

# 61-9.122

## The National Pollutant Discharge Elimination System

Regulation History as Published in State Register			
Date	Document Number	Volume	Issue
July 27, 2001	2615	25	7
June 27, 2003	2783	27	6, Part 1
December 26, 2003	2858	27	12
February 25, 2005 (Errata)	2783	29	2
May 23, 2008	3155	32	5
November 26, 2010	4129	34	11
November 22, 2019	4888	43	11
May 26, 2023	5137	47	5

### Table of Contents

<b>PART A. DEFINITIONS AND GENERAL PROGRAM REQUIREMENTS .....</b>	<b>6</b>
122.1. Purpose and scope.....	6
122.2. Definitions.....	9
122.3. Exclusions.....	19
122.4. Prohibitions.....	20
122.5. Effect of a permit.....	21
122.6. Continuation of expiring permits.....	21
122.7. Confidentiality of information.....	22
<b>PART B. PERMIT APPLICATION AND SPECIAL NPDES PROGRAM REQUIREMENTS .....</b>	<b>22</b>
122.21. Application for a permit.....	22
122.22. Signatories to permit applications and reports.....	56
122.23. Concentrated animal feeding operations.....	57
122.24. Concentrated aquatic animal production facilities.....	62
122.25. Aquaculture projects.....	62
122.26. Storm water discharges.....	63

122.27. Silvicultural activities.....	89
122.28. General permits.....	89
122.29. New sources and new dischargers. ....	95
122.30. What are the objectives of the storm water regulations for small MS4s?.....	97
122.31. Indian Tribes. As a Tribe, what is my role under the NPDES storm water program? .....	97
122.32. Is an operator of a small MS4 regulated under the NPDES storm water program? .....	98
122.33. How does an operator of a regulated, small MS4 apply for an NPDES permit, and when must he apply? .....	102
122.34. As an operator of a regulated, small MS4, what will my NPDES MS4 storm water permit require? .....	103
122.35. May an operator of a regulated small MS4 share the responsibility to implement the minimum control measures with other entities? .....	106
122.36. As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in sections 122.33 through 122.35?.....	107
<b>PART C. PERMIT CONDITIONS.....</b>	<b>107</b>
122.41. Conditions applicable to all permits. ....	107
122.42. Additional conditions applicable to specified categories of NPDES permits. ....	116
122.43. Establishing permit conditions. ....	120
122.44. Establishing limitations, standards, and other permit conditions.....	120
122.45. Calculating NPDES permit conditions.....	129
122.46. Duration of permits. ....	132
122.47. Schedule of compliance. ....	132
122.48. Requirements for recording and reporting of monitoring results. ....	134
122.50. Disposal of pollutants into publicly-owned treatment works. ....	135
<b>PART D. TRANSFER, MODIFICATION, REVOCATION, AND REISSUANCE AND TERMINATION OF PERMITS.....</b>	<b>136</b>
122.61. Transfer of permits. ....	136
122.62. Modification or revocation and reissuance of permits. ....	136
122.63. Minor modifications of permits.....	139
122.64. Termination of permits. ....	140
<b>APPENDIX A. NPDES Primary Industry Categories.....</b>	<b>141</b>
<b>APPENDIX C. Criteria for Determining a Concentrated Aquatic Animal Production Facility..</b>	<b>143</b>
<b>APPENDIX D. NPDES PERMIT APPLICATION TESTING REQUIREMENTS .....</b>	<b>143</b>
<b>APPENDIX E. RAINFALL ZONES OF THE UNITED STATES .....</b>	<b>143</b>

**APPENDIX F. INCORPORATED PLACES WITH POPULATIONS GREATER THAN 250,000 ACCORDING TO THE 1990 DECENNIAL CENSUS BY BUREAU OF CENSUS ..... 143**

**APPENDIX G. INCORPORATED PLACES WITH POPULATIONS GREATER THAN 100,000 AND LESS THAN 250,000 ACCORDING TO 1990 DECENNIAL CENSUS BY BUREAU OF CENSUS ..... 143**

**APPENDIX H. COUNTIES WITH UNINCORPORATED URBANIZED AREAS WITH A POPULATION OF 250,000 OR MORE ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF CENSUS..... 143**

**APPENDIX I. COUNTIES WITH UNINCORPORATED URBANIZED AREAS GREATER THAN 100,000, BUT LESS THAN 250,000 ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF CENSUS..... 144**

**APPENDIX J. NPDES PERMIT TESTING REQUIREMENTS FOR PUBLICLY OWNED TREATMENT WORKS..... 144**

**PART A**  
**DEFINITIONS AND GENERAL PROGRAM REQUIREMENTS**

**122.1. Purpose and scope.**

(a) Coverage

(1) The regulatory provisions contained in R.61-9.122 and 124 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 by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, and Pub. L. 100-4; 33 U.S.C. 1251 et seq.) and the South Carolina Pollution Control Act, S.C. Code Ann. 48-1-10, et seq.

(2) These provisions cover basic Department permitting requirements (122) and procedures for Department processing of permit applications and appeals (124).

(3) These provisions also establish the requirements for public participation in State permit issuance and enforcement and related variance proceedings.

(4) The NPDES permit program has separate, additional provisions that are used by the Department to determine what requirements must be placed in permits, if issued. These provisions are located at S.C. R61-9.125, 129, 133, and 503, and 40 CFR 136, 40 CFR subchapter N (parts 400 through 471) and 40 CFR 125.80-89 (Federal Register December 18, 2001 amended June 19, 2003), which are hereby adopted by reference.

(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 State” and into “waters of the United States.” The terms “pollutant”, “point source”, “waters of the State”, and “waters of the United States” are defined in section 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 a Land Application or State permit issued by the Department under R.61-9.505, as adequate to assure compliance with section 405 of the CWA.

(3) The Department may designate any person subject to the standards for sewage sludge use and disposal as a “treatment works treating domestic sewage” as defined in section 122.2, where it 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 section 122.21 within 180 days of being notified by the Department that a permit is required. The Department’s decision to designate a person as a “treatment works treating domestic sewage” under this paragraph shall be stated in the fact sheet for the permit.

(4) The following are point sources requiring NPDES permits for discharges:

(i) Concentrated animal feeding operations as defined in section 122.23;

- (ii) Concentrated aquatic animal production facilities as defined in section 122.24;
- (iii) Discharges into aquaculture projects as set forth in section 122.25;
- (iv) Discharges of storm water as set forth in sections 122.26 and 122.30 through 36; and,
- (v) Silvicultural point sources as defined in section 122.27.

(c) The Department may incorporate the requirements (either directly or by reference), for permits for the Use and Disposal of Sewage Sludge (see R.61-9.503), or the Use and Disposal of Industrial Sludge (see R.61-9.504) into NPDES permit(s) that may be issued to the applicant. A separate Land Application permit (see R.61-9.505) may be issued by the Department for the activities covered under R.61-9.503 or R.61-9.504, unless an NPDES permit is required for the activity.

(d) Relation to other requirements.

(1) Permit application forms. Applicants for permits must submit their applications on permit application forms designated by the Department. The basic information required in the general form (Form 1) and the additional information required by NPDES applications (Forms 2 a through e) are listed in section 122.21.

(2) Technical Regulations. The NPDES permit program has separate additional regulations. These separate regulations are used by the Department to determine what requirements must be placed in permits if they are issued. These separate regulations are located at R.61-9.125, 129, 133, and 403; 40 CFR Part 136; Subchapter N (40 CFR Parts 400 through 402 and 404 through 460); R.61-9.503, R.61-9.504 and R.61-9.505.

(e) Public participation. This part of the regulation (R.61-9.122) establishes the requirements for public participation in NPDES permit issuance and enforcement and related variance proceedings.

(f) [Reserved]

(g) Authority.

(1) Section 48-1-90(a), S.C. Code of Laws (1976), provides that “it shall be unlawful for any person, directly or indirectly, to throw, drain, run, allow to seep, or otherwise discharge into the environment of the State organic or inorganic matter, including sewage, industrial wastes and other wastes, except as in compliance with a permit issued by the Department.” Section 301(a) of CWA provides that “Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.”

(2) Section 48-1-100(a), S.C. Code of Laws (1976), provides that “if, after appropriate public comment procedures, as defined by Department regulations, the Department finds that the discharge from the proposed outlet ... will not be in contravention of provisions of Chapter 1, Title 48, S.C. Code of Laws, a permit to construct and a permit to discharge must be issued to the applicant.” Section 402(a)(1) of CWA provides in part that “The [Department] may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, ... upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the [Department] determines are necessary to carry out the provisions of this Act.”

(3) Section 318(a) of CWA provides that “The [Department] is authorized, after public hearings, to permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision pursuant to section 402 of this Act.”

(4) Section 405 of CWA provides, in part, that “Where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 212 of this Act (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the [waters of the State], such disposal is prohibited except in accordance with a permit issued by the [Department] under section 402 of this Act.”

(5) Section 405(d)(4) of the CWA requires the Department, prior to promulgation of standards for sewage sludge use and disposal, to “impose conditions in permits issued to publicly owned treatment works under section 402 of this Act, or take such other measures as the [Department] deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge.”

(6) Section 405(f) of CWA provides that NPDES permits must include requirements implementing the standards for sludge use and disposal (40 CFR Part 503) “unless such requirements have been 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 [NPDES] permit programs approved by the Administrator....” Section 405(f) also authorizes the Department to issue permits with requirements for sludge use or disposal that assure compliance with 40 CFR Part 503 to any treatment works treating domestic sewage that is not subject to NPDES (i.e., has no point source discharge) and has not been issued a permit that includes applicable 40 CFR Part 503 standards under the other permit programs listed in section 405(f)(1) of the CWA.

(7) Sections 402(b), 318(b) and (c), and 405(c) and (f) of CWA authorize EPA approval of State NPDES permit programs for discharges from point sources, discharges to aquaculture projects, and use and disposal of sewage sludge.

(8) Section 304(i) of CWA provides that the Administrator shall promulgate guidelines establishing uniform application forms and other minimum requirements for the acquisition of information from dischargers in approved States and establishing minimum procedural and other elements of approved State NPDES programs.

(9) Section 48-1-40 authorizes the Department “after public hearing as herein provided, [to] adopt standards and determine what qualities of water ... shall indicate a polluted condition and these standards shall be promulgated and made a part of the rules and regulations of the Department.” Section 48-1-50(22) authorizes the Department to “[r]equire the owner or operator of any ... disposal system to establish and maintain such operational records; make reports; install, use, and maintain monitoring equipment or methods; sample and analyze ... discharges in accordance with established methods, at locations, intervals, and procedures as the Department shall prescribe; and provide such other information as the Department reasonably may require.” Section 48-1-50(23) authorizes the Department to “[a]dopt ... effluent control regulations, standards and limitations that are applicable to the entire State, that are applicable only within specified areas or zones of the State, or that are applicable only when a specified class of pollutant is present.” Section 501(a) of CWA provides that “The [Department] is authorized to prescribe such regulations as are necessary to carry out [its] functions under this Act.”

(10) Section 48-1-100(a) requires an opportunity for public comment before issuance of permits to discharge. Section 101(e) of CWA provides that “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 Act 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.”

## **122.2. Definitions.**

(a) The following definitions apply to this regulation, R.61-9.124, R.61-9.125, R.61-9.129, R.61-9.133, and R.61-9.403. Terms not defined in this section have the meaning given by the Clean Water Act (CWA) or the Pollution Control Act (PCA).

(b) Definitions:

“Administrator” means the Administrator of the Environmental Protection Agency or any employee of the Agency to whom the Administrator may by order delegate the authority to carry out his functions under section 307(a) of the CWA, or any person who shall by operation of law be authorized to carry out such functions.

Note: “Animal feeding operation” is defined at section 122.23.

“Applicable standards and limitations” means all State, interstate, and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the CWA, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal under section 301, 302, 303, 304, 306, 307, 308, 403 or 405 of CWA.

“Applicant” means a person applying to the Department for a State or NPDES permit to discharge wastes into the waters of the State or to operate a treatment works.

“Application” means the uniform NPDES application form, including subsequent additions, revisions, or modifications thereof promulgated by the Administrator of EPA, and adopted for use by the Board or a State permit application form.

Note: “Aquaculture project” is defined at section 122.25.

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

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

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

“BMP” means best management practices.

“Board” means the Board of Health and Environmental Control for the State of South Carolina and shall be inclusive of any agent designated by the Board to perform any function.

Note: “Bypass” is defined at section 122.41(m).

“CFR” means the Code of Federal Regulations, as amended.

“Class I sludge management facility” means any POTW identified under R.61-9.403.8(a), as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the Regional Administrator in conjunction with the Department because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

“Code” means the South Carolina Code of 1976, as amended.

“Commissioner” means the Commissioner of the S.C. Department of Health and Environmental Control, or his designated representative.

Note: “Concentrated animal feeding operation” is defined at section 122.23.

Note: “Concentrated aquatic animal feeding operation” is defined at section 122.24.

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

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

“CWA” means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, and Pub. L. 97-117, 33 U.S.C. 1251 et seq. Specific references to sections within the CWA will be according to Pub. L. 92-500 notation.

“CWA and regulations” means the Clean Water Act (CWA) and applicable regulations promulgated thereunder and includes State NPDES 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.

“Department” means the S.C. Department of Health and Environmental Control and shall also be inclusive of those persons within the Department authorized by the Board to administer the NPDES program or take any action in behalf of the Board.

“Direct discharge” means the discharge of a pollutant.

“Discharge” means any discharge or discharge of any sewage, industrial wastes or other wastes into any of the waters of the State, whether treated or not.



“Discharge of a pollutant”

(1) means:

(i) Any addition of any pollutant or combination of pollutants to waters of the State from any point source, or

(ii) 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.

(2) includes additions of pollutants into waters of the State from: surface runoff which is collected or channeled 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, and modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA’s.

“Discharger” means any person who discharges any treated or untreated sewage, industrial wastes, or other wastes into any of the waters of the State.

“DMR” means Discharge Monitoring Report.

“Draft Permit” means a document prepared by the staff of the Department, in accordance with R.61-9.124.6, prior to public notice of an application for a permit by a discharger. This document indicates the Department’s tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit to discharge. It contains proposed effluent standards and limitations, proposed compliance schedules and other proposed conditions or restrictions deemed necessary by the Department for a discharge. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in R.61-9.124.5, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as discussed in R.61-9.124.5, is not a draft permit. A “proposed permit” is not a draft permit.

“Effluent limitation” means any restriction imposed by the Department on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the State, the waters of the contiguous zone, or the ocean.

“Effluent limitations guidelines” means: A regulation published by the Administrator under section 304(b) of CWA to adopt or revise effluent limitations.

“Effluent standards and limitations” means restrictions or prohibitions of chemical, physical, biological, and other constituents which are discharged from point sources into State waters, including but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, pretreatment standards and schedules of compliance.

“Environmental Protection Agency” (EPA) means the United States Environmental Protection Agency.

“EPA” means the United States Environmental Protection Agency.

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

“Fact sheet” means a description of a discharge available to the public prepared by the Department staff pursuant to the guidelines, which includes, but is not limited to, information on the location of the discharge, rate of frequency of the discharge, components of the discharge, proposed requirements of the Department regarding the discharge, the location and identification of uses of the receiving waters, water quality standards and procedures for formulation of final requirements on the discharge by the Department.

“Federal Act” means the Federal Water Pollution Control Act (CWA), as amended.

“General permit” means an NPDES permit issued under section 122.28 authorizing a category of discharges or activities under the PCA and CWA within a geographical area.

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

“Indian country” means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

“Indirect discharger” means a non-domestic discharge introducing pollutants to a publicly owned treatment works.

“Industry” means a private person, corporation, firm, plant or establishment which discharges sewage, industrial wastes or other wastes into the waters of the State.

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

“Mailing list” means a list of persons requesting notification and information on public hearings, permits and other NPDES forms.

“Major Facility” means any NPDES facility or activity classified as such by the Regional Administrator in conjunction with the Department.

“Management agency” means an area-wide waste treatment management agency designated by the governor pursuant to Section 208(a) of the Federal Act.

“Maximum daily discharge limitation” means the highest allowable daily discharge.

“Minor discharge” means a discharge of wastewater which has a total volume of less than 50,000 gallons on every day of the year, does not closely affect the waters of another state and is not identified by the Department, the Regional Administrator or by the Administrator of EPA in regulations issued by him pursuant to Section 307(a) of the Federal Act, as a discharge which is not a minor discharge, except that in the case of a discharge of less than 50,000 gallons on any day of the year which represents 1 or 2 or more discharges from a single person which in total exceeds 50,000 gallons on any day of the year, then no discharge from the facility is a minor discharge.

Note: “Municipal separate storm sewer system” is defined at sections 122.26 (b).

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

“National Pollutant Discharge Elimination System” 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.

