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DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-0104

Suspense: June 29, 2007
May 30, 2007

MEMORANDUM FOR U.S. Army Installation Management Command, ATTN: COL
Kenneth Tozzi, Office of the Staff Judge Advocate, 2511 Jefferson Davis Highway,
Taylor Building NCR, Arlington, Virginia 22202-3926

SUBJECT: Whistleblower Investigation—Fort Lewis Public Works, Fort Lewis,
Washington (OSC File Numbers DI-07-1058 through DI-07-1070)

Enclosed for your action is a May 24, 2007 letter from the Office of Special Counsel
(OSC), requesting an investigation of the noted allegations and a report pursuant to 5
U.S.C.1213(c) (1) and (g).

The Special Counsel has concluded that there is substantial likelihood that information
provided by 12 current and former employees of the Department of the Army, Public
Works, Fort Lewis, Washington, that the Fort Lewis waste water treatment plant is
discharging unacceptable and unlawful quantities of oil and other contaminants into the
waters of Puget Sound, in violation of laws and regulations and the plant's operating
permit. Based on this information, the Special Counsel determined that there is a
substantial likelihood that the information the whistleblowers provided to the OSC
discloses violations of laws and regulations, gross mismanagement, and a substantial and
specific danger to public health and safety. The whistleblowers' allegations are of
particular concern to the OSC since Puget Sound harbors a wide variety of marine life,
and large quantities of seafood are harvested from Puget Sound every year for human
consumption, and the whistleblowers maintain that the oil and other contaminants
threaten the viability of the local ecosystem and pose a substantial and specific danger to
public health and safety.

The whistleblowers also allege that management fails to conduct proper testing and
monitoring of the water treated at the plant, fails to properly maintain and replace the
plant's equipment, and does not take adequate measures to protect employees against
occupational health and safety risks. Lastly, the whistleblowers allege gross
mismanagement on the part of the Plant Supervisor, Mr. Long, in that he is not qualified
to be plant supervisor because he does not possess the appropriate level III certification
and requires operators to abandon the waste water treatment plant in order to perform
work at other locations on the base, in violation of the waste water treatment plant's
permit, and jeopardizes public health and safety as there should always be an operator
present in the event that the plant malfunctions or breaks down or another emergency
situation arises.



SUBJECT: Whistleblower Investigation—Fort Lewis Public Works, Fort Lewis, Washington (OSC File Numbers DI-07-1058 through DI-07-1070)

The whistleblowers submitted documents in support of their allegations to the OSC. The OSC faxed the initial correspondence to the Secretary of the Army but mailed via Federal Express the original correspondence and the enclosures/attachments that are approximately 75 pages long. To date, we have not received those documents. As soon as I receive them, I will forward them to you.

A final response describing any actions taken to address the allegations should be prepared for the signature of the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)) who has been delegated the authority by the Secretary of the Army to review, sign and submit written reports of investigations of information and related matters transmitted to the Department of the Army by the Special Counsel, in accordance with Title 5, United States Code (U.S.C.), § 1213(c), (d) and (g). The final response should be submitted to this office AS SOON AS POSSIBLE BUT NOT LATER THAN June 29, 2007.

The Army's response will be available to the public and information contained in the Army response will be made public unless classified or prohibited from release by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. Therefore, our response and any supporting investigative report should be prepared in a manner intended to facilitate public understanding of the allegations and Army's response thereto.

The requirements specified in 5 U.S.C. § 1213(d) (copy enclosed) may be used as a guideline and should include findings, conclusions and corrective action. In all cases, please furnish for our review all backup materials supporting the proposed response that will be used to prepare the official response for the Secretary of the Army.

When you forward your report to me, please do so in hard copy. Additionally, by email to me, please provide the electronic version of the report, including the findings, conclusions and corrective action, but not the backup/supporting documentation.

Please note that should you encounter any problems with the inquiry/investigation and preparation of the subject report, kindly call me as soon as possible to discuss. In some instances, ancillary issues that arise during the course of the investigation may require follow up action.

In conducting your investigation into the allegations, please ensure that the methods and process used are compatible with engaging in a fair and open "dialog" with the OSC regarding the subject allegations and that there are no restrictions or limitations placed on the use or disclosure of the information gathered and relied upon to support the final Army report.

SUBJECT: Whistleblower Investigation—Fort Lewis Public Works, Fort Lewis,
Washington (OSC File Numbers DI-07-1058 through DI-07-1070)

Additionally, the potential use of your report to support any disciplinary actions against individuals based on misconduct should also be considered when structuring your investigation and preparing your report.

Lastly, note that copies of the final Army report, along with comments on the report from the individuals making the disclosures and any comments or recommendations by the OSC will be sent to the President and the appropriate oversight committees in the Senate and House of Representatives pursuant to 5 U.S.C. § 1213(e)(3). Additionally, the Army's final report and any comments to it will be made available to the public. Accordingly, please structure your report so that no restrictions or limitations are placed on its dissemination or the disclosure of the information upon which it relies.

By statute, the agency has sixty (60) days from receipt of the OSC letter to provide the required report. If necessary, I will seek an extension of the date for our reply to the Special Counsel. As soon as it becomes apparent that more time beyond the suspense noted above will be needed to complete your report, you should forward to me an interim response requesting the extension and indicating the reasons for the request and the date by which I can expect to receive your final response. As you can understand, once your report is forwarded to me, I will need additional time to staff the proposed response to the OSC and finalize the Army's report.

If you have any questions, please do not hesitate to contact me at [REDACTED]
Additionally, my email address is [REDACTED]

[REDACTED]
[REDACTED]
Associate Deputy General Counsel
(Human Resources)

Enclosure

CF: DASA (ESOH), [REDACTED]
AFCG-JA, [REDACTED]
DAJA-LE, [REDACTED]
SA IG, C [REDACTED]
SAIG-ZXL [REDACTED]
DACS-ZDV-HR, [REDACTED]



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 21B
Washington, D.C. 20036-4505

FACSIMILE COVER SHEET

TO:

Name: The Honorable Pete Geren	
Title: Acting Secretary	
Organization: Department of the Army	
Office / Location: Washington, D.C.	
Telephone: (703) 695-4311	Fax: (703) 697-0720

FROM:

Name: Scott J. Bloch	
Organization: Office of Special Counsel	
Office / Location: Washington, D.C.	
Telephone: (202) 254-3601	Fax: (202) 653-5151

Date: May 24, 2007	Number of pages, including this cover sheet: 8
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Message: Original and enclosures to follow by Federal Express delivery
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If you did not receive the total number of pages shown, please call Denise Toney at (202) 254-3632.

THIS DOCUMENT IS INTENDED FOR THE USE OF THE PARTY TO WHOM IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL OR PROTECTED FROM DISCLOSURE UNDER APPLICABLE LAW. If you are not the addressee, or a person authorized to deliver the document to the addressee, you are hereby notified that any review, disclosure, dissemination, copying or other action based on the content of this communication is not authorized. If you have received this document in error, please immediately notify us by telephone and return to us at the above address by mail.

70514953



U.S. OFFICE OF SPECIAL COUNSEL

130 M Street, N.W., Suite 300

Washington, D.C. 20036-4505

May 24, 2007

The Special Counsel

The Honorable Pete Geren
Acting Secretary of the Army
101 Army Pentagon
Washington, DC 20310-0101

Re: OSC File Nos. DI-07-1058 through DI-07-1070

Dear Mr. Geren:

Pursuant to my responsibilities as Special Counsel, I am referring to you a whistleblower disclosure from 12 present and former employees of the Department of the Army, Public Works, Fort Lewis, Washington. The whistleblowers allege that the Fort Lewis waste water treatment plant is discharging unacceptable quantities of oil and other contaminants into the waters of Puget Sound, in violation of laws and regulations and the plant's operating permit. As Puget Sound harbors a wide array of marine life, and large quantities of seafood are harvested from Puget Sound every year for human consumption, the whistleblowers maintain that the oil and other contaminants threaten the viability of the local ecosystem and pose a substantial and specific danger to public health and safety. The whistleblowers' allegations are described in greater detail in the attached Report of Disclosures.

The U.S. Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. 5 U.S.C. § 1213(a) and (b). As Special Counsel, if I find, on the basis of the information disclosed, that there is a substantial likelihood that one of these conditions exists, I am required to advise the appropriate agency head of my findings, and the agency head is required to conduct an investigation of the allegations and prepare a report. 5 U.S.C. § 1213(c) and (g).

As set forth in the attached Report of Disclosures, I have concluded that there is a substantial likelihood that the information the whistleblowers provided to OSC discloses violations of laws and regulations, gross mismanagement, and a substantial and specific danger to public health and safety. As previously stated, I am referring this information to you for an investigation of the whistleblowers' allegations and a report of your findings within 60 days of your receipt of this letter. By law, the report must be reviewed and signed by you personally. Should you delegate your authority to review and sign the report to the Inspector General, or any other official, the delegation must be specifically stated and must include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5). Without this information, I would hasten to add that the report may be found deficient. The requirements of the report are set forth at 5 U.S.C. § 1213(c) and (d). A summary of § 1213(d) is enclosed. As a matter of policy, OSC also

The Special Counsel

The Honorable Pete Geren

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requires that your investigators interview the whistleblowers as part of the agency investigation whenever the whistleblowers consent to the disclosure of their names.

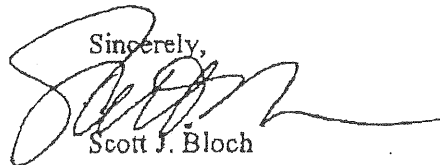
In the event it is not possible to report on the matter within the 60-day time limit under the statute, you may request in writing an extension of time not to exceed 60 days. Please be advised that an extension of time is normally not granted automatically, but only upon a showing of good cause. Accordingly, in the written request for an extension of time, please state specifically the reasons the additional time is needed. Any additional requests for an extension of time must be personally approved by me.

After making the determinations required by 5 U.S.C. § 1213(e)(2), copies of the report, along with any comments on the report from the person making the disclosure and any comments or recommendations by this office will be sent to the President and the appropriate oversight committees in the Senate and House of Representatives owing to the requirements set forth in 5 U.S.C. § 1213(e)(3).

Unless classified or prohibited from release by law or by Executive Order requiring that the information be kept secret in the interest of national defense or the conduct of foreign affairs, a copy of the report and any comments will be placed in a public file in accordance with 5 U.S.C. § 1219(a).

Please refer to our file number in any correspondence on this matter. If you need further information, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 254-3604. I am also available for any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Bloch", written over the typed name.

Scott J. Bloch

Enclosures



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

REPORT OF DISCLOSURES REFERRED FOR INVESTIGATION
OSC FILE NOS. DI-07-1058 through DI-07-1070

I. SUMMARY

Twelve present and former employees of the Department of the Army, Public Works, Fort Lewis, Washington, disclosed to OSC violations of laws and regulations, gross mismanagement, and a substantial and specific danger to public health and safety. Specifically, the whistleblowers allege that the Fort Lewis waste water treatment plant is discharging unacceptable quantities of oil and other contaminants into the waters of Puget Sound, in violation of laws and regulations and the plant's operating permit, and thereby creating a substantial and specific danger to public health and safety. They also allege that management fails to conduct proper testing of the water treated at the plant, fails to properly maintain and replace the plant's equipment, and does not take adequate measures to protect employees against occupational health and safety risks.

II. THE INFORMATION DISCLOSED

The 12 present and former employees, who have consented to the release of their names, are (1) [REDACTED] Biological Science Lab Technician (who has worked at Fort Lewis for 10 years), (2) [REDACTED], Utility Systems Repairer/Operator (30 years), (3) [REDACTED] Utility Systems Repairer/Operator (22 years), (4) Carol Blake, Secretary, Fire Department (1 year), (5) [REDACTED], Waste Water Treatment Plant Repairer/Operator (7 years), (6) [REDACTED] Plumber, Water and Sewer (19 years), (7) [REDACTED] former Utility Systems Repairer/Operator (retired; worked 30 years), (8) [REDACTED] former Exterior Plumber (retired; worked 37 years), (9) [REDACTED], Exterior Plumber (26 years), (10) David Colby, former Plumber (retired; worked 25 years), (11) [REDACTED] z, Purchasing Agent (18 years), (12) [REDACTED] former Plumber (retired; worked 25 years).¹ [REDACTED] possess a state certification level III for waste water treatment plant operation, and Mr. Johnston, [REDACTED], and [REDACTED] are certified at level II.

A. Unlawful Discharge of Contaminants

The whistleblowers allege that, since May of 2006, the Fort Lewis waste water treatment plant has been discharging unacceptable quantities of oil and other contaminants into the waters of Puget Sound, in violation of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the plant's

¹ In order to arrange interviews with the individuals who have retired from federal service, please contact their attorney Joan Mell at Miller, Quinlan, & Auer, 1019 Regents Blvd., Suite 204, Firecrest, Washington 98466; telephone number (253)565-5019, fax number (253)564-5007.

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National Pollutant Discharge Elimination System (NPDES) permit. According to the whistleblowers, the plant releases up to 55 pounds of oil into the waters of the Puget Sound every day. The Clean Water Act prohibits discharging oil or hazardous substances into navigable waters at quantities "the discharge of which may be harmful to the public health or welfare or the environment of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines and beaches." See 33 U.S.C. § 1321(b)(4). According to 40 CFR § 110.3, discharges of oil that the Environmental Protection Agency (EPA) has determined to be "harmful to the public health or welfare or the environment" include those that violate applicable water quality standards or those that "cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines . . ." The whistleblowers state that lab tests have repeatedly demonstrated that the levels of oil and other contaminants in the effluent² water exceed the limits established by the plant's NPDES permit, and they also assert that they have frequently observed an oily sheen on the effluent water.

The whistleblowers advise that the presence of excess oil in the water clogs the machinery, and thereby renders the plant less efficient and decreases its ability to successfully remove other contaminants from the water, such as salmonella, E. coli, and other strains of bacteria, fungi, and other pathogens. They further explain that the oil and other contaminants that are released from the plant have a detrimental impact upon the entire ecosystem of Puget Sound. Puget Sound harbors a wide array of marine life, including salmon, shellfish, seabirds, and sea otters, the viability of which is threatened by pollutants from the waste water treatment plant. The pollutants from the plant also affect the safety of the human food supply, as large quantities of seafood are harvested from Puget Sound for human consumption.

The whistleblowers also allege that excessive amounts of oil have accumulated in the plant's sludge, i.e. the biosolids that settle out of the influent water. They explain that, after settling, the sludge remains in the plant's digesters, where it is treated and broken down by microorganisms. After being treated in the digesters for several months, the sludge is then stored in the plant's drying beds, until it is eventually removed to be used as fertilizer throughout the base. According to the whistleblowers, government contractor Alkai, who was retained to transfer sludge from the digesters to the drying beds, tested the sludge and reported that the oil content was extremely high, at approximately two percent. The whistleblowers explain that, when the sludge contains a high oil content, the oil is continuously re-circulated throughout the plant, as influent water passes through the digesters. Moreover, the whistleblowers advise that the sludge is used as fertilizer throughout Fort Lewis; therefore, the presence of high levels of oil in the sludge poses a danger to public health, as the sludge is used to fertilize vegetable gardens and lawns where children play.

The whistleblowers attribute the high levels of oil present in the effluent water and the sludge to multiple factors. First, they explain that numerous sites on the base, such as the motor pools and lift stations, are not properly disposing of oil, diesel fuel, and jet petroleum products. Consequently, the discarded oil products drain into the sewer system where they join the

² "Effluent" refers to the water that the waste water treatment plant releases into Puget Sound after it has been treated.

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influent³ waste that enters the waste water treatment plant.⁴ Next, the whistleblowers advise that, pursuant to 40 C.F.R. Part 403 and Washington State's Dangerous Waste Regulations Chapter 173-303 WAC, the plant is supposed to have a pre-treatment facility in place for removing oil from the influent before it reaches the plant; however, the plant currently does not pre-treat the influent water. They further maintain that the type of oil the waste water treatment plant purchases to lubricate the digester gas compressors emulsifies easily, thereby clogging the system. The operators have repeatedly asked management to procure a non-emulsifying oil for the compressors in order to minimize contamination; however, management has refused to do so. The whistleblowers also state that the oil/water separators at the plant are not maintained properly, and, as a result, the separators are unable to adequately remove oil from the influent water. In addition, the whistleblowers assert that they repeatedly asked management to purchase polymers to help break down the oil; however, management refused to purchase them.

B. Failure to Maintain Equipment

Next, the whistleblowers state that the plant's inability to adequately process the incoming oil is caused in part by the fact that the plant's equipment is old and in poor condition. The whistleblowers contend that much of the equipment at the plant should be replaced, including the primary sludge pumps, the effluent pumps, the nonpotable pumps, the chlorination pumps, the headworks screens, and the grit collector. In addition, the operators maintain that they do not have many of the tools necessary for repairing and maintaining the plant's equipment, including wrenches and chain saws. On numerous occasions, they asked [REDACTED] Plant Supervisor, to procure necessary maintenance tools, yet he refused to do so. The whistleblowers further assert that [REDACTED] also refuses to procure replacement parts for pumps and other equipment, and, as a result, the plant currently does not have any replacement parts in stock.

The whistleblowers further advise that the situation worsens during the winter rainy season, when the waste water treatment plant is overburdened by incoming rainwater. According to the whistleblowers, as a Class II facility, the waste water treatment plant is only authorized to treat up to 7.6 million gallons of water per day. Nevertheless, the whistleblowers report that, last winter, the plant frequently exceeded its flow capacity, especially on days when it rained. For example, they report that, on or about January 9, 2007, the plant recorded a flow level of 11 million gallons. The whistleblowers attribute the problem to the fact that the base's rainwater collection system is old, and, consequently, much of the rainwater leaks into the sewer system and becomes part of the influent water treated by the plant. The whistleblowers explain that, when the permissible flow level is exceeded, biosolids do not have sufficient time to settle properly. Consequently, a significant quantity of biosolid waste ends up in the effluent water that is released into Puget Sound.

³ "Influent" refers to the waste water, containing raw sewage and other contaminants, that flows into the plant for treatment.

⁴ In order to remedy this particular problem, the whistleblowers recommend that the base institute an oil recycling program and educate its employees on the proper methods for collecting and disposing of oil.

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C. Failure to Properly Test and Monitor Water

The whistleblowers state that the foregoing problems are compounded by the fact that the plant managers do not conduct mandatory testing of the water at the plant and are not properly recording test results. They maintain that regular testing and reporting of test results would facilitate remediation of the situation. [REDACTED] advises that, among other routine tests, the plant's NPDES permit requires the plant to test the level of oil and grease in the effluent every six months, and whenever an operator requests additional testing. The operators assert that they frequently request additional testing, yet management refuses to comply with these requests. The plant's NPDES permit also requires the plant to record the levels of any toxic pollutant found in the water or in the biosolid sludge on the monthly Discharge Monitoring Report (DMR), which is submitted to the EPA, yet the whistleblowers allege that this is not occurring. Lastly, when the Fort Lewis Environmental Department conducts lab tests, it fails to report the test results to the operators or the lab technician, even though the operators and lab technician have specifically requested the information on multiple occasions. The whistleblowers state that the NPDES permit requires that test results be reported to the operators, to enable the operators to make necessary adjustments in treatment, such as determining the correct amount of chemicals to add to the water.

D. Gross Mismanagement by Plant Supervisor

In addition, the whistleblowers allege that [REDACTED] is not qualified to be plant supervisor. Pursuant to State of Washington credentialing requirements, the waste water treatment plant is classified as a grade II plant; therefore, the plant supervisor is required to possess a level III certification. According to the whistleblowers, [REDACTED] only possesses a level II certification.

The whistleblowers report that Mr. Long frequently requires operators to abandon the waste water treatment plant in order to perform work at other locations on the base. As a result, the plant is often left unattended. For example, [REDACTED] alleges that, at 9:00 pm on March 24, 2007, [REDACTED] instructed him to leave the plant in order to clean a sewer elsewhere on base. [REDACTED] states that he spent two hours cleaning the sewer, and then returned to the plant at 11:00 pm. Because [REDACTED] was the sole operator on duty at the plant that night, he states that the plant was left unmanned for two hours while he was away. Similarly, the whistleblowers allege that, on January 14 or 15, 2007, [REDACTED] left the plant to address a sewer backup problem. He instructed the sole operator assigned to the plant, [REDACTED] to accompany him, thereby leaving the plant unattended for three hours. The whistleblowers assert that this practice violates the waste water treatment plant's permit and jeopardizes public health and safety, as there should always be an operator present in the event that the plant malfunctions or breaks down or another emergency situation arises.

E. Occupational Safety and Health Hazards

According to the whistleblowers, [REDACTED] has repeatedly exhibited a flagrant disregard for employee safety, and has jeopardized the safety of employees on numerous occasions. For

Page 5

example, [REDACTED] frequently assigns the plant staff to perform dangerous work at the outfalls; however, he has not provided them with critical confined space entry training. They also contend that Mr. Long often fails to notify plant employees when contractors perform maintenance work on gas lines. It is critical that employees be informed whenever flammable gas is present in the building, so that they will refrain from using welding tools or performing other types of work that could create sparks to ignite the gas and cause an explosion. Mr. Long also fails to hold monthly safety meetings, in violation of Occupational Safety and Health Administration requirements and the plant's Standard Operating Procedures.

[REDACTED] further reported that, since 2005, the lid on digester number two has been cracked, allowing toxic sewer gas to continually leak from the digester. He advised that an exhaust fan then blows the gas into the gas compressor room, where the operators are exposed to the gas. [REDACTED] stated that operators enter the gas compressor room at least twice a day to perform maintenance, and they generally stay in the room at least five or ten minutes each time. The whistleblowers report that, as a result of inhaling the gas, they often experience dizziness, headaches, and lightheadedness, and they believe that long-term exposure to the gas may potentially cause permanent damage to the nervous system.

Finally, the whistleblowers state that they have repeatedly reported the aforementioned problems and violations to [REDACTED] and his supervisor [REDACTED] Project Manager; however, neither [REDACTED] nor [REDACTED] have taken adequate corrective action.

Copies of documents submitted by the whistleblowers in support of their allegations are enclosed.

III. THE SPECIAL COUNSEL'S FINDINGS

Given the whistleblowers' apparent expertise regarding the matters they have disclosed, the detail they have provided, and their first-hand knowledge of many of the incidents they have described, I have concluded that there is a substantial likelihood that the information the whistleblowers provided to OSC discloses violations of laws and regulations, gross mismanagement, and a substantial and specific danger to public health and safety.

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REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
US ARMY INSTALLATION MANAGEMENT COMMAND
2511 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202-3926

JUN 06 2007

S: 27 June 2007

IMLA

MEMORANDUM FOR [REDACTED] Assistant to the Deputy Director, Installation Management Command (IMCOM), West Region, (Northwest Office), IMWE-ZA, 1 Rock Island Arsenal, Rock Island, IL 61299-6200

SUBJECT: Appointment as AR15-6 Investigating Officer

1. I am appointing you as an investigating officer to conduct an informal investigation under the provisions of Army Regulation 15-6 (Procedures for Investigating Officers and Boards of Officers) into "whistleblower" allegations of mismanagement and misconduct related to the Ft. Lewis wastewater treatment plant made by twelve current and former employees of Ft. Lewis, Public Works. The purpose of your investigation to determine the validity of the whistleblowers allegations and make findings concerning whether any wrongdoing has occurred, and if so, by whom, and whether adequate policies and procedures are in place to preclude recurrence of any improprieties, irregularities, or misconduct disclosed during your inquiry.

2. I have enclosed the ten (10) page referral from the Army Office of General Counsel (OGC) dated 30 May 2007, which contains the 24 May 2007 referral memorandum from the Office of Special Counsel (OSC) and OSC's Report of Disclosures Referred for Investigation. Section II of the Report of Disclosures Referred for Investigation contains specifics as to the allegations as well as the names of the whistleblowers. In addition, OGC has the whistleblowers' original correspondence to OSC which included approximately seventy-five (75) pages of enclosures supporting the allegations. Once a copy of the original correspondence is obtained from OGC, a copy will be forwarded to you.

3. In conducting your investigation you must interview the current and former employees who have made the allegations as well as anyone else you determine to have relevant information.¹ Witnesses may be sworn at your discretion in accordance with AR 15-6, paragraph 3-2. Your investigation should focus on the following:

a. whether the Ft. Lewis wastewater treatment plant is discharging unacceptable and unlawful quantities of oil and other contaminants into Puget Sound, in violation of the plant's operating permit;

¹ If you need to question a contractor employee, you must coordinate with the appropriate Program Manager and Contracting Officer Representative to arrange the interview with that person.

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IMLA

SUBJECT: Appointment as AR15-6 Investigating Officer

b. whether plant management fails to properly maintain and replace plant equipment, and does not take adequate measures to protect employees against occupational health and safety risks; and

c. whether there is gross mismanagement on the part of the Plant Supervisor, in that he is not qualified to be plant supervisor because he does not possess the appropriate Level III certification, among other things.

4. Your report will summarize all relevant statements and make specific findings and recommendations. If you discover conflicting evidence, you will resolve the conflicts by saying what you believe and why. Cite the statements that support your findings and recommendations. Submit your findings and recommendations on DA Form 1574 to COL Christopher G. Essig, Chief of Staff, IMCOM HQ, by close of business **27 June 2007**.

