IN THE COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 2015

No. 01028

POTOMAC RIVERKEEPER, INC., D/B/A
POTOMAC RIVERKEEPER NETWORK,

Appellant,

v.

MARYLAND DEPARTMENT OF THE ENVIRONMENT, *et al.*,

Appellees.

On Appeal from the Circuit Court for Allegany County
(W. Timothy Finan, Judge)

BRIEF OF *AMICUS CURIAE* CHESAPEAKE BAY FOUNDATION, INC.

Paul W. Smail, Esq.
Jon A. Mueller, Esq.
Chesapeake Bay Foundation, Inc.
6 Herndon Avenue
Annapolis, MD 21403
(443) 482-2153
psmail@cbf.org
Counsel for Amicus Curiae *Chesapeake Bay Foundation, Inc.*

February 19, 2016

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Regulations

Rules

INTRODUCTION

Amicus curiae, the Chesapeake Bay Foundation, Inc. ("CBF"), hereby submits the following brief pursuant to Maryland Rule 8-511(b). CBF supports the arguments of Appellants and urges this Court to reverse the decision of the Circuit Court for Allegany County.

PROCEDURAL BACKGROUND

On July 16, 2014 the Maryland Department of the Environment ("MDE") issued the National Pollutant Discharge Elimination System ("NPDES") permit for the Upper Potomac River Commission wastewater treatment plant ("UPRC") ("the Permit"). On September 4, 2014, Potomac Riverkeeper Network ("Potomac Riverkeeper") filed a Petition for Judicial Review.

Appellant Potomac Riverkeeper has appealed the decision of the Circuit Court for Allegany County to affirm the issuance of the Permit. The circuit court affirmed the agency decision notwithstanding the clear requirement under State law to remand the matter to MDE for consideration of objections raised by a petitioner that were not reasonably ascertainable during the comment period. Thus, this Court should reverse the decision of the Circuit Court for Allegany County.

QUESTION PRESENTED BY *AMICUS CURIAE*

Did the Circuit Court for Allegany County err by failing to apply the controlling law regarding permit objections not readily ascertainable during the comment period?

BACKGROUND

CBF is a nonstock Maryland corporation with offices in Richmond and Norfolk, Virginia, Annapolis, Maryland, and Harrisburg, Pennsylvania. CBF is the largest conservation organization dedicated to protecting the Chesapeake Bay and its tributaries, including those in Anne Arundel County. CBF has approximately 228,000 members, with over 86,000 members in Maryland. CBF operates fourteen (14) educational programs as well as an Environmental Protection and Restoration department that undertakes land restoration projects throughout Maryland and the Chesapeake Bay watershed, including the Potomac River watershed, designed to improve the water quality of the Chesapeake Bay and its tributaries.

CBF is the largest conservation organization dedicated solely to protecting the Chesapeake Bay and its rivers and streams. CBF has sought leave to file an *amicus curiae* brief on behalf of Potomac Riverkeeper because the restoration and preservation of the Chesapeake Bay depends largely on the adequate control of nutrient discharges from facilities such as UPRC through the development and application of NPDES permits.

NPDES permits such as the one at issue here are perhaps the most important means available to the State of Maryland to implement the Chesapeake Bay Total Maximum Daily Load ("the Bay TMDL"). The Bay TMDL established the total amount of nitrogen, phosphorus and sediment that the Bay and its tidal tributaries can receive from pollution sources. Watershed Implementation Plans, developed by the Chesapeake Bay Watershed states including the State of Maryland, identify various large point sources of nutrient and sediment pollution in the watershed and allocate the maximum

amounts of nitrogen, phosphorus, and sediment for each source. UPRC is one such source. These "wasteload allocations" for specific facilities are designed to ensure that the cumulative amount of these pollutants from all of the contributing sources in Maryland, along with those from other Bay states, does not exceed the total load for the Chesapeake Bay.

MDE may only issue a NPDES permit such as the one at issue here after determining that the discharges meet all applicable State and federal water quality standards and effluent limitations, including wasteload allocations such as those in the Bay TMDL. An integral component of the NPDES permitting process is the ability of citizens and organizations to comment on proposed permits.

STATEMENT OF FACTS

CBF adopts the statement of facts submitted by Appellant Potomac Riverkeeper and adds the following facts.

UPRC is located in Westernport, Maryland and treats industrial wastewater from the Luke Paper Company ("LPC"), and from the towns of Luke and Westernport, Maryland, and Piedmont, West Virginia. E. 561, 758. On February 19, 2013, MDE issued a tentative determination to renew UPRC's NPDES permit. E. 597-616. On July 16, 2014, MDE issued a final NPDES permit for UPRC. E. 254-276. In the final version of the Permit, MDE added a provision that was not included in the tentative determination, modifying the pollution discharge limitation contained within the Permit. The new provision altered the method of calculating UPRC's nitrogen and phosphorus discharges, allowing UPRC to subtract the nitrogen and phosphorus in LPC's intake water from the

nitrogen and phosphorus in UPRC's effluent for the purposes of complying with the Permit. Thus, the permit did not require UPRC to reduce the amount of nitrogen and phosphorous being discharged into the impaired river through technological means, but by legerdemain.

The alteration of the effluent limitation contained within the Permit was not made available in the tentative determination or other supporting documentation that MDE provided to the public during the initial notice and comment period. This is important because the change to the effluent limitation was not reasonably ascertainable by the end of the comment period, leaving Potomac Riverkeeper with no realistic opportunity to know of, or to comment on, the condition contained in the final Permit. Over one year passed between the end of the public notice and comment period and the issuance of the final Permit and no additional public notice and comment period was opened to consider the modified effluent limitation. This deprivation of Potomac Riverkeeper's ability to comment on the revised effluent limitation ignores the clear policy requiring public participation in the NPDES permitting process. This also resulted in a major modification of the permit which allowed UPRC to discharge more nitrogen and phosphorus than the Bay TMDL allows.

ARGUMENT

I. An Opportunity for Meaningful Public Comment During the Permitting Process is Required by Law.

A. Both federal and State law govern the NPDES permitting process.

Congress enacted the Clean Water Act ("CWA) in 1972 to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). The CWA aims to achieve "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." 33 U.S.C. § 1251(a)(2).

To further the goals of the CWA, Section 301(a) prohibits the discharge of any "pollutant" from any "point source" into waters of the United States, unless the Environmental Protection Agency ("EPA") or a state agency issues a permit for such discharge under the NPDES program. 33 U.S.C. §§ 1311(a) and 1342(b). Under the CWA, a "point source" is defined as "any discernible, confined, and discrete conveyance … from which pollutants are or may be discharged." 33 U.S.C. §1362(14). "Pollutant" is statutorily defined to include "dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6). The Supreme Court has held that this list is not exhaustive and that "pollutant" should be interpreted broadly. *Rapanos v. United States*, 547 U.S. 715, 724 (2006).

NPDES permits may be issued by either the EPA itself or by individual states which have been authorized by the EPA to issue and administer the federal NPDES provisions within their states. 33 U.S.C. § 1342(b). The EPA has delegated its authority to administer the NPDES permitting program in Maryland to MDE. *Piney Run Pres. Ass'n v. County Comm'rs*, 268 F. 3d 255, 265 (2001). Therefore, both state and federal law govern MDE's issuance of NPDES permits. See 33 U.S.C. § 1342(b); 40 C.F.R. § 123.25; Md. Code Ann., ENVIR. § 9-324. State law can be more stringent than federal law, but not less stringent. 33 U.S.C. § 1370; *See United States v. Smithfield Foods*, 956 F. Supp. 769, 795 (E.D. Va. 19978) (Commonwealth could adopt stricter standards, limitations and requirements for the discharge of phosphorus than required by the Clean Water Act). Thus, state permitting must at a minimum meet federal requirements including the CWA and EPA's regulations.

B. Public participation is required under the laws governing the NPDES permitting process.

An overarching goal of the CWA is to promote public participation in the NPDES permitting process. The CWA itself does not specify the exact mechanisms required for public participation in the NPDES program. Instead, EPA regulations specify how mandatory public participation opportunities shall be provided for during the NPDES permitting process. *See* 40 C.F.R. § 122.1(a)(3), 124.10, 124.11, 124.13. (describing public participation provisions for NPDES permits, public notice for notices of intent, and public notice of draft permits). Under federal law, notice of permit applications must be provided to the public and the administrator must allow at least 30 days for public

comment. 40 C.F.R. § 124.10(a)(1)(ii), (b). During the comment period, any interested person may submit comments on the draft permit, and may request a public hearing if no hearing has been scheduled. 40 C.F.R. § 124.11.

Congress directed that "[p]ublic participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the [EPA] or any State … *shall be provided for, encouraged, and assisted by the [EPA] and the States*." 33 U.S.C. § 1251(e) (emphasis added); *see also* 40 C.F.R. §§ 123.30 and 123.25(a)(22)-(33). Congress was clear that the EPA's "regulations would do more than pay lip service to public participation; instead, the public must have a genuine opportunity to speak on the issues of protection of its waters' on federal, state, and local levels." *Adams v. U.S. E.P.A.*, 38 F.3d 43, 51 (1st Cir. 1994) (citing *Natural Resources Defense Council, Inc. v. U.S. E.P.A.*, 859 F.2d 156, 177 (D.C. Cir. 1988)). Accordingly, EPA regulations establish minimum procedures and opportunities for public participation in permit decisions applicable to both federal and state NPDES programs, such as the State of Maryland's. *See e.g.* 40 C.F.R. §§ 123.25 and 124.10.

Consistent with Congress' directive, the EPA regulations set forth specific baseline requirements to ensure that the public may participate in, and scrutinize, a state's permitting decisions. *See* 40 C.F.R. § 123.25 (listing procedural requirements applicable to state administered programs and providing that states may "impose more stringent requirements" to allow for greater public participation). Further, the EPA regulations grant the public an unfettered right to seek judicial review of state NDPES permitting decisions. *See* 40 C.F.R. § 123.30 ("All States that administer [a NPDES permit program]

shall provide an opportunity for judicial review in State Court of the final approval or denial of permits by the State that is sufficient to *provide for, encourage, and assist public participation* in the permitting process…") (emphasis added). This public participation mandate applies to MDE's administration of the NPDES permit program. *See* 33 U.S.C.A. § 1251(e); *Costle v. Pac. Legal Found.*, 445 U.S. 198, 216 (1980).

The State of Maryland enacted a specific subtitle of the Environment Article that provides for additional public participation standards applicable to the MDE NPDES permitting process, such as notice and judicial review requirements. Md. Code Ann., ENVIR. § 1-601. Additionally, Section 9-324 of the Environmental Article requires "[t]he [MDE to] give public notice of each application of a discharge permit as required by Title 1, Subtitle 6." Title 1, Subtitle 6 requires the Department to provide the public with a full opportunity to participate in the State's NPDES permitting process. Md. Code. Ann., ENVIR. § 1-601(a)(3). Further, the statute commands that MDE "shall give public notice of each application for a discharge permit… and mak[e] available to the public appropriate documents, permit applications, supporting material, plans, and other relevant information." Md. Code Ann., ENVIR. § 9-324. Section 1-601(d) of the Environmental Article is plainly applicable to cases such as the one at bar and provides a clear remedy when a petitioner seeks judicial review of a permit where the objections raised were not reasonably ascertainable during the permit comment period, or which arose after the comment period. Md. Code Ann., ENVIR. § 1-601(d)(1). It states that "[t]he court shall remand the matter to [MDE] for consideration of [such] objections[.]" Md. Code Ann., ENVIR. § 1-601(d)(2).

This Court recently observed that the public cannot comment on a decision that has not been made. *Maryland Dep't of the Env't v. Anacostia Riverkeeper*, 222 Md. App. 153, 178, 112 A.3d 979, 994 (2015), *cert. granted Md. Dep't of Env't v. Anacostia Riverkeeper*, 443 Md. 734, 118 A.3d 861 (2015) ("This creates an obvious flaw: the public can't comment on a program that doesn't yet exist, and by the time the program *did* exist, the time for comment on it had passed.") (emphasis in original). While in *Anacostia Riverkeeper* this Court was analyzing this issue in the context of yet to be created restoration plans that would later be incorporated as binding terms of stormwater discharge permits, the point of law is applicable here. There is simply no way for the public to predict future permit terms or comment on changes in methods for permit effluent limit calculations that MDE itself failed to identify anywhere in the fact sheet for the draft permit, the draft permit itself, or in any of the other documents provided to the public during the comment period.

II. MDE'S ISSUANCE OF UPRC'S FINAL NPDES PERMIT VIOLATES PUBLIC PARTICIPATION PROCEDURES REQUIRED UNDER BOTH FEDERAL AND STATE LAW BY NOT PROVIDING AN OPPORTUNITY FOR PUBLIC NOTICE AND COMMENT ON THE MODIFIED EFFLUENT LIMITATION.

MDE made a major modification to the Permit after the close of the public comment period. Both federal and State law require any major permit modification to go through a full public participation process, including notice, comment and the opportunity to seek judicial review. Md. Code Ann., ENVIR. § 1-601(c), 9-324(b); 40 C.F.R. § 122.62. The change in UPRC's effluent limitation calculation is material and tantamount to a modification of the terms of UPRC's NPDES permit. As such, MDE's

decision to issue UPRC's final NPDES permit should not be granted deference and the permit should be remanded to MDE for consideration of petitioners' comments and objections as required by Md. Code Ann., ENVIR. § 1-601(d).