“New discharger”

(1) means any building, structure, facility, or installation:

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

(2) includes an indirect discharger which commences discharging into waters of the State 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 Department’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 Department 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 Department shall consider the factors specified in section 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:

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

(2) 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 established by the CWA.

“NPDES form” means any issued permit or any uniform national form used by the Department developed for use in the NPDES, including a NPDES application, a Refuse Act permit application and a reporting form.

“NPDES permit” means a permit issued by the Department to a discharger pursuant to regulations adopted by the Board for all point source discharges into surface waters, and shall constitute a final determination of the Board.

“Non-compliance list” means a list of dischargers, prepared by the Department pursuant to this regulation and the guidelines for transmittal to the Regional Administrator, who fail or refuse to comply with a compliance schedule in a NPDES permit issued pursuant to the State law.

“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 the Department to implement the requirements of this regulation, 40 CFR Parts 123, and R.61-9.124. Permit includes an NPDES general permit (section 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 any individual, public or private corporation, political subdivision, association, partnership, corporation, municipality, State or Federal agency, industry, copartnership, firm, trust, estate, any other legal entity whatsoever, or an agent or employee thereof.

“Pesticide discharges to waters of the State from pesticide application” means the discharges that result from the application of biological pesticides, and the application of chemical pesticides that leave a residue, from point sources to waters of the United States. In the context of this definition of pesticide discharges to waters of the United States from pesticide application, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by law (33 U.S.C. 1342(i); 33 U.S.C. 1362(14)).

“Pesticide residue” for the purpose of determining whether an NPDES permit is needed for discharges to waters of the State from pesticide application, means that portion of a pesticide application that is discharged from a point source to waters of the United States and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

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

“Point source discharge” means a discharge which is released to the waters of the State by a discernible, confined and discrete conveyance, including but not limited to a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft from which waste is or may be discharged.

“Pollutant”

(1) means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

(2) does not mean:

(i) Sewage from vessels; or

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

“Pollution Control Act” (PCA) means the South Carolina Pollution Control Act (PCA), S.C. Code Ann. section 48-1-10 et seq. (1976).

“POTW” means publicly owned treatment works.

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

“Privately owned treatment works” means any device or system which both is used to treat wastes from any facility whose operator is not the operator of the treatment works and is not a POTW.

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

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

“Publicly owned treatment works” or POTW means a treatment works as defined by section 212 of the Clean Water Act, which is owned by a state or municipality (as defined by section 502[4] of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality, as defined in section 502(4) of the CWA, which has jurisdiction over the Indirect Discharges to and the discharge from such a treatment works.

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

“Refuse Act permit application” means an application for a permit issued under authority of Section 13 of the United States Rivers and Harbors Act of March 3, 1899.

“Regional Administrator” means the Regional Administrator of Region IV of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

“Reporting form” means the uniform NPDES reporting form, including subsequent additions, revisions or modifications thereof, adopted by the Department for use in administering this regulation, or a State form prescribed by the Department for use in administering this regulation, for reporting data and information to the Department by a discharger on monitoring and other conditions of permits.

“Satellite sewer system” means a sewer system that is owned or operated by one person that discharges to a system that is owned or operated by a different person. Satellite sewer systems depend on a separate person for final wastewater treatment and discharge and include systems approved under R.61-9.505.8.

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

“Secondary industry category” means any industry category which is not a primary industry category.

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

“Septage” means the liquid and solid material pumped from septic tank, cesspool or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

“Sewage from vessels” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under section 312 of CWA.

“Sewage Sludge” means 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.

“Sewer system” means any system of wastewater collection lines, sewers, interceptors and pump stations, except for service connections, as defined by R.61-67. In this part, a sewer system includes “sewage system” as defined by the Pollution Control Act.

Note: “Silvicultural point source” is defined at section 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 section 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 the State of South Carolina.

“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.

“State Law” means the S.C. Pollution Control Act (PCA), specifically 48-1-10 through 48-1-350 of the South Carolina Code of 1976, and any subsequent amendments thereto.

“State permit” See R-61-9.505.2 for definition.

Note: “Storm water” is defined at section 122.26(b)(13).

Note: “Storm water discharge associated with industrial activity” is defined at section 122.26(b)(14).

“Total dissolved solids” (TDS) 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.

“Trade secret” means the whole or any portion or phase of any manufacturing proprietary process or method, not patented, which is secret, useful in compounding an article of trade having a commercial value, and the secrecy of which the owner has taken reasonable measures to prevent from becoming available to persons other than those selected by the owner to have access thereto to limited purpose. It shall not be construed for purpose of this regulation to include any information relative to the quantity and character of waste products or their constituents discharged into waters of the State.

“Treatment works” means any plant, disposal field, lagoon, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste or other wastes.

“Treatment works treating domestic sewage” (TWTDS) means a POTW or any other sewage sludge or waste water treatment devices or system, 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.

“TWTDS” means treatment works treating domestic sewage.

Note: “Upset” is defined at section 122.41(n).

“Variance” means any mechanism or provision under section 301 or 316 of CWA, PCA, or R.61-9.125, or in the applicable effluent limitations guidelines which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on section 301(c), 301(g), 301(h), 301(i), or 316(a) of CWA.

“Vessel” means any contrivance used or capable of being used for navigation upon water, whether or not capable of self-propulsion, including foreign and domestic vessels engaged in commerce upon the waters of this State, passenger or other cargo carrying vessels, privately owned recreational watercraft or any other floating craft.

“Waste” shall be synonymous with sewage, industrial waste, and other wastes.

“Waters of the State” means lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction.

“Waters of the United States” or “waters of the U.S.”;

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

(2) All interstate waters, including interstate “wetlands;”

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

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

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

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

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

(5) Tributaries of waters identified in paragraphs (1) through (4) of this definition;

(6) The territorial sea; and



(7) Wetlands adjacent to waters (other than waters which are themselves wetlands) identified in paragraphs (1) through (6) of this definition.

(8) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA are not waters of the United States.

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

“Whole effluent toxicity” means the aggregate toxic effect of an effluent measured directly by a toxicity test.

### **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 State 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 State are eliminated. (See also section 122.47(b)). This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other party not leading to treatment works.

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

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

(f) Return flows from irrigated agriculture.

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

#### **122.4. Prohibitions.**

No permit may be issued:

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

(b) When the applicant is required to obtain a State or other appropriate certification under section 401 of CWA and R.61-9.124.53 and that certification has not been obtained or waived;

(c) By the Department where the Regional Administrator has objected to issuance of the permit under 40 CFR Part 123.44;

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

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

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

(g)(1) For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of CWA, unless the Department finds such variance necessary to protect the public health, safety, and welfare;

(2) In reissuance of a permit which requires connection to a regional sewer system or other treatment facilities under the water quality management plan under section 208 of the CWA, once the permittee is notified by the Department that the regional sewer system is operational.

(h) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances;

(1) Before the promulgation of guidelines under section 403(c) of CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the Department determines permit issuance to be in the public interest; or

(2) After promulgation of guidelines under section 403(c) of CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.

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

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

(2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The Department may waive the submission of information by the new source or new discharger required by paragraph (i) of this section if the Department determines that the Department already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph (i)(2) is to be included in the fact sheet to the permit under section 124.56(b)(1).

### **122.5. Effect of a permit.**

(a)(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 the Pollution Control Act and 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 section 122.62 and section 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) 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.

### **122.6. Continuation of expiring permits.**

(a) The conditions of an expired permit continue in force under S.C. Code section 1-23-370(b) until the effective date of a new permit (see R.61-9.124.15), except when the permit requires connection to a regional sewer system or other treatment facilities under the water quality management plan under section 208 of the CWA and the permittee has been notified by the Department that the regional sewer system is operational, if:

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

(2) The Department, through no fault of the permittee does not issue a new permit with an effective date under R.61-9.124.15 on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints); or

(3) The permittee has submitted a timely application under section 122.21 which is a complete application for a new permit and makes a timely appeal of the new permit.

(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 Department 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 section 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 R.61-9.124 with appropriate conditions; or

(4) Take other actions authorized by these regulations.

#### **122.7. Confidentiality of information.**

(a) [Reserved]

(b) Claims of confidentiality for the following information will be denied:

(1) The name and address of any permit applicant or permittee;

(2) Permit applications, permits, and effluent data.

(c) Information required by NPDES application forms provided by the Department under section 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

### **PART B PERMIT APPLICATION AND SPECIAL NPDES PROGRAM REQUIREMENTS**

#### **122.21. Application for a permit.**

(a) Duty to apply.

(1) Any person who discharges or proposes to discharge pollutants or who owns or operates a “sludge-only facility” whose sewage sludge use or disposal practice is regulated by R.61-9.503 and who does not have an effective permit, except persons covered by general permits under section 122.28, excluded under section 122.3, or a user of a privately owned treatment works, unless the Department requires otherwise under section 122.44(m), must submit a complete application to the Department in accordance with this section and R.61-9.124. All concentrated animal feeding operations have a duty to seek coverage under an NPDES permit, as described in section 122.23(d).

(2) Application Forms:

(i) All applicants for State-issued permits must submit applications on EPA permit application forms. More than one application form may be required from a facility depending on the number and types of discharges or outfalls found there. Applications for State-issued permits must be submitted as follows:

(A) All applicants, other than POTWs, TWTDS, vessels, and pesticide applicators must submit Form 1.

(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 Department.

(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 Section 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 Department.

(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 the Department.

(iii) Applicants can obtain copies of these forms by contacting the Department.

(3) 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.

(4) A person discharging or proposing to discharge wastes into the waters of the State shall promptly make application for and obtain a valid NPDES Permit and, if required, a valid State Construction Permit.

(b) [Reserved]

(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 Department. 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 section 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 section 122.26(c)(1)(i)(G) and (c)(1)(ii).

(2) Permits under section 405(f) of CWA. All “treatment works treating domestic sewage” (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 paragraphs (c)(2)(i) of this section must submit the information listed in paragraphs (c)(2)(ii)(A) through (E) of this section to the Department 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 Department. The Department will determine when such TWTDS must submit a full permit application.

(A) The TWTDS's name, mailing address, location, and status as federal, State, private, public or other entity;

(B) The applicant's name, address, telephone number, and ownership status;

(C) A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of paragraph (q)(8)(iv) of this section, the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal, and the location of any land application sites;

(D) Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and

(E) The most recent data the TWTDS may have on the quality of the sewage sludge.

(iii) Notwithstanding paragraphs (c)(2)(i) or (ii) of this section, the Department may require permit applications from any TWTDS at any time if the Department determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

(iv) Any TWTDS that commences operations after promulgation of an applicable "standard for sewage sludge use or disposal" must submit an application to the Department at least 180 days prior to the date proposed for commencing operations.

(3) [Reserved]

(d) Duty to reapply.

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

(2) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that the Department may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date; and

(3) [Reserved]

(e) Completeness.

(1) The Department shall not issue a permit before receiving a complete application for a permit except for NPDES general permits. An application for a permit is complete when the Department receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

(2) A permit application shall not be considered complete if a permitting authority has waived application requirements under paragraphs (j) or (q) of this section and EPA has disapproved the waiver application. If a waiver request has been submitted to EPA more than two hundred ten (210) days prior to permit expiration and EPA has not disapproved the waiver application one hundred eighty-one (181) days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

(3) Except as specified in 122.21(e)(3)(ii), a permit application shall not be considered complete unless all required quantitative data are collected in accordance with sufficiently sensitive analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O.

(i) For the purposes of this requirement, a method approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O is “sufficiently sensitive” when:

(A) The method minimum level (ML) is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter; or

(B) The method ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility’s discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or

(C) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter.

Note to paragraph (e)(3)(i):

Consistent with 40 CFR Part 136, applicants have the option of providing matrix or sample specific minimum levels rather than the published levels. Further, where an applicant can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of “sufficiently sensitive,” the analytical results are not consistent with the QA/QC specifications for that method, then the Department may determine that the method is not performing adequately and the applicant should select a different method from the remaining EPA-approved methods that is sufficiently sensitive consistent with 40 CFR 122.21(e)(3)(i). Where no other EPA-approved methods exist, the applicant should select a method consistent with 40 CFR 122.21(e)(3)(ii).

(ii) When there is no analytical method that has been approved under 40 CFR Part 136, required under 40 CFR chapter I, subchapter N or O, and is not otherwise required by the Department, the applicant may use any suitable method but shall provide a description of the method. When selecting a suitable method, other factors such as a method’s precision, accuracy, or resolution may be considered when assessing the performance of the method.

(4) The Department, at its discretion, or upon request of the Regional Administrator, may request of an applicant any additional information deemed necessary to complete or correct deficiencies in a Refuse Act permit application, before processing the application or issuing or denying the issuance of a permit.

(5) The Department may take enforcement action as prescribed by the State law or this regulation against any person who fails to file a complete application, if deficiencies are not corrected or complete information is not supplied within sixty (60) days to the Department following its request.

(f) Information requirements. All applicants for NPDES permits, other than POTW and other TWTDS, vessels, and pesticide applicators, must provide the following information to the Department, using the application form provided by the Department. Additional information required of applicants is set forth in paragraphs (g) through (k) of this section.

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

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

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

(4) The operator's name, address, telephone number, electronic mail address, 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, activity, or type project.



(9) An indication of whether the facility uses cooling water and the source of the cooling water.

(10) An indication of whether the facility is requesting any of the variances at Section 122.21(m) if known at the time of application.

(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 section 122.21(h), shall provide the following information to the Department, using application forms provided by the Department.

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

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

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

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

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

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

(7) Effluent characteristics.

(i) Information on the discharge of pollutants specified in this paragraph (g)(7) (except information on storm water discharges which is to be provided as specified in section 122.26). When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is

approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Department may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraphs (g)(7)(vi) and (vii) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition for discharges other than storm water discharges, the Department may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged.

(ii) Storm water discharges. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges under section 122.26(d) may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Department). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in section 122.26(c)(1). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in section 122.26 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The Department 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 40 CFR Part 136, 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:

(A) Biochemical oxygen demand, 5-day (BOD<sub>5</sub>)

(B) Chemical oxygen demand

- (C) Total organic carbon
- (D) Total suspended solids
- (E) Ammonia (as N)
- (F) Temperature (both winter and summer)
- (G) pH

(iv) The Department 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 to this regulation) 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 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 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 40 CFR 122.21.]

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

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

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

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

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

(ix) Where quantitative data are required in paragraphs (g)(7)(i) through (viii) of this section, existing data may be used, if available, in lieu of sampling done solely for the purpose of the application, provided that: All data requirements are met; sampling was performed, collected, and analyzed no more than four and one-half (4.5) years prior to submission; all data are representative of the discharge; and all available representative data are considered in the values reported.

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

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

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

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

(10) [Reserved]

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

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

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

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

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

(A) Biochemical Oxygen Demand (BOD<sub>5</sub>).

(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) (only if non-contact cooling water is or will be discharged).

(G) Total Organic Carbon (TOC) (only 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 Department 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 section 122.21(h)(4)) by providing quantitative data in accordance with that section no later than two years after commencement of discharge. However, the applicant need not complete those portions of Item IV requiring tests which he has already performed and reported under the discharge monitoring requirements of his NPDES permit.

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

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

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

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

(8) Certification. Signature of certifying official under section 122.22.

(i) Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities. New and existing concentrated animal feeding operations (defined in section 122.23) and concentrated aquatic animal production facilities (defined in section 122.24) shall provide the following information to the Department, using the application form provided by the Department:

(1) For concentrated animal feeding operations:

(i) The name of the owner or operator;

(ii) The facility location and mailing addresses;

(iii) Latitude and longitude of the production area (entrance to production area);

(iv) A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of paragraph (f)(7) of this section;

(v) Specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

(vi) The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, under-floor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);

(vii) The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

(viii) Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons);

(ix) Estimated amounts of manure, litter, and process wastewater transferred to other persons per year (tons/gallons); and

(x) For CAFO that must seek coverage under a permit after December 31, 2006, certification that a nutrient management plan has been completed and will be implemented upon the date of permit coverage.

(2) For concentrated aquatic animal production facilities:

(i) The maximum daily and average monthly flow from each outfall.

(ii) The number of ponds, raceways, and similar structures.

