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STATE OF WEST VIRGINIA
STATE WATER RESOURCES BOARD
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NOTICE OF PUBLIC HEARING

AND

COMMENT PERIOD ON PROPOSED RULES

PUBLIC HEARING

AGENCY: West Virginia State Water Resources Board
RULE TYPE: Legislative Rules
RULE TITLE: Legislative Rules, State Water Resources Board, Series I, Water Quality Standards; Series II, National Pollutant Discharge Elimination System (NPDES); Series III, Special Regulations; Series IX, Underground Injection Control

A PUBLIC HEARING ON THE PROPOSED REVISIONS TO THE ABOVE RULES WILL BE HELD AT 7:00 P.M. ON JUNE 25, 1985 AT THE COONSKIN ARMORY. COMMENTS SHALL BE LIMITED TO THE PROPOSED REVISIONS AND MAY BE EITHER: ORAL WRITTEN BOTH X .

COMMENTS MAY ALSO BE MAILED TO:

State Water Resources Board
1205 Greenbrier Street
Charleston, WV 25311

1. The Board requests that persons wishing to make comments at the hearing make an effort to also submit written comments to facilitate the review process.
2. Copies of the proposed revisions to the above rules may be obtained from the Secretary of State's Office and at the Board's Office, 1260 Greenbrier Street, Charleston, WV 25311 (phone 348-4002) and may be viewed at all Department of Natural Resources' District Offices.
3. The Board realizes that the responsibility for promulgation of certain portions of the above proposed regulations will change as a result of the recently passed "Energy Act",

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especially as they pertain to coal and oil and gas related issues. However since the majority of the proposed provisions merely update the State regulations to comply with federal EPA regulations this hearing will excellerate the rule making process and it should make the transfer of regulatory responsiblity to the Energy Department more efficient.

Frances E Hunter

Executive Secretary

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-Adm.-Reg. Leg. Rule, 20-5A
Series II, Sec. 1.

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OFFICE OF WEST VIRGINIA
~~ADMINISTRATIVE REGULATIONS~~
WEST VIRGINIA LEGISLATIVE RULE
STATE WATER RESOURCES BOARD
CHAPTER 20-5A
SERIES II

Title: Requirements Governing the State National Pollutant
Discharge Elimination System (NPDES) Program

Section 1. General

1.1 Scope - This legislative rule series establishes requirements governing the State National Pollutant Discharge Elimination System (NPDES) Program.

1.2 Authority - ~~These regulations are promulgated under authority of West Virginia Code Chapter 20, Article 5A, Section 3.~~ W. Va. Code 20-5A.

1.3 Effective Date -

1.4 Filing Date -

1.5 ~~Certification - These regulations are certified authentic by the Chairman of the State Water Resources Board.~~

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Adm. Reg. Leg. Rule, 20-5A
Series II, Sec. 2.

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

"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.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or within any specified 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.

"Discharge" when used without qualification means the discharge of a pollutant for purposes of this ~~chapter~~ series.

"Discharge of a pollutant" means:

(a) any addition of any pollutant or combination of pollutants to waters of the State from any point source;

(b) this definition includes additions of pollutants into waters of the State from: surface runoff which is collected or channelled by man; discharges through pipes, sewers or other conveyances owned by the State, a municipality, or other person which do not lead to a treatment works;

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Adm. Reg. Leg. Rule, 20-5A
Series II, Sec. 2.

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 form(s) prescribed by the Chief and approved by EPA for the reporting of self-monitoring results by permittees.

"Draft permit" means a document prepared under Section 10, indicating the Chief's tentative decision to issue, modify, revoke and reissue, suspend or revoke a permit.

"Effluent limitation" means any restriction established under State or Federal law on quantities, discharge rates, concentrations or other specified units of measure of pollutants which are discharged from point sources into waters of the State.

"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.

"Existing source" means any facility or activity:

(a) from which there is or may be a discharge of pollutants which commenced prior to September 19, 1977; and

(b) which is not a new source.

"Facility or activity" means any point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under this ~~chapter~~ series.

"General permit" means a permit authorizing a category of discharges within a geographical area issued under Section 13.06.

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

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-Adm.-Reg.-Leg. Rule, 20-5A
Series II, Sec. 2.

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

"Interstate agency" means an agency of two or more states, including West Virginia, established on or under an agreement or compact approved by the Congress, or any other agency of two or more states including West Virginia, 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 facility or activity classified as such by the Regional Administrator in conjunction with the Chief.

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

"National Pollutant Discharge Elimination System" ("NPDES") means the National program for issuing, denying, modifying, revoking and reissuing, suspending, revoking, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 318, 402 and 405 of CWA, including any approved State program.

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

(a)(1) from which there is or may be a ~~new or additional discharge of pollutants that did not commence the discharge at a site discharged at which on prior to August 13, 1979, it had never discharged pollutants,~~

~~(2)(3)~~ which is not a new source; and

~~(2)(3)~~ which has never received a finally effective NPDES permit for discharges at that site, ~~and~~

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~~Adm.-Reg.-Leg. Rule, 20-5A~~
Series II, Sec. 2.

(b) This definition includes an indirect discharger which commences discharging into waters of the State. It also includes any existing mobile point source that begins discharging at a location for which it does not have an existing permit.

"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:

(a) after promulgation of standards of performance under Section 306 of CWA which are applicable to such source-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.

"Owner or operator" means the owner or operator of any facility or activity subject to regulation under this series. "Owner" owns or holds title to the facility. "Operator" is any person, firm or company who has responsibility for the overall operation of a facility or activity subject to regulation but does not include any employee, agent or independent contractor of the person with responsibility for the overall operation of a facility subject to regulation.

"Pass through" is the discharge into a POTW of pollutants which will not receive adequate treatment in the POTW treatment process.

"Permit" means an authorization issued by the Chief to implement the requirements of this series.

"POTW" means a "publicly owned treatment works".

"Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, concentrated animal feeding operations, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

"Primary industry category" means any industry category listed in Appendix A pursuant to Section 307(a) of the CWA.

"Privately owned treatment works" means any device or system which is

(a) used to treat wastes other than the owner's waste;
and

(2) (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, by-product, or waste product.

"Proposed permit" means a State NPDES permit prepared after the close of the comment period (and, when applicable, any public hearing) which is sent to EPA for review before final issuance by the Chief.

"Publicly owned treatment works" ("POTW") means any treatment works owned by the State or any political subdivision thereof, any municipality or any other public entity, for the treatment of pollutants. This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment.