EPA "anticipated that most policy and technical issues would be decided as part of the public comment period, which is the most open, accessible forum possible and which comes at a stage where the Agency has the greatest ability to modify a draft permit." *Adams v. U.S. E.P.A.*, 38 F.3d 43, 51 (1st Cir. 1994). A modification of an effluent limitation in the Permit requires mandatory public notice and comment period on the revised effluent limitation. 40 C.F.R § 122.62. To allow a permitting authority to materially modify the conditions of new NPDES permits after the close of the comment period, without reopening the condition to public participation, defies the explicit mandates of the applicable laws governing the public participation process.

As stated above, state permitting must the minimum standards established by the CWA and federal regulations. Those regulations require a full opportunity to participate in permitting decisions that modify a NPDES permit:

> If cause exists, the Director may modify or revoke and reissue the permit accordingly, […] When a permit is modified, only the conditions subject to modification are reopened…. If a permit modification satisfies the criteria in § 122.63 for "minor modifications" the permit may be modified without a draft permit or public review. *Otherwise, a draft permit must be prepared and other procedures in part 124 (or procedures of an approved State program) followed.*

40 C.F.R § 122.62 (emphasis added). The regulation's reference to "part 124" of the Code of Federal Regulations means that any permit modifications (except those defined by regulation as "minor") must go through the same public procedures as new or reissued

permits, including requirements for MDE to prepare a draft permit and fact sheet, provide public notice and an opportunity to comment and request a public hearing. *See* 40 C.F.R. § 123.25 (listing part 124 minimum "procedures for decision making" requirements applicable to state administered programs).

The only permit modifications that do not require full public participation procedures fall within the narrow exception of certain enumerated "minor modifications."[1] 40 C.F.R. § 122.63. Any permit modification not specifically enumerated as a "minor modification" under 40 C.F.R. § 122.63 must be made for cause and with part 124 draft permit and public notice as required in Section 122.62. 40 CFR § 122.63. The modification of the effluent limitation in Special Condition A.1(7) of the Permit does not fall within these "minor modifications." Accordingly, MDE's failure to modify the Permit's effluent limitation calculation through a formal permit modification process plainly violates the mandatory public participation requirements under the CWA. Pursuant to 40 C.F.R. § 122.62 (applicable to state administered NPDES programs under 40 C.F.R. § 123.23), when a new or revised effluent limitation is added to a permit, it must be incorporated through a formal permit modification that fully complies with

[1] "Minor modifications" are narrowly defined at 40 C.F.R. § 122.63. The only permissible minor modifications are those necessary to correct typographical errors, require more frequent monitoring or reporting by the permittee, change an interim compliance date in a schedule of compliance, allow for changes in ownership or operational control of a facility (as long as no other changes are needed), change a construction schedule for a new source, delete a point source outfall when it is terminated, require electronic reporting requirements, incorporate conditions of a POTW pretreatment program (approved in accordance with 40 C.F.R. § 403.11) or to terminate a discharge outfall. 40 C.F.R. § 122.63.

public participation requirements. The modification to a net calculation of the effluent limitation in Special Condition A.1(7) of the Permit falls squarely within these regulations, because it describes the "calculated [effluent] *concentration* [that] may then be used as 'the average daily *concentration* for the month' […] to determine compliance with the loading limit." (emphasis added). The CWA defines "effluent limitation" broadly and includes "any restriction established by a state […] on *quantities, rates, and concentrations* of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters[.]" 33 U.S.C. § 1362(11) (emphasis added). As discussed below, a discharge "concentration" is explicitly defined as an "effluent limitation" in the CWA. Further, the CWA defines a wasteload allocation in a NPDES permit as "a type of water quality-based effluent limitation," which incorporates the "loading limit" described in Special Condition A.1(7). 40 C.F.R. § 130.2(h). Therefore, MDE was required to provide for public notice and comment on the modified effluent limitation. 40 C.F.R. § 122.62.

The public participation procedures following a permit modification of an effluent limitation are not discretionary. 40 C.F.R. § 122.62 ("If a permit modification [is a] "minor modification[]" the permit may be modified without a draft permit or public review. Otherwise, *a draft permit must be prepared and other procedures in part 124 (or procedures of an approved State program) followed.*") (emphasis added). The modification of an effluent limitation to a net limit is expressly listed as just such a modification requiring such public participation procedures. 40 C.F.R. § 122.62(a)(8) (Stating "[t]he *following are causes for modification* […] of permits … (8)(i) Net limits.

Upon request of a permittee who qualifies for *effluent limitations on a net basis* under § 122.45(g).” (emphasis added). Thus, MDE circumvented the public participation process when it changed the effluent limitation in the Permit to a net basis concentration calculation after the close of the public notice and comment period, without providing for additional public notice and comment.

Further, Maryland state law requires that "the issuance, denial, *renewal, or revision*" of any permit be subject to full public participation and opportunity for judicial review. Md. Code Ann., ENVIR. § 1-601(c) (emphasis added). As described in Section I, above, Section 1-601(d) of the Environmental Article requires that a permit be remanded to MDE for consideration of petitioner’s objections to the permit if those objections were not reasonably ascertainable during the permit comment period, or which arose after the comment period. Md. Code Ann., ENVIR. § 1-601(d)(1). Petitioner’s objection to the amended effluent limitation was not reasonably ascertainable during the comment period as the modification arose after the close of the comment period, thus the Permit must be remanded to MDE, in accordance with Maryland law.

MDE is not owed deference in issuing the Permit because its failure to adhere to the procedural public participation requirements is a plain error of federal and state law and ignores Congress’ explicit emphasis on public participation in drafting the CWA. The decision to change to the effluent limitation in the Permit to a net basis, over one year after the close of the public comment period, eliminated any meaningful opportunity for the public to comment on MDE’s decision and the revised effluent limitation. Allowing MDE to circumvent the public participation requirements in this way is in

complete contravention of the NPDES permitting program as it was envisioned by Congress, the EPA and the Maryland General Assembly. Moreover, MDE's action deprived the public of information necessary to "determine whether there exist[ed] a deviation from" the legal requirements of the CWA prior to issuance of the final permit renewal. *Waterkeeper Alliance, Inc. v. U.S. E.P.A.*, 399 F.3d 486, 503-04 (2d Cir. 2005). One of the principal purposes of public participation is to "alert [an] agency to potential problems with permits and ensure that [the] agency has [an] opportunity to address those problems before [the] permit becomes final." *A.H. Smith Assocs. Ltd. P'ship v. Maryland Dep't of the Env't*, 116 Md. App. 233, 238 (1997) (citing *Adams v. U.S. E.P.A.*, 38 F.3d 43, 51 (1st Cir. 1994)). To allow MDE to modify the effluent limitation in the Permit outside of the mandatory public participation process is plainly unlawful and deprives the public of any meaningful opportunity to "speak on the issues of protection of its waters' on federal, state, and local levels." *Adams v. U.S. E.P.A.*, 38 F.3d 43, 51 (1st Cir. 1994) *citing Natural Resources Defense Council, Inc. v. U.S. E.P.A.*, 859 F.2d 156, 177 (D.C. Cir. 1988).

CONCLUSION

Amicus curiae, Chesapeake Bay Foundation, Inc., respectfully requests that this Court reverse the decision of the Circuit Court for Allegany County.

Respectfully submitted,

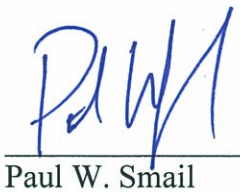
Paul W. Smail
Chesapeake Bay Foundation, Inc.
6 Herndon Avenue
Annapolis, MD 21403
Telephone: (443) 482-2153
Fax: (410) 268-6687
Email: psmail@cbf.org

Attorneys for the Amicus Curiae Chesapeake Bay Foundation, Inc.

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 3,645 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112. This brief has been prepared with proportionally spaced type: Times New Roman, 13 point.



Paul W. Smail

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 19th day of February, 2016, two copies of the foregoing Brief of *Amicus Curiae* Chesapeake Bay Foundation were mailed first class, postage prepaid, to:

Kristen S. DeWire
Jonathan E. C. May
Assistant Attorneys General
Office of the Attorney General
Maryland Department of the Environment
1800 Washington Boulevard, Suite 6048
Baltimore, MD 21230

Pamela D. Marks, Esq.
Beveridge & Diamond PC
201 North Charles Street
Baltimore, MD 21201-4250

E. Paul Calamita, Esq.
Richard H. Sedgley, Esq.
AquaLaw PLC
6 South 5th Street
Richmond, VA 23219

James E. Walsh, Esq.
Robb and Walsh, LLC
18 North Centre Street
Cumberland, MD 21502

_____
Paul W. Smail

CITATIONS AND TEXT OF PERTINENT STATUTES AND REGULATIONS

*** Current through PL 114-114, approved 12/28/15, with gaps of PL's 114-94 and 114-95 ***

TITLE 33. NAVIGATION AND NAVIGABLE WATERS
CHAPTER 26. WATER POLLUTION PREVENTION AND CONTROL
RESEARCH AND RELATED PROGRAMS

Go to the United States Code Service Archive Directory

33 USCS § 1251

§ 1251. Congressional declaration of goals and policy

(a) Restoration and maintenance of chemical, physical and biological integrity of Nation's waters; national goals for achievement of objective. The objective of this Act *[33 USCS §§ 1251* et seq.] is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act *[33 USCS §§ 1251* et seq.]--

(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State;

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans; and

(7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act *[33 USCS §§ 1251* et seq.] to be met through the control of both point and nonpoint sources of pollution.

(b) Congressional recognition, preservation, and protection of primary responsibilities and rights of States. It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this Act *[33 USCS §§ 1251* et seq.]. It is the policy of Congress that the States manage the construction grant program under this Act *[33 USCS §§ 1251* et seq.] and implement the permit programs under sections 402 and 404 of this Act *[33 USCS §§ 1342,* 1344]. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution, and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

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

(d) Administrator of Environmental Protection Agency to administer *33 USCS §§ 1251* et seq. Except as otherwise expressly provided in this Act *[33 USCS §§ 1251* et seq.], the Administrator of the Environmental Protection Agency (hereinafter in this Act called "Administrator") shall administer this Act *[33 USCS §§ 1251* et seq.].

(e) Public participation in development, revision, and enforcement of any regulation, etc. Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this Act *[33 USCS §§ 1251* et seq.] shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

(f) Procedures utilized for implementing *33 USCS §§ 1251* et seq. It is the national policy that to the maximum extent possible the procedures utilized for implementing this Act *[33 USCS §§ 1251* et seq.] shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

(g) Authority of States over water. It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act *[33 USCS §§ 1251* et seq.]. It is the further policy of Congress that nothing in this Act *[33 USCS §§ 1251* et seq.] shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

HISTORY:

(June 30, 1948, ch 758, Title I, § 101, as added, Oct. 18, 1972, P.L. 92-500, § 2, *86 Stat. 816;* Dec. 27, 1977, P.L. 95-217, §§ 5(a), 26(b), *91 Stat. 1567, 1575;* Feb. 4, 1987, P.L. 100-4, Title III, § 316(b), *101 Stat. 60.)*

*** Current through PL 114-114, approved 12/28/15, with gaps of PL's 114-94 and 114-95 ***

TITLE 33. NAVIGATION AND NAVIGABLE WATERS
CHAPTER 26. WATER POLLUTION PREVENTION AND CONTROL
STANDARDS AND ENFORCEMENT

Go to the United States Code Service Archive Directory

33 USCS § 1311

§ 1311. Effluent limitations

(a) Illegality of pollutant discharges except in compliance with law. Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [*33 USCS §§ 1312*, *1316*, *1317*, *1328*, *1342*, *1344*], the discharge of any pollutant by any person shall be unlawful.

(b) Timetable for achievement of objectives. In order to carry out the objective of this Act there shall be achieved--

(1) (A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 304(b) of this Act [*33 USCS § 1314(b)*], or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 307 of this Act [*33 USCS § 1317*]; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 203 of this Act [*33 USCS § 1283*] prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 304(d)(1) of this Act [*33 USCS § 1314(d)(1)*]; or,

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 510 [*33 USCS § 1370*]) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this Act.

(2) (A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(2) of this Act [*33 USCS § 1314(b)(2)*], which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 315 [*33 USCS § 1325*]), that such elimination is technologically and economically achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(2) of this Act [*33 USCS § 1314(b)(2)*], or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 307 of this Act [*33 USCS § 1317*];

(B) [Repealed]

(C) with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in ac-

cordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b) [*33 USCS § 1314(b)*], and in no case later than March 31, 1989;

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 307 of this Act [*33 USCS § 1317*] which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 304(b) [*33 USCS § 1314(b)*], and in no case later than March 31, 1989;

(E) as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b) [*33 USCS § 1314(b)*], and in no case later than March 31, 1989, compliance with effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 304(a)(4) of this Act [*33 USCS § 1314(a)(4)*] shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(4) of this Act [*33 USCS § 1314(b)(4)*]; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than 3 years after the date such limitations are established, and in no case later than March 31, 1989.

(3) (A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b) [*33 USCS § 1314(b)*], and in no case later than March 31, 1989; and

(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 402(a)(1) [*33 USCS § 1342(a)(1)*] in a permit issued after enactment of the Water Quality Act of 1987 [enacted Feb. 4, 1987], compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than March 31, 1989.

(c) Modification of timetable. The Administrator may modify the requirements of subsection (b)(2)(A) of this section with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the economic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants.

(d) Review and revision of effluent limitations. Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.

(e) All point discharge source application of effluent limitations. Effluent limitations established pursuant to this section or section 302 of this Act [*33 USCS § 1312*] shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this Act [*33 USCS §§ 1251* et seq.].

(f) Illegality of discharge of radiological, chemical, or biological warfare agents, high-level radioactive waste or medical waste. Notwithstanding any other provisions of this Act [*33 USCS §§ 1251* et seq.] it shall be unlawful to discharge any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste, into the navigable waters.