(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 POTW and other dischargers designated by the Department must provide, at a minimum, the information in this paragraph to the Department, using Form 2A or another application form provided by the Department. 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 Department. The Department may waive any requirement of this paragraph if he or she has access to substantially identical information. The Department 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, telephone number, and electronic mail address 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), annual average daily flow rate, and maximum daily flow rate for each of the previous 3 years;

(vii) Collection system. Identification of type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and

(viii) Outfalls and other discharge or disposal methods. The following information for outfalls to waters of the State and/or of the United States and other discharge or disposal methods:

(A) For effluent discharges to waters of the State and/or of the United States, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(B) For wastewater discharged to surface impoundments:

(1) The location of each surface impoundment;

(2) The average daily volume discharged to each surface impoundment; and

(3) Whether the discharge is continuous or intermittent;

(C) For wastewater applied to the land:

(1) The location of each land application site;

(2) The size of each land application site, in acres;



(3) The average daily volume applied to each land application site, in gallons per day; and

(4) Whether land application is continuous or intermittent;

(D) For effluent sent to another facility for treatment prior to discharge:

(1) The means by which the effluent is transported;

(2) The name, mailing address, contact person, phone number, and electronic mail address of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(3) The name, mailing address, contact person, phone number, electronic mail address, and NPDES permit number (if any) of the receiving facility; and

(4) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(E) For wastewater disposed of in a manner not included in paragraphs (j)(1)(viii)(A) through (D) of this section (e.g., underground percolation, underground injection):

(1) A description of the disposal method, including the location and size of each disposal site, if applicable;

(2) The annual average daily volume disposed of by this method, in gallons per day; and

(3) Whether disposal through this method is continuous or intermittent;

(ix) An indication of whether the applicant is operating under or requesting to operate under a variance as specified at Section 122.21(n), if known at the time of application.

(2) Additional Information. All applicants with a design flow greater than or equal to 0.1 mgd must provide the following information:

(i) Inflow and infiltration. The current average daily volume of inflow and infiltration, in gallons per day, 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;

(C) Latitude and longitude, to the nearest second;

(D) Distance from shore and depth below surface;

(E) Average daily flow rate, in million gallons per day;

(F) The following information for each outfall with a seasonal or periodic discharge:

(1) Number of times per year the discharge occurs;

(2) Duration of each discharge;

(3) Flow of each discharge; and

(4) Months in which discharge occurs; and

(G) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used;

(ii) Description of receiving waters. The following information (if known) for each outfall through which effluent is discharged to waters of the state and or of the United States:

(A) Name of receiving water;

(B) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;

(C) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and

(D) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable);

(iii) Description of treatment. The following information describing the treatment provided for discharges from each outfall to waters of state and/or the United States:

(A) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:

(1) Design biochemical oxygen demand (BOD<sub>5</sub> or CBOD<sub>5</sub>) removal (percent);

(2) Design total suspended solids (TSS) removal (percent); and, where applicable;

(3) Design phosphorus (P) removal (percent);

(4) Design nitrogen (N) removal (percent); and

(5) Any other removals that an advanced treatment system is designed to achieve.

(B) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination);

(4) Effluent monitoring for specific parameters.

(i) As provided in paragraphs (j)(4)(ii) through (x) of this section, all applicants must submit to the Department effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the State, except for CSOs. The Department may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The Department may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone. For POTWs applying prior to

commencement of discharge, data shall be submitted no later than twenty-four (24) months after the commencement of discharge;

(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 R.61-9.122. 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 R.61-9.122, and for any other pollutants for which the State or EPA have established water quality standards applicable to the receiving waters:

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

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

(C) Other POTW, as required by the Department;

(v) The Department 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 Department 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. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. 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 Department, metals must be reported as total recoverable.

(5) Effluent monitoring for whole effluent toxicity.

(i) All applicants must provide an identification of any whole effluent toxicity tests conducted during the four and one-half years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge. For POTWs applying prior to commencement of discharge, data shall be submitted no later than twenty-four (24) months after the commencement of discharge.

(ii) As provided in paragraphs (j)(5)(iii)-(ix) of this section, the following applicants must submit to the Department the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(A) All POTW with design flow rates greater than or equal to one million gallons per day;

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

(C) Other POTW, as required by the Department, based on consideration of the following factors:

(1) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(2) The ratio of effluent flow to receiving stream flow;

(3) Existing controls on point or non-point sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(4) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water or a water designated as an outstanding natural resource water; or

(5) Other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the Department determines could cause or contribute to adverse water quality impacts.

(iii) Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the Department may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The Department may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

(iv) Each applicant required to perform whole effluent toxicity testing pursuant to paragraph (j)(5)(ii) of this section must provide:

(A) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(B) Results from four tests performed at least annually in the four and one half year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the permitting authority.

(v) Applicants must conduct tests with multiple species (no less than two species; e.g., fish, invertebrate, plant), and test for acute or chronic toxicity, depending on the range of receiving water dilution. EPA recommends that applicants conduct acute or chronic testing based on the following dilutions:

(A) Acute toxicity testing if the dilution of the effluent is greater than 1000:1 at the edge of the mixing zone;

(B) Acute or chronic toxicity testing if the dilution of the effluent is between 100:1 and 1000:1 at the edge of the mixing zone. Acute testing may be more appropriate at the higher end of this range (1000:1), and chronic testing may be more appropriate at the lower end of this range (100:1); and

(C) Chronic testing if the dilution of the effluent is less than 100:1 at the edge of the mixing zone.

(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 Department, 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 Department.

(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.

(ix) For whole effluent toxicity data submitted to the Department 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 (SIU) and non-significant categorical industrial users (NSCIUs), as defined at 40 CFR 403.3(v), including SIUs and NSCIUs that truck or haul waste, discharging to the POTW; and

(ii) POTW with one or more SIU shall provide the following information for each SIU, as defined at R.61-9.403.3(o), 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 Department for POTW 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. POTW receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

(i) If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR Part 261, the applicant must report the following:

- (A) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe) and
- (B) The hazardous waste number and amount received annually of each hazardous waste;

(ii) If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and sections 3004(u) or 3008(h) of RCRA, the applicant must report the following:

- (A) The identity and description of the site(s) or facility(ies) at which the wastewater originates;
- (B) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR part 261, if known; and
- (C) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW.

(iii) Applicants are exempt from the requirements of paragraph (j)(7)(ii) of this section if they receive no more than fifteen kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e).

(8) Combined sewer overflows. Each applicant with combined sewer systems must provide the following information:

(i) Combined sewer system information. The following information regarding the combined sewer system:

(A) System map. A map indicating the location of the following:

(1) All CSO discharge points;

(2) Sensitive use areas potentially affected by CSO (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and

(3) Waters supporting threatened and endangered species potentially affected by CSO; and

(B) System diagram. A diagram of the combined sewer collection system that includes the following information:

(1) The location of major sewer trunk lines, both combined and separate sanitary;

(2) The locations of points where separate sanitary sewers feed into the combined sewer system;

(3) In-line and off-line storage structures;

(4) The locations of flow-regulating devices; and

(5) The locations of pump stations.

(ii) Information on CSO outfalls. The following information for each CSO discharge point covered by the permit application:

(A) Description of outfall. The following information on each outfall:

(1) Outfall number;

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

(3) Latitude and longitude, to the nearest second;

(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, electronic mail address, 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 section 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 section 122.26(c)(1) and this section (except as provided by section 122.26(c)(1)(ii)) shall provide the following information to the Department, using application forms provided by the Department.
- (1) Expected outfall location. The latitude and longitude to the nearest 15 seconds and the name of the receiving water.

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

(3) Flows, sources of pollution, and treatment technologies.

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

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

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

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

(5) Effluent characteristics. The requirements in paragraphs (h)(4)(i), (ii), and (iii) of this section that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of section 122.45(g) are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass.

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

(A) Biochemical Oxygen Demand (BOD).

(B) Chemical Oxygen Demand (COD).

(C) Total Organic Carbon (TOC).

(D) Total Suspended Solids (TSS).

(E) Flow.

(F) Ammonia (as N).

(G) Temperature (winter and summer).

(H) pH.

(ii) Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of Appendix D (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 the 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) O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnell) (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 twenty-four (24) months 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 section 122.21(g)). However, the applicant need not complete those portions of Item V requiring tests which have already been performed and reported under the discharge monitoring requirements of the 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 section 122.22.

(l) [Reserved]

(m) Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this paragraph:

(1) Fundamentally different factors.

(i) A request for a variance based on the presence of “fundamentally different factors” from those on which the effluent limitations guideline was based shall be filed as follows:

(A) For a request from best practicable control technology currently available (BPT) by the close of the public comment period under R.61-9.124.10.

(B) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than:

(1) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations; or

(2) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

(ii) The request shall explain how the requirements of the applicable regulatory and/or statutory criteria have been met.

(2) Non-conventional pollutants. A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called “non-conventional” pollutants) pursuant to section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to section 301(g) of the CWA (provided, however, that a section 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP) (when determined by the Department to be a pollutant covered by section 301(b)(2)(F)) and any other pollutant which the Administrator lists under section 301(g)(4) of the CWA) must be made as follows:

(i) For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

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

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

(2) 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977, and

(B) Submitting a completed request no later than the close of the public comment period under section 124.10 demonstrating that the requirements of section 124.13 and the applicable requirements of R.61-9.125 have been met.

(C) Notwithstanding this provision, the complete application for a request under section 301(g) shall be filed 180 days before EPA must make a decision.

(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 a initial request under paragraph (m)(2)(i)(A) of this section.

(3) [Reserved]

(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 R.61-9.124.10 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 R.61-9.124.10. A copy of the request as required under R.61-9.125, Part H, shall be sent simultaneously to the appropriate State or interstate certifying agency as required under R.61-9.125. (See 40 CFR 124.66 for special procedures for thermal variances in accordance with section 316(a) of the CWA.)

(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 R.61-9.125 Part 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 section 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 Department may notify a permit applicant before a draft permit is issued under section 124.6 that the draft permit will likely contain limitations which are eligible for variances. In the notice the Department may require the applicant as a condition of consideration of any potential variance request to submit a request, explaining how the requirements of R.61-9.125 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 Department. Extensions shall be no more than 6 months in duration.

(p) Record keeping. Except for information required by paragraph (q) 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 R.61-9.503 or R.61-9.504), 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 Department, using Form 2S or another application form approved by the Department. 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 Department. The Department may waive any requirement of this paragraph if he or she has access to substantially identical information. The Department 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) Facility information. All applicants must submit the following information:

- (i) The name, mailing address, and location of the TWTDS for which the application is submitted;
- (ii) Whether the facility is a Class I Sludge Management Facility;
- (iii) The design flow rate (in million gallons per day);
- (iv) The total population served; and
- (v) The status of the TWTDS as Federal, State, private, public, or other entity.

(2) Applicant information. All applicants must submit the following information:

- (i) The name, mailing address, telephone number, and electronic mail address of the applicant; and
- (ii) Indication whether the applicant is the owner, operator, or both.

(3) Permit information. All applicants must submit the facility's NPDES permit number, if applicable, and a listing of all other Federal, State, and local permits or construction approvals received or applied for under any of the following programs:

(i) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);

(ii) UIC program under the Safe Drinking Water Act (SDWA);

- (iii) NPDES program under the Clean Water Act (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 Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
  - (vii) Dredge or fill permits under section 404 of CWA;
  - (viii) Other relevant environmental permits, including State or local permits.
- (4) Indian country. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country.
- (5) Topographic map. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:
- (i) All sewage sludge management facilities, including on-site treatment, storage, and disposal sites and
  - (ii) Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant.
- (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 R.61-9.503 for the applicant's use or disposal practices on the date of permit application.
- (i) The Department 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 R.61-9.503.9(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 R.61-9.503.32(a) or the Class B pathogen reduction requirements in R.61-9.503.32(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 R.61-9.503.33(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.

(iv) If sewage sludge from the applicant’s facility meets the ceiling concentrations in R.61-9.503.13(b)(1), the pollutant concentrations in section 503.13(b)(3), the Class A pathogen requirements in section 503.32(a), and one of the vector attraction reduction requirements in section 503.33(b)(1) through (b)(8), and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this paragraph that is applied to the land.

(v) If sewage sludge from the applicant’s facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to paragraph (q)(8)(iv) of this section, the applicant must provide the following information:

(A) The total dry metric tons per 365-day period of sewage sludge subject to this paragraph that is sold or given away in a bag or other container for application to the land and

(B) A copy of all labels or notices that accompany the sewage sludge being sold or given away.



(vi) If sewage sludge from the applicant's facility is provided to another "person who prepares," as defined at R.61-9.503.9(r), and the sewage sludge is not subject to paragraph (q)(8)(iv) of this section, the applicant must provide the following information for each facility receiving the sewage sludge:

(A) The name, mailing address, and electronic mail address of the receiving facility;

(B) The total dry metric tons per 365-day period of sewage sludge subject to this paragraph that the applicant provides to the receiving facility;

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

(D) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under R.61-9.503.12(g); and

(E) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge.

(9) Land application of bulk sewage sludge. If sewage sludge from the applicant's facility is applied to the land in bulk form, and is not subject to paragraphs (q)(8)(iv), (v), or (vi) of this section, the applicant must provide the following information:

(i) The total dry metric tons per 365-day period of sewage sludge subject to this paragraph that is applied to the land;

(ii) If any land application sites are located in States other than the State where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the State(s) where the land application sites are located;

(iii) The following information for each land application site that has been identified at the time of permit application:

(A) The name (if any), and location for the land application site;

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

(C) A topographic map (or other map if a topographic map is unavailable) that shows the site's location;

(D) The name, mailing address, telephone number, and electronic mail address of the site owner, if different from the applicant;

(E) The name, mailing address, telephone number, and electronic mail address of the person who applies sewage sludge to the site, if different from the applicant;

(F) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined under R.61-9.503.11;

(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 R.61-9.503.33(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 R.61-9.503.13(b)(2) to the site:

(A) Whether the applicant has contacted the permitting authority in the State where the bulk sewage sludge subject to section 503.13(b)(2) will be applied, to ascertain whether bulk sewage sludge subject to section 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, phone number, and electronic mail address if available, 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 section 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 section 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 Department 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, telephone number, and electronic mail address 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:

(A) The name or number and the location of the active sewage sludge unit;

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

(C) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;

(D) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(E) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(F) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of  $1 \times 10^{-7}$  cm/sec;

(G) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any Federal, State, and local permit number(s) for leachate disposal;

(H) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(I) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(J) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(K) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(1) The name, contact person, mailing address, and electronic mail address of the facility and

(2) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(L) Whether any of the vector attraction reduction options of R.61-9.503.33(b)(9) through (b)(11) is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(M) The following information, as applicable to any ground water monitoring occurring at the active sewage sludge unit:

(1) A description of any ground water monitoring occurring at the active sewage sludge unit;

(2) Any available ground-water monitoring data, with a description of the well locations and approximate depth to ground water;

(3) A copy of any ground-water monitoring plan that has been prepared for the active sewage sludge unit;

(4) A copy of any certification that has been obtained from a qualified ground-water scientist that the aquifer has not been contaminated; and

(N) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.

(11) Incineration. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

(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, telephone number, and electronic mail address 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 R.61-9.503.43, 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;

(O) Identification of the monitoring equipment in place, including (but not limited to) equipment to monitor the following:

(1) Total hydrocarbons or Carbon Monoxide;

(2) Percent oxygen;

(3) Percent moisture; and

(4) Combustion temperature; and

(P) A list of all air pollution control equipment used with this sewage sludge incinerator.

(12) Disposal in a municipal solid waste landfill. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

(i) The name, contact person, mailing address, electronic mail address, location, and all applicable permit numbers of the MSWLF;

(ii) The total dry metric tons per 365-day period sent from this facility to the MSWLF;

(iii) A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

(iv) Information, if known, indicating whether the MSWLF complies with criteria set forth in 40 CFR part 258.

(13) Contractors. All applicants must provide the name, mailing address, telephone number, electronic mail address, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal.

(14) Other information. At the request of the Department, the applicant must provide any other information necessary to determine the appropriate standards for permitting under R.61-9.503, and must provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements.

(15) Signature. All applications must be signed by a certifying official in compliance with section 122.22.

#### **122.22. Signatories to permit applications and reports.**

(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.

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

(3) For a municipality, State, Federal, or other public agency or public facility: By either a principal executive officer, mayor, or other duly authorized employee or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

(i) The chief executive officer of the agency, or

(ii) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator, Region IV, EPA).

(b) All reports required by permits, and other information requested by the Department, shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

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

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall

responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,

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

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

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

(e) Electronic Reporting. If documents described in paragraph (a) or (b) of this section are submitted electronically by or on behalf of the NPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (including, in all cases, subpart D to Part 3) (Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission.

### **122.23. Concentrated animal feeding operations.**

(a) Scope. Concentrated animal feeding operations (CAFOs), as defined in paragraph (b) of this section or designated in accordance with paragraph (c) of this section, are point sources, subject to NPDES permitting requirements as provided in this section. Once an animal feeding operation is defined as a CAFO for at least one type of animal, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

(b) Definitions applicable to this section:

(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 forty-five (45) days or more in any twelve (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. The term cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs;

(iv) 2,500 swine, each weighing fifty-five pounds (55 lbs) or more;

(v) 10,000 swine, each weighing less than fifty-five pounds (55 lbs);

(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:

(i) The type and number of animals that it stables or confines falls within any of the following ranges:

(A) 200 to 699 mature dairy cows, whether milked or dry;



(B) 300 to 999 veal calves;

(C) 300 to 999 cattle other than mature dairy cows or veal calves. The term cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs;

(D) 750 to 2,499 swine each weighing fifty-five pounds (55 lbs) or more;

(E) 3,000 to 9,999 swine each weighing less than fifty-five pounds (55 lbs);

(F) 150 to 499 horses;

(G) 3,000 to 9,999 sheep or lambs;

(H) 16,500 to 54,999 turkeys;

(I) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(J) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(K) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(L) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system; or

(M) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and

(ii) Either one of the following conditions is met:

(A) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

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

(7) "Process wastewater" means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

(8) "Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg

washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

(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., the Department 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? Designations may be made by the Department. The Regional Administrator may also designate CAFOs 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.

