedures to carry out the requirements of sections 307 (b) and (c), and 402(b)(1), 402(b)(2), 402(b)(8), and 402(b)(9) of the Act. At a minimum, these procedures shall enable the Director to:

(i) Identify POTW's required to develop Pretreatment Programs in accordance with § 403.8(a) and notify these POTW's of the need to develop a POTW Pretreatment Program. In the absence of a POTW Pretreatment Program, the State shall have procedures to carry out the activities set forth in § 403.8(f)(2);

(ii) Provide technical and legal assistance to POTW's in developing Pretreatment Programs;

(iii) Develop compliance schedules for inclusion in POTW Permits which set forth the shortest reasonable time schedule for the completion of tasks needed to implement a POTW Pretreatment Program. The final compliance date in these schedules shall be no later than July 1, 1983;

(iv) Sample and analyze:

(A) Influent and effluent of the POTW to identify, independent of information supplied by the POTW, compliance or noncompliance with pollutant removal levels set forth in the POTW permit (see § 403.7); and

(B) The contents of sludge from the POTW and methods of sludge disposal and use to identify, independent of information supplied by the POTW, compliance or noncompliance with requirements applicable to the selected method of sludge management;

(v) Investigate evidence of violations of pretreatment conditions set forth in the POTW Permit by taking samples and acquiring other information as needed. This data acquisition shall be performed with sufficient care as to produce evidence admissible in an enforcement proceeding or in court;

(vi) Review and approve requests for approval of POTW Pretreatment Programs and authority to modify categorical Pretreatment Standards submitted by a POTW to the Director; and

(vii) Consider requests for Fundamentally Different Factors variances submitted by Industrial Users in accordance with the criteria and procedures set forth in § 403.13.

(3) *Funding.* The Director shall assure that funding and qualified personnel are available to carry out the authorities and procedures described in paragraphs (f)(1) and (2) of this section.

(g) *Content of State Pretreatment Program submission.* The request for State Pretreatment Program approval will consist of:

(1)(i) A statement from the State Attorney General (or the Attorney for

those State agencies which have independent legal counsel) that the laws of the State provide adequate authority to implement the requirements of this part. The authorities cited by the Attorney General in this statement shall be in the form of lawfully adopted State statutes or regulations which shall be effective by the time of approval of the State Pretreatment Program; and

(ii) Copies of all State statutes and regulations cited in the above statement;

(iii) Notwithstanding paragraphs (g)(1)(i) and (ii) of this section, if the State has the statutory authority to implement the requirements of this part, and if the State at the time of submission of this request has an approved NPDES Program, then regulations setting forth the requirements of this section need not be promulgated by the State if the Administrator finds that the State has submitted a complete description of procedures to administer its program in conformance with the requirements of this section. States without an approved NPDES program will be required to comply with the requirements of paragraphs (g)(1)(i) and (ii) of this section.

(2) A description of the funding levels and full- and part-time personnel available to implement the program; and

(3) Any modifications or additions to the Memorandum of Agreement (required by 40 CFR 123.24) which may be necessary for EPA and the State to implement the requirements of this part.

(h) *EPA Action.* Any approved NPDES State requesting State Pretreatment Program approval shall submit to the Regional Administrator three copies of the Submission described in paragraph (g) of this section. Upon a preliminary determination that the Submission meets the requirements of paragraph (g) the Regional Administrator shall:

(1) Notify the Director that the Submission has been received and is under review; and

(2) Commence the program revision process set out in 40 CFR 123.62. For purposes of that section all requests for approval of State Pretreatment Programs shall be deemed substantial program modifications. A comment period of at least 30 days and the opportunity for a hearing shall be afforded the public on all such proposed program revisions.

(i) *Notification where submission is defective.* If, after review of the Submission as provided for in paragraph (h) of this section, EPA determines that the Submission does not comply with the requirements of paragraph (f) or (g) of this section EPA shall so notify the applying NPDES State in writing. This notification shall identify any defects in the Submission and advise the NPDES State of the means by which it can comply with the requirements of this part.

[46 FR 9439, Jan. 28, 1981, as amended at 51 FR 20429, June 4, 1986]

EFFECTIVE DATE NOTE: At 51 FR 20429, June 4, 1986, § 403.10, was amended by changing the reference in paragraph (f)(1) from "40 CFR 123.9" to read "40 CFR 123.27"; by changing the reference in paragraph (h)(2) from "40 CFR 123.13" to read "40 CFR 123.62"; in paragraph (f)(1)(iii) the spelling of "incorporated" was corrected; and in paragraph (g)(3), the spelling of "Memorandum" was corrected, and "40 CFR 123.6" was changed to read "40 CFR 123.24", effective July 7, 1986.

§ 403.11 Approval procedures for POTW pretreatment programs and POTW granting of removal credits.

The following procedures shall be adopted in approving or denying requests for approval of POTW Pretreatment Programs and applications for removal credit authorization:

(a) *Deadline for review of submission.* The Approval Authority shall have 90 days from the date of public notice of any Submission complying with the requirements of § 403.9(b) and, where removal credit authorization is sought with §§ 403.7(e) and 403.9(d), to review the Submission. The Approval Authority shall review the Submission to determine compliance with the requirements of § 403.8 (b) and (f), and, where removal credit authorization is sought, with § 403.7. The Approval Authority may have up to an additional 90 days to complete the evaluation of the Submission if the public comment period provided for in paragraph (b)(1)(ii) of this sec-

tion is extended beyond 30 days or if a public hearing is held as provided for in paragraph (b)(2) of this section. In no event, however, shall the time for evaluation of the Submission exceed a total of 180 days from the date of public notice of a Submission meeting the requirements of § 403.9(b) and, in the case of a removal credit application, §§ 403.7(e) and 403.9(b).

(b) *Public notice and opportunity for hearing.* Upon receipt of a Submission the Approval Authority shall commence its review. Within 5 days after making a determination that a Submission meets the requirements of § 403.9(b), and, where removal credit authorization is sought, §§ 403.7(e) and 403.9(d), the Approval Authority shall:

(1) Issue a public notice of request for approval of the Submission;

(i) This public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the Submission. Procedures for the circulation of public notice shall include:

(A) Mailing notices of the request for approval of the Submission to designated 208 planning agencies, Federal and State fish, shellfish, and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and

(B) Publication of a notice of request for approval of the Submission in the largest daily newspaper within the jurisdiction(s) served by the POTW.

(ii) The public notice shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the Submission.

(iii) All written comments submitted during the 30 day comment period shall be retained by the Approval Authority and considered in the decision on whether or not to approve the Submission. The period for comment may be extended at the discretion of the Approval Authority; and

(2) Provide an opportunity for the applicant, any affected State, any interested State or Federal agency, person or group of persons to request a public hearing with respect to the Submission.

(i) This request for public hearing shall be filed within the 30 day (or extended) comment period described in paragraph (b)(1)(ii) of this section and shall indicate the interest of the person filing such request and the reasons why a hearing is warranted.

(ii) The Approval Authority shall hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the Submission should be approved. Instances of doubt should be resolved in favor of holding the hearing.

(iii) Public notice of a hearing to consider a Submission and sufficient to inform interested parties of the nature of the hearing and the right to participate shall be published in the same newspaper as the notice of the original request for approval of the Submission under paragraph (b)(1)(i)(B) of this section. In addition, notice of the hearing shall be sent to those persons requesting individual notice.

(c) *Approval authority decision.* At the end of the 30 day (or extended) comment period and within the 90 day (or extended) period provided for in paragraph (a) of this section, the Approval Authority shall approve or deny the Submission based upon the evaluation in paragraph (a) of this section and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. Where the Approval Authority makes a determination to deny the request, the Approval Authority shall so notify the POTW and each person who has requested individual notice. This notification shall include suggested modifications and the Approval Authority may allow the requestor additional time to bring the Submission into compliance with applicable requirements.

(d) *EPA objection to Director's decision.* No POTW pretreatment program or authorization to grant removal allowances shall be approved by the Director if following the 30 day (or extended) evaluation period provided for in paragraph (b)(1)(ii) of this section

and any hearing held pursuant to paragraph (b)(2) of this section the Regional Administrator sets forth in writing objections to the approval of such Submission and the reasons for such objections. A copy of the Regional Administrator's objections shall be provided to the applicant, and each person who has requested individual notice. The Regional Administrator shall provide an opportunity for written comments and may convene a public hearing on his or her objections. Unless retracted, the Regional Administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.

(e) *Notice of decision.* The Approval Authority shall notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the Submission. In addition, the Approval Authority shall cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request for approval of the Submission was published. The Approval Authority shall identify in any notice of POTW Pretreatment Program approval any authorization to modify categorical Pretreatment Standards which the POTW may make, in accordance with § 403.7, for removal of pollutants subject to Pretreatment Standards.

(f) *Public access to submission.* The Approval Authority shall ensure that the Submission and any comments upon such Submission are available to the public for inspection and copying.

[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 31224, Aug. 3, 1984; 51 FR 20429, June 4, 1986]

EFFECTIVE DATE NOTE: At 51 FR 20429, June 4, 1986, § 403.11 was amended by changing the references in paragraphs (a) and (b) from "§ 403.7(d)" to read "§ 403.7(e)", effective July 7, 1986.

§ 403.12 Reporting requirements for POTW's and industrial users.

(a) *Definition.* The term "Control Authority" as it is used in this section refers to: (1) The POTW if the POTW's Submission for its pretreatment program (§ 403.3(t)(1)) has been approved in accordance with the requirements of § 403.11; or (2) the Approval Authority if the Submission has not been approved.

(b) *Reporting requirement for industrial users upon effective date of categorical pretreatment standard—baseline report.* Within 180 days after the effective date of a categorical Pretreatment Standard, or 180 days after the final administrative decision made upon a category determination submission under § 403.6(a)(4), whichever is later, existing Industrial Users subject to such categorical Pretreatment Standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (b)(1) through (7) of this section. Where reports containing this information already have been submitted to the Director or Regional Administrator in compliance with the requirements of 40 CFR 128.140(b), the Industrial user will not be required to submit this information again. New sources shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (b)(1) through (5) of this section:

(1) *Identifying information.* The User shall submit the name and address of the facility including the name of the operator and owners;

(2) *Permits.* The User shall submit a list of any environmental control permits held by or for the facility;

(3) *Description of operations.* The User shall submit a brief description of the nature, average rate of production, and Standard Industrial Classification of the operation(s) carried out by such Industrial User. This description should include a schematic process diagram which indicates points of Discharge to the POTW from the regulated processes.

(4) *Flow measurement.* The User shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

(i) Regulated process streams; and

(ii) Other streams as necessary to allow use of the combined wastes-

tream formula of § 403.6(e). (See paragraph (b)(5)(v) of this section.)

The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(5) *Measurement of pollutants.* (i) The user shall identify the Pretreatment Standards applicable to each regulated process;

(ii) In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the Standard or Control Authority) of regulated pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations;

(iii) Where feasible, samples must be obtained through the flow-proportional composite sampling techniques specified in the applicable categorical Pretreatment Standard. Where composite sampling is not feasible, a grab sample is acceptable;

(iv) Where the flow of the stream being sampled is less than or equal to 950,000 liters/day (approximately 250,000 gpd), the User must take three samples within a two-week period. Where the flow of the stream being sampled is greater than 950,000 liters/day (approximately 250,000 gpd), the User must take six samples within a two-week period;

(v) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula of § 403.6(e) in order to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with § 403.6(e) this adjusted limit along with supporting data shall be submitted to the Control Authority;

(vi) Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto. Where 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator;

(vii) The Control Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

(viii) The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW;

(6) *Certification.* A statement, reviewed by an authorized representative of the Industrial User (as defined in paragraph (k) of this section) and certified to by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) and/or additional pretreatment is required for the Industrial User to meet the Pretreatment Standards and Requirements; and

(7) *Compliance schedule.* If additional pretreatment and/or O and M will be required to meet the Pretreatment Standards; the shortest schedule by which the Industrial User will provide such additional pretreatment and/or O and M. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard.

(i) Where the Industrial User's categorical Pretreatment Standard has been modified by a removal allowance (§ 403.7), the combined wastestream formula (§ 403.6(e)), and/or a Fundamentally Different Factors variance (§ 403.13) at the time the User submits

the report required by paragraph (b) of this section, the information required by paragraphs (b)(6) and (7) of this section shall pertain to the modified limits.

(ii) If the categorical Pretreatment Standard is modified by a removal allowance (§ 403.7), the combined wastestream formula (§ 403.6(e)), and/or a Fundamentally Different Factors variance (§ 403.13) after the User submits the report required by paragraph (b) of this section, any necessary amendments to the information requested by paragraphs (b)(6) and (7) of this section shall be submitted by the User to the Control Authority within 60 days after the modified limit is approved.

(c) *Compliance schedule for meeting categorical Pretreatment Standards.* The following conditions shall apply to the schedule required by paragraph (b)(7) of this section:

(1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the Industrial User to meet the applicable categorical Pretreatment Standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).

(2) No increment referred to in paragraph (c)(1) of this section shall exceed 9 months.

(3) Not later than 14 days following each date in the schedule and the final date for compliance, the Industrial User shall submit a progress report to the Control Authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the Industrial User to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports to the Control Authority.

(d) *Report on compliance with categorical pretreatment standard deadline.* Within 90 days following the date for final compliance with applicable categorical Pretreatment Standards or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any Industrial User subject to Pretreatment Standards and Requirements shall submit to the Control Authority a report indicating the nature and concentration of all pollutants in the Discharge from the regulated process which are limited by Pretreatment Standards and Requirements and the average and maximum daily flow for these process units in the Industrial User which are limited by such Pretreatment Standards and Requirements. The report shall state whether the applicable Pretreatment Standards or Requirements are being met on a consistent basis and, if not, what additional O and M and/or pretreatment is necessary to bring the Industrial User into compliance with the applicable Pretreatment Standards or Requirements. This statement shall be signed by an authorized representative of the Industrial User, as defined in paragraph (k) of this section, and certified to by a qualified professional.

(e) *Periodic reports on continued compliance.* (1) Any Industrial User subject to a categorical Pretreatment Standard, after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge reported in paragraph (b)(4) of this section except that the Control Authority may require more detailed reporting of flows. At the discretion of the Control Authority and in consideraton of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may agree to alter the

months during which the above reports are to be submitted.

(2) Where the Control Authority has imposed mass limitations on Industrial Users as provided for by § 403.6(d), the report required by paragraph (e)(1) of this section shall indicate the mass of pollutants regulated by Pretreatment Standards in the Discharge from the Industrial User.

(f) *Notice of slug loading.* The Industrial User shall notify the POTW immediately of any slug loading, as defined by § 403.5(b)(4), by the Industrial User.

(g) *Monitoring and analysis to demonstrate continued compliance.* The reports required in paragraphs (b)(5), (d), and (e) of this section shall contain the results of sampling and analysis of the Discharge, including the flow and the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable Pretreatment Standards. All analyses shall be performed in accordance with procedures established by the Administrator pursuant to section 304(g) of the Act and contained in 40 CFR Part 136 and amendments thereto or with any other test procedures approved by the Administrator. Sampling shall be performed in accordance with the techniques approved by the Administrator. Where 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or where the Administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

(h) *Compliance schedule for POTW's.* The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW Pretreatment Program required by § 403.8.

(1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW Pretreatment Program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);

(2) No increment referred to in paragraph (h)(1) of this section shall exceed nine months;

(3) Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the Approval Authority including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the Approval Authority.

(i) *Signatory requirements for industrial user reports.* The reports required by paragraphs (b), (d), and (e), of this section must be signed by an authorized representative of the Industrial User. An authorized representative may be:

(1) A principal executive officer of at least the level of vice president, if the Industrial User submitting the reports required by paragraphs (b), (d) and (e) of this section is a corporation.

(2) A general partner or proprietor if the Industrial User submitting the report required by paragraphs (b), (d) and (e) of this section is a partnership or sole proprietorship respectively.