"Real Time Water Quality Control" means the establishment of an effluent limitation which is based upon a stream flow to discharge flow ration, determined by the known characteristics of the stream and the discharge.

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~~Adm. Reg.~~ Leg. Rule, 20-5A
Series II, Sec. 2.

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

"Regional Administrator" means the Regional Administrator of Regional Office (III) of the Environmental Protection Agency, or an authorized representative.

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

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

"Secretary" as used in this ~~chapter-series~~ is the Secretary of the Army.

"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.

"Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a 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 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 the State of West Virginia.

"State Act" or "State Law" means the West Virginia Water Pollution Control Act, West Virginia Code Chapter 20, Article 5A, Section 1 et seq.

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~~Adm. Reg. Leg. Rule, 20-5A~~
Series II, Sec. 2.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by the 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 Sections 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), 302(b)(2), and 316(a) of CWA, where appropriate.

"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.

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~~Adm. Reg.~~ Leg. Rule, 20-5A
Series II, Sec. 4.

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

Section 4. Application for Permits

4.01 Duty to Apply

(a) Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, except persons covered by general permits and persons excluded under Section 3.02, shall submit a complete application in the manner and on a form prescribed by the Chief and in accordance with the following paragraphs and accompanied by the filing fee as prescribed in Series III, Section 7:

(b) When a facility or activity is owned by one person but is operated by another, the Chief may require documentation of the permit responsibility and liability of the owner and operator and may propose and issue the permit to either one or both the owner and operator, but only after notice to both the owner and operator; or, the Chief may deny the permit until the responsible party or parties apply for the permit.

(c) Any existing storm water discharger who is required to have a permit but does not have an effective permit, and which is not covered by a general permit, shall submit an application for a permit within six months of the effective date of this section. Any storm water discharger designated under Section 13.04(c) shall submit an application within six months of notification of its designation.

4.02 Completeness

(a) For the purposes of this section, the term "Chief" includes an authorized representative except in paragraph (f).

(b) The Chief shall not begin the processing of a permit before receiving a complete application.

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~~Adm. Reg.~~ Leg. Rule, 20-5A
Series II, Sec. 4.02

(c) The Chief shall review every application for completeness in not more than 90 days. Upon completing the review, the Chief shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Chief shall list the information necessary to make the application complete. When the application is for an existing source, the Chief shall specify in the request for supplemental information a date for submitting the necessary information. The Chief shall notify the applicant that the application is complete upon receiving this information.

(d) If an applicant fails or refuses to submit the requested supplemental information, the permit application may be denied and appropriate enforcement action may be taken under the applicable provisions of the State Act.

(e) The application shall be considered complete on the date on which the Chief notifies the applicant to that effect as provided in paragraph (c) of this section.

(f) The Chief shall have not more than 90 days to act upon the completed application, unless EPA has filed a written objection except this limitation may be extended by the period of time granted by the Chief under Section 12.01(b)(1) of this regulation.

(g) For a period of one (1) year after date of these regulations, the time period for completeness under paragraph (c) and time period for acting upon a completed application under paragraph (e) may be extended by the Chief when necessary but in no case shall the combined time periods under these paragraphs exceed 240 days.

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

(5) Other relevant permits.

(6) A topographic map (or other map drawing if a topographic map is unavailable) drawn to a reasonable scale and extending at least one (1) mile beyond the site, except in the case of coal mining facilities the distance is 1/2 mile beyond the site depicting the facility and each of its intake and discharge structures; 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 Section 13.04, are exempt from the requirements of this paragraph.

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

(8) For Group II storm water dischargers only, a brief narrative description of:

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

(ii) Receiving water; and

(iii) Any treatment supplied to the discharge.

(b) Existing sewage, manufacturing, commercial, mining and silvicultural discharges shall also provide the following information to the Chief, using application forms provided by the Chief:

(1) Outlet location. The latitude and longitude to the nearest second and, the name and alphanumeric designation of the immediate receiving stream, water-and-or river mile point where applicable, and the stream classification of the receiving stream at the point of discharge (wet weather, intermittent or perennial).

(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 (b)(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

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~~Adm. Reg.~~ Leg. Rule, 20-5A
Series II, Sec. 4.04

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 outlet for the following parameters relating to pollutants unless the prescribed form indicates that such data is not necessary:

- (1) Biochemical Oxygen Demand (BOD5)
- (2) Chemical Oxygen Demand
- (3) Total Organic Carbon
- (4) Total Suspended Solids
- (5) Ammonia (as N)
- (6) Temperature (both winter and summer)
- (7) pH

(B) At the applicant's request, the Chief may waive the reporting requirements for one or more of the pollutants listed in paragraph (b) (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) contributing to a discharge must report quantitative data for the following pollutants in each outlet containing process wastewater:

(A) The organic toxic pollutants in the fractions designated in Table I of Appendix D (July 1, 1985) for the applicant's industrial category or categories; provided, however, that this requirement shall not apply to the coal mining industrial category; and provided, further, that testing and reporting for the base/neutral fraction

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~~Adm. Reg. Leg. Rule, 20-5A~~
Series II, Sec. 4.04

in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process waste-streams of the Steam Electric Power Plant industrial category shall not apply. Table II of Appendix D (July 1, 1985) lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedures which uses gas chromatography/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.

(B) The pollutants listed in Table III of Appendix C D (July 1, 1985) (the toxic metals, cyanide, and total phenols).

(iii) (A) ~~Each applicant must report for each outlet quantitative data for the following pollutants, if the applicant knows or has reason to believe that the pollutant is discharged from the outlet:~~

~~(A) All pollutants listed in Table II or Table III of Appendix D (the toxic pollutants) for which quantitative data is not otherwise required under paragraph (b) (7) (ii) of this section.~~

~~(B) All pollutants in Table IV of Appendix D (certain conventional and nonconventional pollutants). indicate whether it knows or has reason to believe that any of the pollutants in Table IV of Appendix D (July 1, 1985) (certain conventional and nonconventional pollutants) is discharged from each outlet. If an applicable effluent limitations guideline either directly limits the pollutant or, by its expressed 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.~~

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~~Adm. Reg. Leg. Rule, 20-5A~~
Series II, Sec. 4.04

(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 (July 1, 1985) (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (b)(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 (b)(8) of this section is not required to analyze for pollutants listed in Table II of Appendix D (July 1, 1985) (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 (July 1, 1985) (certain hazardous substances and asbestos) are discharged from

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~~Adm.~~ ~~Reg.~~ Leg. Rule, 20-5A
Series II, Sec. 4.04

each outlet. 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, except sewage facilities, 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); 0, 0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothiate (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 paragraphs (b)(7)(ii)(A) or (b)(7)(iii)(A) of this section to submit quantitative data for the pollutants listed in Table II of Appendix D (July 1, 1985) (the organic toxic pollutants):

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

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~~Adm. Reg. Leg. Rule, 20-5A~~
Series II, Sec. 4.04

(ii) For all other applicants, gross total annual sales averaging less than \$100,000 per year.