(2) In making this designation, the Department 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 wastewaters 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 wastewaters into waters of the United States; and

(v) Other relevant factors.

(3) No AFO shall be designated under this paragraph unless the Department 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 man-made 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) NPDES permit authorization –

(1) Permit Requirement. A CAFO must not discharge unless the discharge is authorized by an NPDES permit. In order to obtain authorization under an NPDES permit, 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.

(2) Information to submit with permit application or notice of intent. An application for an individual permit must include the information specified in section 122.21. A notice of intent for a general permit must include the information specified in sections 122.21 and 122.28.

(3) Information to submit with permit application. A permit application for an individual permit must include the information specified in section 122.21. A notice of intent for a general permit must include the information specified in sections 122.21 and 122.28.

(e) Land application discharges from a CAFO are subject to NPDES requirements. The discharge of manure, litter, or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter, or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural stormwater discharge as provided in 33 U.S.C. 1362(14). For purposes of this paragraph, where the manure, litter, or process wastewater has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in section 122.42(e)(1)(vi) through (ix), a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO is an agricultural stormwater discharge.

(1) For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall be considered an agricultural stormwater discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in section 122.42(e)(1)(vi) through (ix).

(2) Unpermitted Large CAFOs must maintain documentation specified in section 122.42(e)(1)(ix) either on site or at a nearby office, or otherwise make such documentation readily available to the Department or Regional Administrator upon request.

(f) By when must the owner or operator of a CAFO have an NPDES permit if it discharges? A CAFO must be covered by a permit at the time that it discharges.

(g) [Reserved]

(h) Procedures for CAFOs seeking coverage under a general permit.

(1) CAFO owners or operators must submit a notice of intent when seeking authorization to discharge under a general permit in accordance with section 122.28(b). The Department must review notices of intent submitted by CAFO owners or operators to ensure that the notice of intent includes the information required by section 122.21(i)(1), including a nutrient management plan that meets the requirements of section 122.42(e) and applicable effluent limitations and standards, including those specified in 40 CFR part 412. When additional information is necessary to complete the notice of intent or clarify, modify, or supplement previously submitted material, the Department may request such information from the owner or operator. If the Department makes a preliminary determination that the notice of intent meets the requirements of sections 122.21(i)(1) and 122.42(e), the Department must notify the public of the Department's proposal to grant coverage under the permit to the CAFO and make available for public review and comment the notice of intent submitted by the CAFO, including the CAFO's nutrient management plan, and the draft terms of the nutrient management plan to be incorporated into the permit. The process for submitting public comments and hearing requests, and the hearing process if a request for a hearing is granted, must follow the procedures applicable to draft permits set forth in 40 CFR 124.11 through 124.13. The Department may establish, either by regulation or in the general permit, an appropriate period of time for the public to

comment and request a hearing that differs from the time period specified in 40 CFR 124.10. The Department must respond to significant comments received during the comment period, as provided in 40 CFR 124.17, and, if necessary, require the CAFO owner or operator to revise the nutrient management plan in order to be granted permit coverage. When the Department authorizes coverage for the CAFO owner or operator under the general permit, the terms of the nutrient management plan shall become incorporated as terms and conditions of the permit for the CAFO. The Department shall notify the CAFO owner or operator and inform the public that coverage has been authorized and of the terms of the nutrient management plan incorporated as terms and conditions of the permit applicable to the CAFO.

(2) For EPA-issued permits only. The Regional Administrator shall notify each person who has submitted written comments on the proposal to grant coverage and the draft terms of the nutrient management plan or requested notice of the final permit decision. Such notification shall include notice that coverage has been authorized and of the terms of the nutrient management plan incorporated as terms and conditions of the permit applicable to the CAFO.

(3) Nothing in this paragraph (h) shall affect the authority of the Department to require an individual permit under section 122.28(b)(3).

#### **122.24. Concentrated aquatic animal production facilities.**

(a) Permit requirement. Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the NPDES permit program.

(b) Definition. “Concentrated aquatic animal production facility” means a hatchery, fish farm, or other facility which meets the criteria in Appendix C of this regulation, or which the Department designates under paragraph (c) of this section.

(c) Case-by-case designation of concentrated aquatic animal production facilities.

(1) The Department may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the State. In making this designation the Department shall consider the following factors:

- (i) The location and quality of the receiving waters of the State;
- (ii) The holding, feeding, and production capacities of the facility;
- (iii) The quantity and nature of the pollutants reaching waters of the State; and
- (iv) Other relevant factors.

(2) A permit application shall not be required from a concentrated aquatic animal production facility designated under this paragraph until the Department has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

#### **122.25. Aquaculture projects.**

(a) Permit requirement. Discharges into aquaculture projects, as defined in this section, are subject to the NPDES permit program through section 318 of CWA, and in accordance with R.61-9.125 Part B.

(b) Definitions.

(1) “Aquaculture project” means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(2) “Designated project area” means the portions of the waters of the State within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

**122.26. Storm water discharges.**

(a) Permit requirement.

(1) Prior to October 1, 1992, a permit shall not be required for a discharge composed entirely of storm water, except:

(i) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(ii) A discharge associated with industrial activity (see section 122.26(a)(4));

(iii) A discharge from a large municipal separate storm sewer system;

(iv) A discharge from a medium municipal separate storm sewer system;

(v) A discharge which the Department 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 State. 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 section 122.2. The Department may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Department may consider the following factors:

(A) The location of the discharge with respect to waters of the State as defined at section 122.2;

(B) The size of the discharge;

(C) The quantity and nature of the pollutants discharged to waters of the State; and

(D) Other relevant factors.

(2) The Department may not require a permit for discharges of storm water 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 that has not come into contact with, any

overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

(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 Department 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 portion of all, discharges from the municipal separate storm sewer system;

(B) Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

(C) A regional authority may be responsible for submitting a permit application under the following guidelines:

(1) The regional authority together with co-applicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time part 1 of the application is due:

(2) The permit applicant or co-applicants shall establish their ability to make a timely submission of part 1 and part 2 of the municipal application;

(3) Each of the operators of municipal separate storm sewers within the systems described in paragraphs (b)(4)(i), (ii) and (iii) or (b)(7)(i), (ii), and (iii) of this section, that are under the purview of the designated regional authority, shall comply with the application requirements of paragraph (d) of this section.

(iv) One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Department may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

(v) Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

(vi) Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

(4) Discharges through large and medium municipal separate storm sewer systems. In addition to meeting the requirements of paragraph (c) of this section, an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing NPDES permit number.

(5) Other municipal separate storm sewers. The Department may issue permits for municipal separate storm sewers that are designated under paragraph (a)(1)(v) of this section on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

(6) Non-municipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Department, in its discretion, may issue: a single NPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the State; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.

(i) All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the State, with each discharger to the non-municipal conveyance a co-permittee to that permit.

(ii) Where there is more than one operator of a single system of such conveyances, all operators of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

(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 section 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 IV 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 section 122.32;

(B) The discharge is a storm water discharge associated with small construction activity pursuant to paragraph (b)(15) of this section;

(C) Either the Department 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) Either the Department 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), or (a)(9)(i)(D) of this section shall seek coverage under an NPDES permit in accordance with sections 122.33 through 122.35. Operators of non-municipal sources designated pursuant to paragraphs (a)(9)(i)(B), (a)(9)(i)(C), or (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 paragraph (a)(9)(i)(C) or (a)(9)(i)(D) of this section shall apply to the Department for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Department (see section 124.52[c] of this chapter).

(b) Definitions.

(1) “Co-permittee” means a permittee to an NPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

Note: “General permit application” is defined at 122.28(b)(4).

(2) “Illicit discharge” means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to an 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 a city, town, township, or village that is incorporated under the laws of the State of South Carolina.

(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

(iii) Owned or operated by a municipality other than those described in paragraph (b)(4)(i) or (ii) of this section and that are designated by the Department as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(4)(i) or (ii) of this section. In making this determination the Department may consider the following factors:

(A) Physical interconnections between the municipal separate storm sewers;



(B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(4)(i) of this section;

(C) The quantity and nature of pollutants discharged to waters of the State;

(D) The nature of the receiving waters; and

(E) Other relevant factors; or

(iv) The Department may, upon petition, designate as a large 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 paragraph (b)(4)(i), (ii), and (iii) of this section.

(5) “Major municipal separate storm sewer outfall” (or “major outfall”) means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

(6) “Major outfall” means a major municipal separate storm sewer outfall.

(7) “Medium municipal” separate storm sewer system means all municipal separate storm sewers that are either:

(i) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix G); or

(ii) Located in the counties listed in appendix I, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

(iii) Owned or operated by a municipality other than those described in paragraph (b) (7)(i) or (ii) of this section and that are designated by the Department as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(7)(i) or (ii) of this section. In making this determination the Department may consider the following factors:

(A) Physical interconnections between the municipal separate storm sewers;

(B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(7)(i) of this section;

(C) The quantity and nature of pollutants discharged to waters of the State;

(D) The nature of the receiving waters; or

(E) Other relevant factors; or

(iv) The Department 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), and (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 State;

(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 section 122.2.

Note: “Notice of Intent” is defined at 122.28(b)(4).

(9) “Outfall” means a point source as defined by section 122.2 at the point where a municipal separate storm sewer discharges to waters of the State 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 State and are used to convey waters of the State.

(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 regulation. 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 40 CFR Part 401); 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 this section) include those facilities designated under the provisions of paragraph (a)(1)(v) of this section. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14):

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) in paragraph (b)(14) of this section);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or

airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14)(i)-(vii) or (ix)-(xi) of this section are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under R.61-9.403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA;

(x) Construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25;

(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 and, in coastal counties within one-half (1/2) mile of a receiving water body (but not for single-family homes which are not part of a subdivision development), that result in any land disturbance 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 Department 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. S.W., Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket, 401 M Street S.W., Washington, DC. 20460, or the Office of the Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An operator must certify to the Department 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 Department that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

(C) As of December 21, 2020, all certifications submitted in compliance with paragraphs (b)(15)(i)(A) and (B) of this section must be submitted electronically by the owner or operator to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, owners or operators may be required to report electronically if specified by a particular permit or if required to do so by State law.

(ii) Any other construction activity designated by the Department, or in States with approved NPDES programs either the Department 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 Section 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 Section 122.26(b)(15)(i).)
Potential Designation: Optional Evaluation and Designation by the NPDES Permitting Authority or EPA Regional Administrator.	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 pollutants. (See Section 122.26(b)(15)(ii).)
Potential Waiver: Waiver from Requirements as Determined by the NPDES Permitting Authority.	Any automatically designated construction activity where the operator certifies: (1) A rainfall erosivity factor of less than five or (2) that the activity will occur within an area where controls are not needed based on a TMDL or, for non-impaired waters that do not require a TMDL, an equivalent analysis for the pollutants of concern. (See Section 122.26(b)(15)(i).)

---

(16) Small municipal separate storm sewer system means all separate storm sewers that are:

(i) Owned or operated by the United States, 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 and

(ii) Not defined as “large” or “medium” municipal separate storm sewer systems pursuant to paragraphs (b)(4) and (b)(7) of this section, or designated under paragraph (a)(1)(v) of this section.

(iii) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(17) Small MS4 means a small municipal separate storm sewer system.

(18) Municipal separate storm sewer system means all separate storm sewers that are defined as “large” or “medium” or “small” municipal separate storm sewer systems pursuant to paragraphs (b)(4), (b)(7), and (b)(16) of this section, or designated under paragraph (a)(1)(v) of this section.

(19) MS4 means a municipal separate storm sewer system.

(20) Uncontrolled sanitary landfill means a landfill or open dump whether in operation or closed, that does not meet the requirements for runoff or runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act.

(21) “Storm water point source” means a conveyance or system of conveyances (including but not limited to pipes, conduits, ditches and channels) primarily used for collecting and conveying storm water runoff and that:

(i) Is located in an urbanized area as designated by the Bureau of the Census;

(ii) Discharges from lands of facilities used for industrial or commercial activities; or

(iii) Is referenced under section 122.26 (Storm Water Discharges).

(c) Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity;

(1) Individual application. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Department is evaluating for designation (see R.61-9.124.52(c)) under paragraph (a)(1)(v) of this section and is not a municipal storm sewer, shall submit an NPDES application in accordance with the requirements of section 122.21 as modified and supplemented by the provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Form 1 and Form 2F. Applicants for discharges composed of storm water and non-storm water shall submit Form 1, Form 2C and Form 2F. Applicants for new sources or new discharges (as defined in section 122.2 of this regulation) composed of storm water and non-storm water shall submit Form 1, Form 2D, and Form 2F.

(i) Except as provided in section 122.26(c)(1)(ii)-(iv), the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

(A) A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of

its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials; each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, 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 R.61-79.262.34); 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 onsite 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 section 122.21 of this regulation 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, BOD<sub>5</sub>, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(4) Any information on the discharge required under section 122.21(g)(7) (vi) and (vii) of this regulation;

(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 section 122.21(g)(2), (g)(3), (g)(4), (g)(5), (g)(7)(iii), (g)(7)(iv), (g)(7)(v), (g)(7)(viii); and

(G) Operators of new sources or new discharges (as defined in section 122.2 of this regulation) 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 section 122.21(k)(3)(ii), (k)(3)(iii), and (k)(5).

(ii) An operator of an existing or new storm water discharge that is associated with industrial activity solely under paragraph (b)(14)(x) of this section or is associated with small construction activity solely under paragraph (b)(15) of this section, is exempt from the requirements of section 122.21(g) and paragraph (c)(1)(i) of this section.

(A) The location (including a map) and the nature of the construction activity;

(B) The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

(C) Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;

(D) Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;

(E) An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

(F) The name of the receiving water.

(iii) The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with paragraph (c)(1)(i) of this section, unless the facility:

(A) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987; or

(B) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or



(C) Contributes to a violation of a water quality standard.

(iv) The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

(v) Applicants shall provide such other information the Department may reasonably require under section 122.21(g)(13) of this regulation to determine whether to issue a permit and may require any facility subject to paragraph (c)(1)(ii) of this section to comply with paragraph (c)(1)(i) of this section.

(2) [Reserved]

(d) Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Department under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a co-applicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include:

(1) Part 1. Part 1 of the application shall consist of:

(i) General information. The applicant's 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 State:

(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 an 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 water quality standards);

(4) Identified and classified according to eutrophic condition of publicly owned lakes listed in State reports required under section 314(a) of the CWA (include the following: a description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

(5) [Reserved]

(6) Designated estuaries under the National Estuary Program under section 320 of the CWA;

(7) Recognized by the applicant as highly valued or sensitive waters;

(8) Defined by the State or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

(9) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

(D) Field screening. Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR Part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

(1) A grid system consisting of perpendicular north-south and east-west lines spaced  $\frac{1}{4}$  mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

(2) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

(3) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

(4) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

(5) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

(6) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

(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 ¼ 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 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 co-applicants 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.

(ii) Source identification. The location of any major outfall that discharges to waters of the State that was not reported under paragraph (d)(1)(iii)(B)(1) of this section. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge to the municipal separate storm sewer, storm water associated with industrial activity;

(iii) Characterization data. When “quantitative data” for a pollutant are required under paragraph (d)(2)(iii)(A)(3) of this paragraph, the applicant must collect a sample of effluent in accordance with section 122.21(g)(7) and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved, the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

(A) Quantitative data from representative outfalls designated by the Department (based on information received in part 1 of the application, the Department shall designate between five and ten outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system, or where there are less than five outfalls covered in the application, the Department shall designate all outfalls) developed as follows:

(1) For each outfall or field screening point designated under this subparagraph, samples shall be collected of storm water discharges from three storm events occurring at least one month apart in accordance with the requirements at section 122.21(g)(7) (the Department may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

(2) A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(3) For samples collected and described under paragraphs (d)(2)(iii)(A)(1) and (A)(2) of this section, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of appendix D, and for the following pollutants;

(a) Total suspended solids (TSS)

(b) Total dissolved solids (TDS)

(c) COD

(d) BOD<sub>5</sub>

(e) Oil and grease

(f) Fecal coliform

- (g) Fecal streptococcus
- (h) pH
- (i) Total Kjeldahl nitrogen
- (j) Nitrate plus nitrite
- (k) Dissolved phosphorus
- (l) Total ammonia plus organic nitrogen
- (m) Total phosphorus

(4) Additional limited quantitative data required by the Department for determining permit conditions (the Department 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 State from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the State from all identified municipal outfalls during a storm event (as described under section 122.21(g)(7)) for BOD<sub>5</sub>, 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 co-applicant. Proposed programs may impose controls on a system-wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Department 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;

(5) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under paragraph (d)(2)(iv)(C) of this section); and

(6) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities;

(B) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(1) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges; however, the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the State:; water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address

discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to waters of the State);

(2) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

(3) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides, and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

(4) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(5) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(6) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(7) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

(C) A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(1) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

(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, BOD<sub>5</sub>, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under section 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 Department 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 Department shall not exclude the operator of a discharge from a municipal separate storm sewer identified in Appendix F, G, H, or I 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 paragraph (a)(1) of this section that does not have an effective NPDES permit covering 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 which is not authorized by a storm water general permit, a permit application made pursuant to paragraph (C) of this section shall be submitted to the Department 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, power plant, or uncontrolled sanitary landfill, the permit application must be submitted to the Department by March 10, 2003.