5. Because the allegations were made to the OSC pursuant to 5 USC § 1213, you will also need to complete a draft OSC Report to be signed by the Assistant Secretary of the Army (Manpower and Reserve Affairs). Your informal 15-6 investigation will be an attachment to the OSC Report. If you have multiple attachments please index and tab them. The OSC Report must contain the following:

- a. Summary of the information with respect to which the investigation was initiated;
- b. Description of the conduct of the investigation;
- c. Summary of any evidence obtained from the investigation;
- d. Listing of any violation or apparent violation of any law, rule, or regulation; and
- e. Description of any action taken or planned as a result of the investigation, such as:

- (1) Changes in agency rules, regulations, or practices;
- (2) The restoration of any aggrieved employee;
- (3) Disciplinary action against any employee; and
- (4) Referral to the Attorney General of any evidence of a criminal violation.

IMLA

SUBJECT: Appointment as AR15-6 Investigating Officer by OGC and OSC

6. OGC has given us a deadline of 29 June 2007 by which to submit the draft OSC Report. Because this deadline is driven by statute, any extensions must be approved by OGC and OSC. As such, if a situation develops which will require an extension, you must notify me immediately so that we can alert OGC. Any request for an extension must include a detailed reason why the 29 June deadline cannot be met.

7. Your primary legal advisor is [REDACTED] IMCOM-West Region Counsel, who will assist you in drafting the OSC Report. [REDACTED] may be reached at (210) 295-2098 or richard.prins@us.army.mil. [REDACTED], Attorney/Advisor, US Army Environmental Command, will serve as a subject matter expert on environmental legal issues. [REDACTED] may be reached at [REDACTED] or [REDACTED]. [REDACTED] Environmental Engineer, IMCOM-West (Northwest Office) will serve as a subject matter expert on environmental technical issues. [REDACTED] may be reached at [REDACTED]. In accordance with AR 15-6, paragraph 4-1, you may consult with any other subject matter experts you deem appropriate.

8. The investigation and reports are the primary duties of the appointed officials until these duties are complete.

Encls
as

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Executive Director

C/S
MR

5



DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON, DC 20310-0104



REPLY TO
ATTENTION OF

July 23, 2007

Ms. Catherine A. McMullen
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Fort Lewis Public Works, Fort Lewis,
Washington (OSC File Numbers DI-07-1058
through DI-07-1070)

Dear Ms. McMullen:

By correspondence dated May 24, 2007, the Office of Special Counsel forwarded to the Secretary of the Army requesting an investigation into allegations affecting the Department of the Army at one of its sites, Public Works, Fort Lewis, Washington. I respectfully submit the following status report for the above captioned case and request that you grant an extension of time to file the Department of the Army's report required by 5 USC §1213 for this Office of Special Counsel (OSC) case. OSC determined that there was substantial likelihood that information provided by 12 current and former employees of the Department of the Army, Public Works, Fort Lewis, Washington, reflected that the Fort Lewis Waste Water Treatment Plant (WWTP) is discharging unacceptable and unlawful quantities of oil and other contaminants into the waters of Puget Sound, in violation of laws and regulations and the plant's operating permit, gross mismanagement, and a substantial and specific danger to public health and safety. The whistleblowers also allege that management fails to conduct proper testing and monitoring of the water treated at the plant, fails to properly maintain and replace the plant's equipment, and does not take adequate measures to protect employees against occupational health and safety risks. Lastly, the whistleblowers allege gross mismanagement on the part of the Plant Supervisor, Mr. Long, in that he is not qualified to be plant supervisor and many of his actions create situations that jeopardize public health and safety.

On May 30, 2007, I forwarded to COL Kenneth Tozzi, the U.S. Army Installation Management Command (IMCOM), Office of the Staff Judge Advocate (OSJA), the OSC correspondence for appropriate action. I requested that the IMCOM OSJA take appropriate action, ensure that the allegations are investigated, and to prepare a draft report of findings for submission to OSC as required by 5 USC §1213 for the above captioned OSC case. This request for an extension is being made pending the OGC

receipt of the report of investigation and draft report from the IMCOM OSJA. To date, the following actions have been taken:

OGC referred the subject case to IMCOM because the Fort Lewis WWTP falls under the Fort Lewis Garrison Commander, who in turn falls under IMCOM. On June 6, 2007, Mr. Philip Sakowitz, Executive Director, IMCOM appointed Mr. Thomas Hodgini, Assistant to the Deputy Director, IMCOM West Region, as an investigating officer (IO) under provisions of AR 15-6, *Procedures for Investigating Officers and Board of Officers*, with a mandate to investigate the allegations forwarded by OSC. OGC initially requested that the IMCOM investigation and draft report be forwarded to OGC no later than June 29, 2007.

I immediately began this process even though the original package mailed by OSC to the Department of the Army had not been received by the Department of the Army. I did not want to delay the initiation of the Army investigation until receipt of the seventy-five pages of attachments. I advised the IMCOM OSJA to proceed with Mr. Hodgini's investigation pending receipt of these documents and they proceeded accordingly, under the circumstances. As you recall, OGC had advised you about this issue immediately after receiving a copy of the OSC correspondence that did not contain the relevant attachments that were to accompany the May 24, 2007 OSC correspondence. We mutually agreed to wait a reasonable amount of time to see if the documents could be found/located. Not wanting to wait any longer, on June 8, 2007, OGC personally received a copy of those documents from your office which were then immediately forwarded to IMCOM. The IMCOM Investigating Officer, Mr. Hodgini, did not receive these attachments until June 13, 2007. Mr. Hodgini worked diligently but carefully to complete his investigation and prepare his investigative report.

As reflected in the two attachments, the IMCOM OSJA requested additional time to continue with the investigation, finalize the investigative report, and then prepare the draft agency report in compliance with 5 USC 1213. On June 25, 2007, due to the complex nature of this investigation and the voluminous technical documents that must be reviewed, IMCOM requested additional time until 20 July 2007 to submit the investigation and draft report to OGC. (Attachment 1). OGC granted this internal suspense extension request based on the above circumstances. On July 20, 2007, the IMCOM OSJA requested additional time to finalize its investigation and draft agency report, staff those documents and then forward them to OGC. (Attachment 2).

At the present time, these documents are undergoing their final reviews for approval by IMCOM before they are forwarded to OGC for further staffing and completion of the final Army report in satisfaction of 5 USC 1213. Once OGC receives these documents, the Department of the Army will need additional time to address the issues presented in the draft report and prepare the final report to the OSC in satisfaction of the 5 USC §1213 requirements.

Should you grant this extension, please advise me as to length of the extension. Within that allotted time, I will either provide you another status update on this pending

action or be able to submit the final Department of the Army report to the Special Counsel.

I appreciate your assistance in considering the extension request. To advise me if this extension will be granted, you can reach me at 703-614-3500.

[Redacted signature and address]
Special Counsel

Enclosure



DEPARTMENT OF THE ARMY
US ARMY INSTALLATION MANAGEMENT COMMAND
2511 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202-3926

REPLY TO
ATTENTION OF

IMLA

25 June 2007

MEMORANDUM FOR [REDACTED] Associate Deputy General
Counsel (Human Resources), Department of the Army, Office of the General Counsel

SUBJECT: Request for extension of time – Ft. Lewis Public Works Whistleblower
Investigation (OSC DI-07-1058 through DI-07-1070)

1. On 30 May 2007, you forwarded for action a 24 May 2007 letter for the Office of the Special Counsel (OSC), requesting an investigation and §1213 Report concerning allegations of impropriety by the Ft. Lewis Public Works. You gave us suspense of 29 June 2007 to provide your office with a copy of the investigation and the draft §1213 Report. Due to the complex nature of this investigation and the voluminous technical documents that must be reviewed, we must request an extension of time until **20 July 2007** in which to submit our Report of Investigation and the draft §1213 Report to your office. This three week extension is necessary for the reasons set forth below.
2. On 6 June 2007, [REDACTED] was formally appointed as the Investigating Officer and ordered to conduct an informal AR 15-6 Investigation into the whistleblower's allegations and prepare a draft §1213 Report. During the week of 4-8 June, [REDACTED] researched applicable laws and regulations, gathered preliminary documents and coordinated with subject matter experts. During the week of 11-15 June, [REDACTED] visited Ft. Lewis where he interviewed and documented statements from twenty witnesses, made site visits, and gathered additional documents. Moreover, [REDACTED] did not receive a copy of the seventy-five page package of enclosures attached to the whistleblowers' original complaint until 13 June. [REDACTED] needs the additional time to complete his analysis, write his Report of Investigation and the draft §1213 Report.
3. Assuming the request for extension of time is granted, we will give Mr. Hodgini an internal suspense of 18 July 2007 in which to submit his Report of Investigation and draft §1213 Report to IMCOM HQ. This should give us adequate time to review it and staff it up the IMCOM/ACSIM chain of command before it is formally submitted to your office.

Attachment 1



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
US ARMY INSTALLATION MANAGEMENT COMMAND
2511 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202-3926

IMLA

20 July 2007

MEMORANDUM FOR [REDACTED], [REDACTED], General
[REDACTED], Department of the Army, Office of the General Counsel

SUBJECT: Request for extension of time – Ft. Lewis Public Works Whistleblower Investigation (OSC DI-07-1058 through DI-07-1070)

1. On 30 May 2007, you forwarded for action a 24 May 2007 letter for the Office of the Special Counsel (OSC), requesting an investigation and §1213 Report concerning allegations of impropriety by the Ft. Lewis Public Works. You gave us a suspense of 29 June 2007 to provide your office with a copy of the investigation and the draft §1213 Report. This would have allowed you to submit the required report to OSC within the 60 day statutory deadline.
2. Due to the complex nature of this investigation and the voluminous technical documents that must be reviewed, we alerted you on 21 June 2007, that the investigating officer (IO) would need additional time to complete the investigation. At that time, we were granted an internal extension of time until 20 July 2007 in which to submit our Report of Investigation (ROI) and the draft §1213 Report to your office. You indicated that at the appropriate time, you would request a sixty-day extension from OSC. The specific reasons the extension is needed are set forth below.
3. On 6 June 2007, [REDACTED] was formally appointed as the IO and ordered to conduct an informal AR 15-6 Investigation into the whistleblower's allegations and prepare a draft §1213 Report. During the week of 4-8 June, [REDACTED] researched applicable laws and regulations, gathered preliminary documents and coordinated with subject matter experts. During the week of 11-15 June, [REDACTED] visited Ft. Lewis where he interviewed and documented statements from twenty witnesses, made site visits, and gathered additional documents. Moreover, [REDACTED] did not receive a copy of the seventy-five page package of enclosures attached to the whistleblowers' original complaint until 13 June. [REDACTED] needed the additional time to complete his analysis, write his ROI and allow time for his legal advisor to draft the §1213 Report.
4. The IO has submitted the ROI and it is currently under going legal review and formal staffing within the Installation Management Command (IMCOM). The ROI needs to be acted upon by the appointing authority before it is considered final. The draft §1213 report is complete but needs to be staffed for official transmittal to your office by the Assistant Chief of Staff Installation Management (ACSIM). The staffing process should

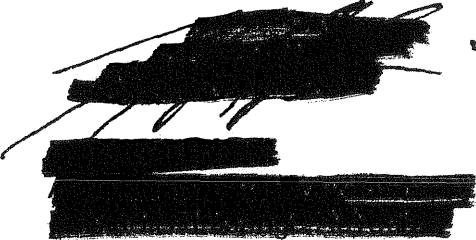
Attachment 2

IMLA

SUBJECT: Request for Extension of Time

take about two weeks. As such, a sixty-day extension will be necessary in order to comply with the statutory deadline.

5. I appreciate your consideration in this matter.

A large area of the document is redacted with heavy black ink, obscuring the signature and name of the sender. The redaction covers approximately three lines of text.

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DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON, DC 20310-0104



REPLY TO
ATTENTION OF

September 20, 2007

Ms. Catherine A. McMullen
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Fort Lewis Public Works, Fort Lewis,
Washington (OSC File Numbers DI-07-1058
through DI-07-1070)

Dear Ms. McMullen:

By correspondence dated May 24, 2007, the Office of Special Counsel forwarded to the Secretary of the Army requesting an investigation into allegations affecting the Department of the Army at one of its sites, Public Works, Fort Lewis, Washington. I respectfully submit the following status report for the above captioned case and request that you grant an extension of time to file the Department of the Army's report required by 5 USC §1213 for this Office of Special Counsel (OSC) case. OSC determined that there was substantial likelihood that information provided by 12 current and former employees of the Department of the Army, Public Works, Fort Lewis, Washington, reflected that the Fort Lewis Waste Water Treatment Plant (WWTP) is discharging unacceptable and unlawful quantities of oil and other contaminants into the waters of Puget Sound, in violation of laws and regulations and the plant's operating permit, gross mismanagement, and a substantial and specific danger to public health and safety. The whistleblowers also allege that management fails to conduct proper testing and monitoring of the water treated at the plant, fails to properly maintain and replace the plant's equipment, and does not take adequate measures to protect employees against occupational health and safety risks. Lastly, the whistleblowers allege gross mismanagement on the part of the [REDACTED] in that he is not qualified to be plant supervisor and many of his actions create situations that jeopardize public health and safety.

You granted a previous request for an extension for sixty days on July 24, 2007, and had agreed that I would provide a status update on this pending action within sixty days or if the outstanding action had been completed, then the final Department of the Army report would be submitted to the Special Counsel. To date, the following actions have been taken on these cases.

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On May 30, 2007, I forwarded to [REDACTED] on [REDACTED] Office of the Staff Judge Advocate (OSJA), the OSC correspondence for appropriate action. I requested that the IMCOM OSJA take appropriate action, ensure that the allegations are investigated, and to prepare a draft report of findings for submission to OSC as required by 5 USC §1213 for the above captioned OSC case. This request for an extension is being made pending the OGC receipt of the report of investigation and draft report from the IMCOM OSJA. To date, the following actions have been taken:

OGC referred the subject case to IMCOM because the Fort Lewis WWTP falls under the Fort Lewis Garrison Commander, who in turn falls under IMCOM. On June 6, 2007, [REDACTED] appointed [REDACTED], IMCOM West Region, as an investigating officer (IO) under provisions of AR 15-6, *Procedures for Investigating Officers and Board of Officers*, with a mandate to investigate the allegations forwarded by OSC. OGC initially requested that the IMCOM investigation and draft report be forwarded to OGC no later than June 29, 2007.

I immediately began this process even though the original package mailed by OSC to the Department of the Army had not been received by the Department of the Army. I did not want to delay the initiation of the Army investigation until receipt of the seventy-five pages of attachments. I advised the IMCOM OSJA to proceed with Mr. [REDACTED] investigation pending receipt of these documents and they proceeded accordingly, under the circumstances. As you recall, OGC had advised you about this issue immediately after receiving a copy of the OSC correspondence that did not contain the relevant attachments that were to accompany the May 24, 2007 OSC correspondence. We mutually agreed to wait a reasonable amount of time to see if the documents could be found/located. Not wanting to wait any longer, on June 8, 2007, OGC personally received a copy of those documents from your office which were then immediately forwarded to IMCOM. The IMCOM Investigating Officer, [REDACTED], did not receive these attachments until June 13, 2007. [REDACTED] worked diligently but carefully to complete his investigation and prepare his investigative report.

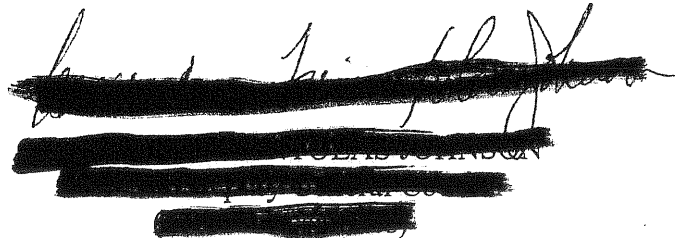
The IMCOM OSJA requested additional time to continue with the investigation, finalize the investigative report, and then prepare the draft agency report in compliance with 5 USC 1213. On June 25, 2007, due to the complex nature of this investigation and the voluminous technical documents that must be reviewed, IMCOM requested additional time until 20 July 2007 to submit the investigation and draft report to OGC. OGC granted this internal suspense extension request based on the above circumstances. On July 20, 2007, the IMCOM OSJA requested additional time to finalize its investigation and draft agency report, staff those documents and then forward them to OGC. OGC requested an extension of time so IMCOM could complete its fact gathering process and prepare its final report and then forward it to OGC for further staffing and completion of the final Army report in satisfaction of 5 USC 1213.

When the OGC reviewed IMCOM's draft report, there were a number of issues that still needed to be further developed. In addition, given the highly complex and technical nature of operating a waste water treatment plant, it was of particular to the OGC that the report be written in a manner that would best facilitate a thorough understanding of the nature of the allegations as well as the evidence and testimony gathered during the agency investigation in order to more clearly understand the facts and circumstances associated with the allegations and their significance. The OGC forwarded additional lines of inquiry as well as clarification to be undertaken.

As a result, when IMCOM and the Investigating Officer provided supplemental information to satisfy the OGC's concerns, it was insufficient. Again, the OGC requested that they undertake additional efforts to satisfy these concerns and incorporate them into the final work product. Those efforts are currently underway. This request for an extension of time will allow the Army to complete its investigation, incorporate that additional information into the draft final report and then complete the review and staffing process so that the final Army report can be forwarded to the OSC in satisfaction of the 5 USC §1213 requirements.

Should you grant this extension, please advise me as to the length of the extension. Within that allotted time, I will either provide you another status update on this pending action or be able to submit the final Department of the Army report to the Special Counsel.

I appreciate your assistance in considering the extension request. To advise me if this extension will be granted, you can reach me at [REDACTED]

A handwritten signature in cursive is written over a thick black redaction bar. Below the signature are three more thick black redaction bars, completely obscuring any text underneath.

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DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-0104

November 23, 2007

Ms. Catherine A. McMullen
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Fort Lewis Public Works, Fort Lewis,
Washington (OSC File Numbers DI-07-1058
through DI-07-1070)

Dear Ms. McMullen:

By correspondence dated May 24, 2007, the Office of Special Counsel forwarded to the Secretary of the Army requesting an investigation into allegations affecting the Department of the Army at one of its sites, Public Works, Fort Lewis, Washington. I respectfully submit the following status report for the above captioned case and request that you grant an extension of time to file the Department of the Army's report required by 5 USC §1213 for this Office of Special Counsel (OSC) case. OSC determined that there was substantial likelihood that information provided by 12 current and former employees of the Department of the Army, Public Works, Fort Lewis, Washington, reflected that the Fort Lewis Waste Water Treatment Plant (WWTP) is discharging unacceptable and unlawful quantities of oil and other contaminants into the waters of Puget Sound, in violation of laws and regulations and the plant's operating permit, gross mismanagement, and a substantial and specific danger to public health and safety. The whistleblowers also allege that management fails to conduct proper testing and monitoring of the water treated at the plant, fails to properly maintain and replace the plant's equipment, and does not take adequate measures to protect employees against occupational health and safety risks. Lastly, the whistleblowers allege gross mismanagement on the part of the [REDACTED], in that he is not qualified to be plant supervisor and many of his actions create situations that jeopardize public health and safety.

You granted a previous request for an extension for sixty days on July 24, 2007, and had agreed that I would provide a status update on this pending action within sixty days or if the outstanding action had been completed, then the final Department of the Army report would be submitted to the Special Counsel. To date, the following actions have been taken on these cases.

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On May 30, 2007, I forwarded to [REDACTED] Installation [REDACTED], Office of the Staff Judge Advocate (OSJA), the OSC correspondence for appropriate action. I requested that the IMCOM OSJA take appropriate action, ensure that the allegations are investigated, and to prepare a draft report of findings for submission to OSC as required by 5 USC §1213 for the above captioned OSC case. This request for an extension is being made pending the OGC receipt of the report of investigation and draft report from the IMCOM OSJA. To date, the following actions have been taken:

OGC referred the subject case to IMCOM because the Fort Lewis WWTP falls under the Fort Lewis Garrison Commander, who in turn falls under IMCOM. On June 6, 2007, [REDACTED] Executive Director, IMCOM appointed Mr. Thomas Hodgini, Assistant to the Deputy Director, IMCOM West Region, as an investigating officer (IO) under provisions of AR 15-6, *Procedures for Investigating Officers and Board of Officers*, with a mandate to investigate the allegations forwarded by OSC. OGC initially requested that the IMCOM investigation and draft report be forwarded to OGC no later than June 29, 2007.

I immediately began this process even though the original package mailed by OSC to the Department of the Army had not been received by the Department of the Army. I did not want to delay the initiation of the Army investigation until receipt of the seventy-five pages of attachments. I advised the IMCOM OSJA to proceed with Mr. [REDACTED] investigation pending receipt of these documents and they proceeded accordingly, under the circumstances. As you recall, OGC had advised you about this issue immediately after receiving a copy of the OSC correspondence that did not contain the relevant attachments that were to accompany the May 24, 2007 OSC correspondence. We mutually agreed to wait a reasonable amount of time to see if the documents could be found/located. Not wanting to wait any longer, on June 8, 2007, OGC personally received a copy of those documents from your office which were then immediately forwarded to IMCOM. The IMCOM Investigating Officer, [REDACTED] did not receive these attachments until June 13, 2007. [REDACTED] worked diligently but carefully to complete his investigation and prepare his investigative report.

The IMCOM OSJA requested additional time to continue with the investigation, finalize the investigative report, and then prepare the draft agency report in compliance with 5 USC 1213. On June 25, 2007, due to the complex nature of this investigation and the voluminous technical documents that must be reviewed, IMCOM requested additional time until 20 July 2007 to submit the investigation and draft report to OGC. OGC granted this internal suspense extension request based on the above circumstances. On July 20, 2007, the IMCOM OSJA requested additional time to finalize its investigation and draft agency report, staff those documents and then forward them to OGC. OGC requested an extension of time so IMCOM could complete its fact gathering process and prepare its final report and then forward it to OGC for further staffing and completion of the final Army report in satisfaction of 5 USC 1213.

When the OGC reviewed IMCOM's draft report, there were a number of issues that still needed to be further developed. In addition, given the highly complex and technical nature of operating a waste water treatment plant, it was of particular to the OGC that the report be written in a manner that would best facilitate a thorough understanding of the nature of the allegations as well as the evidence and testimony gathered during the agency investigation in order to more clearly understand the facts and circumstances associated with the allegations and their significance. The OGC forwarded additional lines of inquiry as well as clarification to be undertaken.

As a result, when IMCOM and the Investigating Officer provided supplemental information to satisfy the OGC's concerns, it was insufficient. Again, the OGC requested that they undertake additional efforts to satisfy these concerns and incorporate them into the final work product. A supplemental investigation was recently completed and its results are currently being incorporated into the draft report by IMCOM and the Army Environmental Center. When staffing of this draft report is complete, it will be forwarded to OGC for further staffing and review in order to prepare the final Army report for forwarding to the OSC. This request for an extension of time will allow the Army to incorporate that additional information into the draft final report and then complete the review and staffing process so that the final Army report can be forwarded to the OSC in satisfaction of the 5 USC §1213 requirements.

Should you grant this extension, please advise me as to the length of the extension. Within that allotted time, I will either provide you another status update on this pending action or be able to submit the final Department of the Army report to the Special Counsel.

I appreciate your assistance in considering the extension request. To advise me if this extension will be granted, you can reach me at [REDACTED]

[REDACTED]

8



DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-0104

January 28, 2008

Ms. Catherine A. McMullen
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Fort Lewis Public Works, Fort Lewis,
Washington (OSC File Numbers DI-07-1058
through DI-07-1070)

Dear Ms. McMullen:

By correspondence dated May 24, 2007, the Office of Special Counsel forwarded to the Secretary of the Army requesting an investigation into allegations affecting the Department of the Army at one of its sites, Public Works, Fort Lewis, Washington. I respectfully submit the following status report for the above captioned case and request that you grant an extension of time to file the Department of the Army's report required by 5 USC §1213 for this Office of Special Counsel (OSC) case. OSC determined that there was substantial likelihood that information provided by 12 current and former employees of the Department of the Army, Public Works, Fort Lewis, Washington, reflected that the Fort Lewis Waste Water Treatment Plant (WWTP) is discharging unacceptable and unlawful quantities of oil and other contaminants into the waters of Puget Sound, in violation of laws and regulations and the plant's operating permit, gross mismanagement, and a substantial and specific danger to public health and safety. The whistleblowers also allege that management fails to conduct proper testing and monitoring of the water treated at the plant, fails to properly maintain and replace the plant's equipment, and does not take adequate measures to protect employees against occupational health and safety risks. Lastly, the whistleblowers allege gross mismanagement on the part of the [REDACTED] in that he is not qualified to be plant supervisor and many of his actions create situations that jeopardize public health and safety.

You granted a previous request for an extension for sixty days on December 1, 2007, and had agreed that I would provide a status update on this pending action within sixty days or if the outstanding action had been completed, then the final Department of the Army report would be submitted to the Special Counsel. To date, the following actions have been taken on these cases.

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On May 30, 2007, I forwarded to [REDACTED], Office of the Staff Judge Advocate (OSJA), the OSC correspondence for appropriate action. I requested that the IMCOM OSJA take appropriate action, ensure that the allegations are investigated, and to prepare a draft report of findings for submission to OSC as required by 5 USC §1213 for the above captioned OSC case. This request for an extension is being made pending the OGC receipt of the report of investigation and draft report from the IMCOM OSJA. To date, the following actions have been taken:

OGC referred the subject case to IMCOM because the Fort Lewis WWTP falls under the Fort Lewis Garrison Commander, who in turn falls under IMCOM. On June 6, 2007, Mr. Philip Sakowitz, Executive Director, IMCOM appointed [REDACTED] Assistant to the Deputy Director, IMCOM West Region, as an investigating officer (IO) under provisions of AR 15-6, *Procedures for Investigating Officers and Board of Officers*, with a mandate to investigate the allegations forwarded by OSC. OGC initially requested that the IMCOM investigation and draft report be forwarded to OGC no later than June 29, 2007.