(3) A duly authorized representative of the individual designated in paragraph (k)(1) or (2) of this section if such representative is responsible for the overall operation of the facility from which the Indirect Discharge originates.

(j) *Signatory requirements for POTW reports.* Reports submitted to the Approval Authority by the POTW in accordance with paragraph (h) of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.

(k) *Provisions governing fraud and false statements.* The reports required by paragraphs (b), (d), (e) and (h) of this section are subject to the provisons of 18 U.S.C. 1001 relating to fraud and false statements and the provisions of section 309(c)(2) of the Act governing false statements, representations or certifications in reports required under the Act.

(l) *Record-keeping requirements.* (1) Any Industrial User and POTW subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:

(i) The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

(ii) The dates analyses were performed;

(iii) Who performed the analyses;

(iv) The analytical techniques/methods use; and

(v) The results of such analyses.

(2) Any Industrial User or POTW subject to the reporting requirements established in this section shall be required to retain for a minimum of 3 years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the Director and the Regional Administrator (and POTW in the case of an Industrial User). This period of retention shall be extended during the course of any unresolved litigation regarding the Industrial User or POTW or when requested by the Director or the Regional Administrator.

(3) Any POTW to which reports are submitted by an Industrial User pursuant to paragraphs (b), (d), and (e) of this section shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the Director and the Regional Administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Industrial User or the operation of the POTW Pretreatment Program or when requested by the Director or the Regional Administrator.

[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 31225, Aug. 3, 1984; 51 FR 20429, June 4, 1986]

EFFECTIVE DATE NOTE: At 51 FR 20429, June 4, 1986, § 403.12 was amended by removing from paragraph (g) the following sentence: "The frequency of monitoring shall be prescribed in the applicable Pretreatment Standard."; and by revising paragraphs (j) and (k), effective July 7, 1986. For the convenience of the user, the superseded paragraphs (j) and (k) are set forth as follows:

§ 403.12 Reporting requirements for POTW's and industrial users.

* * * * *

(j) *Signatory requirements for POTW reports.* Reports submitted to the Approval Authority by the POTW in accordance with paragraphs (h), (i) and (j) of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.

(k) *Provisions governing fraud and false statements.* The reports required by paragraphs (b), (d), (e), (h), (i) and (j) of this section shall be subject to the provisions of 18 U.S.C. section 1001 relating to fraud and false statements and the provisions of section 309(c)(2) of the Act governing false statements, representations or certifications in reports required under the Act.

* * * * *

§ 403.13 Variances from categorical pretreatment standards for fundamentally different factors.

(a) *Definition.* The term "Requester" means an Industrial User or a POTW or other interested person seeking a variance from the limits specified in a categorical Pretreatment Standard.

(b) *Purpose and scope.* In establishing categorical Pretreatment Standards for existing sources, the EPA will take into account all the information it can collect, develop and solicit regarding the factors relevant to pretreatment standards under section 307(b). In some cases, information which may affect these Pretreatment Standards will not be available or, for

other reasons, will not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the limits in categorical Pretreatment Standards, making them either more or less stringent, as they apply to a certain Industrial User within an industrial category or subcategory. This will only be done if data specific to that Industrial User indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to an Industrial User are fundamentally different from the factors considered during development of a categorical Pretreatment Standard applicable to that User and further, that the existence of those factors justifies a different discharge limit than specified in the applicable categorical Pretreatment Standard, may request a fundamentally different factors variance under this section or such a variance request may be initiated by the EPA.

(c) *Criteria*—(1) *General criteria.* A request for a variance based upon fundamentally different factors shall be approved only if:

(i) There is an applicable categorical Pretreatment Standard which specifically controls the pollutant for which alternative limits have been requested; and

(ii) Factors relating to the discharge controlled by the categorical Pretreatment Standard are fundamentally different from the factors considered by EPA in establishing the Standards; and

(iii) The request for a variance is made in accordance with the procedural requirements in paragraphs (g) and (h) of this section.

(2) *Criteria applicable to less stringent limits.* A variance request for the establishment of limits less stringent than required by the Standard shall be approved only if:

(i) The alternative limit requested is no less stringent than justified by the fundamental difference;

(ii) The alternative limit will not result in a violation of prohibitive discharge standards prescribed by or established under § 403.5;

(iii) The alternative limit will not result in a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Pretreatment Standards; and

(iv) Compliance with the Standards (either by using the technologies upon which the Standards are based or by using other control alternatives) would result in either:

(A) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the Standards; or

(B) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Standards.

(3) *Criteria applicable to more stringent limits.* A variance request for the establishment of limits more stringent than required by the Standards shall be approved only if:

(i) The alternative limit request is no more stringent than justified by the fundamental difference; and

(ii) Compliance with the alternative limit would not result in either:

(A) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the Standards; or

(B) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Standards.

(d) *Factors considered fundamentally different.* Factors which may be considered fundamentally different are:

(1) The nature or quality of pollutants contained in the raw waste load of the User's process wastewater;

(2) The volume of the User's process wastewater and effluent discharged;

(3) Non-water quality environmental impact of control and treatment of the User's raw waste load;

(4) Energy requirements of the application of control and treatment technology;

(5) Age, size, land availability, and configuration as they relate to the User's equipment or facilities; processes employed; process changes; and en-

gineering aspects of the application of control technology;

(6) Cost of compliance with required control technology.

(e) *Factors which will not be considered fundamentally different.* A variance request or portion of such a request under this section may not be granted on any of the following grounds:

(1) The feasibility of installing the required waste treatment equipment within the time the Act allows;

(2) The assertion that the Standards cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factors listed in paragraph (d) of this section;

(3) The User's ability to pay for the required waste treatment; or

(4) The impact of a Discharge on the quality of the POTW's receiving waters.

(f) *State or local law.* Nothing in this section shall be construed to impair the right of any state or locality under section 510 of the Act to impose more stringent limitations than required by Federal law.

(g) *Application deadline.* (1) Requests for a variance and supporting information must be submitted in writing to the Director or to the Administrator (or his delegate), as appropriate.

(2) In order to be considered, request for variances must be submitted within 180 days after the effective date of the categorical Pretreatment Standard unless the User has requested a categorical determination pursuant to § 403.6(a).

(3) Where the User has requested a catergorical determination pursuant to § 403.6(a), the User may elect to await the results of the category determination before submitting a variance request under this section. Where the User so elects, he or she must submit the variance request within 30 days after a final decision has been made on the categorical determination pursuant to § 403.6(a)(4).

(h) *Contents submission.* Written submissions for variance requests, whether made to the Administrator (or his delegate) or the Director, must include:

(1) The name and address of the person making the request;

(2) Identification of the interest of the Requester which is affected by the categorical Pretreatment Standard for which the variance is requested;

(3) Identification of the POTW currently receiving the waste from the Industrial User for which alternative discharge limits are requested;

(4) Identification of the categorical Pretreatment Standards which are applicable to the Industrial User;

(5) A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought;

(6) The alternative discharge limits proposed by the Requester for each pollutant or pollutant parameter identified in paragraph (h)(5) of this section;

(7) A description of the Industrial User's existing water pollution control facilities;

(8) A schematic flow representation of the Industrial User's water system including water supply, process wastewater systems, and points of Discharge; and

(9) A Statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request, e.g., technical and economic data collected by the EPA and used in developing each pollutant discharge limit in the Pretreatment Standard.

(i) *Deficient requests.* The Administrator (or his delegate) or the Director will only act on written requests for variances that contain all of the information required. Persons who have made incomplete submissions will be notified by the Administrator (or his delegate) or the Director that their requests are deficient and unless the time period is extended, will be given up to thirty days to remedy the deficiency. If the deficiency is not corrected within the time period allowed by the Administrator (or his delegate) or the Director, the request for a variance shall be denied.

(j) *Public notice.* Upon receipt of a complete request, the Administrator (or his delegate) or the Director will provide notice of receipt, opportunity

to review the submission, and opportunity to comment.

(1) The public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the request. Procedures for the circulation of public notice shall include mailing notices to:

(i) The POTW into which the Industrial User requesting the variance discharges;

(ii) Adjoining States whose waters may be affected; and

(iii) Designated 208 planning agencies, Federal and State fish, shellfish and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists.

(2) The public notice shall provide for a period not less than 30 days following the date of the public notice during which time interested persons may review the request and submit their written views on the request.

(3) Following the comment period, the Administrator (or his delegate) or the Director will make a determination on the request taking into consideration any comments received. Notice of this final decision shall be provided to the requester (and the Industrial User for which the variance is requested if different), the POTW into which the Industrial User discharges and all persons who submitted comments on the request.

(k) *Review of requests by state.* (1) Where the Director finds that fundamentally different factors do not exist, he may deny the request and notify the requester (and Industrial User where they are not the same) and the POTW of the denial.

(2) Where the Director finds that fundamentally different factors do exist, he shall forward the request, with a recommendation that the request be approved, to the Administrator (or his delegate).

(l) *Review of requests by EPA.* (1) Where the Administrator (or his delegate) finds that fundamentally different factors do not exist, he shall deny the request for a variance and send a copy of his determination to the Director, to the POTW, and to the requester (and to the Industrial User, where they are not the same).

(2) Where the Administrator (or his delegate) finds that fundamentally different factors do exist, and that a partial or full variance is justified, he will approve the variance. In approving the variance, the Administrator (or his delegate) will:

(i) Prepare recommended alternative discharge limits for the Industrial User either more or less stringent than those prescribed by the applicable categorical Pretreatment Standard to the extent warranted by the demonstrated fundamentally different factors;

(ii) Provide the following information in his written determination:

(A) The recommended alternative discharge limits for the Industrial User concerned;

(B) The rationale for the adjustment of the Pretreatment Standard (including the reasons for recommending that the variance be granted) and an explanation of how the recommended alternative discharge limits were derived;

(C) The supporting evidence submitted to the Administrator (or his delegate); and

(D) Other information considered by the Administrator (or his delegate) in developing the recommended alternative discharge limits;

(iii) Notify the Director and the POTW of his or her determination; and

(iv) Send the information described in paragraphs (l)(2) (i) and (ii) of this section to the Requestor (and to the Industrial User where they are not the same).

(m) *Request for hearing.* (1) Within 30 days following the date of receipt of the notice of the decision of the Administrator's delegate on a variance request, the requester or any other interested person may submit a petition to the Regional Administrator for a hearing to reconsider or contest the decision. If such a request is submitted by a person other than the Industrial User the person shall simultaneously serve a copy of the request on the Industrial User.

(2) If the Regional Administrator declines to hold a hearing and the Regional Administrator affirms the findings of the Administrator's delegate the requester may submit a petition

for a hearing to the Administrator within 30 days of the Regional Administrator's decision.

[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 5132, Feb. 10, 1984; 50 FR 38811, Sept. 25, 1985; 51 FR 16030, Apr. 30, 1986]

§ 403.14 Confidentiality.

(a) *EPA authorities.* In accordance with 40 CFR Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions, or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR Part 2 (Public Information).

(b) *Effluent data.* Information and data provided to the Control Authority pursuant to this part which is effluent data shall be available to the public without restriction.

(c) *State or POTW.* All other information which is submitted to the State or POTW shall be available to the public at least to the extent provided by 40 CFR 2.302.

§ 403.15 Net/Gross calculation.

Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial Users' intake water in accordance with the provisions of paragraph (a) through (d) of this section:

(a) *Application deadline and contents.* Any Industrial User wishing to obtain a credit for intake pollutants must make application therefor to the appropriate Water Management Division Director. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis, i.e., adjusted to reflect credit for pollutants in the intake water, if the User demonstrates that:

(1) Its intake water is drawn from the same body of water into which the discharge from its publicly owned treatment works is made;

(2) The pollutants present in the intake water will not be entirely removed by the treatment system operated by the User;

(3) The pollutants in the intake water do not vary chemically or biologically from the pollutants limited by the applicable Standards; and

(4) The User does not significantly increase concentrations of pollutants in the intake water, even if the total amount of pollutants remains the same.

(b) *Criteria.* Standards adjusted under this paragraph shall be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the Industrial User. Adjustments under this section shall be given only to the extent that pollutants in the intake water which are limited by the Standard are not removed by the treatment technology employed by the User.

(c) *Notice.* The User shall notify the Regional Enforcement Officer if there are any significant changes in the quantity of the pollutants in the intake water or in the level of treatment provided.

(d) *EPA decision.* The Water Management Division Director shall require the User to conduct additional monitoring (i.e., for flow and concentration of pollutants) as necessary to determine continued eligibility for and compliance with any adjustments. The Water Management Division Director shall consider all timely applications for credits for intake pollutants plus any additional evidence that may have been submitted in response to the EPA's request. The Water Management Division Director shall then make a written determination of the applicable credit(s), if any, state the reasons for its determination, state what additional monitoring is necessary, and send a copy of said determination to the applicant and the applicant's POTW. The decision of the Water Management Division Director shall be final.

[46 FR 9439, Jan. 28, 1981, as amended at 51 FR 20429, June 4, 1986]

Department of Energy
Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 10

Document Incorporated By Reference
40 C.F.R. Chapter I Subchapter N
Part 403, as amended by 51 Fed. Reg. 36368
(Oct. 9, 1986)

EFFECTIVE DATE NOTE: At 51 FR 20429, June 4, 1986, § 403.15 was amended by revising the introductory paragraph of paragraph (a), effective July 7, 1986. For the convenience of the user, the superseded text is set forth as follows:

§ 403.15 Net/Gross calculation.

* * * * *

(a) *Application deadline and contents.* Any Industrial User wishing to obtain a credit for intake pollutants must make application therefore within 60 days after the effective date of the applicable categorical Pretreatment Standard. Application shall be made to the appropriate Enforcement Division Director. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis, i.e., adjusted to reflect credit for pollutants in the intake water, if the User demonstrates that:

* * * * *

§ 403.16 Upset provision.

(a) *Definition.* For the purposes of this section, "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An Upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) *Effect of an upset.* An Upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (c) are met.

(c) *Conditions necessary for a demonstration of upset.* An Industrial User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An Upset occurred and the Industrial User can identify the specific cause(s) of the Upset;

(2) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

(3) The Industrial User has submitted the following information to the POTW and Control Authority within 24 hours of becoming aware of the Upset (if this information is provided orally, a written submission must be provided within five days):

(i) A description of the Indirect Discharge and cause of noncompliance;

(ii) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;

(iii) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

(d) *Burden of proof.* In any enforcement proceeding the Industrial User seeking to establish the occurrence of an Upset shall have the burden of proof.

(e) *Reviewability of agency consideration of claims of upset.* In the usual exercise of prosecutorial discretion, Agency enforcement personnel should review any claims that non-compliance was caused by an Upset. No determinations made in the course of the review constitute final Agency action subject to judicial review. Industrial Users will have the opportunity for a judicial determination on any claim of Upset only in an enforcement action brought for noncompliance with categorical Pretreatment Standards.

(f) *User responsibility in case of upset.* The Industrial User shall control production or all Discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

Department of Energy
Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 10

Document Incorporated By Reference
40 C.F.R. Chapter I Subchapter N
Part 403, as amended by 51 Fed. Reg. 36368
(Oct. 9, 1986)

APPENDIX A—U.S. ENVIRONMENTAL PROTECTION AGENCY

December 16, 1975.

Program Guidance Memorandum—61

Subject: Grants for Treatment and Control of Combined Sewer Overflows and Stormwater Discharges.

From: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546).

To: Regional Administrators, Regions I-X.

This memorandum summarizes the Agency's policy on the use of construction grants for treatment and control of combined sewer overflows and stormwater discharges during wet-weather conditions. The purpose is to assure that projects are funded only when careful planning has demonstrated they are cost-effective.