(9) Used or manufactured toxics. A listing of any toxic pollutant which the applicant does or expects that it will during the next five (5) years use or manufacture as an intermediate or final product or byproduct.

~~(10) Potential discharges. A description of the expected levels of and the reasons for any discharges of pollutants which the applicant knows or has reason to believe will exceed two times the values reported in paragraph (b)(7) of this section over the next five (5) years.~~

~~(11)~~ (10) 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 three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge.

~~(12)~~ (11) Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by paragraph (b)(7) of this section, the identity of each laboratory or firm and the analyses performed.

~~(13)~~ (12) Additional information. In addition to the information reported on the application form, applicants shall provide to the Chief, at his or her request, such other information as the Chief may reasonably require to assess the discharges of the facility and to determine whether to issue a NPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity to aquatic life of the discharges and requirements to determine the cause of the toxicity.

(13) Storm water point source exemption:

(i) An applicant that qualifies as a Group II storm water discharger under Section 13.04 is exempt from the requirements of paragraph (a)(6) and (b)(7) of this section, unless the Chief requests such information.

(ii) For the purpose of this section, storm water point sources may estimate the average flow of their discharge and must indicate the rainfall event and the method of estimation that the estimate is based on.

(c) New and existing concentrated animal feeding operations and

4.05 Record Keeping

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

4.06 Signatories to Permit Applications and Reports

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

(1) For a corporation: ~~by a principle-executive-officer-of-at-least-the-level-of-vice-president-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 principle business function, or any other person who performs 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: The Chief does not require specific assignments or delegations of authority to responsible corporate officers identified in Sec. 4.06(a)(1)(i). The Chief will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Chief to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporation positions under Sec. 4.06(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:

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Adm.-Reg. Leg. Rule, 20-5A
Series II, Sec. 4.05

(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 Administrator of EPA).

(b) Reports. All reports required by permits and other information requested by the Chief, and all permit applications submitted for Group II storm water discharges, shall be signed by a person described in paragraph (a) of this section, 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, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative

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~~Adm. Reg. Leg. Rule, 20-5A~~
Series II, Sec. 4.06

may thus be either a named individual or any individual occupying a named position); and

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

(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 Chief 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 paragraphs (a) or (b) of this section shall make the following certification:

"I certify under penalty of law that this document I have personally examined and am familiar with the information submitted in and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted, and that, based on my inquiry of the person or persons who manage the system, or those persons directly responsible for obtaining-gathering the information, I believe that 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."

(e) The failure to include a certification with a document other than an application filed under (b) at the time the document is initially filed with the Chief shall not affect the timeliness of such filing so long as the certification is submitted within thirty (30) days of the filing of such document.

4.07 Filing Fee

For all NPDES permits, the filing fees required under Series III, Section 7 shall apply, as though fully set forth herein.

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Adm. Reg. Leg. Rule, 20-5A
Series II, Sec. 5.

Section 5. Conditions Applicable to All Permits

The following conditions apply to all permits. All conditions shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit.

(a) Duty to comply:

(1) The permittee must comply with all conditions of this permit. Permit noncompliance constitutes a violation of the CWA and State Act and is grounds for enforcement action; for permit modification, revocation and reissuance, suspension or revocation; or for denial of a permit renewal application.

(2) The permittee shall comply with all effluent standards or prohibitions established under Section 307(a) of the CWA 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 a new permit at least 180 days prior to expiration of the permit.

(c) ~~Duty-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. ~~Upon reduction, loss or failure of~~

the treatment facility the permittee shall, to the extent necessary to maintain compliance with its permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided.

(d) Duty to mitigate. The permittee shall take all reasonable steps to minimize or ~~correct-prevent~~ any ~~adverse-impact~~ discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or on the environment. ~~-resulting-from-noncompliance-with-this-permit-~~

(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 effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, and including appropriate quality assurance procedures. Unless otherwise required by Federal or State law, this provision requires the operation of back-up auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit. For domestic waste treatment facilities, waste treatment operators as classified by State Health Department Regulations authorized under Chapter 16, Article 1, Public Health Laws, Code of West Virginia, will be required except that in circumstances where the domestic waste treatment facility is receiving any type of industrial waste, the Chief may require a more highly skilled operator.

(f) Permit actions. This permit may be modified, revoked and reissued, suspended, or revoked for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or revocation, 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 sort, or any exclusive privilege.

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

(i) Inspection and entry. The permittee shall allow the Chief, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where ~~a an~~ effluent source-regulated-facility or activity is located ~~or~~ conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Act, any substances or parameters at any location.

(5) For purposes of this subsection, the term "authorized representative" shall not include an independent contractor.

(6) All inspections shall be conducted in accordance with the "Environmental Protection Agency Memorandum on Inspection Procedures" dated April 11, 1979.

(j) Monitoring and records:

(1) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, as in effect July 1, 1985, unless other test procedures have been specified in this permit. Inherent variabilites in these procedures may be taken into account in providing the certification required in Section 4.06(d). Exceedances of effluent limitations established in this permit will not be deemed permit violations unless the reported value exceeds the effluent limitation by an amount greater than the variability recognized in applicable sampling and analytical procedures.

(2) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(3) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original 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 three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Chief at any time.

(4) Records of monitoring information shall include:

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

(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; if a commercial laboratory is used, the name and address of the

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(5) Monitoring results shall be reported on DMRs and at the intervals specified elsewhere in this permit.

(6) If the permittee monitors any pollutant at any monitoring point specified in the permit more frequently than required by the permit, using approved test procedures 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.

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

(8) The permittee shall not knowingly render inaccurate any monitoring device required to be used under this permit.

(k) Signatory requirement. All applications, reports or information submitted to the Chief shall be signed and certified as required in Section 4.06.