(2) For any group application submitted in accordance with paragraph (c)(2) of this section:

(i) Part 1.

(A) Except as provided in paragraph (e)(2)(i)(B) of this section, part 1 of the application shall be submitted to the Department by September 30, 1991;

(B) Any municipality with a population of less than 250,000 shall not be required to submit a part 1 application before May 18, 1992.

(C) 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 other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications requirements are reserved.

(ii) Based on information in the part 1 application, the Department will approve or deny the members in the group application within 60 days after receiving part 1 of the group application.

(iii) Part 2.

(A) Except as provided in paragraph (e)(2)(iii)(B) of this section, part 2 of the application shall be submitted to the Department by October 1, 1992;

(B) Any municipality with a population of less than 250,000 shall not be required to submit a part 2 application before May 17, 1993.

(C) 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 other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications requirements are reserved.

(iv) Rejected facilities.

(A) Except as provided in paragraph (e)(2)(iv)(B) of this section, facilities that are rejected as members of the group shall submit an individual application (or obtain coverage under an applicable general permit) no later than 12 months after the date of receipt of the notice of rejection or October 1, 1992, whichever comes first.

(B) Facilities that are owned or operated by a municipality and that are rejected as members of part 1 group application shall submit an individual application no later than 180 days after the date of receipt of the notice of rejection or October 1, 1992, whichever is later.

(v) A facility listed under paragraph (b)(14)(i)-(xi) of this section may add on to a group application submitted in accordance with paragraph (e)(2)(i) of this section at the discretion of the Department, and only upon a showing of good cause by the facility and the group applicant; the request for the addition of the facility shall be made no later than February 19, 1992; the addition of the facility shall not cause the percentage of the facilities that are required to submit quantitative data to be less than 10%, unless there are over 100 facilities in the group that are submitting quantitative data; approval to become part of group application must be obtained from the group or the trade association representing the individual facilities.

(3) For any discharge from a large municipal separate storm sewer system;

(i) Part 1 of the application shall be submitted to the Department by November 18, 1991;

(ii) Based on information received in the part 1 application, the Department will approve or deny a sampling plan under paragraph (d)(1)(iv)(E) of this section within 90 days after receiving the part 1 application;

(iii) Part 2 of the application shall be submitted to the Department by November 16, 1992.

(4) For any discharge from a medium municipal separate storm sewer system;

(i) Part 1 of the application shall be submitted to the Department by May 18, 1992.

(ii) Based on information received in the part 1 application, the Department will approve or deny a sampling plan under paragraph (d)(i)(iv)(E) of this section within 90 days after receiving the part 1 application.

(iii) Part 2 of the application shall be submitted to the Department by May 17, 1993.

(5) A permit application shall be submitted to the Department within 180 days of notice, unless permission for a later date is granted by the Department [see R.61-9.124.52(c)], for:

(i) A storm water discharge that either the Department 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. New applications shall be submitted in accordance with the requirements of sections 122.21 and 122.26(c) 180 days before the expiration of such permits. Facilities with expired permits or permits due to expire before May 18, 1992, shall submit applications in accordance with the deadline set forth under paragraph (e)(1) of this section.

(7) The Department 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 Department shall issue or deny permits for storm water discharges associated with an 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 Department shall issue or deny permits for storm water discharges associated with an industrial activity no later than May 17, 1994, or, for any such municipality which fails to complete a Part II group permit application by May 17, 1993, one year after receipt of a complete permit application;

(ii) The Department 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 Department 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 activity identified in paragraph (b)(15)(i) of this section, see section 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 section 122.33 must be submitted to the Department by:

(i) March 10, 2003 if designated under section 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 section 40 CFR 123.35(d)(3) (see section 122.33(c)(1)); or

(ii) Within 180 days of notice, unless the NPDES permitting authority grants a later date, if designated under section 122.32(a)(2). (See section 122.33(c)(2)).

(f) Petitions.

(1) Any operator of a municipal separate storm sewer system may petition the Department to require a separate NPDES permit for any discharge into the municipal separate storm sewer system.

(2) Any person may petition the Department 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 State.

(3) The owner or operator of a municipal separate storm sewer system may petition the Department to reduce the Census estimates of population served by such separate system to account for storm water discharged to combined sewers as defined by 40 CFR 35.2005(b)(11) that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the NPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(4) Any person may petition the Department for the designation of a large, medium, or small municipal separate storm sewer system as defined by paragraph (b)(4)(iv), (b)(7)(iv), or (b)(16) of this section.

(5) The Department shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4 in which case the Department shall make a final determination on the petition within 180 days after its receipt.

(g) Conditional exclusion for “no exposure” of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is “no exposure” of industrial materials and activities to rain, snow, snowmelt and/or runoff, and the discharger satisfies the conditions in paragraphs (g)(1) through (g)(4) of this section. “No exposure” means that all industrial materials and activities are protected by a storm resistant-shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate

products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

(1) Qualification. To qualify for this exclusion, the operator of the discharge must:

(i) Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snowmelt, and runoff;

(ii) Complete and sign (according to section 122.22) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph (g)(2) of this section;

(iii) Submit the signed certification to the NPDES permitting authority once every five (5) years. As of December 21, 2020, all certifications submitted in compliance with this section must be submitted electronically by the owner or operator to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, owners or operators may be required to report electronically if specified by a particular permit or if required to do so by State law.

(iv) Allow the Department to inspect the facility to determine compliance with the “no exposure” conditions;

(v) Allow the Department to make any “no exposure” inspection reports available to the public upon request; and

(vi) For facilities that discharge through an MS4, upon request, submit a copy of the certification of “no exposure” to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(2) Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:

(i) Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak (“Sealed” means banded or otherwise secured and without operational taps or valves);

(ii) Adequately maintained vehicles used in material handling; and

(iii) Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

(3) Limitations.

(i) Storm water discharges from construction activities identified in paragraphs (b)(14)(x) and (b)(15) are not eligible for this conditional exclusion.

(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, snowmelt, 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 Department 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 Department in determining if the facility qualifies for the no-exposure exclusion:

(i) The legal name, address and phone number of the discharger [see section 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, or 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 section 122.22: “I certify under penalty of law that I have

88 | Regulation 61-9.122

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 submit a no exposure certification form once every five years to the Department and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the Department, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

### **122.27. Silvicultural activities.**

(a) Permit requirement. Silvicultural point sources, as defined in this section, are point sources subject to the NPDES permit program.

(b) Definitions.

(1) “Silvicultural point source” means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the State. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA section 404 permit (See 33 CFR 209.120 and Part 233).

(2) “Rock crushing and gravel washing facilities” means facilities which process crushed and broken stone, gravel, and riprap (See 40 CFR Part 436, Subpart B, including the effluent limitations guidelines).

(3) “Log sorting and log storage facilities” means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). (See 40 CFR Part 429, Subpart I, including the effluent limitations guidelines).

### **122.28. General permits.**

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

(1) Area. The general permit shall be written to cover one or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (a)(2)(ii) of this section, except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries such as:

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

- (ii) Sewer districts or sewer authorities;
- (iii) City, county, or State political boundaries;
- (iv) State highway systems;
- (v) Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- (vi) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or
- (vii) Any other appropriate division or combination of boundaries.
- (viii) Watershed 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 Department 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 40CFR122.44, 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 R61-9.124. Special procedures for issuance are found at 40 CFR 123.44.

(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 Department 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 Department 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 sections 122.6, 122.21 and 122.26. As of December 21, 2020, all notices of intent submitted in compliance with this section must be submitted electronically by the discharger (or treatment works treating domestic sewage) to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, discharger (or treatment works treating domestic sewage) may be required to report electronically if specified by a particular permit or if required to do so by State law.

(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 legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s), and other required data elements as identified in appendix A to 40 CFR Part 127. General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. All notices of intent shall be signed in accordance with section 122.22. Notices of intent for coverage under a general permit for concentrated animal feeding operations (CAFO) must include the information specified in section 122.21(i)(1), including a topographic map.

(iii) General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit.

(iv) General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice) in accordance with the permit either upon receipt of the notice of intent by the Department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the Department. Coverage may be terminated or revoked in accordance with paragraph (b)(3) of this section.

(v) Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity may, at the discretion of the Department, be authorized to discharge under a general permit without submitting a notice of intent where the Department finds that a notice of intent requirement would be inappropriate. In making such a finding, the Department shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Department shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

(vi) The Department may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under paragraph (b)(3)(iii) of this section.

### (3) Requiring an individual permit.

(i) The Department may require any person authorized by a general permit to apply for and obtain an individual NPDES permit, Land Application permit, or State permit (See R.61-9.505 for Land Application permit and State permit requirements). An applicant, any affected state, or interstate agency, the Regional Administrator, or any other interested person may petition the Department to take action under this paragraph. The petition shall indicate specific reasons why an individual permit is requested and the interest in or relationship of the petitioner to the applicant. Cases where an individual NPDES permit, Land Application permit, or State permit (See R.61-9.505 for Land Application permit and State permit requirements) may be required include the following:

(A) The discharger or “treatment works treating domestic sewage” is not in compliance with the conditions of the general NPDES permit, Land Application permit, or State permit (See R.61-9.505 for Land Application permit and State permit requirements);

(B) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

(C) Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit, Land Application permit, or State permit (See R.61-9.505 for Land Application permit and State permit requirements);

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

(E) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(F) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general NPDES permit, Land Application permit, or State permit (See R.61-9.505 for Land Application permit and State permit requirements); or

(G) The discharge(s) is a significant contributor of pollutants. In making this determination, the Department may consider the following factors:

- (1) The location of the discharge with respect to waters of the State;
- (2) The size of the discharge;
- (3) The quantity and nature of the pollutants discharged to waters of the State; and
- (4) Other relevant factors.

(ii) [Reserved]

(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 section 122.21, with reasons supporting the request, to the Department no later than 90 days after the publication of the general permit in the State Register. The request shall be processed in accordance with R.61-9.124. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

(iv) When an individual NPDES permit, Land Application permit, or State permit (See R.61-9.505 for Land Application permit and State permit requirements) is issued to an owner or operator otherwise subject to a general NPDES, Land Application, or State permit, the applicability of the general permit to the individual NPDES, Land Application, or State 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.

(4) Definitions:

(i) “General Permit Application” means an application filed by a potential permittee with the Department for a general permit.

(ii) Notice of Intent” (NOI) means a form used by potential permittees to notify the Department, within a specified time, that they intend to comply with the general permit or that they do not wish to be covered by the general permit and wish an individual permit.

(c) Degree of Waste Treatment Required. All pollutants shall receive such treatment or corrective action so as to insure compliance with the terms and conditions of the issued permit and with the following, whenever applicable:

(1) Effluent limitations established by the EPA pursuant to Sections 301, 302, 303, 306, 307, 308, 318, and 405 of the Federal CWA;

(2) Criteria and standards for Best Management practices established by EPA pursuant to Section 304(e) of the Federal CWA;

(3) Notwithstanding the above, more stringent effluent limitations may be required as deemed necessary by the Department (i) to meet any other existing federal laws or regulations, or (ii) to insure compliance with any applicable State water quality standards, effluent limitations, or treatment standards; and

(4) Calculations and specifications of effluent limits and standards shall be made in accordance with the provisions of section 122.45.

(d) Submittals and Signatory Requirements.

(1) An NOI shall be on forms as may be prescribed and furnished from time to time by the Department. A NOI shall be accompanied by all pertinent information as the Department may require in order to establish effluent limitations in accordance with this regulation, including, but not limited to, complete engineering reports, schedule of progress, plans, specifications, maps, measurements, quantitative and qualitative determinations, records, and all related materials.

(2) Engineering reports, plans, specifications, and other material submitted to the Department's NPDES or State permitting (See R.61-9.505 for Land Application permit and State permit requirements) divisions shall be signed by a Professional Engineer registered in State of South Carolina and competent in the field of sewage and industrial waste treatment.

(3) Material submitted shall be complete and accurate.

(4) Any NOI form submitted to the Department shall be signed in accordance with this Regulation.

(5) All other reports or requests for information required by the Department shall be signed by a person designated in section 122.22 or a duly authorized representative of such person, if:

(i) The representative so authorized is responsible for the overall operation of the facility from which the discharge originates, e.g., a plant manager, superintendent or person of equivalent responsibility;

(ii) The authorization is made in writing by the person designated under section 122.22; and

(iii) The written authorization is submitted to the Department.

(6) Any changes in the written authorization submitted to the Department which occur after the issuance of a permit shall be reported to the Department by submitting a copy of a new written authorization that meets the requirements of (5) above.

(7) Any person signing any document under (d) above shall make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document; and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(e) Other Requirements.

(1) Notice and Public Participation. Public notice and participation requirements shall be in accordance with this Regulation.

(2) Terms and Conditions of Permits. General permits issued shall be subject to the terms and conditions contained in this Regulation.

(3) Monitoring, Recording and Reporting Requirements. Monitoring, recording, and reporting requirements shall be in accordance with the permit and this Regulation.

(4) Duration, Continuation, and Transferability of Permits. General permits shall be issued for a fixed term in accordance with this Regulation.

**122.29. New sources and new dischargers.**

(a) Definitions.

(1) “New source” and “new discharger” are defined in section 122.2.

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

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

(4) “Site” is defined in section 122.2;

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

(b) Criteria for new source determination.

(1) Except as otherwise provided in an applicable new source performance standard, a source is a “new source” if it meets the definition of “new source” in section 122.2, and

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

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

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

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

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

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

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

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

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

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

(c) [Reserved]

(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 non-construction 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 section 125.3 controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

(3) When an NPDES permit issued to a source with a “protection period” under paragraph (d)(1) of this section will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of section 301 and any other then applicable requirements of CWA immediately upon the expiration of the protection period. No additional period for

achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than 3 years before the expiration of the protection period.

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

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

### **122.30. What are the objectives of the storm water regulations for small MS4s?**

(a) Sections 122.30 through 122.36 are written in a “readable regulation” format.

(b) Under the statutory mandate in section 402(p)(6) of the Clean Water Act, the purpose of this portion of the storm water program is to designate additional sources that need to be regulated to protect water quality and to establish a comprehensive storm water program to regulate these sources. (Because the storm water program is part of the National Pollutant Discharge Elimination System (NPDES) Program, you should also refer to section 122.1 which addresses the broader purpose of the NPDES program.)

(c) Storm water runoff continues to harm the nation’s waters. Runoff from lands modified by human activities can harm surface water resources in several ways including changing natural hydrologic patterns and elevating pollutant concentrations and loadings. Storm water runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

(d) EPA and the Department strongly encourage partnerships and the watershed approach as the management framework for efficiently, effectively, and consistently protecting and restoring aquatic ecosystems and protecting public health.

### **122.31. Indian Tribes. As a Tribe, what is my role under the NPDES storm water program?**

As a Tribe you may:

(a) Be authorized to operate the NPDES program including the storm water program, after EPA determines that you are eligible for treatment in the same manner as a State under sections 123.31 through 123.34. (If you do not have an authorized NPDES program, the Department implements the program for discharges on your reservation.);

(b) Be classified as an owner of a regulated small MS4, as defined in section 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 U.S. 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 sections 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 sections 122.26(b)(14) or (b)(15), in which case you must meet the applicable requirements. Within Indian country, the NPDES permitting authority is the Department, unless you are authorized to administer the NPDES program.

**122.32. Is an operator of a small MS4 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 Department, including where the designation is pursuant to 40 CFR 123.35(b)(3) or (b)(4) or is based upon a petition under section 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 sections 122.33 through 122.35.

(c) The Department 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 section 122.33(a) if circumstances change. (See also section 123.35(b) of 40CFR123.)