I immediately began this process even though the original package mailed by OSC to the Department of the Army had not been received by the Department of the Army. I did not want to delay the initiation of the Army investigation until receipt of the seventy-five pages of attachments. I advised the IMCOM OSJA to proceed with Mr. [REDACTED]'s investigation pending receipt of these documents and they proceeded accordingly, under the circumstances. As you recall, OGC had advised you about this issue immediately after receiving a copy of the OSC correspondence that did not contain the relevant attachments that were to accompany the May 24, 2007 OSC correspondence. We mutually agreed to wait a reasonable amount of time to see if the documents could be found/located. Not wanting to wait any longer, on June 8, 2007, OGC personally received a copy of those documents from your office which were then immediately forwarded to IMCOM. The IMCOM Investigating Officer, M. [REDACTED], did not receive these attachments until June 13, 2007. M. [REDACTED] worked diligently but carefully to complete his investigation and prepare his investigative report.

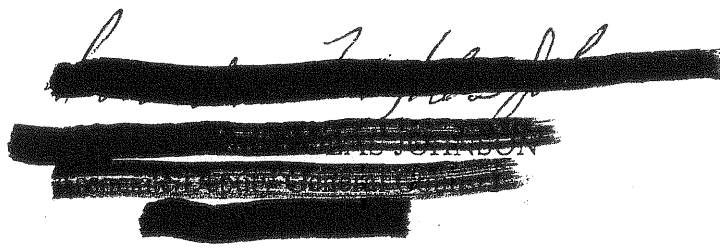
The IMCOM OSJA requested additional time to continue with the investigation, finalize the investigative report, and then prepare the draft agency report in compliance with 5 USC 1213. On June 25, 2007, due to the complex nature of this investigation and the voluminous technical documents that must be reviewed, IMCOM requested additional time until 20 July 2007 to submit the investigation and draft report to OGC. OGC granted this internal suspense extension request based on the above circumstances. On July 20, 2007, the IMCOM OSJA requested additional time to finalize its investigation and draft agency report, staff those documents and then forward them to OGC. OGC requested an extension of time so IMCOM could complete its fact gathering process and prepare its final report and then forward it to OGC for further staffing and completion of the final Army report in satisfaction of 5 USC 1213.

When the OGC reviewed IMCOM's draft report, there were a number of issues that still needed to be further developed. In addition, given the highly complex and technical nature of operating a waste water treatment plant, it was of particular to the OGC that the report be written in a manner that would best facilitate a thorough understanding of the nature of the allegations as well as the evidence and testimony gathered during the agency investigation in order to more clearly understand the facts and circumstances associated with the allegations and their significance. The OGC forwarded additional lines of inquiry as well as clarification to be undertaken.

As a result, when IMCOM and the Investigating Officer provided supplemental information to satisfy the OGC's concerns, it was insufficient. Again, the OGC requested that they undertake additional efforts to satisfy these concerns and incorporate them into the final work product. A supplemental investigation was recently completed, the original AR 15-6 report was revised, and its results were incorporated into the draft report by IMCOM and the Army Environmental Center. IMCOM forwarded the supplemental AR 15-6 report and the draft Army report in December 2007. Given the nature of the allegations, the exhibits that accompanied these documents are quite voluminous and technical. Unfortunately, this has made it difficult to completely review, analyze all of the submitted documents, and properly staff the work products within the OGC and the appropriate staff offices at the Department of the Army level and complete this task with a goal of preparing the final Army report that will be forwarded to the OSC within the given time limits of the current extension. Therefore, this request for an extension of time will allow the Army to accomplish the complete staffing and preparation of the Army's final report that will be forwarded to the OSC in satisfaction of the 5 USC §1213 requirements.

Should you grant this extension, please advise me as to the length of the extension. Within that allotted time, I will either provide you another status update on this pending action or be able to submit the final Department of the Army report to the Special Counsel.

I appreciate your assistance in considering the extension request. To advise me if this extension will be granted, you can reach me at 703-614-3500.

A large section of the document is redacted with thick black bars. The redaction covers a signature and the name of the sender, which appears to be "J. L. ...".

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DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-0104

March 28, 2008

Ms. Catherine A. McMullen
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Fort Lewis Public Works, Fort Lewis,
Washington (OSC File Numbers DI-07-1058
through DI-07-1070)

Dear Ms. McMullen:

By correspondence dated May 24, 2007, the Office of Special Counsel forwarded to the Secretary of the Army requesting an investigation into allegations affecting the Department of the Army at one of its sites, Public Works, Fort Lewis, Washington. I respectfully submit the following status report for the above captioned case and request that you grant an extension of time to file the Department of the Army's report required by 5 USC §1213 for this Office of Special Counsel (OSC) case. OSC determined that there was substantial likelihood that information provided by 12 current and former employees of the Department of the Army, Public Works, Fort Lewis, Washington, reflected that the Fort Lewis Waste Water Treatment Plant (WWTP) is discharging unacceptable and unlawful quantities of oil and other contaminants into the waters of Puget Sound, in violation of laws and regulations and the plant's operating permit, gross mismanagement, and a substantial and specific danger to public health and safety. The whistleblowers also allege that management fails to conduct proper testing and monitoring of the water treated at the plant, fails to properly maintain and replace the plant's equipment, and does not take adequate measures to protect employees against occupational health and safety risks. Lastly, the whistleblowers allege gross mismanagement on the part of the [REDACTED] in that he is not qualified to be plant supervisor and many of his actions create situations that jeopardize public health and safety.

You granted a previous request for an extension for sixty days on February 4, 2008, and had agreed that I would provide a status update on this pending action within sixty days or if the outstanding action had been completed, then the final Department of the Army report would be submitted to the Special Counsel. To date, the following actions have been taken on these cases.

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On May 30, 2007, I forwarded to [REDACTED] Office of the Staff Judge Advocate (OSJA), the OSC correspondence for appropriate action. I requested that the IMCOM OSJA take appropriate action, ensure that the allegations are investigated, and to prepare a draft report of findings for submission to OSC as required by 5 USC §1213 for the above captioned OSC case. This request for an extension is being made pending the OGC receipt of the report of investigation and draft report from the IMCOM OSJA. To date, the following actions have been taken:

OGC referred the subject case to IMCOM because the Fort Lewis WWTP falls under the Fort Lewis Garrison Commander, who in turn falls under IMCOM. On June 6, 2007, [REDACTED] appointed [REDACTED] IMCOM West Region, as an investigating officer (IO) under provisions of AR 15-6, *Procedures for Investigating Officers and Board of Officers*, with a mandate to investigate the allegations forwarded by OSC. OGC initially requested that the IMCOM investigation and draft report be forwarded to OGC no later than June 29, 2007.

I immediately began this process even though the original package mailed by OSC to the Department of the Army had not been received by the Department of the Army. I did not want to delay the initiation of the Army investigation until receipt of the seventy-five pages of attachments. I advised the IMCOM OSJA to proceed with Mr. [REDACTED]'s investigation pending receipt of these documents and they proceeded accordingly, under the circumstances. As you recall, OGC had advised you about this issue immediately after receiving a copy of the OSC correspondence that did not contain the relevant attachments that were to accompany the May 24, 2007 OSC correspondence. We mutually agreed to wait a reasonable amount of time to see if the documents could be found/located. Not wanting to wait any longer, on June 8, 2007, OGC personally received a copy of those documents from your office which were then immediately forwarded to IMCOM. The IMCOM Investigating Officer, [REDACTED] did not receive these attachments until June 13, 2007. [REDACTED] worked diligently but carefully to complete his investigation and prepare his investigative report.

The IMCOM OSJA requested additional time to continue with the investigation, finalize the investigative report, and then prepare the draft agency report in compliance with 5 USC 1213. On June 25, 2007, due to the complex nature of this investigation and the voluminous technical documents that must be reviewed, IMCOM requested additional time until 20 July 2007 to submit the investigation and draft report to OGC. OGC granted this internal suspense extension request based on the above circumstances. On July 20, 2007, the IMCOM OSJA requested additional time to finalize its investigation and draft agency report, staff those documents and then forward them to OGC. OGC requested an extension of time so IMCOM could complete its fact gathering process and prepare its final report and then forward it to OGC for further staffing and completion of the final Army report in satisfaction of 5 USC 1213.

When the OGC reviewed IMCOM's draft report, there were a number of issues that still needed to be further developed. In addition, given the highly complex and technical nature of operating a waste water treatment plant, it was of particular to the OGC that the report be written in a manner that would best facilitate a thorough understanding of the nature of the allegations as well as the evidence and testimony gathered during the agency investigation in order to more clearly understand the facts and circumstances associated with the allegations and their significance. The OGC forwarded additional lines of inquiry as well as clarification to be undertaken.

As a result, when IMCOM and the Investigating Officer provided supplemental information to satisfy the OGC's concerns, it was insufficient. Again, the OGC requested that they undertake additional efforts to satisfy these concerns and incorporate them into the final work product. A supplemental investigation was completed and approved on November 7, 2007. The original AR 15-6 report was revised, and its results were incorporated into the draft report by IMCOM and the Army Environmental Center. IMCOM forwarded the supplemental AR 15-6 report and the draft Army report in December 2007.

Given the nature of the allegations, the exhibits that accompanied these documents are quite voluminous and technical. Unfortunately, this has made it difficult to completely review, analyze all of the submitted documents, and properly staff the work products within the OGC. The initial draft Army § 1213 report has undergone extensive re-writes necessitated by the need to include the information gathered as a result of several and still on-going OGC requests for additional information to supplement the two Reports of Investigation that have already been prepared as part of the anticipated Army submission to OSC. Two extensive conference calls on February 11 and February 21, 2008, were held with the Army team to discuss the OGC concerns with the need for additional clarifying information and how to best capture it in the draft Army report. Further, continuous email discussions and follow-up actions have been occurring to ensure that the requested information is forthcoming. These changes are currently being incorporated into the final Army draft report.

Therefore, additional time is requested to allow the Army team to complete all of the necessary inquiries and incorporate this additional information into the final Army report. The complexity and technical aspect of this information as well as the voluminous amount of information that has been gathered to properly respond to the OSC referred allegations has hampered our ability to prepare the final Army report within the current suspense of March 31, 2008. Further, additional time is needed to complete the staffing process within the Department before the final Army report that can be forwarded to the OSC. Therefore, this request for an extension of time will allow the Army to accomplish the complete staffing and preparation of the Army's final report that will be forwarded to the OSC in satisfaction of the 5 USC §1213 requirements.

Should you grant this extension, please advise me as to the length of the extension. Within that allotted time, I will either provide you another status update on this

pending action or be able to submit the final Department of the Army report to the Special Counsel.

I appreciate your assistance in considering the extension request. To advise me if this extension will be granted, you can reach me at [REDACTED]

[REDACTED]

1/7 NR156 signed off

1/30 JH draft rept

2/19 ^{my} feed feedback

2/11 more my feedback call

2/2 ~~my~~ call

2/25 JH Round 2

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DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-0104

May 23, 2008

Ms. Catherine A. McMullen
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Fort Lewis Public Works, Fort Lewis,
Washington (OSC File Numbers DI-07-1058
through DI-07-1070)

Dear Ms. McMullen:

By correspondence dated May 24, 2007, the Office of Special Counsel forwarded to the Secretary of the Army requesting an investigation into allegations affecting the Department of the Army at one of its sites, Public Works, Fort Lewis, Washington. I respectfully submit the following status report for the above captioned case and request that you grant an extension of time to file the Department of the Army's report required by 5 USC §1213 for this Office of Special Counsel (OSC) case. OSC determined that there was substantial likelihood that information provided by 12 current and former employees of the Department of the Army, Public Works, Fort Lewis, Washington, reflected that the Fort Lewis Waste Water Treatment Plant (WWTP) is discharging unacceptable and unlawful quantities of oil and other contaminants into the waters of Puget Sound, in violation of laws and regulations and the plant's operating permit, gross mismanagement, and a substantial and specific danger to public health and safety. The whistleblowers also allege that management fails to conduct proper testing and monitoring of the water treated at the plant, fails to properly maintain and replace the plant's equipment, and does not take adequate measures to protect employees against occupational health and safety risks. Lastly, the whistleblowers allege gross mismanagement on the part of the [REDACTED] in that he is not qualified to be plant supervisor and many of his actions create situations that jeopardize public health and safety.

You granted a previous request for an extension for sixty days on April 1, 2008, and had agreed that I would provide a status update on this pending action within sixty days or if the outstanding action had been completed, then the final Department of the Army report would be submitted to the Special Counsel. To date, the following actions have been taken on these cases.

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On May 30, 2007, I forwarded to [REDACTED] on [REDACTED] Office of the Staff Judge Advocate (OSJA), the OSC correspondence for appropriate action. I requested that the IMCOM OSJA take appropriate action, ensure that the allegations are investigated, and to prepare a draft report of findings for submission to OSC as required by 5 USC §1213 for the above captioned OSC case. This request for an extension is being made pending the OGC receipt of the report of investigation and draft report from the IMCOM OSJA. To date, the following actions have been taken:

OGC referred the subject case to IMCOM because the Fort Lewis WWTP falls under the Fort Lewis Garrison Commander, who in turn falls under IMCOM. On June 6, 2007, [REDACTED], IMCOM appointed [REDACTED], as an investigating officer (IO) under provisions of AR 15-6, *Procedures for Investigating Officers and Board of Officers*, with a mandate to investigate the allegations forwarded by OSC. OGC initially requested that the IMCOM investigation and draft report be forwarded to OGC no later than June 29, 2007.

I immediately began this process even though the original package mailed by OSC to the Department of the Army had not been received by the Department of the Army. I did not want to delay the initiation of the Army investigation until receipt of the seventy-five pages of attachments. I advised the IMCOM OSJA to proceed with Mr. [REDACTED] investigation pending receipt of these documents and they proceeded accordingly, under the circumstances. As you recall, OGC had advised you about this issue immediately after receiving a copy of the OSC correspondence that did not contain the relevant attachments that were to accompany the may 24, 2007 OSC correspondence. We mutually agreed to wait a reasonable amount of time to see if the documents could be found/located. Not wanting to wait any longer, on June 8, 2007, OGC personally received a copy of those documents from your office which were then immediately forwarded to IMCOM. The IMCOM Investigating Officer, [REDACTED] did not receive these attachments until June 13, 2007. [REDACTED] worked diligently but carefully to complete his investigation and prepare his investigative report.

The IMCOM OSJA requested additional time to continue with the investigation, finalize the investigative report, and then prepare the draft agency report in compliance with 5 USC 1213. On June 25, 2007, due to the complex nature of this investigation and the voluminous technical documents that must be reviewed, IMCOM requested additional time until 20 July 2007 to submit the investigation and draft report to OGC. OGC granted this internal suspense extension request based on the above circumstances. On July 20, 2007, the IMCOM OSJA requested additional time to finalize its investigation and draft agency report, staff those documents and then forward them to OGC. OGC requested an extension of time so IMCOM could complete its fact gathering process and prepare its final report and then forward it to OGC for further staffing and completion of the final Army report in satisfaction of 5 USC 1213.

When the OGC reviewed IMCOM's draft report, there were a number of issues that still needed to be further developed. In addition, given the highly complex and technical nature of operating a waste water treatment plant, it was of particular to the OGC that the report be written in a manner that would best facilitate a thorough understanding of the nature of the allegations as well as the evidence and testimony gathered during the agency investigation in order to more clearly understand the facts and circumstances associated with the allegations and their significance. The OGC forwarded additional lines of inquiry as well as clarification to be undertaken.

As a result, when IMCOM and the Investigating Officer provided supplemental information to satisfy the OGC's concerns, it was insufficient. Again, the OGC requested that they undertake additional efforts to satisfy these concerns and incorporate them into the final work product. A supplemental investigation was completed and approved on November 7, 2007. The original AR 15-6 report was revised, and its results were incorporated into the draft report by IMCOM and the Army Environmental Center. IMCOM forwarded the supplemental AR 15-6 report and the draft Army report in December 2007.

Given the nature of the allegations, the exhibits that accompanied these documents are quite voluminous and technical. Unfortunately, this has made it difficult to completely review, analyze all of the submitted documents, and properly staff the work products within the OGC. The initial draft Army § 1213 report has undergone extensive re-writes necessitated by the need to include the information gathered as a result of several and still on-going OGC requests for additional information to supplement the two Reports of Investigation that have already been prepared as part of the anticipated Army submission to OSC. Two extensive conference calls on February 11 and February 21, 2008, were held with the Army team to discuss the OGC concerns with the need for additional clarifying information and how to best capture it in the draft Army report. Further, continuous email discussions and follow-up actions have been occurring to ensure that the requested information is forthcoming. These changes were incorporated into the final Army draft report.

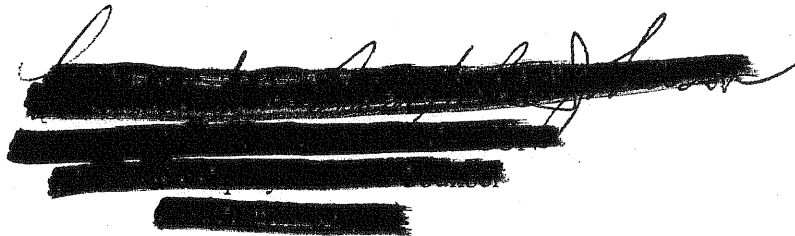
However, further clarification and discussion was needed to develop the Army's draft report into several of the OSC referred allegations. Accordingly, OGC scheduled another VTC for April 10, 2008. This VTC resulted in additional fact gathering efforts by the Army team into these areas that necessitated the gathering of additional testimonial and documentary evidence. This on going fact gathering process is almost completed. A final teleconference is being scheduled for the end of next week to address any final matters that need to be addressed. In the interim, the additional information that was recently gathered is being incorporated into the final Army report that is in the final stages of completion.

Therefore, additional time is requested to allow the Army team to complete all of the necessary inquiries and incorporate this additional information into the final Army report. The complexity and technical aspect of this information as well as the voluminous amount of information that has been gathered to properly respond to the OSC referred

allegations has hampered our ability to prepare the final Army report within the current suspense of May 27, 2008. Further, additional time is needed to complete the staffing process within the Department before the final Army report that can be forwarded to the OSC. Therefore, this request for an extension of time will allow the Army to accomplish the complete staffing and preparation of the Army's final report that will be forwarded to the OSC in satisfaction of the 5 USC §1213 requirements.

Should you grant this extension, please advise me as to the length of the extension. Within that allotted time, I will either provide you another status update on this pending action or be able to submit the final Department of the Army report to the Special Counsel.

I appreciate your assistance in considering the extension request. To advise me if this extension will be granted, you can reach me at [REDACTED]

A handwritten signature in cursive is written over a thick black redaction bar. Below the signature are three more thick black redaction bars, completely obscuring any text underneath.

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DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-0104

July 24, 2008

Ms. Catherine A. McMullen
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Fort Lewis Public Works, Fort Lewis,
Washington (OSC File Numbers DI-07-1058
through DI-07-1070)

Dear Ms. McMullen:

By correspondence dated May 24, 2007, the Office of Special Counsel forwarded to the Secretary of the Army requesting an investigation into allegations affecting the Department of the Army at one of its sites, Public Works, Fort Lewis, Washington. I respectfully submit the following status report for the above captioned case and request that you grant an extension of time to file the Department of the Army's report required by 5 USC §1213 for this Office of Special Counsel (OSC) case. OSC determined that there was substantial likelihood that information provided by 12 current and former employees of the Department of the Army, Public Works, Fort Lewis, Washington, reflected that the Fort Lewis Waste Water Treatment Plant (WWTP) is discharging unacceptable and unlawful quantities of oil and other contaminants into the waters of Puget Sound, in violation of laws and regulations and the plant's operating permit, gross mismanagement, and a substantial and specific danger to public health and safety. The whistleblowers also allege that management fails to conduct proper testing and monitoring of the water treated at the plant, fails to properly maintain and replace the plant's equipment, and does not take adequate measures to protect employees against occupational health and safety risks. Lastly, the whistleblowers allege gross mismanagement on the part of the [REDACTED] in that he is not qualified to be plant supervisor and many of his actions create situations that jeopardize public health and safety.

You granted a previous request for an extension for sixty days on May 27, 2008, and had agreed that I would provide a status update on this pending action within sixty days or if the outstanding action had been completed, then the final Department of the Army report would be submitted to the Special Counsel. To date, the following actions have been taken on these cases.

As you are aware, there have been two investigative reports (the initial investigative report and a supplemental report) that have been prepared to respond to the five OSC referred allegations. Further, the agency draft report has undergone several extensive revisions to ensure that all allegations are thoroughly addressed and developed. In addition, given the highly complex and technical nature of operating a waste water treatment plant, it was of particular to the OGC that the report be written in a manner that would best facilitate a thorough understanding of the nature of the allegations as well as the evidence and testimony gathered during the agency investigation in order to more clearly understand the facts and circumstances associated with the allegations and their significance. The OGC has requested that the Army team (attorneys with relevant expertise in the covered subject matter, functional experts and the investigative team) undertake additional lines of inquiry as well as clarification of particular matters to further develop the Army's report and incorporate them into the final work product for OSC.

The complexity and technical aspect of this information as well as the voluminous amount of information that has been gathered has hampered our ability to prepare the final Army report within the current suspense of July 28, 2008. Unfortunately, it has been difficult to completely review, analyze all of the submitted documents and evidence, and properly staff the work products. To facilitate this synthesis, extensive conference calls with the Army team were held on February 11 and 21; April 10; June 3, 16, 17, 19, 23, 27, 30; and July 1, 2008. Further, continuous email discussions and follow-up actions have been occurring to ensure that the requested information is forthcoming and helpful. These changes are currently being incorporated into the final Army draft report that is in the final stages of staffing within the Department of the Army and completion.

Therefore, additional time is requested to allow the Army team to complete all of the necessary inquiries and incorporate this additional information into the final Army report. Therefore, this request for an extension of time for an additional 45-days will allow the Army to accomplish the complete staffing and preparation of the Army's final report that will be forwarded to the OSC in satisfaction of the 5 USC §1213 requirements.

Should you grant this extension, please advise me as to the length of the extension. I appreciate your assistance in considering the extension request. To advise me if this extension will be granted, you can reach me at [REDACTED]

[Handwritten signature]
[REDACTED]
[REDACTED]
[REDACTED]

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DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-0104

September 25, 2008

Ms. Catherine A. McMullen
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Fort Lewis Public Works, Fort Lewis,
Washington (OSC File Numbers DI-07-1058
through DI-07-1070)

Dear Ms. McMullen:

By correspondence dated May 24, 2007, the Office of Special Counsel forwarded to the Secretary of the Army requesting an investigation into allegations affecting the Department of the Army at one of its sites, Public Works, Fort Lewis, Washington. I respectfully submit the following status report for the above captioned case and request that you grant an extension of time to file the Department of the Army's report required by 5 USC §1213 for this Office of Special Counsel (OSC) case. OSC determined that there was substantial likelihood that information provided by 12 current and former employees of the Department of the Army, Public Works, Fort Lewis, Washington, reflected that the Fort Lewis Waste Water Treatment Plant (WWTP) is discharging unacceptable and unlawful quantities of oil and other contaminants into the waters of Puget Sound, in violation of laws and regulations and the plant's operating permit, gross mismanagement, and a substantial and specific danger to public health and safety. The whistleblowers also allege that management fails to conduct proper testing and monitoring of the water treated at the plant, fails to properly maintain and replace the plant's equipment, and does not take adequate measures to protect employees against occupational health and safety risks. Lastly, the whistleblowers allege gross mismanagement on the part of the Plant Supervisor, Mr. Long, in that he is not qualified to be plant supervisor and many of his actions create situations that jeopardize public health and safety.

You granted a previous request for an extension for sixty days on July 29, 2008, and had agreed that I would provide a status update on this pending action within sixty days or if the outstanding action had been completed, then the final Department of the Army report would be submitted to the Special Counsel. To date, the following actions have been taken on these cases.

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As you are aware, there have been two investigative reports (the initial investigative report and a supplemental report) that have been prepared to respond to the five OSC referred allegations. Further, the agency draft report has undergone several extensive revisions to ensure that all allegations are thoroughly addressed and developed. In addition, given the highly complex and technical nature of operating a waste water treatment plant, it was of particular to the OGC that the report be written in a manner that would best facilitate a thorough understanding of the nature of the allegations as well as the evidence and testimony gathered during the agency investigation in order to more clearly understand the facts and circumstances associated with the allegations and their significance.

The OGC requested that the Army team (attorneys with relevant expertise in the covered subject matter, functional experts and the investigative team) undertake additional lines of inquiry as well as clarification of particular matters to further develop the Army's report and incorporate them into the final work product for OSC. To facilitate this synthesis, extensive conference calls with the Army team were held on February 11 and 21; April 10; June 3, 16, 17, 19, 23, 27, 30; and July 1, 2008. Further, continuous email discussions and follow-up actions occurred during the ensuing months of July, August, and September to ensure that the requested information was forthcoming and helpful.

At this point in time, we are in the final stages of incorporating all additional information into the final Army draft report and completing all necessary staffing within the Department of the Army. Therefore, this request for an extension of time will allow the Army to complete the staffing and preparation of the Army's final report that will be forwarded to the OSC in satisfaction of the 5 USC §1213 requirements.