I. COMBINED SEWER OVERFLOWS

A. Background

The costs and benefits of control of various portions of pollution due to combined sewer overflows and by-passes vary greatly with the characteristics of the sewer and treatment system, the duration, intensity, frequency and areal extent of precipitation, the type and extent of development in the service area, and the characteristics, uses and water quality standards of the receiving waters. Decisions on grants for control of combined sewer overflows, therefore, must be made on a case-by-case basis after detailed planning at the local level.

Where detailed planning has been completed, treatment or control of pollution from wet-weather overflows and bypasses may be given priority for construction grant funds only after provision has been made for secondary treatment of dry-weather flows in the area. The detailed planning requirements and criteria for project approval follow.

B. Planning Requirements

Construction grants may be approved for control of pollution from combined sewer overflows only if planning for the project was thoroughly analyzed for the 20 year planning period:

1. Alternative control techniques which might be utilized to attain various levels of pollution control (related to alternative beneficial uses, if appropriate), including at least initial consideration of all the alternatives described in the section on combined sewer and stormwater control in "Alternative Waste Management Techniques and Best Practicable Waste Treatment" (Section C of Chapter III of the information proposed for comment in March 1974).

2. The costs of achieving the various levels of pollution control by each of the techniques appearing to be the most feasible and cost-effective after the preliminary analysis.

3. The benefits to the receiving waters of a range of levels of pollution control during wet-weather conditions. This analysis will normally be conducted as part of State water quality management planning, 208 areawide management planning, or other State, regional or local planning effort.

4. The costs and benefits of addition of advanced waste treatment processes to dry-weather flows in the area.

C. Criteria for Project Approval

The final alternative selected shall meet the following criteria:

1. The analysis required above has demonstrated that the level of pollution control provided will be necessary to protect a beneficial use of the receiving water even after technology based standards required by Section 301 of Pub. L. 92-500 are achieved by industrial point sources and at least secondary treatment is achieved for dry-weather municipal flows in the area.

2. Provision has already been made for funding of secondary treatment of dry-weather flows in the area.

3. The pollution control technique proposed for combined sewer overflow is a more cost-effective means of protecting the beneficial use of the receiving waters than other combined sewer pollution control techniques and the addition of treatment higher than secondary treatment for dry-weather municipal flows in the area.

4. The marginal costs are not substantial compared to marginal benefits.

Marginal costs and benefits for each alternative may be displayed graphically to assist with determining a project's acceptability under this criterion. Dollar costs should be compared with quantified pollution reduction and water quality improvements. A descriptive narrative should also be included analyzing monetary, social and environmental costs compared to benefits, particularly the significance of the beneficial uses to be protected by the project.

II. STORMWATER DISCHARGES

Approaches for reducing pollution from separate stormwater discharges are now in the early stages of development and evaluation. We anticipate, however, that in many cases the benefits obtained by construction of treatment works for this purpose will be small compared with the costs, and other techniques of control and prevention will be more cost-effective. The policy of the

Department of Energy
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Leg. Rule, 22-1, 22A-1, 22A-1A,
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Document Incorporated By Reference
40 C.F.R. Chapter I Subchapter N
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(Oct. 9, 1986)

Polychlorinated biphenyls (PCBs)
Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
Selenium and compounds
Silver and compounds
2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)
Tetrachloroethylene
Thallium and compounds
Toluene
Toxaphene
Trichloroethylene
Vinyl chloride
Zinc and compounds.

[51 FR 20429, June 4, 1986]

EFFECTIVE DATE NOTE: At 51 FR 20429, June 4, 1986, Part 403 was amended by revising Appendix B, effective July 7, 1986. For the convenience of the user, the superseded text is set forth as follows:

APPENDIX B—65 TOXIC POLLUTANTS

Acenaphthene
Acrolein
Acrylonitrile
Aldrin/Dieldrin
Antimony and compounds[1]
Arsenic and compounds
Asbestos
Benzene
Benzidine
Beryllium and compounds
Cadmium and compounds
Carbon tetrachloride
Chlordane (technical mixture and metabolites)
Chlorinated benzenes (other than dichlorobenzenes)
Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane)
Chloralkyl ethers (chloromethyl, chloroethyl, and mixed ethers)
Chlorinated naphthalene
Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
Chloroform
2-chlorophenol
Chromium and compounds
Copper and compounds
Cyanides
DDT and metabolites
Dichlorobenzenes (1,2-, 1,3-, and 1,4-dichlorobenzenes)
Dichlorobenzidine
Dichloroethylenes (1,1- and 1,2-dichloroethylene)
2,4-dichlorophenol
Dichloropropane and dichloropropene
2,4-dimethylphenol
Dinitrotoluene
Diphenylhydrazine
Endosulfan and metabolites
Endrin and metabolites
Ethylbenzene
Fluoranthene
Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis(dischloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
Halomethanes (other than those listed elsewhere; includes methylene chloromethylchloride, methylbromide, bromoform, dichlorobromomethane, trichlorofluoromethane, dichlorodifluoromethane)
Heptachlor and metabolites
Hexachlorobutadiene
Hexachlorocyclohexane (all isomers)
Hexachlorocyclopentadiene
Isophorone
Lead and compounds
Mercury and compounds
Naphthalene
Nickel and compounds
Nitrobenzene
Nitrophenols (Including 2,4-dinitrophenol, dinitrocresol)
Nitrosamines
Pentachlorophenol
Phenol
Phthalate esters
Polychlorinated biphenyls (PCBs)
Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes,benzofluroranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
Selenium and compounds
Silver and compounds
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)
Tetrachloroethylene
Thallium and compounds
Toluene
Toxaphene
Trichloroethylene
Vinyl chloride
Zinc and compounds

APPENDIX C—INDUSTRIAL CATEGORIES SUBJECT TO NATIONAL CATEGORICAL PRETREATMENT STANDARDS

Aluminum Forming
Asbestos Manufacturing
Battery Manufacturing
Builder's Paper
Carbon Black
Cement Manufacturing
Coil Coating
Copper Forming
Dairy Products Processing

[1]As used throughout this appendix the term "compounds" shall include organic and inorganic compounds.

Department of Energy
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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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Electrical and Electronic Components
Electroplating
Feedlots
Ferroalloy Manufacturing
Fertilizer Manufacturing
Fruits and Vegetables Processing Manufacturing
Glass Manufacturing
Grain Mills Manufacturing
Ink Formulating
Inorganic Chemicals
Iron and Steel Manufacturing
Leather Tanning and Finishing
Meat Processing
Metal Finishing
Metal Molding and Casting
Nonferrous Metals Forming
Nonferrous Metals Manufacturing
Paint Formulating
Paving and Roofing (Tars and Asphalt)
Pesticides
Petroleum Refining
Pharmaceuticals
Phosphate Manufacturing
Porcelain Enameling
Pulp and Paper
Rubber Processing
Seafood Processing
Soaps and Detergents Manufacturing
Steam Electric
Sugar Processing
Timber Products Manufacturing
Plastics Molding and Forming
Textile Mills.

[51 FR 20431, June 4, 1986]

EFFECTIVE DATE NOTE: At 51 FR 20431, June 4, 1986, Part 403 was amended by revising Appendix C, effective July 7, 1986. For the convenience of the user, the superseded text is set forth as follows:

APPENDIX C—34 INDUSTRIAL CATEGORIES

Adhesives and Sealants
Aluminum Forming
Auto and Other Laundries
Battery Manufacturing
Coal Mining
Coil Coating
Copper Forming
Electrical and Electronic Components
Electroplating
Explosives Manufacturing
Foundries
Gum and Wood Chemicals
Inorganic Chemicals Manufacturing
Iron and Steel Manufacturing
Leather Tanning and Finishing
Mechanical Products Manufacturing
Nonferrous Metals Manufacturing
Ore Mining
Organic Chemicals Manufacturing
Paint and Ink Formulation
Pesticides
Petroleum Refining
Pharmaceutical Preparations
Photographic Equipment and Supplies
Plastics Processing
Plastic and Synthetic Materials Manufacturing
Porcelain Enameling
Printing and Publishing
Pulp and Paper Mills
Rubber Processing
Soap and Detergent Manufacturing
Steam Electric Power Plants
Textile Mills
Timber Products Processing

APPENDIX D—SELECTED INDUSTRIAL SUBCATEGORIES EXEMPTED FROM REGULATION PURSUANT TO PARAGRAPH 8 OF THE NRDC v. COSTLE CONSENT DECREE

The following industrial subcategories have been excluded from further rulemaking pursuant to paragraph 8 of the *Natural Resources Defense Council* v. *Costle* Consent Decree for one or more of the following reasons: (1) The pollutants of concern are not detectable in the effluent from the Industrial User (paragraph 8(a)(iii)); (2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragrpah 8(a)(iii)); (3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph 8(a)(iii)); or (4) the wastestream contains only pollutants which are compatible with the POTW (paragraph 8(b)(i)). In some instances, different rationale were given for exclusion under paragraph 8. However, EPA has reviewed these subcategories and has determined that exclusion could have occurred due to one of the four reasons listed above.

This list includes all subcategories that have been excluded for the above-listed reasons as of January 28, 1981. This list will be updated periodically for the convenience of the reader.

Auto and Other Laundries Industry

Carpet Cleaners
Coin Operated Laundries
Diaper Services
Dry Cleaners
Power Laundries

Battery Manufacturing Industry

Carbon Zinc Air Cell Batteries
Lithium Batteries
Magnesium Carbon Batteries
Magnesium Cell Batteries
Miniature Alkaline Batteries
Nickel Zinc Batteries

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Electrical and Electronic Components

Carbon and Graphite Products
Fixed Capacitors
Fluorescent Lamps
Incandescent Lamps
Magnetic Coatings
Mica Paper

Electroplating

Alkaline Cleaning
Bright Dipping
Chemical Machining
Galvanizing
Immersion Plating
Iridite Dipping
Pickling

Explosives Industry

Military Explosive Manufacturing

Foundries Industry

Nickel Casting
Tin Casting
Titanium Casting

Gum and Wood Chemicals

Char and Charcoal Briquets
Gum Resin, Turpentine and Essential Oils

Iron and Steel Industry

Basic Oxygen Furnace (Semiwet)
Beehive Coke Process
Electric Arc Furnace (Semiwet)

Inorganic Chemicals Manufacturing Industry

Aluminum Sulfate
Ammonium Chloride
Ammonium Hydroxide
Barium Carbonate
Borax
Boric Acid
Bromine
Calcium Carbide
Calcium Carbonate
Calcium Chloride
Calcium Hydroxide
Calcium Oxide
Carbon Dioxide
Carbon Monoxide
Chromic Acid
Cuprous Oxide
Ferric Chloride
Ferrous Sulfate
Fluorine
Hydrogen
Hydrochloric Acid
Hydrogen Peroxide
Iodine
Lead Monoxide
Lithium Carbonate
Manganese Sulfate
Nitric Acid
Oxygen and Nitrogen
Potassium Chloride
Potassium Dichromate
Potassium Iodide
Potassium Metal
Potassium Permanganate
Potassium Sulfate
Sodium Bicarbonate
Sodium Carbonate
Sodium Chloride
Sodium Fluoride
Sodium Hydrosulfide
Sodium Metal
Sodium Silicate
Sodium Sulfite
Sodium Thiosulfate
Stannic Oxide
Sulfur Dioxide
Sulfuric Acid
Zinc Oxide
Zinc Sulfate

Leather Industries

Gloves
Luggage
Shoes and Related Footwear
Personal Goods

Non Ferrous Metals Industry

Primary Arsenic
Primary Antimony
Secondary Babbitt
Primary Barium
Secondary Beryllium
Primary Bismuth
Primary Boron
Secondary Boron
Bauxite
Secondary Cadmium
Primary Calcium
Primary Cesium
Primary Chromium
Primary Cobalt
Secondary Cobalt
Secondary Columbium
Primary Gallium
Primary Germanium
Primary Gold
Secondary Precious Metals
Primary Hafnium
Primary and Secondary Indium
Primary Lithium
Primary Manganese
Primary Magnesium
Secondary Magnesium
Primary Mercury
Secondary Mercury
Primary Molybdenum
Secondary Molybdenum
Primary Nickel
Secondary Nickel
Secondary Plutonium
Primary Potassium
Primary Rare Earths
Primary Rhenium
Secondary Rhenium
Primary Rubidium

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Document Incorporated By Reference
40 C.F.R. Chapter I Subchapter N
Part 403, as amended by 51 Fed. Reg. 36368
(Oct. 9, 1986)

Primary Platinum Group
Primary Silicon
Primary Sodium
Secondary Tantalum
Primary Tin
Secondary Tin
Primary Titanium
Secondary Titanium
Secondary Tungsten
Primary Uranium
Secondary Uranium
Secondary Zinc
Primary Zirconium

Paint and Ink Industry

Solvent Base Process
Solvent Wash Process

Paving and Roofing Industry

Asphalt Concrete
Asphalt Emulsion
Linoleum
Printed Asphalt Felt
Roofing

Pulp, Paper, Paperboard, and Converted Paper Industry

Converted Paper Industry

Rubber Processing Industry

Latex-Dipped, Latex-Extruded, and Latex Molded Goods
Latex Foam
Small-sized General Molded, Extruded and Fabricated Rubber Plants
Medium-sized General Molded, Extruded and Fabricated Rubber Plants
Large-sized General Molded, Extruded and Fabricated Rubber Plants
Synthetic Crumb Rubber Production—Emulsion Polymerization
Synthetic Crumb Rubber Production—Solution Polymerization
Synthetic Latex Rubber Production
Tire & Inner Tube Production

Textile Industry

Apparel Manufacturing
Cordage and Twine
Low Water Use Processing (Greige Mills)
Padding and Upholstery Filling

Timber Products Processing

Barking Process
Finishing Processes
Hardboard—Dry Process
Log Washing
Particleboard
Planing Mills
Sawmills
Veneer
Wet Storage
Wood Preserving (Inorganics) Process

Appendix E—Sampling Procedures

I. Composite Method

A. It is recommended that influent and effluent operational data be obtained through 24-hour flow proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. If discrete sampling is employed, at least 12 aliquots should be composited. Discrete sampling may be flow proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites should be flow proportional to either the stream flow at the time of collection of the influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

B. Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the Approval Authority requires detention time compensation. The Approval Authority may require that each effluent sample is taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period should be based on a 24-hour average daily flow value. The average daily flow should in turn be based on the average of the daily flows during the same month of the previous year.

II. Grab Method

If composite sampling is not an appropriate technique, grab samples should be taken to obtain influent and effluent operational data. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes. The collection of influent grab samples should precede the collection of effluent samples by approximately one detention period except that where the detention period is greater than 24 hours such staggering of the sample collection may not be necessary or appropriate. The detention period should be based on a 24-hour average daily flow value. The average daily flow should in turn be based upon the average of the daily flows during the same month of the previous year. Grab sampling should be employed where the pollutants being evaluated are those, such as cyanide and phenol, which may not be held for an extended period because of biological, chemical or physical interaction which take place after sample collection and affect the results.

[49 FR 31225, Aug. 3, 1984]

Department of Energy
Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 10

Document Incorporated By Reference
40 C.F.R. Chapter I Subchapter N
Part 403, as amended by 51 Fed. Reg. 36368
(Oct. 9, 1986)

Appendix E—Sampling Procedures

I. Composite Method

A. It is recommended that influent and effluent operational data be obtained through 24-hour flow proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. If discrete sampling is employed, at least 12 aliquots should be composited. Discrete sampling may be flow proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites should be flow proportional to either the stream flow at the time of collection of the influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

B. Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the Approval Authority requires detention time compensation. The Approval Authority may require that each effluent sample is taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period should be based on a 24-hour average daily flow value. The average daily flow should in turn be based on the average of the daily flows during the same month of the previous year.