(d) The Department 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 section 123.35(b)(4) of 40CFR123) 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 Department may waive permit coverage if your MS4 serves a population under 10,000 and you meet the following criteria:

(1) The Department has evaluated all waters of the U.S., including small streams, tributaries, lakes, and ponds, that receive a discharge from your MS4;

(2) For all such waters, the Department has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA-approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern;



(3) For the purpose of this paragraph (e), the pollutant(s) of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from your MS4; and

(4) The Department has determined that future discharges from your MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

(f) Process for designating small MS4 to require storm water NPDES permitting. The Department will designate small MS4s according to the following criteria as a determination that a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

(1) The Department will make initial designations on a watershed basis but no later than December 8, 2004 [except see the phasing considerations in (h)(3) for MS4 with population less than 10,000], as follows:

(i) All MS4 which are located within an urbanized area as defined by the U.S. Bureau of the Census are to be designated and must obtain permits, unless a waiver is granted. (Many of the municipalities and counties which are small MS4 covered by this requirement are listed in Appendix 6 of 64FR68722, December 8, 1999.)

(ii) Consider all small MS4 with a population density of at least 1000 persons per square mile and a population of at least 10,000 located outside urban areas, according to the criteria. (Six municipalities which meet these descriptions are listed in Appendix 7 of 64FR68722.)

(iii) Consider small MS4 which are adjacent to and impact a designated MS4, according to criteria.

(iv) Consider other government entities which are MS4 relevant to criteria (e.g., military installations, prisons, and state, county, or municipal school, or hospital campuses).

(v)(A) Consider MS4 for which petitions are received requesting that permitting be required.

(B) See section 122.26(f)(5) as to the period for making a determination on designation.

(2) The Department will designate small MS4 to require permitting, as follows:

(i) Small MS4 within urbanized areas;

(ii) Entire municipalities which meet the criteria;

(iii) Counties, military installations, prisons, and state, county, or municipal school or hospital campuses, giving consideration to whether solely the urbanized areas should be designated;

(iv) Small MS4 physically interconnected with and substantially affecting regulated MS4, according to the criteria.

(3) In the process of designating small MS4, the Department will inform entities of the waiver requirements of 40 CFR 123.35(d) and evaluate any requested waiver in making a designation decision.

(4) The Department will evaluate any entity for which a petition is received requesting that a permit be required, based on criteria.

(5) The Department will reevaluate to designate appropriate, additional MS4 whenever the 303(d) list is revised.

(6) The Department will reevaluate at each census only to designate additional small MS4.

(g) Criteria for Designating Small MS4 for Storm Water NPDES Permitting

(1) Any small MS4 with a population of 10,000 or more and a population density of 1000 persons per square mile meeting any criterion will be designated, unless one or more of the exceptions in (1)(i) below applies. For smaller or less-densely populated MS4, the following criteria will be used in any evaluation of whether they should be designated to require a permit.

(i) Any water body receiving storm water from the MS4 is on the South Carolina {303(d)} list of impaired waters for a pollutant discharged in the storm water of the entity or a pollutant contributing to the standards violation leading to listing, unless the MS4 shows that it meets one of the following exceptions:

(A) The runoff from the MS4 caused by a 2-inch rainstorm would be less than one (1) percent of the annual average flow of each receiving stream on the 303(d) list;

(B) The MS4 has excellent BMP in place and presents data showing exemplary quality storm water runoff;

(C) The MS4 has a low ratio of runoff to rainfall (e.g., sandy soil) and moderate (that is, not high) water table; or

(D) The MS4 is shown to have a significantly lower percentage of impermeable area than would be expected for its level of development.

(ii) Any water body receiving storm water from the MS4 is classed ONRW, ORW, or Freshwater-Trout or is open for shellfish harvesting.

(iii) Population growth in the MS4 between the 1990 and 2000 (or the two most-recent) censuses has been 10 percent or more or growth has been 2 percent or more in each of the three (3) most-recent years.

(iv) The MS4 is located within 3 miles of an urbanized area, and the MS4 under consideration discharges storm water to one or more of the water bodies which receive storm water from the urbanized area.

(v) An MS4 which has been partly (at least 25%) designated (e.g., part lying within an urbanized area). Consideration will be give to designating only the portion of a county, military installation, prison, or state, county, or municipal school or hospital campus which is in the relevant urbanized area or, for the more extensively developed counties, designating areas up to three (3) miles from the boundary of the urbanized area.

(vi) The population density of the MS4 is at least 1500 persons per square mile.

(2) The following matters may also be considered in deciding whether a permit is required.

(i) The storm water discharge of an MS4 is causing or contributing to a violation of a water quality standard.

(ii) An MS4 is subject to activity contributing or expected to contribute to storm water contamination; for example, frequent military training exercises.

(iii) An MS4 includes industries with significant particulate emissions (such as battery manufacturing {e.g., lead}, steel manufacturing, etc.)

(iv) An MS4 includes a high percentage of impermeable area (pavement, roof).

(v) An MS4 owns or operates a wastewater treatment facility which has a history of being on the NPDES “Significant Non-compliance List” for effluent violations.

(vi) An MS4 approaches but does not reach two or more of the criteria in (1) above.

(3) Government-owned educational institutions, hospital and prison complexes, and military bases outside of urban areas will be considered in the same manner as municipalities outside urban areas. That is, if they have a population of 10,000 or more and a population density of 1500 persons per square mile, they will be designated. If they are less populated or less-densely populated, they will be considered based on the criteria, if a petition requests that a permit be required.

(4) As an initial decision, designate any small MS4 which has either greater than 2000 total population with a density of at least 1500 persons per square mile or greater than 4000 total population with a density of at least 1000 persons per square mile and which is within the boundaries of or whose boundaries touch, and which drains to at least one basin which receives drainage from, a permitted or designated MS4. However, consider exceptions and “other considerations” stated elsewhere in these criteria.

(h) Waivers and Phasing. The Department may waive or phase in the requirements otherwise applicable to regulated small MS4s, as defined in Sec. 122.32(a)(1) and (2) of this item, under the following circumstances:

(1) The Department may waive permit coverage for each small MS4 in jurisdictions with a population under 1,000 within the urbanized area according to section 122.32(d).

(2) The Department may waive permit coverage for each small MS4 in jurisdictions with a population under 10,000 according to section 122.32(e).

(3) The Department may phase in permit coverage for small MS4s serving jurisdictions with a population under 10,000 on a schedule consistent with a State watershed permitting approach. Under this approach, the Department will permit coverage for small MS4s that qualify for such phased-in coverage during the year assigned for permitting in the basin where it is located. Under this option, all regulated small MS4s are required to have coverage under an NPDES permit no later than March 8, 2007.

(4) The Department will periodically review any waivers granted in accordance with paragraph (h)(2) of this section to determine whether any of the information required for granting the waiver has changed. At a minimum, the reviews will be conducted once every five years during pertinent years for basin permit issuance. In addition, the Department will consider any petition to review any waiver when the petitioner provides evidence that the information required for granting the waiver has substantially changed.

**122.33. How does an operator of a regulated, small MS4 apply for an NPDES permit, and when must he apply?**

(a) If you operate a regulated, small MS4 under section 122.32, you must seek coverage under a NPDES permit issued by the Department. As South Carolina is an NPDES authorized State, then the State is your NPDES permitting authority.

(b) You must seek authorization to discharge under a general or individual NPDES permit, as follows:

(1) If the Department has issued a general permit applicable to your discharge and you are seeking coverage under the general permit, you must submit a Notice of Intent (NOI) that includes the information on your best management practices and measurable goals required by section 122.34(d). You may file your own NOI, or you and other municipalities or governmental entities may jointly submit an NOI. If you want to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, you must submit an NOI that describes which minimum measures you will implement and identify the entities that will implement the other minimum measures within the area served by your MS4. The general permit will explain any other steps necessary to obtain permit authorization.

(2)(i) If you are seeking authorization to discharge under an individual permit and wish to implement a program under section 122.34, you must submit an application to the Department that includes the information required under sections 122.21(f) and 122.34(d), an estimate of the area in square miles served by your small MS4, and any additional information that your NPDES permitting authority requests. A storm sewer map that satisfies the requirement of section 122.34(b)(3)(i) will satisfy the map requirement in section 122.21(f)(7).

(ii) If you are seeking authorization to discharge under an individual permit and wish to implement a program that is different from the program under section 122.34, you will need to comply with the permit application requirements of section 122.26(d). You must submit both Parts of the application requirements in sections 122.26(d)(1) and (2) by March 10, 2003. You do not need to submit the information required by sections 122.26(d)(1)(ii) and (d)(2) regarding your legal authority, unless you intend for the permit writer to take such information into account when developing your other permit conditions.

(iii) If allowed by the Department, you and another regulated entity may jointly apply under either paragraph (b)(2)(i) or (b)(2)(ii) of this section to be co-permittees under an individual permit.

(3) If your small MS4 is in the same urbanized area as a medium or large MS4 with an NPDES storm water permit and that other MS4 is willing to have you participate in its storm water program, you and the other MS4 may jointly seek a modification of the other MS4 permit to include you as a limited co-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 section 122.26, rather than the requirements of section 122.34. You do not need to comply with the specific application requirements of section 122.26(d)(1)(iii) and (iv) and (d)(2)(iii) (discharge characterization). You may satisfy the requirements in section 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.

(c) If you operate a regulated, small MS4:

(1) Designated under section 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 Department has established a phasing schedule under 40CFR123.35(d)(3).

(2) Designated under section 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 receiving the notice of designation, unless the Department grants a later date.

**122.34. As an operator of a regulated, small MS4, what will my NPDES MS4 storm water permit require?**

(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 section 122.26(d). For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMP) 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 section 122.33 constitutes compliance with the standard of reducing pollutants to the “maximum extent practicable.” The Department will specify a 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. 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.

(2) Public involvement/participation. You must, at a minimum, comply with State and local public notice requirements when implementing a public involvement/participation program.

(3) Illicit discharge detection and elimination.

(i) You must develop, implement and enforce a program to detect and eliminate illicit discharges [as defined at section 122.26(b)(2)] into your small MS4.

(ii) You must:

(A) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and locations of all waters of the United States that receive discharges from those outfalls;

(B) To the extent allowable under State or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into your storm sewer system and implement appropriate enforcement procedures and actions;

(C) Develop and implement a plan to detect and address non-storm-water discharges, including illegal dumping, to your system; and

(D) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(iii) You need address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration [as defined at 40 CFR 35.2005(20)], uncontaminated, pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensate, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the United States).

(4) Construction site storm water runoff control.

(i) You must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to your small MS4 from construction activities that result in 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 Department waives requirements for storm water discharges associated with small construction activity in accordance with section 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 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.

(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 (BMP) 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 BMP.

(6) Pollution prevention/good housekeeping for municipal operations. You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, your State, Tribe, or other organizations, your program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

(c) If an existing, qualifying local program requires you to implement one or more of the minimum control measures of paragraph (b) of this section, the Department may include conditions in your NPDES permit that direct you to follow the Department's requirements rather than the requirements of paragraph (b) of this section. A qualifying local program is a local storm water management program that imposes, at a minimum, the relevant requirements of paragraph (b) of this section.

(d)(1) In your permit application (either a notice of intent for coverage under a general permit or an individual permit application), you must identify and submit to the Department the following information:

(i) The best management practices (BMP) that you or another entity will implement for each of the storm water minimum control measures at paragraphs (b)(1) through (b)(6) of this section;

(ii) The measurable goals for each of the BMP 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 the Department has provided or issued a menu of BMP that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMP, however, you still must comply with other requirements of the general permit, including good faith implementation of BMP designed to comply with the minimum measures.

(e) 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 Department may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed 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 sections 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 Department 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 Department 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 section 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 section 122.35(a), you must submit annual reports to the Department for your first permit term. For subsequent permit terms, you must submit reports in year two and four unless the Department requires more frequent reports. As of December 21, 2020, all reports submitted in compliance with this section must be submitted electronically by the owner, operator, or the duly authorized representative of the small MS4 to the Department as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, the owner, operator, or the duly authorized representative of the small MS4 may be required to report electronically if specified by a particular permit or if required to do so by State law. 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;

(iv) A change in any identified best management practices or measurable goals for any of the minimum control measures; and

(v) Notice that you are relying on another governmental entity to satisfy some of your permit obligations (if applicable).

**122.35. May an operator of a regulated small MS4 share the responsibility to implement the minimum control measures with other entities?**

(a) You may rely on another entity to satisfy your NPDES permit obligations to implement a minimum control measure if:



(1) The other entity, in fact, implements the control measure;

(2) The particular control measure, or component thereof, is at least as stringent as the corresponding NPDES permit requirement; and

(3) The other entity agrees to implement the control measure on your behalf. In the reports you must submit under section 122.34(g)(3), you must also specify that you rely on another entity to satisfy some of your permit obligations. If you are relying on another governmental entity regulated under section 122 to satisfy all of your permit obligations, including your obligation to file periodic reports required by section 122.34(g)(3), you must note that fact in your NOI, but you are not required to file the periodic reports. You remain responsible for compliance with your permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, EPA encourages you to enter into a legally binding agreement with that entity if you want to minimize any uncertainty about compliance with your permit.

(b) In some cases, the Department may recognize, either in your individual NPDES permit or in an NPDES general permit, that another governmental entity is responsible under an NPDES permit for implementing one or more of the minimum control measures for your small MS4 or that the Department itself is responsible. Where the Department does so, you are not required to include such minimum control measure(s) in your storm water management program. (For example, if a State or Tribe is subject to an NPDES permit that requires it to administer a program to control construction site runoff at the State or Tribal level and that program satisfies all of the requirements of section 122.34(b)(4), you could avoid responsibility for the construction measure, but would be responsible for the remaining minimum control measures.) Your permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

### **122.36. As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in sections 122.33 through 122.35?**

NPDES permits are federally enforceable. Violators may be subject to the enforcement actions and penalties described in Clean Water Act sections 309 (b), (c), and (g) and 505, or under applicable State, Tribal, or local law. Compliance with a permit issued pursuant to section 402 of the Clean Water Act is deemed compliance, for purposes of sections 309 and 505, with sections 301, 302, 306, 307, and 403, except any standard imposed under section 307 for toxic pollutants injurious to human health. If you are covered as a co-permittee under an individual permit or under a general permit by means of a joint Notice of Intent you remain subject to the enforcement actions and penalties for the failure to comply with the terms of the permit in your jurisdiction except as set forth in section 122.35(b).

## **PART C PERMIT CONDITIONS**

### **122.41. Conditions applicable to all permits.**

The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in section 122.42. All conditions applicable to NPDES permit shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to the federal 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 the permit. Any permit noncompliance constitutes a violation of the Clean Water Act and the Pollution Control Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a

permit renewal application. The Department's approval of wastewater facility Plans and Specifications does not relieve the permittee of responsibility to meet permit limits.

(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) Failure to comply with permit conditions or the provisions of this regulation may subject the permittee to civil penalties under S.C. Code Section 48-1-330 or criminal sanctions under S.C. Code Section 48-1-320. Sanctions for violations of the Federal Clean Water Act may be imposed in accordance with the provisions of 40 CFR Part 122.41(a)(2) and (3).

(3) A person who violates any provision of this regulation, a term, condition or schedule of compliance contained within a valid NPDES permit, or the State law is subject to the actions defined in the State law.

(b) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. (But see 122.4(g)(2)).

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

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

(e)(1) Proper operation and maintenance. The permittee shall at all times properly operate and maintain in good working order and operate as efficiently as possible all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes effective performance based on design facility removals, adequate funding, adequate operator staffing and training and also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(2) The permittee shall develop and maintain at the facility a complete Operations and Maintenance Manual for the waste treatment facilities and/or land application system. The manual shall be made available for on-site review during normal working hours. The manual shall contain operation and maintenance instructions for all equipment and appurtenances associated with the waste treatment facilities and land application system. The manual shall contain a general description of the treatment process(es), the operational procedures to meet the requirements of (e)(1) above, and the corrective action to be taken should operating difficulties be encountered.

(3)(i) Except as stated in (ii) below, the permittee shall provide for the performance of daily treatment facility inspections by a certified operator of the appropriate grade as defined in the permit for the facility. The inspections shall include, but should not necessarily be limited to, areas which require visual observation to determine efficient operation and for which immediate corrective measures can be taken using the O & M manual as a guide. All inspections shall be recorded and shall include the date, time,

and name of the person making the inspection, corrective measures taken, and routine equipment maintenance, repair, or replacement performed. The permittee shall maintain all records of inspections at the permitted facility as required by the permit, and the records shall be made available for on-site review during normal working hours.

(ii) The Department may make exceptions to operating requirements, if stated in the permit, as follows:

(A) Attendance by the certified operator of the appropriate grade (“the operator”) is normally required only on days when treatment or discharge occurs.

(B) For performance of daily inspections, permits may allow a reduced grade of operator for limited time periods under specific circumstances when justified by the permittee in a staffing plan and approved by the Department.