(l) Reporting requirements:

(1) Planned changes. The permittee shall give notice to the Chief as soon as possible of any planned physical alterations or additions to the permitted facility which may significantly affect the nature or quantity of the discharge and of any planned changes in the method of operating the facility which may significantly affect the nature or quantity of the discharge. 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 Section 134.07(b); or

(ii) This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section 5(1)(6).

(ii) The following shall also be reported immediately:

(A) Any anticipated bypass which exceeds any effluent limitation in the permit;

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

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Chief in the permit to be reported immediately. 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.

(iii) The Chief may waive the written report on a case-by-case basis if the oral report has been received in accordance with the above.

(iv) Compliance with the requirements of paragraph 1 (5) of this section, shall not relieve a person of compliance with Series 3, Section 1 of the Board's regulations.

(6) In addition to the above reporting requirements, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Chief in writing as soon as they know or have reason to believe:

(i) 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

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highest of the following "notification levels":

(A) One hundred micrograms per liter (100 ug/l);

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

(C) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 4.04(b)(7); ~~or 4.04(b)(9), and or~~

(D) The level established by the Chief in accordance with Section 6(b)(7).

~~(ii) - That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct of any toxic pollutant which was not reported in the permit application under Section 4.04(b)(9). - 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 ug/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 Section 4.04(b)(7).

(IV) The level established by the Chief in accordance with Section 6(b)(7).

(iii) That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct of any toxic pollutant which was not reported in the permit application under Section 4.04(b)(9) and which will result in the discharge on a routine or frequent basis of that toxic pollutant at levels which exceed five times the detection limit for that

pollutant under approved analytical procedure.
(iv) That they have begun or expect to begin to use
or manufacture as an intermediate or final product or
byproduct of any toxic pollutant which was not reported
in the permit application under Section 4.04(b)(9) and
which will result in the discharge on a non-routine or
infrequent basis of that toxic pollutant at levels
which exceed ten times the detection limit for that
pollutant under approved analytical procedure.

(7) Other noncompliance. The permittee shall report all instances of noncompliance not reported under the above paragraphs at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (1)(5)(i) of this section.

(8) Other information. Where the permittee become 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 Chief, 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; and

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. "Severe property damage" may also include property damage which could result from the curtailment of essential public services.

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

(3) Notice:

(i) If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass;

(ii) If the permittee does not know in advance of the need for a bypass, notice shall be submitted as required in paragraph (1)(5)(ii) of this section.

(4) Prohibition of bypass:

(i) Bypass is permitted only under the following conditions, and the Chief 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 ~~the permittee could have installed 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 Chief may approve an anticipated bypass, after considering it's adverse effects, if the Chief 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 effluent 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 ~~specific~~ cause(s) of the upset;
- (ii) The permitted facility was at the time being properly operated;
- (iii) The permittee submitted notice of the upset as required in paragraph (1)(5)(ii) of this section; and

(iv) The permittee complied with any remedial measures required under Section 5(d).

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

(o) Removed substances. Where removed substances are not otherwise covered by the terms and conditions of this permit or other existing permit by the Chief, any solids, sludges, filter backwash or other pollutants removed in the course of treatment or control of wastewaters and which are intended for disposal within the State, shall be disposed of only in a manner and at a site subject to the approval by the Chief. If such substances are intended for disposal outside the State or for reuse, i.e., as a material used for making another product, which in turn has another use, the permittee shall notify the Chief in writing of the proposed disposal or use of such substances, the identity of the prospective disposer or users, the intended place of disposal or use, as appropriate, and shall take reasonable measures to insure that the use does not cause pollution of the waters of the State.

Section 6. Establishing Permit Conditions

(a) In addition to conditions required in all permits, the Chief shall establish conditions in permits as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the CWA and State Act and regulations. An applicable requirement is a State or Federal or interstate compact, statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit and is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit.

(b) In the permit review and planning process or upon the request of a permit applicant or permittee, the Chief may utilize Real Time Water Quality Control on a case by case basis when establishing permit conditions when the applicant demonstrates that the use of Real Time Water Quality Control will not violate water quality standards. In order to facilitate a determination or assessment of the applicability of Real Time management Control, the Chief may require a permit applicant or permittee to submit such information as deemed necessary.

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Series II, Sec. 6.

(c) Each permit shall include conditions meeting the following requirements when applicable:

(1) Technology-based effluent limitations and standards based on effluent limitations and standards under Section 301 of CWA or new source performance standards promulgated under Section 306 of CWA, or case-by-case effluent limitations determined under Section 402(a)(1) of CWA, ~~or a combination of the two in accordance with 40 CFR Part 125.~~ However, a technology-based effluent limitation may be imposed in a permit only in accordance with the methods set out in Appendix E. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of Section 13.07 (protection period).

(2) 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 Chief shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(3) For any discharger within a primary industry category (see Appendix A), requirements under Section 307(a)(2) of CWA as follows:

After June 30, 1981, any permit issued shall include effluent limitations and a compliance schedule to meet the requirements of Sections 301(b)(2)(A), (C), (D), (E), and (F) of CWA whether or not applicable effluent guidelines have been promulgated or approved. These permits may include a condition stating that, if an applicable standard or limitation is

promulgated under Sections 301(b)(2)(C) and (D), 304(b)(2), 307(a)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not listed in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

(4) Any more stringent requirements necessary to achieve water quality standards established pursuant to the CWA or the State Act and regulations, including requirements of other affected States. Nothing in this section precludes the application of Real Time Water Quality Control in achieving water quality standards. In establishing any such water quality-based effluent limitation the following shall apply:

(i) Water quality-based effluent limitations may be utilized only where violations of water quality standards are identified or projected as likely to occur as the result of the permitted discharge.

(ii) Permit requirements for monitoring effluent toxicity may be imposed only where there is a significant likelihood of toxic effects to biota in the receiving water.

(iii) Permit requirements for monitoring effluent toxicity shall not be imposed where toxic effects are present but there is a significant likelihood that compliance with technology-based requirements will sufficiently mitigate the effect; however, the Chief may require chemical and toxicity testing after installation of the treatment technology and may reopen the permit to incorporate additional limitations if needed to meet water quality standards.

(iv) Effluent toxicity monitoring requirements should be used only where effluents are complex or where combined effects of multiple discharges are of concern.