Should you grant this extension, please advise me as to the length of the extension. I appreciate your assistance in considering the extension request. To advise me if this extension will be granted, you can reach me at [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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Tab 13

See Tab 12

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From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 3, 2005]
[Document not affected by Public Laws enacted between
January 3, 2005 and October 30, 2006]
[CITE: 33USC1251]

TITLE 33--NAVIGATION AND NAVIGABLE WATERS

CHAPTER 26--WATER POLLUTION PREVENTION AND CONTROL

SUBCHAPTER I--RESEARCH AND RELATED PROGRAMS

Sec. 1251. Congressional declaration of goals and policy

- (a) Restoration and maintenance of chemical, physical and biological integrity of Nation's waters; national goals for achievement of objective

The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter--

- (1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;
- (2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;
- (3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;
- (4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;
- (5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State;
- (6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans; and
- (7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this chapter to be met through the control of both point and nonpoint sources of pollution.

- (b) Congressional recognition, preservation, and protection of primary responsibilities and rights of States

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is the policy of Congress that the States manage the construction grant program under this chapter and implement the permit programs under sections 1342 and 1344 of this title. It is further the policy of the Congress to support and aid research relating

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to the prevention, reduction, and elimination of pollution and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

(c) Congressional policy toward Presidential activities with foreign countries

It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

(d) Administrator of Environmental Protection Agency to administer chapter

Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency (hereinafter in this chapter called "Administrator") shall administer this chapter.

(e) Public participation in development, revision, and enforcement of any regulation, etc.

Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

(f) Procedures utilized for implementing chapter

It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

(g) Authority of States over water

It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter. It is the further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

(June 30, 1948, ch. 758, title I, Sec. 101, as added Pub. L. 92-500, Sec. 2, Oct. 18, 1972, 86 Stat. 816; amended Pub. L. 95-217, Secs. 5(a), 26(b), Dec. 27, 1977, 91 Stat. 1567, 1575; Pub. L. 100-4, title III,

Sec. 316(b), Feb. 4, 1987, 101 Stat. 60.)

Amendments

1987--Subsec. (a)(7). Pub. L. 100-4 added par. (7).

1977--Subsec. (b). Pub. L. 95-217, Sec. 26(b), inserted provisions expressing Congressional policy that the States manage the construction grant program under this chapter and implement the permit program under sections 1342 and 1344 of this title.

Subsec. (g). Pub. L. 95-217, Sec. 5(a), added subsec. (g).

Short Title of 2002 Amendment

Pub. L. 107-303, Sec. 1(a), Nov. 27, 2002, 116 Stat. 2355, provided that: ``This Act [enacting section 1271a of this title, amending sections 1254, 1266, 1268, 1270, 1285, 1290, 1324, 1329, 1330, and 1375 of this title, enacting provisions set out as notes under this section, section 1254 of this title, and section 1113 of Title 31, Money and Finance, and repealing provisions set out as a note under section 50 of Title 20, Education] may be cited as the `Great Lakes and Lake Champlain Act of 2002'.''

Pub. L. 107-303, title I, Sec. 101, Nov. 27, 2002, 116 Stat. 2355, provided that: ``This title [enacting section 1271a of this title and amending section 1268 of this title] may be cited as the `Great Lakes Legacy Act of 2002'.''

Pub. L. 107-303, title II, Sec. 201, Nov. 27, 2002, 116 Stat. 2358, provided that: ``This title [amending section 1270 of this title] may be cited as the `Daniel Patrick Moynihan Lake Champlain Basin Program Act of 2002'.''

Short Title of 2000 Amendments

Pub. L. 106-457, title II, Sec. 201, Nov. 7, 2000, 114 Stat. 1967, provided that: ``This title [amending section 1267 of this title and enacting provisions set out as a note under section 1267 of this title] may be cited as the `Chesapeake Bay Restoration Act of 2000'.''

Pub. L. 106-457, title IV, Sec. 401, Nov. 7, 2000, 114 Stat. 1973, provided that: ``This title [amending section 1269 of this title] may be cited as the `Long Island Sound Restoration Act'.''

Pub. L. 106-457, title V, Sec. 501, Nov. 7, 2000, 114 Stat. 1973, provided that: ``This title [enacting section 1273 of this title] may be cited as the `Lake Pontchartrain Basin Restoration Act of 2000'.''

Pub. L. 106-457, title VI, Sec. 601, Nov. 7, 2000, 114 Stat. 1975, provided that: ``This title [enacting section 1300 of this title] may be cited as the `Alternative Water Sources Act of 2000'.''

Pub. L. 106-284, Sec. 1, Oct. 10, 2000, 114 Stat. 870, provided that: ``This Act [enacting sections 1346 and 1375a of this title and amending sections 1254, 1313, 1314, 1362, and 1377 of this title] may be cited as the `Beaches Environmental Assessment and Coastal Health Act of 2000'.''

Short Title of 1994 Amendment

Pub. L. 103-431, Sec. 1, Oct. 31, 1994, 108 Stat. 4396, provided that: ``This Act [amending section 1311 of this title] may be cited as the `Ocean Pollution Reduction Act'.''

Short Title of 1990 Amendment

Pub. L. 101-596, Sec. 1, Nov. 16, 1990, 104 Stat. 3000, provided that: ``This Act [enacting sections 1269 and 1270 of this title, amending sections 1268, 1324, and 1416 of this title, and enacting provisions set out as notes under this section and section 1270 of this title] may be cited as the `Great Lakes Critical Programs Act of 1990'.''

Pub. L. 101-596, title II, Sec. 201, Nov. 16, 1990, 104 Stat. 3004, provided that: ``This part [probably means title, enacting section 1269 of this title and amending section 1416 of this title] may be cited as the `Long Island Sound Improvement Act of 1990'.''

Pub. L. 101-596, title III, Sec. 301, Nov. 16, 1990, 104 Stat. 3006, provided that: ``This title [enacting section 1270 of this title, amending section 1324 of this title, and enacting provisions set out as a note under section 1270 of this title] may be cited as the `Lake Champlain Special Designation Act of 1990'.''

Short Title of 1988 Amendment

Pub. L. 100-653, title X, Sec. 1001, Nov. 14, 1988, 102 Stat. 3835, provided that: ``This title [amending section 1330 of this title and enacting provisions set out as notes under section 1330 of this title] may be cited as the `Massachusetts Bay Protection Act of 1988'.''

Short Title of 1987 Amendment

Section 1(a) of Pub. L. 100-4 provided that: ``This Act [enacting sections 1254a, 1267, 1268, 1281b, 1329, 1330, 1377, 1381 to 1387, and 1414a of this title, amending this section and sections 1254, 1256, 1262, 1281, 1282 to 1285, 1287, 1288, 1291, 1311 to 1313, 1314, 1317 to 1322, 1324, 1342, 1344, 1345, 1361, 1362, 1365, 1369, 1375, and 1376 of this title, and enacting provisions set out as notes under this section, sections 1284, 1311, 1317, 1319, 1330, 1342, 1345, 1362, 1375, and 1414a of this title, and section 1962d-20 of Title 42, The Public Health and Welfare] may be cited as the `Water Quality Act of 1987'.''

Short Title of 1981 Amendment

Pub. L. 97-117, Sec. 1, Dec. 29, 1981, 95 Stat. 1623, provided that: ``This Act [enacting sections 1298, 1299, and 1313a of this title, amending sections 1281 to 1285, 1287, 1291, 1292, 1296, 1311, and 1314 of this title, and enacting provisions set out as notes under sections 1311 and 1375 of this title] may be cited as the `Municipal Wastewater Treatment Construction Grant Amendments of 1981'.''

Short Title of 1977 Amendment

Section 1 of Pub. L. 95-217 provided: ``That this Act [enacting sections 1281a, 1294 to 1296, and 1297 of this title, amending this section and sections 1252, 1254 to 1256, 1259, 1262, 1263, 1281, 1282 to 1288, 1291, 1292, 1311, 1314, 1315, 1317 to 1319, 1321 to 1324, 1328, 1341, 1342, 1344, 1345, 1362, 1364, 1375, and 1376 of this title, enacting provisions set out as notes under this section and sections

1284, 1286, 1314, 1321, 1342, 1344, and 1376 of this title, and amending provisions set out as a note under this section] may be cited as the 'Clean Water Act of 1977'.'

Short Title

Section 1 of Pub. L. 92-500 provided that: ``That this Act [enacting this chapter, amending section 24 of Title 12, Banks and Banking, sections 633 and 636 of Title 15, Commerce and Trade, and section 711 of former Title 31, Money and Finance, and enacting provisions set out as notes under this section and sections 1281 and 1361 of this title] may be cited as the 'Federal Water Pollution Control Act Amendments of 1972'.'

Section 519, formerly section 518, of Act June 30, 1948, ch. 758, title V, as added Oct. 18, 1972, Pub. L. 92-500, Sec. 2, 86 Stat. 896, and amended Dec. 27, 1977, Pub. L. 95-217, Sec. 2, 91 Stat. 1566, and renumbered Sec. 519, Feb. 4, 1987, Pub. L. 100-4, title V, Sec. 506, 101 Stat. 76, provided that: ``This Act [this chapter] may be cited as the 'Federal Water Pollution Control Act' (commonly referred to as the Clean Water Act).'

Savings Provision

Section 4 of Pub. L. 92-500 provided that:

``(a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall abate by reason of the taking effect of the amendment made by section 2 of this Act [which enacted this chapter]. The court may, on its own motion or that of any party made at any time within twelve months after such taking effect, allow the same to be maintained by or against the Administrator or such officer or employee.

``(b) All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972], and pertaining to any functions, powers, requirements, and duties under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall continue in full force and effect after the date of enactment of this Act [Oct. 18, 1972] until modified or rescinded in accordance with the Federal Water Pollution Control Act as amended by this Act [this chapter].

``(c) The Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall remain applicable to all grants made from funds authorized for the fiscal year ending June 30, 1972, and prior fiscal years, including any increases in the monetary amount of any such grant which may be paid from authorizations for fiscal years beginning after June 30, 1972, except as specifically otherwise provided in section 202 of the Federal Water Pollution Control Act as amended by this Act [section 1282 of this title] and in subsection (c) of section 3 of this Act.'

Separability

Section 512 of act June 30, 1948, ch. 758, title V, as added Oct. 18, 1972, Pub. L. 92-500, Sec. 2, 86 Stat. 894, provided that: ``If any provision of this Act [this chapter], or the application of any provision of this Act [this chapter] to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act [this chapter], shall not be affected thereby.''

National Shellfish Indicator Program

Pub. L. 102-567, title III, Sec. 308, Oct. 29, 1992, 106 Stat. 4286; as amended by Pub. L. 105-362, title II, Sec. 201(b), Nov. 10, 1998, 112 Stat. 3282, provided that:

``(a) Establishment of a Research Program.--The Secretary of Commerce, in cooperation with the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, shall establish and administer a 5-year national shellfish research program (hereafter in this section referred to as the 'Program') for the purpose of improving existing classification systems for shellfish growing waters using the latest technological advancements in microbiology and epidemiological methods. Within 12 months after the date of enactment of this Act [Oct. 29, 1992], the Secretary of Commerce, in cooperation with the advisory committee established under subsection (b) and the Consortium, shall develop a comprehensive 5-year plan for the Program which shall at a minimum provide for--

``(1) an environmental assessment of commercial shellfish growing areas in the United States, including an evaluation of the relationships between indicators of fecal contamination and human enteric pathogens;

``(2) the evaluation of such relationships with respect to potential health hazards associated with human consumption of shellfish;

``(3) a comparison of the current microbiological methods used for evaluating indicator bacteria and human enteric pathogens in shellfish and shellfish growing waters with new technological methods designed for this purpose;

``(4) the evaluation of current and projected systems for human sewage treatment in eliminating viruses and other human enteric pathogens which accumulate in shellfish;

``(5) the design of epidemiological studies to relate microbiological data, sanitary survey data, and human shellfish consumption data to actual hazards to health associated with such consumption; and

``(6) recommendations for revising Federal shellfish standards and improving the capabilities of Federal and State agencies to effectively manage shellfish and ensure the safety of shellfish intended for human consumption.

``(b) Advisory Committee.--(1) For the purpose of providing oversight of the Program on a continuing basis, an advisory committee (hereafter in this section referred to as the 'Committee') shall be established under a memorandum of understanding between the Interstate Shellfish Sanitation Conference and the National Marine Fisheries Service.

``(2) The Committee shall--

``(A) identify priorities for achieving the purpose of the Program;

``(B) review and recommend approval or disapproval of Program work plans and plans of operation;

``(C) review and comment on all subcontracts and grants to be

awarded under the Program;

((D) receive and review progress reports from the Consortium and program subcontractors and grantees; and

((E) provide such other advice on the Program as is appropriate.

((3) The Committee shall consist of at least ten members and shall include--

((A) three members representing agencies having authority under State law to regulate the shellfish industry, of whom one shall represent each of the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions;

((B) three members representing persons engaged in the shellfish industry in the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions (who shall be appointed from among at least six recommendations by the industry members of the Interstate Shellfish Sanitation Conference Executive Board), of whom one shall represent the shellfish industry in each region;

((C) three members, of whom one shall represent each of the following Federal agencies: the National Oceanic and Atmospheric Administration, the Environmental Protection Agency, and the Food and Drug Administration; and

((D) one member representing the Shellfish Institute of North America.

((4) The Chairman of the Committee shall be selected from among the Committee members described in paragraph (3)(A).

((5) The Committee shall establish and maintain a subcommittee of scientific experts to provide advice, assistance, and information relevant to research funded under the Program, except that no individual who is awarded, or whose application is being considered for, a grant or subcontract under the Program may serve on such subcommittee. The membership of the subcommittee shall, to the extent practicable, be regionally balanced with experts who have scientific knowledge concerning each of the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions. Scientists from the National Academy of Sciences and appropriate Federal agencies (including the National Oceanic and Atmospheric Administration, Food and Drug Administration, Centers for Disease Control, National Institutes of Health, Environmental Protection Agency, and National Science Foundation) shall be considered for membership on the subcommittee.

((6) Members of the Committee and its scientific subcommittee established under this subsection shall not be paid for serving on the Committee or subcommittee, but shall receive travel expenses as authorized by section 5703 of title 5, United States Code.

((c) Contract With Consortium.--Within 30 days after the date of enactment of this Act [Oct. 29, 1992], the Secretary of Commerce shall seek to enter into a cooperative agreement or contract with the Consortium under which the Consortium will--

((1) be the academic administrative organization and fiscal agent for the Program;

((2) award and administer such grants and subcontracts as are approved by the Committee under subsection (b);

((3) develop and implement a scientific peer review process for evaluating grant and subcontractor applications prior to review by the Committee;

((4) in cooperation with the Secretary of Commerce and the Committee, procure the services of a scientific project director;

((5) develop and submit budgets, progress reports, work plans, and plans of operation for the Program to the Secretary of Commerce and the Committee; and

((6) make available to the Committee such staff, information,

and assistance as the Committee may reasonably require to carry out its activities.

``(d) Authorization of Appropriations.--(1) Of the sums authorized under section 4(a) of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409), there are authorized to be appropriated to the Secretary of Commerce \$5,200,000 for each of the fiscal years 1993 through 1997 for carrying out the Program. Of the amounts appropriated pursuant to this authorization, not more than 5 percent of such appropriation may be used for administrative purposes by the National Oceanic and Atmospheric Administration. The remaining 95 percent of such appropriation shall be used to meet the administrative and scientific objectives of the Program.

``(2) The Interstate Shellfish Sanitation Conference shall not administer appropriations authorized under this section, but may be reimbursed from such appropriations for its expenses in arranging for travel, meetings, workshops, or conferences necessary to carry out the Program.

``(e) Definitions.--As used in this section, the term--

``(1) 'Consortium' means the Louisiana Universities Marine Consortium; and

``(2) 'shellfish' means any species of oyster, clam, or mussel that is harvested for human consumption.''

Limitation on Payments

Section 2 of Pub. L. 100-4 provided that: ``No payments may be made under this Act [see Short Title of 1987 Amendment note above] except to the extent provided in advance in appropriation Acts.''

Seafood Processing Study; Submittal of Results to Congress not Later Than January 1, 1979

Pub. L. 95-217, Sec. 74, Dec. 27, 1977, 91 Stat. 1609, provided that the Administrator of the Environmental Protection Agency conduct a study to examine the geographical, hydrological, and biological characteristics of marine waters to determine the effects of seafood processes which dispose of untreated natural wastes into such waters and to include in this study an examination of technologies which may be used in such processes to facilitate the use of the nutrients in these wastes or to reduce the discharge of such wastes into the marine environment and to submit the result of this study to Congress not later than Jan. 1, 1979.

Standards

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

Oversight Study

Section 5 of Pub. L. 92-500 authorized the Comptroller General of the United States to conduct a study and review of the research, pilot, and demonstration programs related to prevention and control of water

pollution conducted, supported, or assisted by any Federal agency pursuant to any Federal law or regulation and assess conflicts between these programs and their coordination and efficacy, and to report to Congress thereon by Oct. 1, 1973.

International Trade Study

Section 6 of Pub. L. 92-500 provided that:

“(a) The Secretary of Commerce, in cooperation with other interested Federal agencies and with representatives of industry and the public, shall undertake immediately an investigation and study to determine--

“(1) the extent to which pollution abatement and control programs will be imposed on, or voluntarily undertaken by, United States manufacturers in the near future and the probable short- and long-range effects of the costs of such programs (computed to the greatest extent practicable on an industry-by-industry basis) on (A) the production costs of such domestic manufacturers, and (B) the market prices of the goods produced by them;

“(2) the probable extent to which pollution abatement and control programs will be implemented in foreign industrial nations in the near future and the extent to which the production costs (computed to the greatest extent practicable on an industry-by-industry basis) of foreign manufacturers will be affected by the costs of such programs;

“(3) the probable competitive advantage which any article manufactured in a foreign nation will likely have in relation to a comparable article made in the United States if that foreign nation--

“(A) does not require its manufacturers to implement pollution abatement and control programs.

“(B) requires a lesser degree of pollution abatement and control in its programs, or

“(C) in any way reimburses or otherwise subsidizes its manufacturers for the costs of such program;

“(4) alternative means by which any competitive advantage accruing to the products of any foreign nation as a result of any factor described in paragraph (3) may be (A) accurately and quickly determined, and (B) equalized, for example, by the imposition of a surcharge or duty, on a foreign product in an amount necessary to compensate for such advantage; and

“(5) the impact, if any, which the imposition of a compensating tariff of other equalizing measure may have in encouraging foreign nations to implement pollution and abatement control programs.

“(b) The Secretary shall make an initial report to the President and Congress within six months after the date of enactment of this section [Oct. 18, 1972] of the results of the study and investigation carried out pursuant to this section and shall make additional reports thereafter at such times as he deems appropriate taking into account the development of relevant data, but not less than once every twelve months.”

International Agreements

Section 7 of Pub. L. 92-500 provided that: “The President shall undertake to enter into international agreement to apply uniform standards of performance for the control of the discharge and emission of pollutants from new sources, uniform controls over the discharge and

emission of toxic pollutants, and uniform controls over the discharge of pollutants into the ocean. For this purpose the President shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums.''

National Policies and Goal Study

Section 10 of Pub. L. 92-500 directed President to make a full and complete investigation and study of all national policies and goals established by law to determine what the relationship should be between these policies and goals, taking into account the resources of the Nation, and to report results of his investigation and study together with his recommendations to Congress not later than two years after Oct. 18, 1972.

Efficiency Study

Section 11 of Pub. L. 92-500 directed President, by utilization of the General Accounting Office, to conduct a full and complete investigation and study of ways and means of most effectively using all of the various resources, facilities, and personnel of the Federal Government in order to most efficiently carry out the provisions of this chapter and to report results of his investigation and study together with his recommendations to Congress not later than two hundred and seventy days after Oct. 18, 1972.

Sex Discrimination

Section 13 of Pub. L. 92-500 provided that: ``No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this Act [see Short Title note above] the Federal Water Pollution Control Act [this chapter], or the Environmental Financing Act [set out as a note under section 1281 of this title]. This section shall be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964 [section 2000d et seq. of Title 42, The Public Health and Welfare]. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.''

Contiguous Zone of United States

For extension of contiguous zone of United States, see Proc. No. 7219, set out as a note under section 1331 of Title 43, Public Lands.

Prevention, Control, and Abatement of Environmental Pollution at Federal Facilities

Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42, The Public Health and Welfare, provides for the prevention, control, and abatement of environmental pollution at federal facilities.

Executive Order No. 11548

Ex. Ord. No. 11548, July 20, 1970, 35 F.R. 11677, which related to the delegation of Presidential functions, was superseded by Ex. Ord. No. 11735, Aug. 3, 1973, 38 F.R. 21243, formerly set out as a note under section 1321 of this title.

Ex. Ord. No. 11742. Delegation of Functions to Secretary of State
Respecting the Negotiation of International Agreements Relating to the
Enhancement of the Environment

Ex. Ord. No. 11742, Oct. 23, 1973, 38 F.R. 29457, provided:

Under and by virtue of the authority vested in me by section 301 of title 3 of the United States Code and as President of the United States, I hereby authorize and empower the Secretary of State, in coordination with the Council on Environmental Quality, the Environmental Protection Agency, and other appropriate Federal agencies, to perform, without the approval, ratification, or other action of the President, the functions vested in the President by Section 7 of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500; 86 Stat. 898) with respect to international agreements relating to the enhancement of the environment.

Richard Nixon.

Definition of ``Administrator''

Section 1(d) of Pub. L. 100-4 provided that: ``For purposes of this Act [see Short Title of 1987 Amendment note above], the term `Administrator' means the Administrator of the Environmental Protection Agency.''

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TITLE 33--NAVIGATION AND NAVIGABLE WATERS

CHAPTER 26--WATER POLLUTION PREVENTION AND CONTROL

SUBCHAPTER IV--PERMITS AND LICENSES

Sec. 1342. National pollutant discharge elimination system

(a) Permits for discharge of pollutants

(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either (A) all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 407 of this title shall be deemed to be permits issued under this subchapter, and permits issued under this subchapter shall be deemed to be permits issued under section 407 of this title, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.

(5) No permit for a discharge into the navigable waters shall be issued under section 407 of this title after October 18, 1972. Each application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objectives of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 1314(i)(2) of this title, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such

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conditions as the Administrator determines are necessary to carry out the provisions of this chapter. No such permit shall issue if the Administrator objects to such issuance.

(b) State permit programs

At any time after the promulgation of the guidelines required by subsection (i) (2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which--

(A) apply, and insure compliance with, any applicable requirements of sections 1311, 1312, 1316, 1317, and 1343 of this title;

(B) are for fixed terms not exceeding five years; and

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(D) control the disposal of pollutants into wells;

(2) (A) To issue permits which apply, and insure compliance with, all applicable requirements of section 1318 of this title; or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;

(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;

(6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;

(7) To abate violations of the permit or the permit program,

including civil and criminal penalties and other ways and means of enforcement;

(8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 1317(b) of this title into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 1316 of this title if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 1311 of this title if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 1284(b), 1317, and 1318 of this title.

(c) Suspension of Federal program upon submission of State program; withdrawal of approval of State program; return of State program to Administrator

(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those discharges subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 1314(i)(2) of this title. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 1314(i)(2) of this title.

(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(4) Limitations on partial permit program returns and withdrawals.-- A State may return to the Administrator administration, and the Administrator may withdraw under paragraph (3) of this subsection approval, of--

(A) a State partial permit program approved under subsection (n)(3) of this section only if the entire permit program being administered by the State department or agency at the time is returned or withdrawn; and

(B) a State partial permit program approved under subsection (n)(4) of this section only if an entire phased component of the permit program being administered by the State at the time is

returned or withdrawn.

(d) Notification of Administrator

(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.

(3) The Administrator may, as to any permit application, waive paragraph (2) of this subsection.

(4) In any case where, after December 27, 1977, the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing, or, if no hearing is requested within 90 days after the date of such objection, the Administrator may issue the permit pursuant to subsection (a) of this section for such source in accordance with the guidelines and requirements of this chapter.

(e) Waiver of notification requirement

In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (d) of this section at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.

(f) Point source categories

The Administrator shall promulgate regulations establishing categories of point sources which he determines shall not be subject to the requirements of subsection (d) of this section in any State with a program approved pursuant to subsection (b) of this section. The Administrator may distinguish among classes, types, and sizes within any category of point sources.

(g) Other regulations for safe transportation, handling, carriage, storage, and stowage of pollutants

Any permit issued under this section for the discharge of pollutants into the navigable waters from a vessel or other floating craft shall be subject to any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(h) Violation of permit conditions; restriction or prohibition upon

introduction of pollutant by source not previously utilizing treatment works

In the event any condition of a permit for discharges from a treatment works (as defined in section 1292 of this title) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that a State with an approved program has not commenced appropriate enforcement action with respect to such permit, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

(i) Federal enforcement not limited

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

(j) Public information

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.

(k) Compliance with permits

Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 1311, 1316, or 1342 of this title, or (2) section 407 of this title, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on October 18, 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date which source is not subject to section 407 of this title, the discharge by such source shall not be a violation of this chapter if such a source applies for a permit for discharge pursuant to this section within such 180-day period.

(l) Limitation on permit requirement

(1) Agricultural return flows

The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

(2) Stormwater runoff from oil, gas, and mining operations

The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

(m) Additional pretreatment of conventional pollutants not required

To the extent a treatment works (as defined in section 1292 of this title) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to section 1314(a)(4) of this title into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 1317(b)(1) of this title. Nothing in this subsection shall affect the Administrator's authority under sections 1317 and 1319 of this title, affect State and local authority under sections 1317(b)(4) and 1370 of this title, relieve such treatment works of its obligations to meet requirements established under this chapter, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

(n) Partial permit program

(1) State submission

The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

(2) Minimum coverage

A partial permit program under this subsection shall cover, at a minimum, administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b) of this section.