(C) Reduced inspection frequency, but in no case less than weekly, may be suitable when specified in the permit, if there is complete telemetry of operating data and there is either a simple treatment system with a low potential for toxicity but requiring pumps or other electrical functions or the ability to stop the discharge for an appropriate period when necessary.

(D) In other circumstances where the permittee demonstrates the capability to evaluate the facility in an alternative manner equivalent to the inspection requirements in subparagraph 3(i).

(E) Any exceptions allowed under (A), (B), (C), and (D) above may be subject to compliance with the permit conditions.

(4)(i) Purpose. This regulation establishes rules for governing the operation and maintenance of wastewater sewer systems, including gravity or pressure interceptor sewers. It is the purpose of this rule to establish standards for the management of sewer systems to prevent and/or minimize system failures that would lead to public health or environmental impacts.

(ii) Authority and applicability. Under Section 48-1-30 of the Code of Laws of South Carolina (1976 as amended), the Department is authorized to adopt such rules and regulations as may be necessary to implement the Pollution Control Act. This regulation applies to all sewer systems that have been or would be subject to a DHEC construction permit under Regulation 61-67 and whose owner owns or operates the wastewater treatment system to which the sewer discharges and which discharges under NPDES. Nothing in this regulation supersedes a more stringent requirement that may be imposed by sewer system owners that manage wastewater from satellite systems. This regulation (122.41(e)(4)) is effective when published in the State Register.

(iii) General requirements. The requirements to properly operate and maintain sewer systems are the responsibility of the system owner. General Standards. The sewer system owner must:

(A) Properly manage, operate, and maintain at all times all parts of its sewer system(s), to include maintaining contractual operation agreements to provide services, if appropriate;

(B) Provide adequate capacity to convey base flows and peak flows for all parts of the sewer system or, if capital improvements are necessary to meet this standard, develop a schedule of short and long term improvements;

(C) Take all reasonable steps to stop and mitigate the impact of releases of wastewater to the environment; and

(D) Notify the Department within 30 days of a proposed change in ownership of a sewer system.

(iv) [Reserved]

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

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

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

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

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

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

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

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

(j) Monitoring and records.

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

(B) Samples shall be reasonably distributed in time, while maintaining representative sampling.

(C) No analysis, which is otherwise valid, shall be terminated for the purpose of preventing the analysis from showing a permit or water quality violation.

(ii) Flow Measurements.

(A) Where primary flow meters are required, appropriate flow measurement devices and methods consistent with accepted scientific practices shall be present and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of not greater than 10 percent from the true discharge rates throughout the range of expected discharge volumes. The primary flow device, where required, must be accessible to the use of a continuous flow recorder.

(B) Where permits require an estimate of flow, the permittee shall maintain at the permitted facility a record of the method(s) used in “estimating” the discharge flow (e.g., pump curves, production charts, water use records) for the outfall(s) designated on limits pages to monitor flow by an estimate.

(C) Records of any necessary calibrations must be kept.

(iii) The Department may designate a single, particular day of the month on which any group of parameters listed in the permit must be sampled. When this requirement is imposed in a permit, the Department may waive or alter compliance with the permit requirement for a specific sampling event for extenuating circumstances.

(iv) The Department may require that a permittee monitor parameters in the stream receiving his permitted discharge as necessary to evaluate the need for and to establish limits and conditions and to insure compliance with water quality standards (i.e., R.61-68).

(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 R.61-9.503 or R.61-9.504); 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 Department 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) Analyses for required monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit or, in the case of sludge use or disposal, unless otherwise specified in R.61-9.503 or R.61-9.504.

(5) The PCA 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 \$25,000 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 provided by the Clean Water Act is also by imprisonment of not more than 4 years.

(k) Signatory requirement.

(1) All applications, reports, or information submitted to the Department shall be signed and certified (See section 122.22).

(2) The PCA 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 \$25,000 per violation, or by imprisonment for not more than two years per violation, or by both.

(l) Reporting requirements.

(1) Planned changes. The permittee shall give notice to the Department 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 section 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 section 122.42(a)(1).

(iii) The alteration or addition results in a significant change in the permittee's sewage sludge or industrial 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 (included in the NPDES permit directly or by reference);

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

(3) Transfers. This permit is not transferable to any person except after notice to the Department. The Department may require modification or revocation and reissuance of the permit to change the name of permittee and incorporate such other requirements as may be necessary under the Pollution Control Act and the Clean Water Act. (See section 122.61; in some cases, modification or revocation and reissuance is mandatory.)

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

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices. As of December 21, 2016, all reports and forms submitted in compliance with this section must

be submitted electronically by the permittee to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by State law.

(ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in R.61-9.503 or R.61-9.504, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department.

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

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

(6) Twenty-four hour reporting.

(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery), as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combine sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by State law. The Department may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

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

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See section 122.44(g)).

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

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

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

(7) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (l)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6) of this section. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in paragraph (l)(6) and the applicable required data in appendix A to 40 CFR Part 127. As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by State law. The Department may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

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

(9) Identification of the initial recipient for NPDES electronic reporting data. The owner, operator, or the duly authorized representative of an NPDES-regulated entity is required to electronically submit the required NPDES information (as specified in appendix A to 40 CFR Part 127) to the appropriate initial recipient, as determined by EPA, and as defined in Section 127.2(b) of this chapter. EPA will identify and publish the list of initial recipients on its website and in the Federal Register, by State and by NPDES data group [see Section 127.2(c) of this chapter]. EPA will update and maintain this listing.

(m) Bypass.

(1) Definitions.

(i) “Bypass” means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) “Severe property damage” means 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 paragraph (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 (10) days before the date of the bypass. As of December 21, 2020, all notices submitted in compliance with this section must be submitted electronically by the permittee to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by State law.

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (l)(6) of this section (24-hour notice). As of December 21, 2020, all notices submitted in compliance with this section must be submitted electronically by the permittee to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by State law.

#### (4) Prohibition of bypass

(i) Bypass is prohibited, and the Department 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 Department may approve an anticipated bypass, after considering its adverse effects, if the Department 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. A 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 (l)(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.

(o) Misrepresentation of Information.

(1) Any person making application for a NPDES discharge permit or filing any record, report, or other document pursuant to a regulation of the Department, shall certify that all information contained in such document is true. All application facts certified to by the applicant shall be considered valid conditions of the permit issued pursuant to the application.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, or other documents filed with the Department pursuant to the State law, and the rules and regulations pursuant to that law, shall be deemed to have violated a permit condition and shall be subject to the penalties provided for pursuant to 48-1-320 or 48-1-330.

#### **122.42. Additional conditions applicable to specified categories of NPDES permits.**

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

(a) Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under section 122.41(1), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe:

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

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

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

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

(iv) The level established by the Department in accordance with section 122.44(f).

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

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

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

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

(iv) The level established by the Department in accordance with section 122.44(f).

(b) Publicly owned treatment works. All POTWs must provide adequate notice to the Department of the following:

(1) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to sections 301 or 306 of CWA if it were directly discharging those pollutants; and

(2) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

(3) For purposes of this paragraph, adequate notice shall include information on:

(i) The quality and quantity of effluent introduced into the POTW, and

(ii) Any anticipated impact of the change on the 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 Department under section 122.26(a)(1)(v) of this regulation must submit an annual report by the anniversary of the date of the issuance of the permit for such system. As of December 21, 2020, all reports submitted in compliance with this section must be submitted electronically by the owner, operator, or the duly authorized representative of the MS4 to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, the owner, operator, or the duly authorized representative of the MS4 may be required to report electronically if specified by a particular permit or if required to do so by State law. 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 conditions. Such proposed changes shall be consistent with section 122.26(d)(2)(iii); and

(3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under section 122.26(d)(2)(iv) and (d)(2)(v);

(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 section 122.26(e)(7) of this regulation 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 (CAFO). 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 CAFO must have their nutrient management plans developed and implemented by December 31, 2006. CAFO that seek to obtain coverage under a permit after December 31, 2006 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 State;

(vii) Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;

(viii) Establish protocols to land apply manure, litter, or process wastewater in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and

(ix) Identify specific records that will be maintained to document the implementation and management of the minimum elements described in paragraphs (e)(1)(i) through (e)(1)(viii) of this section.

(2) Recordkeeping requirements.

(i) The permittee must create, maintain for five years, and make available to the Department upon request, the following records:

(A) All applicable records identified pursuant to paragraph (e)(1)(ix) of this section;

(B) In addition, all CAFO subject to 40 CFR 412 must comply with record keeping requirements specified in sections 412.37(b) and (c) and sections 412.47(b) and (c).

(ii) A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the Department upon request.

(3) Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter, or process wastewater to other persons, Large CAFO must provide the recipient of the manure, litter, or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of 40 CFR 412. Large CAFO must retain for five years records of the date, recipient name and address, and approximate amount of manure, litter, or process wastewater transferred to another person.

(4) Annual reporting requirements for CAFO. The permittee must submit an annual report to the Department. As of December 21, 2020, all annual reports submitted in compliance with this section must be submitted electronically by the permittee to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, the permittee may be required to report electronically if specified by a particular permit or if required to do so by State law. The annual report must include:

(i) The number and type of animals (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other), whether in open confinement or housed under roof;

(ii) Estimated total amount of manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);

(iii) Estimated total amount of manure, litter, and process wastewater transferred to other person(s) by the CAFO in the previous 12 months (tons/gallons);

(iv) Total number of acres for land application covered by the nutrient management plan developed in accordance with paragraph (e)(1) of this section;

(v) Total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous 12 months;

(vi) Summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous twelve (12) months, including for each discharge, the date of discovery, duration of discharge, and approximate volume; and

(vii) A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

(f) Easements. Easements for Storm Water NPDES Permits or Leaking Underground Storage Tank Groundwater Remediation NPDES Permits. Easements for ditch discharges from either a storm water point source or a leaking underground storage tank groundwater remediation project will not be required to be submitted to the Department as a prerequisite for obtaining an individual NPDES permit or for coverage under a general permit. The permittee must ensure that all easements necessary for the discharge are obtained prior to the discharge occurring.

#### **122.43. Establishing permit conditions.**

(a) In addition to conditions required in all permits (sections 122.41 and 122.42), the Department shall establish conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements of CWA and PCA and regulations. These shall include conditions under section 122.46 (duration of permits), section 122.47(a) (schedules of compliance), and section 122.48 (monitoring), and electronic reporting requirements of 40 CFR Part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR Part 127 (NPDES Electronic Reporting).

(b)(1) An “applicable requirement” is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. 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 section 122.62.

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

#### **122.44. Establishing limitations, standards, and other permit conditions.**

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

(2) Monitoring waivers for certain guideline-listed pollutants.

(i) The Department 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 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 expressed 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 existing effluent limitations guidelines and standards.

(b)(1) Other effluent limitations and standards under sections 301, 302, 303, 307, 318 and 405 of CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Department shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition. See also section 122.41(a).

(2) Standards for sewage sludge use or disposal under section 405(d) of the CWA unless those standards have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, Part C of Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State NPDES permit programs approved by the Administrator. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under section 405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Department may initiate proceedings under these regulations to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

(c) Reopener clause:

(1) For any permit issued to a treatment works treating domestic sewage (including "sludge-only facilities"), the Department shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under section 405(d) of the CWA. The Department may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph, if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit or controls a pollutant or practice not limited in the permit.

(2) A permit may include a reopener referring to a permit modification reasonably foreseen based on expected revision to law or regulation or based on the expectation of receipt of information when either of these would be the basis for a modification under R.61-9.122.62.

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

(1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality.

(i) Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Department determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

(ii) When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

(iii) When the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

(iv) When the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.

(v) Except as provided in this subparagraph, when the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, toxicity testing data, or other information, that a 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 the Department 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 the following options:

(A) Establish effluent limits using 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 307(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 R.61-9.124.56 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 R.61-101 and section 401 of the CWA.

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

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

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

(7) Incorporate section 403(c) criteria under R.61-9.125 Part M, for ocean discharges;

(8) Incorporate alternative effluent limitations or standards where warranted by “fundamentally different factors,” under R.61-9.125 Part D;

(9) [Reserved]

(e) Technology-based controls for toxic pollutants. Limitations established under paragraphs (a), (b), or (d) of this section, to control pollutants meeting the criteria listed in paragraph (e)(1) of this section. Limitations will be established in accordance with paragraph (e)(2) of this section. An explanation of the development of these limitations shall be included in the fact sheet under R.61-9.124.56(b)(1)(i).

(1) Limitations must control all toxic pollutants which the Department determines (based on information reported in a permit application under section 122.21(g)(7) or in a notification under section 122.42(a)(1) or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R.61-9.125.3(c); or

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

(i) Limitations on those pollutants; or

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

(f) Notification level. A “notification level” which exceeds the notification level of section 122.42(a)(1)(i), (ii) or (iii), upon a petition from the permittee or on the Department’s initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R.61-9.125.3(c).

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

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

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

(1) To ensure compliance with the permit and protection of the environment, requirements to monitor:

(i) The mass (or other measurement specified in the permit) for each pollutant limited in the permit and as necessary to characterize any other pollutant, which may be in the wastewater, which has a significant potential to have an effect on the environment or operation of treatment or disposal facilities,

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

(iii) Other measurements as appropriate including pollutants in internal waste streams under section 122.45(h), pollutants in intake water for net limitations under section 122.45(g); frequency, rate of discharge, etc., for noncontinuous discharges under section 122.45(e); pollutants subject to notification requirements under section 122.42(a); and pollutants in sewage sludge or other monitoring as specified in R.61-9.503 or R.61-9.504; or as determined to be necessary on a case-by-case basis pursuant to section 405(d)(4) of the CWA.

(iv) According to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 for the analyses of pollutants or pollutant parameters or required under 40 CFR chapter I, subchapter N or O.

(A) For the purposes of this paragraph, a method is “sufficiently sensitive” when:

(1) The method minimum level (ML) is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or

(2) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter.

Note to paragraph (i)(1)(iv)(A):

Consistent with 40 CFR Part 136, applicants or permittees have the option of providing matrix or sample specific minimum levels rather than the published levels. Further, where an applicant or permittee can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of “sufficiently sensitive,” the analytical results are not consistent with the QA/QC specifications for that method, then the Department may determine that the method is not performing adequately and the Department should select a different method from the remaining EPA-approved methods that is sufficiently sensitive consistent with 40 CFR 122.44(i)(1)(iv)(A). Where no other EPA-approved methods exist, the Department should select a method consistent with Section 122.44(i)(1)(iv)(B).

(B) In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136 or methods are not otherwise required under 40 CFR chapter I, subchapter N or O, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters.

(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 R.61-9.503 (where applicable) but in no case less than once a year. All results must be electronically reported in compliance with 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127.

(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 section 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 section 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 R.61-9.403.

(2)(i) Submit a local program when required by and in accordance with R.61-9.403 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 R.61-9.403. The program must require all indirect dischargers to the POTW to comply with the reporting requirements of R.61-9.403.

(ii) Provide a written technical evaluation of the need to revise local limits under R.61-9.403.5(c)(1), following permit issuance or reissuance.

(3) For POTWs which are “sludge-only facilities,” a requirement to develop a pretreatment program under R.61-9.403 when the Department determines that a pretreatment program is necessary to assure compliance with section 405(d) of the CWA.

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

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

(2) Authorized under section 402(p) of the CWA for the control of storm water discharges;

(3) Numeric effluent limitations are infeasible; or

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

Note to paragraph (k)(4):

Additional technical information on BMPs, and the elements of BMPs, is contained in the following documents: Guidance Manual for Developing Best Management Practices (BMPs), October 1993, EPA No. 833/B-93-004, NTIS No. PB 94-178324, ERIC No. W498); Storm Water Management for Construction 126 | Regulation 61-9.122

Activities: Developing Pollution Prevention Plans and Best Management Practices, September 1992, EPA No. 832/R-92-005, NTIS No. PB 92-235951, ERIC No. N482); Storm Water Management for Construction Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA No. 833/R-92-001, NTIS No. PB 93-223550; ERIC No. W139; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices, September 1992; EPA 832/R-92-006, NTIS No. PB 92-235969, ERIC No. N477; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA 833/R-92-002, NTIS No. PB 94-133782; ERIC No. W492. These and other EPA guidance documents can be obtained through the National Service Center for Environmental Publications (NSCEP) at <http://www.epa.gov/nscep>. In addition, States may have BMP guidance documents. These EPA guidance documents are listed here only for informational purposes; they are not binding and EPA does not intend that these guidance documents have any mandatory, regulatory effect by virtue of their listing in this note.

(l) Reissued permits.

(1) Except as provided in paragraph (l)(2) or (l)(3) of this section when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under section 122.62).

(2) In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) 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.

(i) Exceptions — A permit with respect to which paragraph (l)(2) of this section 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)(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 Department 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(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, 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 303 of the CWA applicable to such waters.

(3) In the event this section (section 122.44(l)) of the regulations conflicts with the provisions of the Clean Water Act, the CWA will apply.