(g) Modifications for certain nonconventional pollutants.

(1) General authority. The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, and total phenols (4AAP) (when determined by the Administrator to be a pollutant covered by subsection (b)(2)(F)) and any other pollutant which the Administrator lists under paragraph (4) of this subsection.

(2) Requirements for granting modifications. A modification under this subsection shall be granted only upon a showing by the owner or operator of a point source satisfactory to the Administrator that--

(A) such modified requirements will result at a minimum in compliance with the requirements of subsection (b)(1)(A) or (C) of this section, whichever is applicable;

(B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(C) such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

(3) Limitation on authority to apply for subsection (c) modification. If an owner or operator of a point source applies for a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutant only during the same time period as he is eligible to apply for a modification under this subsection.

(4) Procedures for listing additional pollutants.

(A) General authority. Up on petition of any person, the Administrator may add any pollutant to the list of pollutants for which modification under this section is authorized (except for pollutants identified pursuant to section 304(a)(4) of this Act [*33 USCS § 1314(a)(4)*], toxic pollutants subject to section 307(a) of this Act [*33 USCS § 1317(a)*], and the thermal component of discharges) in accordance with the provisions of this paragraph.

(B) Requirements for listing.

(i) Sufficient information. The person petitioning for listing of an additional pollutant under this subsection shall submit to the Administrator sufficient information to make the determinations required by this subparagraph.

(ii) Toxic criteria determination. The Administrator shall determine whether or not the pollutant meets the criteria for listing as a toxic pollutant under section 307(a) of this Act [*33 USCS § 1317(a)*].

(iii) Listing as toxic pollutant. If the Administrator determines that the pollutant meets the criteria for listing as a toxic pollutant under section 307(a) [*33 USCS § 1317(a)*], the Administrator shall list the pollutant as a toxic pollutant under section 307(a) [*33 USCS § 1317(a)*].

(iv) Nonconventional criteria determination. If the Administrator determines that the pollutant does not meet the criteria for listing as a toxic pollutant under such section and determines that adequate test methods and sufficient data are available to make the determinations required by paragraph (2) of this subsection with respect to the pollutant, the Administrator shall add the pollutant to the list of pollutants specified in paragraph (1) of this subsection for which modifications are authorized under this subsection.

(C) Requirements for filing of petitions. A petition for listing of a pollutant under this paragraph--

(i) must be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 304 [*33 USCS § 1314*];

(ii) may be filed before promulgation of such guideline; and

(iii) may be filed with an application for a modification under paragraph (1) with respect to the discharge of such pollutant.

(D) Deadline for approval of petition. A decision to add a pollutant to the list of pollutants for which modifications under this subsection are authorized must be made within 270 days after the date of promulgation of an applicable effluent guideline under section 304 [*33 USCS § 1314*].

(E) Burden of proof. The burden of proof for making the determinations under subparagraph (B) shall be on the petitioner.

(5) Removal of pollutants. The Administrator may remove any pollutant from the list of pollutants for which modifications are authorized under this subsection if the Administrator determines that adequate test methods and sufficient data are no longer available for determining whether or not modifications may be granted with respect to such pollutant under paragraph (2) of this subsection.

(h) Modification of secondary treatment requirements. The Administrator, with the concurrence of the State, may issue a permit under section 402 [*33 USCS § 1342*] which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that--

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act [*33 USCS § 1314(a)(6)*];

(2) the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures pro-

tection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable, and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;

(7) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(8) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(9) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 304(a)(1) of this Act [*33 USCS § 1314(a)(1)*] after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act [*33 USCS § 1251(a)(2)*]. For the purposes of paragraph (9), "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters. In order for a permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge. Notwithstanding any other provisions of this subsection, no permit may be issued under this subsection for discharge of a pollutant into the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

(i) Municipal time extensions.

(1) Where construction is required in order for a planned or existing publicly owned treatment works to achieve limitations under subsection (b)(1)(B) or (b)(1)(C) of this section, but (A) construction cannot be completed within the time required in such subsection, or (B) the United States has failed to make financial assistance under this Act [*33 USCS §§ 1251* et seq.] available in time to achieve such limitations by the time specified in such subsection, the owner or operator of such treatment works may request the Administrator (or if appropriate the State) to issue a permit pursuant to section 402 of this Act [*33 USCS § 1342*] or to modify a permit issued pursuant to that section to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after the

date of enactment of the Water Quality Act of 1987 [enacted Feb. 7, 1987]. The Administrator (or if appropriate the State) may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the publicly owned treatment works based on the earliest date by which such financial assistance will be available from the United States and construction can be completed, but in no event later than July 1, 1988, and shall contain such other terms and conditions, including those necessary to carry out subsections (b) through (g) of section 201 of this Act [*33 USCS § 1281(b)*-(g)], section 307 of this Act [*33 USCS § 1317*], and such interim effluent limitations applicable to that treatment works as the Administrator determines are necessary to carry out the provisions of this Act [*33 USCS §§ 1251* et seq.].

(2) (A) Where a point source (other than a publicly owned treatment works) will not achieve the requirements of subsections (b)(1)(A) and (b)(1)(C) of this section and--

(i) if a permit issued prior to July 1, 1977, to such point source is based upon a discharge into a publicly owned treatment works; or

(ii) if such point source (other than a publicly owned treatment works) had before July 1, 1977, a contract (enforceable against such point source) to discharge into a publicly owned treatment works; or

(iii) if either an application made before July 1, 1977, for a construction grant under this Act [*33 USCS §§ 1251* et seq.] for a publicly owned treatment works, or engineering or architectural plans or working drawings made before July 1, 1977, for a publicly owned treatment works, show that such point source was to discharge into such publicly owned treatment works,

and such publicly owned treatment works is presently unable to accept such discharge without construction, and in the case of a discharge to an existing publicly owned treatment works, such treatment works has an extension pursuant to paragraph (1) of this subsection, the owner or operator of such point source may request the Administrator (or if appropriate the State) to issue or modify such a permit pursuant to such section 402 [*33 USCS § 1342*] to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after the date of enactment of this subsection [enacted Dec. 27, 1977] or the filing of a request by the appropriate publicly owned treatment works under paragraph (1) of this subsection, whichever is later. If the Administrator (or if appropriate the State) finds that the owner or operator of such point source has acted in good faith, he may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the point source to achieve the requirements of subsections (b)(1)(A) and (C) of this section and shall contain such other terms and conditions, including pretreatment and interim effluent limitations and water conservation requirements applicable to that point source, as the Administrator determines are necessary to carry out the provisions of this Act [*33 USCS §§ 1251* et seq.].

(B) No time modification granted by the Administrator (or if appropriate the State) pursuant to paragraph (2)(A) of this subsection shall extend beyond the earliest date practicable for compliance or beyond the date of any extension granted to the appropriate publicly owned treatment works pursuant to paragraph (1) of this subsection, but in no event shall it extend beyond July 1, 1988; and no such time modification shall be granted unless (i) the publicly owned treatment works will be in operation and available to the point source before July 1, 1988, and will meet the requirements of subsections (b)(1)(B) and (C) of this section after receiving the discharge from that point source; and (ii) the point source and the publicly owned treatment works have entered into an enforceable contract requiring the point source to discharge into the publicly owned treatment works, the owner or operator of such point source to pay the costs required under section 204 of this Act [*33 USCS § 1284*], and the publicly owned treatment works to accept the discharge from the point source; and (iii) the permit for such point source requires that point source to meet all requirements under section 307(a) and (b) [*33 USCS § 1317(a),* (b)] during the period of such time modification.

(j) Modification procedures.

(1) Any application filed under this section for a modification of the provisions of--

(A) subsection (b)(1)(B) under subsection (h) of this section shall be filed not later that [than] the 365th day which begins after the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981 [enacted Dec. 29, 1981], except that a publicly owned treatment works which prior to December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received modification under subsection (h), may apply for a modification of subsection (h) in its own right not later than 30 days after the date of the enactment of the Water Quality Act of 1987 [enacted Feb. 7, 1987], and except as provided in paragraph (5);

(B) subsection (b)(2)(A) as it applies to pollutants identified in subsection (b)(2)(F) shall be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 304 [*33 USCS § 1314*] or not later than 270 days after the date of enactment of the Clean Water Act of 1977 [enacted Dec. 27, 1977], whichever is later.

(2) Subject to paragraph (3) of this section, any application for a modification filed under subsection (g) of this section shall not operate to stay any requirement under this Act [*33 USCS §§ 1251* et seq.], unless in the judgment of the Administrator such a stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities, and that there is a substantial likelihood that the applicant will succeed on the merits of such application. In the case of an application filed under subsection (g) of this section, the Administrator may condition any stay granted under this paragraph on requiring the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.

(3) Compliance requirements under subsection (g).

(A) Effect of filing. An application for a modification under subsection (g) and a petition for listing of a pollutant as a pollutant for which modifications are authorized under such subsection shall not stay the requirement that the person seeking such modification or listing comply with effluent limitations under this Act [*33 USCS §§ 1251* et seq.] for all pollutants not the subject of such application or petition.

(B) Effect of disapproval. Disapproval of an application for a modification under subsection (g) shall not stay the requirement that the person seeking such modification comply with all applicable effluent limitations under this Act [*33 USCS §§ 1251* et seq.].

(4) Deadline for subsection (g) decision. An application for a modification with respect to a pollutant filed under subsection (g) must be approved or disapproved not later than 365 days after the date of such filing; except that in any case in which a petition for listing such pollutant as a pollutant for which modifications are authorized under such subsection is approved, such application must be approved or disapproved not later than 365 days after the date of approval of such petition.

(5) Extension of application deadline.

(A) In general. In the 180-day period beginning on the date of the enactment of this paragraph [enacted Oct. 31, 1994], the city of San Diego, California, may apply for a modification pursuant to subsection (h) of the requirements of subsection (b)(1)(B) with respect to biological oxygen demand and total suspended solids in the effluent discharged into marine waters.

(B) Application. An application under this paragraph shall include a commitment by the applicant to implement a waste water reclamation program that, at a minimum, will--

(i) achieve a system capacity of 45,000,000 gallons of reclaimed waste water per day by January 1, 2010; and

(ii) result in a reduction in the quantity of suspended solids discharged by the applicant into the marine environment during the period of the modification.

(C) Additional conditions. The Administrator may not grant a modification pursuant to an application submitted under this paragraph unless the Administrator determines that such modification will result in removal of not less than 58 percent of the biological oxygen demand (on an annual average) and not less than 80 percent of total suspended solids (on a monthly average) in the discharge to which the application applies. A

(D) Preliminary decision deadline. The Administrator shall announce a preliminary decision on an application submitted under this paragraph not later than 1 year after the date the application is submitted.

(k) Innovative technology. In the case of any facility subject to a permit under section 402 [*33 USCS § 1342*] which proposes to comply with the requirements of subsection (b)(2)(A) or (b)(2)(E) of this section by replacing existing production capacity with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to such facility and moves toward the national goal of eliminating the discharge of all pollutants, or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or by achieving the required reduction with an innovative system that has the potential for significantly lower costs than the systems which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 402 [*33 USCS § 1342*], in consultation with the Administrator) may establish a date for compliance under subsection (b)(2)(A) or (b)(2)(E) of this section no later than two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection, if it is also determined that such innovative system has the potential for industry-wide application.

(l) Toxic pollutants. Other than as provided in subsection (n) of this section, the Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 307(a)(1) of this Act [*33 USCS § 1317(a)(1)*].

(m) Modification of effluent limitation requirements for point sources.

(1) The Administrator, with the concurrence of the State, may issue a permit under section 402 [*33 USCS § 1342*] which modifies the requirements of subsections (b)(1)(A) and (b)(2)(E) of this section, and of section 403 [*33 USCS § 1343*], with respect to effluent limitations to the extent such limitations relate to biochemical oxygen demand and pH from discharges by an industrial discharger in such State into deep waters of the territorial seas, if the applicant demonstrates and the Administrator finds that--

(A) the facility for which modification is sought is covered at the time of the enactment of this subsection [enacted Jan. 8, 1983] by National Pollutant Discharge Elimination System permit number CA0005894 or CA0005282;

(B) the energy and environmental costs of meeting such requirements of subsections (b)(1)(A) and (b)(2)(E) and section 403 [*33 USCS § 1343*] exceed by an unreasonable amount the benefits to be obtained, including the objectives of this Act [*33 USCS §§ 1251* et seq.];

(C) the applicant has established a system for monitoring the impact of such discharges on a representative sample of aquatic biota;

(D) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(E) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(F) the discharge is into waters where there is strong tidal movement and other hydrological and geological characteristics which are necessary to allow compliance with this subsection and section 101(a)(2) of this Act [*33 USCS § 1251(a)(2)*];

(G) the applicant accepts as a condition to the permit a contractural [contractual] obligation to use funds in the amount required (but not less than $ 250,000 per year for ten years) for research and development of water pollution control technology, including but not limited to closed cycle technology;

(H) the facts and circumstances present a unique situation which, if relief is granted, will not establish a precedent or the relaxation of the requirements of this Act [*33 USCS §§ 1251* et seq.] applicable to similarly situated discharges; and

(I) no owner or operator of a facility comparable to that of the applicant situated in the United States has demonstrated that it would be put at a competitive disadvantage to the applicant (or the parent company or any subsidiary thereof) as a result of the issuance of a permit under this subsection.

(2) The effluent limitations established under a permit issued under paragraph (1) shall be sufficient to implement the applicable State water quality standards, to assure the protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish, fauna, wildlife, and other aquatic organisms, and to allow recreational activities in and on the water. In setting such limitations, the Administrator shall take into account any seasonal variations and the need for an adequate margin of safety, considering the lack of essential knowledge concerning the relationship between effluent limitations and water quality and the lack of essential knowledge of the effects of discharges on beneficial uses of the receiving waters.