(3) Approval of major category partial permit programs

The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if--

(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and

(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b) of this section.

(4) Approval of major component partial permit programs

The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) of this section if--

(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b) of this section; and

(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) of this section by a specified date not more than 5 years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.

(o) Anti-backsliding

(1) General prohibition

In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 1314(b) of this title subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of section 1311(b)(1)(C) or section 1313(d) or (e) of this title, a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with section 1313(d)(4) of this title.

(2) Exceptions

A permit with respect to which paragraph (1) applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if--

(A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(i) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B) of this section;

(C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) the permittee has received a permit modification under section 1311(c), 1311(g), 1311(h), 1311(i), 1311(k), 1311(n), or 1326(a) of this title; or

(E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed,

reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subparagraph (B) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of this chapter or for reasons otherwise unrelated to water quality.

(3) Limitations

In no event may a permit with respect to which paragraph (1) applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 1313 of this title applicable to such waters.

(p) Municipal and industrial stormwater discharges

(1) General rule

Prior to October 1, 1994, the Administrator or the State (in the case of a permit program approved under this section) shall not require a permit under this section for discharges composed entirely of stormwater.

(2) Exceptions

Paragraph (1) shall not apply with respect to the following stormwater discharges:

- (A) A discharge with respect to which a permit has been issued under this section before February 4, 1987.
- (B) A discharge associated with industrial activity.
- (C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.
- (D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.
- (E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(3) Permit requirements

(A) Industrial discharges

Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 1311 of this title.

(B) Municipal discharge

Permits for discharges from municipal storm sewers--

(i) may be issued on a system- or jurisdiction-wide basis;

(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and

(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

(4) Permit application requirements

(A) Industrial and large municipal discharges

Not later than 2 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraphs (2)(B) and (2)(C). Applications for permits for such discharges shall be filed no later than 3 years after February 4, 1987. Not later than 4 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(B) Other municipal discharges

Not later than 4 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraph (2)(D). Applications for permits for such discharges shall be filed no later than 5 years after February 4, 1987. Not later than 6 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(5) Studies

The Administrator, in consultation with the States, shall conduct a study for the purposes of--

(A) identifying those stormwater discharges or classes of stormwater discharges for which permits are not required pursuant to paragraphs (1) and (2) of this subsection;

(B) determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and

(C) establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality.

Not later than October 1, 1988, the Administrator shall submit to Congress a report on the results of the study described in subparagraphs (A) and (B). Not later than October 1, 1989, the Administrator shall submit to Congress a report on the results of

the study described in subparagraph (C).

(6) Regulations

Not later than October 1, 1993, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

(q) Combined sewer overflows

(1) Requirement for permits, orders, and decrees

Each permit, order, or decree issued pursuant to this chapter after December 21, 2000, for a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Control Policy signed by the Administrator on April 11, 1994 (in this subsection referred to as the ``CSO control policy``).

(2) Water quality and designated use review guidance

Not later than July 31, 2001, and after providing notice and opportunity for public comment, the Administrator shall issue guidance to facilitate the conduct of water quality and designated use reviews for municipal combined sewer overflow receiving waters.

(3) Report

Not later than September 1, 2001, the Administrator shall transmit to Congress a report on the progress made by the Environmental Protection Agency, States, and municipalities in implementing and enforcing the CSO control policy.

(June 30, 1948, ch. 758, title IV, Sec. 402, as added Pub. L. 92-500, Sec. 2, Oct. 18, 1972, 86 Stat. 880; amended Pub. L. 95-217, Secs. 33(c), 50, 54(c)(1), 65, 66, Dec. 27, 1977, 91 Stat. 1577, 1588, 1591, 1599, 1600; Pub. L. 100-4, title IV, Secs. 401-404(a), 404(c), formerly 404(d), 405, Feb. 4, 1987, 101 Stat. 65-67, 69, renumbered Sec. 404(c), Pub. L. 104-66, title II, Sec. 2021(e)(2), Dec. 21, 1995, 109 Stat. 727; Pub. L. 102-580, title III, Sec. 364, Oct. 31, 1992, 106 Stat. 4862; Pub. L. 106-554, Sec. 1(a)(4) [div. B, title I, Sec. 112(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-224.)

Amendments

2000--Subsec. (q). Pub. L. 106-554 added subsec. (q).

1992--Subsec. (p)(1), (6). Pub. L. 102-580 substituted ``October 1, 1994`` for ``October 1, 1992`` in par. (1) and ``October 1, 1993`` for ``October 1, 1992`` in par. (6).

1987--Subsec. (a)(1). Pub. L. 100-4, Sec. 404(c), inserted cl. (A) and (B) designations.

Subsec. (c)(1). Pub. L. 100-4, Sec. 403(b)(2), substituted ``as to

those discharges'' for ``as to those navigable waters''.

Subsec. (c)(4). Pub. L. 100-4, Sec. 403(b)(1), added par. (4).

Subsec. (l). Pub. L. 100-4, Sec. 401, inserted ``Limitation on permit requirement'' as subsec. heading designated existing provisions as par. (1) and inserted par. heading, added par. (2), and aligned pars. (1) and (2).

Subsecs. (m) to (p). Pub. L. 100-4, Secs. 402, 403(a), 404(a), 405, added subsecs. (m) to (p).

1977--Subsec. (a)(5). Pub. L. 95-217, Sec. 50, substituted ``section 1314(i)(2)'' for ``section 1314(h)(2)''.

Subsec. (b). Pub. L. 95-217, Sec. 50, substituted in provisions preceding par. (1) ``subsection (i)(2) of section 1314'' for ``subsection (h)(2) of section 1314''.

Subsec. (b)(8). Pub. L. 95-217, Sec. 54(c)(1), inserted reference to identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 1317(b) of this title into treatment works and programs to assure compliance with pretreatment standards by each source.

Subsec. (c)(1), (2). Pub. L. 95-217, Sec. 50, substituted ``section 1314(i)(2)'' for ``section 1314(h)(2)''.

Subsec. (d)(2). Pub. L. 95-217, Sec. 65(b), inserted provision requiring that, whenever the Administrator objects to the issuance of a permit under subsec. (d)(2) of this section, the written objection contain a statement of the reasons for the objection and the effluent limitations and conditions which the permit would include if it were issued by the Administrator.

Subsec. (d)(4). Pub. L. 95-217, Sec. 65(a), added par. (4).

Subsec. (e). Pub. L. 95-217, Sec. 50, substituted ``subsection (i)(2) of section 1314'' for ``subsection (h)(2) of section 1314''.

Subsec. (h). Pub. L. 95-217, Sec. 66, substituted ``where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that a State with an approved program has not commenced appropriate enforcement action with respect to such permit,'' for ``where no State program is approved,''.
Subsec. (l). Pub. L. 95-217, Sec. 33(c), added subsec. (l).

Transfer of Functions

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Enforcement functions of Administrator or other official of the Environmental Protection Agency under this section relating to compliance with national pollutant discharge elimination system permits with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, Secs. 102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub.

L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

Stormwater Permit Requirements

Pub. L. 102-240, title I, Sec. 1068, Dec. 18, 1991, 105 Stat. 2007, provided that:

“(a) General Rule.--Notwithstanding the requirements of sections 402(p)(2)(B), (C), and (D) of the Federal Water Pollution Control Act [33 U.S.C. 1342(p)(2)(B), (C), (D)], permit application deadlines for stormwater discharges associated with industrial activities from facilities that are owned or operated by a municipality shall be established by the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the ‘Administrator’) pursuant to the requirements of this section.

“(b) Permit Applications.--

“(1) Individual applications.--The Administrator shall require individual permit applications for discharges described in subsection (a) on or before October 1, 1992; except that any municipality that has participated in a timely part I group application for an industrial activity discharging stormwater that is denied such participation in a group application or for which a group application is denied shall not be required to submit an individual application until the 180th day following the date on which the denial is made.

“(2) Group applications.--With respect to group applications for permits for discharges described in subsection (a), the Administrator shall require--

“(A) part I applications on or before September 30, 1991, except that any municipality with a population of less than 250,000 shall not be required to submit a part I application before May 18, 1992; and

“(B) part II applications on or before October 1, 1992, except that any municipality with a population of less than 250,000 shall not be required to submit a part II application before May 17, 1993.

“(c) Municipalities With Less Than 100,000 Population.--The Administrator shall not require any municipality with a population of less than 100,000 to apply for or obtain a permit for any stormwater discharge associated with an industrial activity other than an airport, powerplant, or uncontrolled sanitary landfill owned or operated by such municipality before October 1, 1992, unless such permit is required by section 402(p)(2)(A) or (E) of the Federal Water Pollution Control Act [33 U.S.C. 1342(p)(2)(A), (E)].

“(d) Uncontrolled Sanitary Landfill Defined.--For the purposes of this section, the term ‘uncontrolled sanitary landfill’ means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on and run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act [42 U.S.C. 6941 et seq.].

“(e) Limitation on Statutory Construction.--Nothing in this section shall be construed to affect any application or permit requirement, including any deadline, to apply for or obtain a permit for stormwater discharges subject to section 402(p)(2)(A) or (E) of the Federal Water Pollution Control Act [33 U.S.C. 1342(p)(2)(A), (E)].

“(f) Regulations.--The Administrator shall issue final regulations with respect to general permits for stormwater discharges associated

with industrial activity on or before February 1, 1992.'

Phosphate Fertilizer Effluent Limitation

Section 306(c) of Pub. L. 100-4 provided that:

“(1) Issuance of permit.--As soon as possible after the date of the enactment of this Act [Feb. 4, 1987], but not later than 180 days after such date of enactment, the Administrator shall issue permits under section 402(a)(1)(B) of the Federal Water Pollution Control Act [33 U.S.C. 1342(a)(1)(B)] with respect to facilities--

“(A) which were under construction on or before April 8, 1974, and

“(B) for which the Administrator is proposing to revise the applicability of the effluent limitation established under section 301(b) of such Act [33 U.S.C. 1311(b)] for phosphate subcategory of the fertilizer manufacturing point source category to exclude such facilities.

“(2) Limitations on statutory construction.--Nothing in this section [amending section 1311 of this title and enacting this note] shall be construed--

“(A) to require the Administrator to permit the discharge of gypsum or gypsum waste into the navigable waters,

“(B) to affect the procedures and standards applicable to the Administrator in issuing permits under section 402(a)(1)(B) of the Federal Water Pollution Control Act [33 U.S.C. 1342(a)(1)(B)], and

“(C) to affect the authority of any State to deny or condition certification under section 401 of such Act [33 U.S.C. 1341] with respect to the issuance of permits under section 402(a)(1)(B) of such Act.’

Log Transfer Facilities

Section 407 of Pub. L. 100-4 provided that:

“(a) Agreement.--The Administrator and Secretary of the Army shall enter into an agreement regarding coordination of permitting for log transfer facilities to designate a lead agency and to process permits required under sections 402 and 404 of the Federal Water Pollution Control Act [33 U.S.C. 1342, 1344], where both such sections apply, for discharges associated with the construction and operation of log transfer facilities. The Administrator and Secretary are authorized to act in accordance with the terms of such agreement to assure that, to the maximum extent practicable, duplication, needless paperwork and delay in the issuance of permits, and inequitable enforcement between and among facilities in different States, shall be eliminated.

“(b) Applications and Permits Before October 22, 1985.--Where both of sections 402 and 404 of the Federal Water Pollution Control Act [33 U.S.C. 1342, 1344] apply, log transfer facilities which have received a permit under section 404 of such Act before October 22, 1985, shall not be required to submit a new application for a permit under section 402 of such Act. If the Administrator determines that the terms of a permit issued on or before October 22, 1985, under section 404 of such Act satisfies the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of such Act [33 U.S.C. 1311, 1312, 1316, 1317, 1318, and 1343], a separate application for a permit under section 402 of such Act shall not thereafter be required. In any case where the Administrator demonstrates, after an opportunity for a hearing, that the terms of a permit issued on or before October 22, 1985, under section 404 of such Act do not satisfy the applicable requirements of sections 301, 302,

306, 307, 308, and 403 of such Act, modifications to the existing permit under section 404 of such Act to incorporate such applicable requirements shall be issued by the Administrator as an alternative to issuance of a separate new permit under section 402 of such Act.

“(c) Log Transfer Facility Defined.--For the purposes of this section, the term ‘log transfer facility’ means a facility which is constructed in whole or in part in waters of the United States and which is utilized for the purpose of transferring commercially harvested logs to or from a vessel or log raft, including the formation of a log raft.”

Allowable Delay in Modifying Existing Approved State Permit Programs To Conform to 1977 Amendment

Section 54(c)(2) of Pub. L. 95-217 provided that any State permit program approved under this section before Dec. 27, 1977, which required modification to conform to the amendment made by section 54(c)(1) of Pub. L. 95-217, which amended subsec. (b)(8) of this section, not be required to be modified before the end of the one year period which began on Dec. 27, 1977, unless in order to make the required modification a State must amend or enact a law in which case such modification not be required for such State before the end of the two year period which began on Dec. 27, 1977.

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PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

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§ 122.1 Purpose and scope.



(a) *Coverage.* (1) The regulatory provisions contained in this part and parts 123, and 124 of this chapter implement the National Pollutant Discharge Elimination System (NPDES) Program under sections 318, 402, and 405 of the Clean Water Act (CWA) (Public Law 92-500, as amended, 33 U.S.C. 1251 *et seq.*)

(2) These provisions cover basic EPA permitting requirements (this part 122), what a State must do to obtain approval to operate its program in lieu of a Federal program and minimum requirements for administering the approved State program (part 123 of this chapter), and procedures for EPA processing of permit applications and appeals (part 124 of this chapter).

(3) These provisions also establish the requirements for public participation in EPA and State permit issuance and enforcement and related variance proceedings, and in the approval of State NPDES programs. These provisions carry out the purposes of the public participation requirements of part 25 of this chapter, and supersede the requirements of that part as they apply to actions covered under this part and parts 123, and 124 of this chapter.

(4) Regulatory provisions in Parts 125, 129, 133, 136 of this chapter and 40 CFR subchapter N and subchapter O of this chapter also implement the NPDES permit program.

(5) Certain requirements set forth in parts 122 and 124 of this chapter are made applicable to approved State programs by reference in part 123 of this chapter. These references are set forth in §123.25 of this chapter. If a section or paragraph of part 122 or 124 of this chapter is applicable to States, through reference in §123.25 of this chapter, that fact is signaled by the following words at the end of the section or paragraph heading: (Applicable to State programs, see §123.25 of this chapter). If these words are absent, the section (or paragraph) applies only to EPA administered permits. Nothing in this part and parts 123, or 124 of this chapter precludes more stringent State regulation of any activity covered by the regulations in 40 CFR parts 122, 123, and 124, whether or not under an approved State program.

(b) *Scope of the NPDES permit requirement.* (1) The NPDES program requires permits for the discharge of "pollutants" from any "point source" into "waters of the United States." The terms "pollutant", "point source" and "waters of the United States" are defined at §122.2.

(2) The permit program established under this part also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain an NPDES permit, unless all requirements implementing section 405(d) of the CWA applicable to the treatment works treating domestic sewage are included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, Part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator as adequate to assure compliance with section 405 of the CWA.

(3) The Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal as a "treatment works treating domestic sewage" as defined in §122.2, where the Regional Administrator finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under CWA section 405(d). Any person designated as a "treatment works treating domestic sewage" shall submit an application for a permit under §122.21 within 180 days of being notified by the Regional Administrator that a permit is required. The Regional Administrator's decision to designate a person as a "treatment works treating domestic sewage" under this paragraph shall be stated in the fact sheet or statement of basis for the permit.

[Note to §122.1: Information concerning the NPDES program and its regulations can be obtained by contacting the Water Permits Division(4203), Office of Wastewater Management, U.S.E.P.A., Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 at (202) 260-9545 and by visiting the homepage at <http://www.epa.gov/owm/>]

[65 FR 30904, May 15, 2000, as amended at 72 FR 11211, Mar. 12, 2007]

Convention on the Territorial Sea and the Contiguous Zone.

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

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

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

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

Direct discharge means the "discharge of a pollutant."

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

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

Discharge of a pollutant means:

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

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

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

DMR means "Discharge Monitoring Report."

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

Municipal separate storm sewer system is defined at §122.26 (b)(4) and (b)(7).

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

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

- (a) From which there is or may be a "discharge of pollutants;"
- (b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;
- (c) Which is not a "new source;" and
- (d) Which has never received a finally effective NPDES permit for discharges at that "site."

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

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

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

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

NPDES means "National Pollutant Discharge Elimination System."

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

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

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

Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See §122.3).

Sewage Sludge means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

Sewage sludge use or disposal practice means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

Silvicultural point source is defined at §122.27.

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.

Sludge-only facility means any "treatment works treating domestic sewage" whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405(d) of the CWA and is required to obtain a permit under §122.1(b)(2).

Standards for sewage sludge use or disposal means the regulations promulgated pursuant to section 405(d) of the CWA which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe as defined in these regulations which meets the requirements of §123.31 of this chapter.

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

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

Storm water is defined at §122.26(b)(13).

Storm water discharge associated with industrial activity is defined at §122.26(b)(14).

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

Toxic pollutant means any pollutant listed as toxic under section 307(a)(1) or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing section 405(d) of the CWA.

Treatment works treating domestic sewage means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under section 405(f) of the CWA, the Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal in 40 CFR part 503 as a "treatment works treating domestic sewage," where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 CFR part 503.

¹ Editorial Note: The words "This revision" refer to the document published at 48 FR 14153, Apr. 1, 1983.

(Clean Water Act (33 U.S.C. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*))

[48 FR 14153, Apr. 1, 1983, as amended at 48 FR 39619, Sept. 1, 1983; 50 FR 6940, 6941, Feb. 19, 1985; 54 FR 254, Jan. 4, 1989; 54 FR 18781, May 2, 1989; 54 FR 23895, June 2, 1989; 58 FR 45039, Aug. 25, 1993; 58 FR 67980, Dec. 22, 1993; 64 FR 42462, Aug. 4, 1999; 65 FR 30905, May 15, 2000]

§ 122.3 Exclusions.



The following discharges do not require NPDES permits:

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

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

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

(d) Any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

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

(f) Return flows from irrigated agriculture.

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

(h) The application of pesticides consistent with all relevant requirements under FIFRA (i.e., those relevant to protecting water quality), in the following two circumstances:

(1) The application of pesticides directly to waters of the United States in order to control pests. Examples of such applications include applications to control mosquito larvae, aquatic weeds, or other pests that are present in waters of the United States.

(2) The application of pesticides to control pests that are present over waters of the United States,

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PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

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§ 122.1 Purpose and scope.

(a) *Coverage.* (1) The regulatory provisions contained in this part and parts 123, and 124 of this chapter implement the National Pollutant Discharge Elimination System (NPDES) Program under sections 318, 402, and 405 of the Clean Water Act (CWA) (Public Law 92-500, as amended, 33 U.S.C. 1251 *et seq.*)

(2) These provisions cover basic EPA permitting requirements (this part 122), what a State must do to obtain approval to operate its program in lieu of a Federal program and minimum requirements for administering the approved State program (part 123 of this chapter), and procedures for EPA processing of permit applications and appeals (part 124 of this chapter).

(3) These provisions also establish the requirements for public participation in EPA and State permit issuance and enforcement and related variance proceedings, and in the approval of State NPDES programs. These provisions carry out the purposes of the public participation requirements of part 25 of this chapter, and supersede the requirements of that part as they apply to actions covered under this part and parts 123, and 124 of this chapter.

(4) Regulatory provisions in Parts 125, 129, 133, 136 of this chapter and 40 CFR subchapter N and subchapter O of this chapter also implement the NPDES permit program.

(5) Certain requirements set forth in parts 122 and 124 of this chapter are made applicable to approved State programs by reference in part 123 of this chapter. These references are set forth in §123.25 of this chapter. If a section or paragraph of part 122 or 124 of this chapter is applicable to States, through reference in §123.25 of this chapter, that fact is signaled by the following words at the end of the section or paragraph heading: (Applicable to State programs, see §123.25 of this chapter). If these words are absent, the section (or paragraph) applies only to EPA administered permits. Nothing in this part and parts 123, or 124 of this chapter precludes more stringent State regulation of any activity covered by the regulations in 40 CFR parts 122, 123, and 124, whether or not under an approved State program.

(b) *Scope of the NPDES permit requirement.* (1) The NPDES program requires permits for the discharge of "pollutants" from any "point source" into "waters of the United States." The terms "pollutant", "point source" and "waters of the United States" are defined at §122.2.

(2) The permit program established under this part also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain an NPDES permit, unless all requirements implementing section 405(d) of the CWA applicable to the treatment works treating domestic sewage are included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, Part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator as adequate to assure compliance with section 405 of the CWA.

(3) The Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal as a "treatment works treating domestic sewage" as defined in §122.2, where the Regional Administrator finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under CWA section 405(d). Any person designated as a "treatment works treating domestic sewage" shall submit an application for a permit under §122.21 within 180 days of being notified by the Regional Administrator that a permit is required. The Regional Administrator's decision to designate a person as a "treatment works treating domestic sewage" under this paragraph shall be stated in the fact sheet or statement of basis for the permit.

[Note to §122.1: Information concerning the NPDES program and its regulations can be obtained by contacting the Water Permits Division(4203), Office of Wastewater Management, U.S.E.P.A., Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 at (202) 260-9545 and by visiting the homepage at <http://www.epa.gov/owm/>]

[65 FR 30904, May 15, 2000, as amended at 72 FR 11211, Mar. 12, 2007]

Convention on the Territorial Sea and the Contiguous Zone.

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

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

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

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

Direct discharge means the "discharge of a pollutant."

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

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

Discharge of a pollutant means:

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

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

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

DMR means "Discharge Monitoring Report."

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

Municipal separate storm sewer system is defined at §122.26 (b)(4) and (b)(7).

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

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

- (a) From which there is or may be a "discharge of pollutants;"
- (b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;
- (c) Which is not a "new source;" and
- (d) Which has never received a finally effective NPDES permit for discharges at that "site."

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

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

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

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

NPDES means "National Pollutant Discharge Elimination System."

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

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

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

Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See §122.3).

Sewage Sludge means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

Sewage sludge use or disposal practice means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

Silvicultural point source is defined at §122.27.

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.

Sludge-only facility means any "treatment works treating domestic sewage" whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405(d) of the CWA and is required to obtain a permit under §122.1(b)(2).

Standards for sewage sludge use or disposal means the regulations promulgated pursuant to section 405(d) of the CWA which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe as defined in these regulations which meets the requirements of §123.31 of this chapter.

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

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

Storm water is defined at §122.26(b)(13).

Storm water discharge associated with industrial activity is defined at §122.26(b)(14).

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

Toxic pollutant means any pollutant listed as toxic under section 307(a)(1) or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing section 405(d) of the CWA.

Treatment works treating domestic sewage means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under section 405(f) of the CWA, the Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal in 40 CFR part 503 as a "treatment works treating domestic sewage," where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 CFR part 503.

¹ Editorial Note: The words "This revision" refer to the document published at 48 FR 14153, Apr. 1, 1983.

(Clean Water Act (33 U.S.C. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*))

[48 FR 14153, Apr. 1, 1983, as amended at 48 FR 39619, Sept. 1, 1983; 50 FR 6940, 6941, Feb. 19, 1985; 54 FR 254, Jan. 4, 1989; 54 FR 18781, May 2, 1989; 54 FR 23895, June 2, 1989; 58 FR 45039, Aug. 25, 1993; 58 FR 67980, Dec. 22, 1993; 64 FR 42462, Aug. 4, 1999; 65 FR 30905, May 15, 2000]

§ 122.3 Exclusions.



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The following discharges do not require NPDES permits:

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

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

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

(d) Any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

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

(f) Return flows from irrigated agriculture.

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

(h) The application of pesticides consistent with all relevant requirements under FIFRA (i.e., those relevant to protecting water quality), in the following two circumstances:

(1) The application of pesticides directly to waters of the United States in order to control pests. Examples of such applications include applications to control mosquito larvae, aquatic weeds, or other pests that are present in waters of the United States.

(2) The application of pesticides to control pests that are present over waters of the United States,

in the fact sheet to the permit under §124.56(b)(1) of this chapter.

[48 FR 14153, Apr. 1, 1983, as amended at 50 FR 6940, Feb. 19, 1985; 65 FR 30905, May 15, 2000]

§ 122.5 Effect of a permit.



(a) *Applicable to State programs, see §123.25.* (1) Except for any toxic effluent standards and prohibitions imposed under section 307 of the CWA and "standards for sewage sludge use or disposal" under 405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with sections 301, 302, 306, 307, 318, 403, and 405 (a)–(b) of CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§122.62 and 122.64.

(2) Compliance with a permit condition which implements a particular "standard for sewage sludge use or disposal" shall be an affirmative defense in any enforcement action brought for a violation of that "standard for sewage sludge use or disposal" pursuant to sections 405(e) and 309 of the CWA.

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

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

[48 FR 14153, Apr. 1, 1983, as amended at 54 FR 18782, May 2, 1989]

§ 122.6 Continuation of expiring permits.



(a) *EPA permits.* When EPA is the permit-issuing authority, the conditions of an expired permit continue in force under 5 U.S.C. 558(c) until the effective date of a new permit (see §124.15) if:

(1) The permittee has submitted a timely application under §122.21 which is a complete (under §122.21 (e)) application for a new permit; and

(2) The Regional Administrator, through no fault of the permittee does not issue a new permit with an effective date under §124.15 on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(b) *Effect.* Permits continued under this section remain fully effective and enforceable.