(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 Department may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Department'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 Department 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 R61-9.124.59.

(r) [Reserved]

(s) Qualifying State, Tribal, or local programs.

(1) For storm water discharges associated with small construction activity identified in section 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 permit. A qualifying State, Tribal, or local erosion and sediment control program is one that includes:

(i) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(ii) 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;

(iii) Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved State, Tribal or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges); and

(iv) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(2) For storm water discharges from construction activity identified in section 122.26(b)(14)(x), the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. A qualifying State, Tribal or local erosion and sediment control program is one that includes the elements listed in paragraph (s)(1) of this section and any additional requirements necessary to achieve the applicable technology-based standards of “best available technology” and “best conventional technology” based on the best professional judgment of the permit writer.

#### **122.45. Calculating NPDES permit conditions.**

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

(b) Production-based limitations.

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

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

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

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

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

(1) The permit shall require the permittee to notify the Department 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 Department 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 or under R.61-68 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 R.61-9.125.3, 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 section 122.2, shall be particularly described and limited, considering the following factors, as appropriate:

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

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

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



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

(f) Mass limitations.

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

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

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

(iii) If in establishing permit limitations on a case-by-case basis under R.61-9.125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

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

(g) Pollutants in intake water.

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

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

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

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

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

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

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

(h) Internal waste streams.

(1) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by section 122.48 shall also be applied to the internal waste streams.

(2) Limits on internal waste streams will be imposed only when the fact sheet under R.61-9.124.56 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible (for example, under 10 meters of water), the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(i) Disposal of pollutants into wells, into POTWs. Permit limitations and standards shall be calculated as provided in section 122.50.

**122.46. Duration of permits.**

(a) An NPDES permit issued pursuant to State law and this regulation shall be effective for a fixed term not to exceed 5 years. A person who wishes to continue to operate under such permit shall apply for re-issuance of a permit pursuant to this regulation.

(b) Except as provided in section 122.6, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(c) The Department 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.

**122.47. Schedule of compliance.**

(a) General. The NPDES permit may, when appropriate, specify a schedule of compliance leading to compliance with CWA, PCA, 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 or as provided for under section 122.47(c).

(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 nine (9) months from the date of permit issuance, the schedule shall set forth interim requirements and the date for their achievement.

(i) The time between interim dates shall not exceed nine (9) months, 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 nine (9) months 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.

(4) Reporting. The permit shall be written to require that no later than 10 days following each interim date and the final date of compliance, the permittee shall notify the Department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if paragraph (a)(3)(ii) is applicable.

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

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

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

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

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

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

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

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

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

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

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

(c) Terms and Conditions of Permits: Schedules of Compliance.

(1) A person issued an NPDES permit by the Department who is not in compliance with applicable effluent standards and limitations or other requirements contained therein at the time the permit is issued, shall be required to achieve compliance within a period of time as set forth by the Department, with effluent standards and limitations, with water quality standards, or with specific requirements or conditions set by the Department. The Department shall require compliance with terms and conditions of the permit in the shortest reasonable period of time as determined thereby or within a time schedule for compliance which shall be specified in the issued permit.

(2) If a time schedule for compliance specified in an NPDES permit which is established by the Department pursuant to Subpart (1) above, exceeds nine (9) months, the time schedule shall provide for interim dates of achievement for compliance with certain applicable terms and conditions of the permit.

(d) Terms and Conditions of Permits: Compliance Reports by Dischargers.

(1) Within ten (10) days after an interim date of compliance or the final date of compliance specified in an NPDES permit, a permittee shall provide the Department with written notice of his compliance or noncompliance with the requirements or conditions specified to be completed by that date.

(2) Failure to submit the written notice to the Department is just cause for the Department to pursue enforcement action against the discharger pursuant to the State law or this regulation.

(e) Noncompliance. A discharger who fails or refuses to comply with an interim or final date of compliance specified in an NPDES permit, may be deemed by the Department to be in violation of the permit and may be subject to enforcement action prescribed in the State law or this regulation.

**122.48. Requirements for recording and reporting of monitoring results.**

(a) All permits shall specify:

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

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

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

(4) That a permittee required to monitor a waste discharge shall maintain records of all information resulting from such monitoring, including the date, place and time of sampling; the dates analyses were

performed; the person performing the analyses; the analytical techniques, procedures or methods used; and the results of such analyses. All records and results of monitoring activities and calibration and maintenance records shall be retained by the permittee a minimum of three (3) years unless otherwise required or extended by the Department.

(b) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required by the Department to be maintained as a condition in a permit, or who alters or falsifies the results obtained by such devices or methods, shall be deemed to have violated a permit condition and shall be subject to the penalties provided for pursuant to 48-1-320 and 48-1-330 of the Code.

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in 40 CFR Part 3 (Cross-Media Electronic Reporting Regulation), Section 122.44, and 40 CFR Part 127 (NPDES Electronic Reporting). Reporting shall be no less frequent than specified in Section 122.44. EPA will maintain the start dates for the electronic reporting of monitoring results for each State on its website.

### **122.50. Disposal of pollutants into publicly-owned treatment works.**

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

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

(2) In all cases other than those described in paragraph (a)(1) of this section, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the State, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under R.61-9.125 Part D to make them more or less stringent if discharges to publicly owned treatment works change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

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

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

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

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

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

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

## **PART D TRANSFER, MODIFICATION, REVOCATION, AND REISSUANCE AND TERMINATION OF PERMITS**

### **122.61. Transfer of permits.**

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

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

(1) The current permittee notifies the Department 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) Permits are non-transferable except with prior consent of the Department. A modification under this subparagraph may also be a minor modification under section 122.63.

### **122.62. Modification or revocation and reissuance of permits.**

(a) When the Department receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see section 122.41), receives a request for modification or revocation and reissuance under section 124.5, or conducts a review of the permit file), it may determine whether or not one or more of the causes listed in paragraph (d) and (e) of this section for modification or revocation and reissuance or both exist.

(b) If cause exists, the Department may modify or revoke and reissue the permit accordingly, subject to the limitations of R.61-9.124.5(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 R.61-9.124.5(c)(2).

(c) If cause does not exist under this section or section 122.63, the Department shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in section 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 R.61-9.124 followed.

(d) 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.

(2) Information. The Department 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 (section 122.28) this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger NPDES permits (sections 122.21, 122.29), this cause shall include any significant information derived from effluent testing required under section 122.21(k)(5)(vi) or section 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 guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under R.61-9.133; and

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

(C) A permittee requests modification in accordance with R.61-9.124.5 within ninety (90) days after Federal Register notice of the action on which the request is based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with R.61-9.124.5 within ninety (90) days of judicial remand.

(iii) For changes based upon modified State certifications of NPDES permits, see R.61-9.124.55(b).

(4) Compliance schedules. The Department determines good cause exists for modification of a compliance schedule or terms and conditions of a permit, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an NPDES compliance schedule be modified to extend beyond an applicable CWA statutory deadline. See also section 122.63(c) (minor modifications) and paragraph (d)(13) of this section (NPDES innovative technology).

(5) When the permittee has filed a request for a variance under CWA section 301(c), 301(k), or 316(a) or for “fundamentally different factors” within the time specified in section 122.21.

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

(7) Reopener. When required by the “reopener” conditions in a permit, which are established in the permit under section 122.44(b) (for CWA toxic effluent limitations and standards for sewage sludge use or disposal, see also section 122.44(c)) or R.61-9. 403.18(e) (Pretreatment program).

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

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

(9) Pretreatment. As necessary under R.61-9.403.8(e) (compliance schedule for development of pretreatment program).

(10) Failure to notify. Upon failure of an approved State to notify, as required by section 40 CFR 402(b)(3), another State whose waters may be affected by a discharge from the approved State.

(11) Non-limited pollutants. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R.61-9.125.3(c).

(12) Notification levels. To establish a “notification level” as provided in section 122.44(f).

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

(14) For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in section 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 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 an NPDES 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.



(e) 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 section 122.64, and the Department determines that modification or revocation and reissuance is appropriate.

(2) The Department has received notification (as required in the permit, see section 122.41(1)(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 (section 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.

(3) There is a violation of any terms or conditions of the permit.

(4) The permittee has obtained a permit by misrepresentation or has failed to disclose all relevant facts to the Department.

### **122.63. Minor modifications of permits.**

Upon the consent of the permittee, the Department 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 R.61-9.124. Any permit modification not processed as a minor modification under this section must be made for cause and with R.61-9.124 draft permit and public notice as required in section 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) Approve permit transfer for a Change in Ownership, as follows:

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

(2) Whenever there occurs a change in the ownership of treatment works which are the subject of a NPDES permit the new owner shall notify the Department of this change in ownership within thirty (30) days thereof and shall be bound by all the terms and conditions of said permit or permits.

(3) Change the name of the facility.

(4) Permits are non-transferable except with the prior consent of the Department.

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

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

(f)(1) Add or revise requirements for certification under section 208 of CWA.

(2) [Reserved]

(3) Change sludge disposal sites from one approved landfill to another.

(g) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in R.61-9.403.11 (or a modification thereto that has been approved in accordance with the procedures in R.61-9.403.18) as enforceable conditions of the POTW's permits.

(h)(1) Change the operator grade or other operator requirements, including revision to frequency of operator visits.

(2)(i) Change a sampling date stated in the permit or add a sampling date,

(ii) Add specific sample locations if unclear in the issued permit,

(iii) Reduce sampling frequency after some period of time, if specifically allowed in an issued permit.

(3) Add the treatment system reliability classification.

(4) Require submittal of closure plans.

(5) Change page numbers of the issued permit.

(i) Require electronic reporting requirements (to replace paper reporting requirements) including those specified in 40 CFR Part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR Part 127 (NPDES Electronic Reporting).

#### **122.64. Termination of permits.**

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

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

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

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

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

(ii) Cessation of substantially all manufacturing operations, which are a basis for effluent limits or which contribute to a discharge, for a period of 180 days or longer.

(5) A permittee with a permit which requires connection to a regional sewer system or other treatment facilities under the water quality management plan under section 208 of the CWA is ineligible for reissuance of a permit once notified by the Department that the regional sewer system is operational.

(b) The Department shall follow the applicable procedures in R.61-9.124 in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the Department may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the Department shall follow R.61-9.124 procedures for termination. Expedited permit termination procedures are not available to permittees that are subject to pending State and/or Federal enforcement actions including citizen suits brought under State or Federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending State or Federal enforcement actions including citizen suits brought under State or Federal law. State-authorized NPDES programs are not required to use 40 CFR 22 procedures for NPDES permit terminations.

(c) Permittees that wish to terminate their permit must submit a Notice of Termination (NOT) to their permitting authority. If requesting expedited permit termination procedures, a permittee must certify in the NOT that it is not subject to any pending State or Federal enforcement actions including citizen suits brought under State or Federal law. As of December 21, 2020, all NOTs submitted in compliance with this section must be submitted electronically by the permittee to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, the permittee may be required to report electronically if specified by a particular permit or if required to do so by State law.

#### **APPENDIX A. NPDES Primary Industry Categories**

Any permit issued after June 30, 1981 to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of section 301(b)(2)(A), (C), (D), (E) and (F) of CWA, whether or not applicable effluent limitations guidelines have been promulgated. See section 122.44 and section 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 metal manufacturing  
Ore mining  
Organic chemicals manufacturing  
Paint and ink formulation  
Pesticides  
Petroleum refining  
Pharmaceutical preparations  
Photographic equipment and supplies  
Plastics processing  
Plastic and synthetic materials manufacturing  
Porcelain enameling  
Printing and publishing  
Pulp and paper mills  
Rubber processing  
Soap and detergent manufacturing  
Steam electric power plants  
Textile Mills

Timber Products Processing

**APPENDIX C. Criteria for Determining a Concentrated Aquatic Animal Production Facility  
(section 122.24)**

A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of section 122.24 if it contains, grows, or holds aquatic animals in either of the following categories:

(a) Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

(1) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(2) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(b) Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

(1) Closed ponds which discharge only during periods of excess runoff; or

(2) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

“Cold water aquatic animals” include, but are not limited to, the Salmonidae family of fish; e.g., trout and salmon.

“Warm water aquatic animals” include, but are not limited to, the Ictaluridae, Centrarchidae, and Cyprinidae families of fish; e.g., respectively, catfish, sunfish, and minnows.

**APPENDIX D. NPDES PERMIT APPLICATION TESTING REQUIREMENTS (Section 122.21)  
(Refer to 40 CFR Part 122, Appendix D)**

**APPENDIX E. RAINFALL ZONES OF THE UNITED STATES (Refer to 40 CFR Part 122,  
Appendix E)**

**APPENDIX F. INCORPORATED PLACES WITH POPULATIONS GREATER THAN 250,000  
ACCORDING TO THE 1990 DECENNIAL CENSUS BY BUREAU OF CENSUS (Refer to 40  
CFR Part 122, Appendix F)**

**APPENDIX G. INCORPORATED PLACES WITH POPULATIONS GREATER THAN 100,000  
AND LESS THAN 250,000 ACCORDING TO 1990 DECENNIAL CENSUS BY BUREAU OF  
CENSUS (Refer to 40 CFR Part 122, Appendix G)**

**APPENDIX H. COUNTIES WITH UNINCORPORATED URBANIZED AREAS WITH A  
POPULATION OF 250,000 OR MORE ACCORDING TO THE 1990 DECENNIAL CENSUS BY  
THE BUREAU OF CENSUS (Refer to 40 CFR Part 122, Appendix H)**

**APPENDIX I. COUNTIES WITH UNINCORPORATED URBANIZED AREAS GREATER THAN 100,000, BUT LESS THAN 250,000 ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF CENSUS (Refer to 40 CFR Part 122, Appendix I)**

**APPENDIX J. NPDES PERMIT TESTING REQUIREMENTS FOR PUBLICLY OWNED TREATMENT WORKS [section 122.21(j)]**

Table 1A – Effluent Parameters for All POTWS

Biochemical oxygen demand (BOD<sub>5</sub> or CBOD<sub>5</sub>), 5-day

Fecal coliforms

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

Cyanide

Hardness

Metals (total recoverable), cyanide and total phenols

Antimony

Arsenic

Cadmium

Copper

Mercury

Selenium

Thallium

Beryllium

Chromium

Lead

Nickel

Silver

Zinc

Phenolic compounds, total  
Volatile organic compounds

Acrolein  
Benzene  
Carbon tetrachloride  
Chlorodibromomethane  
2-chloroethylvinyl ether  
Dichlorobromomethane  
1,2-dichloroethane  
1,1-dichloroethylene  
1,3-dichloropropylene  
Methyl bromide  
Methylene chloride  
Tetrachloroethylene  
1,1,1-trichloroethane  
Trichloroethylene

Acid-extractable compounds

P-chloro-m-cresol  
2,4-dichlorophenol  
4,6-dinitro-o-cresol  
2-nitrophenol  
Pentachlorophenol  
2,4,6-trichlorophenol

Base-neutral compounds:

Acenaphthene  
Anthracene  
Benzo(a)anthracene  
3,4-benzofluoranthene  
Benzo(k)fluoranthene  
Bis (2-chloroethyl) ether  
Bis (2-ethylhexyl) phthalate  
Butyl benzyl phthalate  
4-chlorophenyl phenyl ether  
Di-n-butyl phthalate  
Dibenzo(a,h)anthracene  
1,3-dichlorobenzene  
3,3'-dichlorobenzidine  
Dimethyl phthalate  
2,6-dinitrotoluene  
Fluoranthene  
Hexachlorobenzene  
Hexachlorocyclo-pentadiene  
Indeno(1,2,3-cd)pyrene  
Naphthalene  
N-nitrosodi-n-propylamine  
N-nitrosodiphenylamine  
Pyrene

Acrylonitrile  
Bromoform  
Chlorobenzene  
Chloroethane  
Chloroform  
1,1-dichloroethane  
Trans-1,2-dichloroethylene  
1,2-dichloropropane  
Ethylbenzene  
Methyl chloride  
1,1,2,2-tetrachloroethane  
Toluene  
1,1,2-trichloroethane  
Vinyl chloride

2-chlorophenol  
2,4-dimethylphenol  
2,4-dinitrophenol  
4-nitrophenol  
Phenol

Acenaphthylene  
Benzidine  
Benzo(a)pyrene  
Benzo(ghi)perylene  
Bis (2-chloroethoxy) methane  
Bis (2-chloroisopropyl) ether  
4-bromophenyl phenyl ether  
2-chloronaphthalene  
Chrysene  
Di-n-octyl phthalate  
1,2-dichlorobenzene  
1,4-dichlorobenzene  
Diethyl phthalate  
2,4-dinitrotoluene  
1,2-diphenylhydrazine  
Fluorene  
Hexachlorobutadiene  
Hexachloroethane  
Isophorone  
Nitrobenzene  
N-nitrosodimethylamine  
Phenanthrene  
1,2,4 -trichlorobenzene