(v) In making a determination to require effluent toxicity monitoring as a permit condition, the Chief shall take into account the degree of impact, the complexity and variability of the discharge, the water body type and hydrology, the potential for human health impact, the amount of existing data,

the level of certainty desired in water quality assessment, the appropriateness of the toxicity monitoring technique for use in protecting and monitoring water quality, other sources of pollutants, and the ecology of the receiving stream.

(vi) If upon the basis of such effluent toxicity monitoring, it is determined that there is a significant likelihood of toxic effects to biota in the receiving water, then the Chief may require the permittee to conduct a toxicity reduction evaluation.

(vii) If, as a result of such toxicity reduction evaluation, specific pollutants are identified as causing such toxic effects to biota in the receiving water, the permit may be modified to limit such pollutants.

(viii) All biological or other toxicity monitoring procedures required in a permit shall be approved pursuant to 40 CFR Part 136 or, unless permittee agrees otherwise, be based upon studies establishing that such analyses have been properly validated by scientifically accepted interlaboratory procedures in subparagraph (v) above.

(5) Any requirements necessary to ensure consistency with the requirements of a Water Quality Management Plan approved by EPA under Section 208(b) of CWA.

(6) For toxic pollutants, limitations established under paragraphs (1), (2), or (4) of this section, to control pollutants meeting the criteria listed in paragraph (6)(i) of this section. Limitations will be established in accordance with paragraph (6)(ii) of this section. An explanation of the development of these limitations shall be included in the fact sheet, if any:

(i) Limitations must control all toxic pollutants which:

(A) The Chief determines are or may be discharged at a greater level than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee; or

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

(C) 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 re-issuance; or

(D) 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.

(E) 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.

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

(G) 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).

(H)(i) Upon request by the permittee, following final adoption by the Board of amendments to its regulations consistent with changes in EPA regulations adopted as a result of the legal challenge to EPA regulations in the case of Natural Resources Defense Council v. EPA, No. 80-1607 and consolidated cases, or other cases challenging EPA's NPDES regulations, a permit may be reopened for the limited purpose of changing any conditions in this permit which were based upon regulations which have subsequently been so amended.

(ii) Pending final consideration by the Board of amendments to regulations described in (i) above, the permittee will be deemed to be in compliance with the pertinent conditions of this permit if the permittee is in compliance with corresponding final regulations promulgated by the U. S. Environmental Protection Agency in response to the case cited in paragraph (i) above.

(11) 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 of CWA and the State Act. Alternatively, the Chief may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Chief'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 treatment works, if any.

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(12) Grants. Any conditions imposed in grants made by the Administrator to POTWs under Section 201 and 204 of CWA which are reasonably necessary for the achievement of effluent limitations under Section 301 of CWA.

(13) Sewage sludge. Requirements under Section 405 of CWA governing the disposal of sewage sludge from publicly owned treatment works, in accordance with any applicable regulations.

(14) Navigation. Any conditions that the Secretary considers necessary to ensure that navigation and anchorage will not be substantially impaired.

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

(16) Incorporate specific items of the permit application and supporting documents by express reference. This provision does not authorize a general incorporation by reference of all application information.

Section 7. Calculating NPDES Permit Conditions

(a) Outlets and discharge points. All permit effluent limitations, standards, and prohibitions shall be established for each outlet or discharge point of the permitted facility, except as otherwise provided under Section 6(b)(9) and paragraph (i) of this section.

(b) Production-based limitations:

(1) In the case of sewage facilities, permit limitations, standards, or prohibitions shall be calculated based on design flow.

(2)(i) Except in the case of sewage facilities, 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, ~~such as the production during the high month of the previous year, or the monthly average for the highest of the previous five (5) years, or upon any other reasonable measure of production as demonstrated by the application or as determined by the Chief.~~ 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) Where production-based limitations, standards or prohibitions apply, the Chief 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.

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

to notify the Chief 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.

(II) 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 Chief under paragraph (b)(2)(ii)(B)(I) 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.

(III) 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.

(3) In the case of facilities and activities providing services and where water usage is not related to a product, limitations, standards, and prohibitions shall be based upon water usage. For those facilities covered by Section 2 and 3 of Series III of the Administrative Legislative Regulations, those requirements shall also be considered in these determinations.

(c) Metals. All permit effluent limitations, standards, or

prohibitions for a metal shall be expressed in terms of ~~the total metal (that is, the sum of the dissolved and suspended fractions of the metal)~~ "total recoverable metal" as defined in Series I, Section 2, 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, it is necessary to express the limitation on the metal in the dissolved or valent or total form in order 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 all continuous discharges, all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as maximum daily and average monthly discharge limitations.

(e) Noncontinuous discharges. Discharges which are not continuous, shall be particularly described and limited, considering the following factors, as appropriate:

(1) Frequency;

(2) Total mass;

(3) Maximum rate of discharge of pollutants during the discharge; or

(4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.

(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, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation, 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. ~~Except as provided in paragraph (h) of this section, effluent limitations imposed in permits shall not be adjusted for pollutants in the intake water.~~

~~--(h)--Net limitations:-----~~

(1) Upon request of the permittee, technology based effluent limitations or standards imposed in a permit shall be calculated on a "net" basis; that is, shall be adjusted to reflect credit for pollutants in the permittee's intake water, if the permittee demonstrates that its intake water is drawn from the same body of water into which its discharge is made and if:

- (i)(A) The applicable effluent limitations and standards contained in Section 14 specifically provide that they shall be applied on a net basis; or
- (ii)(B)- The permittee demonstrates that the pollutants present in the intake water will

~~not be entirely removed by its treatment systems operated by the permittee, and control system it proposes or uses to meet applicable technology-based eliminations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.~~

~~(iii) The permit contains conditions requiring the permittee to conduct additional monitoring as necessary to determine continued eligibility for and compliance with any such adjustments.~~

(2) ~~The permittee shall notify the Chief if eligibility for an adjustment under this section has been altered or no longer exists. In such case, the permit may be modified or revoked and reissued. 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 outlet or elsewhere.~~

(3) ~~Permit effluent limitations or 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 permittee. Adjustments under this paragraph shall be given only to the extent that pollutants in the intake water which are limited in the permit are not removed by the treatment technology employed by the permittee. In addition, effluent limitations or standards shall not be adjusted to the extent that the pollutants in the intake water vary physically, chemically, or biologically from the pollutants limited in the permit. Nor shall effluent limitations or standards be adjusted to the extent that the permittee significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same. Nor shall effluent limitations or standards be calculated on a "net" basis for permittees whose intake water comes from underground water systems.~~

(4) 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.