(c) *Enforcement.* When the permittee is not in compliance with the conditions of the expiring or expired permit the Regional Administrator may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue a notice of intent to deny the new permit under §124.6. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under part 124 with appropriate conditions; or

(4) Take other actions authorized by these regulations.

(B) Applicants for new and existing POTWs must submit the information contained in paragraph (j) of this section using Form 2A or other form provided by the director.

(C) Applicants for concentrated animal feeding operations or aquatic animal production facilities must submit Form 2B.

(D) Applicants for existing industrial facilities (including manufacturing facilities, commercial facilities, mining activities, and silvicultural activities), must submit Form 2C.

(E) Applicants for new industrial facilities that discharge process wastewater must submit Form 2D.

(F) Applicants for new and existing industrial facilities that discharge only nonprocess wastewater must submit Form 2E.

(G) Applicants for new and existing facilities whose discharge is composed entirely of storm water associated with industrial activity must submit Form 2F, unless exempted by §122.26(c)(1)(ii). If the discharge is composed of storm water and non-storm water, the applicant must also submit, Forms 2C, 2D, and/or 2E, as appropriate (in addition to Form 2F).

(H) Applicants for new and existing TWTDS, subject to paragraph (c)(2)(i) of this section must submit the application information required by paragraph (q) of this section, using Form 2S or other form provided by the director.

(ii) The application information required by paragraph (a)(2)(i) of this section may be electronically submitted if such method of submittal is approved by EPA or the Director.

(iii) Applicants can obtain copies of these forms by contacting the Water Management Divisions (or equivalent division which contains the NPDES permitting function) of the EPA Regional Offices. The Regional Offices' addresses can be found at §1.7 of this chapter.

(iv) Applicants for State-issued permits must use State forms which must require at a minimum the information listed in the appropriate paragraphs of this section.

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

(c) *Time to apply.* (1) Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities described under §122.26(b)(14)(x) or (b)(15)(i) shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. See also paragraph (k) of this section and §122.26(c)(1)(i)(G) and (c)(1)(ii).

(2) *Permits under section 405(f) of CWA.* All TWTDS whose sewage sludge use or disposal practices are regulated by part 503 of this chapter must submit permit applications according to the applicable schedule in paragraphs (c)(2)(i) or (ii) of this section.

(i) A TWTDS with a currently effective NPDES permit must submit a permit application at the time of its next NPDES permit renewal application. Such information must be submitted in accordance with paragraph (d) of this section.

(ii) Any other TWTDS not addressed under paragraph (c)(2)(i) of this section must submit the information listed in paragraphs (c)(2)(ii)(A) through (E) of this section to the Director within 1 year after publication of a standard applicable to its sewage sludge use or disposal practice(s), using Form 2S or another form provided by the Director. The Director will determine when such TWTDS must submit a full permit application.

- (3) Up to four SIC codes which best reflect the principal products or services provided by the facility.
- (4) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.
- (5) Whether the facility is located on Indian lands.
- (6) A listing of all permits or construction approvals received or applied for under any of the following programs:
- (i) Hazardous Waste Management program under RCRA.
 - (ii) UIC program under SDWA.
 - (iii) NPDES program under CWA.
 - (iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.
 - (v) Nonattainment program under the Clean Air Act.
 - (vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.
 - (vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.
 - (viii) Dredge or fill permits under section 404 of CWA.
 - (ix) Other relevant environmental permits, including State permits.
- (7) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.
- (8) A brief description of the nature of the business.
- (g) *Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.* Existing manufacturing, commercial mining, and silvicultural dischargers applying for NPDES permits, except for those facilities subject to the requirements of §122.21(h), shall provide the following information to the Director, using application forms provided by the Director.
- (1) *Outfall location.* The latitude and longitude to the nearest 15 seconds and the name of the receiving water.
- (2) *Line drawing.* A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under paragraph (g)(3) of this section. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.
- (3) *Average flows and treatment.* A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and stormwater runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in

storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in §122.26 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The Director may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under part 136 of this chapter, and additional time for submitting data on a case-by-case basis. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

(iii) *Reporting requirements.* Every applicant must report quantitative data for every outfall for the following pollutants:

Biochemical Oxygen Demand (BOD5)

Chemical Oxygen Demand

Total Organic Carbon

Total Suspended Solids

Ammonia (as N)

Temperature (both winter and summer)

pH

(iv) The Director may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in paragraph (g)(7)(iii) 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.

(v) Each applicant with processes in one or more primary industry category (see appendix A of this part) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(A) The organic toxic pollutants in the fractions designated in table I of appendix D of this part for the applicant's industrial category or categories unless the applicant qualifies as a small business under paragraph (g)(8) of this section. Table II of appendix D of this part lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas 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. See Notes 2, 3, and 4 of this section.

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

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

(B) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in table II or table III of appendix D of this part (the toxic pollutants and total phenols) for which

standard shall provide the following information to the Director, using application forms provided by the Director:

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

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

(3) *Type of waste.* An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available.

(4) *Effluent characteristics.* (i) Quantitative data for the pollutants or parameters listed below, unless testing is waived by the Director. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136. When analysis of pH, temperature, residual chlorine, oil and grease, or fecal coliform (including *E. coli*), and Enterococci (previously known as fecal streptococcus) and volatile organics is required in paragraphs (h)(4)(i)(A) through (K) of this section, grab samples must be collected for those pollutants. For all other pollutants, a 24-hour composite sample, using a minimum of four (4) grab samples, must be used unless specified otherwise at 40 CFR Part 136. For a composite sample, only one analysis of the composite of aliquots is required. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

(A) Biochemical Oxygen Demand (BOD₅).

(B) Total Suspended Solids (TSS).

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

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

(E) Oil and Grease.

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

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

(H) Ammonia (as N).

(I) Discharge Flow.

(J) pH.

(K) Temperature (Winter and Summer).

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

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

- (iii) The name of the receiving water and the source of intake water.
- (iv) For each species of aquatic animals, the total yearly and maximum harvestable weight.
- (v) The calendar month of maximum feeding and the total mass of food fed during that month.

(j) *Application requirements for new and existing POTWs.* Unless otherwise indicated, all POTWs and other dischargers designated by the Director must provide, at a minimum, the information in this paragraph to the Director, using Form 2A or another application form provided by the Director. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the Director. The Director may waive any requirement of this paragraph if he or she has access to substantially identical information. The Director may also waive any requirement of this paragraph that is not of material concern for a specific permit, if approved by the Regional Administrator. The waiver request to the Regional Administrator must include the State's justification for the waiver. A Regional Administrator's disapproval of a State's proposed waiver does not constitute final Agency action, but does provide notice to the State and permit applicant (s) that EPA may object to any State-issued permit issued in the absence of the required information.

(1) *Basic application information.* All applicants must provide the following information:

(i) *Facility information.* Name, mailing address, and location of the facility for which the application is submitted;

(ii) *Applicant information.* Name, mailing address, and telephone number of the applicant, and indication as to whether the applicant is the facility's owner, operator, or both;

(iii) *Existing environmental permits.* Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

(A) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;

(B) Underground Injection Control program under the Safe Drinking Water Act (SDWA);

(C) NPDES program under Clean Water Act (CWA);

(D) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(E) Nonattainment program under the Clean Air Act;

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

(G) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(H) Dredge or fill permits under section 404 of the CWA; and

(I) Other relevant environmental permits, including State permits;

(iv) *Population.* The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;

(v) *Indian country.* Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

(vi) *Flow rate.* The facility's design flow rate (the wastewater flow rate the plant was built to handle),

and steps the facility is taking to minimize inflow and infiltration;

(ii) *Topographic map.* A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:

(A) Treatment plant area and unit processes;

(B) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;

(C) Each well where fluids from the treatment plant are injected underground;

(D) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;

(E) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and

(F) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

(iii) *Process flow diagram or schematic.* (A) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and

(B) A narrative description of the diagram; and

(iv) *Scheduled improvements, schedules of implementation.* The following information regarding scheduled improvements:

(A) The outfall number of each outfall affected;

(B) A narrative description of each required improvement;

(C) Scheduled or actual dates of completion for the following:

(1) Commencement of construction;

(2) Completion of construction;

(3) Commencement of discharge; and

(4) Attainment of operational level;

(D) A description of permits and clearances concerning other Federal and/or State requirements;

(3) *Information on effluent discharges.* Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

(i) *Description of outfall.* The following information about each outfall:

(A) Outfall number;

(B) State, county, and city or town in which outfall is located;

zone;

(ii) All applicants must sample and analyze for the pollutants listed in Appendix J, Table 1A of this part;

(iii) All applicants with a design flow greater than or equal to 0.1 mgd must sample and analyze for the pollutants listed in Appendix J, Table 1 of this part. Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine from Table 1;

(iv) The following applicants must sample and analyze for the pollutants listed in Appendix J, Table 2 of this part, and for any other pollutants for which the State or EPA have established water quality standards applicable to the receiving waters:

(A) All POTWs with a design flow rate equal to or greater than one million gallons per day;

(B) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(C) Other POTWs, as required by the Director;

(v) The Director should require sampling for additional pollutants, as appropriate, on a case-by-case basis;

(vi) Applicants must provide data from a minimum of three samples taken within four and one-half years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The Director should require additional samples, as appropriate, on a case-by-case basis.

(vii) All existing data for pollutants specified in paragraphs (j)(4)(ii) through (v) of this section that is collected within four and one-half years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

(viii) Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 unless an alternative is specified in the existing NPDES permit. When analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including *E. coli*), or volatile organics is required in paragraphs (j)(4)(ii) through (iv) of this section, grab samples must be collected for those pollutants. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

(ix) The effluent monitoring data provided must include at least the following information for each parameter:

(A) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;

(B) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;

(C) The analytical method used; and

(D) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

(x) Unless otherwise required by the Director, metals must be reported as total recoverable.

(5) *Effluent monitoring for whole effluent toxicity.* (i) All applicants must provide an identification of any

(vi) Each applicant required to perform whole effluent toxicity testing pursuant to paragraph (j)(5)(ii) of this section must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

(vii) Applicants must provide the results using the form provided by the Director, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to paragraph (j)(5)(ii) of this section for which such information has not been reported previously to the Director.

(viii) Whole effluent toxicity testing conducted pursuant to paragraph (j)(5)(ii) of this section must be conducted using methods approved under 40 CFR part 136. West coast facilities in Washington, Oregon, California, Alaska, Hawaii, and the Pacific Territories are exempted from 40 CFR part 136 chronic methods and must use alternative guidance as directed by the permitting authority.

(ix) For whole effluent toxicity data submitted to the Director within four and one-half years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

(x) Each POTW required to perform whole effluent toxicity testing pursuant to paragraph (j)(5)(ii) of this section must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past four and one-half years revealed toxicity.

(6) *Industrial discharges.* Applicants must submit the following information about industrial discharges to the POTW:

(i) Number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW; and

(ii) POTWs with one or more SIUs shall provide the following information for each SIU, as defined at 40 CFR 403.3(v), that discharges to the POTW:

(A) Name and mailing address;

(B) Description of all industrial processes that affect or contribute to the SIU's discharge;

(C) Principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;

(D) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and non-process flow;

(E) Whether the SIU is subject to local limits;

(F) Whether the SIU is subject to categorical standards, and if so, under which category(ies) and subcategory(ies); and

(G) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past four and one-half years.

(iii) The information required in paragraphs (j)(6)(i) and (ii) of this section may be waived by the Director for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in paragraphs (j)(6)(i) and (ii) of this section.

(A) An annual report submitted within one year of the application; or

(B) A pretreatment program;

(7) *Discharges from hazardous waste generators and from waste cleanup or remediation sites.* POTWs receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at

- (1) Outfall number;
- (2) State, county, and city or town in which outfall is located;
- (3) Latitude and longitude, to the nearest second; and
- (4) Distance from shore and depth below surface;
- (5) Whether the applicant monitored any of the following in the past year for this CSO:

- (i) Rainfall;
- (ii) CSO flow volume;
- (iii) CSO pollutant concentrations;
- (iv) Receiving water quality;
- (v) CSO frequency; and
- (6) The number of storm events monitored in the past year;

(B) *CSO events*. The following information about CSO overflows from each outfall:

- (1) The number of events in the past year;
- (2) The average duration per event, if available;
- (3) The average volume per CSO event, if available; and
- (4) The minimum rainfall that caused a CSO event, if available, in the last year;

(C) *Description of receiving waters*. The following information about receiving waters:

- (1) Name of receiving water;
- (2) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code (if known); and
- (3) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code (if known); and

(D) *CSO operations*. A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable State water quality standard);

(9) *Contractors*. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility; and

(10) *Signature*. All applications must be signed by a certifying official in compliance with §122.22.

(k) *Application requirements for new sources and new discharges*. New manufacturing, commercial, mining and silvicultural dischargers applying for NPDES permits (except for new discharges of facilities subject to the requirements of paragraph (h) of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of §122.26(c)(1) and this section (except as

either directly or indirectly through limitations on an indicator pollutant: all pollutants in table IV of appendix D of part 122 (certain conventional and nonconventional pollutants).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) *Special provisions for applications from new sources.* (1) The owner or operator of any facility which may be a new source (as defined in §122.2) and which is located in a State without an approved NPDES program must comply with the provisions of this paragraph (l)(1).

(2)(i) Before beginning any on-site construction as defined in §122.29, the owner or operator of any facility which may be a new source must submit information to the Regional Administrator so that he or she can determine if the facility is a new source. The Regional Administrator may request any additional information needed to determine whether the facility is a new source.

(ii) The Regional Administrator shall make an initial determination whether the facility is a new source within 30 days of receiving all necessary information under paragraph (l)(2)(i) of this section.

shorter or longer period).

(ii) For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with paragraph (m)(2)(i)(B) of this section and need not be preceded by an initial request under paragraph (m)(2)(i)(A) of this section.

(3)-(4) [Reserved]

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

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

(n) *Variance requests by POTWs.* A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

(1) *Discharges into marine waters.* A request for a modification under CWA section 301(h) of requirements of CWA section 301(b)(1)(B) for discharges into marine waters must be filed in accordance with the requirements of 40 CFR part 125, subpart G.

(2) [Reserved]

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

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

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

(p) *Recordkeeping.* Except for information required by paragraph (d)(3)(ii) of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by 40 CFR part 503), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least 3 years from the date the application is signed.

(q) *Sewage sludge management.* All TWTDS subject to paragraph (c)(2)(i) of this section must provide the information in this paragraph to the Director, using Form 2S or another application form approved by the Director. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the Director. The Director may waive any requirement of this paragraph if he or she has access to substantially identical information. The Director may also waive any requirement of this paragraph that is not of material

(6) *Sewage sludge handling.* All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge, the destination(s) of all liquids and solids leaving each such unit, and all processes used for pathogen reduction and vector attraction reduction;

(7) *Sewage sludge quality.* The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in 40 CFR part 503 for the applicant's use or disposal practices on the date of permit application.

(i) The Director may require sampling for additional pollutants, as appropriate, on a case-by-case basis;

(ii) Applicants must provide data from a minimum of three samples taken within four and one-half years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application;

(iii) Applicants must collect and analyze samples in accordance with analytical methods approved under SW-846 unless an alternative has been specified in an existing sewage sludge permit;

(iv) The monitoring data provided must include at least the following information for each parameter:

(A) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;

(B) The analytical method used; and

(C) The method detection level.

(8) *Preparation of sewage sludge.* If the applicant is a "person who prepares" sewage sludge, as defined at 40 CFR 503.9(r), the applicant must provide the following information:

(i) If the applicant's facility generates sewage sludge, the total dry metric tons per 365-day period generated at the facility;

(ii) If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:

(A) The name, mailing address, and location of the other facility;

(B) The total dry metric tons per 365-day period received from the other facility; and

(C) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics;

(iii) If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information:

(A) Whether the Class A pathogen reduction requirements in 40 CFR 503.32(a) or the Class B pathogen reduction requirements in 40 CFR 503.32(b) are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(B) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(1) through (b)(8) are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(C) A description of any other blending, treatment, or other activities that change the quality of sewage sludge;

(F) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined under 40 CFR 503.11;

(G) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;

(H) Whether either of the vector attraction reduction options of 40 CFR 503.33(b)(9) or (b)(10) is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and

(I) Other information that describes how the site will be managed, as specified by the permitting authority.

(iv) The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site:

(A) Whether the applicant has contacted the permitting authority in the State where the bulk sewage sludge subject to §503.13(b)(2) will be applied, to ascertain whether bulk sewage sludge subject to §503.13(b)(2) has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;

(B) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in §503.13(b)(2) to the site since July 20, 1993, if, based on the inquiry in paragraph (q)(iv)(A), bulk sewage sludge subject to cumulative pollutant loading rates in §503.13(b)(2) has been applied to the site since July 20, 1993;

(v) If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

(A) Describes the geographical area covered by the plan;

(B) Identifies the site selection criteria;

(C) Describes how the site(s) will be managed;

(D) Provides for advance notice to the permit authority of specific land application sites and reasonable time for the permit authority to object prior to land application of the sewage sludge; and

(E) Provides for advance public notice of land application sites in the manner prescribed by State and local law. When State or local law does not require advance public notice, it must be provided in a manner reasonably calculated to apprise the general public of the planned land application.

(10) *Surface disposal.* If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

(i) The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period;

(ii) The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does *not* own or operate:

(A) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and

(B) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site;

(iii) The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

(i) The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period;

(ii) The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does *not* own or operate:

(A) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and

(B) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator;

(iii) The following information for each sewage sludge incinerator that the applicant owns or operates:

(A) The name and/or number and the location of the sewage sludge incinerator;

(B) The incinerator's latitude and longitude to the nearest second, and method of determination;

(C) The total dry metric tons per 365-day period fired in the sewage sludge incinerator;

(D) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Beryllium in 40 CFR part 61 will be achieved;

(E) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Mercury in 40 CFR part 61 will be achieved;

(F) The dispersion factor for the sewage sludge incinerator, as well as modeling results and supporting documentation;

(G) The control efficiency for parameters regulated in 40 CFR 503.43, as well as performance test results and supporting documentation;

(H) Information used to calculate the risk specific concentration (RSC) for chromium, including the results of incinerator stack tests for hexavalent and total chromium concentrations, if the applicant is requesting a chromium limit based on a site-specific RSC value;

(I) Whether the applicant monitors total hydrocarbons (THC) or Carbon Monoxide (CO) in the exit gas for the sewage sludge incinerator;

(J) The type of sewage sludge incinerator;

(K) The maximum performance test combustion temperature, as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies;

(L) The following information on the sewage sludge feed rate used during the performance test:

(1) Sewage sludge feed rate in dry metric tons per day;

(2) Identification of whether the feed rate submitted is average use or maximum design; and

(3) A description of how the feed rate was calculated;

(M) The incinerator stack height in meters for each stack, including identification of whether actual or creditable stack height was used;

(N) The operating parameters for the sewage sludge incinerator air pollution control device(s), as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies;

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

This revision continues that suspension.]¹

[Note 3: At 46 FR 35090, July 1, 1981, the Environmental Protection Agency suspended until further notice §122.21(g)(7)(v)(A) and the corresponding portions of Item V-C of the NPDES application Form 2C as they apply to:

a. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR part 454), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.

b. Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

c. Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

d. Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR part 430); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

e. Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

This revision continues that suspension.]¹

¹ Editorial Note: The words "This revision" refer to the document published at 48 FR 14153, Apr. 1, 1983.

(r) *Application requirements for facilities with cooling water intake structures* —(1)(i) *New facilities with new or modified cooling water intake structures.* New facilities (other than offshore oil and gas extraction facilities) with cooling water intake structures as defined in part 125, subpart I, of this chapter must submit to the Director for review the information required under paragraphs (r)(2) (except (r)(2)(iv)), (3), and (4) of this section and §125.86 of this chapter as part of their application. New offshore oil and gas extraction facilities with cooling water intake structures as defined in part 125, subpart N, of this chapter that are fixed facilities must submit to the Director for review the information required under paragraphs (r)(2) (except (r)(2)(iv)), (3), and (4) of this section and §125.136 of this chapter as part of their application. New offshore oil and gas extraction facilities that are *not* fixed facilities must submit to the Director for review only the information required under paragraphs (r)(2)(iv), (r)(3) (except (r)(3)(ii)), and §125.136 of this chapter as part of their application. Requests for alternative requirements under §125.85 or §125.136 of this chapter must be submitted with your permit application.

(ii) *Phase II existing facilities.* Phase II existing facilities as defined in part 125, subpart J, of this chapter must submit to the Director for review the information required under paragraphs (r)(2), (3), and (5) of this section and all applicable provisions of §125.95 of this chapter as part of their application except for the Proposal for Information Collection which must be provided in accordance with §125.95(b)(1).

(2) *Source water physical data.* These include:

(vii) Documentation of any public participation or consultation with Federal or State agencies undertaken in development of the plan; and

(viii) If you supplement the information requested in paragraph (r)(4)(i) of this section with data collected using field studies, supporting documentation for the Source Water Baseline Biological Characterization must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling and/or data analysis methods you use must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

(5) *Cooling water system data.* Phase II existing facilities as defined in part 125, subpart J of this chapter must provide the following information for each cooling water intake structure they use:

(i) A narrative description of the operation of the cooling water system, its relationship to cooling water intake structures, the proportion of the design intake flow that is used in the system, the number of days of the year the cooling water system is in operation and seasonal changes in the operation of the system, if applicable; and

(ii) Design and engineering calculations prepared by a qualified professional and supporting data to support the description required by paragraph (r)(5)(i) of this section.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 31842, Aug. 8, 1984; 49 FR 38046, Sept. 26, 1984; 50 FR 6940, 6941, Feb. 19, 1985; 50 FR 35203, Aug. 29, 1985; 51 FR 26991, July 28, 1986; 53 FR 4158, Feb. 12, 1988; 53 FR 33007, Sept. 6, 1988; 54 FR 254, Jan. 4, 1989; 54 FR 18782, May 2, 1989; 55 FR 30128, July 24, 1990; 55 FR 48062, Nov. 16, 1990; 58 FR 9413, Feb. 19, 1993; 60 FR 17956, Apr. 7, 1995; 60 FR 33931, June 29, 1995; 60 FR 40235, Aug. 7, 1995; 64 FR 42462, Aug. 4, 1999; 64 FR 68838, Dec. 8, 1999; 65 FR 30905, May 15, 2000; 66 FR 65337, Dec. 18, 2001; 68 FR 7265, Feb. 12, 2003; 69 FR 41682, July 9, 2004; 70 FR 60191, Oct. 14, 2005; 71 FR 6983, Feb. 10, 2006; 71 FR 35039, June 16, 2006; 72 FR 11211, Mar. 12, 2007; 72 FR 40250, July 24, 2007]

Effective Date Note: At 72 FR 37109, July 9, 2007, §122.21(r)(1)(ii) and (r)(5) were suspended.

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



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

(1) *For a corporation.* By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

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

(1) *Animal feeding operation* ("AFO") means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- (i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
- (ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(2) *Concentrated animal feeding operation* ("CAFO") means an AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this paragraph, or that is designated as a CAFO in accordance with paragraph (c) of this section. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

(3) The term *land application area* means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter or process wastewater from the production area is or may be applied.

(4) *Large concentrated animal feeding operation* ("Large CAFO"). An AFO is defined as a Large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:

- (i) 700 mature dairy cows, whether milked or dry;
- (ii) 1,000 veal calves;
- (iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
- (iv) 2,500 swine each weighing 55 pounds or more;
- (v) 10,000 swine each weighing less than 55 pounds;
- (vi) 500 horses;
- (vii) 10,000 sheep or lambs;
- (viii) 55,000 turkeys;
- (ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (x) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- (xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- (xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or
- (xiii) 5,000 ducks (if the AFO uses a liquid manure handling system).

(5) The term *manure* is defined to include manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

(6) *Medium concentrated animal feeding operation* ("Medium CAFO"). The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges listed in paragraph (b)(6) (i) of this section and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

(9) *Small concentrated animal feeding operation* ("Small CAFO"). An AFO that is designated as a CAFO and is not a Medium CAFO.

(c) *How may an AFO be designated as a CAFO?* The appropriate authority (*i.e.* , State Director or Regional Administrator, or both, as specified in paragraph (c)(1) of this section) may designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to waters of the United States.

(1) *Who may designate?* —(i) *Approved States.* In States that are approved or authorized by EPA under Part 123, CAFO designations may be made by the State Director. The Regional Administrator may also designate CAFOs in approved States, but only where the Regional Administrator has determined that one or more pollutants in the AFO's discharge contributes to an impairment in a downstream or adjacent State or Indian country water that is impaired for that pollutant.

(ii) *States with no approved program.* The Regional Administrator may designate CAFOs in States that do not have an approved program and in Indian country where no entity has expressly demonstrated authority and has been expressly authorized by EPA to implement the NPDES program.

(2) In making this designation, the State Director or the Regional Administrator shall consider the following factors:

(i) The size of the AFO and the amount of wastes reaching waters of the United States;

(ii) The location of the AFO relative to waters of the United States;

(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters of the United States; and

(v) Other relevant factors.

(3) No AFO shall be designated under this paragraph unless the State Director or the Regional Administrator has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program. In addition, no AFO with numbers of animals below those established in paragraph (b)(6) of this section may be designated as a CAFO unless:

(i) Pollutants are discharged into waters of the United States through a manmade ditch, flushing system, or other similar manmade device; or

(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(d) *Who must seek coverage under an NPDES permit?* —(1) *All CAFO owners or operators must apply for a permit.* All CAFO owners or operators must seek coverage under an NPDES permit, except as provided in paragraph (d)(2) of this section. Specifically, the CAFO owner or operator must either apply for an individual NPDES permit or submit a notice of intent for coverage under an NPDES general permit. If the Director has not made a general permit available to the CAFO, the CAFO owner or operator must submit an application for an individual permit to the Director.