II. Grab Method

If composite sampling is not an appropriate technique, grab samples should be taken to obtain influent and effluent operational data. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes. The collection of influent grab samples should precede the collection of effluent samples by approximately one detention period except that where the detention period is greater than 24 hours such staggering of the sample collection may not be necessary or appropriate. The detention period should be based on a 24-hour average daily flow value. The average daily flow should in turn be based upon the average of the daily flows during the same month of the previous year. Grab sampling should be employed where the pollutants being evaluated are those, such as cyanide and phenol, which may not be held for an extended period because of biological, chemical or physical interaction which take place after sample collection and affect the results.

[49 FR 31225, Aug. 3, 1984]

Department of Energy
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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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Document Incorporated By Reference
40 C.F.R. Chapter I Subchapter N
Part 403, as amended by 51 Fed. Reg. 36368
(Oct. 9, 1986)

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES

For the reason set out in the preamble, 40 CFR Part 403 is amended as follows:

1. The authority citation for Part 403 continues to read as follows:

Authority: Secs. 301; 304 (b), (c), (e), and (g); 306 (b) and (c); 307; 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972), as amended by the Clean Water Act of (1977), (the "Act"); 33 U.S.C. 1311; 1314 (b), (c), (e), and (g); 1316 (b) and (c); 1317; 1318; and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567; Pub. L. 95-217.

2. Part 403 is amended by revising Appendix D to read as follows:

Appendix D—Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Wastestream Formula

The following industrial subcategories are considered to have dilute wastestreams for purposes of the combined wastestream formula. They either were or could have been excluded from categorical pretreatment standards pursuant to paragraph 8 of the Natural Resources Defense Council, Inc., et al. v. Costle Consent Decree for one or more of the following four reasons: (1) The pollutants of concern are not detectable in the effluent from the industrial user (paragraph 8(a)(iii)); (2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph 8(a)(iii)); (3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph 8(a)(iii)); or (4) the wastestream contains only pollutants which are compatible with the POTW (paragraph 8(b)(i)). In some instances, different rationales were given for exclusion under paragraph 8. However, EPA has reviewed these subcategories and has determined that exclusion could have occurred due to one of the four reasons listed above.

This list is complete as of October 9, 1986. It will be updated periodically for the convenience of the reader.

Auto and Other Laundries (40 CFR Part 444)
- Carpet and Upholstery Cleaning
- Coin-Operated Laundries and Dry Cleaning
- Diaper Services
- Dry Cleaning Plants except Rug Cleaning
- Industrial Laundries
- Laundry and Garment Services, Not Elsewhere Classified
- Linen Supply
- Power Laundries, Family and Commercial

Electrical and Electronic Components [1] (40 CFR Part 469)
- Capacitors (Fluid Fill)
- Carbon and Graphite Products
- Dry Transformers
- Ferrite Electronic Devices
- Fixed Capacitors
- Fluorescent Lamps
- Fuel Cells
- Incandescent Lamps
- Magnetic Coatings
- Mica Paper Dielectric
- Motors, Generators, Alternators
- Receiving and Transmitting Tubes
- Resistance Heaters
- Resistors
- Switchgear
- Transformer (Fluid Fill)

Metal Molding and Casting (40 CFR Part 464)
- Nickel Casting
- Tin Casting
- Titanium Casting

Gum and Wood Chemicals (40 CFR Part 454)
- Char and Charcoal Briquets

Inorganic Chemicals Manufacturing (40 CFR Part 415)
- Ammonium Chloride
- Ammonium Hydroxide
- Barium Carbonate
- Calcium Carbonate
- Carbon Dioxide
- Carbon Monoxide and Byproduct Hydrogen
- Hydrochloric Acid
- Hydrogen Peroxide (Organic Process)
- Nitric Acid
- Oxygen and Nitrogen
- Potassium Iodide
- Sodium Chloride (Brine Mining Process)
- Sodium Hydrosulfide
- Sodium Hydrosulfite
- Sodium Metal
- Sodium Silicate
- Sodium Thiosulfate
- Sulfur Dioxide
- Sulfuric Acid

Leather (40 CFR Part 425)
- Gloves
- Luggage

Paving and Roofing (40 CFR Part 443)
- Asphalt Concrete
- Asphalt Emulsion
- Linoleum
- Printed Asphalt Felt
- Roofing

Pulp, Paper, and Paperboard, and Builders' Paper and Board Mills (40 CFR Parts 430 and 431)
- Groundwood-Chemi-Mechanical

Rubber Manufacturing (40 CFR Part 428)
- Tire and Inner Tube Plants
- Emulsion Crumb Rubber
- Solution Crumb Rubber
- Latex Rubber
- Small-sized General Molded, Extruded and Fabricated Rubber Plants.[2]
- Medium-sided General Molded, Extruded and Fabricated Rubber Plants [2]
- Large-sized General Molded, Extruded and Fabricated Rubber Plants [2]
- Wet Digestion Reclaimed Rubber
- Pan, Dry Digestion, and Mechanical Reclaimed Rubber
- Latex Dipped, Latex-Extruded, and Latex-Molded Rubber [3]
- Latex Foam [4]

Soap and Detergent Manufacturing (40 CFR Part 417)
- Soap Manufacture by Batch Kettle
- Fatty Acid Manufacture by Fat Splitting
- Soap Manufacture by Fatty Acid Neutralization
- Glycerine Concentration
- Glycerine Distillation
- Manufacture of Soap Flakes and Powders
- Manufacture of Bar Soaps
- Manufacture of Liquid Soaps
- Manufacture of Spray Dried Detergents
- Manufacture of Liquid Detergents
- Manufacture of Dry Blended Detergents
- Manufacture of Drum Dried Detergents
- Manufacture of Detergent Bars and Cakes

Textile Mills (40 CFR Part 410)
- Apparel manufacturing
- Cordage and Twine
- Padding and Upholstery Filling

Timber Products Processing (40 CFR Part 429)
- Barking Process
- Finishing Processes
- Hardboard—Dry Process

[FR Doc. 86-22944 Filed 10-8-86; 8:45 am]
BILLING CODE 6560-50-M

[1] The Paragraph 8 exemption for the manufacture of products in the Electrical and Electronic Components Category is for operations not covered by Electroplating/Metal Finishing pretreatment regulations (40 CFR Parts 413/433).

[2] Footnote: Except for production attributed to leadsheathed hose manufacturing operations.

[3] Footnote: Except for production attributed to chromic acid form-cleaning operations

[4] Footnote: Except for production that generates zinc as a pollutant in discharge.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 10

Document Incorporated By Reference
40 C.F.R. Part 434

PART 434—COAL MINING POINT SOURCE CATEGORY; BPT, BAT, BCT LIMITATIONS AND NEW SOURCE PERFORMANCE STANDARDS

Subpart A—General Provisions

Sec.

Subpart B—Coal Preparation Plant and Coal Preparation Plant Associated Areas

Subpart C—Acid or Ferruginous Mine Drainage

Department of Energy
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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 10

Document Incorporated By Reference
40 C.F.R. Part 434

Sec.

AUTHORITY: Secs. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977), (the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

SOURCE: 47 FR 45393, Oct. 13, 1982, unless *otherwise noted.*

Subpart A—General Provisions

§ 434.10 Applicability.

This part applies to discharges from any coal mine at which the extraction of coal is taking place or is planned to be undertaken and to coal preparation plants and associated areas.

§ 434.11 General definitions.

(a) The term "acid or ferruginous mine drainage" means mine drainage which, before any treatment, either has a pH of less than 6.0 or a total iron concentration equal to or more than 10 mg/l.

(b) The term "active mining area" means the areas, on and beneath land, used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas.

(c) The term "alkaline mine drainage" means mine drainage which, before any treatment, has a pH equal to or more than 6.0 and a total iron concentration of less than 10 mg/l.

(d) The term "bond release" means the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work (including, in the case of underground mines, mine sealing and abandonment procedures) has been satisfactorily completed.

(e) The term "coal preparation plant" means a facility where coal is subjected to cleaning, concentrating, or other processing or preparation in order to separate coal from its impurities and then is loaded for transit to a consuming facility.

(f) The term "coal preparation plant associated areas" means the coal preparation plant yards, immediate access roads, coal refuse piles, and coal storage piles and facilities.

(g) The term "coal preparation plant water circuit" means all pipes, channels, basins, tanks, and all other structures and equipment that convey, contain, treat, or process any water that is used in coal preparation processes within a coal preparation plant.

(h) The term "mine drainage" means any drainage, and any water pumped or siphoned, from an active mining area or a post-mining area.

(i) The abbreviation "ml/l" means milliliters per liter.

(j)(1) Subject to paragraph (j)(2) of this section, the term "new source coal mine" means a coal mine (excluding coal preparation plants and coal preparation plant associated areas):

(i) The construction of which is commenced after May 29, 1981 (the date of publication of the proposal of these regulations); or

(ii) Which is determined by the EPA Regional Administrator to constitute a "major alteration." In making this determination, the Regional Administrator shall take into account the occurrence of one or more of the following events, in connection with the mine for which the NPDES permit is being considered, after the date of proposal of applicable new source performance standards:

(A) A mine operation initiates extraction of a coal seam not previously extracted by that mine;

(B) A mine operation discharges into a drainage area not previously affected by wastewater discharges from the mine;

(C) A mine operation causes extensive new surface disruption;

(D) A mine operation initiates construction of a new shaft, slope, or drift;

(E) A mine operation acquires additional land or mineral rights;

(F) A mine operation makes significant capital investment in additional equipment or additional facilities; and

(G) Such other factors as the Regional Administrator deems relevant.

(2) No provision in this part shall be deemed to affect the classification as a new source, pursuant to EPA's promulgation of January 13, 1981 (46 FR 3136), of a coal mine on which construction began prior to May 29, 1981.

(k) The term "post-mining area" means: (1) A reclamation area or (2) the underground workings of an underground coal mine after the extraction, removal, or recovery of coal from its natural deposit has ceased and prior to bond release.

(l) The term "reclamation area" means the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.

(m) The term "settleable solids" is that matter measured by the volumetric method specified in § 434.64.

(n) The term "10-year, 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in ten years as defined by the National Weather Service and Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, or equivalent regional or rainfall probability information developed therefrom.

(o) The terms "treatment facility" and "treatment system" mean all structures which contain, convey, and as necessary, chemically or physically treat coal mine drainage, coal preparation plant process wastewater, or drainage, from coal preparation plant associated areas, which remove pollutants regulated by this part from such waters. This includes all pipes, channels, ponds, basins, tanks and all other equipment serving such structures.

[47 FR 45393, Oct. 13, 1982; 48 FR 50321, Nov. 1, 1983]

Subpart B—Coal Preparation Plant and Coal Preparation Plant Associated Areas

§ 434.20 Applicability.

The provisions of this subpart are applicable to discharges from coal preparation plants and coal preparation plant associated areas, as indicated, including discharges which are pumped, siphoned, or drained from the coal preparation plant water circuit and coal storage, refuse storage, and ancillary areas related to the cleaning or beneficiation of coal of any rank including, but not limited to, bituminous, lignite, and anthracite.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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Document Incorporated By Reference
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§ 434.21 [Reserved]

§ 434.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30 through 125.32, 40 CFR 401.17, and §§ 434.61, 434.62 and 434.63 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant associated areas subject to the provisions of this subpart after application of the best practicable control technology currently available if discharges from such point sources normally exhibit a pH of less than 6.0 prior to treatment:

BPT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
TSS	70	35
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0 at all times.

(b) Except as provided in 40 CFR 125.30 through 125.32, 40 CFR 401.17, and §§ 434.61 and 434.63 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant associated areas subject to the provisions of this subpart after application of the best practicable control technology currently available if discharges from such point sources normally exhibit a pH equal to or greater than 6.0 prior to treatment:

BPT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5
TSS	70	35
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0 at all times.

[47 FR 45393, Oct. 13, 1982]

§ 434.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30 through 125.32, and §§ 434.61, 434.62 and 434.63 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant associated areas subject to the provisions of this subpart after application of the best available technology economically achievable if discharges from such point sources normally exhibit a pH of less than 6.0 prior to treatment:

BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5
Manganese, total	4.0	2.0

(b) Except as provided in 40 CFR 125.30 through 125.32, and §§ 434.61 and 434.63 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant associated areas subject to the provisions of this subpart after application of the best available technology economically achievable if discharges

from such point sources normally exhibit a pH equal to or greater than 6.0 prior to treatment:

BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5

§ 434.24 [Reserved]

§ 434.25 New source performance standards (NSPS).

The following new source performance standards (NSPS) shall be achieved by any new source coal preparation plant and coal preparation plant associated areas, as indicated:

(a) Except as provided in paragraph (b) of this section, for new source coal preparation plants, there shall be no discharge of process wastewater pollutants from the coal preparation plant water circuit to surface waters.

(b) An occasional discharge or purge of pollutants may occur when necessary to reduce the concentration of solids or process chemicals in the water circuit to a level which would not interfere with the preparation process or process equipment, provided that:

(1) Advance written notice must be submitted to the permitting authority and the permitting authority does not disapprove the discharge. Such notice shall include: (i) Description of the need for the discharge or purge; (ii) the period of discharge or purge including anticipated dates and times; (iii) an estimate of discharge volume; and (iv) the intended receiving area.

(2) The occasional purge or discharge, if discharged to waters of the United States, shall be subject to the limitations specified in § 434.23(a) if the discharge normally exhibits a pH of less than 6.0, and § 434.23(b) if the discharge normally exhibits a pH of 6.0 or greater. The operator shall have the burden of proof that the purge was necessary to reduce the concentration of solids or process chemicals in the water circuit to a level which would not interfere with the preparation process or process equipment. This paragraph shall not exempt a facility subject to this part from complying with the other effluent limitations and standards set forth in this part, as appropriate. The permitting authority may include in the permit a provision limiting the amount or frequency of the purge.

(c) Except as provided in 40 CFR 401.17 and §§ 434.61, 434.62 and 434.63 of this part, the following new source performance standards shall apply for discharges from new source coal preparation plant associated areas:

NSPS EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	6.0	3.0
Manganese	4.0	2.0
TSS	70.0	35.0
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

(Approved by the Office of Management and Budget under control number 2040-0026)

[47 FR 45393, Oct. 13, 1982; 48 FR 50321, Nov. 1, 1983; 50 FR 4514, Jan. 31, 1985]

Subpart C—Acid or Ferruginous Mine Drainage

§ 434.30 Applicability; description of the acid or ferruginous mine drainage subcategory.

The provisions of this subpart are applicable to acid or ferruginous mine drainage from an active mining area resulting from the mining of coal of any rank including, but not limited to, bituminous, lignite, and anthracite.

§ 434.31 [Reserved]

§ 434.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30 through 125.32, 40 CFR 401.17, and §§ 434.61, 434.62 and, with respect to mine drainage from surface areas of a coal mine and drainage from the underground workings of underground mines which is commingled with surface mine discharges, § 434.63 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

BPT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
TSS	70.0	35.0
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

§ 434.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30 through 125.32, 40 CFR 401.17, §§ 434.61, 434.62 and, with respect to mine drainage from surface areas of a coal mine and drainage from the underground workings of underground mines which is commingled with surface mine discharges, § 434.63 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, Total	7.0	3.5
Manganese total	4.0	2.0

§ 434.34 [Reserved]

§ 434.35 New source performance standards (NSPS)

(a) Except as provided in 40 CFR 401.17 §§ 434.61, 434.62 and, with respect to mine drainage from surface areas of a coal mine and drainage from the underground workings of underground mines which is commingled with surface mine discharges, § 434.63 of this part, the following new source performance standards shall be achieved for any discharge from a new source subject to this subpart:

NSPS EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	6.0	3.0
Manganese, total	4.0	2.0
TSS	70.0	35.0
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

Subpart D—Alkaline Mine Drainage

§ 434.40 Applicability; description of the alkaline mine drainage subcategory.

The provisions of this subpart are applicable to alkaline mine drainage from an active mining area resulting from the mining of coal of any rank including, but not limited to, bituminous, lignite, and anthracite.