(3) A permit under this subsection may be issued for a period not to exceed five years, and such a permit may be renewed for one additional period not to exceed five years upon a demonstration by the applicant and a finding by the Administrator at the time of application for any such renewal that the provisions of this subsection are met.

(4) The Administrator may terminate a permit issued under this subsection if the Administrator determines that there has been a decline in ambient water quality of the receiving waters during the period of the permit even if a direct cause and effect relationship cannot be shown: *Provided,* That if the effluent from a source with a permit issued under this subsection is contributing to a decline in ambient water quality of the receiving waters, the Administrator shall terminate such permit.

(n) Fundamentally different factors.

(1) General rule. The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) or section 307(b) [*33 USCS § 1317(b)*] for a facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that--

(A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 304(b) or 304(g) and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;

(B) the application--

(i) is based solely on information and supporting data submitted to the Administrator during the rule-making for establishment of the applicable national effluent limitation guidelines or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility; or

(ii) is based on information and supporting data referred to in clause (i) and information and supporting data the applicant did not have a reasonable opportunity to submit during such rulemaking;

(C) the alternative requirement is no less stringent than justified by the fundamental difference; and

(D) the alternative requirement will not result in a nonwater quality environmental impact which is markedly more adverse than the impact considered by the Administrator in establishing such national effluent limitation guideline or categorical pretreatment standard.

(2) Time limit for applications. An application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection must be submitted to the Administrator within 180 days after the date on which such limitation or standard is established or revised, as the case may be.

(3) Time limit for decision. The Administrator shall approve or deny by final agency action an application submitted under this subsection within 180 days after the date such application is filed with the Administrator.

(4) Submission of information. The Administrator may allow an applicant under this subsection to submit information and supporting data until the earlier of the date the application is approved or denied or the last day that the Administrator has to approve or deny such application.

(5) Treatment of pending applications. For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factors which is pending on the date of the enactment of this subsection [enacted Feb. 7, 1987] shall be treated as having been submitted to the Administrator on the 180th day following such date of enactment [enacted Feb. 7, 1987]. The applicant may amend the application to take into account the provisions of this subsection.

(6) Effect of submission of application. An application for an alternative requirement under this subsection shall not stay the applicant's obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

(7) Effect of denial. If an application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection is denied by the Administrator, the applicant must comply with such limitation or standard as established or revised, as the case may be.

(8) Reports. By January 1, 1997, and January 1 of every odd-numbered year thereafter, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the status of applications for alternative requirements which modify the requirements of effluent limitations under section 301 or 304 of this Act [*33 USCS § 1311* or *1314*] or any national categorical pretreatment standard under section 307(b) of this Act [*33 USCS § 1317(b)*] filed before, on, or after such date of enactment [enacted Feb. 7, 1987].

(o) Application fees. The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administrative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to subsections (c), (g), (i), (k), (m), and (n) of section 301, section 304(d)(4), and section 316(a) of this Act [*33 USCS §§ 1311(c)*, (g), (i), (k), (m), (n), 1314(d)(4), 1316(a)]. All amounts collected by the Administrator under this subsection shall be deposited into a special fund of the Treasury entitled "Water Permits and Related Services" which shall thereafter be available for appropriation to carry out activities of the Environmental Protection Agency for which such fees were collected.

(p) Modified permit for coal remining operations.

(1) In general. Subject to paragraphs (2) through (4) of this subsection, the Administrator, or the State in any case which the State has an approved permit program under section 402(b) [*33 USCS § 1342(b)*], may issue a permit under section 402 [*33 USCS § 1342*] which modifies the requirements of subsection (b)(2)(A) of this section with respect to the pH level of any pre-existing discharge, and with respect to pre-existing discharges of iron and manganese from the remined area of any coal remining operation or with respect to the pH level or level of iron or manganese in any pre-existing discharge affected by the remaining operation. Such modified requirements shall apply the best available

technology economically achievable on a case-by-case basis, using best professional judgment, to set specific numerical effluent limitations in each permit.

(2) Limitations. The Administrator or the State may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation will result in the potential for improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins. No discharge from, or affected by, the remining operation shall exceed State water quality standards established under section 303 of this Act [*33 USCS § 1313*].

(3) Definitions. For purposes of this subsection--

(A) Coal remining operation. The term "coal remining operation" means a coal mining operation which begins after the date of the enactment of this subsection [enacted Feb. 4, 1987] at a site on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977.

(B) Remined area. The term "remined area" means only that area of any coal remining operation on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977.

(C) Pre-existing discharge. The term "pre-existing discharge" means any discharge at the time of permit application under this subsection.

(4) Applicability of strip mining laws. Nothing in this subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 to any coal remining operation, including the application of such Act to suspended solids.

HISTORY:

(June 30, 1948, ch 758, Title III, § 301, as added Oct. 18, 1972, P.L. 92-500, § 2, 86 Stat. 844; Dec. 27, 1977, P.L. 95-217, §§ 42-47, 53(c), 91 Stat. 1582-1586, 1590; Dec. 29, 1981, P.L. 97-117, §§ 21(a) in part, (b), 22(a)-(d), 95 Stat. 1631, 1632; Jan. 8, 1983, P.L. 97-440, 96 Stat. 2289; Feb. 4, 1987, P.L. 100-4, Title III, §§ 301(a)-(e), 302(a)-(d), 303(a), (b)(1), (c)-(f), 304(a), 305, 306(a), (b), 307, 101 Stat. 29; Nov. 18, 1988, P.L. 100-688, Title III, Subtitle B, § 3202(b), 102 Stat. 4154; Oct. 31, 1994, P.L. 103-431, § 2, 108 Stat. 4396; Dec. 21, 1995, P.L. 104-66, Title II, Subtitle B, § 2021(b), 109 Stat. 727.)

§ 1342. National pollutant discharge elimination system

(a) Permits for discharge of pollutants.

(1) Except as provided in sections 318 and 404 of this Act [*33 USCS §§ 1328, 1344*], the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 301(a) [*33 USCS § 1311(a)*], upon condition that such discharge will meet either (A) all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act [*33 USCS §§ 1311, 1312, 1316, 1317, 1318, 1343*], (B) or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act [*33 USCS §§ 1251* et seq.].

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

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

(4) All permits for discharges into the navigable waters issued pursuant to section 13 of the Act of March 3, 1899 [*33 USCS § 407*], shall be deemed to be permits issued under this *title [33 USCS §§ 1341* et seq.], and permits issued under this *title [33 USCS §§ 1341* et seq.] shall be deemed to be permits issued under section 13 of the Act of March 3, 1899 [*33 USCS § 407*], and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this Act [*33 USCS §§ 1251* et seq.].

(5) No permit for a discharge into the navigable waters shall be issued under section 13 of the Act of March 3, 1899 [*33 USCS § 407*], after the date of enactment of this title [enacted Oct. 18, 1972]. Each application for a permit under section 13 of the Act of March 3, 1899 [*33 USCS § 407*], pending on the date of enactment of this Act [enacted Oct. 18, 1972], shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objective of this Act [*33 USCS §§ 1251* et seq.], to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on the date of enactment of this Act [enacted Oct. 18, 1972] and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 304(h)(2) [304(i)(2)] of this Act [*33 USCS § 1314(i)(2)*], or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this Act [*33 USCS §§ 1251* et seq.]. No such permit shall issue if the Administrator objects to such issuance.

(b) State permit programs. At any time after the promulgation of the guidelines required by subsection (h)(2) of section 304 [304(i)(2)] of this Act [*33 USCS § 1314(i)(2)*], the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete

description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each such submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which--

(A) apply, and insure compliance with, any applicable requirements of sections 301, 302, 306, 307, and 403 [*33 USCS §§ 1311, 1312, 1316, 1317, 1343*];

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

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

(i) violation of any condition of the permit;

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

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

(D) control the disposal of pollutants into wells;

(2) (A) To issue permits which apply, and insure compliance with, all applicable requirements of section 308 of this Act [*33 USCS § 1318*] or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of this Act [*33 USCS § 1318*];

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

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

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

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

(7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;

(8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 307(b) of this Act [*33 USCS § 1317(b)*] into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 306 [*33 USCS § 1316*] if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 301 [*33 USCS § 1311*] if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 204(b), 307, and 308 [*33 USCS §§ 1284(b), 1317, 1318*].

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

(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those discharges subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 304(h)(2) [304(i)(2)] of this Act [*33 USCS § 1314(i)(2)*]. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 304(h)(2) [304(i)(2)] of this Act [*33 USCS § 1314(i)(2)*].

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

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

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

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

(d) Notification of Administrator.

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

(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or (B) of the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this Act [*33 USCS §§ 1251* et seq.]. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.

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

(4) In any case where, after the date of enactment of this paragraph [enacted Dec. 27, 1977], the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing, or, if no hearing is requested within 90 days after the date of such objection, the Administrator may issue the permit pursuant to subsection (a) of this section for such source in accordance with the guidelines and requirements of this Act [*33 USCS §§ 1251* et seq.].

(e) Waiver of notification requirement. In accordance with guidelines promulgated pursuant to subsection (h)(2) of section 304 [304(i)(2)] of this Act [*33 USCS § 1314(i)(2)*], the Administrator is authorized to waive the requirements of subsection (d) of this section at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.

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

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

(h) Violation of permit conditions; restriction or prohibition upon introduction of pollutant by source not previously utilizing treatment works. In the event any condition of a permit for discharges from a treatment works (as defined in section 212 of this Act [*33 USCS § 1292*]) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved or where the Administrator determines pursuant to section 309(a) of this Act [*33 USCS § 1319(a)*] that a State with an approved program has not commenced appropriate enforcement action with respect to such permit, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

(i) Federal enforcement not limited. Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 309 of this Act [*33 USCS § 1319*].

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

(k) Compliance with permits. Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 309 and 505 [*33 USCS §§ 1319, 1365*], with sections 301, 302, 306, 307, and 403 [*33 USCS §§ 1311, 1312, 1316, 1317, 1343*], except any standard imposed under section 307 [*33 USCS § 1317*] for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 301, 306, or 402 of this Act [*33 USCS § 1311, 1316,* or *1342*], or (2) section 13 of the Act of March 3, 1899 [*33 USCS § 407*], unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 [enacted Oct. 18, 1972], in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date of enactment which source is not subject to section 13 of the Act of March 3, 1899 [*33 USCS § 407*], the discharge by such source shall not be a violation of this Act [*33 USCS §§ 1251* et seq.] if such a source applies for a permit for discharge pursuant to this section within such 180-day period.

(l) Limitation on permit requirement.

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

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

(3) Silvicultural activities.

(A) NPDES permit requirements for silvicultural activities. The Administrator shall not require a permit under this section nor directly or indirectly require any State to require a permit under this section for a discharge from runoff resulting from the conduct of the following silviculture activities conducted in accordance with standard industry practice: 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.

(B) Other requirements. Nothing in this paragraph exempts a discharge from silvicultural activity from any permitting requirement under section 404 [*33 USCS § 1344*], existing permitting requirements under section 402 [*33 USCS § 1342*], or from any other federal law.

(C) The authorization provided in Section 505(a) [*33 USCS § 1365(a)*] does not apply to any non-permitting program established under 402(p)(6) [*33 USCS § 1342(p)(6)*] for the silviculture activities listed in 402(l)(3)(A) [*33 USCS § 1342(l)(3)(A)*], or to any other limitations that might be deemed to apply to the silviculture activities listed in 402(l)(3)(A) [*33 USCS § 1342(l)(3)(A)*].

(m) Additional pretreatment of conventional pollutants not required. To the extent a treatment works (as defined in section 212 of this Act [*33 USCS § 1292*]) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to section 304(a)(4) of this Act [*33 USCS § 1314(a)(4)*] into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 307(b)(1) of this Act [*33 USCS § 1317(b)(1)*]. Nothing in this subsection shall affect the Administrator's author-

ity under sections 307 and 309 of this Act [*33 USCS §§ 1317*, *1319*], affect State and local authority under sections 307(b)(4) and 510 of this Act [*33 USCS §§ 1317(b)(4)*, *1370*], relieve such treatment works of its obligations to meet requirements established under this Act [*33 USCS §§ 1251* et seq.], or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

(n) Partial permit program.

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

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

(3) Approval or major category partial permit programs. The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if--

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

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

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

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

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

(o) Anti-backsliding.

(1) General prohibition. In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) [*33 USCS § 1314(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. In the case of effluent limitations established on the basis of section 301(b)(1)(C) or section 303 (d) or (e) [*33 USCS § 1311(b)(1)(C)* or *1313(d)* or (e)], a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with section 303(d)(4) [*33 USCS § 1313(d)(4)*].

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

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

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

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

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

(D) the permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) [*33 USCS § 1311(c)*, (g), (h), (i), (k), (n), or 1326(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).

Subparagraph (B) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a

decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of this Act [*33 USCS §§ 1251* et seq.] or for reasons otherwise unrelated to water quality.

(3) Limitations. In no event may a permit with respect to which paragraph (1) applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 [*33 USCS § 1313*] applicable to such waters.

(p) Municipal and industrial stormwater discharges.

(1) General rule. Prior to October 1, 1994, the Administrator or the State (in the case of a permit program approved under section 402 of this Act [this section]) shall not require a permit under this section for discharges composed entirely of stormwater.

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

(A) A discharge with respect to which a permit has been issued under this section before the date of the enactment of this subsection [enacted Feb. 4, 1987].

(B) A discharge associated with industrial activity.

(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.