(2) *Exception.* An owner or operator of a Large CAFO does not need to seek coverage under an NPDES permit otherwise required by this section once the owner or operator has received from the Director notification of a determination under paragraph (f) of this section that the CAFO has "no potential to discharge" manure, litter or process wastewater.

(3) *Information to submit with permit application.* A permit application for an individual permit must include the information specified in §122.21. A notice of intent for a general permit must include the information specified in §§122.21 and 122.28.

prior to April 14, 2003. For operations that are defined as CAFOs under regulations that are in effect prior to April 14, 2003, the owner or operator must have or seek to obtain coverage under an NPDES permit as of April 14, 2003, and comply with all applicable NPDES requirements, including the duty to maintain permit coverage in accordance with paragraph (h) of this section.

(2) *Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date.* For all operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date, the owner or operator of the CAFO must seek to obtain coverage under an NPDES permit by a date specified by the Director, but no later than February 27, 2009.

(3) *Operations that become defined as CAFOs after April 14, 2003, but which are not new sources.* For newly constructed AFOs and AFOs that make changes to their operations that result in becoming defined as CAFOs for the first time, after April 14, 2003, but are not new sources, the owner or operator must seek to obtain coverage under an NPDES permit, as follows:

(i) For newly constructed operations not subject to effluent limitations guidelines, 180 days prior to the time CAFO commences operation; or

(ii) For other operations (e.g. , resulting from an increase in the number of animals), as soon as possible, but no later than 90 days after becoming defined as a CAFO; except that

(iii) If an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has until February 27, 2009, or 90 days after becoming defined as a CAFO, whichever is later.

(4) *New sources.* New sources must seek to obtain coverage under a permit at least 180 days prior to the time that the CAFO commences operation.

(5) *Operations that are designated as CAFOs.* For operations designated as a CAFO in accordance with paragraph (c) of this section, the owner or operator must seek to obtain coverage under a permit no later than 90 days after receiving notice of the designation.

(6) *No potential to discharge.* Notwithstanding any other provision of this section, a CAFO that has received a "no potential to discharge" determination in accordance with paragraph (f) of this section is not required to seek coverage under an NPDES permit that would otherwise be required by this section. If circumstances materially change at a CAFO that has received a NPTD determination, such that the CAFO has a potential for a discharge, the CAFO has a duty to immediately notify the Director, and seek coverage under an NPDES permit within 30 days after the change in circumstances.

(h) *Duty to Maintain Permit Coverage.* No later than 180 days before the expiration of the permit, the permittee must submit an application to renew its permit, in accordance with §122.21(g). However, the permittee need not continue to seek continued permit coverage or reapply for a permit if:

(1) The facility has ceased operation or is no longer a CAFO; and

(2) The permittee has demonstrated to the satisfaction of the Director that there is no remaining potential for a discharge of manure, litter or associated process wastewater that was generated while the operation was a CAFO, other than agricultural stormwater from land application areas.

[68 FR 7265, Feb. 12, 2003, as amended at 71 FR 6984, Feb. 10, 2006; 72 FR 40250, July 24, 2007]

§ 122.24 Concentrated aquatic animal production facilities (applicable to State NPDES programs, see §123.25).



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(a) *Permit requirement.* Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the NPDES permit program.

(v) A discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at §122.2.

The Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director may consider the following factors:

- (A) The location of the discharge with respect to waters of the United States as defined at 40 CFR 122.2.
- (B) The size of the discharge;
- (C) The quantity and nature of the pollutants discharged to waters of the United States; and
- (D) Other relevant factors.

(2) The Director may not require a permit for discharges of storm water runoff from the following:

(i) Mining operations composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that have not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations, except in accordance with paragraph (c)(1)(iv) of this section.

(ii) All field activities or operations associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities, except in accordance with paragraph (c)(1)(iii) of this section. Discharges of sediment from construction activities associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities are not subject to the provisions of paragraph (c)(1)(iii)(C) of this section.

Note to paragraph (a)(2)(ii): EPA encourages operators of oil and gas field activities or operations to implement and maintain Best Management Practices (BMPs) to minimize discharges of pollutants, including sediment, in storm water both during and after construction activities to help ensure protection of surface water quality during storm events. Appropriate controls would be those suitable to the site conditions and consistent with generally accepted engineering design criteria and manufacturer specifications. Selection of BMPs could also be affected by seasonal or climate conditions.

(3) *Large and medium municipal separate storm sewer systems.* (i) Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

(ii) The Director may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

(iii) The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:

(A) Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a

(iii) Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(7) *Combined sewer systems.* Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain NPDES permits in accordance with the procedures of §122.21 and are not subject to the provisions of this section.

(8) Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operator of the discharge is eligible for funding under title II, title III or title VI of the Clean Water Act. See 40 CFR part 35, subpart I, appendix A (b)H.2.j.

(9)(i) On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph (a)(1) of this section to obtain a permit, operators shall be required to obtain a NPDES permit only if:

(A) The discharge is from a small MS4 required to be regulated pursuant to §122.32;

(B) The discharge is a storm water discharge associated with small construction activity pursuant to paragraph (b)(15) of this section;

(C) The Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, determines that storm water controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

(D) The Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(ii) Operators of small MS4s designated pursuant to paragraphs (a)(9)(i)(A), (a)(9)(i)(C), and (a)(9)(i)(D) of this section shall seek coverage under an NPDES permit in accordance with §§122.33 through 122.35. Operators of non-municipal sources designated pursuant to paragraphs (a)(9)(i)(B), (a)(9)(i)(C), and (a)(9)(i)(D) of this section shall seek coverage under an NPDES permit in accordance with paragraph (c)(1) of this section.

(iii) Operators of storm water discharges designated pursuant to paragraphs (a)(9)(i)(C) and (a)(9)(i)(D) of this section shall apply to the Director for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Director (see §124.52(c) of this chapter).

(b) *Definitions.* (1) *Co-permittee* means a permittee to a NPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

(2) *Illicit discharge* means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

(3) *Incorporated place* means the District of Columbia, or a city, town, township, or village that is incorporated under the laws of the State in which it is located.

(4) *Large municipal separate storm sewer system* means all municipal separate storm sewers that are either:

(i) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix F of this part); or

(ii) Located in the counties listed in appendix H, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

(iv) The Director may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraphs (b)(7) (i), (ii), (iii) of this section.

(8) *Municipal separate storm sewer* means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;

(ii) Designed or used for collecting or conveying storm water;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

(9) *Outfall* means a *point source* as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

(10) *Overburden* means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(11) *Runoff coefficient* means the fraction of total rainfall that will appear at a conveyance as runoff.

(12) *Significant materials* includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

(13) *Storm water* means storm water runoff, snow melt runoff, and surface runoff and drainage.

(14) *Storm water discharge associated with industrial activity* means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under this part 122. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at part 401 of this chapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs (b)(14)(i) through (xi) of

(15) *Storm water discharge associated with small construction activity* means the discharge of storm water from:

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Director may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

(A) The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of *Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE)*, pages 21–64, dated January 1997. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C 552(a) and 1 CFR part 51. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. SW, Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket, 401 M Street SW, Washington, DC 20460, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. An operator must certify to the Director that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

(B) Storm water controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Director that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

(ii) Any other construction activity designated by the Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States.

Exhibit 1 to §122.26(b)(15)—Summary of Coverage of "Storm Water Discharges Associated with Small Construction Activity" Under the NPDES Storm Water Program

Automatic Designation: Required Nationwide Coverage	• Construction activities that result in a land disturbance of equal to or greater than one acre and less than five acres.
	• Construction activities disturbing less than one acre if part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and less than five acres. (see §122.26(b)(15)(i).)
Potential Designation: Optional Evaluation and Designation by the NPDES Permitting	• Construction activities that result in a land disturbance of less than one acre based on the potential for contribution to a violation of a water quality standard or for significant contribution of

soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

(B) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

(C) A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a NPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

(D) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

(E) Quantitative data based on samples collected during storm events and collected in accordance with §122.21 of this part from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(1) Any pollutant limited in an effluent guideline to which the facility is subject;

(2) Any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit);

(3) Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(4) Any information on the discharge required under §122.21(g)(7)(vi) and (vii);

(5) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

(6) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

(F) Operators of a discharge which is composed entirely of storm water are exempt from the requirements of §122.21 (g)(2), (g)(3), (g)(4), (g)(5), (g)(7)(iii), (g)(7)(iv), (g)(7)(v), and (g)(7)(viii); and

(G) Operators of new sources or new discharges (as defined in §122.2 of this part) which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in paragraph (c)(1)(i)(E) of this section instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in paragraph (c)(1)(i)(E) of this section within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the NPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of §122.21 (k)(3)

(i) *General information.* The applicants' name, address, telephone number of contact person, ownership status and status as a State or local government entity.

(ii) *Legal authority.* A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in paragraph (d)(2)(i) of this section, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

(iii) *Source identification.* (A) A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

(B) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

(1) The location of known municipal storm sewer system outfalls discharging to waters of the United States;

(2) A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(3) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(4) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES permit;

(5) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

(6) The identification of publicly owned parks, recreational areas, and other open lands.

(iv) *Discharge characterization.* (A) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

(B) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

(C) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

(1) Assessed and reported in section 305(b) reports submitted by the State, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

(2) Listed under section 304(l)(1)(A)(i), section 304(l)(1)(A)(ii), or section 304(l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

(3) Listed in State Nonpoint Source Assessments required by section 319(a) of the CWA that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of

(7) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in paragraphs (d)(1)(iv)(D) (1) through (6) of this section, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

(E) *Characterization plan.* Information and a proposed program to meet the requirements of paragraph (d)(2)(iii) of this section. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under paragraph (d)(2)(iii)(A) of this section, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see paragraph (d)(1)(iv)(C) of this section) to the extent practicable.

(v) *Management programs.* (A) A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to: Procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under State law as well as local requirements.

(B) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

(vi) *Fiscal resources.* (A) A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.

(2) *Part 2.* Part 2 of the application shall consist of:

(i) *Adequate legal authority.* A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

(A) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

(B) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

(C) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

(D) Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(E) Require compliance with conditions in ordinances, permits, contracts or orders; and

(F) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

Total phosphorus

(4) Additional limited quantitative data required by the Director for determining permit conditions (the Director may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness);

(B) Estimates of the annual pollutant load of the cumulative discharges to waters of the United States from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the United States from all identified municipal outfalls during a storm event (as described under §122.21(c)(7)) for BOD₅, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods;

(C) A proposed schedule to provide estimates for each major outfall identified in either paragraph (d)(2)(ii) or (d)(1)(iii)(B)(1) of this section of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under paragraph (d)(2)(iii)(A) of this section; and

(D) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

(iv) *Proposed management program.* A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(A) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(1) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

(2) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. (Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in paragraph (d)(2)(iv)(D) of this section;

(3) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

(4) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible;

(2) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph (d)(2)(iv)(C) of this section, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES permit for a facility; oil and grease, COD, pH, BOD₅, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under §122.21(g)(7) (vi) and (vii).

(D) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

(1) A description of procedures for site planning which incorporate consideration of potential water quality impacts;

(2) A description of requirements for nonstructural and structural best management practices;

(3) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(4) A description of appropriate educational and training measures for construction site operators.

(v) *Assessment of controls.* Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

(vi) *Fiscal analysis.* For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under paragraphs (d)(2) (iii) and (iv) of this section. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

(vii) Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination.

(viii) Where requirements under paragraph (d)(1)(iv)(E), (d)(2)(ii), (d)(2)(iii)(B) and (d)(2)(iv) of this section are not practicable or are not applicable, the Director may exclude any operator of a discharge from a municipal separate storm sewer which is designated under paragraph (a)(1)(v), (b)(4)(ii) or (b)(7) (ii) of this section from such requirements. The Director shall not exclude the operator of a discharge from a municipal separate storm sewer identified in appendix F, G, H or I of part 122, from any of the permit application requirements under this paragraph except where authorized under this section.

(e) *Application deadlines.* Any operator of a point source required to obtain a permit under this section that does not have an effective NPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

(1) *Storm water discharges associated with industrial activity.* (i) Except as provided in paragraph (e)(1) (ii) of this section, for any storm water discharge associated with industrial activity identified in paragraphs (b)(14)(i) through (xi) of this section, that is not part of a group application as described in paragraph (c)(2) of this section or that is not authorized by a storm water general permit, a permit application made pursuant to paragraph (c) of this section must be submitted to the Director by October 1, 1992;

(ii) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, the permit application must be submitted to the Director by March 10, 2003.

(2) For any group application submitted in accordance with paragraph (c)(2) of this section:

(5) A permit application shall be submitted to the Director within 180 days of notice, unless permission for a later date is granted by the Director (see §124.52(c) of this chapter), for:

(i) A storm water discharge that the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States (see paragraphs (a)(1)(v) and (b)(15)(ii) of this section);

(ii) A storm water discharge subject to paragraph (c)(1)(v) of this section.

(6) Facilities with existing NPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. Facilities with permits for storm water discharges associated with industrial activity which expire on or after May 18, 1992 shall submit a new application in accordance with the requirements of 40 CFR 122.21 and 40 CFR 122.26(c) (Form 1, Form 2F, and other applicable Forms) 180 days before the expiration of such permits.

(7) The Director shall issue or deny permits for discharges composed entirely of storm water under this section in accordance with the following schedule:

(i)(A) Except as provided in paragraph (e)(7)(i)(B) of this section, the Director shall issue or deny permits for storm water discharges associated with industrial activity no later than October 1, 1993, or, for new sources or existing sources which fail to submit a complete permit application by October 1, 1992, one year after receipt of a complete permit application;

(B) For any municipality with a population of less than 250,000 which submits a timely Part I group application under paragraph (e)(2)(i)(B) of this section, the Director shall issue or deny permits for storm water discharges associated with industrial activity no later than May 17, 1994, or, for any such municipality which fails to submit a complete Part II group permit application by May 17, 1993, one year after receipt of a complete permit application;

(ii) The Director shall issue or deny permits for large municipal separate storm sewer systems no later than November 16, 1993, or, for new sources or existing sources which fail to submit a complete permit application by November 16, 1992, one year after receipt of a complete permit application;

(iii) The Director shall issue or deny permits for medium municipal separate storm sewer systems no later than May 17, 1994, or, for new sources or existing sources which fail to submit a complete permit application by May 17, 1993, one year after receipt of a complete permit application.

(8) For any storm water discharge associated with small construction activities identified in paragraph (b)(15)(i) of this section, see §122.21(c)(1). Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.

(9) For any discharge from a regulated small MS4, the permit application made under §122.33 must be submitted to the Director by:

(i) March 10, 2003 if designated under §122.32(a)(1) unless your MS4 serves a jurisdiction with a population under 10,000 and the NPDES permitting authority has established a phasing schedule under §123.35(d)(3) (see §122.33(c)(1)); or

(ii) Within 180 days of notice, unless the NPDES permitting authority grants a later date, if designated under §122.32(a)(2) (see §122.33(c)(2)).

(f) *Petitions.* (1) Any operator of a municipal separate storm sewer system may petition the Director to require a separate NPDES permit (or a permit issued under an approved NPDES State program) for any discharge into the municipal separate storm sewer system.

(2) Any person may petition the Director to require a NPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(ii) This conditional exclusion from the requirement for an NPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be "no exposure" discharges, individual permit requirements should be adjusted accordingly.

(iii) If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, and/or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for un-permitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

(iv) Notwithstanding the provisions of this paragraph, the NPDES permitting authority retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

(4) *Certification.* The no exposure certification must require the submission of the following information, at a minimum, to aid the NPDES permitting authority in determining if the facility qualifies for the no exposure exclusion:

(i) The legal name, address and phone number of the discharger (see §122.21(b));

(ii) The facility name and address, the county name and the latitude and longitude where the facility is located;

(iii) The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

(A) Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

(B) Materials or residuals on the ground or in storm water inlets from spills/leaks;

(C) Materials or products from past industrial activity;

(D) Material handling equipment (except adequately maintained vehicles);

(E) Materials or products during loading/unloading or transporting activities;

(F) Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants);

(G) Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

(H) Materials or products handled/stored on roads or railways owned or maintained by the discharger;

(I) Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

(J) Application or disposal of process wastewater (unless otherwise permitted); and

(K) Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow;

(iv) All "no exposure" certifications must include the following certification statement, and be signed in accordance with the signatory requirements of §122.22: "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from NPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under paragraph (g)(2)) of this section. I understand that I am obligated to

- (iii) City, county, or State political boundaries;
- (iv) State highway systems;
- (v) Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- (vi) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or
- (vii) Any other appropriate division or combination of boundaries.

(2) *Sources.* The general permit may be written to regulate one or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in paragraph (a)(1) of this section, where the sources within a covered subcategory of discharges are either:

(i) Storm water point sources; or (ii) One or more categories or subcategories of point sources other than storm water point sources, or one or more categories or subcategories of "treatment works treating domestic sewage", if the sources or "treatment works treating domestic sewage" within each category or subcategory all:

- (A) Involve the same or substantially similar types of operations;
- (B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
- (C) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;
- (D) Require the same or similar monitoring; and (E) In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

(3) *Water quality-based limits.* Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to §122.44, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

(4) *Other requirements.* (i) The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

(ii) The general permit may exclude specified sources or areas from coverage.

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

(2) *Authorization to discharge, or authorization to engage in sludge use and disposal practices.* (i) Except as provided in paragraphs (b)(2)(v) and (b)(2)(vi) of this section, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Director a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with paragraph (b)(2)(v) of this section, contains a provision that a notice of intent is not required or the Director notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph (b)(2)(vi) of this section. A complete and timely, notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of §§122.6, 122.21 and 122.26.

(ii) The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the

- (1) The location of the discharge with respect to waters of the United States;
- (2) The size of the discharge;
- (3) The quantity and nature of the pollutants discharged to waters of the United States; and
- (4) Other relevant factors;

(ii) *For EPA issued general permits only*, the Regional Administrator may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in paragraph (b)(3)(i) of this section, only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES permit the general permit as it applies to the individual permittee shall automatically terminate. The Director may grant additional time upon request of the applicant.

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

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

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

(c) *Offshore oil and gas facilities* (Not applicable to State programs). (1) The Regional Administrator shall, except as provided below, issue general permits covering discharges from offshore oil and gas exploration and production facilities within the Region's jurisdiction. Where the offshore area includes areas, such as areas of biological concern, for which separate permit conditions are required, the Regional Administrator may issue separate general permits, individual permits, or both. The reason for separate general permits or individual permits shall be set forth in the appropriate fact sheets or statements of basis. Any statement of basis or fact sheet for a draft permit shall include the Regional Administrator's tentative determination as to whether the permit applies to "new sources," "new dischargers," or existing sources and the reasons for this determination, and the Regional Administrator's proposals as to areas of biological concern subject either to separate individual or general permits. For Federally leased lands, the general permit area should generally be no less extensive than the lease sale area defined by the Department of the Interior.

(2) Any interested person, including any prospective permittee, may petition the Regional Administrator to issue a general permit. Unless the Regional Administrator determines under paragraph (c)(1) of this section that no general permit is appropriate, he shall promptly provide a project decision schedule covering the issuance of the general permit or permits for any lease sale area for which the Department of the Interior has published a draft environmental impact statement. The project decision schedule shall meet the requirements of § 124.3(g), and shall include a schedule providing for the issuance of the final general permit or permits not later than the date of the final notice of sale projected by the Department of the Interior or six months after the date of the request, whichever is later. The Regional Administrator may, at his discretion, issue a project decision schedule for offshore oil and gas facilities in the territorial seas.

(3) Nothing in this paragraph (c) shall affect the authority of the Regional Administrator to require an individual permit under § 122.28(b)(3)(i) (A) through (G).

(Clean Water Act (33 U.S.C. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*))

intended to be used in its operation with a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under the paragraph.

(c) *Requirement for an environmental impact statement.* (1) The issuance of an NPDES permit to new source:

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

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

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

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

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

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

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

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

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

(ii) Ten years from the date the source begins to discharge process or other nonconstruction related wastewater; or

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

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

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

(ii) Additional permit conditions in accordance with §125.3 controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances

determines that you are eligible for treatment in the same manner as a State under §§123.31 through 123.34 of this chapter. (If you do not have an authorized NPDES program, EPA implements the program for discharges on your reservation as well as other Indian country, generally.);

(b) Be classified as an owner of a regulated small MS4, as defined in §122.32. (Designation of your Tribe as an owner of a small MS4 for purposes of this part is an approach that is consistent with EPA's 1984 Indian Policy of operating on a government-to-government basis with EPA looking to Tribes as the lead governmental authorities to address environmental issues on their reservations as appropriate. If you operate a separate storm sewer system that meets the definition of a regulated small MS4, you are subject to the requirements under §§122.33 through 122.35. If you are not designated as a regulated small MS4, you may ask EPA to designate you as such for the purposes of this part.); or

(c) Be a discharger of storm water associated with industrial activity or small construction activity under §§122.26(b)(14) or (b)(15), in which case you must meet the applicable requirements. Within Indian country, the NPDES permitting authority is generally EPA, unless you are authorized to administer the NPDES program.

[64 FR 68842, Dec. 8, 1999]

§ 122.32 As an operator of a small MS4, am I regulated under the NPDES storm water program?



(a) Unless you qualify for a waiver under paragraph (c) of this section, you are regulated if you operate a small MS4, including but not limited to systems operated by federal, State, Tribal, and local governments, including State departments of transportation; and:

(1) Your small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated); or

(2) You are designated by the NPDES permitting authority, including where the designation is pursuant to §§123.35(b)(3) and (b)(4) of this chapter, or is based upon a petition under §122.26(f).

(b) You may be the subject of a petition to the NPDES permitting authority to require an NPDES permit for your discharge of storm water. If the NPDES permitting authority determines that you need a permit, you are required to comply with §§122.33 through 122.35.

(c) The NPDES permitting authority may waive the requirements otherwise applicable to you if you meet the criteria of paragraph (d) or (e) of this section. If you receive a waiver under this section, you may subsequently be required to seek coverage under an NPDES permit in accordance with §122.33(a) if circumstances change. (See also §123.35(b) of this chapter.)

(d) The NPDES permitting authority may waive permit coverage if your MS4 serves a population of less than 1,000 within the urbanized area and you meet the following criteria:

(1) Your system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES storm water program (see §123.35(b)(4) of this chapter); and

(2) If you discharge any pollutant(s) that have been identified as a cause of impairment of any water body to which you discharge, storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established "total maximum daily load" (TMDL) that addresses the pollutant(s) of concern.

(e) The NPDES permitting authority may waive permit coverage if your MS4 serves a population under 10,000 and you meet the following criteria:

(1) The permitting authority has evaluated all waters of the U.S., including small streams, tributaries,

permittee. As a limited co-permittee, you will be responsible for compliance with the permit's conditions applicable to your jurisdiction. If you choose this option you will need to comply with the permit application requirements of §122.26, rather than the requirements of §122.34. You do not need to comply with the specific application requirements of §122.26(d)(1)(iii) and (iv) and (d)(2)(iii) (discharge characterization). You may satisfy the requirements in §122.26 (d)(1)(v) and (d)(2)(iv) (identification of a management program) by referring to the other MS4's storm water management program.

(4) Guidance: In referencing an MS4's storm water management program, you should briefly describe how the existing plan will address discharges from your small MS4 or would need to be supplemented in order to adequately address your discharges. You should also explain your role in coordinating storm water pollutant control activities in your MS4, and detail the resources available to you to accomplish the plan.

(c) If you operate a regulated small MS4:

(1) Designated under §122.32(a)(1), you must apply for coverage under an NPDES permit, or apply for a modification of an existing NPDES permit under paragraph (b)(3) of this section by March 10, 2003, unless your MS4 serves a jurisdiction with a population under 10,000 and the NPDES permitting authority has established a phasing schedule under §123.35(d)(3) of this chapter.

(2) Designated under §122.32(a)(2), you must apply for coverage under an NPDES permit, or apply for a modification of an existing NPDES permit under paragraph (b)(3) of this section, within 180 days of notice, unless the NPDES permitting authority grants a later date.

[64 FR 68843, Dec. 8, 1999]

§ 122.34 As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?



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(a) Your NPDES MS4 permit will require at a minimum that you develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. Your storm water management program must include the minimum control measures described in paragraph (b) of this section unless you apply for a permit under §122.26(d). For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the storm water management program required pursuant to this section and the provisions of the permit required pursuant to §122.33 constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable." Your NPDES permitting authority will specify a time period of up to 5 years from the date of permit issuance for you to develop and implement your program.

(b) *Minimum control measures* —(1) *Public education and outreach on storm water impacts.* (i) You must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

(ii) Guidance: You may use storm water educational materials provided by your State, Tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The public education program should inform individuals and households about the steps they can take to reduce storm water pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. EPA recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. EPA recommends that the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include

a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the NPDES permitting authority waives requirements for storm water discharges associated with small construction activity in accordance with §122.26(b)(15)(i), you are not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

(ii) Your program must include the development and implementation of, at a minimum:

(A) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State, Tribal, or local law;

(B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(C) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(D) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(E) Procedures for receipt and consideration of information submitted by the public, and

(F) Procedures for site inspection and enforcement of control measures.

(iii) Guidance: Examples of sanctions to ensure compliance include non-monetary penalties, fines, bonding requirements and/or permit denials for non-compliance. EPA recommends that procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with local sediment and erosion control requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. You are encouraged to provide appropriate educational and training measures for construction site operators. You may wish to require a storm water pollution prevention plan for construction sites within your jurisdiction that discharge into your system. See §122.44(s) (NPDES permitting authorities' option to incorporate qualifying State, Tribal and local erosion and sediment control programs into NPDES permits for storm water discharges from construction sites). Also see §122.35(b) (The NPDES permitting authority may recognize that another government entity, including the permitting authority, may be responsible for implementing one or more of the minimum measures on your behalf.)