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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§ 434.41 [Reserved]

§ 434.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30 through 125.32, 40 CFR 401.17, § 434.61 and, with respect to mine drainage from surface areas of a coal mine and drainage from the underground workings of underground mines which is commingled with surface mine discharges, § 434.63 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

BPT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5
TSS	70.0	35.0
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

[47 FR 45393, Oct. 13, 1982; 48 FR 50322, Nov. 1, 1983]

§ 434.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30 through 125.32, § 434.61 and, with respect to mine drainage from surface areas of a coal mine and drainage from the underground workings of underground mines which is commingled with surface mine discharges, § 434.63 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5

[47 FR 45393, Oct. 13, 1982; 48 FR 50322, Nov. 1, 1983]

§ 434.44 [Reserved]

§ 434.45 New source performance standards (NSPS).

(a) Except as provided in 40 CFR 401.17 and § 434.61 and, with respect to mine drainage from surface areas of a coal mine and drainage from the underground workings of underground mines which is commingled with surface mine discharges, § 434.63 of this part, the following new source performance standards shall be achieved for any discharge from a new source subject to this subpart:

NSPS EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	6.0	3.0
TSS	70.0	35.0
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

[47 FR 45393, Oct. 13, 1982; 48 FR 50322, Nov. 1, 1983]

Department of Energy
Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 10

Document Incorporated By Reference
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Subpart E—Post-Mining Area

§ 434.50 Applicability; the provisions of this subpart are applicable to discharges from post-mining areas.

§ 434.51 [Reserved]

§ 434.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) *Reclamation areas.* The limitations in this subparagraph apply to discharges from reclamation areas until the performance bond issued to the facility by the appropriate SMCRA authority has been released.

(1) Except as provided in 40 CFR 125.30 through 125.32, 40 CFR 401.17 and §§ 434.61 and 434.63(b) of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subsection after application of the best practicable control technology currently available:

BPT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Settleable Solids	0.5 ml/l	
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

(b) *Underground mine drainage.* The limitations in this subparagraph apply to discharges from the underground workings of underground mines until SMCRA bond release.

(1) Except as provided in 40 CFR 125.30 through 125.32, 40 CFR 401.17 and §§ 434.61 and 434.62 and, with respect to mine drainage from the underground workings of underground mines which is commingled with surface mine discharges, § 434.63 of this part, the following limitations establish the concentration or quality of pollutants in acid or ferruginous mine drainage subject to the provisions of this subsection after application of the best practicable control technology currently available:

BPT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
TSS	70.0	35.0
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

(2) Except as provided in 40 CFR 125.30 through 125.32, 40 CFR 401.17, § 434.61 and, with respect to mine drainage from the underground workings of underground mines which is commingled with surface mine discharges, § 434.63 of this part, the following limitations establish the concentration or quality of pollutants in alkaline mine drainage subject to the provisions of this subsection after application of the best practicable control technology currently available:

BPT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5
TSS	70.0	35.0
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

[47 FR 45393, Oct. 13, 1982; 48 FR 50322, Nov. 1, 1983]

§ 434.53 Effluent limitations guidelines representing the degree of effluent reduction attainable by application of the best available technology economically achievable (BAT).

(a) *Reclamation areas.* The limitations of this subsection apply to discharges from reclamation areas until SMCRA bond release.

(1) Except as provided in 40 CFR 125.30 through 125.32, and §§ 434.61 and 434.63(b) of this part, the following limitations establish the concentration or quality of pollutants which

may be discharged by a point source subject to the provisions of this subsection after application of the best available technology economically achievable:

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Settleable Solids	0.5 (ml/l)	

(b) *Underground mine drainage.* The limitations in this subsection apply to discharges from the underground workings of underground mines until SMCRA bond release.

(1) Except as provided in 40 CFR 125.30 through 125.32, and §§ 434.61, 434.62, and, with respect to mine drainage from the underground workings of underground mines which is commingled with surface mine discharges, § 434.63 of this part, the following limitations establish the concentration or quality of pollutants in acid or ferruginous mine drainage subject to the provisions of this subsection after application of the best available technology economically achievable:

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5
Manganese, total	4.0	2.0

(2) Except as provided in 40 CFR 125.30 through 125.32, and § 434.61, and, with respect to mine drainage from the underground workings of underground mines which is commingled with surface mine discharges, § 434.63 of this part, the following limitations establish the concentration or quality of pollutants in alkaline mine drainage subject to the provisions of this subsection after application of the best available technology economically achievable:

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	7.0	3.5

§ 434.54 [Reserved]

§ 434.55 New source performance standards (NSPS).

The following new source performance standards shall apply to the post-mining areas of all new source coal mines:

(a) *Reclamation areas.* The standards of this subparagraph apply to discharges from reclamation areas at new source coal mines until SMCRA bond release.

(1) Except as provided in 40 CFR 401.17 and §§ 434.61 and 434.63(b) of this part, the following new source performance standards shall be achieved for a discharge subject to the provisions of this subparagraph:

NSPS Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Settleable Solids	0.5 ml/l	
pH	(1)	

[1] Within the range of 6.0 to 9.0 at all times.

(b) *Underground mine drainage.* The standards in this subsection apply to discharges from the underground workings of new source underground mines until bond release.

(1) Except as provided in 40 CFR 401.17 and §§ 434.61, 434.62, and, with respect to mine drainage from the underground workings of underground mines which is commingled with surface mine discharges, § 434.63 of this part, the following new source performance standards shall be achieved for the discharge of any acid or ferruginous mine drainage subject to this subparagraph:

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 10

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NSPS Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	6.0	3.0
Manganese, total	4.0	2.0
TSS	70.0	35.0
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

(2) Except as provided in 40 CFR 401.17, § 434.61, and, with respect to mine drainage from the underground workings of underground mines which is commingled with surface mine discharges, § 434.63 of this part, the following new source performance standards shall be achieved for the discharge of any alkaline mine drainage subject to this subparagraph:

NSPS Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Concentration in mg/l	
Iron, total	6.0	3.0
TSS	70.0	35.0
pH	(1)	(1)

[1] Within the range 6.0 to 9.0 at all times.

Subpart F—Miscellaneous Provisions

§ 434.60 Applicability.

The provisions of this subpart apply to this part as specified in Subparts B, C, D, and E.

§ 434.61 Commingling of waste streams.

Where waste streams from any facility covered by this part are combined for treatment or discharge with waste streams from another facility covered by this part, the concentration of each pollutant in the combined discharge may not exceed the most stringent limitations for that pollutant applicable to any component waste stream of the discharge.

§ 434.62 Alternate effluent limitation for pH.

Where the application of neutralization and sedimentation treatment technology results in inability to comply with the otherwise applicable manganese limitations, the permit issuer may allow the pH level in the final effluent to exceed 9.0 to a small extent in order that the manganese limitations can be achieved.

§ 434.63 Effluent limitations for precipitation events.

(a) Any discharge or increase in the volume of a discharge caused by precipitation within any 24 hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations instead of the otherwise applicable limitations:

EFFLUENT LIMITATIONS DURING PRECIPITATION

Pollutant or pollutant property	Maximum for any 1 day (ml/l)	Average of daily values for 30 consecutive days
Settleable Solids	0.5	
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0 at all times.

(b) Any discharge or increase in volume of a discharge caused by precipitation within any 24 hour period greater than the 10-year, 24-hour precipitation event or snowmelt of equivalent volume) may comply with the following limitations instead of the otherwise applicable limitations:

EFFLUENT LIMITATIONS DURING PRECIPITATION

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0 at all times.

(c) The operator shall have the burden of proof that the discharge or increase in discharge was caused by the applicable precipitation event described in paragraph (a) and (b) of this section.

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Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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[47 FR 45393, Oct. 13, 1982; 48 FR 50322, Nov. 1, 1983]

§ 434.64 Determination of settleable solids.

For the purposes of this part, the following procedure shall be used to determine settleable solids:

(a) Fill an Imhoff cone to the one-liter mark with a thoroughly mixed sample. Allow to settle undisturbed for 45 minutes. Gently stir along the inside surface of the cone with a stirring rod. Allow to settle undisturbed for 15 minutes longer. Record the volume of settled material in the cone as milliliters per liter. Where a separation of settleable and floating materials occurs, do not include the floating material in the reading.

(b) Notwithstanding any provision of 40 CFR Part 136, the method detection limit for measuring settleable solids under this part shall be 0.4 ml/l.

PART 435—OIL AND GAS EXTRACTION POINT SOURCE CATEGORY

Subpart A—Offshore Subcategory

Sec.

Subpart B—[Reserved]

Subpart C—Onshore Subcategory

Subpart D—Coastal Subcategory

Sec.

Subpart E—Agricultural and Wildlife Water Use Subcategory

Subpart F—Stripper Subcategory

AUTHORITY: Secs. 301, 304(b) and (c), Clean Water Act of 1977, 33 U.S.C. 1251 *et seq.*; Pub. L. 95-217.

SOURCE: 44 FR 22075, Apr. 13, 1979, unless otherwise noted.

Subpart A—Offshore Subcategory

§ 435.10 Applicability; description of the offshore subcategory.

The provisions of this subpart are applicable to those facilities engaged in the production, field exploration, drilling, well production, and well treatment in the oil and gas extraction industry which are located seaward of the inner boundary of the territorial seas as defined in 40 CFR 125.1(gg).

§ 435.11 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

(b) The term "M10" shall mean those offshore facilities continuously manned by ten (10) or more persons.

(c) The term "M9IM" shall mean those offshore facilities continuously manned by nine (9) or fewer persons or only intermittently manned by any number of persons.

(d) The term "no discharge of free oil" shall mean that a discharge does not cause a film or sheen upon or a discoloration on the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

Department of Energy
Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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PART 436—MINERAL MINING AND PROCESSING POINT SOURCE CATEGORY

Subpart A—Dimension Stone Subcategory [Reserved]

Subpart B—Crushed Stone Subcategory

Sec.

Subpart C—Construction Sand and Gravel Subcategory

Subpart D—Industrial Sand Subcategory

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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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Leg. Rule, 22-1, 22A-1, 22A-1A,
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Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
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Sec.

AUTHORITY: Secs. 301, 304 (b) and (c), Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1311, 1314 (b) and (c), 86 Stat. 816 *et seq.*, Pub. L. 92-500) (the Act), unless otherwise noted.

SOURCE: 40 FR 48657, Oct. 16, 1975, unless otherwise noted.

Subpart A—Dimension Stone Subcategory—[Reserved]

Subpart B—Crushed Stone Subcategory

SOURCE: 42 FR 35849, July 12, 1977, unless otherwise noted.

§ 436.20 Applicability; description of the crushed stone subcategory.

The provisions of this subpart are applicable to the mining or quarrying and the processing of crushed and broken stone and riprap. This subpart includes all types of rock and stone. Rock and stone that is crushed or broken prior to the extraction of a mineral are elsewhere covered. The processing of calcite, however, in conjunction with the processing of crushed and broken limestone or dolomite is included in this subpart.

§ 436.21 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "mine dewatering" shall mean any water that is impounded or that collects in the mine and is pumped, drained or otherwise removed from the mine through the efforts of the mine operator. However, if a mine is also used for treatment of process generated waste water, discharges of commingled water from the facilities shall be deemed discharges of process generated waste water.

(c) The term "10-year 24-hour precipitation event" shall mean the maximum 24-hour precipitation event with a probable reoccurrence interval of once in 10 years. This information is available in "Weather Bureau Technical Paper No. 40," May 1961 and "NOAA Atlas 2," 1973 for the 11 Western States, and may be obtained from the National Climatic Center of the Environmental Data Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) The term "mine" shall mean an area of land, surface or underground, actively mined for the production of crushed and broken stone from natural deposits.

(e) The term "process generated waste water" shall mean any waste water used in the slurry transport of mined material, air emissions control, or processing exclusive of mining. The term shall also include any other water which becomes commingled with such waste water in a pit, pond, lagoon, mine, or other facility used for treatment of such waste water.

§ 436.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) Subject to the provisions of paragraphs (b) and (c) of this section, the following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(1) Discharges of process generated waste water pollutants from facilities that recycle waste water for use in processing shall not exceed the following limitations:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(2) Mine dewatering discharges shall not exceed the following limitations:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) Any overflow from facilities governed by this subpart shall not be subject to the limitations of paragraph (a) of this section if the facilities are designed, constructed and maintained to contain or treat the volume of waste water which would result from a 10-year 24-hour precipitation event.

(c) In the case of a discharge into receiving waters for which the pH, if un-

altered by man's activities, is or would be less than 6.0 and water quality criteria in water quality standards approved under the Act authorize such lower pH, the pH limitations for such discharge may be adjusted downward to the pH water quality criterion for the receiving waters. In no case shall a pH limitation outside the range 5.0 to 9.0 be permitted.

[42 FR 35849, July 12, 1977, as amended at 44 FR 76793, Dec. 28, 1979]

Subpart C—Construction Sand and Gravel Subcategory

SOURCE: 42 FR 35850, July 12, 1977, unless otherwise noted.

§ 436.30 Applicability; description of the construction sand and gravel subcategory.

The provisions of this subpart are applicable to the mining and the processing of sand and gravel for construction or fill uses, except that on-board processing of dredged sand and gravel which is subject to the provisions of 33 CFR Part 230 of this chapter will not be governed by the provisions of this subpart.

§ 436.31 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "mine dewatering" shall mean any water that is impounded or that collects in the mine and is pumped, drained or otherwise removed from the mine through the efforts of the mine operator. This term shall also include wet pit overflows caused solely by direct rainfall and ground water seepage. However, if a mine is also used for treatment of process generated waste water, discharges of commingled water from the mine shall be deemed discharges of process generated waste water.

(c) The term "10-year 24-hour precipitation event" shall mean the maximum 24 hour precipitation event with a probable reoccurrence interval of once in 10 years. This information is available in "Weather Bureau Technical Paper No. 40," May 1961 and "NOAA Atlas 2," 1973 for the 11 Western States, and may be obtained from the National Climatic Center of the Environmental Data Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) The term "mine" shall mean an area of land, surface or underground, actively mined for the production of sand and gravel from natural deposits.

(e) The term "process generated waste water" shall mean any waste water used in the slurry transport of mined material, air emissions control, or processing exclusive of mining. The term shall also include any other water which becomes commingled with such waste water in a pit, pond, lagoon, mine or other facility used for treatment of such waste water. The term does not include waste water used for the suction dredging of deposits in a body of water and returned directly to the body of waste without being used for other purposes or combined with other waste water.

§ 436.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger

are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) Subject to the provisions of paragraphs (b) and (c) of this section, the following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(1) Discharges of process generated waste water pollutants from facilities that recycle waste water for use in processing shall not exceed the following limitations:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(2) Mine dewatering discharges shall not exceed the following limitations:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) Any overflow from facilities governed by this subpart shall not be subject to the limitations of paragraph (a) of this section if the facilities are designed, constructed and maintained to contain or treat the volume of waste water which would result from a 10-year 24-hour precipitation event.

(c) In the case of a discharge into receiving waters for which the pH, if unaltered by man's activities, is or would be less than 6.0 and water quality criteria in water quality standards approved under the Act authorize such lower pH, the pH limitation for such discharge may be adjusted downward to the pH water quality criterion for the receiving waters. In no case shall a pH limitation outside the range 5.0 to 9.0 be permitted.

[42 FR 35850, July 12, 1977, as amended at 44 FR 76793, Dec. 28, 1979]

Subpart D—Industrial Sand Subcategory

SOURCE: 42 FR 35851, July 12, 1977, unless otherwise noted.

§ 436.40 Applicability; description of the industrial sand subcategory.

The provisions of this subpart are applicable to the mining and the processing of sand and gravel for uses other than construction and fill. These uses include, but are not limited to glassmaking, molding, abrasives, filtration, refractories, and refractory bonding.