(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.

(E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(3) Permit requirements.

(A) Industrial discharges. Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 301 [*33 USCS § 1311*].

(B) Municipal discharge. Permits for discharges from municipal storm sewers--

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

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

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

(4) Permit application requirements.

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

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

(5) Studies. The Administrator, in consultation with the States, shall conduct a study for the purposes of--

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

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

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

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

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

(q) Combined sewer overflows.

(1) Requirement for permits, orders, and decrees. Each permit, order, or decree issued pursuant to this Act [*33 USCS §§ 1251* et seq.] after the date of enactment of this subsection [enacted Dec. 21, 2000] for a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Control Policy signed by the Administrator on April 11, 1994 (in this subsection referred to as the "CSO control policy").

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

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

(r) Discharges incidental to the normal operation of recreational vessels. No permit shall be required under this Act [*33 USCS §§ 1251* et seq.] by the Administrator (or a State, in the case of a permit program approved under subsection (b)) for the discharge of any graywater, bilge water, cooling water, weather deck runoff, oil water separator effluent, or effluent from properly functioning marine engines, or any other discharge that is incidental to the normal operation of a vessel, if the discharge is from a recreational vessel.

HISTORY:

(June 30, 1948, ch 758, Title IV, § 402, as added Oct. 18, 1972, P.L. 92-500, § 2, 86 Stat. 880; Dec. 27, 1977, P.L. 95-217, §§ 33(c), 54(c)(1), 65, 66, 91 Stat. 1577, 1591, 1599, 1600; Feb. 4, 1987, P.L. 100-4, Title IV, §§ 401-403, 404(a), (c) [(d)], 405, 101 Stat. 65-69; Oct. 31, 1992, P.L. 102-580, Title III, § 364, 106 Stat. 4862; Dec. 21, 1995, P.L. 104-66, Title II, Subtitle B, § 2021(e)(2), 109 Stat. 727; Dec. 21, 2000, P.L. 106-554, § 1(a)(4), 114 Stat. 2763; July 30, 2008, P.L. 110-288, § 2, 122 Stat. 2650.)

(As amended Feb. 7, 2014, P.L. 113-79, Title XII, Subtitle C, § 12313, 128 Stat. 992.)

*** Current through PL 114-114, approved 12/28/15, with gaps of PL's 114-94 and 114-95 ***

TITLE 33. NAVIGATION AND NAVIGABLE WATERS
CHAPTER 26. WATER POLLUTION PREVENTION AND CONTROL
GENERAL PROVISIONS

Go to the United States Code Service Archive Directory

33 USCS § 1362

§ 1362. Definitions

Except as otherwise specifically provided, when used in this Act [*33 USCS §§ 1251* et seq.]:

(1) The term "State water pollution control agency" means the State agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.

(2) The term "interstate agency" means an agency of two or more States established by or pursuant to 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.

(3) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(4) The term "municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to 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 this Act [*33 USCS § 1288*].

(5) The term "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a state, or any interstate body.

(6) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) " sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces" within the meaning of section 312 of this Act [*33 USCS § 1322*]; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(7) The term "navigable waters" means the waters of the United States, including the territorial seas.

(8) The term "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

(9) The term "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone [15 UST § 1606].

(10) The term "ocean" means any portion of the high seas beyond the contiguous zone.

(11) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

(12) The term "discharge of a pollutant" and the term "discharge of pollutants" each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

(13) The term "toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

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

(15) The term "biological monitoring" shall mean the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants (A) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and (B) at appropriate frequencies and locations.

(16) The term "discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.

(17) The term "schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

(18) The term "industrial user" means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category "Division D--Manufacturing" and such other classes of significant waste producers as, by regulation, the Administrator deems appropriate.

(19) The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

(20) The term "medical waste" means isolation wastes; infectious agents; human blood and blood products; pathological wastes; sharps; body parts; contaminated bedding; surgical wastes and potentially contaminated laboratory wastes; dialysis wastes; and such additional medical items as the Administrator shall prescribe by regulation.

(21) Coastal recreation waters.

(A) In general. The term "coastal recreation waters" means--

(i) the Great Lakes; and

(ii) marine coastal waters (including coastal estuaries) that are designated under section 303(c) [*33 USCS § 1313(c)*] by a State for use for swimming, bathing, surfing, or similar water contact activities.

(B) Exclusions. The term "coastal recreation waters" does not include--

(i) inland waters; or

(ii) waters upstream of the mouth of a river or stream having an unimpaired natural connection with the open sea.

(22) Floatable material.

(A) In general. The term "floatable material" means any foreign matter that may float or remain suspended in the water column.

(B) Inclusions. The term "floatable material" includes--

(i) plastic;

(ii) aluminum cans;

(iii) wood products;

(iv) bottles; and

(v) paper products.

(23) Pathogen indicator. The term "pathogen indicator" means a substance that indicates the potential for human infectious disease.

(24) Oil and gas exploration and production. The term "oil and gas exploration, production, processing, or treatment operations or transmission facilities" means all field activities or operations associated with exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities.

(25) Recreational vessel.

(A) In general. The term "recreational vessel" means any vessel that is--

(i) manufactured or used primarily for pleasure; or

(ii) leased, rented, or chartered to a person for the pleasure of that person.

(B) Exclusion. The term "recreational vessel" does not include a vessel that is subject to Coast Guard inspection and that--

(i) is engaged in commercial use; or

(ii) carries paying passengers.

(26) Treatment works. The term "treatment works" has the meaning given the term in section 212 [*33 USCS § 1292*].

HISTORY:

(June 30, 1948, ch 758, Title V, § 502, as added Oct. 18, 1972, P.L. 92-500, § 2, 86 Stat. 886; Dec. 27, 1977, P.L. 95-217, § 33(b), 91 Stat. 1577; Feb. 4, 1987, P.L. 100-4, Title V, §§ 502(a), 503, 101 Stat. 75; Nov. 18, 1988, P.L. 100-688, Title III, Subtitle B, § 3202(a), 102 Stat. 4154; Feb. 10, 1996, P.L. 104-106, Div A, Title III, Subtitle C, § 325(c)(3), 110 Stat. 259; Oct. 10, 2000, P.L. 106-284, § 5, 114 Stat. 875; Aug. 8, 2005, P.L. 109-58, Title III, Subtitle C, § 323, 119 Stat. 694; July 30, 2008, P.L. 110-288, § 3, 122 Stat. 2650.)

(As amended June 10, 2014, P.L. 113-121, Title V, Subtitle B, § 5012(b), 128 Stat. 1328.)

TITLE 33. NAVIGATION AND NAVIGABLE WATERS
CHAPTER 26. WATER POLLUTION PREVENTION AND CONTROL
GENERAL PROVISIONS

Go to the United States Code Service Archive Directory

33 USCS § 1370

§ 1370. State authority

Except as expressly provided in this Act [33 USCS §§ 1251 et seq.], nothing in this Act [33 USCS §§ 1251 et seq.] shall (1) preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except that if an effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance is in effect under this Act [33 USCS §§ 1251 et seq.], such State or political subdivision or interstate agency may not adopt or enforce any effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance which is less stringent than the effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance under this Act [33 USCS §§ 1251 et seq.]; or (2) be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.

History:

(June 30, 1948, ch. 758, Title V, § 510, as added, Oct. 18, 1972, P.L. 92-500, § 2, 86 Stat. 893.)

Md. ENVIRONMENT Code Ann. § 9-324

ENVIRONMENT
TITLE 9. WATER, ICE, AND SANITARY FACILITIES
SUBTITLE 3. WATER POLLUTION CONTROL
PART IV. DISCHARGE PERMITS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. ENVIRONMENT Code Ann. § 9-324 (2015)

§ 9-324. Issuance of discharge permit

(a) In general. -- Subject to the provisions of this section, the Department may issue a discharge permit if the Department finds that the discharge meets:

(1) All applicable State and federal water quality standards and effluent limitations; and

(2) All other requirements of this subtitle.

(b) Compliance with Title 1, Subtitle 6 of this article. -- Before issuing a discharge permit, the Department shall comply with the provisions of Title 1, Subtitle 6 of this article.

(c) Time and place of information meeting. -- The information meeting required by Title 1, Subtitle 6 of this article shall be held in the geographical area that will be most directly affected if the discharge permit is issued.

(d) Public notice of application. -- The Department shall give public notice of each application for a discharge permit as required by Title 1, Subtitle 6 of this article, and by making available to the public appropriate documents, permit applications, supporting material, plans, and other relevant information.

HISTORY: NR § 8-1413; 1982, ch. 240, § 2; 1993, ch. 59, § 2.

ENVIRONMENT
TITLE 1. DEFINITIONS; GENERAL PROVISIONS; ENFORCEMENT
SUBTITLE 6. PUBLIC PARTICIPATION IN THE PERMITTING PROCESS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. ENVIRONMENT Code Ann. § 1-601 (2015)

§ 1-601. Scope of subtitle

(a) In general. -- Permits issued by the Department under the following sections shall be issued in accordance with this subtitle:

(1) Air quality control permits to construct subject to § 2-404 of this article;

(2) Permits to install, materially alter, or materially extend landfill systems, incinerators for public use, or rubble landfills subject to § 9-209 of this article;

(3) Permits to discharge pollutants to waters of the State issued pursuant to § 9-323 of this article;

(4) Permits to install, materially alter, or materially extend a structure used for storage or distribution of any type of sewage sludge issued, renewed, or amended pursuant to § 9-234.1 or § 9-238 of this article;

(5) Permits to own, operate, establish, or maintain a controlled hazardous substance facility issued pursuant to § 7-232 of this article;

(6) Permits to own, operate, or maintain a hazardous material facility issued pursuant to § 7-103 of this article; and

(7) Permits to own, operate, establish, or maintain a low-level nuclear waste facility issued pursuant to § 7-233 of this article.

(b) Contested case hearing may not occur. -- For permits listed under subsection (a) of this section, a contested case hearing may not occur.

(c) Judicial review. -- A final determination by the Department on the issuance, denial, renewal, or revision of any permit listed under subsection (a) of this section is subject to

judicial review at the request of any person that:

(1) Meets the threshold standing requirements under federal law; and

(2) (i) Is the applicant; or

(ii) Participated in a public participation process through the submission of written or oral comments, unless an opportunity for public participation was not provided.

(d) Record on review; consideration of objections. --

(1) Judicial review shall be on the administrative record before the Department and limited to objections raised during the public comment period, unless the petitioner demonstrates that:

(i) The objections were not reasonably ascertainable during the comment period; or

(ii) Grounds for the objections arose after the comment period.

(2) The court shall remand the matter to the Department for consideration of objections under paragraph (1) of this subsection.

(e) Venue. --

(1) Unless otherwise required by statute, a petition for judicial review by a person that meets the requirements of subsection (c) of this section shall be filed with the circuit court for the county where the application for the permit states that the proposed activity will occur.

(2) The decision of the circuit court may be appealed to the Court of Special Appeals.

(f) Consolidation of meetings or hearings; location. --

(1) When this article requires more than one public informational meeting or public hearing, the Department may consolidate some or all of the meetings or hearings for the proposed facility with similar meetings or hearings.

(2) The Department shall hold public informational meetings and public hearings at a location in the political subdivision and in close proximity to the location where the individual permit applies.

HISTORY: 1993, ch. 59, § 2; 1999, ch. 519; 2009, ch. 650, § 2; ch. 651, § 2; 2012, ch. 358; 2013, ch. 43, § 5.

40 CFR § 123.25

This document is current through February 1, 2016, with the exception of the amendment appearing at 81 FR 5170, Feb. 1, 2016

Code of Federal Regulations
TITLE 40 -- PROTECTION OF ENVIRONMENT
CHAPTER I -- ENVIRONMENTAL PROTECTION AGENCY
SUBCHAPTER D -- WATER PROGRAMS
PART 123 -- STATE PROGRAM REQUIREMENTS
SUBPART B -- STATE PROGRAM SUBMISSIONS

§ 123.25 Requirements for permitting.