(5) *Post-construction storm water management in new development and redevelopment.* (i) You must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.

(ii) You must:

(A) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for your community;

(B) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law; and

(C) Ensure adequate long-term operation and maintenance of BMPs.

(iii) Guidance: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. EPA recommends that the BMPs chosen: be appropriate for the local community; minimize water quality impacts; and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, EPA encourages you to participate in locally-based watershed planning efforts which attempt to involve

(ii) The measurable goals for each of the BMPs including, as appropriate, the months and years in which you will undertake required actions, including interim milestones and the frequency of the action; and

(iii) The person or persons responsible for implementing or coordinating your storm water management program.

(2) If you obtain coverage under a general permit, you are not required to meet any measurable goal(s) identified in your notice of intent in order to demonstrate compliance with the minimum control measures in paragraphs (b)(3) through (b)(6) of this section unless, prior to submitting your NOI, EPA or your State or Tribe has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, you still must comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.

(3) Guidance: Either EPA or your State or Tribal permitting authority will provide a menu of BMPs. You may choose BMPs from the menu or select others that satisfy the minimum control measures.

(e)(1) You must comply with any more stringent effluent limitations in your permit, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The permitting authority may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

(2) Guidance: EPA strongly recommends that until the evaluation of the storm water program in §122.37, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.

(f) You must comply with other applicable NPDES permit requirements, standards and conditions established in the individual or general permit, developed consistent with the provisions of §§122.41 through 122.49, as appropriate.

(g) *Evaluation and assessment* —(1) *Evaluation*. You must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achieving your identified measurable goals.

Note to paragraph(g)(1): The NPDES permitting authority may determine monitoring requirements for you in accordance with State/Tribal monitoring plans appropriate to your watershed. Participation in a group monitoring program is encouraged.

(2) *Recordkeeping*. You must keep records required by the NPDES permit for at least 3 years. You must submit your records to the NPDES permitting authority only when specifically asked to do so. You must make your records, including a description of your storm water management program, available to the public at reasonable times during regular business hours (see §122.7 for confidentiality provision). (You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice.)

(3) *Reporting*. Unless you are relying on another entity to satisfy your NPDES permit obligations under §122.35(a), you must submit annual reports to the NPDES permitting authority for your first permit term. For subsequent permit terms, you must submit reports in year two and four unless the NPDES permitting authority requires more frequent reports. Your report must include:

(i) The status of compliance with permit conditions, an assessment of the appropriateness of your identified best management practices and progress towards achieving your identified measurable goals for each of the minimum control measures;

(ii) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(iii) A summary of the storm water activities you plan to undertake during the next reporting cycle;

§ 122.37 Will the small MS4 storm water program regulations at §§122.32 through 122.36 and §123.35 of this chapter change in the future?



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EPA will evaluate the small MS4 regulations at §§122.32 through 122.36 and §123.35 of this chapter after December 10, 2012 and make any necessary revisions. (EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation of the NPDES MS4 storm water program. EPA will re-evaluate the regulations based on data from the NPDES MS4 storm water program, from research on receiving water impacts from storm water, and the effectiveness of best management practices (BMPs), as well as other relevant information sources.)

[64 FR 68847, Dec. 8, 1999]

Subpart C—Permit Conditions



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



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

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

(1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

(2) The Clean Water Act provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$25,000 per day for each violation. The Clean Water Act provides that any person who *negligently* violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who *knowingly* violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than

representative of the monitored activity.

(2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

(3) Records of monitoring information shall include:

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

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

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

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

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(4) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O.

(5) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

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

(2) The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

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

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

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

(iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;

(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.

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

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

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

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

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

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

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

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

(2) *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit 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 cause(s) of the upset;

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

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

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

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

quantity or quality of effluent to be discharged from the POTW.

(c) *Municipal separate storm sewer systems.* The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under §122.26(a)(1)(v) of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

- (1) The status of implementing the components of the storm water management program that are established as permit conditions;
- (2) Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with §122.26(d)(2)(iii) of this part; and
- (3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under §122.26(d)(2)(iv) and (d)(2)(v) of this part;
- (4) A summary of data, including monitoring data, that is accumulated throughout the reporting year;
- (5) Annual expenditures and budget for year following each annual report;
- (6) A summary describing the number and nature of enforcement actions, inspections, and public education programs;
- (7) Identification of water quality improvements or degradation;

(d) *Storm water discharges.* The initial permits for discharges composed entirely of storm water issued pursuant to §122.26(e)(7) of this part shall require compliance with the conditions of the permit as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit.

(e) *Concentrated animal feeding operations (CAFOs).* Any permit issued to a CAFO must include:

(1) *Requirements to develop and implement a nutrient management plan.* At a minimum, a nutrient management plan must include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented by February 27, 2009. CAFOs that seek to obtain coverage under a permit after February 27, 2009, must have a nutrient management plan developed and implemented upon the date of permit coverage. The nutrient management plan must, to the extent applicable:

- (i) Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
- (ii) Ensure proper management of mortalities (*i.e.* , dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
- (iii) Ensure that clean water is diverted, as appropriate, from the production area;
- (iv) Prevent direct contact of confined animals with waters of the United States;
- (v) Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;
- (vi) Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;
- (vii) Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;

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

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

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

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

[48 FR 14153, Apr. 1, 1983, as amended at 65 FR 30908, May 15, 2000]

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



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

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

(2) *Monitoring waivers for certain guideline-listed pollutants.* (i) The Director may authorize a discharger subject to technology-based effluent limitations guidelines and standards in an NPDES permit to forego sampling of a pollutant found at 40 CFR Subchapter N of this chapter if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(ii) This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger.

(iii) Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(iv) Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis.

(v) This provision does not supersede certification processes and requirements already established in

discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the permitting authority demonstrates in the fact sheet or statement of basis of the NPDES permit, using the procedures in paragraph (d)(1)(ii) of this section, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

(vi) Where a State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard, the permitting authority must establish effluent limits using one or more of the following options:

(A) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

(B) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 304(a) of the CWA, supplemented where necessary by other relevant information; or

(C) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(1) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(2) The fact sheet required by §124.56 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(3) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(4) The permit contains a reopener clause allowing the permitting authority to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

(vii) When developing water quality-based effluent limits under this paragraph the permitting authority shall ensure that:

(A) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

(B) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.

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

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

(iii) Other measurements as appropriate including pollutants in internal waste streams under §122.45(i); pollutants in intake water for net limitations under §122.45(f); frequency, rate of discharge, etc., for noncontinuous discharges under §122.45(e); pollutants subject to notification requirements under §122.42(a); and pollutants in sewage sludge or other monitoring as specified in 40 CFR part 503; or as determined to be necessary on a case-by-case basis pursuant to section 405(d)(4) of the CWA.

(iv) According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants or another method is required under 40 CFR subchapters N or O. In the case of pollutants for which there are no approved methods under 40 CFR Part 136 or otherwise required under 40 CFR subchapters N or O, monitoring must be conducted according to a test procedure specified in the permit for such pollutants.

(2) Except as provided in paragraphs (i)(4) and (i)(5) of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR part 503 (where applicable), but in no case less than once a year.

(3) Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(4) Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in paragraph (i)(3) of this section) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

(i) The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

(ii) The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;

(iii) Such report and certification be signed in accordance with §122.22; and

(iv) Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.

(5) Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under §122.41(l) (1), (4), (5), and (6) at least annually.

(j) *Pretreatment program for POTWs.* Requirements for POTWs to:

(1) Identify, in terms of character and volume of pollutants, any Significant Industrial Users discharging into the POTW subject to Pretreatment Standards under section 307(b) of CWA and 40 CFR part 403.

(2)(i) Submit a local program when required by and in accordance with 40 CFR part 403 to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the permit as described in 40 CFR part 403. The program must require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR part 403.

(B)(1) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under section 402(a)(1)(b);

(C) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) The permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); or

(E) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(ii) *Limitations.* In no event may a permit with respect to which paragraph (l)(2) of this section applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 applicable to such waters.

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

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

(o) *Sewage sludge.* Requirements under section 405 of CWA governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established, in accordance with any applicable regulations.

(p) *Coast Guard.* When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

(q) *Navigation.* Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with §124.59 of this chapter.

(r) *Great Lakes.* When a permit is issued to a facility that discharges into the Great Lakes System (as defined in 40 CFR 132.2), conditions promulgated by the State, Tribe, or EPA pursuant to 40 CFR part 132.

(s) *Qualifying State, Tribal, or local programs.* (1) For storm water discharges associated with small construction activity identified in §122.26(b)(15), the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. Where a qualifying State, Tribal, or local program does not include one or more of the elements in this paragraph (s)(1), then the Director must include those elements as conditions in the

production, as indicated in paragraph (b)(2)(i) of this section, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

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

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

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

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

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

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

(2) In establishing permit limitations on a case-by-case basis under §125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the CWA; or

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

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

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

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

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

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

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

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

(4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/1 zinc or more than 250 grams (1/4kilogram) of zinc in any discharge).

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

- (a) NPDES permits shall be effective for a fixed term not to exceed 5 years.
- (b) Except as provided in §122.6, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.
- (c) The Director may issue any permit for a duration that is less than the full allowable term under this section.
- (d) A permit may be issued to expire on or after the statutory deadline set forth in section 301(b)(2) (A), (C), and (E), if the permit includes effluent limitations to meet the requirements of section 301(b)(2) (A), (C), (D), (E) and (F), whether or not applicable effluent limitations guidelines have been promulgated or approved.
- (e) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (d) of this section is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 31842, Aug. 8, 1984; 50 FR 6940, Feb. 19, 1985; 60 FR 33931, June 29, 1995]

§ 122.47 Schedules of compliance.

- (a) *General (applicable to State programs, see §123.25).* The permit may, when appropriate, specify a schedule of compliance leading to compliance with CWA and regulations.
- (1) *Time for compliance.* Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.
- (2) The first NPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.
- (3) *Interim dates.* Except as provided in paragraph (b)(1)(ii) of this section, if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.
- (i) The time between interim dates shall not exceed 1 year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.
- (ii) If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

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

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

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

[48 FR 14153, Apr. 1, 1983; 50 FR 6940, Feb. 19, 1985]

§ 122.49 Considerations under Federal law.



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The following is a list of Federal laws that may apply to the issuance of permits under these rules. When any of these laws is applicable, its procedures must be followed. When the applicable law requires consideration or adoption of particular permit conditions or requires the denial of a permit, those requirements also must be followed.

(a) The *Wild and Scenic Rivers Act*, 16 U.S.C. 1273 *et seq.* section 7 of the Act prohibits the Regional Administrator from assisting by license or otherwise the construction of any water resources project that would have a direct, adverse effect on the values for which a national wild and scenic river was established.

(b) The *National Historic Preservation Act of 1966*, 16 U.S.C. 470 *et seq.* section 106 of the Act and implementing regulations (36 CFR part 800) require the Regional Administrator, before issuing a license, to adopt measures when feasible to mitigate potential adverse effects of the licensed activity and properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with State Historic Preservation Officers and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation.

(c) The *Endangered Species Act*, 16 U.S.C. 1531 *et seq.* section 7 of the Act and implementing regulations (50 CFR part 402) require the Regional Administrator to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

(d) The *Coastal Zone Management Act*, 16 U.S.C. 1451 *et seq.* section 307(c) of the Act and implementing regulations (15 CFR part 930) prohibit EPA from issuing a permit for an activity affecting land or water use in the coastal zone until the applicant certifies that the proposed activity complies with the State Coastal Zone Management program, and the State or its designated agency concurs with the certification (or the Secretary of Commerce overrides the State's nonconcurrence).

(e) The *Fish and Wildlife Coordination Act*, 16 U.S.C. 661 *et seq.*, requires that the Regional Administrator, before issuing a permit proposing or authorizing the impoundment (with certain exemptions), diversion, or other control or modification of any body of water, consult with the appropriate State agency exercising jurisdiction over wildlife resources to conserve those resources.

(f) *Executive orders*. [Reserved]

(g) The National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, may require preparation of an Environmental Impact Statement and consideration of EIS-related permit conditions (other than effluent limitations) as provided in §122.29(c).

(Clean Water Act (33 U.S.C. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*))

[48 FR 14153, Apr. 1, 1983, as amended at 48 FR 39620, Sept. 1, 1983; 49 FR 38050, Sept. 26, 1984]

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

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

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

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

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

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



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

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

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice) which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

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

(2) *Information.* The Director has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For NPDES general permits (§122.28) this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger NPDES permits §§122.21, 122.29, this cause shall include any significant information derived from effluent testing required under §122.21(k)(5)(vi) or §122.21(h)(4)(iii) after issuance of the permit.

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

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

(A) The permit condition requested to be modified was based on a promulgated effluent limitation

measure or measures as specified in §122.34(b) when:

(i) The permit does not include such measure(s) based upon the determination that another entity was responsible for implementation of the requirement(s); and

(ii) The other entity fails to implement measure(s) that satisfy the requirement(s).

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

(16) 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).

(17) [Reserved]

(18) *Land application plans*. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

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

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

(2) The Director has received notification (as required in the permit, see §122.41(l)(3)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (§122.61(b)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 25981, June 25, 1984; 49 FR 37009, Sept. 29, 1984; 49 FR 38050, Sept. 26, 1984; 50 FR 4514, Jan. 31, 1985; 51 FR 20431, June 4, 1986; 51 FR 26993, July 28, 1986; 54 FR 256, 258, Jan. 4, 1989; 54 FR 18784, May 2, 1989; 60 FR 33931, June 29, 1995; 64 FR 68847, Dec. 8, 1999; 65 FR 30909, May 15, 2000; 70 FR 60191, Oct. 14, 2005]

§ 122.63 Minor modifications of permits.



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

(a) Correct typographical errors;

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

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

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

Any permit issued after June 30, 1981 to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of section 301(b)(2)(A), (C), (D), (E) and (F) of CWA, whether or not applicable effluent limitations guidelines have been promulgated. See §§122.44 and 122.46.

Industry Category

Adhesives and sealants

Aluminum forming

Auto and other laundries

Battery manufacturing

Coal mining

Coil coating

Copper forming

Electrical and electronic components

Electroplating

Explosives manufacturing

Foundries

Gum and wood chemicals

Inorganic chemicals manufacturing

Iron and steel manufacturing

Leather tanning and finishing

Mechanical products manufacturing

Nonferrous metals manufacturing

Ore mining

Organic chemicals manufacturing

Paint and ink formulation

Pesticides

Petroleum refining

Pharmaceutical preparations

Photographic equipment and supplies

Plastics processing



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

Industrial category	GC/MS Fraction ¹			
	Volatile	Acid	Base/neutral	Pesticide
Adhesives and Sealants	2	2	2	
Aluminum Forming	2	2	2	
Auto and Other Laundries	2	2	2	2
Battery Manufacturing	2		2	
Coal Mining	2	2	2	2
Coil Coating	2	2	2	
Copper Forming	2	2	2	
Electric and Electronic Components	2	2	2	2
Electroplating	2	2	2	
Explosives Manufacturing		2	2	
Foundries	2	2	2	
Gum and Wood Chemicals	2	2	2	2
Inorganic Chemicals Manufacturing	2	2	2	
Iron and Steel Manufacturing	2	2	2	
Leather Tanning and Finishing	2	2	2	2
Mechanical Products Manufacturing	2	2	2	
Nonferrous Metals Manufacturing	2	2	2	2
Ore Mining	2	2	2	2
Organic Chemicals Manufacturing	2	2	2	2
Paint and Ink Formulation	2	2	2	2
Pesticides	2	2	2	2
Petroleum Refining	2	2	2	2
Pharmaceutical Preparations	2	2	2	
Photographic Equipment and Supplies	2	2	2	2
Plastic and Synthetic Materials Manufacturing	2	2	2	2
Plastic Processing	2			
Porcelain Enameling	2		2	2
Printing and Publishing	2	2	2	2

21V methyl chloride

22V methylene chloride

23V 1,1,1,2-tetrachloroethane

24V tetrachloroethylene

25V toluene

26V 1,2-trans-dichloroethylene

27V 1,1,1-trichloroethane

28V 1,1,2-trichloroethane

29V trichloroethylene

31V vinyl chloride

Acid Compounds

1A 2-chlorophenol

2A 2,4-dichlorophenol

3A 2,4-dimethylphenol

4A 4,6-dinitro-o-cresol

5A 2,4-dinitrophenol

6A 2-nitrophenol

7A 4-nitrophenol

8A p-chloro-m-cresol

9A pentachlorophenol

10A phenol

11A 2,4,6-trichlorophenol

Base/Neutral

1B acenaphthene

2B acenaphthylene

3B anthracene

4B benzidine

5B benzo(a)anthracene

- 34B hexachlorobutadiene
- 35B hexachlorocyclopentadiene
- 36B hexachloroethane
- 37B indeno(1,2,3-cd)pyrene
- 38B isophorone
- 39B naphthalene
- 40B nitrobenzene
- 41B N-nitrosodimethylamine
- 42B N-nitrosodi-n-propylamine
- 43B N-nitrosodiphenylamine
- 44B phenanthrene
- 45B pyrene
- 46B 1,2,4-trichlorobenzene

Pesticides

- 1P aldrin
- 2P alpha-BHC
- 3P beta-BHC
- 4P gamma-BHC
- 5P delta-BHC
- 6P chlordane
- 7P 4,4'-DDT
- 8P 4,4'-DDE
- 9P 4,4'-DDD
- 10P dieldrin
- 11P alpha-endosulfan
- 12P beta-endosulfan
- 13P endosulfan sulfate
- 14P endrin

if Expected to be Present

Bromide

Chlorine, Total Residual

Color

Fecal Coliform

Fluoride

Nitrate-Nitrite

Nitrogen, Total Organic

Oil and Grease

Phosphorus, Total

Radioactivity

Sulfate

Sulfide

Sulfite

Surfactants

Aluminum, Total

Barium, Total

Boron, Total

Cobalt, Total

Iron, Total

Magnesium, Total

Molybdenum, Total

Manganese, Total

Tin, Total

Titanium, Total

Table V—Toxic Pollutants and Hazardous Substances Required To Be Identified by Existing Dischargers if Expected To Be Present

Toxic Pollutants

Dimethyl amine

Dinitrobenzene

Diquat

Disulfoton

Diuron

Epichlorohydrin

Ethion

Ethylene diamine

Ethylene dibromide

Formaldehyde

Furfural

Guthion

Isoprene

Isopropanolamine Dodecylbenzenesulfonate

Kelthane

Kepone

Malathion

Mercaptodimethur

Methoxychlor

Methyl mercaptan

Methyl methacrylate

Methyl parathion

Mevinphos

Mexacarbate

Monoethyl amine

Monomethyl amine

Naled

Napthenic acid

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

1. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (Subpart C—Low water use processing of 40 CFR part 410), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.
2. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR part 440), and testing and reporting for all four fractions in all other subcategories of this industrial category.
3. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

c. At 46 FR 35090, July 1, 1981, the Environmental Protection Agency suspended until further notice §122.21(g)(7)(ii)(A) and the corresponding portions of Item V-C of the NPDES application Form 2c as they apply to:

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

This revision continues these suspensions.]*

*Editorial Note: The words "This revision" refer to the document published at 48 FR 14153, Apr. 1, 1983.

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

Table I—Testing Requirements for Organic Toxic Pollutants by Industry Category

Industry category	GC/MS fraction ²			
	Volatile	Acid	Neutral	Pesticide
Adhesives and sealants	(1)	(1)	(1)	
Aluminum forming	(1)	(1)	(1)	

Timber products processing	(1)	(1)	(1)	(1)
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¹Testing required.

²The pollutants in each fraction are listed in Item V-C.

³Pulp and Paperboard Mills:

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

¹Must test.

²Do not test unless "reason to believe" it is discharged.

³Subparts are defined in 40 CFR Part 430.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 38050, Sept. 26, 1984; 50 FR 6940, Feb. 19, 1985]

Illinois	Chicago.
Indiana	Indianapolis.
Kansas	Wichita.
Kentucky	Louisville.
Louisiana	New Orleans.
Maryland	Baltimore.
Massachusetts	Boston.
Michigan	Detroit.
Minnesota	Minneapolis.
	St. Paul.
Missouri	Kansas City.
	St. Louis.
Nebraska	Omaha.
New Jersey	Newark.
New Mexico	Albuquerque.
New York	Buffalo. Bronx Borough. Brooklyn Borough. Manhattan Borough. Queens Borough. Staten Island Borough.
North Carolina	Charlotte.
Ohio	Cincinnati. Cleveland. Columbus. Toledo.
Oklahoma	Oklahoma City. Tulsa.
Oregon	Portland.
Pennsylvania	Philadelphia. Pittsburgh.
Tennessee	Memphis. Nashville/Davidson.
Texas	Austin.
	Dallas.
	El Paso.
	Fort Worth.
	Houston.
	San Antonio.
Virginia	Norfolk.
	Virginia Beach.
Washington	Seattle.

Connecticut	Bridgeport.
	Hartford.
	New Haven.
	Stamford.
	Waterbury.
Florida	Fort Lauderdale.
	Hialeah.
	Hollywood.
	Orlando.
	St. Petersburg.
	Tallahassee.
Georgia	Columbus.
	Macon.
	Savannah.
Idaho	Boise City.
Illinois	Peoria.
	Rockford.
Indiana	Evansville.
	Fort Wayne.
	Gary.
	South Bend.
Iowa	Cedar Rapids.
	Davenport.
	Des Moines.
Kansas	Kansas City.
	Topeka.
Kentucky	Lexington-Fayette.
Louisiana	Baton Rouge.
	Shreveport.
Massachusetts	Springfield.
	Worcester.
Michigan	Ann Arbor.
	Flint.
	Grand Rapids.
	Lansing.
	Livonia.
	Sterling Heights.
	Warren.
Mississippi	Jackson.
Missouri	Independence.

	Chesapeake.
	Hampton.
	Newport News.
	Portsmouth.
	Richmond.
	Roanoke.
Washington	Spokane.
	Tacoma.
Wisconsin	Madison.

[64 FR 68848, Dec. 8, 1999]

Appendix H to Part 122—Counties with Unincorporated Urbanized Areas With a Population of 250,000 or More According to the 1990 Decennial Census by the Bureau of the Census



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State	County	Unincorporated urbanized population
California	Los Angeles	886,780
	Sacramento	594,889
	San Diego	250,414
Delaware	New Castle	296,996
Florida	Dade	1,014,504
Georgia	DeKalb	448,686
Hawaii	Honolulu ¹	114,506
Maryland	Anne Arundel	344,654
	Baltimore	627,593
	Montgomery	599,028
	Prince George's	494,369
Texas	Harris	729,206
Utah	Salt Lake	270,989
Virginia	Fairfax	760,730
Washington	King	520,468

¹County was previously listed in this appendix; however, population dropped to below 250,000 in the 1990 Census.

[64 FR 68848, Dec. 8, 1999]

Appendix I to Part 122—Counties With Unincorporated Urbanized Areas Greater Than 100,000, But Less Than 250,000 According to the 1990 Decennial Census by the Bureau of the Census



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	Henrico	201,367
	Prince William	157,131
Washington	Pierce	258,530
	Snohomish	157,218

¹County was previously listed in this appendix; however, population dropped to below 100,000 in the 1990 Census.

[64 FR 68849, Dec. 8, 1999]

Appendix J to Part 122—NPDES Permit Testing Requirements for Publicly Owned Treatment Works (§122.21(j))

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Table 1A—Effluent Parameters for All POTWS

Biochemical oxygen demand (BOD-5 or CBOD-5)

Fecal coliform

Design Flow Rate

pH

Temperature

Total suspended solids

Table 1—Effluent Parameters for All POTWS With a Flow Equal to or Greater Than 0.1 MGD

Ammonia (as N)

Chlorine (total residual, TRC)

Dissolved oxygen

Nitrate/Nitrite

Kjeldahl nitrogen

Oil and grease

Phosphorus

Total dissolved solids

Table 2—Effluent Parameters for Selected POTWS

Hardness

Metals (total recoverable), cyanide and total phenols

1,2-dichloroethane

Trans-1,2-dichloroethylene

1,1-dichloroethylene

1,2-dichloropropane

1,3-dichloropropylene

Ethylbenzene

Methyl bromide

Methyl chloride

Methylene chloride

1,1,1,2-tetrachloroethane

Tetrachloroethylene

Toluene

1,1,1-trichloroethane

1,1,2-trichloroethane

Trichloroethylene

Vinyl chloride

Acid-extractable compounds

P-chloro-m-creso

2-chlorophenol

2,4-dichlorophenol

2,4-dimethylphenol

4,6-dinitro-o-cresol

2,4-dinitrophenol

2-nitrophenol

4-nitrophenol

Pentachlorophenol

Phenol

2,4,6-trichlorophenol

2,4-dinitrotoluene
2,6-dinitrotoluene
1,2-diphenylhydrazine
Fluoranthene
Fluorene
Hexachlorobenzene
Hexachlorobutadiene
Hexachlorocyclo-pentadiene
Hexachloroethane
Indeno(1,2,3-cd)pyrene
Isophorone
Naphthalene
Nitrobenzene
N-nitrosodi-n-propylamine
N-nitrosodimethylamine
N-nitrosodiphenylamine
Phenanthrene
Pyrene
1,2,4,-trichlorobenzene

[65 FR 42469, Aug. 4, 2000]

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