§ 436.41 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "mine dewatering" shall mean any water that is impounded or that collects in the mine and is pumped, drained, or otherwise removed from the mine through the efforts of the mine operator. This term shall also include wet pit overflows caused solely by direct rainfall and ground water seepage. However, if a mine is also used for the treatment of process generated waste water, discharges of commingled water from the mine shall be deemed discharges of process generated waste water.

(c) The term "10-year 24-hour precipitation event" shall mean the maximum 24 hour precipitation event with a probable reoccurrence interval of once in 10 years. This information is available in "Weather Bureau Technical Paper No. 40," May 1961 and "NOAA Atlas 2," 1973 for the 11 Western States, and may be obtained from the National Climatic Center of the Environmental Data Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) The term "mine" shall mean an area of land actively mined for the production of sand and gravel from natural deposits.

(e) The term "process generated waste water" shall mean any waste water used in the slurry transport of mined material, air emissions control, or processing exclusive of mining. The term shall also include any other water which becomes commingled with such waste water in a pit, pond, lagoon, mine or other facility used for treatment of such waste water. The terms does not include waste water used for the suction dredging of deposits in a body of water and returned directly to the body of water without being used for other purposes or combined with other waste water.

§ 436.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available, and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) Subject to the provisions of paragraphs (b) and (c) of this section, the following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart with the exception of operations using acid leaching, after application of the best practicable control technology currently available:

(1) With the exception of operation using HF flotation, discharges of process waste water pollutants from facilities that recycle waste water, for use

in the processing shall not exceed the following limitations:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
TSS	45 mg/l	25 mg/l.
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(2) Except as provided in paragraphs (a) (1) and (3) of this section, there shall be no discharge of process generated waste water pollutants into navigable waters.

(3) Process generated waste water from facilities employing HF flotation shall not exceed the following limitations:

[Metric units, kg/kkg of total product; English units, lb/1,000 lb of total product]

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
TSS	0.046	0.023
Total fluoride	.006	.003
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(4) Mine dewatering discharges shall not exceed the following limitations:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
TSS	45 mg/l	25 mg/l.
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) Any overflow from facilities governed by this subpart shall not be subject to the limitations of paragraph (a) of this section if the facilities are designed, constructed and maintained to contain or treat the volume of waste water which would result from a 10-year 24-hour precipitation event.

(c) In the case of a discharge into receiving waters for which the pH, if unaltered by man's activities, is or would be less than 6.0 and water quality criteria in water quality standards approved under the Act authorize such lower pH, the pH limitation for such discharge may be adjusted downward to the pH water quality criterion for the receiving waters. In no case shall a pH limitation outside the range 5.0 to 9.0 be permitted.

Subpart E—Gypsum Subcategory

§ 436.50 Applicability; description of the gypsum subcategory.

The provisions of this subpart are applicable to the processing of gypsum.

§ 436.51 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

§ 436.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establish-

ment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environemental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations. The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(a) For operations not employing wet air emissions control scrubbers there shall be no discharge of process generated waste water pollutants into navigable waters.

(b) Only that volume of water resulting from precipitation that exceeds the maximum safe surge capacity of a process waste water impoundment may be discharged from that impoundment. The height difference between the maximum safe surge capacity level and the normal operating level must be greater than the inches of rain representing the 10-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the locality in which such impoundment is located.

Subpart F—Asphaltic Mineral Subcategory

§ 436.60 Applicability; description of the asphaltic mineral subcategory.

The provisions of this subpart are applicable to the processing of bituminous limestone, oil-impregnated diatomite and oilsonite not primarily as an energy source.

§ 436.61 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

§ 436.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated

by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations. The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(a) Subject to the provisions of the following paragraphs of this section, there shall be no discharge of process generated waste water pollutants into navigable waters.

(b) Only that volume of water resulting from precipitation that exceeds the maximum safe surge capacity of a process waste water impoundment may be discharged from that impoundment. The height difference between the maximum safe surge capacity level and the normal operating level must be greater than the inches of rain representing the 10-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the locality in which such impoundment is located.

Subpart G—Asbestos and Wollastonite Subcategory

§ 436.70 Applicability; description of the asbestos and wollastonite subcategory.

The provisions of this supbart are applicable to the processing of asbestos and wollastonite.

§ 436.71 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

§ 436.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations. The following limitations establish the quantity of or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a

point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(a) Subject to the provisions of the following paragraphs of this section, there shall be no discharge of process generated waste water pollutants into navigable waters.

(b) Only that volume of water resulting from precipitation that exceeds the maximum safe surge capacity of a process waste water impoundment may be discharged from that impoundment. The height difference between the maximum safe surge capacity level and the normal operating level must be greater than the inches of rain representing the 10-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the locality in which such impoundment is located.

Subpart H—Lightweight Aggregates Subcategory [Reserved]

Subpart I—Mica and Sericite Subcategory [Reserved]

Subpart J—Barite Subcategory

§ 436.100 Applicability; description of the barite subcategory.

The provisions of this subpart are applicable to the processing of barite.

§ 436.101 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

§ 436.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available: For operations not employing wet processes or flotation processes there shall be no discharge of process generated waste water pollutants into navigable waters.

Subpart K—Fluorspar Subcategory

§ 436.110 Applicability; description of the fluorspar subcategory.

The provisions of this subpart are applicable to the processing of fluorspar.

§ 436.111 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

§ 436.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied of other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available: For operations not employing heavy media separation or floatation processes there shall be no discharge of process generated waste water pollutants into navigable waters.

Subpart L—Salines From Brine Lakes Subcategory

§ 436.120 Applicability; description of the salines from brine lakes subcategory.

The provisions of this subpart are applicable to the processing of salines from brine lakes.

§ 436.121 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

§ 436.122 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization

and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations. The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(a) Subject to the provisions of the following paragraphs of this section, there shall be no discharge of process waste water pollutants into navigable waters.

(b) The limitations specified in paragraph (a) of this section shall be applied on a net basis if the discharge is in compliance with § 125.28 of this chapter "the source of the applicant's water supply is the same body of water into which the discharge is made * * *".

Subpart M—Borax Subcategory

§ 436.130 Applicability; description of the borax subcategory.

The provisions of this subpart are applicable to the processing of borate minerals. Borax obtained from brine lakes is regulated in the salines from brine lakes subcategory (Subpart L of this part).

§ 436.131 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

§ 436.132 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not

fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations. The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(a) Subject to the provisions of the following paragraphs of this section, there shall be no discharge of process waste water pollutants into navigable waters.

(b) Only that volume of water resulting from precipitation that exceeds the maximum safe surge capacity of a process waste water impoundment may be discharged from that impoundment. The height difference between the maximum safe surge capacity level and the normal operating level must be greater than the inches of rain representing the 10-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the locality in which such impoundment is located.

Subpart N—Potash Subcategory

AUTHORITY: Sec. 306, Federal Water Pollution Control Act, as amended.

§ 436.140 Applicability; description of the potash subcategory.

The provisions of this subpart are applicable to the processing of potash. Potash obtained from brine lakes is regulated in the saline from brine lakes subcategory (Subpart L of this part).

§ 436.141 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

§ 436.142 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available, and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different fac-

tors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations. The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(a) Subject to the provisions of the following paragraphs of this section, there shall be no discharge of process waste water pollutants into navigable waters.

(b) Only that volume of water resulting from precipitation that exceeds the maximum safe surge capacity of a process waste water impoundment may be discharged from that impoundment. The height difference between the maximum safe surge capacity level and the normal operating level must be greater than the inches of rain representing the 10-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the locality in which such impoundment is located.

Subpart O—Sodium Sulfate Subcategory

§ 436.150 Applicability; description of the sodium sulfate subcategory.

The provisions of this subpart are applicable to the processing of sodium sulfate. Sodium sulfate obtained from brine lakes is regulated in the salines from brine lakes subcategory (Subpart L of this part).

§ 436.151 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

§ 436.152 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations. The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a

point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(a) Subject to the provisions of the following paragraphs of this section, there shall be no discharge of process waste water pollutants into navigable waters.

(b) Only that volume of water resulting from precipitation that exceeds the maximum safe surge capacity of a process waste water impoundment may be discharged from that impoundment. The height difference between the maximum safe surge capacity level and the normal operating level must be greater than the inches of rain representing the 10-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the locality in which such impoundment is located.

Subpart P—Trona Subcategory [Reserved]

Subpart Q—Rock Salt Subcategory [Reserved]

Subpart R—Phosphate Rock Subcategory

AUTHORITY: Sec. 306, Federal Water Pollution Control Act, as amended.

§ 436.180 Applicability; description of the phosphate rock subcategory.

The provisions of this subpart are applicable to the mining and the processing of phosphate bearing rock, ore or earth for the phosphate content.

[43 FR 9809, Mar. 10, 1978]

§ 436.181 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "mine dewatering" shall mean any water that is impounded or that collects in the mine and is pumped, drained or otherwise removed from the mine through the efforts of the mine operator.

(c) The term "10-year 24-hour precipitation event" shall mean the maximum 24 hour precipitation event with a probable reoccurrence interval of once in 10 years. This information is available in "Weather Bureau Technical Paper No. 40," May 1961 and "NOAA Atlas 2," 1973 for the 11 Western States, and may be obtained from the National Climatic Center of the Environmental Data Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) The term "mine" shall mean an area of land, surface or underground, actively used for or resulting from the extraction of a mineral from natural deposits.

(e) The term "process generated waste water" shall mean any waste water used in the slurry transport of mined material, air emissions control, or processing exclusive of mining. The term shall also include any other water which becomes commingled with such waste water in a pit, pond lagoon, mine, or other facility used for settling or treatment of such waste water.

[43 FR 9809, Mar. 10, 1978]

§ 436.182 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to

issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) Subject to the provisions of paragraph (b) of this section, the following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(1) Discharges of process generated waste water and mine dewatering discharges, shall not exceed the following limitations:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
TSS	60 mg/l	30 mg/l.
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) Any overflow from facilities governed by this subpart shall not be subject to the limitations of paragraph (a) of this section if the facilities are designed, constructed and maintained to contain or treat the volume of waste water which would result from a 10-year 24-hour precipitation event.

[42 FR 35352, July 12, 1977]

§§ 436.183–436.184 [Reserved]

§ 436.185 Standards of performance for new sources.

(a) Subject to the provisions of paragraph (b) of this section, the following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available demonstrated control technology.

(1) Discharges of process generated waste water and mine dewatering discharges, shall not exceed the following limitations:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
TSS	60 mg/l	30 mg/l.
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) Any overflow from facilities governed by this subpart shall not be subject to the limitations of paragraph (a) of this section if the facilities are designed, constructed and maintained to contain or treat the volume of waste water which would result from a 10-year 24-hour precipitation event.

[43 FR 9810, Mar. 10, 1978]

Subpart S—Frasch Sulfur Subcategory

§ 436.190 Applicability; description of the Frasch sulfur subcategory.

The provisions of this subpart are applicable to the processing of sulfur on shore and in marshes and estuaries by the Frasch process. Not covered are sulfur refining operations that are not performed at the mining and collection site.

§ 436.191 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

§ 436.192 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations. The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(a) Subject to the provisions of the following paragraphs of this section for operations mining anhydrite deposits, there shall be no discharge of process waste water pollutants into navigable waters.

(b) Only that volume of water resulting from precipitation that exceeds the maximum safe surge capacity of a process waste water impoundment may be discharged from that impoundment. The height difference between the maximum safe surge capacity level and the normal operating level must be greater than the inches of rain representing the 10-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the locality in which such impoundment is located.

Subpart T—Mineral Pigments Subcategory [Reserved]

Subpart U—Lithium Subcategory [Reserved]

Subpart V—Bentonite Subcategory

§ 436.220 Applicability; description of the bentonite subcategory.

The provisions of this subpart are applicable to the processing of bentonite.

§ 436.221 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

§ 436.222 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available: There shall be no discharge of process generated waste water pollutants into navigable waters.

Subpart W—Magnesite Subcategory

§ 436.230 Applicability; description of the magnesite subcategory.

The provisions of this subpart are applicable to the processing of naturally occurring magnesite ore.

§ 436.231 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

§ 436.232 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written find-

ing that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations or initiate proceedings to revise these regulations. The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(a) Subject to the provisions of the following paragraphs of this section, there shall be no discharge of process generated waste water pollutants into navigable waters.

(b) Only that volume of water resulting from precipitation that exceeds the maximum safe surge capacity of a process waste water impoundment may be discharged from that impoundment. The height difference between the maximum safe surge capacity level and the normal operating level must be greater than the inches of rain representing the 10-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the locality in which such impoundment is located.

Subpart X—Diatomite Subcategory

§ 436.240 Applicability; description of the diatomite subcategory.

The provisions of this subpart are applicable to the processing of diatomite.

§ 436.241 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

§ 436.242 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify

other limitations, or initiate proceedings to revise these regulations. The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(a) Subject to the provisions of the following paragraphs of this section, there shall be no discharge of process generated waste water pollutants into navigable waters.

(b) Only that volume of water resulting from precipitation that exceeds the maximum safe surge capacity of a process waste water impoundment may be discharged from that impoundment. The height difference between the maximum safe surge capacity level and the normal operating level must be greater than the inches of rain representing the 10-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the locality in which such impoundment is located.

Subpart Y—Jade Subcategory

§ 436.250 Applicability; description of the jade subcategory.

The provisions of this subpart are applicable to the processing of jade.

§ 436.251 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

§ 436.252 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations. The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(a) Subject to the provisions of the following paragraphs of this section, there shall be no discharge of process generated waste water pollutants into navigable waters.

(b) Only that volume of water resulting from precipitation that exceeds the maximum safe surge capacity of a process waste water impound-

ment may be discharged from that impoundment. The height difference between the maximum safe surge capacity level and the normal operating level must be greater than the inches of rain representing the 10-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the locality in which such impoundment is located.

Subpart Z—Novaculite Subcategory

§ 436.260 Applicability; description of the novaculite subcategory.

The provisions of this subpart are applicable to the processing of novaculite.

§ 436.261 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

§ 436.262 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations. The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(a) Subject to the provisions of the following paragraphs of this section, there shall be no discharge of process generated waste water pollutants into navigable waters.

(b) Only that volume of water resulting from precipitation that exceeds the maximum safe surge capacity of a process waste water impoundment may be discharged from that impoundment. The height difference between the maximum safe surge capacity level and the normal operating level must be greater than the inches of rain representing the 10-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the locality in which such impoundment is located.

Department of Energy
Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 10

Document Incorporated By Reference
40 C.F.R. Part 436

Subpart AA—Fire Clay Subcategory [Reserved]

Subpart AB—Attapulgite and Montmorillonite Subcategory [Reserved]

Subpart AC—Kyanite Subcategory [Reserved]

Subpart AD—Shale and Common Clay Subcategory [Reserved]

Subpart AE—Aplite Subcategory [Reserved]

Subpart AF—Tripoli Subcategory

§ 436.310 Applicability; description of the tripoli subcategory.

The provisions of this subpart are applicable to the processing of tripoli.

§ 436.321 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

§ 436.322 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations. The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available: For operations not employing wet processes there shall be no discharge of process generated waste water pollutants into navigable waters.

Subpart AG—Kaolin Subcategory [Reserved]

Department of Energy
Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 10

Document Incorporated By Reference
40 C.F.R. Part 436

Subpart AH—Ball Clay Subcategory [Reserved]

Subpart AI—Feldspar Subcategory [Reserved]

Subpart AJ—Talc, Steatite, Soapstone and Pyrophyllite Subcategory [Reserved]

Subpart AK—Garnet Subcategory [Reserved]

Subpart AL—Graphite Subcategory

§ 436.380 Applicability; description of the graphite subcategory.

The provisions of this subpart are applicable to the mining and processing of naturally occurring graphite.

§ 436.381 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "mine drainage" shall mean any water drained, pumped or siphoned from a mine.