- **(a)**§ 123.25(a) All State Programs under this part must have legal authority to implement each of the following provisions and must be administered in conformance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:
  - **(1)**§ 123.25(a)(1) § 122.4 -- (Prohibitions):
    - **(2)**§ 123.25(a)(1)(2) § 122.5(a) and (b) -- (Effect of permit);
    - **(3)**§ 123.25(a)(1)(3) § 122.7(b) and (c) -- (Confidential information);
    - **(4)**§ 123.25(a)(1)(4) § 122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r) -- (Application for a permit);
    - **(5)**§ 123.25(a)(1)(5) § 122.22 -- (Signatories);
    - **(6)**§ 123.25(a)(1)(6) § 122.23 -- (Concentrated animal feeding operations);
    - **(7)**§ 123.25(a)(1)(7) § 122.24 -- (Concentrated aquatic animal production facilities);
    - **(8)**§ 123.25(a)(1)(8) § 122.25 -- (Aquaculture projects);
    - **(9)**§ 123.25(a)(1)(9) § 122.26 -- (Storm water discharges);
    - **(10)**§ 123.25(a)(1)(10) § 122.27 -- (Silviculture);
    - **(11)**§ 123.25(a)(1)(11) § 122.28 -- (General permits), Provided that States which do not seek to implement the general permit program under § 122.28 need not do so.
    - **(12)**§ 123.25(a)(1)(12) Section 122.41 (a)(1) and (b) through (n) -- (Applicable permit conditions) (Indian Tribes can satisfy enforcement authority requirements under § 123.34);
    - **(13)**§ 123.25(a)(1)(13) § 122.42 -- (Conditions applicable to specified categories of permits);
    - **(14)**§ 123.25(a)(1)(14) § 122.43 -- (Establishing permit conditions);
    - **(15)**§ 123.25(a)(1)(15) § 122.44 -- (Establishing NPDES permit conditions);

- **(16)**§ 123.25(a)(1)(16) § 122.45 -- (Calculating permit conditions);
- **(17)**§ 123.25(a)(1)(17) § 122.46 -- (Duration);
- **(18)**§ 123.25(a)(1)(18) § 122.47(a) -- (Schedules of compliance);
- **(19)**§ 123.25(a)(1)(19) § 122.48 -- (Monitoring requirements);
- **(20)**§ 123.25(a)(1)(20) § 122.50 -- (Disposal into wells);
- **(21)**§ 123.25(a)(1)(21) § 122.61 -- (Permit transfer);
- **(22)**§ 123.25(a)(1)(22) § 122.62 -- (Permit modification);
- **(23)**§ 123.25(a)(1)(23) § 122.64 -- (Permit termination);
- **(24)**§ 123.25(a)(1)(24) § 124.3(a) -- (Application for a permit);
- **(25)**§ 123.25(a)(1)(25) § 124.5 (a), (c), (d), and (f) -- (Modification of permits);
- **(26)**§ 123.25(a)(1)(26) § 124.6 (a), (c), (d), and (e) -- (Draft permit);
- **(27)**§ 123.25(a)(1)(27) § 124.8 -- (Fact sheets);
- **(28)**§ 123.25(a)(1)(28) § 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e) -- (Public notice);
- **(29)**§ 123.25(a)(1)(29) § 124.11 -- (Public comments and requests for hearings);
- **(30)**§ 123.25(a)(1)(30) § 124.12(a) -- (Public hearings); and
- **(31)**§ 123.25(a)(1)(31) § 124.17 (a) and (c) -- (Response to comments);
- **(32)**§ 123.25(a)(1)(32) § 124.56 -- (Fact sheets);
- **(33)**§ 123.25(a)(1)(33) § 124.57(a) -- (Public notice);
- **(34)**§ 123.25(a)(1)(34) § 124.59 -- (Comments from government agencies);
- **(35)**§ 123.25(a)(1)(35) § 124.62 -- (Decision on variances);
- **(36)**§ 123.25(a)(1)(36) Subparts A, B, D, H, I, J, and N of part 125 of this chapter;
- **(37)**§ 123.25(a)(1)(37) 40 CFR parts 129, 133, and subchapter N;
- **(38)**§ 123.25(a)(1)(38) For a Great Lakes State or Tribe (as defined in 40 CFR 132.2), 40 CFR part 132 (NPDES permitting implementation procedures only);
- **(39)**§ 123.25(a)(1)(39) § 122.30 (What are the objectives of the storm water regulations for small MS4s?);
- **(40)**§ 123.25(a)(1)(40) § 122.31 (For Indian Tribes only) (As a Tribe, what is my role under the NPDES storm water program?);
- **(41)**§ 123.25(a)(1)(41) § 122.32 (As an operator of a small MS4, am I regulated under the NPDES storm water program?);
- **(42)**§ 123.25(a)(1)(42) § 122.33 (If I am an operator of a regulated small MS4, how do I apply for an NPDES permit? When do I have to apply?);
- **(43)**§ 123.25(a)(1)(43) § 122.34 (As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?);

        - **(44)**§ 123.25(a)(1)(44) § 122.35 (As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?);
        - **(45)**§ 123.25(a)(1)(45) § 122.36 (As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?); and
        - **(46)**§ 123.25(a)(1)(46) 40 CFR part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR part 127 (NPDES Electronic Reporting Requirements).

Note to paragraph (a): Except for paragraph (a)(46) of this section, states need not implement provisions identical to the above listed provisions. Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions. While States may impose more stringent requirements, they may not make one requirement more lenient as a tradeoff for making another requirement more stringent; for example, by requiring that public hearings be held prior to issuing any permit while reducing the amount of advance notice of such a hearing.

State programs may, if they have adequate legal authority, implement any of the provisions of parts 122 and 124. See, for example, §§ 122.5(d) (continuation of permits) and 124.4 (consolidation of permit processing) of this chapter.

For example, a State may impose more stringent requirements in an NPDES program by omitting the upset provision of § 122.41 of this chapter or by requiring more prompt notice of an upset.

- **(b)**§ 123.25(b) State NPDES programs shall have an approved continuing planning process under 40 CFR 130.5 and shall assure that the approved planning process is at all times consistent with the CWA.
- **(c)**§ 123.25(c) State NPDES programs shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous 2 years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.
    - **(1)**§ 123.25(c)(1) For the purposes of this paragraph:
        - **(i)**§ 123.25(c)(1)(i) Board or body includes any individual, including the Director, who has or shares authority to approve all or portions of permits either in the first instance, as modified or reissued, or on appeal.
        - **(ii)**§ 123.25(c)(1)(ii) Significant portion of income means 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.
        - **(iii)**§ 123.25(c)(1)(iii) Permit holders or applicants for a permit does not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.

        - **(iv)**§ 123.25(c)(1)(iv) Income includes retirement benefits, consultant fees, and stock dividends.
    - **(2)**§ 123.25(c)(2) For the purposes of paragraph (c) of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

Statutory Authority
AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

Clean Water Act, 33 U.S.C. 1251 et seq.

History

[48 FR 14178, Apr. 1, 1983; 50 FR 6941, Feb. 19, 1985; 50 FR 7912, Feb. 27, 1985, as amended at 54 FR 18784, May 2, 1989; 55 FR 48075, Nov. 16, 1990; 58 FR 67981, Dec. 22, 1993; 60 FR 15386, Mar. 23, 1995; 63 FR 45114, 45122, Aug. 24, 1998; 64 FR 42434, 42470, Aug. 4, 1999, as corrected at 64 FR 43426, Aug. 10, 1999; 64 FR 68722, 68849, Dec. 8, 1999; 65 FR 30886, 30909, May 15, 2000; 66 FR 65256, 65338, Dec. 18, 2001; 69 FR 41576, 41682, July 9, 2004; 70 FR 59848, 59888, Oct. 13, 2005; 71 FR 35006, 35040, June 16, 2006; 80 FR 64064, 64099, Oct. 22, 2015]

40 § CFR 122.1

This document is current through February 1, 2016, with the exception of the amendment appearing at 81 FR 5170, Feb. 1, 2016

Code of Federal Regulations
TITLE 40 -- PROTECTION OF ENVIRONMENT
CHAPTER I -- ENVIRONMENTAL PROTECTION AGENCY
SUBCHAPTER D -- WATER PROGRAMS
PART 122 -- EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
SUBPART A -- DEFINITIONS AND GENERAL PROGRAM REQUIREMENTS

§ 122.1 Purpose and scope.

- **(a) Coverage.** § 122.1(a)
    - **(1)**§ 122.1(a)(1) The regulatory provisions contained in this part and parts 123, and 124 of this chapter implement the National Pollutant Discharge Elimination System (NPDES) Program under sections 318, 402, and 405 of the Clean Water Act (CWA) (Public Law 92-500, as amended, 33 U.S.C. 1251 et seq.)
    - **(2)**§ 122.1(a)(2) These provisions cover basic EPA permitting requirements (this part 122), what a State must do to obtain approval to operate its program in lieu of a Federal program and minimum requirements for administering the approved State program (part 123 of this chapter), and procedures for EPA processing of permit applications and appeals (part 124 of this chapter).
    - **(3)**§ 122.1(a)(3) These provisions also establish the requirements for public participation in EPA and State permit issuance and enforcement and related variance proceedings, and in the approval of State NPDES programs. These provisions carry out the purposes of the public participation requirements of part 25 of this chapter, and supersede the requirements of that part as they apply to actions covered under this part and parts 123, and 124 of this chapter.
    - **(4)**§ 122.1(a)(4) Regulatory provisions in Parts 125, 129, 133, 136 of this chapter and 40 CFR subchapter N and subchapter O of this chapter also implement the NPDES permit program.
    - **(5)**§ 122.1(a)(5) Certain requirements set forth in parts 122 and 124 of this chapter are made applicable to approved State programs by reference in

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

- **(b) Scope of the NPDES permit requirement.** § 122.1(b)
    - **(1)**§ 122.1(b)(1) The NPDES program requires permits for the discharge of "pollutants" from any "point source" into "waters of the United States." The terms "pollutant", "point source" and "waters of the United States" are defined at § 122.2.
    - **(2)**§ 122.1(b)(2) The permit program established under this part also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain an NPDES permit, unless all requirements implementing section 405(d) of the CWA applicable to the treatment works treating domestic sewage are included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, Part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator as adequate to assure compliance with section 405 of the CWA.
    - **(3)**§ 122.1(b)(3) The Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal as a "treatment works treating domestic sewage" as defined in § 122.2, where the Regional Administrator finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under CWA section 405(d). Any person designated as a "treatment works treating domestic sewage" shall submit an application for a permit under § 122.21 within 180 days of being notified by the Regional Administrator that a permit is required. The Regional Administrator's decision to designate a person as a "treatment works treating domestic sewage" under this paragraph shall be stated in the fact sheet or statement of basis for the permit.

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

Statutory Authority

The Clean Water Act, 33 U.S.C. 1251 et seq.

History

[48 FR 14153, Apr. 1, 1983, as amended at 54 FR 18781, May 2, 1989; 55 FR 48062, Nov. 16, 1990; 60 FR 33931, June 29, 1995; 65 FR 30886, 30904, May 15, 2000; 72 FR 11200, 11211, Mar. 12, 2007]

40 CFR § 124.10

This document is current through February 1, 2016, with the exception of the amendment appearing at 81 FR 5170, Feb. 1, 2016

Code of Federal Regulations
TITLE 40 -- PROTECTION OF ENVIRONMENT
CHAPTER I -- ENVIRONMENTAL PROTECTION AGENCY
SUBCHAPTER D -- WATER PROGRAMS
PART 124 -- PROCEDURES FOR DECISIONMAKING
SUBPART A -- GENERAL PROGRAM REQUIREMENTS

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

- **(a)**§ 124.10(a) Scope. (1) The Director shall give public notice that the following actions have occurred:
  - **(i)**§ 124.10(a)(i) A permit application has been tentatively denied under § 124.6(b);
  - **(ii)**§ 124.10(a)(ii) (Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)). A draft permit has been prepared under § 124.6(d);
  - **(iii)**§ 124.10(a)(iii) (Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404) and 271.14 (RCRA)). A hearing has been scheduled under § 124.12;
  - **(iv)**§ 124.10(a)(iv) (Applicable to State programs, see § 233.26 (404)). A State section 404 application has been received in cases when no draft permit will be prepared (see § 233.39); or
  - **(v)**§ 124.10(a)(v) An NPDES new source determination has been made under § 122.29.
    - **(2)**§ 124.10(a)(v)(2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under § 124.5(b). Written notice of that denial shall be given to the requester and to the permittee.
    - **(3)**§ 124.10(a)(v)(3) Public notices may describe more than one permit or permit actions.
- **(b)**§ 124.10(b) Timing (applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404, and 271.14 (RCRA)). (1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this section shall allow at least 30 days for public comment. For RCRA permits only, public notice shall allow at least 45 days for public comment. For EPA-issued permits, if the Regional Administrator determines under 40 CFR part 6, subpart F that an Environmental Impact Statement (EIS) shall be prepared for an NPDES new source, public notice of the draft permit shall not be given until after a draft EIS is issued.

    - **(2)**§ 124.10(b)(2) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time aspublic notice of the draft permit and the two notices may be combined.)
- **(c)**§ 124.10(c) Methods (applicable to State programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.23 (404), and 271.14 (RCRA)). Public notice of activities described in paragraph (a)(1) of this section shall be given by the following methods:
    - **(1)**§ 124.10(c)(1) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits);
        - **(i)**§ 124.10(c)(1)(i) The applicant (except for NPDES and 404 general permits when there is no applicant);
        - **(ii)**§ 124.10(c)(1)(ii) Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), NPDES, 404, sludge management permit, or ocean dumping permit under the Marine Research Protection and Sanctuaries Act for the same facility or activity (including EPA when the draft permit is prepared by the State);
        - **(iii)**§ 124.10(c)(1)(iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected States (Indian Tribes). (For purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States.)
        - **(iv)**§ 124.10(c)(1)(iv) For NPDES and 404 permits only, any State agency responsible for plan development under CWA section 208(b)(2), 208(b)(4) or 303(e) and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;
        - **(v)**§ 124.10(c)(1)(v) For NPDES permits only, any user identified in the permit application of a privately owned treatment works;
        - **(vi)**§ 124.10(c)(1)(vi) For 404 permits only, any reasonably ascertainable owner of property adjacent to the regulated facility or activity and the Regional Director of the Federal Aviation Administration if the discharge involves the construction of structures which may affect aircraft operations or for purposes associated with seaplane operations;
        - **(vii)**§ 124.10(c)(1)(vii) For PSD permits only, affected State and local air pollution control agencies, the chief executives of the city and county where the major stationary source or major modification

would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the regulated activity;

- **(viii)**§ 124.10(c)(1)(viii) For Class I injection well UIC permits only, state and local oil and gas regulatory agencies and state agencies regulating mineral exploration and recovery;
- **(ix)**§ 124.10(c)(1)(ix) Persons on a mailing list developed by:
  - **(A)**§ 124.10(c)(1)(ix)(A) Including those who request in writing to be on the list;
  - **(B)**§ 124.10(c)(1)(ix)(B) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and
  - **(C)**§ 124.10(c)(1)(ix)(C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to such a request.)
- **(x)**§ 124.10(c)(1)(x)
  - **(A)**§ 124.10(c)(1)(x)(A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and (B) to each State agency having any authority under State law with respect to the construction or operation of such facility.
- **(xi)**§ 124.10(c)(1)(xi) For Class VI injection well UIC permits, mailing or e-mailing a notice to State and local oil and gas regulatory agencies and State agencies regulating mineral exploration and recovery, the Director of the Public Water Supply Supervision program in the State, and all agencies that oversee injection wells in the State.