(5) Credit shall be granted only if the permittee

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~~Admin. Reg.~~ Leg. Rule, 20-5A
Series II, Sec. 7.

demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Chief may waive this requirement if he finds that no environmental degradation will result.

(6) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(i) Internal waste streams. When permit effluent limitations or

discharged into waters of the State, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted to make them more 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.

(2) paragraph (j)(1) of this section shall not apply to the extent that promulgated effluent limitations guidelines:

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

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

(3) Paragraph (j)(1) of this section does not alter a discharger's obligation to meet any more stringent requirements established under Sections 5 and 6 of this series.

Section 8. Schedules of Compliance

(a) General. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the CWA and State Act and regulations:

(1) Any schedule of compliance shall require compliance as soon as possible, but in no case later than an applicable statutory deadline. In the case of permit conditions based on water quality standards, a schedule of compliance may be used which shall assure that the discharge will not cause a violation of applicable water quality standards.

(2) The first NPDES permit issued to a new source,

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~~or a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall not contain a schedule of compliance under this section, 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 commencement of discharge.~~

(3) Interim dates. If a permit establishes a schedule of compliance which exceeds one (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 one (1) year.

(ii) If the time necessary for completion of any interim requirement is more than one (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.

(b) Alternative schedules of compliance. A permit applicant or permittee may cease conducting regulated activities rather than continue to operate and meet permit requirements 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 noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is

9.02 Causes for Modification or Permittee Requested
Reissuance of Permits

(a) Minor modifications. Permits may be modified by the Chief for any good cause and unless such cause is specified in the following subsections (b) and (c), modification does not require the preparation of a draft permit or the public notice procedures of Sections 10 and 12 respectively.

(b) Modifications. The following are causes for modification, but not reissuance of a permit unless the permittee requests or agrees, and require the preparation of a draft permit under Section 10 and the public notice procedures of Section 12, unless an emergency is declared by the Chief. If the permittee requests or agrees, then the following causes can be reason for a permit reissuance which will open the entire permit for comment and change.

(1) Alterations. There are material and substantial alterations or additions to the permitted facility or activity which justify the application of permit conditions that are different or absent in the existing permit, including the acceptance of wastes from an indirect discharger under Section 14.

(2) Information. The Chief has received other new information. Permits may be modified during their terms for this cause only if information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) which would have justified the application of different permit conditions at the time of issuance. For NPDES general permits this cause shall include 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 to be modified was based on a promulgated effluent limitation guideline, new source performance standard, pretreatment standard, or water quality standards; ~~and~~

(B) The State has revised, withdrawn or modified that portion of the effluent limitation guideline, new source performance standard, pretreatment standard, or water quality standard on which the permit condition was based, have been withdrawn or modified; and

(C) A permittee requests modification within ninety (90) days after the State Register notice of the action on which the request is based.

(ii) For judicial decisions, when a court of competent jurisdiction has remanded and stayed State or Federal promulgated regulations, if the remand and stay concern that portion of the regulations on which the permit condition was based.

(4) Modification and extension of compliance schedules:

(i) The Chief determines good cause exists for extension 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.

(ii) To modify a schedule of compliance to reflect the time lost during construction of an innovation or alternative facility, in

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~~Adm. Reg. Leg. Rule, 20-5A~~
Series II, Sec. 9.02

~~(13) -When the permittee begins or expects to begin to--
-use or manufacture as an intermediate or final product or---
-byproduct any toxic pollutant which was not reported in the permit-
-application.--~~

~~(14) -To establish a "notification level" as provided in-
-Section 6(b)(7).-~~

~~(14)(15)~~ Upon failure of the Chief to notify another State as required by Section 12.01 whose waters may be affected by a discharge from this State.

~~(15)(16)~~ A determination that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by a permit modification.

~~(16)(17)~~ Any of the reasons cited in Section 9.04.

~~(17)~~ 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.

~~(18)~~ To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

~~(19)~~ 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).

~~(20)(i)~~ Upon request by the permittee, following final adoption by the Board of amendments to its regulations consistent with changes in EPA regulations adopted as a result of the legal challenge to EPA regulations in the case of Natural Resources Defense Council v. EPA, No. 80-1607 and consolidated cases, or other cases challenging EPA's NPDES regulations, a permit may be reopened for the limited purpose of changing any conditions in

this permit which were based upon regulations which have subsequently been so amended.

(ii) Pending final consideration by the Board of amendments to regulations as described in (i) above, the permittee will be deemed to be in compliance with the pertinent conditions of this permit if the permittee is in compliance with corresponding final regulations promulgated by the U. S. Environmental Protection Agency in response to the case cited in paragraph (i) above.

~~(e) -- If an emergency is declared by the Chief as provided by the statute (Chapter 207, Article 5A, Section 12(a)), the provisions of this subsection shall apply. -- He may either immediately modify the permit without prior public notice or preparation of a draft permit or shorten the time period for public notice but that public notice period shall be no less than ten (10) days. -- When the Chief immediately modifies the permit, he or she shall at the same time, also prepare a draft permit and follow the public notice procedures for permit modifications so that the public may scrutinize his action and comment upon it. -- Following the preparation of the draft permit and public notice procedures, the Chief may again modify the permit in a manner consistent with public comment. --~~

Section 10. Draft Permits

10.01 Administration

(a) Once an application is complete, the Chief shall tentatively decide whether to prepare a draft permit or to deny the application.

(b) If the Chief tentatively decides to issue a general permit, he or she shall prepare a draft general permit under paragraph (c) of this section.

(c) If the Chief decides to prepare a draft permit, it shall contain the following information:

(1) All conditions under Sections 5 and 6;

(2) All compliance schedules;

(3) All monitoring requirements; and

(4) Effluent limitations, standards, prohibitions and conditions and all variances that are to be included.

(d) All draft permits shall be provided to permittees and shall be accompanied by a fact sheet if required under Section 11 and shall be publicly noticed and available for public comment in accordance with Section 12.

10.02 Decision on Variances

(a) The Chief may grant or deny requests for the following variances:

(1) Extensions under CWA Section 301(i) based on delay in completion of a publicly owned treatment works; Any decision on a request for an extension must be based upon a consideration of the criteria set out in Appendix F.