§ 436.382 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations. The following limitations for process waste water and mine dewatering establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(a) Subject to the provisions of the following paragraphs of this section, process waste water and mine drainage shall meet the following limitations:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
TSS	20 mg/l	10 mg/l
Total Fe	2 mg/l	1 mg/l
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) Only that volume of water resulting from precipitation that exceeds the maximum safe surge capacity of a process waste water impoundment may be discharged from that im-

poundment. The height difference between the maximum safe surge capacity level and the normal operating level must be greater than the inches of rain representing the 10-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the locality in which such impoundment is located.

Sec. 11

Department of Energy
Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 11

Document Incorporated By Reference
40 C.F.R. Part 129

PART 129—TOXIC POLLUTANT EFFLUENT STANDARDS

Subpart A—Toxic Pollutant Effluent Standards and Prohibitions

AUTHORITY: Sec. 307, 308, 501, Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500, 86 Stat. 816, (33 U.S.C. 1251 *et seq.*)).

SOURCE: 42 FR 2613, Jan. 12, 1977, unless otherwise noted.

Subpart A—Toxic Pollutant Effluent Standards and Prohibitions

§ 129.1 Scope and purpose.

(a) The provisions of this subpart apply to owners or operators of specified facilities discharging into navigable waters.

(b) The effluent standards or prohibitions for toxic pollutants established in this subpart shall be applicable to the sources and pollutants hereinafter set forth, and may be incorporated in any NPDES permit, modification or renewal thereof, in accordance with the provisions of this subpart.

(c) The provisions of 40 CFR Parts 124 and 125 shall apply to any NPDES permit proceedings for any point source discharge containing any toxic pollutant for which a standard or prohibition is established under this part.

§ 129.2 Definitions.

All terms not defined herein shall have the meaning given them in the Act or in 40 CFR Part 124 or 125. As used in this part, the term:

(a) "Act" means the Federal Water Pollution Control Act, as amended (Pub. L. 92-500, 86 Stat. 816 *et seq.*, 33 U.S.C.1251 *et seq.*). Specific references to sections within the Act will be according to Pub. L. 92-500 notation.

(b) "Administrator" means the Administrator of the Environmental Protection Agency or any employee of the Agency to whom the Administrator may by order delegate the authority to carry out his functions under section 307(a) of the Act, or any person who shall by operation of law be authorized to carry out such functions.

(c) "Effluent standard" means, for purposes of section 307, the equivalent of "effluent limitation" as that term is defined in section 502(11) of the Act with the exception that it does not include a schedule of compliance.

(d) "Prohibited" means that the constituent shall be absent in any discharge subject to these standards, as determined by any analytical method.

(e) "Permit" means a permit for the discharge of pollutants into navigable waters under the National Pollutant Discharge Elimination System established by section 402 of the Act and implemented in regulations in 40 CFR Parts 124 and 125.

(f) "Working day" means the hours during a calendar day in which a facility discharges effluents subject to this part.

(g) "Ambient water criterion" means that concentration of a toxic pollutant in a navigable water that, based upon available data, will not result in adverse impact on important aquatic life, or on consumers of such aquatic life, after exposure of that aquatic life for periods of time exceeding 96 hours and continuing at least through one reproductive cycle; and will not result in a significant risk of adverse health effects in a large human population based on available information such as mammalian laboratory toxicity data, epidemiological studies of human occupational exposures, or human exposure data, or any other relevant data.

(h) "New source" means any source discharging a toxic pollutant, the construction of which is commenced after proposal of an effluent standard or prohibition applicable to such source if such effluent standard or prohibition is thereafter promulgated in accordance with section 307.

(i) "Existing source" means any source which is not a new source as defined above.

(j) "Source" means any building, structure, facility, or installation from which there is or may be the discharge of toxic pollutants designated as such by the Administration under section 307(a)(1) of the Act.

(k) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a source as defined above.

(l) "Construction" means any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

(m) "Manufacturer" means any establishment engaged in the mechanical or chemical transformation of materials or substances into new products including but not limited to the blending of materials such as pesticidal products, resins, or liquors.

(n) "Process wastes" means any designated toxic pollutant, whether in wastewater or otherwise present, which is inherent to or unavoidably resulting from any manufacturing process, including that which comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product or waste product and is discharged into the navigable waters.

(o) "Air emissions" means the release or discharge of a toxic pollutant by an owner or operator into the ambient air either (1) by means of a stack or (2) as a fugitive dust, mist or vapor as a result inherent to the manufacturing or formulating process.

(p) "Fugitive dust, mist or vapor" means dust, mist or vapor containing a toxic pollutant regulated under this part which is emitted from any source other than through a stack.

(q) "Stack" means any chimney, flue, conduit, or duct arranged to conduct emissions to the ambient air.

(r) "Ten year 24-hour rainfall event" means the maximum precipitation event with a probable recurrence interval of once in 10 years as defined by the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments or equivalent regional or State rainfall probability information developed therefrom.

(s) "State Director" means the chief administrative officer of a State or interstate water pollution control agency operating an approved HPDES permit program. In the event responsibility for water pollution control and enforcement is divided among two or more State or interstate agencies, the term "State Director" means the administrative officer authorized to perform the particular procedure to which reference is made.

§ 129.3 Abbreviations.

The abbreviations used in this part represent the following terms:

lb = pound (or pounds).
g = gram.
μg/l = micrograms per liter (1 one-millionth gram/liter).
kg = kilogram(s).
kkg = 1000 kilogram(s).

§ 129.4 Toxic pollutants.

The following are the pollutants subject to regulation under the provisions of this subpart:

(a) Aldrin/Dieldrin—"Aldrin" means the compound aldrin as identified by the chemical name, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro - 1,4 - endo-5,8-exo-dimethanonaphthalene; "Dieldrin" means the compound dieldrin as identified by the chemical name 1,2,3,4,10,10-hexachloro - 6,7 - epoxy - 1,4,4a,5,6,7,8,8a-octahydro-1,4-endo-5,8-exo-dimethanonaphthalene.

(b) DDT—"DDT" means the compounds DDT, DDD, and DDE as identified by the chemical names: (DDT)-1,1,1-trichloro-2,2 - bis(p - chlorophenyl) ethane and some o,p'-isomers; (DDD) or (TDE) - 1,1 - dichloro - 2,2-bis(p-chlorophenyl) ethane and some o,p'-isomers; (DDE) - 1,1 - dichloro-2,2-bis(p-chlorophenyl) ethylene.

(c) Endrin—"Endrin" means the compound endrin as identified by the chemical name 1,2,3,4,10,10-hexachloro-6,7-epoxy - 1,4,4a,5,6,7,8,8a - octahydro - 1,4-endo-5,8-endodimethanonaphthalene.

(d) Toxaphene—"Toxaphene" means a material consisting of technical grade chlorinated camphene having the approximate formula of $C_{10}H_{10}Cl_8$ and normally containing 67-69 percent chlorine by weight.

(e) Benzidine—"Benzidine" means the compound benzidine and its salts as identified by the chemical name 4,4'-diaminobiphenyl.

(f) Polychlorinated Biphenyls (PCBs) "polychlorinated biphenyls" (PCBs) means a mixture of compounds composed of the biphenyl molecule which has been chlorinated to varying degrees.

[42 FR 2613, Jan. 12, 1977, as amended at 42 FR 2620, Jan. 12, 1977; 42 FR 6555, Feb. 2, 1977]

§ 129.5 Compliance.

(a)(1) Within 60 days from the date of promulgation of any toxic pollutant effluent standard or prohibition each owner or operator with a discharge subject to that standard or prohibition must notify the Regional Administrator (or State Director, if appropriate) of such discharge. Such notification shall include such information and follow such procedures as the Regional Administrator (or State Director, if appropriate) may require.

(2) Any owner or operator who does not have a discharge subject to any toxic pollutant effluent standard at the time of such promulgation but who thereafter commences or intends to commence any activity which would result in such a discharge shall first notify the Regional Administrator (or State Director, if appropriate) in the manner herein provided at least 60 days prior to any such discharge.

(b) Upon receipt of any application for issuance or reissuance of a permit or for a modification of an existing permit for a discharge subject to a toxic pollutant effluent standard or prohibition the permitting authority shall proceed thereon in accordance with 40 CFR Part 124 or 125, whichever is applicable.

(c)(1) Every permit which contains limitations based upon a toxic pollutant effluent standard or prohibition under this part is subject to revision following the completion of any proceeding revising such toxic pollutant effluent standard or prohibition regardless of the duration specified on the permit.

(2) For purposes of this section, all toxic pollutants for which standards are set under this part are deemed to be injurious to human health within the meaning of section 402(k) of the Act unless otherwise specified in the standard established for any particular pollutant.

(d)(1) Upon the compliance date for any section 307(a) toxic pollutant effluent standard or prohibition, each owner or operator of a discharge subject to such standard or prohibition shall comply with such monitoring, sampling, recording, and reporting conditions as the Regional Administrator (or State Director, if appropriate) may require for that discharge. Notice of such conditions shall be provided in writing to the owner or operator.

(2) In addition to any conditions required pursuant to paragraph (d)(1) of this section and to the extent not required in conditions contained in NPDES permits, within 60 days following the close of each calendar year each owner or operator of a discharge subject to any toxic standard or prohibition shall report to the Regional Administrator (or State Director, if appropriate) concerning the compliance of such discharges. Such report shall include, as a minimum, information concerning (i) relevant identification of the discharger such as name, location of facility, discharge points, receiving waters, and the industrial process or operation emitting the toxic pollutant; (ii) relevant conditions (pursuant to paragraph (d)(1) of this section or to an NPDES permit) as to flow, section 307(a) toxic pollutant concentrations, and section 307(a) toxic pollutant mass emission rate; (iii) compliance by the discharger with such conditions.

(3) When samples collected for analysis are composited, such samples shall be composited in proportion to the flow at time of collection and preserved in compliance with requirements of the Regional Administrator (or State Director, if appropriate), but shall include at least five samples, collected at approximately equal intervals throughout the working day.

(e)(1) Nothing in these regulations shall preclude a Regional Administrator from requiring in any permit a more stringent effluent limitation or standard pursuant to section 301(b)(1)(C) of the Act and implemented in 40 CFR 125.11 and other related provisions of 40 CFR Part 125.

(2) Nothing in these regulations shall preclude the Director of a State Water Pollution Control Agency or interstate agency operating a National Pollutant Discharge Elimination System Program which has been approved by the Administrator pursuant to section 402 of the Act from requiring in any permit a more stringent effluent limitation or standard pursuant to section 301(b)(1)(C) of the Act and implemented in 40 CFR 124.42 and other related provisions of 40 CFR Part 124.

(f) Any owner or operator of a facility which discharges a toxic pollutant to the navigable waters and to a publicly owned treatment system shall limit the summation of the mass emissions from both discharges to the less restrictive standard, either the direct discharge standard or the pretreatment standard; but in no case will this paragraph allow a discharge to the navigable waters greater than the toxic pollutant effluent standard established for a direct discharge to the navigable waters.

(g) In any permit hearing or other administrative proceeding relating to the implementation or enforcement of these standards, or any modification thereof, or in any judicial proceeding other than a petition for review of these standards pursuant to section 509(b)(1)(C) of the Act, the parties thereto may not contest the validity of any national standards established in this part, or the ambient water criterion established herein for any toxic pollutant.

§ 129.6 Adjustment of effluent standard for presence of toxic pollutant in the intake water.

(a) Upon the request of the owner or operator of a facility discharging a pollutant subject to a toxic pollutant effluent standard or prohibition, the Regional Administrator (or State Director, if appropriate) shall give credit, and shall adjust the effluent standard(s) in such permit to reflect credit for the toxic pollutant(s) in the owner's or operator's water supply if (1) the source of the owner's or operator's water supply is the same body of water into which the discharge is made and if (2) it is demonstrated to the Regional Administrator (or State Director, if appropriate) that the toxic pollutant(s) present in the owner's or operator's intake water will not be removed by any wastewater treatment systems whose design capacity and operation were such as to reduce toxic pollutants to the levels required by the applicable toxic pollutant effluent standards in the absence of the toxic pollutant in the intake water.

(b) Effluent limitations established pursuant to this section shall be calculated on the basis of the amount of section 307(a) toxic pollutant(s) present in the water after any water supply treatment steps have been performed by or for the owner or operator.

(c) Any permit which includes toxic pollutant effluent limitations established pursuant to this section shall also contain conditions requiring the permittee to conduct additional monitoring in the manner and locations determined by the Regional Administrator (or State Director, if appropriate) for those toxic pollutants for which the toxic pollutant effluent standards have been adjusted.

§ 129.7 Requirement and procedure for establishing a more stringent effluent limitation.

(a) *In exceptional cases:* (1) Where the Regional Administrator (or State Director, if appropriate) determines that the ambient water criterion established in these standards is not being met or will not be met in the receiving water as a result of one or more discharges at levels allowed by these standards, and

(2) Where he further determines that this is resulting in or may cause or contribute to significant adverse effects on aquatic or other organisms usually or potentially present, or on human health, he may issue to an owner or operator a permit or a permit modification containing a toxic pollutant effluent limitation at a more stringent level than that required by the standard set forth in these regulations. Any such action shall be taken pursuant to the procedural provisions of 40 CFR Parts 124 and 125, as appropriate. In any proceeding in connection with such action the burden of proof and of going forward with evidence with regard to such more stringent effluent limitation shall be upon the Regional Administrator (or State Director, if appropriate) as the proponent of such more stringent effluent limitation.

(3) Evidence in such proceeding shall include at a minimum: An analysis using data and other information to demonstrate receiving water concentrations of the specified toxic pollutant, projections of the anticipated effects of the proposed modification on such receiving water concentrations, and the hydrologic and hydrographic characteristics of the receiving waters including the occurrence of dispersion of the effluent. Detailed specifications for presenting relevant information by any interested party may be prescribed in guidance documents published from time to time, whose availability will be announced in the FEDERAL REGISTER.

(b) Any effluent limitation in an NPDES permit which a State proposes to issue which is more stringent than the toxic pollutant effluent standards promulgated by the Administrator is subject to review by the Administrator under section 402(d) of the Act. The Administrator may approve or disapprove such limitation(s) or specify another limitation(s) upon review of any record of any proceedings held in connection with the permit issuance or modification and any other evidence available to him. If he takes no action within ninety days of his receipt of the notification of the action of the

epartment of Energy
ivision of Mines and Minerals
eg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 11

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permit issuing authority and any record thereof, the action of the State permit issuing authority shall be deemed to be approved.

§ 129.8 Compliance date.

(a) The effluent standards or prohibitions set forth herein shall be complied with not later than one year after promulgation unless an earlier date is established by the Administrator for an industrial subcategory in the promulgation of the standards or prohibitions.

(b) Toxic pollutant effluent standards or prohibitions set forth herein shall become enforceable under sections 307(d) and 309 of the Act on the date established in paragraph (a) of this section regardless of proceedings in connection with the issuance of any NPDES permit or application therefor, or modification or renewal thereof.

§§ 129.9–129.99 [Reserved]

§ 129.100 Aldrin/dieldrin.

(a) *Specialized definitions.* (1) "Aldrin/Dieldrin manufacturer" means a manufacturer, excluding any source which is exclusively an aldrin/dieldrin formulator, who produces, prepares or processes technical aldrin or dieldrin or who uses aldrin or dieldrin as a material in the production, preparation or processing of another synthetic organic substance.

(2) "Aldrin/Dieldrin formulator" means a person who produces, prepares or processes a formulated product comprising a mixture of either aldrin or dieldrin and inert materials or other diluents, into a product intended for application in any use registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 135, et seq.).

(3) The ambient water criterion for aldrin/dieldrin in navigable waters is .003 μg/l.

(b) *Aldrin/dieldrin manufacturer*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the manufacturing areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by aldrin/dieldrin as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (b)(1)(ii) of this section; and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of aldrin/dieldrin; or to stormwater runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable.* Environmental Protection Agency method specified in 40 CFR Part 136, except that a 1-liter sample size is required to increase the analytical sensitivity.