- **(2)**§ 124.10(c)(2)
  - **(i)**§ 124.10(c)(2)(i) For major permits, NPDES and 404 general permits, and permits that include sewage sludge land application plans under 40 CFR 501.15(a)(2)(ix), publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity; and for EPA-issued NPDES general permits, in the Federal Register;

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

        - **(ii)**§ 124.10(c)(2)(ii) For all RCRA permits, publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.
    - **(3)**§ 124.10(c)(3) When the program is being administered by an approved State, in a manner constituting legal notice to the public under State law; and
    - **(4)**§ 124.10(c)(4) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.
- **(d)**§ 124.10(d) Contents (applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)) -- (1) All public notices. All public notices issued under this part shall contain the following minimum information:
    - **(i)**§ 124.10(d)(i) Name and address of the office processing the permit action for which notice is being given;
    - **(ii)**§ 124.10(d)(ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of NPDES and 404 draft general permits under §§ 122.28 and 233.37;
    - **(iii)**§ 124.10(d)(iii) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for NPDES or 404 general permits when there is no application.
    - **(iv)**§ 124.10(d)(iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application; and
    - **(v)**§ 124.10(d)(v) A brief description of the comment procedures required by §§ 124.11 and 124.12 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.
    - **(vi)**§ 124.10(d)(vi) For EPA-issued permits, the location of the administrative record required by § 124.9, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant is available as part of the administrative record.
    - **(vii)**§ 124.10(d)(vii) For NPDES permits only (including those for "sludge-only facilities"), a general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice(s) and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area. For EPA-issued

NPDES permits only, if the discharge is from a new source, a statement as towhether an environmental impact statement will be or has been prepared.

- **(viii)**§ 124.10(d)(viii) For 404 permits only,
  - **(A)**§ 124.10(d)(viii)(A) The purpose of the proposed activity (including, in the case of fill material, activities intended to be conducted on the fill), a description of the type, composition, and quantity of materials to be discharged and means of conveyance; and any proposed conditions and limitations on the discharge;
  - **(B)**§ 124.10(d)(viii)(B) The name and water quality standards classification, if applicable, of the receiving waters into which the discharge is proposed, and a general discription of the site of each proposed discharge and the portions of the site and the discharges which are within State regulated waters;
  - **(C)**§ 124.10(d)(viii)(C) A description of the anticipated environmental effects of activities conducted under the permit;
  - **(D)**§ 124.10(d)(viii)(D) References to applicable statutory or regulatory authority; and
  - **(E)**§ 124.10(d)(viii)(E) Any other available information which may assist the public in evaluating the likely impact of the proposed activity upon the integrity of the receiving water.
- **(ix)**§ 124.10(d)(ix) Requirements applicable to cooling water intake structures under section 316(b) of the CWA, in accordance with part 125, subparts I, J, and N of this chapter.
- **(x)**§ 124.10(d)(x) Any additional information considered necessary or proper.
  - **(2)**§ 124.10(d)(x)(2) Public notices for hearings. In addition to the general public notice described in paragraph (d)(1) of this section, the public notice of a hearing under § 124.12 shall contain the following information:
    - **(i)**§ 124.10(d)(x)(2)(i) Reference to the date of previous public notices relating to the permit;
    - **(ii)**§ 124.10(d)(x)(2)(ii) Date, time, and place of the hearing;
    - **(iii)**§ 124.10(d)(x)(2)(iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures; and
    - **(iv)**§ 124.10(d)(x)(2)(iv) For 404 permits only, a summary of major issues raised to date during the public comment period.

- **(e)**§ 124.10(e) (Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)). In addition to the general public notice described in paragraph (d)(1) of this section, all persons identified in paragraphs (c)(1) (i), (ii), (iii), and (iv) of this section shall be mailed a copy of the fact sheet or statement of basis (for EPA-issued permits), the permit application (if any) and the draft permit (if any).

Statutory Authority

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

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

History

[48 FR 14264, Apr. 1, 1983; 48 FR 30115, June 30, 1983, as amended at 53 FR 28147, July 26, 1988; 53 FR 37410, Sept. 26, 1988; 54 FR 258, Jan. 4, 1989; 54 FR 18786, May 2, 1989; 65 FR 30886, 30911, May 15, 2000; 66 FR 65256, 65338, Dec. 18, 2001; 69 FR 41576, 41683, July 9, 2004; 71 FR 35006, 35040, June 16, 2006; 75 FR 77230, 77286, Dec. 10, 2010; 78 FR 5281, 5285, Jan. 25, 2013]

40 § CFR 124.11

This document is current through February 1, 2016, with the exception of the amendment appearing at 81 FR 5170, Feb. 1, 2016

Code of Federal Regulations
TITLE 40 -- PROTECTION OF ENVIRONMENT
CHAPTER I -- ENVIRONMENTAL PROTECTION AGENCY
SUBCHAPTER D -- WATER PROGRAMS
PART 124 -- PROCEDURES FOR DECISIONMAKING
SUBPART A -- GENERAL PROGRAM REQUIREMENTS

§ 124.11 Public comments and requests for public hearings.

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

Statutory Authority

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

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

History

48 FR 14264, Apr. 1, 1983.

40 § CFR 124.13

This document is current through February 1, 2016, with the exception of the amendment appearing at 81 FR 5170, Feb. 1, 2016

Code of Federal Regulations
TITLE 40 -- PROTECTION OF ENVIRONMENT
CHAPTER I -- ENVIRONMENTAL PROTECTION AGENCY
SUBCHAPTER D -- WATER PROGRAMS
PART 124 -- PROCEDURES FOR DECISIONMAKING
SUBPART A -- GENERAL PROGRAM REQUIREMENTS

§ 124.13 Obligation to raise issues and provide information during the public comment period.

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under § 124.10. Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting materials not already included in the administrative record available to EPA as directed by the Regional Administrator. (A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section. Additional time shall be granted under § 124.10 to the extent that a commenter who requests additional time demonstrates the need for such time.)

Statutory Authority

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

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

History

[49 FR 38051, Sept. 26, 1984]

40 CFR § 123.30

This document is current through February 1, 2016, with the exception of the amendment appearing at 81 FR 5170, Feb. 1, 2016

Code of Federal Regulations
TITLE 40 -- PROTECTION OF ENVIRONMENT
CHAPTER I -- ENVIRONMENTAL PROTECTION AGENCY
SUBCHAPTER D -- WATER PROGRAMS
PART 123 -- STATE PROGRAM REQUIREMENTS
SUBPART B -- STATE PROGRAM SUBMISSIONS

§ 123.30 Judicial review of approval or denial of permits.

All States that administer or seek to administer a program under this part shall provide an opportunity for judicial review in State Court of the final approval or denial of permits by the State that is sufficient to provide for, encourage, and assist public participation in the permitting process. A State will meet this standard if State law allows an opportunity for judicial review that is the same as that available to obtain judicial review in federal court of a federally-issued NPDES permit (see § 509 of the Clean Water Act). A State will not meet this standard if it narrowly restricts the class of persons who may challenge the approval or denial of permits (for example, if only the permittee can obtain judicial review, if persons must demonstrate injury to a pecuniary interest in order to obtain judicial review, or if persons must have a property interest in close proximity to a discharge or surface waters in order to obtain judicial review.) This requirement does not apply to Indian Tribes.

Statutory Authority
AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

Clean Water Act, 33 U.S.C. 1251 et seq.

History

[61 FR 20972, 20980, May 8, 1996]

40 CFR § 122.62

This document is current through February 1, 2016, with the exception of the amendment appearing at 81 FR 5170, Feb. 1, 2016

Code of Federal Regulations
TITLE 40 -- PROTECTION OF ENVIRONMENT
CHAPTER I -- ENVIRONMENTAL PROTECTION AGENCY
SUBCHAPTER D -- WATER PROGRAMS
PART 122 -- EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
SUBPART D -- TRANSFER, MODIFICATION, REVOCATION AND REISSUANCE, AND TERMINATION OF PERMITS

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

- When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 122.41), receives a request for modification or revocation and reissuance under § 124.5, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in paragraphs (a) and (b) of this section for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of § 124.5(c), and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See § 124.5(c)(2). If cause does not exist under this section or § 122.63, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in § 122.63 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in part 124 (or procedures of an approved State program) followed.
    - **(a)**§ 122.62(a) Causes for modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.
        - **(1)**§ 122.62(a)(1) Alterations. There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice) which occurred after permit issuance which justify the

application of permit conditions that are different or absent in the existing permit.

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

- **(2)**§ 122.62(a)(2) Information. The Director has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For NPDES general permits (§ 122.28) this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger NPDES permits §§ 122.21, 122.29), this cause shall include any significant information derived from effluent testing required under § 122.21(k)(5)(vi) or § 122.21(h)(4)(iii) after issuance of the permit.
- **(3)**§ 122.62(a)(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)**§ 122.62(a)(3)(i) For promulgation of amended standards or regulations, when:
        - **(A)**§ 122.62(a)(3)(i)(A) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under part 133; and
        - **(B)**§ 122.62(a)(3)(i)(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)**§ 122.62(a)(3)(i)(C) A permittee requests modification in accordance with § 124.5 within ninety

(90) days after Federal Register notice of the action on which the request is based.

- **(ii)**§ 122.62(a)(3)(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with § 124.5 within ninety (90) days of judicial remand.
- **(iii)**§ 122.62(a)(3)(iii) For changes based upon modified State certifications of NPDES permits, see § 124.55(b).

- **(4)**§ 122.62(a)(4) Compliance schedules. The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an NPDES compliance schedule be modified to extend beyond an applicable CWA statutory deadline. See also § 122.63(c) (minor modifications) and paragraph (a)(14) of this section (NPDES innovative technology).
- **(5)**§ 122.62(a)(5) When the permittee has filed a request for a variance under CWA section 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a) or for "fundamentally different factors" within the time specified in § 122.21 or § 125.27(a).
- **(6)**§ 122.62(a)(6) 307(a) toxics. When required to incorporate an applicable 307(a) toxic effluent standard or prohibition (see § 122.44(b)).
- **(7)**§ 122.62(a)(7) Reopener. When required by the "reopener" conditions in a permit, which are established in the permit under § 122.44(b) (for CWA toxic effluent limitations and Standards for sewage sludge use or disposal, see also § 122.44(c)) or 40 CFR 403.18(e) (Pretreatment program).
- **(8)**§ 122.62(a)(8)
  - **(i)**§ 122.62(a)(8)(i) Net limits. Upon request of a permittee who qualifies for effluent limitations on a net basis under § 122.45(g).

        - **(ii)**§ 122.62(a)(8)(ii) When a discharger is no longer eligible for net limitations, as provided in § 122.45(g)(1)(ii).
- **(9)**§ 122.62(a)(9) Pretreatment. As necessary under 40 CFR 403.8(e) (compliance schedule for development of pretreatment program).
- **(10)**§ 122.62(a)(10) Failure to notify. Upon failure of an approved State to notify, as required by section 402(b)(3), another State whose waters may be affected by a discharge from the approved State.
- **(11)**§ 122.62(a)(11) Non-limited pollutants. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c).
- **(12)**§ 122.62(a)(12) Notification levels. To establish a "notification level" as provided in § 122.44(f).
- **(13)**§ 122.62(a)(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)**§ 122.62(a)(14) For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in § 122.34(b) when:
    - **(i)**§ 122.62(a)(14)(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)**§ 122.62(a)(14)(ii) The other entity fails to implement measure(s) that satisfy the requirement(s).
- **(15)**§ 122.62(a)(15) To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

- **(16)**§ 122.62(a)(16) When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under section 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).
- **(17)**§ 122.62(a)(17) Nutrient Management Plans. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with §§ 122.23(h) and 122.28 is not a cause for modification pursuant to the requirements of this section.
- **(18)**§ 122.62(a)(18) Land application plans. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

- **(b)**§ 122.62(b) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:
  - **(1)**§ 122.62(b)(1) Cause exists for termination under § 122.64, and the Director determines that modification or revocation and reissuance is appropriate.
  - **(2)**§ 122.62(b)(2) The Director has received notification (as required in the permit, see § 122.41(l)(3)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (§ 122.61(b)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

Statutory Authority

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

History

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 25981, June 25, 1984; 49 FR 37009, Sept. 29, 1984; 49 FR 38050, Sept. 26, 1984; 50 FR 4514, Jan. 31, 1985; 51 FR 20431, June 4, 1986; 51 FR 26993, July 28, 1986; 54 FR 256, 258, Jan. 4, 1989; 54 FR 18784, May 2, 1989; 60 FR 33931, June 29, 1995; 64 FR 68722, 68847, Dec. 8, 1999; 65 FR 30886, 30909, May 15, 2000; 70 FR 60134, 60191, Oct. 14, 2005; 73 FR 70418, 70485, Nov. 20, 2008]

40 CFR § 122.63

This document is current through February 1, 2016, with the exception of the amendment appearing at 81 FR 5170, Feb. 1, 2016

Code of Federal Regulations
TITLE 40 -- PROTECTION OF ENVIRONMENT
CHAPTER I -- ENVIRONMENTAL PROTECTION AGENCY
SUBCHAPTER D -- WATER PROGRAMS
PART 122 -- EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
SUBPART D -- TRANSFER, MODIFICATION, REVOCATION AND REISSUANCE, AND TERMINATION OF PERMITS

§ 122.63 Minor modifications of permits.

- Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of part 124. Any permit modification not processed as a minor modification under this section must be made for cause and with part 124 draft permit and public notice as required in § 122.62. Minor modifications may only:
    - **(a)**§ 122.63(a) Correct typographical errors;
    - **(b)**§ 122.63(b) Require more frequent monitoring or reporting by the permittee;
    - **(c)**§ 122.63(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)**§ 122.63(d) Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.
    - **(e)**§ 122.63(e)
        - **(1)**§ 122.63(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 § 122.29.

- **(2)**§ 122.63(e)(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)**§ 122.63(f) 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).
- **(g)**§ 122.63(g) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 (or a modification thereto that has been approved in accordance with the procedures in 40 CFR 403.18) as enforceable conditions of the POTW's permits.
- **(h)**§ 122.63(h) Incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of § 122.42(e)(6).

Statutory Authority

The Clean Water Act, 33 U.S.C. 1251 et seq.

History

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 38051, Sept. 26, 1984; 51 FR 20431, June 4, 1986; 53 FR 40616, Oct. 17, 1988; 60 FR 33931, June 29, 1995; 73 FR 70418, 70485, Nov. 20, 2008; 80 FR 64064, 64099, Oct. 22, 2015]

TITLE 40 -- PROTECTION OF ENVIRONMENT
CHAPTER I -- ENVIRONMENTAL PROTECTION AGENCY
SUBCHAPTER N -- EFFLUENT GUIDELINES AND STANDARDS
PART 403 -- GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

Go to the CFR Archive Directory

40 CFR 403.11

§ 403.11 Approval procedures for POTW pretreatment programs and POTW granting of removal credits.

The following procedures shall be adopted in approving or denying requests for approval of POTW Pretreatment Programs and applications for removal credit authorization:

(a) Deadline for review of submission. The Approval Authority shall have 90 days from the date of public notice of any Submission complying with the requirements of § 403.9(b) and, where removal credit authorization is sought with §§ 403.7(e) and 403.9(d), to review the Submission. The Approval Authority shall review the Submission to determine compliance with the requirements of § 403.8 (b) and (f), and, where removal credit authorization is sought, with § 403.7. The Approval Authority may have up to an additional 90 days to complete the evaluation of the Submission if the public comment period provided for in paragraph (b)(1)(ii) of this section is extended beyond 30 days or if a public hearing is held as provided for in paragraph (b)(2) of this section. In no event, however, shall the time for evaluation of the Submission exceed a total of 180 days from the date of public notice of a Submission meeting the requirements of § 403.9(b) and, in the case of a removal credit application, §§ 403.7(e) and 403.9(b).

(b) Public notice and opportunity for hearing. Upon receipt of a Submission the Approval Authority shall commence its review. Within 20 work days after making a determination that a Submission meets the requirements of § 403.9(b) and, where removal allowance approval is sought, §§ 403.7(d) and 403.9(d), the Approval Authority shall:

(1) Issue a public notice of request for approval of the Submission;

(i) This public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the Submission. Procedures for the circulation of public notice shall include:

(A) Mailing notices of the request for approval of the Submission to designated 208 planning agencies, Federal and State fish, shellfish and wildfish resource agencies (unless such agencies have asked not to be sent the notices); and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and

(B) Publication of a notice of request for approval of the Submission in a newspaper(s) of general circulation within the jurisdiction(s) served by the POTW that meaningful public notice.

(ii) The public notice shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the Submission.

(iii) All written comments submitted during the 30 day comment period shall be retained by the Approval Authority and considered in the decision on whether or not to approve the Submission. The period for comment may be extended at the discretion of the Approval Authority; and

(2) Provide an opportunity for the applicant, any affected State, any interested State or Federal agency, person or group of persons to request a public hearing with respect to the Submission.

(i) This request for public hearing shall be filed within the 30 day (or extended) comment period described in paragraph (b)(1)(ii) of this section and shall indicate the interest of the person filing such request and the reasons why a hearing is warranted.

(ii) The Approval Authority shall hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the Submission should be approved. Instances of doubt should be resolved in favor of holding the hearing.

(iii) Public notice of a hearing to consider a Submission and sufficient to inform interested parties of the nature of the hearing and the right to participate shall be published in the same newspaper as the notice of the original request for approval of the Submission under paragraph (b)(1)(i)(B) of this section. In addition, notice of the hearing shall be sent to those persons requesting individual notice.

(c) Approval authority decision. At the end of the 30 day (or extended) comment period and within the 90 day (or extended) period provided for in paragraph (a) of this section, the Approval Authority shall approve or deny the Submission based upon the evaluation in paragraph (a) of this section and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. Where the Approval Authority makes a determination to deny the request, the Approval Authority shall so notify the POTW and each person who has requested individual notice. This notification shall include suggested modifications and the Approval Authority may allow the requestor additional time to bring the Submission into compliance with applicable requirements.

(d) EPA objection to Director's decision. No POTW pretreatment program or authorization to

grant removal allowances shall be approved by the Director if following the 30 day (or extended) evaluation period provided for in paragraph (b)(1)(ii) of this section and any hearing held pursuant to paragraph (b)(2) of this section the Regional Administrator sets forth in writing objections to the approval of such Submission and the reasons for such objections. A copy of the Regional Administrator's objections shall be provided to the applicant, and each person who has requested individual notice. The Regional Administrator shall provide an opportunity for written comments and may convene a public hearing on his or her objections. Unless retracted, the Regional Administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.

(e) Notice of decision. The Approval Authority shall notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the Submission. In addition, the Approval Authority shall cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request for approval of the Submission was published. The Approval Authority shall identify in any notice of POTW Pretreatment Program approval any authorization to modify categorical Pretreatment Standards which the POTW may make, in accordance with § 403.7, for removal of pollutants subject to Pretreatment Standards.

(f) Public access to submission. The Approval Authority shall ensure that the Submission and any comments upon such Submission are available to the public for inspection and copying.

HISTORY:

[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 31224, Aug. 3, 1984; 51 FR 20429, June 4, 1986; 53 FR 40613, Oct. 17, 1988; 62 FR 38406, 38414, July 17, 1997]

TITLE 40 -- PROTECTION OF ENVIRONMENT
CHAPTER I -- ENVIRONMENTAL PROTECTION AGENCY
SUBCHAPTER D -- WATER PROGRAMS
PART 123 -- STATE PROGRAM REQUIREMENTS
SUBPART B -- STATE PROGRAM SUBMISSIONS

Go to the CFR Archive Directory

40 CFR 123.23

§ 123.23 Attorney General's statement.

(a) Any State that seeks to administer a program under this part shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel) that the laws of the State, or an interstate compact, provide adequate authority to carry out the program described under § 123.22 and to meet the requirements of this part. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions which demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program.

Note: EPA will supply States with an Attorney General's statement format on request.

(b) If a State (which is not an Indian Tribe) seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

(c) The Attorney General's statement shall certify that the State has adequate legal authority to issue and enforce general permits if the State seeks to implement the general permit program under § 122.28.

HISTORY:
[48 FR 14178, Apr. 1, 1983; 58 FR 67981, Dec. 22, 1993]

40 CFR § 130.2

This document is current through February 1, 2016, with the exception of the amendment appearing at 81 FR 5170, Feb. 1, 2016

Code of Federal Regulations

TITLE 40 -- PROTECTION OF ENVIRONMENT
CHAPTER I -- ENVIRONMENTAL PROTECTION AGENCY
SUBCHAPTER D -- WATER PROGRAMS
PART 130 -- WATER QUALITY PLANNING AND MANAGEMENT

§ 130.2 Definitions.

- **(a)**§ 130.2(a) The Act. The Clean Water Act, as amended, 33 U.S.C. 1251 et seq.
- **(b)**§ 130.2(b) Indian Tribe. Any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.
- **(c)**§ 130.2(c) Pollution. The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.
- **(d)**§ 130.2(d) Water quality standards (WQS). Provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.
- **(e)**§ 130.2(e) Load or loading. An amount of matter or thermal energy that is introduced into a receiving water; to introduce matter or thermal energy into a receiving water. Loading may be either man-caused (pollutant loading) or natural (natural background loading).
- **(f)**§ 130.2(f) Loading capacity. The greatest amount of loading that a water can receive without violating water quality standards.
- **(g)**§ 130.2(g) Load allocation (LA). The portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best estimates of the loading, which may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting the loading. Wherever possible, natural and nonpoint source loads should be distinguished.

- **(h)**§ 130.2(h) Wasteload allocation (WLA). The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.
- **(i)**§ 130.2(i) Total maximum daily load (TMDL). The sum of the individual WLAs for point sources and LAs for nonpoint sources and natural background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. If Best Management Practices (BMPs) or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs.
- **(j)**§ 130.2(j) Water quality limited segment. Any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by sections 301(b) and 306 of the Act.
- **(k)**§ 130.2(k) Water quality management (WQM) plan. A State or areawide waste treatment management plan developed and updated in accordance with the provisions of sections 205(j), 208 and 303 of the Act and this regulation.
- **(l)**§ 130.2(l) Areawide agency. An agency designated under section 208 of the Act, which has responsibilities for WQM planning within a specified area of a State.
- **(m)**§ 130.2(m) Best Management Practice (BMP). Methods, measures or practices selected by an agency to meet its nonpoint source control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.
- **(n)**§ 130.2(n) Designated management agency (DMA). An agency identified by a WQM plan and designated by the Governor to implement specific control recommendations.

Statutory Authority

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

33 U.S.C. 1251 et seq.

History

[50 FR 1779, Jan. 11, 1985, as amended at 54 FR 14359, Apr. 11, 1989; 65 FR 43586, 43662, July 13, 2000, withdrawn at 68 FR 13608, 13614, Mar. 19, 2003; 66 FR 53044, 53048, Oct. 18, 2001]

Md. Rule 8-511

MARYLAND RULES
TITLE 8. APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS
CHAPTER 500. RECORD EXTRACT, BRIEFS, AND ARGUMENT

Md. Rule 8-511 (2016)

Review Court Orders which may amend this Rule.

Rule 8-511. Amicus curiae

(a) Authorization to File Amicus Curiae Brief. An amicus curiae brief may be filed only:

(1) upon written consent of all parties to the appeal;

(2) by the Attorney General in any appeal in which the State of Maryland may have an interest;

(3) upon request by the Court; or

(4) upon the Court's grant of a motion filed under section (b) of this Rule.

(b) Motion and Brief.

(1) Content of Motion. A motion requesting permission to file an amicus curiae brief shall:

(A) identify the interest of the movant;

(B) state the reasons why the amicus curiae brief is desirable;

(C) state whether the movant requested of the parties their consent to the filing of the amicus curiae brief and, if not, why not;

(D) state the issues that the movant intends to raise;

(E) identify every person, other than the movant, its members, or its attorneys, who made a monetary or other contribution to the preparation or submission of the brief, and identify the nature of the contribution; and

(F) if filed in the Court of Appeals to seek leave to file an amicus curiae brief supporting or

opposing a petition for writ of certiorari or other extraordinary writ, state whether, if the writ is issued, the movant intends to seek consent of the parties or move for permission to file an amicus curiae brief on the issues before the Court.

(2) Attachment of Brief. Copies of the proposed amicus curiae brief shall be attached to two of the copies of the motion filed with the Court.

Cross references. -- See Rule 8-431 (e) for the total number of copies of a motion required when the motion is filed in an appellate court.

(3) Service. The movant shall serve a copy of the motion and proposed brief on each party.

(4) If Motion Granted. If the motion is granted, the brief shall be regarded as having been filed when the motion was filed. Within ten days after the order granting the motion is filed, the amicus curiae shall file the additional number of briefs required by Rule 8-502 (c).

(c) Time for filing.

(1) Generally. Except as required by subsection (c)(2) of this Rule and unless the Court orders otherwise, an amicus curiae brief shall be filed at or before the time specified for the filing of the principal brief of the appellee.

(2) Time for Filing in Court of Appeals.

(A) An amicus curiae brief may be filed pursuant to section (a) of this Rule in the Court of Appeals on the question of whether the Court should issue a writ of certiorari or other extraordinary writ to hear the appeal as well as, if such a writ is issued, on the issues before the Court.

(B) An amicus curiae brief or a motion for leave to file an amicus curiae brief supporting or opposing a petition for writ of certiorari or other extraordinary writ shall be filed at or before the time any answer to the petition is due.

(C) Unless the Court orders otherwise, an amicus curiae brief on the issues before the Court if the writ is granted shall be filed at the applicable time specified in subsection (c)(1) of this Rule.

(d) Compliance with Rules 8-503 and 8-504. An amicus curiae brief shall comply with the applicable provisions of Rules 8-503 and 8-504.

(e) Reply brief; Oral argument; Brief supporting or opposing motion for reconsideration. Without permission of the Court, an amicus curiae may not (1) file a reply brief, (2) participate in oral argument, or (3) file a brief in support of, or in opposition to, a motion for reconsideration. Permission may be granted only for extraordinary reasons.

(f) Appellee's reply brief. Within ten days after the later of (1) the filing of an amicus curiae brief that is not substantially in support of the position of the appellee or (2) the entry of an order granting a motion under section (b) that permits the filing of a brief not substantially in support of the position of the appellee, the appellee may file a reply brief limited to the

issues in the amicus curiae brief that are not substantially in support of the appellee's position and are not fairly covered in the appellant's principal brief. Any such reply brief shall not exceed 3,900 words.

HISTORY: (Amended Nov. 8, 2005, effective Jan. 1, 2006; Nov. 21, 2013, effective Jan. 1, 2014; September 17, 2015, effective January 1, 2016.)