(2) After consultation with the Regional Administrator, extensions under CWA Section 301(k) based on the use of innovative technology; Any decision by the Chief on a request for an extension must be based upon a consideration of the criteria set out in Appendix G.

(3) Variances under CWA Section 316(a) for thermal pollution. Any decision on a request for an extension must be based upon a consideration of the criteria set out in Appendix H.

(b) The Chief 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; Any decision on a variance must be based upon a consideration of the criteria set out in Appendix I.

(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). In considering a request for a variance under this provision the Chief shall consider whether there is a reasonable relationship between the economic and social costs and the benefits to be obtained by achieving such effluent limitations.

(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 Chief.

(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 Chief 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 40 CFR 124.64.

Section 11. Fact Sheet

(a) A fact sheet shall be prepared for every draft or final permit for a major facility or activity, for every general permit and for every draft or final permit that incorporates a variance and for every draft or final permit which the Chief 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 Chief shall send this fact sheet to the applicant and, on request, to any other person and to the persons required under Section 12.01(e).

(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 or final permit.

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

(3) A brief summary of the basis for the draft or final permit conditions including references to applicable statutory or regulatory provisions.

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

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

(i) For draft permits, the beginning and ending dates of the comment period under Section 12.01 and the address where comments will be received;

(ii) For draft permits, 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.

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

(7) 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 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

(8) When the draft or final permit contains any of the following conditions, ~~as a full and documented~~ explanation of the reasons why such conditions are applicable appropriate:

(i) Limitations to control toxic pollutants under Section 6(b)(6);

(ii) Limitations on internal waste streams under Section 7(i);

(iii) Limitations on indicator pollutants under 40 CFR 125.3(g); or

(iv) For every permit to be issued to a privately owned treatment works, an explanation of the Chief's decision on regulation of users under Section 6(b)(11).

(v) Conditions under Section 6(c)(4); or

(vi) Limitations set on a case-by-case basis under Section 6.

(9) When appropriate, a sketch or detailed description of the location of the discharge described in the application.

(c) The Chief shall prepare a statement of basis for every draft or final permit for which a fact sheet under (a), above, is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft or final 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

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~~Adm. Reg.~~ Leg. Rule, 20-5A
Series II, Sec. 11.

and, on request, to any other person.

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Adm. Reg. Leg. Rule, 20-5A
Series II, Sec. 12.

Section 12. Public Comment, and Hearings and Effective Date
of Permit

12.01 Public Notice

(a) Scope:

(1) Public notice shall be given that the following actions have occurred:

(i) A draft permit has been prepared.

(ii) A hearing has been scheduled under Section 12.03.

(2) Public notices may describe more than one permit or permit section.

(b) Timing:

(1) Public notice of the preparation of a draft permit shall allow at least 30 days for public comment. Upon request of the permittee the public comment period will be extended for an additional 30 days. Further extension of the comment period may be granted by the Chief for good cause shown but in no case may the further extension exceed an additional 30 days.

(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. Public notice 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;

(ii) Any other State or Federal agency which the Chief knows has issued or is required to issue a permit for

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Adm. Reg. Leg. Rule, 20-5A
Series II, Sec. 12.03

12.03 Public Hearings

(a) The Chief shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest on issues relevant to the draft permit(s). The Chief also may 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.

(b) 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 under Section 12.01(b) shall automatically be extended to 10 days after the close of any public hearing under this section.

(c) A tape recording or written transcript of the hearing shall be made available to the public, upon request.

12.04 Reopening of the Public Comment Period

(a) If any data, information or arguments submitted during the public comment period ~~appear to raise~~ substantial new questions concerning a permit, or if as a result of comments submitted by someone other than the permittee the Chief determines to substantially revise any condition of the permit that had been sent to initial public notice, the Chief may shall take one or more of the following actions:

(1) Prepare a new draft permit, appropriately modified, under Section 10;

(2) Prepare a revised fact sheet under Section 11 and reopen the comment period under this section; or

(3) Reopen or extend the comment period under Section 12.01 to give interested persons an opportunity to comment on the information or arguments submitted.

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~~Adm., Reg., Leg.~~ Rule, 20-5A
Series II, Sec. 12.

claim is made at the time of submission, the Chief may make the information available to the public without further notice.

(b) Any information claimed to be confidential shall be forwarded to the Regional Administrator for his or her concurrence in any determination of confidentiality.

(c) Such information shall be subject to appropriate Federal regulations governing confidentiality.

Section 12.8 Issuance and effective date of permit.

(a) After the close of the public comment period under Section 12.02 on a draft permit, the Chief shall issue a final permit decision. The Chief 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 the decision. 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.

(b) A final permit decision shall become effective 30 days after the service of notice of the decision under paragraph (a) of this section, unless:

(1) A latter effective date is specified in the decision; or

(2) A request for suspension of one or more of the terms and conditions of the permit is made pursuant to West Virginia Code 20-5A-15(b), within the appeal period provided therein, in which case the final permit decision shall become effective 45 days after service of notice of the decision under (a), above, unless the request for suspension is granted by the Board; or

(3) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

but not limited to physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

13.04 Separate Storm Sewers

(a) Permit requirement. Separate Storm sewers water point sources as defined in this section are point sources subject to the permit program. Separate Storm sewers water point sources may be permitted either individually or under a general permit. A permit for discharges into the waters of the State from a separate storm sewer water point source covers all conveyances which are a part of that separate storm sewer system, even though there may be several owners or operators of these conveyances. However, discharges into separate storm sewers such systems from point sources which are not part of the separate storm sewer systems may also require a permit. Where there is more than one owner or operator of a single system of such conveyances, any or all discharges into the storm water discharge system may be identified in the application submitted by the owner or operator of the portion of the system that discharges directly into waters of the State. Any such application shall include all information regarding discharges into the system that would be required if the dischargers submitted separate applications. Dischargers so identified shall not require a separate permit unless the Chief specifies otherwise. Any permit covering more than one owner or operator shall identify the effluent limitations, if any, which apply to each owner or operator. Where there is more than one owner or operator, no discharger into the storm water discharge may be subject to a permit condition for discharges into the storm water discharge other than its own discharges into that system without its consent. All dischargers into a storm water discharge system must either be covered by an individual permit or a permit issued to the owner or operator of the portion of the system that directly discharges.