(3) *Effluent standard*—(i) *Existing sources.* Aldrin or dieldrin is prohibited in any discharge from any aldrin/dieldrin manufacturer.

(ii) *New Sources.* Aldrin or dieldrin is prohibited in any discharge from any aldrin/dieldrin manufacturer.

(c) *Aldrin/dieldrin formulator*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the formulating areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by aldrin/dieldrin as a result of the formulating process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (c)(1)(ii) of this section; and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of aldrin/dieldrin; or to stormwater runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable.* Environmental Protection Agency method specified in 40 CFR Part 136, except that a 1-liter sample size is required to increase the analytical sensitivity.

Department of Energy
Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 11

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(3) *Effluent standard*—(i) *Existing sources.* Aldrin or dieldrin is prohibited in any discharge from any aldrin/dieldrin formulator.

(ii) *New sources.* Aldrin or dieldrin is prohibited in any discharge from any aldrin/dieldrin formulator.

§ 129.101 DDT, DDD and DDE.

(a) *Specialized definitions.* (1) "DDT Manufacturer" means a manufacturer, excluding any source which is exclusively a DDT formulator, who produces, prepares or processes technical DDT, or who uses DDT as a material in the production, preparation or processing of another synthetic organic substance.

(2) "DDT formulator" means a person who produces, prepares or processes a formulated product comprising a mixture of DDT and inert materials or other diluents into a product intended for application in any use registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 135, et seq.).

(3) The ambient water criterion for DDT in navigable waters is 0.001 μg/l.

(b) *DDT manufacturer*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the manufacturing areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by DDT as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (b)(1)(ii) of this section; and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of DDT; or to stormwater runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable.* Environmental Protection Agency method specified in 40 CFR Part 136, except that a 1-liter sample size is required to increase the analytical sensitivity.

(3) *Effluent standard*—(i) *Existing sources.* DDT is prohibited in any discharge from any DDT manufacturer.

(ii) *New sources.* DDT is prohibited in any discharge from any DDT manufacturer.

(c) *DDT formulator*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the formulating areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by DDT as a result of the formulating process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (c)(1)(ii) of this section; and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of DDT; or to stormwater runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable.* Environmental Protection Agency method specified in 40 CFR Part 136, except that a 1-liter sample size is required to increase the analytical sensitivity.

(3) *Effluent standard*—(i) *Existing sources.* DDT is prohibited in any discharge from any DDT formulator.

(ii) *New Sources.* DDT is prohibited in any discharge from any DDT formulator.

§ 129.102 Endrin.

(a) *Specialized definitions.* (1) "Endrin Manufacturer" means a manufacturer, excluding any source which is exclusively an endrin formulator, who produces, prepares or processes technical endrin or who uses endrin as a material in the production, preparation or processing of another synthetic organic substance.

(2) "Endrin Formulator" means a person who produces, prepares or processes a formulated product comprising a mixture of endrin and inert materials or other diluents into a

product intended for application in any use registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 135, et seq.).

(3) The ambient water criterion for endrin in navigable waters is 0.004 μg/l.

(b) *Endrin manufacturer*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the manufacturing areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by endrin as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (b)(1)(ii) of this section; and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of endrin; or to stormwater runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable*—Environmental Protection Agency method specified in 40 CFR Part 136.

(3) *Effluent standard*—(i) *Existing sources.* Discharges from an endrin manufacturer shall not contain endrin concentrations exceeding an average per working day of 1.5 μg/l calculated over any calendar month; and shall not exceed a monthly average daily loading of 0.0006 kg/kkg of endrin produced; and shall not exceed 7.5 μg/l in a sample(s) representing any working day.

(ii) *New sources.* Discharges from an endrin manufacturer shall not contain endrin concentrations exceeding an average per working day of 0.1 μg/l calculated over any calendar month; and shall not exceed a monthly average daily loading of 0.00004 kg/kkg of endrin produced; and shall not exceed 0.5 μg/l in a sample(s) representing any working day.

(iii) *Mass emission standard during shutdown of production.* In computing the allowable monthly average daily loading figure required under the preceding paragraphs (b)(3) (i) and (ii) of this section, for any calendar month for which there is no endrin being manufactured at any plant or facility which normally contributes to the discharge which is subject to these standards, the applicable production value shall be deemed to be the average monthly production level for the most recent preceding 360 days of actual operation of the plant or facility.

(c) *Endrin formulator*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the formulating areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by endrin as a result of the formulating process, including but not limited to: (*1*) Stormwater and other runoff except as hereinafter provided in paragraph (c)(1)(ii) of this section; and (*2*) water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of endrin; or to storm-water runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable*—Environmental Protection Agency method specified in 40 CFR Part 136, except that a 1-liter sample size is required to increase the analytical sensitivity.

(3) *Effluent standard*—(i) *Existing sources.* Endrin is prohibited in any discharge from any endrin formulator.

(ii) New sources—Endrin is prohibited in any discharge from any endrin formulator.

(d) The standards set forth in this Section shall apply to the total combined weight or concentration of endrin, excluding any associated element or compound.

§ 129.103 Toxaphene.

(a) *Specialized definitions.* (1) "Toxaphene manufacturer" means a manufacturer, excluding any source which is exclusively a toxaphene formulator, who produces, prepares or processes

toxaphene or who uses toxaphene as a material in the production, preparation or processing of another synthetic organic substance.

(2) "Toxaphene formulator" means a person who produces, prepares or processes a formulated product comprising a mixture of toxaphene and inert materials or other diluents into a product intended for application in any use registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 135, *et seq.*).

(3) The ambient water criterion for toxaphene in navigable waters is 0.005 μg/l.

(b) *Toxaphene manufacturer*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the manufacturing areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by toxaphene as a result of the manufacturing process, including but not limited to: (*1*) Stormwater and other runoff except as hereinafter provided in paragraph (b)(1)(ii) of this section; and (*2*) water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of toxaphene; or to stormwater runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable*—Environmental Protection Agency method specified in 40 CFR Part 136.

(3) *Effluent standard*—(i) *Existing sources.* Discharges from a toxaphene manufacturer shall not contain toxaphene concentrations exceeding an average per working day of 1.5 μg/l calculated over any calendar month; and shall not exceed a monthly average daily loading of 0.00003 kg/kkg of toxaphene produced, and shall not exceed 7.5 μg/l in a sample(s) representing any working day.

(ii) *New sources.* Discharges from a toxaphene manufacturer shall not contain toxaphene concentrations exceeding an average per working day of 0.1 μg/l calculated over any calendar month; and shall not exceed a monthly average daily loading of 0.000002 kg/kkg of toxaphene produced, and shall not exceed 0.5 μ/l in a sample(s) representing any working day.

(iii) *Mass emission during shutdown of production.* In computing the allowable monthly average daily loading figure required under the preceding paragraphs (b)(3)(i) and (ii) of this section, for any calendar month for which there is no toxaphene being manufactured at any plant or facility which normally contributes to the discharge which is subject to these standards, the applicable production value shall be deemed to be the average monthly production level for the most recent preceding 360 days of actual operation of the plant or facility.

(c) *Toxaphene formulator*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the formulating areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by toxaphene as a result of the formulating process, including but not limited to: (*1*) Stormwater and other runoff except as hereinafter provided in paragraph (c)(1)(ii) of this section; and (*2*) water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of toxaphene; or to stormwater runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable*—Environmental Protection Agency method specified in 40 CFR Part 136, except that a 1-liter sample size is required to increase the analytical sensitivity.

(3) *Effluent standards*—(i) *Existing sources.* Toxaphene is prohibited in any discharge from any toxaphene formulator.

(ii) *New sources.* Toxaphene is prohibited in any discharge from any toxaphene formulator.

(d) The standards set forth in this section shall apply to the total combined weight or concentration of toxa-

phene, excluding any associated element or compound.

§ 129.104 Benzidine.

(a) *Specialized definitions.* (1) "Benzidine Manufacturer" means a manufacturer who produces benzidine or who produces benzidine as an intermediate product in the manufacture of dyes commonly used for textile, leather and paper dyeing.

(2) "Benzidine-Based Dye Applicator" means an owner or operator who uses benzidine-based dyes in the dyeing of textiles, leather or paper.

(3) The ambient water criterion for benzidine in navigable waters is 0.1 μg/l.

(b) *Benzidine manufacturer*—(1) *Applicability.* (i) These standards apply to:

(A) All discharges into the navigable waters of process wastes, and

(B) All discharges into the navigable waters of wastes containing benzidine from the manufacturing areas, loading and unloading areas, storage areas, and other areas subject to direct contamination by benzidine or benzidine-containing product as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (b)(1)(ii) of this section, and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of benzidine; or to stormwater runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable*—Environmental Protection Agency method specified in 40 CFR Part 136.

(3) *Effluent standards*—(i) *Existing sources.* Discharges from a benzidine manufacturer shall not contain benzidine concentrations exceeding an average per working day of 10 μg/l calculated over any calendar month, and shall not exceed a monthly average daily loading of 0.130 kg/kkg of benzidine produced, and shall not exceed 50 μg/l in a sample(s) representing any working day.

(ii) *New sources.* Discharges from a benzidine manufacturer shall not contain benzidine concentrations exceeding an average per working day of 10 μg/l calculated over any calendar month, and shall not exceed a monthly average daily loading of 0.130 kg/kkg of benzidine produced, and shall not exceed 50 μg/l in a sample(s) representing any working day.

(4) The standards set forth in this paragraph (b) shall apply to the total combined weight or concentration of benzidine, excluding any associated element or compound.

(c) *Benzidine-based dye applicators*—(1) *Applicability.* (i) These standards apply to:

(A) All discharges into the navigable waters of process wastes, and

(B) All discharges into the navigable waters of wastes containing benzidine from the manufacturing areas, loading and unloading areas, storage areas, and other areas subject to direct contamination by benzidine or benzidine-containing product as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (c)(1)(ii) of this section, and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of benzidine; or to stormwater that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable.* (i) Environmental Protection Agency method specified in 40 CFR Part 136; or

(ii) Mass balance monitoring approach which requires the calculation of the benzidine concentration by dividing the total benzidine contained in dyes used during a working day (as certified in writing by the manufacturer) by the total quantity of water discharged during the working day.

[*Comment:* The Regional Administrator (or State Director, if appropriate) shall rely entirely upon the method specified in 40 CFR Part 136 in analyses performed by him for enforcement purposes.]

Department of Energy
Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 11

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(3) *Effluent standards*—(i) *Existing sources.* Discharges from benzidine-based dye applicators shall not contain benzidine concentrations exceeding an average per working day of 10 μg/l calculated over any calendar month; and shall not exceed 25 μg/l in a sample(s) or calculation(s) representing any working day.

(ii) *New sources.* Discharges from benzidine-based dye applicators shall not contain benzidine concentrations exceeding an average per working day of 10 μg/l calculated over any calendar month; and shall not exceed 25 μg/l in a sample(s) or calculation(s) representing any working day.

(4) The standards set forth in this paragraph (c) shall apply to the total combined concentrations of benzidine, excluding any associated element or compound.

[42 FR 3620, Jan. 12, 1977]

§ 129.105 Polychlorinated biphenyls (PCBs).

(a) *Specialized definitions.* (1) "PCB Manufacturer" means a manufacturer who produces polychlorinated biphenyls.

(2) "Electrical capacitor manufacturer" means a manufacturer who produces or assembles electrical capacitors in which PCB or PCB-containing compounds are part of the dielectric.

(3) "Electrical transformer manufacturer" means a manufacturer who produces or assembles electrical transformers in which PCB or PCB-containing compounds are part of the dielectric.

(4) The ambient water criterion for PCBs in navigable waters is 0.001 μg/l.

(b) *PCB manufacturer*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes;

(B) All discharges from the manufacturing or incinerator areas, loading and unloading areas, storage areas, and other areas which are subject to direct contamination by PCBs as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (b)(1)(ii) of this section; and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of PCBs; or to stormwater runoff that exceeds that from the ten-year 24-hour rainfall event.

(2) Analytical Method Acceptable—Environmental Protection Agency method specified in 40 CFR Part 136 except that a 1-liter sample size is required to increase analytical sensitivity.

(3) *Effluent standards*—(i) *Existing sources.* PCBs are prohibited in any discharge from any PCB manufacturer;

(ii) *New sources.* PCBs are prohibited in any discharge from any PCB manufacturer.

(c) *Electrical capacitor manufacturer*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the manufacturing or incineration areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by PCBs as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (c)(1)(ii) of this section; and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of PCBs; or to stormwater runoff that exceeds that from the ten-year 24-hour rainfall event.

(2) *Analytical method acceptable.* Environmental Protection Agency method specified in 40 CFR Part 136, except that a 1-liter sample size is required to increase analytical sensitivity.

(3) *Effluent standards*—(i) *Existing sources.* PCBs are prohibited in any discharge from any electrical capacitor manufacturer;

(ii) *New sources.* PCBs are prohibited in any discharge from any electrical capacitor manufacturer.

Department of Energy
Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A,
22A-3, 22A-4, 22A-5, 22A-6 and 20-5A
Series 20, Sec. 11

Document Incorporated By Reference
40 C.F.R. Part 129

(d) *Electrical transformer manufacturer*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the manufacturing or incineration areas, loading and unloading areas, storage areas, and other areas which are subject to direct contamination by PCBs as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (d)(1)(ii) of this section; and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of PCBs; or to stormwater runoff that exceeds that from the ten-year 24-hour rainfall event.

(2) *Analytical method acceptable.* Environmental Protection Agency method specified in 40 CFR Part 136, except that a 1-liter sample size is required to increase analytical sensitivity.

(3) *Effluent standards*—(i) *Existing sources.* PCBs are prohibited in any discharge from any electrical transformer manufacturer;

(ii) *New sources.* PCBs are prohibited in any discharge from any electrical transformer manufacturer.

(e) *Adjustment of effluent standard for presence of PCBs in intake water.* Whenever a facility which is subject to these standards has PCBs in its effluent which result from the presence of PCBs in its intake waters, the owner may apply to the Regional Administrator (or State Director, if appropriate), for a credit pursuant to the provisions of § 129.6, where the source of the water supply is the same body of water into which the discharge is made. The requirement of paragraph (1) of § 129.6(a), relating to the source of the water supply, shall be waived, and such facility shall be eligible to apply for a credit under § 129.6, upon a showing by the owner or operator of such facility to the Regional Administrator (or State Director, if appropriate) that the concentration of PCBs in the intake water supply of such facility does not exceed the concentration of PCBs in the receiving water body to which the plant discharges its effluent.

[42 FR 6555, Feb. 2, 1977]

H. B. 3004

(By Delegate Knight)

(Introduced February 23, 1987; referred to the Committee on the Judiciary)

A BILL to amend article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections designated sections twenty-two (one) (sixteen) and twenty-two-a (three) (forty), relating to authorizing the commissioner of the department of energy to promulgate legislative rules governing the state national pollutant discharge elimination system (NPDES) for mines and minerals.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections twenty-two (one) (sixteen) and twenty-two-a (three) (forty), all to read as follows:

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-22(1)(16). Commissioner of the department of energy.

3004

The rules authorized by the legislature in section twenty-two-a (three) (forty) of this article were also proposed by the commissioner of the department of energy pursuant to section sixteen, article one, chapter twenty-two of this code.

64-2-22a(3)(40). Commissioner of the department of energy.

The legislative rules filed in the state register on the twelfth day of January, one thousand nine hundred eighty-seven, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of February, one thousand nine hundred eighty-seven, relating to the commissioner of the department of energy (state national pollutant discharge elimination system (NPDES) for mines and minerals) are authorized.

NOTE: The purpose of this bill is to authorize the Commissioner of the Department of Energy to promulgate legislative rules governing the State National Pollutant Discharge Elimination System (NPDES) for Mines and Minerals.

This section is new; therefore, strike-throughs and underscoring have been omitted.