(b) Definitions:

(1) "Separate storm sewer" "Storm water point source" means a conveyance or system of conveyances (including pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and which is either:

- (i) Located in an urbanized area as designed by the U. S. Bureau of the Census according to the criteria in 39 FR 15202 (May 1, 1974); or

~~(ii) Not located in an urbanized area but designated under paragraph (c) of this section.~~

Discharges from lands or facilities used for industrial or commercial activities; or

(iii) Is designated under paragraph (c) of this section. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain NPDES permits, but are not "storm water point sources".

(2) Except as provided in paragraph (b)(3) and paragraph (c) of this section, a conveyance or system of conveyances operated primarily for the purpose of collecting and conveying storm water runoff ~~which is not located in an urbanized area and has not been designated by the Chief under paragraph (c) of this section is not considered~~ does not constitute a storm water point source ~~a point source~~ and is not subject to the provisions of this series.

~~(3) Conveyances which discharge process wastewater or storm water runoff contaminated by contact with wastes, raw materials, or pollutant contaminated soil, from lands or facilities used for industrial or commercial activities, into waters of the State or into separate storm sewers are point sources subject to the requirements of this chapter but are not separate storm sewers for purposes of this section. As used in this paragraph, "wastes" does not include sand, silt and gravel.~~

(3) "Group I storm water discharge" means any "storm water point source" which is:

(i) Subject to effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards;

(ii) Designated under paragraph (c) of this section; or

(iii) Located at an industrial plant or in plant associated areas. "Plant associated areas" means industrial plant yards, immediate access roads, drainage ponds, refuse piles, storage piles or areas and material or products loading and unloading areas. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots.

(4) "Group II storm water discharge" means any "storm water point source" not included in paragraph (b)(3) of this section.

(5)(4) Whether a system of conveyances is or is not a separate storm water point source sewer for purposes of this section shall have no bearing on whether the system is eligible for funding under Title II of CWA.

(c) Case-by-case designation of separate storm water discharges-sewers. The Chief may designate a storm sewer not

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Adm.-Reg. Leg. Rule, 20-5A
Series II, Sec. 13.04

~~located in an urbanized area as a separate storm sewer.~~ conveyance or system of conveyances primarily used for collecting and conveying storm water runoff as a storm water point source. This designation may be made to the extent allowed or required by EPA promulgated effluent guidelines for point sources in the separate-storm water discharge sewer category; or when:

(1) A Water Quality Management Plan under Section 208 of CWA which contains requirements applicable to such point sources is approved; or

(2) The Chief determines that a storm sewer water discharge is a significant contributor of pollution to the waters of the State.

supporting the request, to the Chief no later than 90 days after the general permit notice in accordance with Section 12.01.

(3) Upon issuance of a general permit, the Chief shall cause to be published a notice of issuance as a Class I legal advertisement in a qualified daily or weekly newspaper within the geographical area affected by the subject of the permit, and by any other means reasonably calculated to give notice of issuance to the persons affected by it.

13.07 New Sources and New Discharges

(a) Definitions:

(1) "Site", "new source" and "new discharger" are defined in Section 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) "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. ~~(Reserved)~~

(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 Section 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 Chief 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 Section 2.

(3) Construction on a site at which an existing source is located results in a modification subject to Section 9 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 paragraphs (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 Section 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 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 within 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.

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Adm.--Reg.--Leg. Rule, 20-5A

Series II, Sec. 13.07

(c) Effect of compliance with new source performance standards:

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~~Adm. Reg. Leg. Rule, 20-5A~~
Series II, Sec. 13.07

as the method to control the toxic pollutants
or hazardous substances.

(3) When a NPDES permit issued to a source with a "protection period" under paragraph (c)(1) of this section will expire on or after the expiration of the protection period, such permit shall require the owner or operator of the source to comply with the requirements of Section 301 and any other applicable requirements of CWA immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements shall 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 permit 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 Sec. 8.

(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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--Adm.--Reg. Leg. Rule, 20-5A
Series II, Sec. 15.

Section 15. Federal Effluent Limitations Guidelines and
Standards Incorporation

(a) The provisions of 40 CFR Chapter I, Subchapter N,
Parts 400-460 as in effect July 1, 1985, are hereby incorporated
by reference. This date will be updated annually.

(b) [Reserved.]

6
Section 15. Enforcement

6
15.01 General

The provisions of this section may be enforced by all of the applicable provisions in the State Act, including:

(a) Orders issued by the Chief in accordance with Sections 7, 8, 10 and 12a of the State Act;

(b) Civil penalties and injunctive relief in accordance with Section 17 of the State Act; and

(c) Criminal penalties in accordance with Section 19 of the State Act.

6
15.02 Citizen Participation

The Chief shall provide for public participation in enforcement by the following:

(a) Investigating and providing a written response to all signed, written complaints from citizens;

(b) Not opposing intervention by any citizen when permissive intervention is authorized by statute or rule; and

(c) Publishing notice in a newspaper of general circulation in the County in which the discharge is located at least 30 days prior to the final settlement of any civil action or consent order issued by the Board. This notice will identify the person discharging, the specific enforcement action to be taken, and the name and address where information on the proposed settlement can be obtained. The Chief shall consider all comments received during the 30 day period.

15.03 Enforcement of Average Monthly Limitations

For purposes of enforcement, an exceedance of an average monthly discharge limitation which otherwise constitutes a permit violation shall be deemed a single violation of the permit for the month or the period covered by the applicable monitoring requirement, whichever is longer.

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~~Adm. Reg.~~ Leg. Rule, 20-5 A
Series II, Sec. 167.

7
Section ~~16~~. Conflict of Interest

7
16.01 Members of the State Water Resources Board shall be bound by the conflict of interest requirements contained in Chapter 20, Article 5, Section 3(b) of the State Code as amended.

7
16.02 The Chief of the Division of Water Resources shall not be a person who receives or has during the previous two (2) years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(a) For the purposes of this section:

(1) "Significant portion of income" means ten (10) percent or more of gross personal income for a calendar year, except that it means fifty (50) percent or more of gross personal income for a calendar year if the recipient is over sixty (60) years of age and is receiving that portion under retirement, pension, or similar arrangement.

(2) "Permit holders or applicants for a permit" does not include any department or agency of the State.

(3) "Income" includes retirement benefits, consultant fees, and stock dividends.

(b) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

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~~Adm. Reg. Lec. Rule, 20-5 A~~
Series II, Sec. 178.

Section 17.⁸ Conflicting Provisions

In the event of any inconsistency or conflict between any provision of this section and any provisions of Series III, the provisions of this section shall control.